

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13674, of Janus Consultants, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the lot area requirements (Sub-section 3301.1), the lot occupancy requirements (Sub-section 3303.1), the rear yard requirements (Sub-section 3304.1), from the prohibition against allowing a dwelling without side yards when the proposed building does not show a common division wall with another building (Sub-section 3305.4) and from the prohibition against allowing a required parking space less than nineteen feet in length (Sub-section 7204.1) to construct a single family row dwelling or in the alternative, variances from the prohibition against allowing an addition to a building which does not conform to the lot occupancy requirements (Paragraph 7107.21) and from the prohibition against allowing a required parking space less than nineteen feet in length (Sub-section 7204.1) to convert the existing building (garage) into a dwelling and add a second story in an R-3 District at the premises 3500 P Street, N.W., (Square 1247, Lot 835).

HEARING DATE: February 10, 1982
DECISION DATE: March 3, 1982

FINDINGS OF FACT:

1. The subject property is located in an R-3 District on the south side of P Street between 35th and 36th Streets, N.W.
2. The subject property is rectangular in shape, with a width of 40.33 feet and a depth of twenty feet. The property has a lot area of 806.60 square feet. The property has existed as a separate lot in the current configuration since 1947.
3. The subject property is improved with a one-story concrete block garage. The garage can accommodate four cars, was built in 1924, and occupies 100 percent of the lot. The garage spaces are leased to persons who live or work in the area. Three of the four spaces were rented at the time the case was heard.
4. Abutting the subject property to the west is a ten foot wide lot which is twenty feet deep. The lot is owned by Mr. and Mrs. Thomas Parrott, who also own and live in a single family dwelling at 3512 P Street, which abuts the ten

foot lot on the west. This lot serves as a driveway to the properties to the south in the square which front on 35th Street.

5. Abutting the subject property to the east is the rear yard of a single family dwelling owned by Ms. Ruth Morales which faces on 35th Street and is known as 1428 35th Street.

6. Abutting the subject property to the south is the rear yard of a rowhouse lot at 1426 35th Street owned by Mr. and Mrs. Edmund Parsons. The rear yard is used as a garden and parking area.

7. The owner of the subject property purchased it in 1979 with the intention of using it for parking for its employees at 1212 Potomac Street, N.W. When the distance between the two locations proved too great for practical use, the owner listed the property for sale with a real estate agent.

8. Since April, 1980, the owner has attempted to sell this property. It was listed with a real estate agent for twelve months. It was offered both in its existing use as a garage and as a condominium by offering each garage space at \$15,000 apiece, the fair market value of a Georgetown parking space. A large "For Sale" sign was posted on the property. It was advertised in the Washington Post. It was advertised in the real estate agent's office. A flyer was hand-delivered to all neighbors in the vicinity. By letter dated July 3, 1980, the owner also tried to sell the property for use as a residence and approached a neighbor in the area offering to purchase additional property to provide a conforming lot. The efforts to sell or otherwise dispose of the property have been to no avail.

9. The applicant now proposes to use the property as a single-family row dwelling. The residence would have one indoor parking space, two bedrooms, two and one-half baths, a living area and a kitchen. The building would have two stories. The height to the highest point of the roof would be twenty-eight feet.

10. The applicant offered two alternative proposals to construct a single family dwelling. In the first alternative, the existing building would be demolished and a new two story building covering the same area as the existing building would be constructed. In the second alternative, the existing building would be retained and remodeled, and a new second story added. In either case, the floor plans of the building would remain the same.

11. To accomplish the first alternative, the applicant require five variances, as follows:

- a. A row dwelling requires a minimum lot area of 2,000 square feet. The subject lot has 806.60 square feet. A variance of 1,193.40 square feet is required.
- b. The maximum lot occupancy permitted for a row dwelling is sixty percent. The proposed building would cover 100 percent, necessitating a variance of 322.64 square feet.
- c. A rear yard of at least twenty feet is required. No rear yard is provided. A variance of the full twenty feet is required.
- d. A side yard of at least eight feet is required on each side. No side yards are provided. A variance of the eight foot requirement is necessary.
- e. A required parking space must be at least nineteen feet long. The proposed parking space is only eighteen feet, eight inches long. A variance of four inches is required.

12. The variances described in a-d in Finding of Fact No. 11 are all required because the demolition of the existing structure removes any rights which may have pertained to the property as a non-conforming structure.

13. To accomplish the second alternative, the applicant requires a variance from the size of the parking space, as described in Finding 11. The applicant also require a variances from Paragraph 7101.21, which prohibits an addition to an existing building which now exceeds the maximum permitted percentage of lot occupancy. The existing structure occupies 100 percent of the lot.

14. From the architectural appearance, the only difference between the two alternatives is that the side and rear walls of the first alternative would be painted brick, whereas the side and rear walls of the second alternative would be painted concrete block.

15. The subject property is in the Georgetown Historic District. The Commission of Fine Arts, by memorandum dated October 22, 1981, gave preliminary design approval to the proposed residence and recommended alteration of the existing garage structure because it "is unattractive in its present condition and has no historic merit".

16. The applicant's architectural designer testified that the house has been designed to be compatible with its

neighbors. The height of the building is two stories, the same as or less than the height of the other buildings on the south side of P Street between 35th and 36th Streets. Its style is that of the early 19th Century, the prevailing style in the neighborhood.

17. The proposed structure on the non-conforming lot is in keeping with the character of this area of Georgetown. In the subject Square 1247, fifty-seven percent of the existing residential lots are under 2,000 square feet, the minimum lot area for the R-3 zone district. In Square 1247, there are four lots of 900 square feet, one lot of 843 square feet and one lot of 917 square feet. The applicant submitted evidence showing that in surrounding squares, eighty-eight percent of the lots in Square 1248, sixty-one percent in Square 1226, ninety-four percent in Square 1227, sixty-seven percent in Square 1228, sixty-eight percent in Square 1246, and twenty-one percent in Square 1253, are non-conforming as to area.

18. The proposed residential use is a conforming use and more in keeping with the primary purpose of the R-3 zone district than is the existing four car garage.

19. The variance from the size of the parking space is caused by the extremely shallow depth of the property. Since the site is only twenty feet deep, and the walls and doors occupy one foot, four inches, the maximum size available for the parking space is only eighteen feet, eight inches. Denial of this variance would preclude the construction of doors on the garage, exposing the vehicle to the elements and creating a less pleasing view from the street.

20. The variance to add to the existing structure is caused by the non-conforming lot occupancy of the existing building. No addition of any kind or size is permitted without a variance. The existing building has only 806.60 square feet on one floor. After including area for a parking space, the building is too small to serve as a functional single family dwelling.

21. Advisory Neighborhood Commission 3A, by statement marked as Exhibit No. 30 of the record, recommended that the application be denied. The ANC was of the opinion that the application could not be granted without substantial detriment to the intent, purpose and integrity of the zone plan. The ANC was concerned about the density of the proposed dwelling, and alleged that the granting of the variances sought would allow overdevelopment of the site to the detriment of the adjoining property owners. The ANC further argued that the owner can use the building as a garage, and is not sustaining a hardship as defined in the Zoning Regulations.

22. The Citizens Association of Georgetown, by resolution dated January 22, 1982, opposed the application on the same grounds cited by the ANC.

23. Mr. and Mrs. Thomas Parrott, the owner of the adjoining driveway lot to the west and the house that abuts the driveway, opposed the application. The Parrotts' house at 3512 P Street is three stories in height. There are windows in the east wall of that house at the second and third stories. There are no windows on the first floor level. That wall is on the lot line and the windows face the ten foot wide driveway lot. The Parrotts argued that the proposed two-story building would block light and air to their windows, and cast them in shadow. Mr. Parrott further objected to the building occupying 100 percent of the lot, and not providing any outside space for the occupants of the dwelling.

24. Mr. and Mrs. Edmund Parsons, owner of the adjoining property to the south, also opposed the application. Mr. Parsons argued that the second story would reduce the ambient light that penetrates his garden. He further argued that the second story would block the view of trees located on the Visitation Convent property across P Street to the north. He objected to the loss of privacy in his rear yard by virtue of windows located in the south wall of the proposed dwelling. He argued that the location of one air-conditioning condenser on the south side of the roof as causing excessive noise.

25. Ms. Ruth Morales, owner of the adjoining property to the east, objected to the application on the grounds that the light to her garden would be reduced.

26. The Board is required by statute to give "great weight" to the written report of the Advisory Neighborhood Commission. In addressing that report, and the other points raised by the opposing neighbors, the Board finds as follows:

- a. The size of the subject lot is not out of character with other lots in the subject square and surrounding squares, as more fully set forth in Finding No. 17. Even with the second story, the proposed dwelling has less than 1,700 square feet and is not an exceedingly large dwelling.
- b. The Regulations clearly require that all new structures provide specified amounts of open space on the lot. However, the subject building is an existing non-conforming structure, one which was conforming at the time it was built but does not meet the

present requirement for lot occupancy. The application in its second alternative, modifying and enlarging the existing structure, requires fewer variances than the first alternative of demolition and total new construction.

- c. The proposed use of the building as a single family dwelling is not at issue. Such a use is a conforming R-3 use permitted as a matter-of-right.
- d. The height of the building is equal to or less than the height of surrounding dwellings. The Parrott's house to the west is three stories and approximately forty feet in height.
- e. The height of the proposed dwelling will not block the third floor windows of the Parrotts' dwelling. The ten foot separation and the pitched roof design of the proposed dwelling will result in no substantial impairment of light to the second story window.
- f. The direction of sun light to the adjoining properties is from the southeast, east and southwest. The addition of a second story will not obstruct light and air to the property to the south. It will further cause no significant impact to the property to the east.
- g. The proposed dwelling is one story and twelve feet less than the maximum height permitted in an R-3 District, and has less impact on adjoining property than the greater height permitted.
- h. The Parsons' objection as to loss of view is not dispositive. They have no right to a view across the applicant's property.
- i. The loss of privacy objection is also not significant. The R-3 District permits rowhouses on lots only twenty feet wide. The proposed building has only one window in the rear, and no more invades the privacy of adjoining owners than would a conforming R-3 building.
- j. The objection to the air conditioning

equipment is unfounded. Such mechanical equipment is typical of many residences. Its location on the roof as proposed is a reasonable proposal. Other than unsupported allegations, the Parsons have failed to show that the proposed location would have a significant adverse effect.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that in either alternative, the requested variances are area variances, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the application should be considered only in the second alternative, that of modifying the existing non-conforming structure. That alternative requires only two variances, as opposed to the five required for the new construction. The Board concludes that the second alternative is thus more in keeping with the overall intent of the Zoning Regulations, including Article 71.

The second alternative requires only two variances, one relating to the size of parking space and the other to the existing lot occupancy condition. As to the parking space size, the variance requested is minimal, only four inches. The extremely shallow depth of the property, only twenty feet is an exceptional condition. The Board concludes that strict application of the regulations would cause practical difficulties for the owner by preventing the placement of doors on the garage, thereby exposing the vehicles to the elements and creating a less satisfying appearance for the dwelling. There was no opposition expressed relating to the size of the parking space.

The second variance requested also relates to the small size of the property. The existing building occupies all of the lot. It is a non-conforming structure. In converting the garage to a residence, additional living space is necessary to create a practical sized dwelling. The small size of the lot and the existing occupancy create an exceptional condition. Strict application of the regulations causes a practical difficulty by preventing the use of the building as a dwelling, a use which is permitted as a matter-of-right and more in keeping with the character of the zone than a four car garage.

The Board has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled by statute. The Board concludes that the density of the proposed dwelling, both in terms of the size of the lot and the size of the dwelling, is not out of character with the

immediately surrounding area. The Board concludes that use of the building as expanded as a dwelling is more consistent with the overall intent and purpose of the regulations, including Article 71, than its continued use as a garage. The Board notes that the ANC applied the wrong test for the application. This is an area variance, not a use variance, and the test is practical difficulty, not hardship.

The Board is mindful of the objections of the owners of surrounding property. The Board concludes however that the requested relief 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 condition that approval is for the existing building to be converted into a dwelling unit with a second story addition.

VOTE: 3-1 (Walter B. Lewis, Connie Fortune and Charles R. Norris to GRANT; Douglas J. Patton OPPOSED to the Motion; William F. McIntosh not voting, not having heard the case).

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

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

FINAL DATE OF ORDER: MAY 24 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.