

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14014, of Vul-And Ventures, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the lot area requirements (Sub-section 3301.1) for the proposed subdivision of a lot occupied by a flat into two single family residences in an R-4 District at premises 913 and 915 C Street, S.E., (Square 945, Lot 51).

HEARING DATE: September 14, 1983
DECISION DATE: October 5, 1983

FINDINGS OF FACT:

1. The subject premises is located on the south side of C Street, between 9th and 10th Streets, S.E. The site is in an R-4 District and is known as premises 913 and 915 C Street, S.E.

2. The subject site is rectangular in shape. Its dimensions are 40.875 feet in width on the north and south sides and sixty feet in depth on the east and west sides. It has an area of 2,452.2 square feet. There is a slight downward slope at the south or rear portion of the property.

3. The site is improved with a two-family dwelling. The dwelling is a two-story brick structure with the two units located side by side and attached. The units are at the eastern end of a row of dwellings facing C Street where the subject property was formerly vacant.

4. Access to the subject site is through C Street on the north. There is no alley access.

5. The subject square is developed with rowhouses and apartment houses. The lots fronting on C Street are smaller in size than those on the other three sides of the square. The neighborhood surrounding the subject square is of medium density residential development and is zoned R-4. The other uses in the area include public parks and commercially zoned areas that provide community shopping. The residential portions of the neighborhood are primarily composed of owner occupied single family dwellings.

6. The subject Lot 51 was originally two unequal sized lots, both of which contained less than the minimum lot area of 1,800 square feet required for a row dwelling or flat in an R-4 District. The structures on the lots were demolished

in approximately 1963, thereby creating two adjacent vacant lots. The subject lots were acquired by the applicant for the purpose of building two townhouses of equal size.

7. The applicant had intended to resubdivide the subject lots into two equal lots and sell the townhouses separately as single-family dwellings. Upon further investigation, the applicant discovered that the lots could not be resubdivided without BZA approval. It was necessary that the applicant proceed with construction without delay in order to avoid the loss of previously acquired construction financing. Therefore the lots were combined to form a single lot known as Lot 51, the subject lot of this application. A flat was designed and constructed on the subject lot consisting of two equal and adjoining units in one building.

8. The subject units were designed so that each could independently conform to all building and zoning code requirements for single family dwellings in the event of future resubdivision. The applicant proposes no changes to the exterior of the existing building.

9. The applicant is now requesting approval to resubdivide Lot 51 into two lots of approximately equal size so that the subject units may be sold separately as single family houses. The resulting lots would be larger than other lots in the same row of townhouses on C Street but smaller than lots on the other three sides of the square.

10. The subject units are completely independent, each having interior stairs with the living area downstairs and the bedrooms upstairs. They are built on a slab with no basements. The subject units each contain 1,450 square feet of floor space, including a built-in garage on the first floor.

11. The proposed resubdivision of Lot 51 would result in two lots, one with an area of 1,216.2 square feet and one with an area of 1,236.0 square feet. These lots would require area variances of 583.8 square feet or 32.43 percent and 564 square feet or 31.33 percent, respectively, from the minimum lot size required for a rowhouse in an R-4 District.

12. The Board of Zoning Adjustment has the power to grant variances under Paragraph 8207.11 of the D.C. Zoning Regulations, which provides:

Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of

a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exception practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and map.

13. The subject lot is exceptionally shallow, measuring sixty feet in depth. Its width of 40.875 feet if divided as proposed would yield lots having widths of 20.27 feet and 20.60 feet. These widths would exceed the required minimum width of eighteen feet for the R-4 District. However, the lots would still be undersized because their depth would be only sixty feet instead of the ninety feet of depth needed to yield 1,800 square feet of lot area.

14. The applicant argued that single family dwellings would be more in character with the surrounding neighborhood than a flat. Very few dwellings in the neighborhood are rented. Most are owner occupied by single families. The small size of neighborhood dwellings prevents their conversion to flats. The subject units are slightly larger than the others on C Street and smaller than those on the other three sides of the square. The applicant argued that the subject units are so designed and constructed that they could not be expanded at a future date for use as flats but would remain as single-family dwellings if this application were granted.

15. The applicant argued that sale of the property as one unit would result in its use as a flat by real estate investors. Such a use, according to the applicant, would be objectionable to the community as expressed at meetings the applicant held with adjacent neighbors and Advisory Neighborhood Commission 6B. Further, the market for residential property in the area is for single-family dwellings and not for flats.

16. The original use of the property was as two single-family row dwellings on unequal lots. The destruction of these dwellings left a vacant space at the end of the row. The in-filling of this space was complicated by the unequal size of the lots. The subject lots remained vacant for approximately twenty years. The applicant argued that the small and unequal size of the original lots constituted a practical difficulty in utilizing the property. Further, this difficulty is now compounded by the construction of a two unit building on one combined lot. Denial of this application would prevent the use of the units as preferred in the R-4 District which seeks to stabilize one family dwellings.

17. The Office of Planning, by memorandum dated September 7, 1983, recommended that the application be denied. The Office of Planning was of the opinion that the applicant had not shown that a practical difficulty existed in regard to the physical characteristics of the property. The Office of Planning was of the opinion that the requested variances were too large. The Office of Planning noted that Lot 51 was created in or about 1982 with an area of 2,452.2 square feet, and was of sufficient area to accommodate a single family unit or a flat. The subject lot is rectangular in shape, with a very slight drop toward the south, a street frontage of 40.54 feet and is improved with a flat. The Office of Planning did not find anything unique about the physical characteristics of the property. The Office of Planning further reported that if the variance were granted, there would not be a negative impact to the area. This block has four existing dwelling units immediately adjacent to the west of the subject property which are smaller than the two proposed lots. Also, the primary purpose of the R-4 District is the stabilization of remaining one-family dwellings. The Office of Planning believed that the proposal would tend to stabilize the neighborhood and would not impair the intent, purpose and integrity of the Zone Plan for the city. The Board, for reasons discussed below in its Conclusions, does not concur with the findings of the Office of Planning on the exceptional condition issue, nor with its recommendation to deny the variances.

18. Advisory Neighborhood Commission 6B, by letter dated August 23, 1983, reported that its members had voted unanimously to support the variance application. The ANC observed that each new lot and structure will conform to lot occupancy requirements, parking requirements and backyard requirements. The lots are undersized by 584 and 544 square feet, not unlike a majority of lots on Capitol Hill. Each lot will contain one single family dwelling only. The size of each building limits the possibility of future conversion to a flat. The abutting neighbor to the west and other neighbors attended the zoning committee meeting and supported this application. The ANC was of the opinion that the applicant had met the requirement of a practical difficulty and that the conversion of the building to two single family dwellings on two lots is improving an undesirable plot of land. The Board concurs with the recommendations and reasoning of the ANC.

19. Fourteen form letters of support for the application were submitted by neighbors. The neighbors' letters stated that they lived near the subject property and approved of the applicant's request.

20. The Capitol Hill Restoration Society, by letter dated September 13, 1983, expressed opposition to the application on the grounds that no case had been made that there exist extraordinary conditions resulting in exceptional hardship and practical difficulties as required under Paragraph 8207.11 of the Zoning Regulations. The record and an inspection of the property in question disclose no basis for the requested variance to permit the proposed subdivision of the flat into two single family dwellings. The Society noted that many neighbors have expressed their support for the creation of owner occupied single family dwellings units, but the Society did not consider the granting of this variance as achieving the neighborhood goals. The present structure, upon completion, will be a two-unit dwelling on a lot of approximately 1450 square feet. This is not an unusual condition on Capitol Hill. If the variance is granted, each of the two dwellings could, at some future date, have a second unit added. In theory, this could result in four units on these premises. The Board does not concur with the reasoning and recommendations of the Capitol Hill Restoration Society as enunciated below in the conclusions. The Board will further condition approval on the units remaining as single family dwellings.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires a showing through substantial evidence of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape, or topographical conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met the burden of proof demonstrating a practical difficulty inherent in the property. The shallowness of the subject site is an exceptional condition which causes its use for two single family dwellings on separate lots to violate the minimum lot size required by the D.C. Zoning Regulations. The subject property was originally used for two single family dwellings on separate lots. The Board concludes that the proposed use of the property is most compatible with the R-4 District. The predominant land use in the subject neighborhood is single family owner occupied dwellings.

The Board further concludes that granting this application will not be detrimental to the public good and will not

impair the intent and purpose of the zone plan. On the contrary, the application if granted will promote the stabilization of a single-family neighborhood under R-4 zoning and prevent the intrusion of a flat in an owner occupied row of single family dwellings. Such use of the property as a flat could prove to be objectionable to the neighbors and the ANC and would be a detriment to the community.

Further, the twenty year vacancy of the subject property created an undesirable condition and is evidence that the size, shallowness and unequal subdivision of the original lots created a practical difficulty in their use for R-4 purposes.

The Board further concludes that the subject property if separated into two properties as proposed could not later be divided to form two flats because of the small size and single family design of the units. Given the neighborhood sentiment against rental property, the lack of a market for flats in the subject area and the size and design of the subject units, the property should be required to remain as two single family dwellings, and this order has been so conditioned below.

The Board concludes that it has given "great weight" to the issues and concerns of ANC 6B. Accordingly, it is hereby ORDERED that the application is GRANTED SUBJECT to the CONDITION that the use of the structure on each lot shall be limited to a single-family dwelling.

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

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

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

FINAL DATE OF ORDER: JAN 24 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."

BZA APPLICATION NO. 14014

PAGE 7

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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