

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13984 of Muriel M. Yasuna, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a nonconforming use from apartment house, four units, all floors to a five unit apartment house, all floors in an R-3 District at premises 1531 - 31st Street, N.W., (Square 1269,

HEARING DATE: July 27, 1983

DECISION DATE: July 27, 1983 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located at the southwest corner of the intersection of 31st and Q Streets and is known as 1531 - 31st Street, N.W. It is zoned R-3.

2. The subject property is improved with a three story plus basement brick structure.

3. The subject property has been before the Board on two prior occasions. In BZA Order No. 10300, dated August, 21, 1970, the prior owner of the property was granted permission to change a nonconforming use from a tenement house to an apartment house limited to four apartments, all floors and basement. Following that approval, an application for a certificate of occupancy for a four-unit apartment house was filed in a timely manner. For unknown reasons, no certificate of occupancy was issued at that time for the apartment use.

4. In BZA Order No. 11412, dated December 19, 1973, the Board denied the applicant's request to change a nonconforming use from a tenement house to an apartment house containing five units.

5. On April 18, 1977, Certificate of Occupancy No. B-84081 for a four-unit apartment house was issued pursuant to the application for certificate of occupancy filed subsequent to the approval granted in BZA Order No. 10300.

6. The applicant is presently seeking a change of nonconforming use from an apartment house of four units to an apartment house of five units.

7. The applicant purchased the subject property in 1972. At that time, no structural alterations had been

undertaken to convert the building from a tenement to an apartment house.

8. The applicant converted the tenement to an apartment house containing five units in 1973. The five units consist of a one bedroom apartment in the basement, a two bedroom duplex on parts of the first and second floors, an efficiency on the first floor, an efficiency on the second floor and a two bedroom unit on the third floor. The building has been leased and occupied as a five unit apartment house since that time. The granting of the requested relief would give approval to the existing use.

9. The applicant asserts that BZA Order No. 10300 permits five units, in that Finding of Fact No. 2 of that Order indicates that "The subject property is improved with a four (4) story building with basement, which is presently being used as a tenement house." One unit on each of four floors and the basement would therefore entitle the applicant to five units.

10. The applicant asserted that she has not been in violation, in that she has been property licensed for many years for a five unit apartment house. The applicant submitted for the record copies of licenses for the apartment use which have been issued on an annual basis since 1975. The license issued for the period from November 1, 1982, through October 31, 1983, is for six units. All the other licenses submitted are for five apartment units. The granting of the requested relief would eliminate the discrepancy between the existing certificate of occupancy and the business licenses.

11. The Board does not concur with the applicant's claim to legitimacy based on the licenses issued and the approval granted in BZA No. 10300. BZA Order No. 10300 is clearly conditioned, as follows:

- (a) No more than four (4) units shall be provided.
- (b) Appellant shall be permitted to distribute said units on all floors including the basement.

That order's Finding of Fact No. 2, cited by the applicant, refers to the number of floors, and has no bearing on the concise conditions imposed by the Board's Order limiting the use to four units.

12. The standard of review necessary for issuance of a business license is not subject to the review as to zoning compliance that is exacted in an application for a certificate of occupancy. The lack of correlation between

the two branches of the District agencies involved in issuing permits in this case may have resulted in the issuance of licenses permitting this applicant to operate more units than was lawfully allowed. However, the issuance of licenses containing erroneous information does not supercede the number of units legally permitted under zoning in the subject structure.

13. At the conclusion of the applicant's presentation, a representative of the Citizens Association of Georgetown (CAG) recommended that the Board deny the application because the essential facts of the subject case have been the subject of two prior hearings. No new facts have been presented except that the property has been used in violation of the Zoning Regulations and prior Board actions for ten years, and any other course of action by the Board would permit the applicant to profit from an illegal act. The Board concurs with the recommendation and reasoning of the Citizens Association of Georgetown.

14. The record contains a letter in opposition to the subject application from a nearby property owner. The opposition was based on the exacerbation of existing traffic congestion and parking inadequacy, the downgrading of the existing zoning restrictions and the impact it would have on the historic character of the neighborhood.

15. The record contains a resolution submitted by Advisory Neighborhood Commission 2E, dated July 6, 1983 which recommended that the application be denied for the following reasons:

1. The area within 300 feet of this structure is already saturated with development, and there is a critical shortage of parking in the area.
2. Applicant's site does not provide any parking.
3. Denial of the extra unit would not constitute an undue hardship as the BZA has confirmed in two previous hearings.
4. It would be contrary to the future trend of this neighborhood, which is presently developing in harmony with the Zoning Regulations and the Comprehensive Plan for the District of Columbia.
5. The applicant has been operating in violation for a period of ten years.

The Board concurs with the reasoning and recommendation of the Advisory Neighborhood Commission.

16. The Office of Planning, by memo dated July 20, 1983, recommended denial of the subject application based on the increased degree of nonconformity, which would result, the additional traffic, parking and other adverse impacts associated with higher density uses in low density neighborhoods, and the fact that the Board previously denied an almost identical request. The Board concurs with the findings and recommendation of the Office of Planning.

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 a special exception. In order to be granted such relief, the applicant must demonstrate, through substantial evidence, compliance with Sub-section 7104.2 and 8207.2

The Board concludes that the applicant has introduced no more than a scintilla of evidence to the record purporting to satisfy the Zoning Regulations. No probative evidence has been given that the proposed use will not adversely affect the present character or future development of the area, that there will be no deleterious external effects, such as noise, traffic or parking, nor that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and map. The applicant has failed to meet the burden of proof on the issues as required by the Regulations.

The Board further concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is DENIED. The Board is aware that the applicant has been using the building in violation of the existing certificate of occupancy. The Board admonishes the applicant to desist such activity, and the Zoning Administrator is directed to take such actions as are necessary to enforce compliance with this order and the Zoning Regulations.

VOTE: 5-0 (Lindsley Williams, Douglas J. Patton,
Carrie L. Thornhill, William F. McIntosh,
and Charles R. Norris to deny).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

OCT 27 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."

13984order/MCNEAL