

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application NO. 14298 of Varan Corp., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the minimum lot area requirements (Sub-section 3301.1) to convert a flat to a four unit apartment-house in an R-4 District at premises 903 M Street, N.W., (Square 368, Lot 801).

HEARING DATE: June 12, 1985
DECISION DATE: July 3, 1985

FINDINGS OF FACT:

1. The subject site is located on the north side of M Street between 9th and 10th Streets, N.W. The premises is known as 903 M Street, N.W. The site is in an R-4 District and is located in the Shaw Urban Renewal District.

2. The subject property is rectangular in shape. It contains 2,200 square feet of land area. The site has twenty feet of frontage along M Street, and 110 feet of depth to the rear alley.

3. The subject building was constructed in 1865. It was previously used as a flat and rooming house less than five roomers. The certificate of occupancy for the prior use was issued on December 16, 1958. The site has been vacant since 1968.

4. The structure contains a basement and three floors. The basement and first floor each contain 1,208 square feet. The second floor contains 938 square feet and the third floor contains 788 square feet.

5. The site is adjacent to rowhouses which are two to five stories in height and a mixed use condominium complex which is in excess of 9,800 square feet to the immediate west of the subject site. Vacant parcels of land are dispersed among the developed parcels. There are also a number of nonconforming uses including auto repair facilities within the interior of the subject square.

6. To the south of the subject square in Square 369, almost the entire square is vacant and unimproved. The neighborhood is currently being considered for designation as an historic district.

7. The applicant proposes to renovate and restore the entire subject structure, creating three two-bedroom and one one-bedroom apartment condominiums. All of the units will be marketed at a moderate price level.

8. The applicant proposes to remodel and carefully restore the building so as to preserve the original facade of the building, with the exception of removing the iron fire escape. The building in its current state of disrepair is frequented by vagrants, drug addicts, transvestite prostitutes, and as such is a detriment to the community.

9. Under Subsection 3301.1 of the Zoning Regulations, in an R-4 District for the conversion of a structure to an apartment house, there must be 900 square feet of lot area provided for each unit. The subject lot contains 2,200 square feet, whereas 3,600 square feet is required for four units. A variance from minimum lot area requirements of 1,400 square feet is required.

10. The applicant is not required to provide on-site parking, although on-site parking can be provided by converting the carriage house located on the subject lot to a two car garage.

11. The size and design of the units will allow for spacious living accommodations having adequate light and air. The lot area variance will not adversely affect the desirability of the units as living quarters.

12. The extraordinary or exceptional situation or condition affecting the subject site stems from the existing building which is large enough to support four dwelling units. The subject structure was constructed for residential use in approximately 1865. It therefore substantially predates the application of the Zoning Regulations.

13. Matter of right use of the structure as a flat would impose practical difficulties upon the applicant as it would require the provision of units which average in excess of 2,000 square feet each. These unusually large apartment units would not be marketable as moderately priced dwelling units. Further, the applicant testified that it would be extremely difficult to obtain construction financing for two units.

14. The proposed renovation will have a beneficial impact on the surrounding neighborhood which is currently in a state of decline or transition as evidenced by the mix of rehabilitated structures and vacant and boarded-up structures. The proposed use will contribute to the neighborhood's growth and will help stabilize the 900 block of M Street. Based upon the prior certificate of occupancy which stated that the site was used as a flat and rooming house, the proposed use will not increase the intensity of the site.

15. The Office of Planning, by report dated June 5, 1985, and testimony at the public hearing, recommended approval of the application. The OP reported that the subject structure has been vacant for some time and a total interior renovation is required. Such renovation would require new electrical, heating/cooling and plumbing systems as well as new walls, etc. Also the wall at the rear of the main structure would have to be rebuilt. This lot and building size are not uncommon in this area of the city. The subject structure was constructed for residential use in 1865. Its origins, therefore, predate the application of the Zoning Regulations. Presently, there is a total of approximately 4,092 square feet which is ample floor area to accommodate four apartments without need to increase the present building size. The OP was of the opinion that the proposed four dwelling units is not inconsistent with the intent and purpose of the R-4 District and that the applicant's proposal will show a beneficial impact on the surrounding neighborhood by contributing positively to the neighborhood's growth.

The OP's recommendation was contingent upon a condition that the existing structure would not be further enlarged. The applicant stated that it did not intend to enlarge the structure. The Board concurs with the findings and recommendations of the Office of Planning.

16. Several petitions were signed in support of the conversion by area residents, owners and tenants, the businesses in the neighboring business district and parishioners of various community churches which were submitted for the record. The grounds for support were that the subject structure had been unoccupied and deteriorating for many years and is now an eyesore. It is also a haven for undesirables. Also, one business owner appeared and testified in support of the conversion by stating that it would discourage vagrants and the like from loitering which "takes away" from his business establishment. Another neighbor was in support of the application only if the applicant renovated the property according to certain architecture specification.

17. The Logan Circle Community Association by letter of June 11, 1985 reported that the Association opposed the application on the grounds that.

- a. There is no compelling reason, such as unusual configuration of the lot or building, why the property cannot be redeveloped as a single-family home or two-family dwelling, to which the contract owners are entitled as a matter of right in an R-4 zone.
- b. The contract owners purchased this building with full knowledge that they could have only a maximum of two units as a matter of right.

- c. A variance of this nature would constitute "spot-zoning" and would set a terrible precedent for R-4 zones throughout our neighborhood and city. It would give developers an open invitation to redevelop single-family homes as apartment buildings and thereby fundamentally change the character of the R-4 zone.
18. A petition in opposition to the application was filed in the record. The petition recited that the undersigned residents of the 900 block of M Street, NW, were opposed to the Board of Zoning Adjustment application #14298, because it would substantially increase the density beyond that envisioned by the current zoning. It would also provide a precedent for the spot zoning of the neighborhood, which will be under significant development pressure in the coming years. The residents proposed that the BZA approve three units, provided that one of those units is in the carriage house. In exchange for this variance from the zoning, the developers of 903 M Street would be required to restore and maintain the Victorian aspects of the current structure.
19. Councilman John A. Wilson, Ward 2, by letter of June 11, 1985 opposed the application on the ground that the subject structure is located in a residential neighborhood (R-4 Zone) which is in the process of revitalization. The northside of the 900 block of M Street, N.W. has experienced increased home ownership in the last few years. The residents have made substantial investments in their homes and have sought to preserve the residential character of the block. The variance requested for 903 M Street, N.W. is the antithesis of the prime purpose of the R-4 Zone "stabilization of remaining one-family dwelling." The conversion of this "flat" to a four unit apartment house would set a negative precedent for the block. Secondly, there is nothing exceptional about this development which would warrant a variance of this magnitude.
20. The property owners to the immediate west of the site testified in opposition to the application. They had purchased their home as September 7, 1978. They renovated the home into a flat and moved in July 1982. They testified that prior to the purchase of their home they checked the zoning. They were satisfied that it was an R-4 District and the residences would be limited to flats and not apartment houses. In their opinion a variance is a means of handling cases which are in some sense extraordinary. Perhaps an unusual plot of land, or an accommodation to a restriction on the number of parking places. It was their opinion that the subject application was simply not extraordinary. Because their house is identical to 903, they are living

proof of the ordinariness of its circumstances. To grant this variance would destabilize the neighborhood. While not setting precedent in a legal sense, it would inform all developers that this board is receptive to significantly increasing the density of R-4 neighborhoods in the central city area. That would be a very disruptive message to promulgate in neighborhoods which were specifically protected by a special zone meant to "stabilize". The opposition further testified that it is of concern to the District of Columbia that the area might be stagnant, and might need an extra boost. They don't believe that to be the case. One of the houses in the row is about to finish renovation, two more are under renovation around the corner on 10th Street, and an apartment house is being renovated across N Street, directly to the North. The Metro is under construction two short blocks away, a Hyatt Hotel is being built by the Convention Center, which is three blocks to the South, and Techworld is going in. The opposition testified that the neighborhood is in the middle of an incipient boom and that no special incentive is needed to assure the total development of the neighborhood. In fact, it is very important that the Board lead the way in refusing to destroy the neighborhood before its renovation can be completed.

21. The Board in addressing the concerns of the opposition finds that it has no jurisdiction in determining in what manner an applicant must restore a structure. The Board is not an architectural review Board. The Board also finds that the opposition has misread the preamble for the R-4 District. Sub-section 3104 provides that the R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of such dwellings into dwellings for two or more families. Very little vacant land would be included within this District since its primary purpose would be the stabilization of remaining one-family dwellings. The District would not be an apartment house district as contemplated under the General Residence (R-5) District since the conversion of existing structures will be controlled by a minimum lot area per family requirement. The Board further finds that under Sub-section 3301.1 a conversion of an existing structure constructed prior to May 12, 1958 the effective day of the current Zoning Regulations to an apartment house is permitted provided there is a minimum lot area of 900 square feet per apartment. This is the very section under which the applicant seeks its relief. As found in Finding Nos. 4 and No. 13 the proposed units will be spacious living accommodation having adequate light and air. The subject structure is of ample size to accommodate few units. The previous use of the structure was for a flat, first and second floors; the third floor as a rooming house less than five roomers. The proposed use will not increase the density. The lack of the lot area requirements does not cause substantial detriment to the

public nor any future inhabitants of the subject structure. The subject structure is one of many row houses sharing party walls. The size of the proposed units are similar to other units in the square.

22. ANC 2C filed no recommendation on the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking an area variance the granting of which requires a showing through substantial evidence of 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 Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met the burden of proof. As to the minimum lot area requirements, the Board concludes that the subject structure was built prior to the adoption of the 1958 Zoning Regulations. A practical difficulty exists in attempting to reasonably use the buildings in conformance with the Zoning Regulations.

As to parking requirements, which are not applicable in this case the applicant will convert the carriage house into a two-car garage with storage space on the second level of the carriage house. The Board concludes that there will be no adverse parking impacts.

The Board further concludes that the requested relief can be granted without causing substantial detriment to the public good. The additional residential units will add to the City's housing supply in furtherance of the policies of the City. The strong showing of support of the community through the record reflects the positive reception the project has within the community. The Board is further of the opinion that the relief can be granted without substantially impairing the intent, purpose and integrity of the zone plan. ACCORDINGLY, it is ORDERED that the application is GRANTED.

VOTE: 3-0 (Charles R. Norris, William F. McIntosh to grant; Patricia N. Mathews to grant by proxy; Carrie L. Thornhill 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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