

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13679 of Russell Hughes, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the minimum lot area requirements (Sub-section 3301.1) to increase the number of units in an existing apartment house from three units to six units in an R-4 District at the premises 2719 - 13th Street, N.W., (Square 2859, Lot 57).

HEARING DATE: February 24, 1982 and April 21, 1982
DECISION DATE: April 21, 1982

FINDINGS OF FACT:

1. The subject application was on the preliminary calendar for the public hearing of February 24, 1982. The affidavit of posting filed in the record evidenced that the property was posted nine days before the public hearing instead of the ten days required by the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment and that the affidavit of posting was filed two days prior to the public hearing instead of five days as required by the Rules. Mr. Russell Hughes, appearing on behalf of the applicant, testified that he could not get sufficient time off from his job to properly post the property or to properly file the affidavit. There was opposition to the application present at the public hearing who opposed the waiver of the posting requirement. Ms. Marjorie D. Logan who resides at 2721 - 13th Street, N.W., immediately adjacent to the subject property, stated that the property was posted on February 20, 1982, four days prior to the hearing. Mr. Hughes stated that the sign had been torn down and was posted for the second time on that date. The testimony of Mr. Hughes also indicated that the sign was first posted on the corner of the block. When Mr. Hughes re-posted after the sign was found to be torn down, he posted the sign on a tree located next door to his property. The Chair ruled that because of the contradictory evidence on the posting issue as to time and the poster being placed on other than the subject property the application could not go forward on its merits. The public hearing in the subject application was postponed until April 21, 1982 to permit proper posting of the property by the applicant. The case was heard on April 21, 1982.

2. The subject property is located on the east side of 13th Street between Fairmont and Girard Streets, N.W. and

is known as premises 2719 13th Street, N.W. It is zoned R-4.

3. The property is improved with a three-story row dwelling containing three apartment units, one on each floor.

4. The applicant proposes to increase the number of units in the existing structure from three to six apartment units.

5. Under Sub-section 3301.1, the R-4 District requires a minimum of 900 square feet of lot area for each of the proposed six apartment units, a total of 5,400 square feet. The site consists of 2,659 square feet of lot area necessitating a variance from the lot area requirement of 2,741 square feet.

6. The applicant testified that he desired to renovate and increase the number of units in the subject structure in order to get rid of the existing tenants. The Board finds that the issue of the eviction of tenants is not properly before it.

7. The applicant is seeking an area variance, the granting of which requires substantial evidence that a practical difficulty on the owner of the property is caused by some extraordinary or exceptional condition of the property and that the variance could be granted without impairing the intent, purpose and integrity of the zone plan.

8. The applicant presented no probative evidence or testimony which indicated the existence of an exceptional or extraordinary condition inherent in the property which would result in a practical difficulty on the owner. Further, no evidence or testimony was presented which addressed the impacts the proposed, more intense development would have on the area.

9. When the applicant completed his testimony, the Board, on its own motion, denied the application for failure of the applicant to meet the burden of proof required for the granting of an area variance.

10. There was no further evidence or testimony admitted to the record although there was opposition present at the hearing and in the record and a report was in the record from the Office of Planning and Development.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking an

area variance, the granting of which requires proof through probative evidence of an exceptional or extraordinary situation or condition of the property which causes a practical difficulty for the owner. The Board concludes that no evidence or testimony was presented which shows that such situation or condition exists in the subject property.

Further, the Board concludes that the owner demonstrated no practical difficulty that he would suffer if the Zoning Regulations were strictly applied. The applicant's desire to rid himself of existing tenants in his building can not properly be considered by the Board. It is a personal difficulty which is not a basis for a variance. The applicant has not met the burden of proof. For the above reasons it is therefore ORDERED that the application is DENIED.

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

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

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

FINAL DATE OF ORDER: JUN 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."