

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13733, of John A. McCann, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the minimum lot area requirements (Sub-section 3301.1) to use the first, second and third floors of the subject premises as an apartment house of three units in an R-4 District at the premises 64 Rhode Island Avenue, N.W., (Square 311, Lot 21).

HEARING DATE: April 28, 1982  
DECISION DATE: June 2, 1982

FINDINGS OF FACT:

1. The subject site is located on the south side of Rhode Island Avenue between First and North Capitol Streets. It is known as premises 64 Rhode Island Avenue, N.W. The site is located in an R-4 District.

2. The site comprises 1,412 square feet of land area. It is improved with a three story and basement structure. The site is basically rectangular except for the rear portion of the lot fronting T Street.

3. The structure contains three separate one-bedroom units. The basement is used for storage and the heating system.

4. The subject site is surrounded by row dwelling units to the north, east, south and west. There is a church at the corner of First Street and Rhode Island Avenue and a small apartment building two doors to the west.

5. The applicant purchased the subject property in October, 1979. It was then vacant. The applicant then proceeded to rent all three units.

6. The applicant applied for a certificate of occupancy for an apartment house of three units. The applicant testified that he was then made aware that the existing certificate of occupancy was for a flat.

7. The applicant testified that upon the purchase of the property he was led to believe that the property was legally used as an apartment house of three units and that the prior owner had converted the structure from a single family dwelling to an apartment house of three units. The

date of said conversion was unknown. The applicant assumed the conversion took place in 1968.

8. Sub-section 3301.1 of the Zoning Regulations requires that in conversions to an apartment house in an R-4 District, there must be 900 square feet of lot area for each unit within the structure. The subject lot has only 1,412 square feet, and the applicant therefore seeks a variance of 1,288 square feet.

9. The applicant argued that the practical difficulty in the property is based on the shape of the lot and the existence of the three units. He argued that it would be too expensive to renovate the three units to a flat, that income from a flat would not meet his financial obligations and that existing tenants would have to be evicted. The applicant further argued that the existing three units had had no adverse affect on the immediate area. He has received no complaints. As to the shape of the lot, the Board finds that even if the lot were completely rectangular, it would still comprise less than 2700 square feet. As to the other practical difficulties asserted, the Board will address these issues below.

10. A homeowner residing directly across the street from the subject site opposed the application. She had no specific objections to the subject dwelling. Her concern was that if the application was approved, it would lead to other owners making similar conversions which would increase the density on the block. The opponent specifically testified to the dwelling next door to her home which was crowded with people who created much noise and other disturbances to her and her grandchildren.

11. The Board did not allow the report of the Office of Planning and Development to be admitted to the record since the preparer of the report was not present at the public hearing and there was no OPD representative who was prepared to answer the questions of the Board as to statements made in the report.

12. The record was left open at the end of the public hearing for the applicant to submit evidence in support of his contention that the subject dwelling was converted to three units shortly after the prior owner purchased the property in 1968. The applicant was unable to submit corroborating evidence.

13. The record was left open for the Advisory Neighborhood Commission 5C to submit its study of similar violations in the immediate neighborhood and for a recommendation by the ANC. The ANC had testified at the public hearing that there was no single member commissioner

for the subject area and that the ANC had not had the opportunity to evaluate the application.

14. Advisory Neighborhood Commission 5C, by letter of May 18, 1982, reported that at its meeting of May 11, 1982, the ANC voted unanimously to oppose the application. The ANC in its report stated that in all zoning matters, its primary consideration was what is best for the community rather than what would be best for a particular property owner. The ANC noted that several homeowners in the community had expressed opposition to this variance, and that concerns had been raised regarding trash and weeds which have accumulated on the property as well as fears that overcrowding will cause the neighborhood to deteriorate.

15. The ANC reported that an application for an area variance to convert a flat to a three unit apartment house for the subject property filed by the previous owner was denied in BZA No. 11470 in an Order dated December 19, 1973. The Board's conclusion, based upon Paragraph 8207.11 was that "(t)he applicant has shown no unique circumstance or practical difficulty which would preclude him from conforming with the Zoning Regulations." In the ANC's view, there have been no changed conditions which would warrant disturbing this earlier Board decision. The ANC argued that that case offers persuasive evidence that since the prior owner certainly had knowledge of the zoning restrictions, the present owner should also have this knowledge or possess a legal remedy assertable against the party upon whose representations he relied. The community should not be made to suffer because of the imprudence or improvidence of a property owner.

16. The ANC was concerned that if this applicant is granted a variance, largely because of the "improved" condition of the property at the time it was purchased, other owners of "bootleg" properties would apply to legalize their property in a similar manner.

17. The ANC argued that the concept of overcrowding should refer to the density of structures as well as the percentage of lot area that a structure occupies. Overcrowding of property negatively impacts upon adjacent lot owners who may have purchased their homes in reliance on the existing zoning scheme in a number of ways. Overcrowding adds to the likelihood of fire, increases traffic, noise, threatens sewer and water services with inadequacy, and contributes to other conditions harmful to the well being of the community. Minimum lot area requirements are the principal means by which overcrowding is prevented.

18. The ANC argued that it is not the uniqueness of the plight of the owner, but uniqueness of the property causing

the plight which is the criteria set forth in the statute and Regulations for the granting of a variance. The "unique circumstances" cited by the applicant in this case refer to his personal misfortune or inability to derive a sufficient economic return on the property. This is not a proper basis on which to grant a variance. A variance should not be granted merely because a particular use of property will be more profitable than a present use. Where an owner can derive a reasonable return from his property as it is presently zoned, he should not be entitled to a variance. It is not the duty of the Board to insure the economic viability of a particular piece of property.

19. The ANC argued that to grant this variance would substantially impair the integrity of the zoning scheme and contradict the intent and purpose behind the creation of the R-4 zoning district. Sub-section 3104.1 of the Zoning Regulations states in part:

Very little vacant land would be included within this district since its primary purpose would be the stabilization of remaining one-family dwellings. The district would not be an apartment house district as contemplated under the General Residence (R-5) Districts since the conversion of existing structures will be controlled by a minimum lot area per family requirement.

Although the home which is the subject of the present application is not currently used as a single family dwelling, the contemplated use would only provide an incentive for further conversions. It is important that concern be focused upon upgrading the character and quality of the affected community. The future as well as present impact of the proposed change must be given serious consideration. Where, as here, the dwelling in issue is similar to neighboring homes, any grant of a variance can be expected to result in identical demands by neighboring property owners. The proper remedy in a situation such as this would be an amendment to the zoning scheme rather than the granting of random and capricious variances. The ANC concluded that this community would not be best served by such a change in its zoning plan.

20. The Board is required by statute to give "great weight" to the issues and concerns of the ANC. The Board has consistently stated that each application must be decided on its own merits, based on the particular set of facts presented. In this application, the Board concurs with the recommendation of the ANC that the application be denied. The Board finds that there is no exceptional or extraordinary situation or condition of the property to warrant the granting of the variance. The personal

circumstances of the applicant are not a proper basis for variance relief.

21. A resident of the adjacent property filed a letter in support of the application. No grounds was stated.

CONCLUSIONS OF LAW AND OPINION:

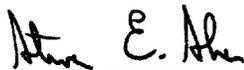
Based on the record, the Board concludes that the application is seeking an area variance, the granting of which requires substantial evidence of a practical difficulty that is inherent in the land. The Board concludes that no exceptional or extraordinary situation of the property leading to a practical difficulty exists. The practical difficulty results from the dense use to which it is illegally being put. The applicant's practical difficulty is personal. The applicant's imprudence in purchasing the property without investigation as to the legality of its use, his renting the three vacant units and his need for a greater economic return on his property are personal matters. They are not grounds for the Board to grant an area variance. The Board concludes that the applicant cannot rely on the illegal conversion of the building from a flat to an apartment house to now provide the basis for the granting of the variance. Such reliance would totally frustrate the orderly administration and application of the Zoning Regulations.

The Board further concludes that the application cannot be granted without substantial detriment to the public good and without substantially impairing the extent and purpose of the Zoning Regulations. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-1 (Walter B. Lewis, Connie Fortune and Charles R. Norris to DENY; 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:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: \_\_\_\_\_

DEC - 3 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."

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