

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14528, as amended, of Bancroft Development, Inc., pursuant to Paragraph 8207.11 (3107.2 DCMR 11) of the Zoning Regulations, for variances from the maximum allowable height and number of stories requirements (Sub-section 3201.1, 400 DCMR 11), the side yard requirements (Sub-section 3305.1, 405 DCMR 11), and from the prohibition against the enlargement of a nonconforming structure devoted to a nonconforming use (Paragraph 7106.14, 2002 DCMR 11) for a proposed one story addition to an existing apartment house, a nonconforming use and from Section 7205.22 (2116.2 DCMR 11) to permit two parking spaces to be located in a court in an R-3 District at premises 2229 Bancroft Place, N.W., (Square 2529, Lot 302).

HEARING DATE: January 14, 1987
DECISION DATE: March 4, 1987

FINDINGS OF FACT:

1. At the public hearing, the application was amended to request an additional variance from Section 7205.22 of the Zoning Regulations (11 DCMR 2116.2) to permit parking spaces to be located in a court.

2. The property is located on the north side of Bancroft Place east of 23rd Street and is known as premises 2229 Bancroft Place, N.W. The property is located in an R-3 District.

3. The R-3 District extends to the east and west of the site. The Bancroft Condominium is located to the west and the Kalorama Square townhouse project is located to the east. The St. Nicholas Condominium is located in the R-5-B District which is located to the north of the site. Mitchell Park is located to the south of the site in an R-1-B District.

4. The site is irregularly shaped and has a lot area of approximately 13,794 square feet with a street frontage of approximately 132.03 feet along Bancroft Place.

5. The site is currently improved with a four-story plus basement brick apartment house which was constructed circa 1923. The premises may be occupied as a matter-of-right as a 25 unit apartment house pursuant to Certificate of Occupancy No. R145635 dated June 6, 1986.

The building was occupied as an apartment house from 1923 to 1980. In 1980 the building was vacated.

6. The Applicant proposes a fifth story addition to the structure and renovation to use the premises as an apartment building.

7. The existing structure is nonconforming as to height, number of stories, lot occupancy, side yard and use. The proposed addition will increase the existing nonconformity as to height and number of stories. The existing nonconforming side yard will remain unchanged.

8. The use will remain a nonconforming apartment building. The number of units will be reduced from twenty-five to between eighteen and twenty-one.

9. The building currently has a height of 46 feet, three inches. The addition will increase the building to a height of 59 feet nine inches. The side yard of 1.5 feet will be maintained for the total height to take advantage of the load bearing wall.

10. The proposed renovation will provide for the restoration of the building's facade as well as the addition of a fifth floor and the provision of an elevator. The windows will be replaced and a slate roof with white wood painted dormer windows will be installed. The proposed roof will allow the placement of existing mechanical equipment including the condenser units, on the roof and out of public view from the street level.

11. The structure is in a deteriorated condition and in need of extensive renovation. The interior has suffered extreme damage due to water leakage, vandalism and fire. The building needs complete new mechanical and electrical systems and partitioning.

12. The existing building is not equipped with an elevator.

13. The building contains a gross floor area of approximately 30,186 square feet. The proposed addition will increase the gross floor area by approximately 5,404 square feet. The net rentable/saleable area will be increased by approximately 4,410 square feet. The installation of elevators and code required means of egress will occupy approximately 50 square feet per floor. Additionally, existing residential floor space will be converted to parking.

14. The structure cannot practically be expanded into the existing court area and any addition to the structure would require variance relief.

15. The Applicant's expert witness in real estate appraisal testified that there is no reasonable investment return available on the project without the addition of the fifth floor.

16. The expert in real estate further testified that the project would not be marketable unless the rehabilitation of the structure included an elevator, outdoor and indoor parking, a fifth floor and a "very high level of finish." In reaching his conclusions, the expert compared the proposed project to others in the Kalorama area.

17. The Applicant's real estate expert further testified that the addition of the fifth floor to the structure would impair the view from some apartments in neighboring buildings. He also testified that a number of factors such as the condition and decoration of apartment relate to sales price and that view is not an overriding factor.

18. The Applicant's architect conducted studies which demonstrated that the addition will not cast undue shade or shadow nor will it adversely affect the flow of air to the neighboring buildings. Specifically, the amount of light and air received by the St. Nicholas Apartment building will not be significantly impacted since the proposed addition will be 52 feet away from the structure's south wall.

19. The proposed fifth floor will not maximize the available floor area or foot print of the structure which is approximately 6,600 square feet. The roof line will be set back with a sloping roof to reduce the visual impact of the addition.

20. There are approximately six other buildings with a very similar roof line to that of the proposed addition within a quarter mile radius of the site.

21. The final determination of whether a reduction of units to a total of 18 could be accomplished would depend on whether any of the prior tenants who are parties to the settlement agreement exercise their option to purchase units in the renovated building. Under the settlement agreement certain tenants have a 30 day right of first refusal once the public offering statement has been filed and forwarded to their designated agent. If none of the tenants exercise the right to purchase, the Applicant is willing to commit to reduce the number of units to 18. If all of the persons permitted to exercise the option do so, the applicant will provide 21 units.

22. In the 21 unit scheme, the number of bedrooms would be reduced from the existing 41 to 29. Under the 18 unit scheme, the number of bedrooms would be reduced to 23.

23. No parking spaces are required for the matter-of-right use of the site.

24. Currently there are at most two parking spaces on the site. The proposed renovation will provide four surface parking spaces at the rear of the site and three surface parking spaces in the court.

25. Due to the shape of the lot, the placement of the existing building and the location of the ramp to the garage, the court area is the only place on the lot that can accommodate additional surface parking. The alley that abuts the rear portion of the lot will be used to access the spaces. The proposed location of spaces within the court area results in a more efficient use of land and addresses a major area of community concern by maximizing on-site parking. The spaces are convenient to the occupants of the building.

26. Three thousand five hundred square feet of existing space in the basement/cellar level will be converted to parking to accommodate seven vehicles. The entire basement/ cellar level cannot be used for parking because of the location of certain foundations and footings.

27. The report dated January 7, 1987 and by testimony at the public hearing, the Office of Planning (OP) recommended approval of the application. The OP reported that the addition will not increase the intensity of the use of the structure but rather will result in fewer and larger apartments and additional parking spaces. The OP is of the opinion that the applicant has met the burden of proof for variances as required by Paragraph 8207.11 of the Zoning Regulations. The OP considered the following factors in making its recommendation:

- (a) the structure was built prior to the enactment of the current Zoning Regulations;
- (b) the large building has been vacant for a number of years and the Applicant's real estate appraisal and marketing expert reported that the variance relief is critical to enabling any project to proceed forward as a residential use;
- (c) the building is similar to other structures located in the R-5-B District immediately north of the subject site;
- (d) the need for an elevator in the structure;
- (e) the parking spaces to be provided on the site although none are required; and,

- (f) the site is adjacent to R-5-B zoned property to the north and to an existing R-3 apartment building to the west.

The Board concurs with the reasoning and recommendation of the OP.

28. By letter dated January 7, 1987, Advisory Neighborhood Commission (ANC) 1D reported its opposition to the application on the grounds that the addition of one story to the structure would increase the already nonconforming height of the existing building. The ANC is of the opinion that the Board should not allow an increase in nonconformity unless the increase would benefit the surrounding neighborhood. The ANC argued that the proposed fifth floor would be detrimental to the neighborhood by blocking sunlight and panoramic views, by adding excessive bulk to one end of Bancroft Place and one side of Mitchell Park and by creating traffic congestion and parking needs greater than the community can absorb. The Board does not concur that the addition will have a substantial detrimental effect on the neighborhood by blocking sunlight or resulting in excessive bulk. The Board notes that the protection of panoramic views is not within the jurisdiction of the Board. The Board further notes that the Applicant proposed to provide more parking that is required for the matter-of-right use or the proposed use of the structure and that the number of apartment units will be decreased from the number allowed under the matter-of-right use.

29. Numerous neighborhood groups, including the Citizens' Committee to oppose BZA Application No. 14528 and the Sheridan Kalorama Neighborhood Council and individuals testified and/or submitted letters to the record in opposition to the application. Grounds for the opposition include:

- (a) The concerns expressed by the ANC above.
- (b) The owner of the site overpaid for the property and it is not the responsibility of the Board to "bail out" the owner.
- (c) The Applicant did not meet the burden of proof required by Section 8207.11 of the Zoning Regulations.
- (d) The Bancroft Condominium building is located adjacent to the subject structure to the west. The two buildings are now equal in height and "the addition of a fifth floor would ruin the architectural relationship between the two buildings".

- (e) If the panoramic views from certain units of the St. Nicholas Condominium are minimized, the value of those units will substantially lessen.
- (f) The developers could feasibly renovate the building without adding a fifth floor.
- (g) The proposed fifth floor is not needed to off set the costs of installing an elevator and underground parking and there is a very marginal difference between the rate of return on the renovation of the building as a four story building and the renovation with a fifth floor addition.

The Board does not concur. The Board finds that the price the owner paid for the site is not a criteria for deciding the application. The Board addresses the applicant's burden of proof below. The Board finds that the addition will not have a significantly negative architectural impact on the area. A number of neighboring buildings are similar in height and roofline features. The Board does not have jurisdiction over the protection of views. The Board finds that the building has been vacant for over six years demonstrating that there are difficulties developing the site as the structure now exists.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and evidence of record, the Board concludes that the Applicant is seeking variances, the granting of which requires a showing through substantial evidence of a practical difficulty or exceptional and undue hardship 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 deriment to the public good and that it will not substantially impair the intent, purpose and integrity of the zone plan.

Sub-section 3201.1 of the Zoning Regulations allows a maximum height of 40 feet and a maximum of three stories for the site. The Applicant proposed to increase the building height to 59.76 feet and add one story to the existing four necessitating a variance of 19.76 (49.4 percent) and two stories (66.7 percent) respectively. Section 3305.1 requires a side yard of eight feet. The structure is currently located 1.15 feet from the east property line. The proposed addition will maintain this setback, necessitating a variance of 6.85 feet (85.63 percent). Section 7205.22 does not provide for parking spaces to be located in a court. The Applicant proposes providing three parking spaces in the court at the northeast of the

building. The Applicant is also seeking a variance from Paragraph 7106.14 to allow the enlargement of a nonconforming structure devoted to a nonconforming use. The building is nonconforming as to height, number of stories, side yard and the use as apartments. The Board concludes that the Applicant has met the burden of proof. The site is unique in that it is improved with a nonconforming structure in a derelict physical condition devoted to a nonconforming use.

The Applicant has established that the enlargement of the existing structure is essential to his ability to rehabilitate the building. By virtue of the redesign of the building, including the provisions of parking spaces and the elevator, there is a loss of existing square footage within the building that would otherwise be usable for dwelling unit purposes. There would be a loss of approximately 50 square feet per floor because of the installation of the elevator and a loss of approximately 3,500 square feet because of the provision of underground parking spaces. The Board notes that variance relief was established in the Zoning Regulations so that sites affected by unique situations or conditions could be rendered useful.

The Applicant has also established 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.

The Board concludes that as a matter-of-right, the existing building could be used for 25 apartments and no parking spaces would need to be provided. The current proposal significantly reduces the number of dwelling units and places the maximum number of parking spaces on the site. It is therefore a desirable solution to the problems raised in returning the vacant building to a viable use.

The Board further concludes that the proposed addition will have no significant negative architectural impacts on the neighborhood and will not significantly obstruct light and air from neighboring properties. The protection of views is beyond the jurisdiction of the Board. The Board further concludes that it has given "great weight" to the issues and concerns of the ANC as required by statute.

Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the CONDITION that construction and improvements shall be in accordance with the plans marked as Exhibits No. 7, 29 and 50 of the record, provided that the Applicant may modify the interior plan to provide between 18 and 21 units.

VOTE: 4-1 (Charles R. Norris, Patricia N. Mathews,
William F. McIntosh and Carrie L. Thornhill)

to grant; Paula L. Jewell opposed to the motion).

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

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

UNDER 11 DCMR 3103.1, "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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