

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13602 of Helen L. Pavilion, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3101.1) to permit temporarily the storage of a trailer on the subject property in an R-1-B District at the premises 230 Tuckerman Street, N.W., (Square 3343, Lot 811).

HEARING DATE: November 10, 1981

DECISION DATE: November 10, 1981 (Bench Decision)

FINDINGS OF FACT:

1. The subject site is located on the south side of Tuckerman Street between 2nd and 3rd Streets, and is known as premises 230 Tuckerman Street, N.W. It is in an R-1-B District.
2. The property is located in a residential section of the Takoma neighborhood. Tuckerman Street is developed with detached houses on lots averaging about forty five feet wide. The subject site is in an R-1-B Zone District. A C-M-1 District that follows the railroad and Metrorail right-of-way begins 200 feet east of the site.
3. The subject site is 48.0 feet wide and 172.50 feet deep. It was improved with a two story brick single family dwelling. There were two fires to the premises, on December 19, 1980 and May 6, 1981. The second fire gutted the structure and destroyed the roof.
4. The applicant has stored a trailer truck, measuring forty feet long, in the driveway of the subject premises. The trailer is not hooked to a tractor so that it could be moved. The applicant was advised by the office of the Zoning Administrator on May 15, 1981 that the storage of a vehicle on a lot is not permitted in an R-1-B District and that she was in violation of the D.C. Zoning Regulations. The trailer was rented by the applicant in April, 1981.
5. The applicant requests premission to retain the trailer to store her belongings for as long as necessary. The applicant plans to rebuild her home. She stated that her present apartment, which she acquired prior to the fires, is too small to accommodate the possessions she had in the destroyed dwelling.

6. The applicant is retired and lives on a fixed income. The subject dwelling was uninsured. The applicant estimated that it would cost between \$40,000 and \$50,000 to restore the subject dwelling. The applicant anticipates that she could accumulate sufficient money to restore the house and, if not, she would think of selling the site.

7. The subject trailer is stored with furniture, clothes, jewelery and miscellaneous household items. It also harbors five cats.

8. The applicant did not occupy the subject premises at the time of the first fire. The applicant testified that after the first fire, the subject dwelling was broken into several times, the doors and windows were axed and personal property was stolen. The applicant could not reside in the premises. She used the trailer to store her furnishings. Several friends came to help her clean up the premises. They stayed in the house, the trailer or the two small sheds to the rear of the site. Prior to any fires, the D.C. Government, on the basis of complaints from the neighborhood, cleaned up the trash and debris that had collected on the premises.

9. The Office of Planning and Development, by report dated November 4, 1981, reported that the fire that had rendered the premises uninhabitable constituted a temporary undue hardship. That hardship exists only for a period of time reasonably necessary for the applicant to rebuild the structure. One year, beginning from the time of the fire, is a reasonable period for reconstruction, including time for demolition and obtaining estimates and permits. One-half year has already passed since the fire. During this time, the unsightliness of the property should be mitigated to the maximum extent possible. The OPD recommended that this application be approved for a period not extending beyond May 6, 1982, subject to the condition that the applicant present evidence to the Board in the form of photographs, showing that all open areas of the lot have been cleared of belongings, litter, and debris. This must be done so as to meet the requirement in Paragraph 8207.11 that any grant of variance not be detrimental to the public good and not impair the intent of the Zoning Regulations. The OPD attested to the open cat food, boxes and trash on the site when an inspection was made. The OPD further reported that Section 3101 of the Zoning Regulations permits as of right a temporary building for the construction industry incidental to the erection of a permanent building. Such temporary buildings are often trailers of the type that is the subject of this case. The OPD was of the opinion that the Zoning Regulations recognize the need, temporarily, for structures that would not be in keeping with the neighborhood if permitted permanently. The Board, for reasons discussed below, does not concur in the OPD recommendation.

10. There is no exceptional or extraordinary condition inherent in the property that precludes the property from being used in accordance with the Zoning Regulations.

11. The applicant suffers no hardship deriving out of the property as a result of strict application of the Zoning Regulations. Any hardship inherent in the case is the result of the personal circumstances of the applicant.

12. There was opposition to the application at the Public Hearing and of record. The opposition testified that for at least the past ten years the subject premises has been a disgrace to the community. The grounds are filled with trash and junk. Vagrants were occupying the trailer, drinking beer on the grounds and tossing the beer cans over the site. The citizens banded together to get the D.C. Government to clear the site. After the D.C. Government removed the litter, the grounds were cluttered once again with trash. Pictures were introduced into evidence showing the debris in existence one week prior to the Public Hearing. The opposition further complained that, when it rains, the applicant hangs out rags and clothes too dry on the trees on the site, creating an appearance of a gypsy carnival. In summary, the property is an eye sore in the community of residential homes. The opposition also expressed concern that the applicant had had sufficient time to remove the trailer and doubted that she would do so unless she was forced to do so by law.

13. The Board finds that past and present activities on the site, resulting from action taken by the applicant or taken by others with the consent of the applicant, have create a nuisance and blight on the neighborhood. Approval of this application would allow such activities to continue to the detriment of surrounding property.

14. Advisory Neighborhood Commission 4B, by letter of November 6, 1981, reported that the ANC-4B member representative for the above subject area, had received earlier compliants from residents of that immediate vicinity concerning undersirable and unsavory elements associated with the use of a trailer at the above referred property. Therefore, in response to the expressed concerns of residents of that area, the Commission opposed the application for a variance. The Board concurs in the ANC recommendation.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking a use variance, the granting of which requires proof of a hardship that is inherent in the property itself. The Board concludes that there is no hardship in the land itself. The hardship inherent in the

personal circumstances of the applicant is not a proper basis for the granting of a use variance.

The presence of the trailer on the lot is classified as the storage of vehicles, a use first permitted in a C-M-1 District. Also, under Section 3101 of the Zoning Regulations a trailer can be used under certain conditions. It should be a temporary condition and, be connected with the construction industry. These conditions do not obtain on the subject site. The subject trailer is being used for storage. It has been on the property for over one year and a half. The applicant is asking for another two years. The Board is not unmindful of the plight of the applicant. The Board is also aware that based on the financial resources of the applicant the probability of the dwelling being rehabilitated in a short period of time is very slight. The Board concludes that the applicant has had more than sufficient time to make realistic plans for the site and that she has not done so.

The Board further concludes that the existing condition cannot be tolerated any longer, since it constitutes a flagrant violation and causes substantial detriment to the public good and substantially impairs the intent, purpose and integrity of the zone plan. Accordingly, for all the reasons discussed, it is ORDERED that the application, is DENIED. The Zoning Administrator is directed to enforce the Zoning Regulations without delay to seek removal of the trailer.

VOTE: 3-0 (Walter B. Lewis, Charles R. Norris and Connie Fortune to deny, Douglas J. Patton and 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: JAN 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."