

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13978 of Seldon P. Todd, Jr., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the minimum lot area requirements (Sub-section 3301.1) to use all floors and basement of the subject premises as a three unit apartment building in an R-4 District at premises 14 10th Street, N.E., (Square 941, Lot 818).

HEARING DATES: June 22, and September 21, 1983
DECISION DATE: November 2, 1983

FINDINGS OF FACT:

1. The subject application was originally scheduled for the public hearing of June 22, 1983. By letter dated June 14, 1983, and by representative at the public hearing, counsel for the applicant requested a continuance because of a previously scheduled trial requiring counsel's presence and because the applicant himself was required to be out-of-town on business on the scheduled hearing date. A representative of the Capitol Hill Restoration Society, present in opposition to the application, offered no objection to the requested continuance. The Chairman ruled that the continuance be granted. The application was accordingly re-scheduled for the public hearing of September 21, 1983.

2. The subject property is located on the west side of 10th Street between East Capitol Street and Massachusetts Avenue, N.E., and is known as premises 14 10th Street N.E. It is zoned R-4.

3. The subject property is flat and rectangular in shape. The lot has 19.04 feet of frontage on 10th Street and a depth of 115.87 feet. The lot area of the subject site is 2,206.16 square feet.

4. The subject property is improved with a two-story plus basement brick structure which was constructed in the early 1900's. The structure contains approximately 3,360 square feet of habitable floor area.

5. The property abuts similar row dwellings to the north and south. The neighborhood is primarily developed with row dwellings. The subject site is located one block to the west of Lincoln Park.

6. The prior owner of the property filed Application No. 10956 before the Board seeking the same variance relief as requested herein to convert the building to a three unit apartment house. By Order dated November 19, 1971, the Board denied the application, finding that the "appellant has not proven a hardship within the meaning of the variance clause" and that denial of the requested relief "will not result in peculiar and exceptional practical difficulties upon the owner." The applicant testified that he was unaware of this decision until shortly before the hearing on the subject case.

7. The applicant purchased the subject property on July 6, 1973. At the time of purchase, the property was used as a flat. The basement was partially renovated, and plans had been prepared for the conversion of the basement to a third dwelling unit.

8. On August 5, 1974, Certificate of Occupancy No. B88138 was issued to the applicant to use the premises as a flat, one unit, first floor and basement, and one unit on the second floor.

9. Approximately one year after the applicant purchased the property, he hired a contractor to explore the possibility of providing an additional bedroom in the first floor unit in order to provide adequate space for the applicant and his family.

10. The contractor determined that the layout of the existing first floor unit precluded the provision of an additional bedroom, but that the basement, then part of a unit including the basement and first floor, could be converted to a separate apartment unit.

11. Plans for such conversion were prepared by the contractor. BZA Application No. 11776, seeking a variance from the 900 square foot minimum lot area requirements to allow three units, was filed, and the proposal was presented to the Capitol Hill Restoration Society.

12. The contractor informed the applicant that the Capitol Hill Restoration Society, after review of the plans, opposed the application and that it was therefore unlikely that the application would be approved. The applicant took no further action and the case was dismissed for lack of prosecution by order dated October 28, 1975.

13. In 1978, the applicant was advised by a different contractor that subsequent to the adoption of Home Rule, the Zoning Regulations had been changed and rental of the basement as a separate unit was permissible.

14. In reliance on the contractor's statements, the applicant completed renovation of the basement as a one-bedroom apartment in 1978. There is no evidence that building permits were ever applied for or issued for this renovation. The premises have been occupied illegally as three separate units since that time, without a proper certificate of occupancy.

15. The applicant was informed that use of the subject premises for a three-unit apartment was not permitted without BZA approval by a zoning inspector in 1983. The applicant is therefore seeking a variance from the minimum lot area requirements from the Board in order to continue the use of the premises as three apartments.

16. Sub-section 3301.1 of the Zoning Regulations requires a minimum lot area of 900 square feet per apartment unit for the conversion of a building to an apartment house in an R-4 District. The subject property contains 2,206.16 square feet of lot area. To use the premises as a three unit apartment house thus requires an area variance of 493.84 square feet or approximately eighteen percent.

17. The subject property is larger and the existing structure is greater in depth than any of the neighboring properties in Square 941.

18. Each floor of the subject structure contains approximately 1,120 square feet of habitable floor area, for a total floor area of 3,360 square feet. The applicant's architect testified that 1,120 square feet was larger than the average one bedroom unit on Capitol Hill. The strict application of the Zoning Regulations would allow only two units as a matter-of-right, with an average size of approximately 1,680 square feet per unit.

19. The applicant's architect testified that the most logical floor plan to achieve two units in the subject structure would be to have one 1,120 square foot unit on the second floor and to combine the basement and first floors to provide one unit of approximately 2,240 square feet.

20. The applicant testified that each of the existing three units rents for approximately \$600 per month. The monthly rental for a unit created by combining the basement and first floors would have to be approximately \$1,200 to \$1,300 per month. In the applicant's opinion, such a unit would not be marketable due to the large size and excessive cost.

21. The architect testified that the size, configuration and cost would make it impractical to rent the basement and first floor as a single unit. The architect further testified that the rental of such large unit would be

difficult and would be most suitable for a large group of students or unrelated single persons and would therefore increase the density of population of the subject structure.

22. The subject property is abutted on the north, west and south by owner-occupied property and on the east by 10th Street. The applicant is unable to purchase the additional land necessary to increase the area of the subject lot to a minimum of 2,700 square feet and therefore convert the premises to three units as a matter of right.

23. The record contains letters in support of the application from the tenants of two of the existing units and a letter from the owner of the adjoining property at 16 10th Street offering no objection to the proposal.

24. The Office of Planning, by memorandum dated June 13, 1983, recommended that the application be denied. The Office of Planning was of the opinion that the applicant did not establish a basis for a finding of practical difficulty upon the owner arising out of some exceptional or extraordinary condition inherent in the property itself. The premises is located in a viable residential area developed with rowhouses and flats of varying sizes. The subject site is similar in character in terms of size, shape and type of development to other properties in the neighborhood. The Office of Planning was further of the opinion that the purchase of the structure with a partially renovated basement unit and the loss of additional income from a third unit does not constitute a practical difficulty. The Board concurs with the findings and recommendation of the Office of Planning.

25. The Capitol Hill Restoration Society, by letter dated June 15, 1983, opposed the subject application. The Society was of the opinion that no practical difficulty or exceptional condition exists in that, although the subject structure is somewhat larger than its neighbors, it occupies precisely sixty percent of the lot as prescribed by the Zoning Regulations for the R-4 District. The existing building is thus not oversized, but represents the size of structure envisioned for a row dwelling or flat in the R-4 District. The Society was further of the opinion that the granting of the requested variance would result in an unacceptable level of density resulting in crowding, pollution, trash and parking problems in the neighborhood. The Society noted that despite previous Board action relating to the property, the applicant has illegally operated the property as three separate rental units for three years and such misconduct should not be rewarded. The Board concurs.

26. The ANC Commissioner representing Single Member District 6A-11 appeared at the public hearing in opposition

to the subject application. The Commissioner testified that the subject premises did not appear to differ in size from the other average buildings in the area. In addition the prevailing use in the subject square is for single-family units or flats. The Board so finds.

27. The Single Members District Commissioner testified that Advisory Neighborhood Commission 6A had met and taken a position on the subject application. The Board finds that no such ANC report was filed in the record, stating its issues and concerns, seven days prior to the public hearing as required by section 108.1 of the Supplemental Rules of Practice and Procedure before the BZA. The Board further finds that Section 108.2 of the Rules provides that "great weight" shall be given to the written report of the ANC. The Board finds that, absent a written recommendation from the ANC, the Board cannot afford "great weight" to the issues and concerns of the ANC.

28. The record contains two letters from neighboring residents in opposition to the subject application.

29. The record in the subject application was left open at the end of the public hearing for the applicant to submit supplemental information including the addresses of other structures in the same square which contain three rental units. The Board finds that the applicant's post-hearing submission does not indicate the existence of any three-unit structures in the square.

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 a showing through substantial evidence of a practical difficulty upon the owner arising out of some exceptional or extraordinary situation or condition of the property. The Board further must find that the relief will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicants have not met their burden of proof in demonstrating a practical difficulty that is inherent in the property. The site is rectangular in shape and topographically level. The lot and structure are slightly larger than adjoining properties. However, there is nothing physically unique about the site that precludes it from conforming to the Zoning Regulations for the R-4 District. The identical relief presently requested was previously considered by the Board and was denied in its order No. 10956, dated November 19, 1971. The Board is not persuaded by the testimony that a flat in the subject structure is not a viable use. Marketing

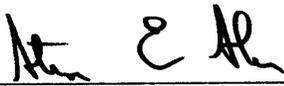
difficulties or a loss of additional income from a third unit does not constitute a showing of a practical difficulty necessary for the granting of an area variance.

The Board cautions the applicant that it does not take lightly the continued illegal use of the subject premises. The applicant acted less than prudently in his reliance on the representation made by a contractor that the structure could legally be used for three rental units. The Board further concludes that the requested relief cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zone Plan. Accordingly, it is therefore hereby ORDERED that the application is DENIED.

VOTE: 4-0 (Carrie L. Thornhill, Maybelle T. Bennett, William F. McIntosh and Douglas J. Patton to deny; Charles R. Norris not voting, not having heard the case.)

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

APR 19 1984

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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