

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14472, of W.H. Associates, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3104.3) and from the prohibition against allowing an addition to a non-conforming structure which now exceeds the lot occupancy requirements (Sub-section 7105.12) for a proposed addition to and conversion of existing warehouses into a four unit apartment building in a R-4 District at premises 118 12th Street, N.E., (Square 988, Lot 98).

HEARING DATE: July 23, 1986  
DECISION DATE: July 30, 1986

FINDINGS OF FACT:

1. The Board approved for cause shown, an expedited public hearing date on this application.
2. The site, known as premises 118 - 12th Street, N.E., is located on the west side of 12th Street between East Capitol Street and Constitution Avenue. It is in an R-4 District.
3. The site is rectangular in shape with a frontage of 36 feet along 12th Street and a depth of 117.50 feet. A 30 foot wide public alley, Walter Houp Court, bisects the square from east to west and is adjacent to the south property line. A 30 foot wide public alley extending from Constitution Avenue southward to the east-west alley is adjacent to the site's rear property line.
4. The site is improved with two adjoining warehouses which were built prior to May 12, 1958, the effective date of the current Zoning Regulations. On that date the structures became non-conforming by exceeding the allowable percentage of lot occupancy.
5. The R-4 District extends in all directions from the subject site. Square 988 is developed primarily with two and three story single family dwellings. The site and surrounding area are located within the Capital Hill Historic District.
6. Pursuant to Paragraph 8207.11 of the Zoning Regulations the applicant is seeking a variance from the use provisions (Sub-section 3104.3) and from the prohibition

against allowing an addition to a non-conforming structure which now exceeds the lot occupancy requirements (Sub-section 7105.12) to construct an addition to and convert the warehouses in a four unit apartment building.

7. One of the two warehouses is two stories high and contains approximately 1,455 square feet of floor area. The other warehouse is one story high and has approximately 1,494 square feet of floor area.

8. Both structures are vacant and deteriorating. The two structures occupy approximately 55 percent of the total lot area. The remaining 45 percent of the lot, 2,000 square feet, is vacant and fronts on 12th Street.

9. The proposed four units will have the following features:

- Unit one - One bath, fireplace, private entry containing 678 sq. ft.
- Unit Two - One bedroom, one bath, fireplace, private entry, containing 777 sq. ft.
- Unit Three - One bedroom, two stories, two baths, private entry containing 1,400 sq. ft.
- Unit Four - Two bedroom, two stories, 2.5 baths, private entry, containing 1,400 sq. ft.

10. The proposed addition would consist of a second story on the one story warehouse. The structure would be in harmony and scale with the two and three story buildings located on neighboring properties.

11. For a conversion to an apartment in a R-4 District, the Zoning Regulations require that a minimum of 900 square feet of lot area be provided per each apartment. The site contains 4,000 square feet and can provide four apartments as a matter-of-right.

12. Paragraph 7105.12 allows a lot occupancy of 40 percent, or 1,692 square feet for the site. The structure currently occupies 2,221.20 square feet exceeding the allowed occupancy by 529.20 square feet, or 31.27 percent.

13. The proposed addition is to the second floor only and will not increase the lot occupancy.

14. The structures were constructed and used for industrial or other non-residential purposes.

15. The proposed addition would convert a non-conforming industrial use to a residential use.

16. The front yard would be used to provide four parking spaces for the proposed apartments.

17. The building is regulated by the Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144). This law severely restricts the demolition or alteration of historic structures. As interpreted, the law prohibits new window and door openings in exterior walls visible from streets and alleys.

18. The one-story structure does not meet the code requirements for light. D.C. Building Code Section 502.7(2)6.a. (Required Glazed Areas; Habitable Rooms) requires 202.9 square feet of glazed area for the existing one-story structure. Only 160 square feet of glazed area is possible given the existing window and door openings in this structure. D.C. Law 2-144 does not allow new windows or door openings to puncture exterior facades.

19. The applicant argued that the one-story structure, without substantial modifications, is infeasible for residential use because a large amount of living space immediately abuts a public street and affords little privacy and subjects residents of the building to fumes and noise from adjacent vehicles and trash. A second story would permit privacy and place residents above the level of parked or moving cars and provide for adequate light and additional ventilation.

20. The applicant further argued that the one-story portion of the building is too large to reasonably devote to a one-family dwelling. As such, it would be unmarketable for rental or sale purposes.

21. The applicant argued that because of the reasons listed in Findings No. 12 through 20 above, the structure cannot readily be used as a permitted use i.e., church, one-family dwelling, rectory, embassy, child development center, college or university, community based residential facility, flat, rooming or boarding house, hospital, clinic, private club, museum or art gallery and practical difficulties and a hardship are created upon the owner. The Board does not concur and addresses these issues in the conclusions of law below.

22. By memorandum dated July 22, 1986, the Office of Planning (OP) recommended denial of the application. The OP found no evidence of hardship such that the property cannot be used for permitted uses in the existing R-4 District. The OP reported that the subject lot is a flat, rectangular piece of land which is similar to the other lots in the Square but for its width and size. The width is that of two existing lots and the size is approximately that of two

lots. The existing carriage houses have similar physical characteristics to other carriage houses on the block and in the Capitol Hill Historic District. The OP was of the opinion that the property could be converted to residential units without the need of a use variance. The Board concurs with the recommendation of the OP.

23. Advisory Neighborhood Commission - 6B filed no report on the application.

24. By letter dated July 21, 1986, the Capitol Hill Restoration Society (CHRS) reported that it voted to support the application if four parking spaces are provided on site and a trash collection point is provided within the structure. The CHRS Zoning Committee questioned the decision of the Deputy Zoning Administrator that a variance is needed for the use provisions (Section 3104.3). The proposed alterations will not increase the base structure of the subject property. The Board notes that a use variance is required because an addition to the structure is proposed. Sub-section 3104.3 provides for conversion of an existing structure to an apartment building. If no addition were proposed, an apartment conversion would be granted as a matter-of-right.

25. One letter from a neighboring property owner was submitted to the file in opposition to the application on the following grounds: (a) parking would not be provided (b) the proposed addition could create a greater density of use (c) the design of the proposed addition is inadequate as all doors to the units would be on the south side of the structure. The Board notes that adequate parking would be provided for the site, the four unit structure is allowed by matter-of-right development and the doors, fenestration and material design of the structure are subject to review by the Historic Preservation Review Board.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot reasonably be used for the purpose for which it is zoned. The Board must further find that the relief requested 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 Maps.

The Board further 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 concludes that the applicant has not met the burden of proof in showing that an undue hardship is inherent in the property. There is nothing in the size, shape or topography of the subject property that would preclude it from being used for an R-4 purpose. The property could be converted to an R-4 use including matter-of-right and special exception uses. Matter-of-right development would allow the conversion of the structures into apartment units. In addition to the possible residential uses, whether single family or multi-family, there are non-residential uses permitted which the applicant has not investigated.

The Board further concludes that the design restraints imposed by the historic nature of the building do not constitute a hardship in the sense defined by the Zoning Regulations. Such hardship should be inherent in the physical characteristics of the site so that it cannot be used for a permitted purpose.

The Board further concludes that the applicant has not demonstrated that a practical difficulty arises upon the owner from some unique or exceptional condition of the property. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 3-1 (William F. McIntosh, Charles R. Norris, Paula L. Jewell to deny; Carrie L. Thornhill opposed).

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

ATTESTED BY:

  
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EDWARD L. CURRY  
Acting Executive Director

FINAL DATE OF ORDER: OCT 6 1986

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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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