

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13609, of Mike and Rita Gravel, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the use provisions (Sub-section 3104.3), from the prohibition against allowing an addition to a non-conforming structure which now exceeds the lot occupancy and height of building requirements (Paragraph 7107.21), the story limitation requirements (Sub-section 3201.1) and the open court requirements (Sub-section 3306.1 and Paragraph 7107.22) for a proposed addition to an apartment house which is a non-conforming structure in an R-4 District at the premises 117 - 2nd Street, N.E., (Square 758, Lot 807).

HEARING DATES: October 14 and December 3, 1981  
DECISION DATE: January 9, 1982

FINDINGS OF FACT:

1. The application was originally scheduled for the public hearing of October 14, 1981. At that time, the Board determined that the notice of the public hearing had not been posted on the property as required by Section 3.33 of the Supplemental Rules of Practice and Procedure before the BZA. The hearing was postponed until December 9, 1981.
2. The subject property is located in an R-4 District on the east side of 2nd Street between A Street and Constitution Avenue, N.E.
3. The subject property is twenty feet wide and varies in depth from 73.79 to eighty-five feet. The lot contains 1,587.90 square feet. The lot is improved with a three story plus basement building which has no side yards.
4. The last recorded Certificate of Occupancy, No. B-105485, was issued on December 30, 1977 and authorized use of the building as a six unit apartment house.
5. By order dated November 1, 1979, in Application No. 13024, the Board approved variances from the rear yard, open court, lot occupancy and story requirements of the Zoning Regulations. That approval lapsed when the applicant failed to apply for a building permit within six months.

6. The applicant now proposes to renovate the building and convert it to a five unit apartment house. There would be one unit in the front of the basement, one in the front of the first floor, one duplex unit at the rear of the basement and first floor, one duplex unit at the front of the second and third floors and one duplex unit at the rear of the second and third floors. One of the applicants intends to reside in one of the duplex units and rent the other four units.

7. The applicants propose to add to the fourth floor of the building. The basement will not be extended from what presently exists. An additional floor will be created at the rear of the basement by dropping the present floor at the rear half to the ground level, and raising the level of the first floor, since the present ceiling is about twelve feet high, leaving sufficient room to do this without excavating the rear basement area. Therefore, there will be no excavation of the existing crawl space.

8. The ceiling of the basement is more than four feet out of grade at the point where the height of the building is measured. The basement must thus be counted as a story in considering compliance with the three story limitation of the R-4 District. The third complete story out of grade is thus the fourth story under the Zoning Regulations, and the building is thus a non-conforming structure. The fourth story presently extends for approximately half the depth of the building. The applicant proposes to extend the fourth story for the full depth of the dwelling.

9. The fourth floor addition also encroaches on the required width of a court. The fourth floor addition follows the line of the existing building and does not decrease the width of the existing court which is only 5.58 feet wide.

10. The applicants propose to remove the existing fire escape located in the open court on the south side of the building at the rear. It is proposed to construct a set of steel stairs leading from the ground to the first and second floors in the court. These stairs will provide additional means of egress from the two units on the upper floors and the unit at the rear of the first floor.

11. The Zoning Regulations permit in an R-4 District the conversion of a building built prior to May 12, 1958 to an apartment house. Since the top story and staircase additions did not exist in 1958, a variance from the use provision is required to permit their use as part of the apartment house.

12. The addition as proposed is desired in part to allow extra large windows to be located on the rear wall of the building to allow as much light and air as possible for the rear apartment units.

13. The property to the north is similar to the subject site in that it presently has a fourth floor which extends only half the depth of the building. The remainder of the roof of the third floor is enclosed by an eight foot high stockade fence and is used as a roof deck. The proposed addition would extend only two feet above the level of the existing fence.

14. Advisory Neighborhood Commission - 6B, by letter dated October 13, 1981, took no position on the application and presented no issues and concerns for the Board to consider.

15. The Capitol Hill Restoration Society, the Stanton Park Neighborhood Association and the Capitol Hill Citizens Association all submitted letters to the record advising that they had no position on the application.

16. There was no opposition to the application at the hearing or in the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking both use and area variances. As to the use variance, the Board concludes that the granting of such a variance normally requires the showing of an exceptional or extraordinary condition of the property which would create an undue hardship upon the owner. In this case, the Board notes that the building is already in existence as an apartment house, was in existence as of May 12, 1958 and is therefore a permitted use. The variance is required because the applicants propose to add the stair and the fourth floor addition. The size of the building is being increased only minimally. The number of units in the building is being reduced from six to five. The Board concludes that the configuration of the building is such that the additions are warranted, and the hardship is inherent in the property.

As to the remaining variances, the Board concludes that they are all area variances, the granting of which requires the showing of an extraordinary or exceptional condition of the property which creates a practical difficulty for the owner. The Board concludes that all of the variances result from the existing non-conformity of the building. The practical difficulty is thus inherent in the property. The Board notes that the degree of non-conformity as to the height, lot occupancy and open court is not worsened by approval of the application.

The Board concludes that all the variances can be granted 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 maps. It is therefore ORDERED that the application is GRANTED subject to the following CONDITIONS:

1. The construction shall be in compliance with the plans marked as Exhibit No. 12 of the record.
2. The landscaping shall be in compliance with Exhibit No. 31-A of the record except that all shrubs to be planted shall be evergreen shrubs.
3. The applicant may replace the windows currently designated on the plans as "fixed glass" with windows that can be opened.

VOTE: 5-0 (Lindsley Williams, Charles R. Norris, Douglas J. Patton, William F. McIntosh and Connie Fortune to GRANT).

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

ATTESTED BY: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: MAR 11 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.