

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14980 of Gerald H. and Linda T. Salzman, pursuant to 11 DCMR 3107.2, for a variance from the front yard setback requirement for a structure on a theoretical lot (Sub-section 2516.3), a variance from the side yard requirements (Sub-section 405.9), and a variance from the theoretical lot subdivision requirement (Sub-section 2516.2) for the proposed theoretical lot subdivision, addition and conversion of an existing storage building into a single-family dwelling in an R-1-B District at premises 3820 and the rear of 3820 Woodley Road, N.W., [Square 1816, Lots 825 and 826 (19)].

HEARING DATE: March 8, 1989
DECISION DATE: April 5, 1989

FINDINGS OF FACT:

1. The subject property is located on the south side of Woodley Road between 38th and Idaho Avenue and is known as premises 3820 Woodley Road, N.W. It is zoned R-1-B.

2. The site is irregular in shape with a frontage of 50 feet along Woodley Road, a depth of 308 feet on the east, a depth of 278 feet on the west, and a width of 60.8 feet on the south. The site has a total lot area of 14,498.9 square feet.

3. The property is currently improved with a one-story masonry single family dwelling and a one-story, three-bay masonry and wood garage. The property abuts a twenty foot wide public alley to the east and to the south.

4. The area surrounding the site is predominantly developed with single family detached dwellings on large lots in the R-1-B District. The Christ Church is located at the intersection of Massachusetts Avenue and Hamilton Circle.

5. The subject site was subdivided into two theoretical building sites designated as Tax and Assessment Lots 825 and 826 on December 6, 1988. Lot 825 abuts Woodley Road and contains 9,450 square feet of lot area. Lot 825 is developed with the existing single family dwelling and will remain unchanged. Lot 826 at the rear of the site is abutted by twenty foot alleys on the east and south, contains 5,048.9 feet of lot area and is developed with the

existing three-bay parking structure. The applicant proposes to convert the existing masonry and wood parking structure into a single family dwelling.

6. Sub-section 2516.1 of the Zoning Regulations permits the location of two or more principal buildings or structures on a single subdivided lot provided that the use, height, bulk and open space requirements are met. Where a principal building has no street frontage as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front shall be the side upon which the principal entrance is located. Open space in front of the entrance shall be provided equivalent to the required rear yard in the zone district in which the building is located and a rear yard is also required.

7. The applicant proposes to renovate the existing garage and convert it to use as a single family dwelling. The proposed renovations would be confined to the footprint of the existing structure. A partial second story addition would be constructed to provide a sleeping area and bath and exterior modifications would eliminate two garage bay doors and provide doorways and windows appropriate for residential use. One parking space would be provided in an interior garage and the lot would be landscaped with flowers and shrubs.

8. The applicant testified that the subject lot is affected by exceptional or extraordinary conditions as follow:

- a. The lot is exceptionally large and its depth is greater than that of any other lot in the square, including several lots within the square with lot areas in excess of 10,000 square feet.
- b. The subject lot is the only lot in the square which abuts two twenty foot public alleys and has three points of access through the alley system from surrounding streets.
- c. No other lot in the square is currently improved with an accessory structure of similar size, height and material make-up suitable for conversion to residential use.

9. The applicant testified that the strict enforcement of the Zoning Regulations would prohibit the reasonable use of the applicant's property. The applicant testified that it is not possible to acquire additional adjacent land to reduce or eliminate the need for variance relief because the lot is bounded by public alley ways to the east and south and the owner of the lot to the west is uninterested in selling a portion of that property to the

applicant. The applicant argued that while the south lot could be developed with a conforming residence, the applicant did not wish to demolish an existing sound structure nor to eliminate the existing open area between the two structures on the site.

10. The applicant testified that the proposed conversion would not have a negative impact on adjoining and nearby properties in that an existing unattractive garage structure which has existed at the subject location would be renovated into an attractive, landscaped single family dwelling; the open space between the existing single family dwelling and the proposed conversion would be maintained; access to the proposed dwelling will be via the existing alley system; and the proposed conversion will generate less traffic than the use of the structure as a three-bay garage.

11. The Office of Planning (OP), by memorandum dated March 1, 1989, recommended that the application be denied. The OP was of the opinion that the lot area of the property indicates that two single family dwellings could be accommodated on the site. However, the proposed conversion would cause substantial detriment to the public good and impair the intent of the R-1-B District within the McLean Gardens neighborhood.

12. The Advisory Neighborhood Commission (ANC) 3C, by letter dated March 1, 1989 opposed the granting of the application. The ANC was of the opinion that the proposed conversion would create an "alley dwelling" or "alley lot" which would set a precedent in the community to the detriment of the public good and that variance relief is inappropriate in that the size and shape of the subject lot, as well as any resultant hardship, is self-created by the applicant.

13. The record contains correspondence from eleven nearby property owners offering no objection to the proposed conversion.

14. The record contains several letters in opposition to the application and several nearby property owners appeared at the public hearing in opposition to the application. The opposition was generally based on the following:

- a. The proposed conversion of the existing garage would be inconsistent with the character of the neighborhood.
- b. The front of the proposed residence is too close to the alley.

- c. The proposed location of the residence would adversely impact on other resident's privacy.
- d. The traffic generated by a residential use would increase the demand on parking in the area.
- e. The alley system would be inadequate for emergency vehicles to access the proposed residence.
- f. The creation of an "alley dwelling" will reduce the property values in the area.

15. In rebuttal to the concerns expressed by the ANC and the opposition, the applicant argued that the use of the structure as a single family dwelling is consistent with the R-1-B zone; the windows in the proposed dwelling are designed so as to protect the privacy of nearby properties; the structure is separated from other properties by the existing twenty foot wide public alley system; there will be no change in the alley system due to the proposed conversion so there will be no change in access by emergency or other vehicles; additional parking could be provided on site if demanded; and no evidence was presented to support the contention that the proposed conversion would adversely impact area property values.

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

- a. The granting of this application would not set a precedent in that each matter before the Board is considered based on its own merits and individual circumstances.
- b. As set forth in Finding of Fact No. 6, the location of two principal structures on a single subdivided lot is permitted subject to specific provisions of the Zoning Regulations. The applicant's proposal does not result in the creation of an "alley lot" as defined in Section 199 of the Zoning Regulations.
- c. The burden of proof for establishing a case on the merits to justify the granting of variance relief rests with the applicant whether or not evidence is offered in opposition to the case.
- d. The Board noted the opposition's contentions relative to adverse impacts which may be created by the proposed conversion but declines consideration of those issues based on the Board's determination that the applicant has failed to meet the burden of proof as set forth in Finding of Fact No. 17.

17. The Board finds that the applicant has not met the requisite burden of proof. While the size and shape of the subject site may be extraordinary in the immediate area, the evidence presented indicates that the site is currently developed in conformance with the provisions of the Zoning Regulations. The applicant further offered testimony that, as subdivided, the lot is large enough to accommodate the construction of a new dwelling without necessitating variance relief. The applicant's desire to change the nature of the existing conforming accessory structure into a residence necessitates the requested variance relief. There is no evidence that the applicant would suffer a practical difficulty the Zoning Regulations were strictly enforced in that the reasonable use of the existing structure as an accessory garage can continue. In addition, the retention of the garage as it currently exists would not seem to preclude the matter-of-right construction of a residence on the lot as presently subdivided.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires proof through substantial evidence of a practical difficulty upon the owner of the property arising out of some extraordinary or exceptional situation or condition of the property. The Board must further find that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan. The Board concludes that the applicant has not met the burden of proof.

The Board concludes that there is no practical difficulty inherent in the property itself which would sustain the area variances requested. The subject site, while larger than required by the Zoning Regulations, is currently developed with a conforming single family dwelling and accessory garage. The proposed theoretical lot subdivision and conversion of the existing garage into a single family dwelling would result in the creation of a single family dwelling which does not conform to the front and side yard requirements. While the proposed conversion would not alter the footprint of the existing development on the site, the change in the use from an accessory garage to a principal dwelling renders the existing structure nonconforming. The applicant would not suffer a practical difficulty in achieving reasonable use of the property if the provisions of the Zoning Regulations are strictly enforced. The Board notes that the applicant has conceded that the property is large enough to be developed with two principal structures without necessitating variance relief if the subject garage were demolished or continued for use as an accessory building. The applicant's desire to retain the

existing structure is not sufficient grounds to sustain the granting of the requested variance relief in this case.

The Board further concludes that the conversion of an existing accessory building into a nonconforming dwelling on a site currently improved in conformance with the provisions of the Zoning Regulations is not in keeping with the intent and purpose of the Zoning Regulations and map. The Board has afforded the ANC the "great weight" to which it is entitled. Accordingly it is ORDERED that the application is hereby DENIED.

VOTE: 5-0 (William F. McIntosh, Paula L. Jewell, Maybelle Taylor Bennett, Charles R. Norris and Carrie L. Thornhill to deny).

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

ATTESTED BY:



EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

NOV 29 1990

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."

14980order/BHS29

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION NO. 14980

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated NOV 29 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY
Executive Director

DATE: NOV 29 1990