

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13931, as amended, of Annie J. Proctor and J.C. Lipscomb, pursuant to Sub-section 8107.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Sub-section 3301.1 for a proposed subdivision establishing two lots with a semi-detached flat on one lot and a four unit row apartment house on the other lot and for variances for the apartment house lot from the floor area ratio requirements (Sub-sections 1302.2 and 3302.1) and the lot occupancy requirements (Sub-sections 1302.2 and 3303.1) in an R-5-A District at premises 1333 and 1335 Bryant Street, N.E., (Square 3952, Lot 41).

HEARING DATES: March 9, 1983 and July 20, 1983
DECISION DATE: September 7, 1983

FINDINGS OF FACT:

1. The subject application was first scheduled for the Public Hearing of March 9, 1983. The Chairman continued the hearing on the case for several reasons. The applicants had failed to comply with Section 302.3 of the Supplemental Rules of Practice and Procedure before the BZA, in that the applicants had failed to post notice of the hearing on the property at least fifteen days in advance of the public hearing. The property was posted six days. In addition, the application was being amended. The special exception relief is now through Sub-section 3301.1, rather than Paragraph 3105.42, wherein the Board must approve the minimum lot area and width for newly established lots in an R-5-A District. Also, as amended, the variance relief from the floor area ratio requirements and the lot occupancy requirements for premises 1335 Bryant Street was greatly reduced. The applicants were required to submit a revised plat reflecting the revised subdivision and the respective floor area ratio and lot occupancy computations. The Board requested that the Zoning Administrator submit a revised memorandum. The Board determined that the case must be readvertised.

2. At the Public Hearing of July 20, 1983 the application appeared on the preliminary agenda since the property was posted for fourteen days instead of the required fifteen days. The Chairman, for good cause shown, waived the Rules.

3. The subject site is located at the southeast corner of the intersection of Bryant Street and 13th Place

and is known as premises 1333 and 1335 Bryant Street, N.E. It is in an R-5-A District.

4. The site is triangular in shape, not as deep as adjoining lots, and is improved with two permanent structures, a flat and an apartment house, both of which were constructed about 1914. The structures are presently occupied. The structures share a common party wall.

5. The applicants are requesting permission to subdivide the subject lot into two lots. One lot will be improved with a semi-detached flat. The other lot will be improved with a four unit apartment house. Both the flat and the apartment house are presently occupied consistent with the R-5-A use provisions. The applicants are proposing no change to the existing number of units. The subdivision is being sought in order to allow the owners of the property to sell one building independent of the other and to obtain bank financing.

6. The applicants are requesting relief from three provisions of the R-5-A District regulations. The applicants are requesting a special exception to allow the subdivision of one lot into two in the R-5-A District. The applicants are requesting variances from the provisions of Sub-section 1302.2 which states "Where a lot is hereafter divided, the division shall be effected in such manner as not to violate provision of these regulations for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces or loading berths applicable to said lot or any lot created."

7. The proposed subdivision would require the approval of a variance from the floor area ratio and lot occupancy requirements. As amended, the applicants have adjusted the proposed lot lines in order to come as close as possible to complying with the R-5-A floor area ratio and lot occupancy requirements without infringing on other yard requirements. The applicants are seeking a variance of 157.01 square feet or 12.83 percent from the forty percent minimum lot occupancy requirements and a variance of 8.73 square feet or 0.31 percent from the floor area ratio requirements. These variances are needed for only one of the two lots to be created in this subdivision, namely 1335 Bryant Street. The larger of the two lots in question, 1333 Bryant Street, complies in total with the area requirements of the R-5-A District.

8. As to premises 1333 Bryant Street, the applicant is providing a lot area of 2,570.63 square feet and a lot width of 83.74 feet. As to premises 1335 Bryant Street, the applicant is providing a lot area of 3,056.97 square feet and an average lot width of 34.09 feet.

9. On the north side of Bryant Street, east to Downing Street, there are twenty-two two story apartment houses. The average width of these lots is thirty-four feet, with lot areas ranging from 3,699 to 4,423 square feet. On the southern frontage of Bryant Street, there are similarly developed lots to the proposed lots. These lots average thirty-four feet in width, with lot areas averaging approximately 2,270 square feet. The Brentwood Village apartment complex is located further north of the site and there are single family row dwellings further south of Bryant Street. However, these properties are not developed in a manner similar to the subject site.

10. The Office of Planning, by report dated July 13, 1983, recommended that the application be approved. The Office of Planning reported that the applicants are hampered in their desire to comply with the FAR and lot occupancy requirements given the unique characteristics of the property. The property is triangular in shape, shallow and developed with structures built in 1941. The property's triangular shape lends to its irregular depth and resultant shallowness. The applicants' surveyor has redrawn the lot line of 1335 Bryant Street in order to increase its lot area and substantially decrease the amount of variance originally sought. The Office of Planning was of the opinion that the applicant had redrawn the lot lines as closely as possible to comply with the R-5-A area provisions without infringing on other yard requirements, and without in the most extreme alternative demolishing a part of the building at 1335 to reduce its lot coverage. The Office of Planning was further of the opinion that the applicants' subdivision proposal would be compatible with the lot descriptions on the majority of Bryant Street southern frontage in this block. The Office of Planning further reported that the special exception will be consistent with the criteria for approval as described in Subsection 8207.2, as the new lots will not tend to adversely affect the use of neighboring properties. The applicant did not propose to change the number of units from what now exists. The Office of Planning was of the opinion that the requested variances, having been substantially reduced by the applicants' second effort to bring the proposed lots into compliance with the R-5-A area requirements, will not create any adverse impacts given the minimal degree of variances fought. The Office of Planning supported this request due to the practical difficulty which confronts the applicants in trying to comply with these provisions which results from the unique physical restraints of the property. The Board concurs in the Office of Planning's reasoning and recommendation.

11. Advisory Neighborhood Commission 5B filed no recommendation on the application.

12. An ANC single member district commissioner testified in opposition to the application on the grounds enumerated in Findings No. 13 and 14.

13. There was a petition of some sixty signatures filed in opposition to the application on the grounds that the requested relief would be disruptive of community stability and availability of affordable rental housing units.

14. A number of residents of 13th Place, N.E., filed a letter in opposition on the following grounds:

- a. The variance will be used as a vehicle to eliminate the existing building from rent control regulations. If rent control regulations are by-passed, the present tenants will probably be displaced. The present tenants are long-term residents of the neighborhood and their displacement would place an undue hardship on them.
- b. Sale of the two units as separate entities will probably be an end result of the issuance of the zoning variance. Their sale will undoubtedly be at a rate in excess of the norm for surrounding properties, thereby causing the neighboring properties to increase in assessment value. This would be undesirable since most of the homeowners are retired and live on fixed incomes.
- c. The present tenants of the apartment buildings pose no threat to the present flavor of the neighborhood.

15. In addressing the concerns of the opposition, the Board finds that there would be no disruption to the community stability. The proposal will not decrease the existing number of units. It will remain the same at six units. Rent decontrol and assessment value of properties are not zoning issues. Each has a proper forum in which such issues can be addressed. The forum is not the Board of Zoning Adjustment. The applicant has a specific burden of proof before the BZA. If it is met, the relief must be granted.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking special exception and variance relief. The Board, to grant the special exception, must find that the applicant has met the requirements of Sub-section 3301.1. The Board, based on Findings No. 9 and 10, concludes that the applicant has met its burden of proof. The Board further concludes that the special exception can be

granted as in harmony with the general purpose and intent of the Zoning Regulations and that it will not affect adversely the use of neighboring properties.

As to the variance relief the Board must find a practical difficulty upon the owner of the property arising out of some unique or exceptional condition of the property. The Board, based on Finding No. 4 concludes that the practical difficulty is inherent in the property. The Board further concludes that the relief can be granted without substantial detriment to the public good and that the relief will not substantially impair the intent and purpose of the zone plan. Accordingly, it is ORDERED that the application is granted in its entirety in accordance with the subdivision plan marked as Exhibit No. 29 of the record.

VOTE: 3-0 (Lindsley Williams, William F. McIntosh and Charles R. Norris to grant, Douglas J. Patton not voting, not having heard the case, Carrie L. Thornhill abstained).

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

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

FINAL DATE OF ORDER: NOV - 9 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."

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 CONSUMER AND REGULATORY AFFAIRS.

13931order/BJW