

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13730, of Arthur M. and Roberta S. Leib, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against allowing a sub-division that does not meet the lot area and lot width requirements (Sub-section 1302.2) in an R-3 District at the premises 3517 O Street, N.W., (Square 1247, Lot 805).

HEARING DATE: April 21, 1982
DECISION DATE: May 5, 1982

FINDINGS OF FACT:

1. The subject property is located on the north side of O Street between 35th and 36th Streets, N.W. at premises known as 3507 O Street, N.W. It is in an R-3 District.

2. The subject property consists of 2,740 square feet of land area. It has a street frontage of 18.28 feet along O Street and a width of 30.28 feet at the rear lot line. It has a depth of 120 feet along the western property line. The eastern property line runs north for a depth of seventy-five feet from O Street, then easterly for twelve feet, then directly north for forty-five feet to the rear lot line.

3. The property is improved with a two-story framed row dwelling with a two-story brick rear addition. The addition creates an open court at the rear 5.96 feet wide along the western boundary of the lot. The rear yard is enclosed by a wood stockade fence and a two-story framed shed abuts the northwest corner of the subject property. The original house was built in 1810.

4. The applicant proposes to subdivide the subject lot to have an area less than the minimum lot area of 2,000 square feet required in the R-3 District. A portion of the rear yard measuring 30.0 by 30.28 feet will be removed from the subject lot and sold to the owners of the adjoining Lot 123, known as premises 1408 35th Street, N.W.

5. The rear of the subject property had been developed as a garden and had been maintained by the applicants. Because of their age and the lack of finances, the applicants have found it difficult to maintain the garden. They are proposing to allow the owner of the adjoining Lot 123, who is willing to maintain the garden, the opportunity to

rightfully own the area and to provide the proper care the garden needs.

6. Adjoining Lot 123 is known as 1408 35th Street, N.W. Its rear property line abuts the subject Lot 805 at the northeast corner with a common boundary line of thirty feet.

7. Lot 123 has an area of 3,600 square feet and measures thirty feet in width by 120 feet deep. The additional land area from the subject lot will increase the area of Lot 123 to 4,508 square feet. Under the R-3 District, this would be sufficient area to create two lots. As a practical matter, it is not possible to subdivide the property and build two houses without further review by this Board.

8. The present owner of Lot 123 is willing to covenant that she will not attempt to subdivide Lot 123 to build two dwellings.

9. Lot 123 is improved with a single family dwelling built in the 1860's. The structure has a front yard and rear addition. The rear yard of Lot 123 is twenty by thirty feet. The proposed subdivision will increase the rear yard to 50.28 by thirty feet.

10. The subject property once subdivided will have a lot area of 1,825 square feet, which is 175 feet less than the minimum required for the R-3 District. It is presently non-conforming with respect to lot width.

11. The subject square 1247 has no existing alley system.

12. The subject lot 805 and lot 123 are located in Historic Georgetown and the proposed subdivision is subject to review by the Fine Arts Commission and the Joint Committee on Landmarks.

13. The applicant testified that while the subject lot will result in a lot area less than the required 2,000 square feet, it will be of a size which is slightly above the average lot size in Square 1247.

14. The applicant also testified that the elevation of the subject lot 805 and lot 123 is virtually the same or flat with a slight grade from lot 123 to lot 805.

15. Five letters were received in support of the proposed application from property owners within Square 1247.

16. The Office of Planning and Development by report dated April 16, 1982, recommended denial of the application, stating that the applicant has not shown a practical difficulty inherent in the property which would justify reduction of the area of the subject lot to a substandard status. The desires of financial need of the present owner should not be the basis for making a property permanently substandard in size and quality. The OPD was of the opinion that there has not been a showing of practical difficulty. For the reasons set forth below, the Board does not concur with the OPD report.

17. The Citizens Association of Georgetown testified in opposition to the application, stating that the request does not meet the requirements of Paragraph 8207.11 of the Zoning Regulations and the Board cannot judge the proposed application on the economic circumstances of the applicant. Also, the requested variance would compound the non-conforming status of Lot 805 regarding lot area and width.

18. Advisory Neighborhood Commission 3A, by letter dated April 14, 1982, recommended that the application be denied for the following reasons:

- a. The proposed subdivision would create a substandard lot in violation of the Zoning Regulations.
- b. The applicants can achieve their objective without a variance. If the applicants were to sell twenty-four feet of their rear yard and grant a gardening easement for the remaining six feet, there would be no need for a variance.
- c. The increase in area for Lot 123 would allow for the possible future subdivision into two standard lots, causing the demolition of the existing house which is an important example of early Georgetown architecture. Such an occurrence could be prevented if the present owner is willing to provide a preservation easement against future subdivisions to a recognized preservation organization.

19. The Board by statute is required to give "great weight" to the written issues and concerns of ANC 3A. In addressing the ANC's concerns, the Board finds that:

- a. Inherent in the authority to grant variances is the authority of the Board to permit subdivisions which do not meet the strict application of the Zoning Regulations. If the subdivision complied with the Zoning Regulations, no variance would be

required. The fact that the lot is substandard is not a basis to deny the application.

- b. If both the applicant and the owners of adjoining lot 123 were to agree to a limited subdivision and an easement, such could be accomplished. However, there is no such agreement in the record. The Board further finds that such a procedure would be more cumbersome and less straightforward than the variance sought herein.
- c. The owners of Lot 123 are prepared to enter into a preservation agreement. However, the controls administered by the Fine Arts Commission and the Joint Committee on Landmarks, in combination with the Zoning Regulations, make demolition of the existing structure to facilitate the construction of two new houses unlikely.

20. As to the arguments in opposition of the Citizens Association of Georgetown and the Office of Planning and Development, the Board finds as follows:

- a. The subject property is affected by an extraordinary or exceptional condition. Its rear portion is much wider than the front portion for a significant depth of the lot.
- b. The subdivision as proposed would result in making an unusually large yard smaller and an unusually small yard larger.
- c. The end result of the subdivision will be two houses on two lots having the same total area as now exists. There will be no increase in density, and no adverse impact on any surrounding property.
- d. The transfer of control over the rear portion of the property could be affected by means of an easement with no governmental review. Such a device would be legally complex and unnecessarily burdensome for both parties, when the same result can be achieved by the variance sought.
- e. The extent of the variance is small, only 175 square feet.

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 the showing of a practical difficulty inherent in the property itself. The structure was built prior to the adoption of the Zoning

Regulations on a lot which is substandard in width. The applicants' proposed subdivision would result in the subject lot being deficient regarding lot area. While an additional substandard feature would be created, the proposed subdivision would provide additional area to the rear yard of an adjoining lot. The proposed subdivision would not have an adverse effect on adjoining property since the subdivision is merely a transfer of ownership for the purpose of maintaining the existing grounds and garden. The applicants are unable to adequately maintain their rear yard grounds and its use is limited with no existing alley system in the square. No adjoining property would be affected by the proposed subdivision. The Board concludes that the applicants have met their burden of proof and the relief can be granted without substantial detriment to the public good, and without substantially impairing the intent, purpose and integrity of the zone plan. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled, but that based on the findings and conclusions set forth herein, the relief should be granted.

Accordingly, it is ORDERED that the application is hereby GRANTED.

VOTE: 3-2 (Walter B. Lewis, Charles R. Norris and Douglas J. Patton to GRANT; Connie Fortune and William F. McIntosh OPPOSED).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: SEP 20 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.