

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13263 of William and Diane Gardner, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a variance from the use provisions (Section 6101) to use the first and second floors of the subject premises as a rooming house consisting of four rooms in a C-M-3 District at the premises 64 New York Avenue, N.E., (Square 670, Lot 7).

HEARING DATE: June 18, 1980  
DECISION DATES: July 2 and September 3, 1980

FINDINGS OF FACT:

1. The subject property is located in a C-M-3 District on the north side of New York Avenue between North Capitol Street and O Street, N.E. The subject lot is a through lot, also having frontage on O Street.
2. The C-M-3 District which includes the subject site covers a broad area between North Capitol and 1st Street, N.E., extending from G Street all the way up to Florida Avenue.
3. All of the industrially zoned area described above is used for commercial or industrial purposes, with the exception of the subject square. The frontage of the subject square along both New York Ave. and O Streets is subdivided into sixteen or seventeen foot wide lots and developed with rowhouse type structures. A number of the lots are vacant, and a number of the structures in the block are boarded up.
4. Across New York Avenue to the south are a McDonalds restaurant, car wash, parking garage, auto parts store and oil company. Across O Street to the north is a parking lot.
5. The subject property is improved with a two story brick rowhouse type structure. The building also has an unfinished half basement. The building is vacant at the present.
6. The applicants originally proposed to use the building as a motel, which is a use permitted as a matter-of-right in the C-M-3 District. At the time of application for a Certificate of Occupancy, the building could not meet the requirements established by the definition of a motel.
7. The applicants now seek to use the premises as a rooming house. There would be three bedrooms on the second floor, and one in the front of the first floor. The rear room on the first floor would be a lounge, and the middle room on the first floor

would be reserved for the use of the owners. There would be no kitchen facilities in the building.

8. There is no record of a Certificate of Occupancy having been issued for the subject building. The applicants testified that the building was used as a church some time ago. The design of the building indicates that it was likely used as a single family dwelling, which does not require a Certificate of Occupancy.

9. The Regulations provide that residential uses in existence when the C-M-3 District was mapped may continue as a permitted use. A new residential use is not permitted, and the applicant therefore seeks a use variance to establish the rooming house.

10. The subject property is not suitable for use for a commercial or industrial purpose permitted in a C-M-3 District. The only suitable use for the premises is for some kind of residential use.

11. The Office of Planning and Development, by memorandum dated June 17, 1980 and by testimony at the hearing, recommended that the application be denied. The OPD was of the opinion that the subject premises can be used as a single family dwelling, and that there is no hardship in the property to support a variance. The Board disagrees. The size and present development of the site are not suitable for commercial and industrial use as contemplated by the C-M-3 District. The majority of the subject square is now used for residential purposes similar to those permitted in the R-4 District, which is located one block away west of North Capitol Street. The Board finds that denial of this application would prevent the upgrading of this particular building, and would preclude its use for a residential purpose, for which the building was originally built.

12. There was no report from Advisory Neighborhood Commission 5C.

13. There was one letter of opposition in the record from the owner of abutting property at 66 New York Avenue, N.E. The objection was to alleged water damage caused to 66 New York Avenue by the lack of proper drains on the subject site. The Board finds that the objection is not relevant to this application before the Board, which deals with the use of the subject premises. The Board advises the applicants however to consider the complaint of the owner of abutting property, and take appropriate actions to resolve the matter.

CONCLUSIONS OF LAW AND OPINION

Based on the findings of fact and the evidence of record, the Board concludes that the requested variance is a use variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates undue hardship for the owner. The Board concludes that the size of the subject site, combined with the nature of the improvements presently on the site, do create such a hardship for the owner. The Board concludes that there is no reasonable commercial or industrial use to which the subject premises can be put. The Board further concludes that denial of the application is not warranted, since residential use is compatible with the existing uses of other buildings in that block, and approval of the application will result in the upgrading of the subject site and contribute positively to the area. The Board concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. It is therefore ORDERED that the application is GRANTED.

VOTE: 3-0 (Charles R. Norris, Connie Fortune and Leonard L. McCants to grant, William F. McIntosh and Ruby McZier not present, not voting).

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

ATTESTED BY: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 6 OCT 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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.