

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13438, of Viola Delespin, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the 900 square foot minimum lot area requirements (Sub-section 3301.1) to use the subject premises as an apartment house consisting of three units in an R-4 District at the premises 17 N Street, N.W., (Square 617, Lot 36).

HEARING DATE: February 18, 1981
DECISION DATE: May 6, 1981

FINDINGS OF FACT:

1. The subject application appeared on the preliminary calendar. Section 3.33 of the Supplemental Rules of Practice and Procedure before the BZA requires that an applicant shall post the property with notice of the public hearing at least ten days in advance of the hearing. In the subject application, the property was posted for six days. The applicant testified that she didn't understand the ten days requirement. There was much opposition present who had all received notice of the public hearing and seen the property posted. All of the opposition desired that the hearing on the application go forward on its merits. The Chairman determined that adequate notice had been given and determined to waive the normal posting requirements.
2. The subject site is located on the north side of N Street between North Capitol and First Streets. N.W. It is known as 17 N Street and is in an R-4 District.
3. The subject site is rectangular in shape. It measures seventeen feet wide and ninety-five feet deep. The site is improved with a two-story plus basement brick, row structure.
4. The applicant proposes to use the subject structure as an apartment house of three units. Under the Zoning Regulations, conversion of a dwelling built prior to 1958 to an apartment house in an R-4 District requires 900 square feet of lot area for each unit within the building. The applicant's lot consists of 1,615 square feet. A variance of 1,085 square feet is requested.
5. The applicant has received two rehabilitation loans totalling \$94,000.00. One is a "312" loan from Housing and Urban Development, the other is a Community Development loan from the D.C. Department of Housing and Community Development. The applicant is currently paying on the 312 HUD loan. Payment on the CD loan has been deferred pending the approval of the subject application. The applicant is to pay approximately \$495.00 per month on the two loans.

6. The two loans were predicated upon the subject property being converted into three units with the applicant occupying one of the units, and using the rental income from the other units to help pay off the loans.

7. The Board finds that the loans were granted with no understanding that the proposed use constituted an illegal use of property.

8. The applicant testified that she cannot meet the monthly payments on the loans unless the property is converted to three units. The applicant did not know if she could keep enough money for the two units for which she has a permit and return the unused amount thereby reducing the total amount of her indebtedness.

9. The applicant presented no evidence of any exceptional or extraordinary condition or situation of the property which would support the granting of a variance.

10. The practical difficulties cited by the applicant arise out of loans she used to renovate the property. These loans were premised on an illegal use of the building.

11. There was much opposition to the application on the part of homeowners, tenants and members of the block club. The grounds for the opposition were that to grant the application would greatly overtax the already limited parking, overcrowd the obsolete sewer and drainage system, and increase the chances of fire with more families living in a house which was originally bought as a one family dwelling. There was testimony that through the recent remodeling of the subject property, there is now no rear escape route, which is a fire hazard. There was further testimony that city services have already been greatly reduced in the area and block, due to the local government's fiscal problems. Crime is another factor the club takes into consideration as the neighborhood is becoming more vulnerable to burglaries, narcotics traffic and loitering. A petition with ten signatures in opposition to the application was submitted to the record.

12. There was also great concern among the opposition that the applicant had never discussed her plans with the neighbors. They had questions whether the applicant would occupy one of the units. They questioned if the financial arrangements could have been made.

13. Advisory Neighborhood Commission - 5C recommended that the application be denied for the reasons listed in Findings No.11 and 12.

14. At the public hearing, the Board requested a member of the opposition to represent his group and meet with the applicant and discuss the concerns of all. The Board also requested that the Office of Planning and Development arrange a meeting between the applicant, the opposition and appropriate District agency representatives to evaluate the concerns of the opposition. The Board also requested specific information from the Department of Housing and Community Development, Loan and Grant Division, as to the nature of the loan that was granted to the subject applicant. More specifically, the Board desired to know if the loan was predicated upon two or three units in the subject property, if DHCD would grant a loan with the knowledge that three units in the subject property was an illegal use, whether the loan was subject to any approval of the BZA, terms of repayment of the loan, cancellation of parts of the loan and whether the loan was predicated upon the borrower residing in one of the units. The Board also desired confirmation of the lack of fire hazards on the premises in view of the testimony of the lack of rear exits.

15. By letter of March 16, 1981, the ANC reported that it scheduled a meeting for March 14, 1981 to discuss the subject application. Fourteen people were present including a contractor and a housing inspector from the DHCD. The architect, the DHCD loan officers and the applicant were not present. In view of this, the ANC recommended that the application be denied.

16. By letter of March 16, 1981, the applicant advised the Board that she was not informed of the meeting.

17. The specific information requested from the Department of Housing and Community Development was not received in the record.

18. The Office of Planning and Development, by report dated April 22, 1981, reported as follows:

"As the Board is aware this application has engendered opposition from Advisory Neighborhood Commission 5C and other community residents. Many factual issues are in dispute. OPD has worked diligently to gather the information in order to respond to the Board's requests. To date, we have been partially successful in unraveling several confusing facts of this application. Unfortunately, we have not been able to confirm several other aspects of this case including the amount of loan monies disbursed, the extent of renovation completed and the possibility of renegotiating the terms of the loan. We have also been unable to arrange a meeting among the principals involved in this case as the Board requested."

CONCLUSIONS OF LAW AND OPINION:

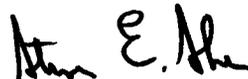
The Board deferred a decision on the application for two months in the hope that the parties could meet and discuss their concerns and that the pertinent Government agencies would provide the information the Board requested. This has not happened, and the Board is forced to decide the case based on the record before it.

Based on the record, the Board concludes that the applicant is seeking an area variance, the granting of which requires proof of a practical difficulty that is inherent in the property itself. The Board concludes that the applicant has not met the burden of proof. The Board is also of the opinion that many factual issues are in dispute in the subject application. Until the applicant can present probative evidence as to the exact nature of the loans, her obligations under the loans and her redresses if any, the subject application can not be approved on the merits. The Board is aware that the applicant cannot resolve her difficulties by herself and the Board has requested the applicant to seek further assistance through the DHCD. Such assistance should not be limited only to the issue of the rehabilitation loans. The applicant must address the standards set forth in Paragraph 8207.11 to warrant the granting of a variance. The concerns of the opposition should also be addressed. Accordingly, it is ORDERED that the application is DENIED WITHOUT PREJUDICE to the REFILING of a subsequent application.

VOTE: 4-0 (Walter B. Lewis, Connie Fortune, Douglas J. Patton, and Charles R. Norris to DENY; William F. McIntosh not present, not voting).

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

ATTESTED BY: _____



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 1 SEP 1981.

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."