

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13775, of Larry W. Zimmerman, et al., 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 subject premises as an apartment house consisting of four units in an R-4 District at the premises 1852 5th Street, N.W., (Square 3093, Lot 450).

HEARING DATE: August 11, 1982
DECISION DATE: September 22, 1982

FINDINGS OF FACT:

1. The subject site is located on the west side of Fifth Street just north of its intersection with Florida Avenue and is known as premises 1852 5th Street, N.W. It is in an R-4 District.

2. The subject lot is fifteen feet wide with 1,016 square feet of land area. It is trapezodial in shape, with the rear lot line running at an angle to the front. A twelve foot wide public alley abuts the site at the rear.

3. The site is improved with a four story, brick structure. It was constructed about 1890. There is a twelve foot extension at the rear of the building on floors one through three, only. A Certificate of Occupancy No. B-69797, was issued May 28, 1970, for the use of the subject property as a rooming house, all floors, consisting of eight bedrooms. The structure has been vacant for eighteen months, after a fire displaced the tenants.

4. The structure constitutes a shell. It has been vandalized with removal of heating and electrical equipment. It is now boarded up.

5. The applicants propose to use the subject premises as an apartment house consisting of four units. The Zoning Regulations permit conversions to apartment houses in an R-4 District of structures built prior to May 12, 1958, the date of the current Regulations, provided there is a minimum lot area of 900 square feet per apartment. For a four unit building, 3,600 square feet of lot area is required. The applicants request a variance of 2,584 square feet.

6. The gross floor area of the structure is approximately 3,000 square feet. The applicants propose to construct a two bedroom unit on each of floors one through three. The fourth floor will be a one bedroom unit. The second and third floor units will contain approximately 750 square feet. Because the first floor contains the entrance and because the fourth floor does not extend as far back as the other three floors, units on these floors will contain less than the 750 square feet each. The units will have individually controlled heating and cooling units. They will be marketed as rental units.

7. The subject site is located within the boundaries of the LeDroit Park Historic District. The Joint Committee on Landmarks will review any construction permit.

8. The subject site abuts a vacant lot and a public alley on its southern property line. Further to the south, separated by the vacant lot and a row dwelling, is the twelve foot wide public alley which abuts the subject lot at the rear. Across the alley further south there is a row structure with a liquor store on the first floor located in a C-2-A District. Directly north of the site there is another four story row dwelling in multi-family usage in the R-4 District. Continuing north and east there are row dwellings and detached structures located in the R-4 District.

9. The Zoning Administrator has determined that there is no off-street parking required for the proposed apartment use and that a parking credit has been applied because of the previous rooming house use of the premises and its pre-1958 zoning status. Had there been a parking requirement, given the irregular shape of the lot and the percentage of lot occupancy, there is no room on site to locate a regulation sized nine by nineteen foot space.

10. Fifth Street at the subject location has two way traffic with no parking between 7:00 A.M. and 6:30 P.M., Monday through Friday, allowed on the side of the subject property.

11. The applicants' family has owned the subject property for approximately thirty years. The owners do not intend to sell the property. The applicants estimate that it will cost approximately \$80,000 to rehabilitate the structure for four units. They anticipate a rental between \$350 and \$400 per month. If it were to be rented out as a single family residence, the estimated rent would be approximately \$1,200 per month. The applicants contend that the subject neighborhood does not warrant such a high rental nor correspondingly high rentals if the units were reduced to less than four. The applicants further contend that less than four units is not practical because of the poor

accessibility between the floors, such as stairwells. The Board suggested possible modifications to the proposal, such as to provide two units or a single family residence of three improved floors, first through third. The applicants contended that such is not economically feasible.

12. The Board finds that the applicant's economic analysis is based on factors which are subject to immediate change based on national economic and financial factors. As such, there is no basis to assume that such factors will continue or that long-term land use decisions should be based on temporary economic conditions.

13. The applicants argued that the subject property has an inherent practical difficulty because of the smallness of the lot, its irregular shape, the existence of a four story structure on a small lot and the fact that the structure is basically a shell. The applicants further argued that the structure as it now exists in its boarded-up state, the existence of fire escapes on the front and back of the building and its general unkempt appearance is a blight on the neighborhood. The applicant would restore the building so as to blend in with the neighborhood.

14. The Office of Planning and Development, by report dated August 6, 1982, recommended that the application be approved. The OPD was of the opinion that there were exceptional situations and conditions related to the physical characteristics of this property which made the strict compliance with the Zoning Regulations unreasonable and thus created a practical difficulty upon the owners in thier efforts to revitalize this property for residential usage. Specifically, OPD believed that the substantial gross floor area of the building and lot occupancy in proportion to the substandard sized lot area and width was an exceptional condition that supported the reasonableness of this structure's multi-family usage above the two units allowed as a flat by matter-of-right. The OPD believed that the structure as designed could accommodate four spacious units without creating any objectionable conditions for its future inhabitants or neighbors. The OPD was further of the opinion that the conversion of the premises into a four unit apartment house would not impair the intent, purpose or integrity of the Zoning Regulations. The OPD believed that the units would provide rental housing convenient to the Howard University complex and Seventh Street and Florida Avenue public transportation routes, and be compatible with the neighboring multi-family uses along the subject block of 5th Street, and C-2-A zoned frontage on Florida Avenue. The Board for reasons discussed below, does not concur in the OPD recommendation nor its reasoning.

15. At the public hearing, the Zoning Committee of Advisory Neighborhood Commission 1B gave its report. The

Chair left the record open for the ANC to submit its recommendation. By letter of August 24, 1982, ANC-1B recommended that the application be denied on the following grounds:

- a. The subject property is not unique because of size, shape or topography. Substandard lot size and width is a general characteristic of the row houses constructed in LeDroit Park. The row houses constructed along the 1800 block of Fifth Street, N.W. and other areas of LeDroit Park are of similar substandard lot size and width. The rowhouses along the 300 and 400 blocks of Elm Street, 1800, 1900, and 2000 blocks of 5th Street and 1900 block of 6th Street, are equally burdened with substandard lots. Thus, although the subject property may be exceptional or unique when compared in area and width with rowhouses in other neighborhoods in the District of Columbia, it is neither exceptional nor unique when compared to identically zoned neighboring property in LeDroit Park.
- b. There is no reason why the applicant would suffer practical difficulties using the property for a permitted use. Other property owners in LeDroit Park are able to use their substandard lots for a permitted use and there is nothing so unusual about this property which would prevent the applicants from using the property likewise. The fact that it would be more profitable for the applicants to use the subject property as an apartment as opposed to a single family home, flat or other permitted use does not justify a variance.
- c. The only unusual feature of the subject property which distinguishes it from neighboring rowhouse properties is the unusual size of the building, four stories and 3,000 square feet. However, the building size is not a burden on the applicants. To the contrary, the large building size is a benefit to the applicants because it enhances the rental potential and market value of the property.
- d. The use of the subject building as a four-unit apartment would adversely affect the neighborhood. It would result in high density, potential overcrowding and more noise and parking congestion in the area. Developing this vacant structure as a four-unit apartment would significantly add to parking demand along the 1800 block of Fifth Street especially since the subject lot cannot accommodate off-street parking. The area now

suffers a parking problem due to Howard University generated traffic and the problem will get even worse as the University develops new buildings in LeDroit Park in accordance with its BZA approved campus construction plan. The proposed use would exacerbate the parking problem.

- e. To grant the minimum area deviation and permit apartment use would run counter to Sub-section 3104.1, resulting in overcrowding and adversely affect the neighborhood. A four-unit apartment would lead to unacceptably high density and potential overcrowding. The Zoning Regulations specify a minimum area of 3,600 square feet for four-unit apartments. The subject property has only 1,016 square feet. Sub-section 3301.1 of the Zoning Regulations would permit only one apartment on such a small lot, yet the applicant proposes four. The proposed use would be a tremendous deviation from the minimum area requirements, a deviation of approximately seventy per cent. The Board should not grant such a tremendous deviation from the area requirement, especially in an R-4 District. According to Sub-section 3104.1 the R-4 District would not be "an apartment house district" since apartment conversions "will be controlled by minimum lot area per family requirement."
- f. The grant of this variance would violate the intent and purpose of the Zoning Regulations. As noted earlier, the subject property is no more unique than other LeDroit Park rowhouses. If the BZA establishes a precedent by permitting an apartment conversion here due to substandard lot size, it would be required to permit practically all rowhouses in LeDroit Park to be similarly converted. This would upset the R-4 zoning scheme and lead to a pattern of uses characteristic of R-5 areas. It is not the intent or within the spirit of a zoning ordinance to permit one variance which may lead to another so that eventually the entire zoning plan is adversely affected.

16. The Board concurs in the findings and recommendation of the ANC, except as to the precedent issue stated in Finding F above. The BZA has repeatedly held that it will determine each application on its own merits. The granting of one variance does not necessarily establish a precedent in the neighborhood.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicants are seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner of the property that arises out of some unique or exceptional condition of the property, such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the practical difficulty does not exist. The site is basically rectangular in shape and is flat. The site is not unique to the subject neighborhood as found in Finding No. 15(a). The Board is also of the opinion that the building plans as submitted may be too elaborate. There appear to be modifications that could be made, as suggested by the Board, which would require not so great a variance and which would be more in keeping with the character of the immediate neighborhood. The Board concludes that the plans as submitted would have an adverse affect upon the neighborhood and would substantially impair the intent, purpose and integrity of the zone plan as set forth in Finding No 15. The Board appreciates the applicants intent to rehabilitate the structure so that it would cease being a blight upon the neighborhood. However, there is no grounds for granting the area variance requested. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 4-0 (Lindsley Williams, Douglas J. Patton, William F. McIntosh and Charles R. Norris to DENY; Connie Fortune 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: JAN 18 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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