

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13671, of Bradford Brothers Construction Corp., Trustee for M&S Associates Joint Venture, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against allowing an addition to a non-conforming structure which now exceeds the lot occupancy requirements (Paragraph 7101.21) for a proposed addition to an eighteen unit apartment house which is a non-conforming structure in an R-5-C District at the premises at 1901 16th Street, N.W., (Square 190, Lot 127).

HEARING DATES: February 10 and May 12, 1982

DECISION DATES: April 17, June 2 and August 4, 1982

1. The Board at the public hearing of February 10, 1982, heard part of the application and decided to continue the hearing until after it conducted a field inspection of the site and the adjacent surrounding area, including the home of Mrs. Artie B. Parlor, located at 1543 T Street, N.W., for the limited purpose of determining whether the addition to the applicant's building would adversely impact the structural integrity of the west wall of the home of Mrs. Parlor. The decision was made after conflicting testimony was given as to the structural integrity of the party wall shared by the applicant's building and the home of Mrs. Parlor.

2. The Board, by letter dated March 19, 1982, advised the applicant and opponents that it had decided to cancel the field inspection and proceeded to set the application for decision on the record on April 7, 1982. The Board's decision was based upon its belief that it was without primary jurisdiction in the matter of the structural integrity of the party wall, believing that such matters were more properly before the Building Regulations Division of the Department of Housing and Community Development. The Board stated that it would, in its final order, if the applicant's variance request was granted, suggest to the Building Regulations Division that it give very careful review to the matters raised by Mrs. Parlor with regard to the structural integrity of the west wall of her home before permitting new construction to go forward. The Board, by memorandum dated June 9, 1982, has already alerted the Deputy Chief of the Building Regulations Division of Mrs. Parlor's concerns, and requested the Division to "make any inspections necessary prior to the issuance of permits to the applicant, to insure that all requirements of the

Building Code are met and that appropriate safeguards for Mrs. Parlor's property be undertaken."

3. Upon consideration of various motions and responses, at the public meeting held on April 7, 1982, the Board determined to reopen the record and set further hearing on certain limited issues which were not fully considered at the first hearing. This Order and decision is based upon the entire record made at both hearings and incorporating all relevant post-hearing submissions and responses.

4. The subject site is located at the northeast corner of the intersection of 16th and T Streets, N.W. and is known as premises 1901 16th Street, N.W. It is in an R-5-C District.

5. The site is rectangular in shape and comprises 3,150.25 square feet of land area. The site is developed with a three story apartment house constructed between 1920 and 1940. The structure is now vacant.

6. The subject lot has 83.25 feet of frontage on 16th Street and approximately thirty-eight feet of frontage on T Street, N.W.

7. The applicant proposes to renovate the present structure to construct an addition of approximately 1,346 square feet on the roof of the present building, to reduce the number of apartment units from twenty-two to eighteen creating in some cases duplex apartments, and to convert the entire building to residential condominium ownership. There will be five efficiency apartments, eleven one-bedroom apartments and two two-bedroom apartments. The new proposed roof area will serve as a recreational area for the occupants of the four units on the top floor.

8. North of the site is a three story structure followed by an eight story apartment house, both in the R-5-C District. East of the site are three story row dwellings in the R-5-C District, followed by other row dwellings in the R-5-B District. South of the site is T Street followed by three and four story row dwellings in the R-5-C District. West of the site across 16th Street is a two story building occupied by a grocery store in the R-5-C District.

9. The subject structure is located within the 16th Street Historic District.

10. The applicant proposes to preserve the basic exterior design of the structure. The apartment's design has received conceptual approval from the Joint Committee on Landmarks.

11. The R-5 Districts are designed to permit a flexibility of design by permitting in a single district, all types of urban residential development as specified in Section 3105. The R-5-C District permits medium to high density development. The Zoning Regulations do not prescribe a minimum lot area or width requirement for the R-5-C District.

12. The Zoning Administrator has determined that the property as it now exists is non-conforming as to lot occupancy. The existing lot occupancy is approximately ninety percent. The building therefore does not conform to the allowed lot occupancy of seventy-five percent or 2,362.69 square feet. The building occupies at present 2,852.66 square feet, or 489.97 square feet more than what is permitted. The proposed fourth story addition will not increase the degree of non-conformity. The lot occupancy of the addition is forty-two percent or 1,346.86 square feet below the permitted occupancy of over 2,300 square feet. A variance is required only because the structure now exceeds the permitted lot occupancy.

13. The maximum permitted FAR is 3.5. The present structure, which contains 9,671.89 square feet of gross floor area, is below the permitted FAR. After the proposed fourth floor addition of 1,346.86 square feet, the building will continue to conform with the FAR requirements.

14. The maximum permitted height in the R-5-C District is ninety feet. The present structure is 38.5 feet in height. The proposed addition adds 8.5 feet for a total height of forty-seven feet, just over fifty percent of the maximum allowed height.

15. The fourth floor addition will consist of the upper part of four duplex units. The proposed addition is part of the renovation of a vacant structure. The current certificate of occupancy permits twenty-two units. The applicant will reduce the total number of habitable units to eighteen but each unit will be larger in size than those that currently exist. The intensity of building use will be decreased.

16. The applicant testified that the subject site is affected by an exceptional situation due to the existing non-conformity of the building. No building addition may be constructed without the approval of the Board, even though the building as proposed will only be slightly over one-half the permitted height. The applicant also testified that the strict application of the Zoning Regulations resulted in practical difficulties since the proposed addition is for a permitted use and the addition in and of itself conforms with all requirements of the Regulations. Finally, the applicant testified that the building addition would not

have any adverse impacts since the small size of the addition complies with all municipal regulations, the Joint Committee on Landmarks has approved the conceptual design and the proposed use of eighteen units is less intense than the previous use.

17. The applicant's architect testified that the proposed addition would be compatible in design with the existing structure. The Board concurs.

18. The applicant does not seek to extend the non-conforming features of the structure. Rather, the addition proposed is for a conforming, residential use which does not increase the percentage of lot occupancy.

19. The applicant as a part of its showing of practical difficulty submitted a cost analysis which compares two twenty-two unit and one eighteen unit conversion projects and concluded that the eighteen unit project is the only economically viable option. The applicant asserted that a practical difficulty is clearly upon the applicant on the basis of infeasibility from a marketing and economic standpoint of proceeding with the project without the proposed building addition.

20. A letter from a mortgage lender was submitted to the record that indicates that, given the submitted ratios of return, it would not lend on the project if the proposed addition is not constructed.

21. Letters from a real estate broker and a real estate appraiser were submitted which both indicate that the three smaller units of the twenty-two project alternative would not be readily saleable due to insufficient floor area.

22. The Office of Planning and Development, by report dated May 7, 1982, recommended that the application be approved conditionally. The OPD was of the opinion that there are conditions attributed to the subject lot's improvement, specifically the bulk of the building made prior to the adoption of the 1958 Zoning Regulations, which lend support to the requested variance. The OPD noted that the premises conforms to the floor area ratio requirements, and the open and closed court requirements of the Zoning Regulations. The OPD further noted that the addition will make the total height of the building forty-seven feet, or approximately one-half the permitted height of ninety feet in R-5-C. The OPD agreed with the applicant's contention that the subject site is affected by an exceptional situation or condition by virtue of the existence of a non-conforming building on the site, which prevents the site's development in accordance with the Zoning Regulations. The OPD was of the opinion that such condition is

the direct cause of practical difficulty upon the owner. Approval of the variance would not, in OPD's opinion, create substantial detriment to the public good or impair the intent, integrity or purpose of the Zoning Regulations. The OPD noted that the proposed fourth floor addition is substantially smaller in terms of lot occupancy than the lower floors, and that except for a distance of 16.5 feet, of the eastern wall of the southern addition is designed to be set back for most part from the eastern property line. This design coupled with the direction of sun travel protects the light and air status quo of the properties to the east which front on T Street. The OPD recommended approval of this application conditioned to the applicant's submission of a site plan showing the location and type of security fencing to be used and placed along the site's eastern roof line. The OPD suggested that this fencing be set back on the roof to provide privacy to the neighboring property located at a lower level. The Board concurs in the report and recommendation of the OPD as set forth herein.

23. Mrs. Artie B. Parlor, owner and resident of 1543 T Street, N.W., which immediately adjoins to the east the applicant's property at 1901 16th Street, N.W., appeared at the hearings in opposition to the granting of the requested variance. Mrs. Parlor cited the following reasons for her opposition:

- a. Adverse impact on the structural integrity of the west wall of her home which is a party wall with the applicant's building;
- b. Infringement and invasion of her personal privacy because of the proposed use of the area of the roof of applicant's building, not covered by the proposed addition, for recreational purposes related to the condominium;
- c. Loss of sunlight and the encroachment on air circulation to her back yard and the rear of her home;
- d. Fears for the security of her home from burglary since active use of the roof area of applicant's building would increase access to the roof area of her home;
- e. Concern that the addition would destroy the historic and architectural symmetry of the 1500 block of T Street, N.W.; and
- f. That the subject property was not unique in the neighborhood and that the issue of uniqueness would not establish the practical difficulty.

Mrs. Parlor stated that she was not opposed to the conversion of the present building, without the proposed addition, to residential condominium apartments, whether twenty-two or eighteen in number.

24. The 1500 T Street Block Council, the Midway Civic Association, Saint's Paul and Augustine Parish, two property owners on T Street and the Dupont Circle Citizens Association also opposed the application for basically the same reasons enumerated by Mrs. Parlor. There were also petitions in opposition submitted to the record.

25. Advisory Neighborhood Commission 1B, by letter of February 17, 1982, recommended that the application be denied. The ANC reported that in its view an addition of a fourth floor would destroy the Victorian design of the 16th and T Streets properties. Additional, support strain would be forced upon 1543 T Street, N.W. The ANC had received no assurance of security since the design of the additional floor would permit residents to walk on the roofs of adjoining housing. The ANC noted that its decision was supported by 102 residents of the area who believe the neighborhood has been the victim of unnecessary demolition and inconsistent rebuilding.

26. The Board at its public meeting of August 4, 1982 denied the opposition's motion to open the record and conduct a further hearing. The Board determined that the motion presented no new issues but a repeat of the issues already considered by the Board in the two public hearings on this application and in the numerous, detailed post-hearing submissions of the parties.

27. The Board is required by statute to give great weight to the issues and concerns of the ANC when it is reduced to writing. In addressing the concerns of the ANC and the similar concerns of the other opposition, the Board finds that the issue of structural integrity of the party wall is not properly before the Board. It is not a zoning issue but a matter to be considered by the Building Regulations Division of the Department of Housing and Community Development. By memo of July 9, 1982, the Board brought the structural issue to that attention of said Division and will send a copy of this Final Order to it.

28. As to the issues of invasion of privacy and security, the Board finds that these issues will be met through the conditions hereinafter imposed by the Board to the granting of the application.

29. As to the issue of loss of light and air, the Board notes that the rear of Mrs. Parlor's dwelling faces north and windows in that wall receive no direct light. The rear yard, as now, would get its light from the sun directly

overhead. Also, as mentioned in Finding No. 26, the citation to the OPD report, the design of the subject property coupled with the direction of sun travel protects the light and air status quo of the properties fronting on T Street.

30. As to any impact on the historic and architectural symmetry of the 1500 block of T Street, the Board finds that the subject design, for the most part, is set back from the eastern property line. The design has further received conceptual approval from the Joint Committee on Landmarks, which is charged with protection of historic districts.

31. The opposition argues that the subject property is not unique in the sense that it would support the finding of a practical difficulty upon the owner. Both the applicant and the opposition have submitted testimony and memoranda on the issue of the practical difficulty. The applicant's contention is as stated in Finding No. 16. The opposition contends through its submissions that there are innumerable structures in the immediate neighborhood that exceed the lot occupancy. The opposition further argues that to grant the subject application would set a precedent and there would be no obstacles for such other structures to seek their maximum FAR and height. The Board does not find the opposition's argument persuasive. The Board has repeatedly held that it will consider each application on its own merits. The precedent issue does not prevail.

32. The Board finds that it is a combination of factors which create an exceptional situation of the property, not the singular issue of lot occupancy. The size of the lot, the existing over-occupancy of the lot, the gross floor area and floor area ratio of the existing building and the height of the building combine to create an exceptional situation. Of the various lots described in the opposition's review of surrounding lots on 16th Street in the R-5-C District, only six out of thirty-five lots exceed 3,000 square feet in area. Of those, one is not a residential building (1536 U Street), two are conforming as to lot occupancy (1835 and 1842 16th Street), and two others are only marginally over the lot occupancy (1915 and 1925 16th Street). The opposition submitted no probative evidence to the record that discusses either the floor area ratio or height of any of those buildings.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and the testimony and the evidence of record, the Board concludes that the requested variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. With regard to the lot occupancy variance request,

the Board concludes that the subject site is affected by an exceptional situation. As set forth in Finding No. 32, the Board concludes that a combination of factors create that condition. The Board notes that the existing non-conforming lot occupancy condition prevents any building addition, unless a variance is granted, even though the addition itself conforms in all respects to the Zoning Regulations. The Board further notes that the inability to construct any building addition, which forces the site to remain improved with a structure that utilizes less than its permitted FAR far below the permitted maximum height, constitutes a practical difficulty. The Board concludes that the economic analysis submitted by the applicant relating to the infeasibility and risk in developing the project further underscores the applicant's practical difficulty in this case.

The Board notes that the opposition focused considerable attention on whether the property was unique. In the case of Palmer v. Board of Zoning Adjustment, D.C. App., 287 A. 2d 535 (1972), the D. C. Court of Appeals stated:

"To support a variance it is fundamental that the difficulties or hardships be due to unique circumstances peculiar to the applicant's property and not to general conditions in the neighborhood. If the circumstances affect the whole area the reasonableness of the regulations are challenged and the proper remedy is to seek an amendment of the regulation rather than a variance."

In the subject application, it is clear that the circumstances of the subject property which create the need for and justify the granting of the variance are not "general conditions in the area" and do not "affect the whole area." A very limited number of other buildings may be similarly situated. The existence of one or more other properties having conditions or situations similar to the subject property cannot be said to remove the combination of factors present in the subject case that creates an exceptional condition here.

The Board further concludes that the requested variance will not adversely affect the zone plan since the proposed addition does not violate the Zoning Regulations and the use is permitted as a matter of right. Also, the building addition will not harm the public good because the applicant's building is substantially less than the permitted building height, the addition faces no walls containing windows and it has received conceptual approval from the Joint Committee on Landmarks. Finally, the Board concludes that the applicant's proposed rehabilitation will restore a vacant structure to a productive use and will add

to the housing stock and tax base of the District. The Board has given to the issues and concerns of the ANC the "great weight" to which they are entitled.

It is therefore hereby ORDERED that the application be GRANTED SUBJECT to the following CONDITIONS:

1. The applicant shall erect a wood stockade fence on the roof, such fence to be seven feet in height and to be located two feet from the eastern property line.
2. The applicant shall erect a masonry parapet wall three feet in height on the roof along the eastern property line.
3. The applicant shall erect a chain link fence four feet in height, along the center line atop the three foot parapet wall located on the eastern side of the building. The fence shall contain vinyl or wood diagonal strips so as to make the fence generally opaque.

VOTE: 3-1 (Walter B. Lewis, Connie Fortune and Charles R. Norris to GRANT; William F. McIntosh opposed by proxy; Douglas J. Patton not present, not voting).

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

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

FINAL DATE OF ORDER: NOV 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13671 of Bradford Brothers Construction Corp., Trustee for M&S Associates Joint Venture, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against allowing an addition to a non-conforming structure which now exceeds the lot occupancy requirements (Paragraph 7101.21) for a proposed addition to an eighteen unit apartment house which is a non-conforming structure in an R-5-C District at the premises 1901 - 16th Street, N.W., (Square 190, Lot 127).

HEARING DATES: February 10 and May 12, 1982

DECISION DATES: June 2 and August 4, 1982

DISPOSITION: The Board CONDITIONALLY GRANTED the application by a vote of 3-1 (Walter B. Lewis, Connie Fortune and Charles R. Norris to grant; William F. McIntosh opposed by proxy, Douglas J. Patton not present, not voting).
The Board DENIED a Request by the opposition for a further hearing in the application by a vote of 3-1 (Walter B. Lewis, Connie Fortune and Charles R. Norris to deny; William F. McIntosh opposed to the motion; Douglas J. Patton not voting, not having heard the case).

FINAL DATE OF ORDER: November 22, 1982

O R D E R

On December 2, 3 and 6, 1982, the Board received three timely motions for reconsideration in the subject application from individuals and citizens associations which appeared at the public hearing in opposition to the application. This application was heard and decided by the Board in accordance with the Supplemental Rules of Practice and Procedure in effect prior to August 27, 1982. Section 5.45 of those Rules requires that such a motion must be approved by four affirmative votes. Upon consideration of the motions for reconsideration, a motion made by William F. McIntosh to reconsider failed for a lack of four affirmative votes (William F. McIntosh to grant; Charles R. Norris opposed to the motion; Walter B. Lewis opposed to the motion by proxy; Carrie Thornhill and Douglas J. Patton not voting, not having heard the case). The Chairman ruled and it is

hereby ordered that the motion is DENIED for failure to obtain four affirmative votes as required by Section 5.45 of the Supplemental Rules of Practice and Procedures.

DECISION DATE: January 5, 1983

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

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

FINAL DATE OF ORDER: FEB - 4 1983

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."

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