GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14168, of Everett and Norma Hobson, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the use provisions (Sub-section 3102.3) and the lot area and width requirements (Sub-section 3301.3) to construct two flats in an R-2 District at premises 805-807 46th Street, N.E., (Square 5150, Lots 17 and 18).

HEARING DATE: November 14, 1984
DECISION DATE: December 5, 1984

FINDINGS OF FACT:

1. The applicants in their original application had requested three variances. The third variance was from the parking requirements. According to the plans originally filed, one parking space was to have been provided on each lot, whereas two are required. The applicants, by memorandum dated June 12, 1984, advised the Board that both lots can accommodate an additional space and the request for a parking variance was withdrawn.

2. The subject property is located on the northeast corner of the intersection of 46th and Hayes Streets, N.E. The site is in an R-2 District and is known as premises 805-807 46th Street, N.E.

3. The subject site is formed by two adjoining rectangular lots. The lots are equal in size and shape. Each lot has dimensions of twenty-five feet on the east and west sides, and 107.50 feet on the north and south sides. The area of each lot is 2,687.5 square feet.

4. There is a change of grade at the front lot line between the site and 46th Street, that requires the climbing of several steps from 46th Street to the top of the site. At this level, the lots are fairly flat, like the adjacent lots. The subject property is similar in size, shape and topography to the lots in the adjacent area.

5. The site is presently improved with a two story detached single family dwelling unit in a state of disrepair. The dwelling unit has been vacant for several years.

6. There is access to and from the subject site through 46th Street on the west and through a public alley on the east. The public alley is fifteen feet wide and

provides access to Hayes Street on the south and to Hunt Place on the north. Nannie Helen Burroughs Avenue traverses the subject intersection at a diagonal and passes to the south-southeast of the subject site.

7. The subject site is located on the southern edge of an R-2 District. There is a C-1 District approximately 150 feet to the south and two other C-1 Districts along the south side of Nannie Helen Burroughs Avenue. The R-2 District extends to the west, north and east. The area is characterized by two-story single family detached and semi-detached dwelling units. Across the street, the area is developed with detached single family units. There is a semi-detached dwelling unit immediately to the north of the subject site. There are some two-story garden apartment units to the north of the subject site.

8. The subject site was purchased by the applicants in 1965. The applicants have been unable to find a suitable use for the existing dilapidated structure.

9. The applicants propose to demolish the existing single family dwelling unit and build a flat on each lot. In order to do so, the applicant is requesting a use variance to permit a flat in an R-2 District and two area variances.

10. The subject lots are each twenty-five feet wide, whereas the minimum required lot width is forty feet. This requires a fifteen foot variance from the provisions of Sub-section 3301.3 of the Zoning Regulations. The lots each have an area of 2,687.5 square feet, whereas the minimum required lot area is 4,000 square feet. This requires a variance of 1,312.5 square feet from the provisions of Sub-section 3301.3.

11. A flat is a use first permitted in a R-4 District. The application therefore requests a variance from the use provisions of Sub-section 3102.3.

12. The Board of Zoning Adjustment has the power to grant variances under Paragraph 8207.11 of the D.C. Zoning Regulations which provides that 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 other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, the Board may grant a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the

intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and map.

13. The applicants argued that area variances from the size and width requirements would be needed whether the applicants proposed to construct two flats or two matter-of-right single family dwelling units. The applicants further argued that the proposed construction would provide affordable and reasonable housing which is needed in the neighborhood. The applicants noted that the existing dwelling at the site has been condemned by the city. The other lot is vacant and contributes very little to the tax base of the city. The construction of structures on the site would increase the city's tax base.

14. The applicants testified that the proposed flats would be compatible with the structures existing in the surrounding area. There are apartment buildings located throughout the area, including 46th Street and Hunt Place. The area is mixed in use. There is a C-1 District south of the corner of the subject block . The applicants noted that some of the mixture results from non-conforming structures and uses. The area is located near public transportation and is convenient to commercial areas nearby.

15. In the applicants' opinion, the proposed use would not be detrimental to the public good because the proposed dwellings would resemble single family dwellings in design, and would be similar to all other housing in the area. The applicants were of the opinion that the proposed use of land would be an effective use of the site and would enhance the community.

16. The applicants noted that the site is in or near an area designated as a redirection area in the proposed D.C Comprehensive Plan then pending before the Council of the District of Columbia. The applicants further noted that the Board has granted prior applications in similar cases where the proposed residential use would be compatible with existing uses and structures in the square, and where the proposed structure would result in upgrading the subject site and in contributing positively to the area. The applicants were of the opinion that the proposed flats would meet these criteria and would remove an eyesore from the neighborhood.

17. The applicants further noted that the proposed Comprehensive Plan has stated that it is desireable for new growth and development to be directed into areas that can accommodate change without damaging the city's social or physical fabric. They further noted that demographic projections indicate that households in the future will be smaller and more numerous, which indicates a need for numerous smaller housing units such as apartments. The

applicants noted that the District has only approximately 2,400 acres of land, or four percent of the city's land area, that is zoned for multi-family dwellings. The applicants were of the opinion that, given the limited amount of land zoned for multi-family dwelling, the construction of the proposed flats would benefit the community and the city by increasing the multi-family housing stock. For these reasons, the applicants were of the opinion that they could not use the property for the purpose for which it is zoned because two flats would provide more affordable housing in the community.

18. The applicants were further of the opinion that the proposed flats would not significantly increase traffic in the area. The applicants noted that the existing density is so low that the area could probably absorb the traffic generated by two flats without any adverse effects. The applicants were of the opinion that the proposed construction would enhance the value of other properties in the surrounding area and increase the value of the subject property more than would the construction of a single-family dwelling.

19. There is no exceptional or extraordinary situation or condition affecting or related to the subject properties, as described in Finding No. 4.

20. The applicants demonstrated no undue hardship that they would suffer if the Zoning Regulations were strictly applied.

21. The applicants presented no specific evidence of other similar structures where the Board had granted a use variance for a flat in a single-family district.

22. The Office of Planning (OP), by report dated November 7, 1984, recommended that the application be denied. The OP was of the opinion that the property does not qualify under Paragraph 8207.11 of the Zoning Regulations for the requested use and area variances. The OP was further of the opinion that the construction of a flat in a R-2 District would be contrary to the intent of the R-2 District, which is to protect one-family semi-detached dwellings from invasion by denser types of residential development. In the OP's opinion, there did not seem to be anything unique about these lots, which are similar to the majority of the lots in this area. The existing lot size and width are greatly below the requirements of the R-2 District family units. The construction of the proposed flats would greatly increase the intensity of use for the subject site. In the OP's opinion, it would create a negative impact on the area and would undermine the intent, purpose and integrity of the R-2 District. The Board

concurs with the reasoning and the recommendations of the Office of Planning.

23. Advisory Neighborhood Commission 7C submitted no formal report. A letter was submitted to the record by the Single Member District (SMD) Commissioner for the SMD in which the site is located. The SMD Commissioner was notified by a letter from the Zoning Secretariat, dated November 9, 1984, that the Secretariat staff's review of the SMD Commissioner's letter evidenced that it did not comply with Section 108 of the Supplemental Rules of Practice and Procedures before the BZA. A copy of that section was enclosed for the SMD Commissioner's consideration on the subject application and any future applications in her jurisdiction.

24. The ANC Commissioner for SMD 7C04, by letter dated November 5, 1984, expressed concern about the impact of the proposed use on the subject neighborhood. The Commissioner noted that although ANC 7C would welcome a new structure on the site under consideration, the Commissioners did support the request to construct a multi-family dwelling on the subject lots. It has been the longstanding position of the community not to support use variances that would alter the flavor of this single-family residence community. The Board concurs with the reasoning and the recommendations of the Commissioner for SMD 7C04.

25. One neighbor testified in support of the application. The neighbor resides across 46th Street from the site and has lived in the Deanwood neighborhood since 1939. The neighbor in support was of the opinion that the proposed structures would provide needed safe, sanitary and decent housing for moderate income individuals and families. The supporter was further of the opinion that the proposal would enhance the appearance of the neighborhood. The supporter had discussed the proposal with the neighbors at adjacent properties and found them to be of the same opinion. The supporter noted that at present the site is occupied by an abandoned building and that the applicants are proposing to demolish and replace the abandoned structure. The supporter further noted that although the proposed four units would be double the permitted density, the people of the area welcome families to the neighborhood. The Deanwood area is a stable community of homeowners and longterm residents. The supporter was of the opinion that this quiet area could absorb four more families. The Board does not concur with the reasoning of the neighbor in support, for reasons explained below.

26. The Board finds that the proposed flats would constitute an increase in density from the two units permitted at the site to four units. Such an increase would

bring more traffic and parking than would two matter-of-right units. The Board finds that the construction of two units rather than four would still enhance the value of the subject property and surrounding properties. The Board finds that there is no exceptional condition that prevents the applicants from using the property for the purpose for which it is zoned, namely, two single-family dwellings. The two area variances are dependent on the use variance and should properly be considered in an application for two single-family dwellings.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicants are seeking use and area variances, the granting of which requires a showing through substantial evidence of an undue hardship and a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The applicants must prove that no reasonable use can be made of the property for a purpose for which it is zoned. 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 applicants have not met this burden of proof in showing the undue hardship or practical difficulty inherent in the property. There is no exceptional condition inherent in the property that prevents it from being used for the purpose for which it is zoned, namely, two single-family dwellings. The use variance fails for lack of cause, and therefore it is unnecessary to consider in greater specifics the area variances.

The Board notes that the applicants cited a number of portions of the proposed land-use element of the comprehensive plan as relevant to the Board's decision on the subject application. The Board concludes that those references are not relevant for two reasons. First, the land-use element had not been adopted by the Council at the time at which this case was heard and decided. It is therefore not the adopted policy of the District of Columbia. Second, the comprehensive plan is not self-executing. It does not by itself amend the Zoning Regulations or change the standards under which the Board considers applications. The Board must consider applications based on the Zoning Regulations in affect on the date the Board renders its decision. Based on those Regulations, as set forth in this order, the application cannot be granted.

The Board further concludes that granting the proposed relief will cause substantial detriment to the public good and will substantially impair the intent and purpose of the zone plan. The granting of these variances would permit an increase in density, traffic and parking that would have an adverse impact on the R-2 District in which it is located.

Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 3-0 (Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to deny; Douglas J. Patton 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: 15 MAR 1985

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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