

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13980 of Roy and Joyce Gamse, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against eliminating a required parking space after the space has been provided (Sub-section 7206.2) to allow the extended use of a den and laundry room in space previously used as a garage in an R-4 District at premises 811 C Street, S.E., (Square 924, Lot 62).

HEARING DATE: June 22, 1983

DECISION DATE: September 7, 1983 and January 11, 1984

FINDINGS OF FACT:

1. The subject site is located on the south side of C Street between 8th and 9th Streets, S.E. at premises known as 811 C Street, S.E. It is in an R-4 District.

2. The site is generally rectangular in shape, approximately seventeen feet wide by ninety-five feet deep. It is improved with a three-story brick row dwelling occupied as a single-family dwelling. The dwelling was constructed after the adoption of the current Zoning Regulations.

3. The site is generally flat and has no rear yard access to a public alley.

4. The subject property was constructed in 1966 as one of six single-family row dwellings, each with a garage. The garage contained a parking space meeting the requirements of the Zoning Regulations. The garage of the subject property was converted to living space in 1969 by a prior owner of the premises. No approval for the conversion of the garage and the removal of the required parking space was given by the District of Columbia, and no permits for the work were issued.

5. The subject property was purchased by the applicants in 1978 with the garage already converted to a laundry room and den.

6. The applicants propose to maintain the existing laundry room and den and to not provide the one off-street parking space required.

7. It would cost approximately \$2,500 to convert the garage back to its intended use. The \$2,500 estimate includes: (a) moving a washer, dryer and sink; (b) tearing down a panelled wall between the den and laundry room; (c) removing a parquet floor; (d) installing proper insulation; and (e) installing a conventional garage door. The applicants alleged that such a financial consideration constituted a practical difficulty under the Zoning Regulations.

8. The applicants further indicated that the house would be too small to accommodate their family if the den and laundry room were reconverted to a garage. The applicants indicated that they would not have purchased the house if it had been in the condition which would be required if the variance is denied.

9. The applicant testified that on-street parking is usually available in the block. The applicant presently parks in his driveway in front of the building, which is within the public right-of-way of C Street.

10. The subject property is not affected by any exceptional or extraordinary situation or condition, other than the fact that the prior garage area has been illegally converted to a den and laundry room.

11. The applicant conducted a mail survey of owners and residents of the fifty-six properties within 200 feet of the subject site to determine the views of those persons on the application. Forty-three responses were received and all but one response supported the application.

12. The subject property and the five similarly constructed dwellings have approximately the same assessed value.

13. The R-4 District requires one off-street parking space for the subject property. The applicants propose to continue using the house without an off-street parking space, requiring a 100 percent variance.

14. In response to the Board's request at the Public Hearing, the Office of Planning, by report dated August 31, 1983, indicated that it had conducted a field inspection of the subject Square 924, talked to the building inspector's office, and checked the building plans and permits issued for the subject square. The Office of Planning found the following:

- A. From a visual inspection of the outside of the subject house and the adjacent four houses, which are the only ones on the block with garages, it was not possible to ascertain if the garages have

been converted to living space or to any other use. The only thing observed from the outside was solid wood garage doors.

- B. The building inspector's office had a complaint regarding the illegal use of the above mentioned five garages. The building inspector found that the subject garage had been converted to a laundry room some time ago. Of the other four garages, three were in compliance and the fourth was being used for storage and subsequently was brought into compliance.
- C. The building plans used to obtain the original permits could not be located and no other building permits have been issued for the five above mentioned properties. However, it is customary to provide lights, electrical outlets and running water in a garage.

15. The D.C. Department of Transportation, Bureau of Parking and Enforcement, Ticket Writing Branch, by report dated August 30, 1983, in response to a request from the Board, stated that it has been the practice in the city for some time not to ticket cars in driveways if no hazard is created. Neither the police nor Department of Transportation personnel ticket such cars. This practice is not expected to change in the future.

16. Two letters of support from neighborhood residents were filed into the record. Their support was based on:

- A. There are safety problems when parking at night.
- B. Forcing the applicant to reconvert the garage or to eliminate the driveway solves no problem and serves no useful purpose since there have been no problems with the subject premises for the past fourteen years.
- C. The applicant is the victim of arbitrary and selective enforcement.
- D. The Board should not take it upon itself to enforce D.C. Police policy.
- E. There is overwhelming neighborhood support.

The Board cannot and will not condone illegal activities on the part of citizens, regardless of their good intentions. The Board finds no evidence of selective enforcement in this case. To the contrary, the report of the Office of Planning and the letter of the Department of Transportation

evidence consistent enforcement policies of the District of Columbia.

17. The Capitol Hill Restoration Society, by letter dated June 17, 1983, reported that the Society opposed the application in its present form. However, if the applicant were to amend the application to include an agreement to close the curb cut and remove the driveway within three years from the granting of the application, the Society would not oppose the application.

18. Advisory Neighborhood Commission 6B, by report dated June 9, 1983, supported the application with the following restrictions:

- A. The curb cut be closed, thus eliminating parking on public space; and
- B. The D.C. Department of Transportation be notified concerning other illegal parking at 801, 803, 805, 807, and 809 C Street, S.E.

The ANC based its position on the following:

- A. The house was built in 1966 and the garage converted in 1969 with no permits. The applicants bought the property in 1978 stating that they would not have done so without the garage converted into the den and laundry room. The applicants are now parking on a pad measuring fourteen feet by eight feet, four inches located between the sidewalk and the building. This is public space and it is illegal to park on public space. The D.C. Department of Transportation stated that it only enforces this regulation when requested or if there is a blatant violation.
- B. There are many neighbors and letters supporting the granting of this variance.
- C. There would be considerable cost involved if the den and laundry room must be converted back to a garage. The ANC believed that the intent, purpose and integrity of the zone plan would not be impaired if this den and laundry room stayed as is. However, the ANC was concerned that if the variance was granted, the practice of parking on public space must be eliminated and the curb cut must be closed.
- D. There are other violations of parking on public space in this block. To be fair, the ANC believed that the Department of Transportation should look into this. Either the neighbors park on the

street or in their garages and if this is not possible, then Zoning Enforcement should be notified.

19. In response to the issues and concerns of the ANC and those of the Capitol Hill Restoration Society, the Board finds the following:

- A. The ANC has not identified conditions of the property necessary for the granting of the requested area variance.
- B. Neither the D.C. Department of Transportation nor the Police Department as a matter of practice ticket cars which are parked in driveways, if no hazard is created. The issue of selective enforcement has been addressed in Finding No. 16, above.
- C. The cost of reconverting the den and laundry room to a garage was identified in Finding No. 7. Whether this is "considerable" is a matter of judgement not material to the findings that this Board must make in determining whether the conditions exist that support the granting of a variance.
- D. The Board does not have jurisdiction over public space or the enforcement of restrictions prohibiting vehicles from parking on public space.

20. No one appeared at the public hearing in opposition to the application.

21. The Board at the public meeting of September 7, 1983, granted the application. At the public meeting of January 11, 1984 the staff requested the Board to reconsider its prior approval and deny the application. A motion made by Carrie Thornhill, seconded by Douglas J. Patton to reconsider the application failed for lack of a majority by a vote of 2-2 (Carrie Thornhill and Douglas J. Patton to reconsider, Walter B. Lewis opposed to the motion, Charles R. Norris opposed by proxy; William F. McIntosh not present, not voting). Accordingly, the findings and conclusions herein represent the decision of the Board.

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 the showing of an exceptional or extraordinary situation or condition of the subject property which causes a practical difficulty for the owner. The Board further must determine that the relief

requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

The Board is of the opinion that it is faced with a unique situation. The subject conversion occurred in 1969. The applicants purchased the property in 1978 in an "as is" condition. The correspondence from the neighbors further evidences that the parking of the car in the driveway has produced no adverse affects on the use of neighboring property over all these years. The Board does not condone such a conversion. The Board admonishes the applicant for acting less than prudently when purchasing the property. The Board does not favor its being put in the position of a court of equity. However, after weighing all the circumstances, on the grounds that the subject conversion did not produce substantial detriment to the public good, the reconversion of the den to a garage would produce a financial hardship on the applicant who after a nine year period may not be able to enforce his redress in another forum and on the applicant's good faith, the Board will grant the application. The Board emphasizes that such a grant will not constitute a precedent in any manner. Accordingly, it is ORDERED that the application is GRANTED.

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

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: FEB - 6 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."

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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