

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14833, of the Wynmark Development Corporation, pursuant to 11 DCMR 3107.2, for a variance from the rear yard requirements (Sub-sections 842.4, 842.5, and 2516.2) to allow the proposed construction of three retail buildings on theoretical lots in a C-M-1 District adjacent to a residential district at premises 1201, 1215, and 1225 South Capitol Street, S.W., (Square 651, Lot 801).

HEARING DATE: July 21, 1988
DECISION DATE: July 21, 1988 (Bench Decision)

FINDINGS OF FACT:

1. The property is located on the west side of South Capitol Street between M and N Streets and is known as premises 1201, 1215 and 1225 South Capitol Street, S.W. It is zoned C-M-1.

2. The lot has a frontage of 512 feet along South Capitol Street and a depth of 44.58 feet except for a 20 foot by 72 feet rectangle at the southwest corner which is not included in the application. The lot area of the site is approximately 21,271 square feet.

3. The lot is separated from adjacent two-story row houses in the R-4 zone to the west by a ten foot wide public alley. To the north of the site is an Urban Renewal District which contains commercial establishments including a fast food carry-out, a 7-Eleven and the Skyline Tower hotel. To the east across South Capitol Street are several abandoned warehouse structures, a gas station, Metro bus parking, and vacant lots in the C-M-2 District. To the south of the site are two-story row house structures in the C-M-1 District.

4. The applicant is seeking a variance from the provisions of 11 DCMR 842.4 to eliminate the twelve foot rear yard requirements of the C-M-1 District in order to construct a retail shopping center. The proposed use of the property for retail purposes is a matter of right in the C-M-1 District.

5. The proposed retail shopping center will consist of three separate buildings ranging in size from 3,488 to 4,858 square feet. The anticipated tenants of the shopping center would be neighborhood-oriented retail such as a convenience

store, valet, pharmacy, doctor, dentist or other professional services.

6. The lot will be subdivided into three theoretical lots upon each of which one building will be constructed. The total FAR of the proposed project will be 0.62 with a total gross floor area of 13,258 square feet. Each building will be one-story with a maximum height of twenty-four feet.

7. The Zoning Regulations require the provision of twelve on-site parking spaces. The applicant is providing twenty on-site parking spaces.

8. There are no loading berth requirements for a project of this size. The applicant has designated two spaces in the parking area for deliveries and trash pick-up.

9. The project will be landscaped in accordance with the streetscape and design standards of the Department of Public Works.

10. The representative of the applicant testified that a market feasibility study of the subject site indicated the appropriateness of the site for the proposed project given the site's location on a major thoroughfare and its proximity to pedestrian traffic from the nearby residential community. In addition, the project would benefit the area, as follows:

- a. The project will provide three attractively-designed buildings on a vacant lot which is currently an eyesore;
- b. The project will provide retail stores, including convenience stores, laundry, drycleaning facility and other conveniences to service the existing and future residential uses in the neighborhood;
- c. The project will provide more than adequate parking to accommodate the patrons of the project;
- d. The project will provide entry level job opportunities and tax revenues which will contribute to the City's economy and the health, welfare and prosperity of the citizens; and
- e. The applicant will participate in the First Source Employment Program and will contract with the Minority Business Opportunity Commission, to target 35 percent of construction contracts to minority businesses.

11. The applicant's representative and the architect testified that the market feasibility study indicated that the typical retail tenant requires space approximately fifty

feet in depth, but that the proposed forty-four foot depth would be leasable. The strict application of the rear yard requirement would result in a practical difficulty upon the owner in that twenty-five percent of the buildable lot size would be eliminated resulting in unleasable space thirty-two feet in depth.

12. The project architect was of the opinion that the height, density and visual impacts of the proposed project would have considerably less adverse impacts on the adjacent row house development than a matter-of-right development with a height of forty-feet and depth of thirty-two feet and further that the proposed project provides an ideal buffer between the existing row houses and the existing heavy traffic along South Capitol Street.

13. The project traffic consultant testified that the majority of the patronage of the proposed project will be drawn from existing traffic along South Capitol Street enroute to other destinations and from residents of the area who will travel to the site on foot, therefore, no increase in existing traffic will be created by the proposed development.

14. The project traffic consultant further testified that no dangerous or objectionable traffic conditions would result from the development of the site. Vehicular traffic to the site would generally enter and exit the site from the South Capitol Street service road. Trash pick-ups and deliveries will take place in the front of the structures, which have no rear entrances, and will therefore not impact traffic in the public alley to the rear of the site. The applicant is providing on-site parking in excess of that required by the Zoning Regulations.

15. The Office of Planning, by memorandum dated July 18, 1988, recommended that the application be denied. The OP was of the opinion that the applicant had not met the burden of proof and that the required rear yard is important to protect the adjacent residential area from the impact of the proposed retail use. OP was further of the opinion that commercial vehicular traffic, loading and unloading, trash pick-up, and access to parking would have a detrimental impact on the area. The Board does not concur with the recommendation of the OP.

16. By letter dated July 13, 1988 and through testimony at the public hearing, Advisory Neighborhood Commission (ANC) 2D opposed the granting of the application for the following reasons:

- a. No changes should be allowed in current zoning until comprehensive planning in the area is completed;

- b. There are already enough fast food restaurants along South Capitol Street and hence any addition would turn it into a fast food corridor;
- c. Traffic is already congested at this intersection and the proposed development would worsen traffic flow; and
- d. The commercial viability of the project is in doubt and the ANC questions what would happen if it failed.

17. A representative of the Friends of Carrollsburg Place Association testified at the public hearing in support of the application. The Association represents the residents of the row dwellings directly across the public alley to the west of the subject site. The Association's representative testified that the neighborhood is in need of the types of retail services proposed and that the project, as presented to the Association, will not have an adverse impact on the adjacent residents. The Association's representative indicated that the applicant had addressed the concerns of the Association by agreeing to the following conditions:

- a. That no national fast food chains be permitted to locate in the project;
- b. That a physical barrier or a fence be erected along the rear property line of any abutting property owner who so requests.

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

- a. The subject application is for an area variance and does not involve a change in the existing zoning. The Board must determine whether the applicant has met the requisite burden of proof for area variance relief based on the Zoning Regulations in effect on the date of its decision.
- b. The property is zoned C-M-1. The Board does not have the authority to preclude the development of the property for any purpose which is permitted as a matter-of-right in the zone district in which the property is located.
- c. The Board does not have the expertise or the authority to consider the commercial viability of the project, which is a risk to be borne by the owner or developer of this or any other project.
- d. The Board is persuaded by the testimony of the applicant's witnesses as set forth in Finding of

Fact Nos. 13 and 14 that there will be minimal impact on existing traffic in the area as a result of the proposed development.

- e. The Board further finds that the scale and density of the development, as well as the orientation of access and services to the front of the buildings, will serve to minimize any negative impacts on the adjacent residential area.

CONCLUSIONS OF LAW AND AND OPINION:

Based on the foregoing 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 must further find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the required burden of proof in showing a practical difficulty inherent in the property itself. The lot is long and shallow. The applicant is unable to increase the depth of the lot because it is surrounded on four sides by public right-of-way. The Board further concludes that the proposed development is consistent with the intent and purpose of the C-M-1 District and will not result in substantial detriment to the public good nor substantially impair the intent and purpose of the zone plan. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 3-0 (William F. McIntosh, Paula L. Jewell, and Carrie L. Thornhill to grant; Charles R. Norris not present, not voting).

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

ATTESTED BY:



EDWARD L. CURRY
Executive Director

DEC 16 1988

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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