

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13223 of Milton McGinty, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3105.42 to permit a new residential development comprising a twelve unit apartment house and a variance from the number of stories (Sub-section 3201.1) in an R-5-A District at the premises 2599 Naylor Road, S. E., (Square 5631, Parcel 219/52).

HEARING DATE: April 23, 1980  
DECISION DATE: May 7, 1980

FINDINGS OF FACT:

1. The subject property is located on the southwest side of Naylor Road, S. E., between Altamont Place, and Good Hope Road and is in an R-5-A District.

2. Square 5631 in which the subject property is located, is bounded by Naylor Road, Good Hope Road and Altamont Place. The square is developed with apartment buildings fronting on all three streets. The level of development is quite intensive.

3. The topography in the area is also difficult. The land along Naylor Road is substantially higher than and slopes down toward Good Hope Road. It is also higher than the elevation of Naylor Road. The existing development in the square is terraced to cope with the topography. The lots to the north and the west are at a substantially lower grade from the subject property.

4. The applicant proposes to construct a new apartment building with twelve dwelling units. The currently vacant site is fifty feet wide and 207.33 feet deep. The proposed building will have three floors and a basement. There will be three one-bedroom units on the basement floor and two two-bedroom and one one-bedroom unit on each of the other three floors. The building will be rectangular in shape having a width of thirty-four feet fronting along Naylor Road and a depth of sixty-eight feet parallel to the side yard. There will be an eight foot side yard provided on either side of the building.

The entrance will be approximately midway along the south side of the building having access through the side yard. Parking will be located to the rear of the building.

5. The front portion of the site is vacant. The rear portion of the site where the applicant proposes to provide parking for the building is already being used for accessory parking for two apartment buildings #2601 and 2603 Naylor Road, located on the adjoining lots 15 and 34.

6. The apartment buildings 2601 and 2603 Naylor Road which are located on the adjoining lots 15 and 34, were constructed prior to 1958. Each of the two buildings have fourteen apartments, for a total of twenty eight apartments. There is not enough space on lots 15 and 34 to provide sufficient parking for the buildings located on them. The parking need for these buildings is currently met by the existing spaces on the subject property. The applicant has proposed to assign these spaces to the new building and leave the existing buildings without adequate parking.

7. The applicant owns the above mentioned lots 15 and 34 which are located adjacent to and to the south of the subject parcel. The total property, which includes parcel 219/52 and lots 15 and 34, was acquired by the applicant in 1974. The property was also in single ownership prior to 1974. The accessory parking for the apartment buildings Nos. 2601 and 2603 Naylor Road existed on the subject parcel 219/52 at the time of its acquisition by the applicant in 1974.

8. Square 5631, in which the subject property is located, is bounded by Naylor Road, Good Hope Road and Altamont Place. The square is developed with apartment buildings. The development is quite intensive. The topography of the area is irregular having excessive changes in grade. The land along Naylor Road is substantially higher than and slopes down toward Good Hope Road. The existing development in the square is terraced to cope with the topography. The lots to the north and the west are at a substantially lower grade from the subject property.

9. Entrance to the existing parking area is from the south side of lot 15 which is not in the ownership of the applicant. It is the understanding of the applicant that this right to entrance exists by custom rather than any formalized legal document. The applicant proposes to effect an easement. The existing exit driveway which is twelve feet in width is on the northerly side of lot 15 and runs adjacent to and outside the subject parcel.

10. On the subject site there are twenty parking spaces and on lots 15 and 34 there are eight parking spaces. The twenty parking spaces service the twenty-eight tenants residing at 2601 and 2603 Naylor Road. Through the proposed development eleven of the existing spaces would be relined to provide twelve spaces as required under the Zoning Regulations for the new tenants. There would remain seventeen spaces for the nineteen tenants from 2601 and 2603 Naylor Road who currently park on the property. The applicant argued that since not all of the new tenants would require spaces there would still be accommodations for the other tenants at 2601 and 2603 Naylor Road.

11. The applicant testified that he would build two semi-detached buildings on the subject lot. All but eight of the existing parking spaces would be eliminated. The applicant also testified that he could construct a three story apartment building and would not need a variance from the number of stories. In both of these situations the applicant testified that such construction would not be in harmony with the surrounding apartment houses.

12. There is no provision in the subject site plans for active or passive recreation for the proposed tenants.

13. In BZA Order No. 12656, dated June 30, 1978, the Board denied the application of the subject applicant for the subject property for the construction of a sixteen unit apartment house. In that application in addition to the subject special exception the applicant also sought variances from the FAR requirements and side yard requirements and a special exception to permit accessory parking to be located on a lot other than where the principal use is located. The Board concluded that there was no practical difficulty inherent in the property itself but that the requested variances arose from the intensity of the proposed development. The Board also concluded that the granting of the application would cause substantial detriment to the public good and substantially impair the intent, purpose and integrity of the zone plan.

14. Pursuant to Sub-section 3105.42 the application was referred to the D. C. Board of Education, the Department of Transportation, Department of Housing and Community Development and the Office of Planning and Development for their comments and recommendations.

15. By memorandum dated March 24, 1980 the Board of Education reported that it found no objection to the proposed development and that there will be no impact upon school facilities in the subject area. The Board so finds.

16. The Department of Transportation, by memorandum dated April 8, 1980, reported that by memorandum dated June 8, 1978 relative to BZA Application No. 12656, the DOT had recommended denial of that application for a sixteen unit apartment building because the sixteen off-street parking spaces that were to be provided for the development were in fact already assigned to residents of the adjacent apartment buildings owned by the applicant. The DOT recommended that the subject application for a twelve unit apartment house should likewise be denied. The plat submitted with this application also shows the existing parking lot now assigned to residents of the proposed building. The DOT reported that the twelve apartment units will add no measurable adverse traffic impact to the surrounding street system. The Board concurs with the findings and recommendations of the DOT.

17. By memorandum dated April 7, 1980, the Department of Housing and Community Development reported that the lot which is the subject of this application is presently vacant in a block which consists exclusively of apartment houses. Surrounding blocks, across Naylor and Good Hope Roads, contain similar development. Local shopping is a short distance away, on Good Hope Road, and the E. L. Stanton Public School is just across that street to the south. Open space and recreation needs are met by the school as well as by such major facilities as Fort Stanton Park to the west. The Department reported that the apartment building is compatible with its surroundings and is likely to be adequately served by existing public and private facilities in the neighborhood. Since Good Hope Road and the nearby Alabama Avenue are both major arteries, the site also has good access to other parts of the District. The small number of units in the proposed building are unlikely to have any adverse effect on public facilities.

18. In reviewing the site plan, the Department reported that, since the present lot is only fifty feet wide, while the proposed building is thirty-four feet wide in the same direction, little room remains for an adequate driveway to the rear of the lot. The eight feet shown does not meet the Zoning Regulation minimum of fourteen feet for driveways. Such a driveway goes by the windows of all apartments on the lower floors and when

cars pass they may provide a nuisance. In addition, the layout of the spaces is such that it is either impossible to get access to them through a tight, ten foot wide turn, or the first of the spaces must be eliminated. The Department recommended that developer should be asked, to re-examine the parking layout not only to improve access but also to see whether a better consolidation could provide some private open space. There is no indication as to whether the existing fifteen foot public alley at the rear of the lot is to be used for access to parking.

The Department noted the proposed apartment units would presumably provide an opportunity for rental housing for families of moderate income and, as such, would be consistent with the housing policies. The Department of Housing and Community Development had no objection to the granting of this application but recommends that it be contingent on the submission of an improved site plan. The Board notes the comments of the DHCD, but for reasons stated below, the Board disagrees with DHCD's recommendation.

19. The Office of Planning and Development by report dated April 10, 1980 recommended that the application be denied. It reported that in the opinion of the Office of Planning and Development, the proposed development on the site is too intense and is likely to adversely impact the surrounding area. A portion of the site is being used for accessory parking needs for the apartment buildings on the adjoining lots. The proposed development involves reduction in this parking area since a portion of it will be designated for the proposed development. The need for the variance from the number of stories requirements arises from the intensity of the development. The Board concurs with the findings and recommendations of OPD.

20. ANC-6C made no recommendation on the application.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the application is seeking a special exception and a variance. For the special exception to be granted the Board must conclude that the applicant has complied with the requirements of Paragraph 3105.42 of the Zoning Regulations and that the relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations, and that it will not tend to affect adversely the use of neighboring property. The Board in its findings has found that the proposed development of the site is too intense and that the proposed parking arrangements tends to affect adversely the use of neighboring property. The Board concludes that the special exception cannot be granted without adversely impacting the surrounding area.

As to the variance the Board concludes that the applicant is seeking an area variance the granting of which requires a showing of a practical difficulty that is inherent in the property itself. The Board concludes that that there is nothing exceptional about the subject property. It basically rectangular in shape. The requested variance arises from the intensity of the proposed development. The subject proposal is new development not rehabilitation or conversion of an existing structure. The applicant could use the property for other residential purposes which would not require a variance. A fourth story is the applicant's option and he has the burden of proof in establishing the practical difficulty for the extra story. He has failed to do this. Accordingly, for the above reasons it is ORDERED that the application is DENIED in its entirety.

VOTE: 5-0 (Connie Fortune, Walter B. Lewis, Charles R. Norris, William F. McIntosh and Leonard L. McCants to deny).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher

Steven E. Sher  
Executive Director

FINAL DATE OF ORDER: 28 JUL 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."