GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14193, of Demetrius Bagley, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the lot area requirements (Sub-section 3301.1) to construct a flat in an R-4 District at premises 1301 Potomac Avenue, S.E., (Square 1046, Lot 135).

HEARING DATE: October 17, 1984
DECISION DATE: November 7, 1984

FINDINGS OF FACT:

1. The subject property is located at the southeast corner of the intersection of 13th and Potomac Streets and is known as premises 1301 Potomac Avenue, S.E. It is zoned R-4.

2. The subject property is irregular in shape. The property has 42.22 feet of frontage on 13th Street and 21.50 feet of frontage on Potomac Avenue.

3. The subject property contains 1,538.65 square feet of lot area and is currently unimproved.

4. The applicant proposes to construct a flat on the property. The R-4 District requires a minimum lot area of 1,800 square feet for a flat. The subject property contains 1,538.62 square feet. A variance of 261.35 square feet is thus required. The subject property was subdivided prior to the adoption of the present Zoning Regulations.

5. The proposed building would measure approximately twenty feet wide by twenty-nine feet deep. It would contain two stories and a basement. There would be one unit in the basement, with access from the 13th Street side of the lot, and one unit on the first and second floors, with access from both street sides of the property. The basement unit would contain a living room, kitchen, bathroom and one bedroom. The upper unit would have a living room, dining room, kitchen and powder room on the first floor and three bedrooms and a bathroom on the second floor. Each unit would have a fireplace, washer/dryer combination, dishwasher and refrigerator.

6. There would be one off-street parking space located in the rear yard with access from a driveway from 13th Street.

7. The area is developed primarily with row dwellings on lots of smaller size than the subject property. The site is bounded on both sides by existing improved lots.

8. The subject property does not meet the minimum lot area requirement for the R-4 District. No building can be constructed on the subject property without the granting of the requested variance.

9. By Order No. 13511, dated October 5, 1981, the Board granted the applicant the identical relief requested in the instant application. The Board concluded that the small size of the subject property and the adoption of the 1958 Zoning Regulations constituted an exceptional condition of the property. The Board further concluded that the strict application of the Zoning Regulations would result in a practical difficulty upon the owner in that no building could be constructed on the site and no use of the property could be made.

10. The applicant's representative testified that the applicant did not obtain the necessary building permits within the six month period following the issuance of Order No. 13511 due to an oversight on his part. In accordance with Paragraph 8205.11 of the Zoning Regulations, the approval expired six months from the date of the order. The re-application for the requested relief was further delayed due to the applicant's inability to obtain financing for the project. The applicant's representative testified that the applicant is now prepared to go forward with the project.

11. The plans for the proposed flat are identical to those approved by Order No. 13511.

12. A nearby property owner testified at the public hearing in opposition to the granting of the subject application. The basis for the opposition was as follows:

A. The proposed flat is inconsistent with development in the immediate area which is comprised primarily of single family row dwellings.

B. The proposed flat is too dense a use for the small size of the subject site. A single family dwelling would be more appropriate for the subject site.

C. The proposed flat will exacerbate the existing parking problems in the immediate area.

D. The applicant does not maintain other properties which he owns at 1303 and 1305 Potomac Avenue in a good state of repair.

13. The record contains a petition containing the signatures of seventeen area residents in opposition to the application for the reasons set forth in Finding of Fact No. 12.

14. Advisory Neighborhood Commission 6B, by resolution dated September 27, 1984, opposed the granting of the application. The ANC's opposition was based on the existing high density usage in the neighborhood and the proposed use of a flat on a lot smaller than the minimum lot size required by the Zoning Regulations.

15. The Board is required by statute to give "great weight" to the written issues and concerns of the Advisory Neighborhood Commission. In addressing the concerns of the ANC and the opposition, the Board finds as follows:

A. A flat is permitted as a matter-of-right in the R-4 District. Such use of the subject property is, therefore, not inconsistent with the intent and purpose of the Zoning Regulations.

B. Parking will be provided on-site. The proposed use would, therefore, not adversely impact on the existing demand for on-street parking in the immediate area.

C. Construction of a single family dwelling on the subject site would require the granting of the identical relief requested in the subject application.

D. The maintenance of other properties owned by the applicant is not within the Board's jurisdiction.

16. The Capitol Hill Restoration Society, by letter dated October 4, 1984, supported the granting of the requested relief. The CHRS found no reason to change its position on the prior application as the relief requested is identical to that previously approved in Order No. 13511.

17. The Office of Planning, by memorandum dated October 10, 1984, recommended approval of the application. It was the opinion of the Office of Planning that the facts adduced during the hearing of the previous case are still valid and that the plans submitted are identical to those previously reviewed and approved by the Board. The Board concurs with the 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

an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty upon the owner. The Board concludes that the size of the property is exceptional as related to the requirements of the Zoning Regulations. The subject lot was created prior to the adoption of the 1958 Zoning Regulations and the imposition of the 1,800 square feet minimum lot area requirement. The Board concludes that the strict application of the Zoning Regulations would create a practical difficulty upon the owner in that no building could be constructed on the site and no use of the property could be made.

The Board further concludes, as previously found in Application No. 13511, that the requested 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. The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled.

It is therefore ORDERED that the application is GRANTED.

VOTE: 4-1 (Maybelle T. Bennett, Douglas J. Patton, William F. McIntosh and Carrie L. Thornhill to grant; Charles R. Norris opposed to the motion).

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

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

FINAL DATE OF ORDER: 19 DEC 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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