

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13370, of Edward G. Jackson, Sr., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 6101) to use the second and third floors of the subject property as a flat in a C-M-2 District at the premises 2300 Champlain Street, N.W., (Square 2560, Lot 32).

HEARING DATE: November 12, 1980
DECISION DATE: December 3, 1980

FINDINGS OF FACT:

1. The subject property is located in a C-M-2 District on the west side of Champlain Street across from its intersection with Kalorama Road, N.W.
2. The subject property is eighteen feet wide and ninety-two feet deep. It contains 1,650 square feet of land area.
3. The property is improved with a two story plus basement brick row structure. The basement level is occupied by a small shoe repair shop called Empire Shoe Rebuilders, The upper two stories of the building are used as a flat, with one dwelling unit on each floor. There is no Certificate of Occupancy existing for the flat.
4. The applicant is requesting a variance from the use provisions of the C-M District to obtain a Certificate of Occupancy and continue the existing flat use. The C-M District does not permit the establishment of a new flat.
5. The building was constructed in 1926. It was designed for residential use on the top two floors, and has always been used as such.
6. Prior to May 12, 1958, the property was located in the "First Commercial 60-C" District. A flat was permitted as a matter-of-right in such district.

7. The property was designated in the C-M-2 District as of May 12, 1958. If the flat had had a proper Certificate of Occupancy on that date, it would have become a non-conforming use.

8. There is ample testimony and evidence in the record that the property was in flat use prior to, as of and continuously since May 12, 1958.

9. To the north of the subject site are vacant lots, followed by the Capital Cycle Corporation in the C-M-2 District. Across Champlain Street to the east is a gasoline service station. To the south are row dwellings and apartment houses in the C-M-2 District. Across a sixteen foot alley to the rear are commercial uses fronting on 18th Street in the C-2-B District.

10. The Office of Planning and Development, by memorandum dated October 21, 1980 and by testimony at the hearing recommended that the application be approved. The OPD was of the opinion that the applicant would suffer a hardship if the flat use of the premises was not permitted to be continued. The OPD noted that examination of the building and related facts indicates that the premise was originally designed as a flat with separate bath and kitchen facilities on the top two floors. The functional space thus created, if not used for residential purposes, would create an extraordinary situation in utilizing the premises. The OPD reported that the proposed use will not cause substantial detriment to the public good or adversely effect any future planning in the area, but will rather maintain residential rental units which had existed legally under the previous 1957 zone classification of first commercial/height limitation 60 feet which permitted flats as a matter-of-right. The Board concurs with the findings and recommendations of the OPD.

11. Advisory Neighborhood Commission - 1C, by letter dated November 12, 1980, reported that it supported the application. The ANC noted that the use of the house as a flat with a basement shoe repair shop pre-dated the Zoning Regulations of 1958 and the ownership of the present owner. Mr. Jackson bought the house in 1974. The house has been constantly occupied, with no break in occupancy. Thus the use of the house is a mere continuation of a non-conforming use. The ANC further noted that many non-conforming residential uses in the C-M-2 area of Adams Morgan were never registered.

The house is one of a clump of rowhouses, with vacant land to the side of it. The zone mapped behind the house is C-2-B, which is a mixed residential commercial usage. The house is in harmony with adjacent uses.

The ANC stated that there is a housing crisis in the city and it is appropriate for residential uses to be protected. The ANC advised the Board that it intended to submit zoning proposals to the Zoning Commission shortly for the C-M-2 area of Adams Morgan in order to stabilize the housing supply and bring an improved mixed use in the area. The Board concurs with the findings of the ANC. The Board notes however, that neither a housing crisis in the city nor the pendency of amendments to the Zoning Regulations is a basis for granting a variance.

12. The Adams-Morgan Organization, by letter dated November 12, 1980, supported the application.

13. There was no opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the requested variance is a use variance, the granting of which normally requires a showing which creates an undue hardship for the owner. However, in the present case, the premises had been used as a flat prior to May 12, 1958 the effective date of the Zoning Regulations. Granting the application would not result in the institution of a new use, nor would it increase the density in the area. Rather, it would only serve to legalize an existing use which is not non-conforming because of the failure to secure proper permits. Granting the continuation of the present use would result in the applicant being able to make reasonable use of the property that is compatible with the existing structure, not detrimental to the public good and would not impair the intent, purpose and integrity of the Zoning Regulations. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 5-0 (Walter B. Lewis, Charles R. Norris, Connie Fortune and William F. McIntosh to GRANT; Douglas J. Patton to GRANT by PROXY).

