

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 13544 of J D Investment Partnership, as amended, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the use provisions (Section 3104), the lot occupancy requirements, (Sub-section 3303.1), the closed court requirements (sub-section 3306.1), the side yard requirements (sub-section 3305.1) and from the prohibition against allowing an accessory building to occupy more than thirty percent of the area of the required rear yard (Sub-section 76-9.2) for a proposed new apartment house consisting of two buildings in the R-4 District at the premises 615 Third Street, N.W., (Square 778, Lot 8).

Appeal No. 13545 of the J D Investment Partnership, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the administrative decision of James J. Fahey, Zoning Administrator, made on June 2, 1981 to the fact that a wall does not constitute a "structure" as defined in the Zoning Regulations and therefore cannot be converted to a multiple dwelling pursuant to Paragraph 3104.33, said premises being in an R-4 District at 615 3rd Street, N.E., (Square 778, Lot 8).

HEARING DATE: August 5, 1981  
DECISION DATE: September 4, 1981

FINDINGS OF FACT:

1. The subject site is located on the east side of 3rd Street between F and G Streets and is known as premises 615 3rd Street, N.E. It is in an R-4 District.
2. The subject site measures fifty-five feet in width and 149.85 feet in depth. It is presently unimproved except for a garage which abuts a public alley at the rear of the site.
3. The applicant proposes to construct nine apartment units on the proposed site which will be sold as condominiums. The subject garage will provide five parking spaces.
4. As originally filed and advertised for the public hearing, the applicant sought six variances including a use variance, variances from the lot occupancy, rear yard, closed court and side yard requirements, and a variance from the theoretical subdivision requirements. At the public

hearing, the applicant requested permission to amend the application. Under the revised plans there would be a single building rather than two buildings and the applicant would no longer need variance relief from the requirements pertaining to the bulk and open space requirements. The applicant does require a further variance from the prohibition against allowing an accessory building to occupy more than thirty percent of the required rear yard.

5. At the time the applicant acquired the subject site it was improved with two structures, a one-story commercial office building which fronts on Third Street, N.E., and a one-story brick garage/warehouse structure at the rear of the property abutting the public alley. The office building was nonconforming as to use with a Certificate of Occupancy, No. B46036, which permitted office use for the contract installation of carpets, and incidental stock in trade. The improvements on the site at that time exceeded the allowable percentage of lot occupancy.

6. The applicant initially desired to convert the then-existing office building to residential use, with a total of nine dwelling units and retain the rear building for five indoor parking spaces. Under that proposal the applicant would have added an additional story to the office building. To the extent it would have been feasible, existing walls were to have been used and built upon for the second story. A city building inspector determined those walls to be unsafe and not capable of supporting another story. Pursuant to a permit, applicant then proceeded with the demolition of the existing office structure and assumed that it could still proceed as a matter of right with the originally proposed conversion. The applicant was not aware that, by demolishing the existing office building, the Zoning Regulations would not permit the applicant to proceed as a matter of right under Paragraph 3104.33 of the Zoning Regulations.

7. Subsequent to the demolition of the office structure, the applicant filed its building plans for permit approval and was advised by the Zoning Administrator's Office that it could no longer proceed as a matter of right to convert an existing structure to an apartment house containing nine units.

8. On June 8, 1981 the applicant filed application No. 13544 and Appeal No. 13545. The Appeal filed was from the ruling of the Zoning Administrator that a wall does not constitute a "structure" as defined in the Zoning Regulations and therefore cannot be converted to a multiple dwelling pursuant to Paragraph 3104.33 of the Zoning Regulations. The Board agreed to hear application No. 13544 first. If the Board granted the application then Appeal No. 13545 would become moot.

9. As initially proposed by the applicant with the filing of this application, two buildings on one recorded lot were to be constructed which do not meet the bulk and open spaces required around each building. That proposed scheme would have resulted in a percentage of lot occupancy of seventy-eight percent, two closed courts with a width of only 9.25 feet and an area of only 225.05 square feet, and no rear or side yards. The proposed nine apartment units would have been consistent with the standard of 900 square feet of lot area per unit.

10. At the public hearing, the applicant also presented the aforementioned amended plan which was subsequently reviewed by the Zoning Administrator. The alternate plan calls for the construction of a single building which will occupy seventy-three percent of the lot and also contain nine apartment units. As with the earlier proposal, the number of units proposed will be consistent with the standard of 900 square feet of lot area per dwelling unit. While the rear yard under the alternate plan will have a depth of thirty feet, the garage will occupy greater than thirty percent of the rear yard and requires a variance from the Zoning Regulations. Also under the alternate plan, a closed court is created at the rear of the building requiring a variance from the width of closed court requirements.

11. The lot itself is larger than most other lots located in the square and has a depth of nearly 150 feet. There are three similarly large lots in the entire square but only one, the adjoining Lot 9, is as deep. Lot 9 is improved with a renovated apartment house containing six units.

12. At the public hearing, the applicant presented testimony comparing the economic feasibility of developing the site with four townhouses containing flats, eight units, which would be the maximum that could be done as a matter of right, with the economic feasibility of the nine units proposed.

13. The applicant also submitted an affidavit subsequent to the public hearing which discussed the feasibility of adapting the property to any other R-4 use. The affidavit analyzed all of the permitted R-4 uses, including a private school, rooming and boarding house, hospital, sanitarium or clinic for humans, convalescent or nursing home and private club. Such uses would be predicated on long-term financing for income producing property. The availability of such financing is virtually non-existent on a small project such as this and would be cost-prohibitive when available. Most of the uses would be high traffic, both people and vehicular, type operations with high concentrations of traffic during certain time

periods. Examples would be private schools and private clubs. The parking requirements in many cases would exceed the available parking space on the site. Additionally, there are no public parking facilities within close proximity to the site. All of the uses are less desirable than the proposed residential use which has been supported by residents of the block. The applicant has been informed and advised by two realtors that they can see no demand for any of the uses discussed herein given the location, zoning, size and shape of the lot and character of the neighborhood. The Board so finds.

14. The applicant had contemplated constructing four flats on the site. Since the width of the lot is fifty-five feet the site was designed for two flats in the front on E Street and two flats to the rear. The rear houses would face the alley and be accessible only from the alley. They would be less marketable than those facing the street. In contrast with the nine units proposed, the four flats would have a net saleable area of 6,278 square feet and four parking spaces whereas the nine units would have 7,966 square feet of net saleable area and five parking spaces. The acquisition costs would be the same. The total cost for the four flats would be \$745,480.00 and for the nine units, \$856,170.00. The total sales for the flats would be \$740,000.00 or a .07 percent loss; the total sales for nine units would be \$939,700.00 or a profit of 8.88 percent.

15. The proposed apartment house will restore the subject lot to conforming residential use and create a development compatible with other uses in the square. Moreover, the nine dwelling unit proposal will create a development of far less density and intensity of lot and building use than that of other apartments in the square. The Logan Apartment House at 315 G Street, N.E., has fifteen dwelling units with a lot area of only 5,470 square feet. The Ramona at 676 Fourth Street, N.E., has twenty-four units and a lot area of 5,023 square feet. The Capital Mansion at 637 Third Street, N.E., has twenty-four units and a lot area of 5,390 square feet. The Board, in BZA Application No. 13135, approved sixteen units for the premises 301 G Street, N.E., with a 9,125 square foot lot area.

16. Sixteen neighboring residents signed a letter in support of the application and two residents of the neighborhood appeared at the hearing and testified in support of the application.

17. Advisory Neighborhood Commission 6A took no position on this application because it was unable to convene a meeting in advance of the public hearing. However, a letter in support of the application was received

from the single member District representative for the area in which the subject property is located.

18. There was no opposition to the case registered at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking a use variance and area variances, the granting of which requires proof of a specific hardship inherent in the land or a practical difficulty inherent on the land, respectively.

As to the use variance, the Board is of the opinion that the subject property is affected with extraordinary conditions inherent in the site itself due to its unusually large size and depth. The subject property is a large lot of 8,241.75 square feet and can accommodate nine apartment units consistent with the standard of 900 square feet of lot area per dwelling unit for the R-4 District. The Board concludes that the subject property cannot be reasonably adopted to any R-4 use. A use variance may be granted where the applicant proves inability to put the premises to any conforming use with a fair and reasonable return arising out of the ownership thereof.

As to the area variances, the Board concludes that the subject property is affected with extraordinary conditions inherent in the site itself due to its unusually large size and depth. The subject property is a large lot of 8,241.75 square feet and can accommodate nine apartment units consistent with the standard of 900 square feet of lot area per dwelling unit for the R-4 District.

The Board further concludes that the strict application of the Zoning Regulations in this case imposes both an undue hardship and a practical difficulty upon the property owner. The denial of the requested use and area variances in this case would preclude the use of this property in a manner which would permit it to yield a reasonable return to the property owner. The Board further concludes that the property cannot be reasonably adapted to any R-4 use. The Board concludes that the granting of this application can be done 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 map.

Accordingly, it is ORDERED that the application, as amended, is GRANTED SUBJECT to the following CONDITIONS:

1. Construction shall be in conformance with the revised plans marked as Exhibit No. 32 of the record.

2. Landscaping shall be in conformance with the landscaping plan marked as Exhibit No. 28 of the record.
3. The closed court areas are not to be utilized for any purpose except for passive type recreation.

It is further ORDERED that Appeal No. 13545 is DISMISSED as MOOT.

VOTE: 5-0 (Lindsley Williams, William F. McIntosh, Douglas J. Patton, Charles R. Norris and Connie Fortune to grant application no. 13544 in its entirety and to DISMISS Appeal No. 13545 as MOOT).

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: MAR 22 1982

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.