

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14293 of Hudai Yavalar, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variance from the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7105.12) and the rear yard requirements (Sub-section 3304.1) to construct an addition to a non-conforming structure housing a dwelling unit and, in part, a non-conforming grocery store use in an R-3 District at premises 1643 - 34th Street, N.W., (Square 1278, Lot 848).

HEARING DATE: May 22, 1985
DECISION DATE: June 5, 1985

ORDER

In application No. 14048, by Order dated April 5, 1984, the Board of Zoning Adjustment approved the identical variance relief requested herein, for the same applicant to construct the same addition as proposed herein. The applicant did not proceed to file for building permits to construct the proposed addition. In accordance with Paragraph 8205.11 of the Zoning Regulations, the approval expired after six months.

The applicant filed Application No. 14262 on December 21, 1984 seeking the identical variance relief originally granted. During the course of the subject hearing on that case on March 13, 1985, it became evident that the structure contained two dwelling units in addition to the grocery store use. A two-family dwelling or flat is not a permitted use in the R-B District. The Board therefore, dismissed Application No. 14262 as not properly before it and advised the applicant to file for a Certificate of Occupancy requesting the use that will actually be made of the subject premises so that a proper determination could be made as to the relief necessary for consideration by the Board. The applicant modified his plans to develop the property as a one-family dwelling and a non-conforming grocery use as approved in BZA Order No. 14048. The applicant filed the subject application on March 29, 1985. By letter dated March 29, 1985, the Zoning Administrations' Office advised the Board that review of the revised plans disclosed that no other relief would be required except as approved by BZA Order No. 14048, dated April 5, 1984. The applicant is, therefore, seeking reinstatement of the Board's prior Order. The Board incorporates herein the Findings of Fact and

Conclusions of Law set forth in Order No. 14048, dated April 5, 1984, a copy of which is attached.

The Office of Planning by memorandum dated May 15, 1985, noted that its field inspection and review of the revised plans show no deviation in the outside dimensions of the building or any change in the relationship of the subject property with its surroundings that would render the Board's decision in Order No. 14048 invalid. The Office of Planning noted further that the applicant has made an effort to comply with the spirit and intent of BZA Order No. 14048. Therefore, the Office of Planning was of the opinion that the application had sufficient merit to be approved and recommended reinstatement of the prior order.

The Advisory Neighborhood Commission 2E by letter dated May 15, 1985, opposed the granting of the subject application on the grounds that the plans connecting the second story over the store to the second story of the rear resident unit showed a doorway which does not exist and which could not be constructed because of differing elevations on either side of the doorway; and the proposed addition did not qualify as "fill-in" development for the previously existing steps and deck. The Board noted that the ANC report did not meet the requirements of Section 108.1 of the Supplemental Rules of Practice and Procedure before the BZA in that it did not indicate that a quorum was present, what the vote on the motion was, and who was designated to represent the ANC at the Public Hearing.

The ANC Commissioner for the SMD in which the subject premises are located and a nearby resident testified in opposition to the granting of the application. That opposition was based on the following.

- (a) The doorway and staircase leading from Dent Place, to the second story of the subject premises did not exist prior to the applicant's remodeling of the subject premises, are not aesthetically pleasing and would easily allow reconversion of the residential portion of the structure into two units,
- (b) There is concern that the construction has not met all the applicable building codes since construction proceeded without the required permits and without proper inspections.
- (c) The applicant proceeded with construction without permits and violated stop work orders.
- (d) The original permit was for repairs at a cost of approximately \$900.00. The premises have been gutted, renovated and extended without proper

permits and without proper review by the Fine Arts Commission.

In addressing the issues and concerns of the ANC and the opposition, the Board finds as follows:

- (a) Testimony by the applicant and the representative of Office of Planning indicate that the residential portion of the structure has been modified to contain only one single-family unit in accordance with the spirit and intent of BZA Order No. 14048.
- (b) There is no substantive evidence depicting the size of the deck and stairs which existed prior to the construction of the subject addition. The addition was approximately ninety-five percent complete at the time of the October 19, 1982 hearing on Application No. 14048. Photographs of the building prior to construction of the addition do not reflect the size or condition of the deck and stairs as the view of the rear portion of the site is obstructed by a stockade fence.
- (c) The doorway and stairwell leading from Dent Place, to the second story of the subject building is not within the jurisdiction of the Board's consideration in this case.
- (d) The Board is concerned only with zoning issues. The Board has no jurisdiction over alleged violations of building permits or illegal acts. Such is the jurisdiction of the Department of Consumer and Regulatory Affairs and the Corporation Counsel.

Based of the foregoing, the Board concludes that neither the requested variance relief nor the conditions of the site and surrounding area have changed and that its previous decision is still applicable. It is, therefore, hereby ORDERED that the application is GRANTED and BZA Order No. 14048 is REINSTATED.

VOTE: 3-0 (William F. McIntosh, and Carrie L. Thornhill to grant; Lindsley Williams to grant by proxy; Charles R. Norris not voting, not having heard the case; Douglas J. Patton not present, not voting).

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

ATTESTED BY:



CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 03 SEP 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."

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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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14048, of Hudai Yavalar, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7105.12) and the rear yard requirements (Sub-section 3304.1) to construct an addition to a non-conforming structure housing a dwelling unit and, in part, a non-conforming grocery store use in an R-3 District at premises 1643 - 34th Street, N.W., (Square 1278, Lot 848).

HEARING DATE: October 19, 1983
DECISION DATE: November 2, 1983

FINDINGS OF FACT:

1. The subject site is located at the southeast corner of the intersection of Dent Place and 34th Street and is known as premises 1643 34th Street, N.W. It is in an R-3 District.

2. The site has a lot area of 1,188 square feet. It has seventy-two feet of frontage on Dent Place and 16.50 feet of frontage on 34th Street. The site is flat and rectangular in shape.

3. The site is improved with a nonconforming structure that houses a dwelling unit and a nonconforming grocery store use. The store front faces 34th Street. The residence fronts on Dent Place. The side of the building facing 34th Street constitutes the front of the structure. The structure was built prior to 1958.

4. The applicant requests approval of the Board for an addition to the structure. The addition measures seven feet deep and 16.50 feet wide. The addition will provide more family living space for the dwelling unit. The addition will replace an old dilapidated rear deck and steps. When completed, the structure with the addition will extend to the same depth as the adjoining residence to the south.

5. The subject addition was partially constructed without proper permits. At the time of the hearing, the addition was some ninety-five percent completed.

6. The subject structure is nonconforming as to the lot occupancy requirements. The R-3 District permits a

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maximum lot occupancy of sixty percent, or for the subject lot, 712.8 square feet. The lot occupancy without the 115.5 square feet of the proposed addition is 825 square feet. With the addition, 940 square feet will be provided, creating a need for a variance of 227 square feet or 31.9 percent.

7. The addition will result in a rear yard of fifteen feet. The Zoning Regulations require a minimum rear yard of twenty feet. The applicant seeks a rear yard variance of five feet or twenty-five percent. In relation to 34th Street, this yard is a rear yard. In relation to Dent Place, the space appears as a side yard.

8. Certificate of Occupancy No. B135808 was issued August 1, 1983, to the applicant to use the first floor of the subject premises as a retail-grocery, basement for storage.

9. A Class "B" Alcoholic Beverage Control License No. 6409 was issued to the applicant for the period of October 21, 1983 to June 30, 1984.

10. The Commission of Fine Arts, by letter of March 1, 1983, recommended that a permit be issued to the applicant for the removal of artificial brick siding and restoration of wood siding underneath for the grocery store portion of the building. The Commission noted that the drawings had been altered to show three vertical muntins in the side show windows. Work on the adjacent house was not included in this approval.

11. There were many letters of record in favor of the application. Said letters reported that prior to the restoration of the structure, the property was neglected. It had become an eyesore in the neighborhood. Through the restoration, the ugly imitation brick exterior had been removed, the premises had been repainted and the premises was more in harmony with the surrounding properties. There was also a petition with many signatures in favor of the application submitted to the record.

12. The Citizens Association of Georgetown opposed the application on the following grounds:

- a. The existing structure already exceeds the allowable lot occupancy. The proposed addition would double the non-conformity of lot coverage and would require a thirty-two percent variance, which is excessive.
- b. The existing, rear yard would be reduced by twenty-five percent. This is a corner lot that does not back up to another rear yard or alley.

Granting a variance to reduce the rear yard would place the proposed addition too close to the adjoining property.

- c. The resultant overdevelopment of the lot would undermine one of the most important zoning controls in an R-3 District; i.e., the lot coverage limitation.
- d. The structure is quite habitable without the addition and the property can be used in a reasonable manner and has been for many years within the restrictive provisions of the zoning regulations.
- e. There are no exceptional or extraordinary conditions of the property which create a practical difficulty for the owner and that could form the legal basis for granting a variance.

At the close of the applicant's case-in-chief, the Citizens Association of Georgetown made a motion to deny or dismiss the application for failure of proof. The Chair denied the motion.

13. Advisory Neighborhood Commission 2E, by letter dated October 11, 1983, and appearance at the public hearing, opposed the application on the same grounds enumerated by the Citizens Association. The ANC reported that it had further concerns. It was the ANC's opinion that the building permit that had been issued to the applicant was issued only for repairs to be made to the store. The ANC contended that the applicant used the permit not only to repair the store but to build his addition.

14. The Advisory Neighborhood Commission reported that, by letter of June 3, 1983, the Commission requested the Corporation Counsel to open an investigation of this matter. The Commission further advised the Corporation Counsel that on April 20, 1983, a letter was sent from the Citizens Association of Georgetown to the Zoning Administrator, reporting that certain work was being carried out at the subject address, which was not covered by the permit for repairs. On May 13, 1983, Mr. Leslie C. Reid, a D.C. Building Inspector, issued a stop-work order to the owner's agent after inspecting the project and confirming the Association's allegations. The permittee or his agents unlawfully continued such non-permitted work, despite such written stop-work order, for at least the next four days, May 14-17, 1983. Work was finally stopped on May 17, 1983, at 7:00 P.M. During the period, April 20 to May 13, 1983, there were approximately eighteen days of separate violations of the Building Code. On May 13, the stop-work order was issued. During the period, May 14 to 17, 1983, inclusive, there were an additional four days of violations

of the Building Code. Thus, there are apparently twenty-two days of alleged separate violations of D.C. Law. The ANC further reported that the community considers the unlawful actions of the permittees a gross violation of the law that should not go uncorrected. The owner has attempted to deny the District revenue due for the correct building permits, and he has mis-stated facts to the neighbors as to whether he had the proper permits. Finally, he has defied a direct written stop-work order from the D.C. Building Inspector.

15. On June 6, 1983, the Corporation Counsel advised the ANC that it had referred the matter to the Housing and Community Development Division for a further inquiry and appropriate action.

16. The Board is required by statute to give "great weight" to the issues and concerns of the ANC. The Board in addressing these concerns as well as those of the Citizens Association of Georgetown finds that in the first instance the Board is concerned with zoning issues. The Board has no jurisdiction over alleged violations of building permits and illegal acts. Such is the jurisdiction of the District Consumer and Regulatory Affairs and the Corporation Counsel. As to the variance relief, the Board for reasons discussed in its Conclusions, finds that the applicant has met his burden of proof in establishing that a practical difficulty exists in the property that warrants the granting of the variance relief.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking two area variances, the granting of which requires proof through substantial evidence of a practical difficulty upon the owner of the property arising out of some extraordinary or exceptional situation or condition of the property. The Board must further find that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan.

The Board concludes that the applicant has met the burden of proof. In comparison to the normal R-3 District standards, the subject lot is a small lot. A lot area of 2000 square feet is permitted. This lot provides 1,188 square feet. A lot width of twenty feet is permitted. This lot provides a 16.50 width. The structure was erected prior to May 12, 1958, the effective date of the current Zoning Regulations. On May 12, 1958, it became nonconforming as to its lot occupancy. The subject addition is a replacement for the deck and steps now demolished. It is a fill-in for what had previously existed on the site. As to the depth of the rear yard, there is no persuasive evidence in the record that it ever had a depth more than fifteen feet. Also,

there is no question that the structure was used as a residence in the past and that in the future the use will so continue. Such does not preclude a renovation of the premises.

The Board notes the many letters of record from neighborhood owners of property reporting the run-down condition of the property and how pleased all were that it was being renovated so that it would cease to be an eyesore in the neighborhood. The Board, for all the above reasons, concludes that the burden of proof has been met. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled, but for the reasons stated, the application should be granted. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0 (Douglas J. Patton, William F. McIntosh and Charles R. Norris to grant; Walter B. Lewis to grant by proxy; 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: APR - 5 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."

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