

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13564, of Meyer Lebowitz, et al., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3101) to use the subject premises as a flat in an R-1-B District at the premises 7101 Chestnut Street, N.W., (Square 3187, Lot 37).

HEARING DATE: September 30, 1981

DECISION DATE: November 4, 1981

FINDINGS OF FACT:

1. The subject site is located on the southeast corner of the intersection of Chestnut Street and Blair Road, N.W., approximately one-quarter mile northwest of the Takoma Metrorail station. It is known as premises 7101 Chestnut Street, N.W. The property is located in an R-1-B District.
2. Chestnut Street is a one-block-long street that has a dead end at the railroad right-of-way. It is developed with detached houses. The area to the north, west, and south is of similar residential character with detached homes on lots generally ranging from 7,000 to 10,000 square feet of land area. Southwest of the property along Blair Road and Spring Place are some industrial and commercial uses, including a glass company and a used car lot. Immediately south of the property along Blair Road for a distance of about 200 feet is land that was recently cleared.
3. The subject site is at the edge of a large R-1-B District that extends for several blocks to the north, west, and southwest. Immediately south of the site is 131 feet of frontage along Blair Road recently rezoned from R-1-B to C-2-A. Beyond this is C-M-1 zoning.
4. The subject site consists of 7,793 square feet of land area. The detached house upon it is two stories in height with an attic, and was built about 1912. It has an estimated gross floor area of 3,000 to 3,500 square feet. It is typical in design and size of many houses of the Takoma neighborhood.
5. There is one parking space on the site in a free-standing garage. Curbside parking is permitted on Chestnut Street and appears to be generally available.
6. The structure contains two units on the second floor and one unit on the first floor. The second floor units share a bath but have separate kitchen facilities. The first floor unit has its own bathroom and kitchen. There is a common entrance to all three units. The first floor unit and one of the second floor units is currently occupied.

7. The applicant proposes to use the subject premises as a flat, a use not permitted as a matter-of-right in an R-1-B District. The applicant is seeking a variance from the provisions of an R-1-B District.

8. Records in the Zoning Secretariat office evidence that the entire Takoma area had previously been under consideration for rezoning by the Zoning Commission in Case No. 78-24. By Z.C. Order No. 268 dated March 8, 1979, the Zoning Commission approved comprehensive changes of zoning for the Takoma area. The subject property was not rezoned.

9. By Zoning Commission Order No. 328, dated December 11, 1980, the Zoning Commission approved a change of zoning for the sites at 7053 and 7059 Blair Road, which are behind the subject property, from R-1-A to C-2-A. The Commission noted the existence of a covenant running with the land to protect the surrounding single family homes, including the subject property.

10. In BZA Order No. 1498, dated January 7, 1974, the Board denied the application for a use variance to permit the establishment of a flat at premises 7100 Chestnut Street on the grounds that no hardship inherent in the property was established. Said property is located directly across the street from the subject property and is of similar size and age.

11. In 1980, the Joint Committee on Landmarks designated an Historic District designation for the Takoma area. The subject premises are within the historic district.

12. The property is owned by Meyer, Irving and Faye Lebowitz. The applicants inherited the subject property upon the death of Matilda Lebowitz on January 2, 1980. Neither the present nor prior owners resided on the subject premises. The applicants had no knowledge of any of the zoning actions recited in Findings No. 8, 9 and 10.

13. The past history of the use of the subject premises is unclear. It appears to have been used by multiple persons during the World War II years. Whether the occupants were families or roomers is not known. Records in the Permit Branch reveal no Certificate of Occupancy for the premises. There is no record in the office of the Zoning Secretariat that the premises ever were the subject of an application before the BZA. The conversion of the building to multi-family use was done illegally, without proper permits or authorization from the District of Columbia Government.

14. There is in existence a lease for the premises signed by three parties. Presently each of the two occupants has signed an individual lease.

15. The subject premises has never been placed on the open market for rent as a single family residence. Mrs. Lebowitz questioned her ability to evict tenants under a lease.

16. Mrs. Lebowitz testified that the subject premises was not suitable for a single family occupancy since the anticipated rent of \$600 to \$800 a month, including utilities, would be too heavy a burden for a family. She further testified that the premises was not desirable for a family since it was so close to commercial enterprises, the area has heavy traffic and the area is changing to a commercial ambience. The applicant offered no evidence that there was a hardship inherent in the property which prevented it from being used for a purpose for which it was zoned. The characteristics cited by Mrs. Lebowitz were typical of other properties in the area that can be and are being used for conforming R-1-B purposes.

17. The Office of Planning and Development, by report dated September 25, 1981 and at the public hearing, recommended that the application be denied. The OPD reported that the subject premises appears to have been illegally converted to multi-family use. There are no conditions apart from the internal arrangement of the structure that are peculiar to this property. Its original design is undeniably for single family use. The size of the lot and the structure are typical of the Takoma area. The OPD found no hardship inherent in the property itself to support the use variance. The Board concurs in the OPD findings and recommendation.

18. An individual property owner appeared at the public hearing in opposition to the application on the grounds that the residents of Takoma Park had worked for many years for the development and revitalization of the neighborhood in ways that would preserve its historic character and its stability as a quiet, residential neighborhood. He testified that the subject variance is not in keeping with the planning, zoning or historic designation of Takoma Park.

19. Letters of record from Neighbors, Inc., Historic Takoma, Inc., Plan Takoma and individual citizens also opposed the application for the reasons stated in Finding No. 18. This opposition further argued that there is nothing relating to the site itself such as narrowness, shallowness or shape of the property that justified a variance. They further argued that there need be no economic hardship on the owner if the owner chose to rent or sell the premises.

20. Advisory Neighborhood Commission - 4B made no recommendation on the application.

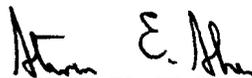
CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking an area variance, the granting of which requires proof that there is a hardship inherent in the property itself and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met the burden of proof. There was no probative evidence offered that the property could not be put to a use permitted in an R-1-B District. The applicant's hardship appears to be based on an economic hardship and a false impression that rentals under a lease cannot be terminated where the use is an illegal use of the premises. There is no basis for the granting of a use variance. The Board further concludes that the relief cannot be granted as in harmony with the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED for all these reasons the application is DENIED.

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

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

ATTESTED BY: 

STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JAN 18 1992

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."