

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14483 of 2016 P Street Limited Partnership, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against allowing an enlargement to a nonconforming structure, a residential/retail structure, now exceeding the lot occupancy requirements in a C-2-B District at premises 2016 P Street, N.W., (Square 96, Lot 41).

HEARING DATE: July 30, 1986
DECISION DATE: July 30, 1986 (Bench Decision)

FINDINGS OF FACT:

1. On July 3, 1986, the applicant formally requested an expedited hearing on its application for a variance on the grounds that (a) it had relied on an interpretation of Section 2001.3 of 11 D.C.M.R. (published by the District of Columbia Government as the Zoning Regulations) to permit it to construct a basement area, when it later appeared that the section did not accurately state the applicable zoning regulations and (b) in reliance on that section, it had purchased the structure. Further, the applicant stated that it had a lease agreement with High's to use the proposed addition which required it to provide the space within two months and the inability to do so jeopardized that agreement. On July 9, 1986, the Board granted the applicant's request for an expedited hearing.

2. The site, known as premises 2016 P Street, N.W., is located at the southeast corner of the intersection of Hopkins and P Streets, N.W. The site is in a C-2-B District.

3. The site is rectangular in shape with a frontage of 22.75 feet on P Street and a depth of 90 feet on Hopkins Street. A ten foot wide public alley is located to the rear of the site.

4. The site is improved with a four story plus cellar masonry structure which has been used for residential purposes since 1902 and for residential and retail purposes since 1920, when the first floor was used as a delicatessen. The structure is presently vacant. High's which had occupied the first floor since 1940 recently vacated the premises. On May 12, 1958, the effective date of the current Zoning Regulations, the structure became nonconforming as to lot occupancy.

5. The area to the west and immediate east of the structure is in the C-2-B District. An SP-2 District is located approximately 60 feet east of the site. An R-5-B District is located to the south of the site. The area is developed with mixed commercial and residential uses.

6. Pursuant to Paragraph 8207.11 of the Zoning Regulations, the applicant is seeking a variance from the prohibition against allowing an enlargement to a nonconforming structure now exceeding the lot occupancy requirements (Paragraph 7105.12).

7. The C-2-B District permits a maximum lot occupancy of 80 percent for a residential structure. The existing structure occupies 100 percent of the lot.

8. The proposed addition will consist of a basement area which will be leased to a High's Dairy Store, the former occupant of the first floor.

9. The applicant is negotiating with an art gallery to lease the first floor of the structure. The second, third and fourth floors will be used for residential purposes. The six residential units provided previously will be maintained.

10. The use of a basement area will not increase the structure's floor area ratio (F.A.R.). All uses proposed by the applicant are permitted as a matter of right in the C-2-B District.

11. The proposed enlargement will not alter the existing footprint of the building nor will it affect the visual perception of building mass created by existing structures and walls.

12. The applicant purchased the structure for \$797,000.00 and estimates that it will cost between \$600,000 and \$700,000 to renovate, with or without a basement.

13. The use of the entire building, including the basement, is necessary to make the proposed renovation economically feasible.

14. The applicant in determining whether to purchase the building reviewed the prior owner's plans, consulted an architect and considered the Title 11 of the Municipal Regulations. The advice given to the applicant was that the basement area would be permitted, as a matter of right, because section 2001.3 11 D.C.M.R. indicated that an enlargement would be prohibited only if it caused the structure's lot occupancy to be nonconforming. In reliance on that interpretation, the applicant purchased the structure. The Board finds that this reliance was not

reasonable although the Board notes that discrepancy between the language in the Municipal Regulations and the language of the regulation adopted by the Zoning Commission and that said reliance alone does not warrant the grant of a variance.

15. The building's facade will be restored to highlight its historically and architecturally significant features. The fenestration of the building's Hopkins Street facade will be restored as it existed prior to its being modernized for a delicatessen.

16. The structure is deteriorating and needs major repairs. The interior of the structure has to be gutted. The floors must be replaced and the leaking roof repaired.

17. In order to bring the structure up to code, a new electrical, mechanical, plumbing and heating system must be provided. In order to maintain the historic configuration of the building the staircase inside the Hopkins Street entrance will be rebuilt.

18. If the building were not located in an historic district, portions of the building could be demolished to reduce the building's lot occupancy and incorporate a basement area without the need for a variance.

19. By memorandum dated July 23, 1986, the Office of Planning (OP) recommended approval of the variance if the applicant could show that it reasonably relied, to its detriment, on the Municipal Regulations. At the public hearing, the OP testified that it did not believe that this was shown. The OP was of the opinion that, while there is precedent for granting a variance for a landmark which occupies 100 percent of the lot, the Board should not do so with structures in historic districts. The Board finds that since the effects on a structure, whether it is a landmark or in a historic district are the same and should be treated the same. Each case is decided on its individual merits.

20. Advisory Neighborhood Commission 2B made no recommendation on the application. The Chairman of ANC 2B did file a letter expressing an objection to the hearing of this matter on an expedited bases since it did not provide enough time for the ANC to consider the application. The Board finds that the expedited consideration was warranted.

21. The residential Action Coalition and a private citizen testified in opposition to the application. The opposition was of the opinion that the structure could be used without a basement and that additional commercial uses would have an adverse impact on the neighborhood. The Board does not concur. As stated below, the uses proposed are to make the venture economically viable. The uses include

residential as well as commercial. The structure has provided these facilities for many years to this neighborhood. The same type and method of deliveries will continue. While the Board recognizes it might be preferable to use alleys rather than public streets for deliveries, this is not possible in this case as the alley is but ten feet wide. The Zoning Regulations do not require loading zones in the instant situation.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of 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 relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent of the zone plan.

The Board concludes that the applicant has met the burden of proof. The structure is a nonconforming structure. It occupies 100 percent of the site and has done so since 1902. The occupancy allowance for a residential building in a C-2-B District is 80 percent. The structure now exceeds the allowable occupancy by 409.5 square feet or 20 percent. The proposed cellar will increase the square footage of the structure by 2,047.5 square feet. However, it will not increase the lot occupancy percentage or building footprint of the structure. The Board concludes that the applicant has submitted persuasive evidence that the building is economically feasible to restore and use only if the additional basement space is allowed. The extra income to be derived from the use of the basement is critical to the use and restoration of the structure. While the economic hardship does not alone constitute the practical difficulty to support the area variance, the costs of conforming to the Zoning Regulations and the marketability of the building are relevant factors to be considered. In this case, the restoration and use of only four floors without the basement would result in the creation of space that is unmarketable. The Board notes that the applicant will preserve six residential units in a building located in a C-2-B District. The granting of the variance will allow for the restoration and reuse of an existing vacant building. Because of the building's location in a historic district, a portion of the structure cannot be removed to bring it into compliance with the lot occupancy requirements. The Board further concludes that

the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the variance is GRANTED SUBJECT to the CONDITION that construction shall be in accordance with the revised plans marked as Exhibit No. 25 of the record.

VOTE: 3-2 (Patricia N. Mathews, Carrie L. Thornhill, Charles R. Norris to grant; William F. McIntosh and Paula L. Jewell opposed).

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

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: SEP 23 1986

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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