

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13963 of Richard S. and Marcia H. Rothblum, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against constructing a one-family dwelling on an alley lot where the alley lot abuts an alley less than thirty feet in width (Sub-section 7606.2) and from the lot width requirements (Sub-section 3301.1) to construct a one-family dwelling in an R-1-B District at the premises 3810 Macomb Street, N.W., (Square 1817, Lot 45).

HEARING DATES: May 25 and June 16, 1983
DECISION DATE: July 7, 1983

FINDINGS OF FACT:

1. The subject application was originally scheduled for the public hearing of May 25, 1983. On that date, the Chairman ruled to continue the last three cases on the agenda to allow the Board sufficient time to hear the application preceding the subject case. The hearing on the subject application was continued to June 16, 1983.

2. The subject property is an alley lot located in the middle of Square 1817 which is bounded by Macomb Street to the north, 38th Street to the east, Woodley Road to the south, and Idaho Avenue to the west. The site is known as premises 3810 Macomb Street, N.W. It is zoned R-1-B.

3. The subject lot contains 5,905.7 square feet of lot area. The depth of the lot is 135 feet. Throughout the substantial length of the lot, the lot width is forty-five feet, but due to the irregular shape, the average lot width is calculated at 43.23 feet. Sub-section 3301.1 of the Zoning Regulations requires a minimum lot width of fifty feet in the R-1-B District. A variance of 6.77 feet or 13.53 percent is therefore required.

4. The subject lot is the only alley lot in the square. It is surrounded on all four sides by public alleys. It is bounded by a twenty foot wide asphalt brick alley to the south and a fifteen foot wide concrete alley to the north and east. A twenty foot wide rubble alley leads from the north of the property to Macomb Street. The west side of the property is bounded by a twenty foot wide "paper" alley which has not been improved. This lot and alley system has existed in its present configuration since

at least 1931 as evidenced by Exhibit 21, attachment D, an excerpt from the 1931 Real Estate Atlas.

5. Sub-section 7606.2 of the Zoning Regulations prohibits the construction of a single family dwelling on an alley lot abutting an alley less than thirty feet in width and which does not have access to a street through an alley thirty feet in width. No alley in the subject square is more than twenty feet wide. A variance of ten feet or 33.33 percent is therefore necessary.

6. The subject property is presently improved with a garage structure which accommodates four vehicles which was constructed in approximately 1928. The existing garage structure is non-conforming with regard to Sub-section 7401.2 which requires such structure to be set back twelve feet from the centerline of the adjacent alley. The garage structure occupies 873 square feet or fifteen percent of the lot area. The remainder of the subject lot is unimproved.

7. The applicants propose to construct a two-story single family dwelling with an attic and a cellar. The existing garage structure will be removed and the lot will be landscaped.

8. The proposed single-family dwelling complies with the minimum lot area, lot occupancy, side yard and rear yard requirements for the R-1-B District.

9. The applicants testified that the owner of the property which abuts the paper alley to the west of the lot has declined to join in the applicants' proposal to close the public alley between the two properties and further has declined the applicants' offer to purchase sufficient land to cede to the city to widen the public alley and widen the subject site to meet the minimum lot width requirements. Because the lot is surrounded by public alleys, enlargement of the subject lot to meet the lot width requirements is not possible without closing an alley. The existing improved alleys are used for access to properties in the square.

10. Access to the proposed dwelling will be via the existing alley system. The applicants propose to regrade and pave the alley from the north of the site to Macomb Street in accordance with applicable D.C. Department of Transportation requirements.

11. The proposed single family dwelling will generate less traffic and will have less impact on the alley system than the existing four garages.

12. The proposed dwelling exceeds the minimum side and rear yard requirements for the R-1-B District, providing an adequate set back from the surrounding dwellings. The

proposed dwelling will occupy approximately fourteen percent of the lot and the lot will be landscaped to screen the dwelling from neighboring houses. The proposed dwelling will not interfere with the light and air of nearby dwellings.

13. The majority of the lots in the subject square are non-conforming as to the minimum lot area and/or the minimum lot width requirements for the R-1-B District. The majority of the dwellings facing 38th Street are non-conforming semi-detached structures. The proposed development of the subject lot will be less intense than houses existing on many of the lots in the square.

14. The alleys in the square are fifteen and twenty feet wide. The D.C. Department of Transportation alley width standards are fifteen feet for residential alleys, and twenty feet in commercial districts in order to accommodate truck traffic. The proposed structure will have no adverse impact on the alley system as it currently exists. The lot has direct access to the street through either of several twenty foot wide alleys. This is the standard width for commercial zones, and will allow adequate ingress and egress through the square by cars, trucks, and emergency vehicles.

15. There were several residents present at the public hearing in support of the application. They expressed the views that the proposed development would be consistent with the character of the neighborhood, would provide stability by preempting more dense development, would eliminate a security problem, and would enhance the appearance of the area by virtue of replacing unsightly garages with an attractive structure well maintained and landscaped. In addition, they expressed the view that denial of the subject application would deny the applicants a reasonable use of their property.

16. Advisory Neighborhood Commission 3C, by resolution dated April 30, 1983, opposed the granting of the application based on the following:

- a. The majority of neighborhood residents most directly facing the lot oppose the application.
- b. The requested variance would increase the density of the square in a manner incompatible with the R-1-B District and the neighborhood.
- c. The increased density would have deleterious effects, including traffic problems in the alleys, and infringement on the privacy of the neighbors, because the house would be built too close to neighboring properties, and because the structure would exceed the permitted height.

- d. The property has existed in its present state for many years. The applicants will suffer no hardship because the "risks" of the property were knowingly acquired.

17. Four single member district commissioners for Advisory Neighborhood Commission 3C, filed a minority report dated May 9, 1983, recommending the granting of the requested relief. The recommendation was based on the following:

- a. The proposed plan is designed to minimize adverse effects to the character of the neighborhood.
- b. The weight of neighborhood sentiment is not drastically opposed to the application.
- c. The proposed construction will not add to the density of the neighborhood in excess of that permitted by the Zoning Regulations.
- d. The proposed development will enhance the appearance of the lot.
- e. The facts upon which the ANC majority report were based were in dispute when the report was written.
- f. The views of some of those opposed to the application are based on a desire to preserve the lot in its vacant state for use as a neighborhood play area.

18. The Office of Planning, by memorandum dated May 18, 1983, recommended that the application be approved. The Office of Planning found that the granting of these area variances was justified, due to the fact that the lot is surrounded on all sides by public alleys, that the proposal would not increase the density of the square, that the combination of the surrounding alleys and the required yards on the lot constitutes a more than adequate visual and noise buffer, that expansion of the subject site is impractical because it is surrounded on all four sides by alleys, that the proposed use will generate less traffic than the existing use, and that many of the other uses in the square are more dense than the proposed use.

19. Several adjacent property owners appeared at the public hearing in opposition to the granting of the application. The opposition was generally based on allegations of the lowering of the property values of nearby homes, an increase in alley traffic which would be generated by the proposed development, the view from the rear of nearby residences will be blocked, the construction stage will pose a hazard to families with children who use the alleys, the

height of the structure may exceed the height permitted in the R-1-B District, the loss of privacy, the loss of existing trees located on the subject lot, the granting of the application may set a precedent and the applicants have not proven a hardship.

20. In addressing the concerns of the Advisory Neighborhood Commission and the opposing neighbors, the Board finds that:

- a. The proposed single-family dwelling will not increase the density beyond that permitted in the R-1-B District. The subject lot meets the minimum lot area requirements, and the proposed construction would be well under the maximum permitted lot occupancy.
- b. The traffic generated by a single family dwelling would be less than is presently generated by the existing four garages.
- c. The applicant is not obligated to provide a visual easement over the lot to neighboring property owners. The lot is proposed to be landscaped. The rear and side yards proposed in addition to the surrounding alley system will provide an adequate buffer between the proposed dwelling and neighboring properties.
- d. There was no evidence present to show that the proposed height of the structure exceeds that permitted in the R-1-B District. No variance from the height requirements was requested, and the building must conform.
- e. All applications before the Board are decided on their merits on a case-by-case basis.
- f. The proper standard for an area variance is not an undue hardship, but rather a practical difficulty.

21. The Board concurs with the findings of the Office of Planning and the Advisory Neighborhood Commission minority report.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires proof of a practical difficulty upon the owner arising out of some exceptional condition of the property itself. The Board concludes that the subject site is subject to extraordinary or exceptional conditions by virtue of the irregular shape

of the lot and the existence of fifteen and twenty foot public alleys on all four side of the property which. It is unlikely that the alleys can be closed and the property widened. The Board concludes that the strict application of the Zoning Regulations would result in a practical difficulty upon the applicants by precluding any reasonable development of the lot for single family dwelling use, the major use permitted in the zone and the actual use in the remainder of the square.

The Board further concludes that the granting of the requested relief will not be objectionable and will not be inconsistent with the intent and purposes of the Zoning Regulations. The subject lot meets the required minimum lot area. Therefore, there is no increase in density above the normal standards of the R-1-B District. The proposed structure is adequately buffered from existing residences since it meets the applicable side and rear yard requirements and is further separated from existing dwellings by the abutting alleys. The existing alley system will be adequate to meet the needs of traffic generated by a single family dwelling which will be less than that generated by the existing garages which will be removed. The subject site is the only alley lot in the square, so no potential exists for a cumulative impact from future applications of a similar nature.

The Board concludes that the requested relief can be granted, as hereinafter conditioned, without substantially impairing the intent, purpose or integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board further concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application be GRANTED SUBJECT to the CONDITION that the dwelling be located on the lot as shown on the plat marked as Exhibit No. 2 of the record.

VOTE: 5-0 (Walter B. Lewis, Carrie Thornhill, William F. McIntosh, Douglas J. Patton and Charles R. Norris to grant).

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

ATTESTED BY:


 STEVEN E. SHER
 Executive Director

FINAL DATE OF ORDER: _____

AUG 29 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.

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