

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15161 of Shamsher Singh, as amended, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that exceeds the allowable lot occupancy requirements [Paragraph 2001.3(a) and (c)], and a variance from the use provisions (Sub-section 320.3) to allow conversion of a single-family row dwelling into a 5-unit apartment house in an R-3 District at premises 2111 S Street, N.W., (Square 2532, Lot 44).

HEARING DATE: October 25, 1989 and November 14, 1990
DECISION DATE: December 6, 1989 and January 3, 1990

ORDER IN REHEARING

INTRODUCTION

The Board denied the application by its Order dated June 18, 1990. The Board concluded that the applicant had not met the burden of proof by establishing that the property was affected by an exceptional condition inherent in the property itself which would create an undue hardship upon the owner if the Zoning Regulations were strictly enforced.

Counsel for the applicant filed a timely motion for reconsideration or rehearing on June 26, 1990. In support of the motion, counsel argued that the applicant was unable to present evidence of the unique physical aspects of the property because he was unavoidably out of the country at the time of the public hearing. In addition, the applicant failed to submit the plans for the project with the original submission. A set of plans which were reviewed and stamped by the Zoning Administrator in conjunction with the memorandum and computations dated April 11, 1988 was offered into evidence by the applicant. In addition the applicant offered evidence of the availability of financing to ensure adequate and timely renovation of the structure if the application were granted. There was no opposition to the motion for reconsideration or rehearing.

Upon review of the motion and the record in the case, the Board concluded that the applicant's submission indicated the existence of evidence which was not available at the time of the public hearing. At its public meeting of July 11, 1990, the Board reconsidered its decision and set the application for rehearing.

On August 14, 1990, the applicant submitted revised plans. The revised plans were referred to the Office of the Zoning Administrator for review prior to the scheduling of the rehearing. By memorandum dated September 10, 1990, the Zoning Administrator

indicated that additional variance relief from the provisions of Section 2001.3(a) and (b) was required. The notice of public hearing was appropriately amended to reflect the zoning relief required for the proposed project and the case was scheduled for public hearing on November 14, 1990.

FINDINGS OF FACT:

1. The property is located on the north side of S Street between Connecticut Avenue and Phelps Place and is known as premises 2111 S Street, N.W. It is zoned R-3.

2. The property is rectangular in shape with a frontage of twenty feet along S Street and a depth of 85 feet for a total lot area of 1,700 square feet.

3. The site is currently improved with a four-story plus basement single-family row dwelling.

4. The area surrounding the subject site contains a mixture of uses including row dwellings, office buildings, embassies, apartment buildings and various small commercial establishments. There is one single-family dwelling located in this block on the north side of S Street.

5. The applicant proposes to renovate the existing building and convert it for use as a five-unit apartment building. The facade of the structure will be maintained with minimal cosmetic treatment. The interior of the building will be gutted and new floors, ceilings, plumbing and electrical systems, individual kitchens and bathrooms will be installed. In addition, an elevator permitting handicapped access to the upper levels is proposed to be installed with access via the street level entrance to the basement of the structure.

6. The applicant testified that the proposed apartments will be sold in the open market as condominium units.

7. There is one parking space at the rear of the site. The property is located approximately one-half block from the intersection of Connecticut and Florida Avenues and approximately two blocks from the Dupont Circle Metro Station. Residential permit parking is in effect on the subject block.

8. The applicant also proposes to extend the partial fourth floor to the rear of the building. The rear wall of the addition would be set back eight feet from the rear wall of the lower three floors and would provide space for a small rear deck for the fourth floor apartment. The proposed addition would result in the addition of approximately 224 square feet of floor area to the existing building.

9. The property is located in the R-3 District which permits residential use as a matter of right including single-family semi-detached dwellings with a minimum lot width of 30 feet, a minimum lot area of 3,000 square feet, and a maximum lot occupancy of forty percent; single-family row dwellings with a minimum lot width of 20 feet, a minimum lot area of 2,000 square feet, and a maximum lot occupancy of sixty percent. A minimum lot width of forty feet, a minimum lot area of 4,000 square feet, and a maximum lot occupancy of forty percent is required for all other structures. The maximum height permitted in the R-3 District is forty feet and three stories. The minimum rear yard requirement is twenty feet.

10. The subject property was constructed circa 1900 and is currently nonconforming as to lot width, lot area, lot occupancy, height, number of stories, rear yard and open court requirements. The property abuts a public street to the south, a public alley to the rear and currently improved properties to the east and west. The applicant is therefore unable to acquire additional property to lessen the degree of the existing nonconformities. The proposed fourth story addition will not increase the existing nonconformities inherent in the site.

11. The property was originally constructed as a single-family row dwelling. The applicant testified that the premises was converted to use as a rooming house during the 1940's, however, no Certificate of Occupancy for that use could be located. As presently configured the structure contains eighteen rooms, six commonly located bathrooms, two kitchens, ten fireplaces, individual locks on bedroom doors, and an exterior metal fire escape consistent with its previous use as a rooming house.

12. The property is located in the Sheridan-Kalorama Historic District. The facade of the structure will remain unchanged except for minor cosmetic repairs; the low shed at the rear of the site will be demolished; the brickwork at the back of the structure will be refurbished; and the proposed fourth story addition will be offset eight feet from the rear wall of the structure as recommended by the Historic Preservation Division. The roof and gutters of the building will be replaced.

13. The existing structure is currently vacant and in a deteriorated condition. The applicant testified that the proposed renovation and conversion would be beneficial to the neighborhood in that an existing delapidated building will be restored in keeping with the surrounding area and would be upgraded to meet current Building Code requirements.

14. The applicant testified that the property was affected by an exceptional condition in terms of the physical size and configuration of the existing structure; the existing lot constraints; and the economic constraints of the massive renovation

necessary to re-convert the structure into a single-family use.

15. The applicant further testified that the proposed restoration and conversion would not adversely impact the neighborhood. The intensity of use of the proposed five-unit apartment building would be less than the previously existing, although possibly illegal, eighteen-room rooming house. The proposed fourth story addition would not be visible from the street. The demand for on-street parking would not impact existing conditions by virtue of the proximity of the site to public transportation and the existing residential parking permit program in the area.

16. The Office of Planning (OP), by memorandum dated November 7, 1990, recommended approval of the application. The OP was of the opinion that the applicant has met the burden of proof. The existing lot constraints inherent in the site create a practical difficulty in that the applicant is unable to reasonably add to the structure. The interior configuration of the structure lends itself for use as a multi-unit dwelling and requiring the applicant to reconfigure the interior for single-family use would cause an undue hardship upon the owner. The OP was further of the opinion that the proposed use would be compatible with existing development in the immediate area and restoring a vacant structure for residential use would have a stabilizing impact on the neighborhood.

17. By letters dated April 16, November 9 and November 13, 1990, Advisory Neighborhood Commission (ANC) 1D indicated that the applicant made a presentation of his case and that a straw vote of attendees at the ANC meeting of April 3, 1990 resulted in a vote of 45 persons in favor, ten persons opposed, and eleven persons abstaining, with the caveat that the applicant invest sufficient funds in the renovation of the structure and that such renovation proceed within a reasonable period of time. ANC 1D is made up of only two Single Member District Commissioners. One of the SMD members voted in support of the application. The other SMD member voted to oppose the application.

18. Several nearby property owners testified at the public hearing and the record contains a petition of thirty-six signatures in opposition to the application. The opposition was generally based on the following:

- a. The applicant has failed to properly maintain the structure; allowed the accumulation of trash and debris; and allowed pest infestation including roaches, rats and pigeons.
- b. The property has been used as a rooming or boarding house in the past without the issuance of a valid Certificate

of Occupancy.

- c. The provision of five units and only one on-site parking space at the subject premises will result in an increase in the demand for on-street parking in the area thereby exacerbating the existing problems experienced by area residents seeking parking on the street.
- d. The number of single family homes available will be diminished and the entire character of the block will be changed if the existing single-family residences are not safeguarded.

19. In addressing the issues and concerns expressed by the opposition, the Board finds as follows:

- a. The concerns relative to the failure of the applicant to maintain the property in a safe and sanitary manner and the alleged illegal use of the premises without the proper approvals are beyond the scope of the Board's jurisdiction and should be addressed to the proper enforcement authorities for appropriate reviews and action. The Board, however, wishes to remind the applicant of his responsibility to comply with all appropriate D.C. Codes and Regulations.
- b. The plans for the proposed project have been reviewed by the Zoning Administrator on two occasions. The Zoning Administrator has determined that parking for the project is adequate based on a parking credit and the provision of one parking space at the rear of the premises. No relief from the parking requirements is being sought in this application.
- c. The Board notes that the standards for the granting of a use and or area variance have been addressed by the Court in several instances including Palmer vs. The Board of Zoning Adjustment, 287 A.2d 535 (DC app. 1982) and the Clerics of St. Viator vs. the Board of Zoning Adjustment 320 A.2d 291, 294 (DC app. 1974). The Court has held that a use variance is proper when it has been shown that a property meets the criteria set forth in 11 DCMR 3107.2 and also when it has been shown that a reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. The Board must apply those standards as appropriate given the circumstances relative to each specific case. The Board further notes that the applicant bears the burden of proof.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a use variance and an area variance. In order to be granted such variances, the applicant must demonstrate an undue hardship upon the owner caused by an exceptional or extraordinary condition inherent in the property itself and further that such exceptional condition of the property would create a practical difficulty upon the owner in complying with the strict application of the Zoning Regulations.

The Board concludes that the applicant has met the requisite burden of proof. The property was developed prior to the adoption of the Zoning Regulations on May 12, 1958 and is currently nonconforming as to lot size, height, number of stories and rear yard. The interior configuration of the structure was modified at some time in the past to accommodate a multi-unit rooming house and is not easily reconfigured for single-family use. The structure is large and exceeds the zoning standards for single-family residential use in the R-3 District in terms of height, number of stories, and lot occupancy. Because the structure currently exceeds the maximum permitted lot occupancy, no addition to the structure may be made without variance relief. The physical constraints of the site, as set forth in Finding of Fact Nos. 9 and 10, prevent the applicant from complying with the current Zoning Regulations.

The Board further concludes that the project is similar in character with the majority of development on the subject block, it is consistent with the intent and purpose of the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good. Accordingly, it is ORDERED that the decision of the Board dated June 18, 1990 is REVERSED and the application is hereby GRANTED.

DECISION DATE: December 5, 1990

VOTE: 4-1 (Charles R. Norris, Sheri M. Pruitt, and Carrie L. Thornhill to grant; John G. Parsons to grant by proxy; Paula L. Jewell opposed to the motion).

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

BZA APPLICATION NO. 15161
PAGE 7

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: FEB 22 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE

FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ODER 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.

15161Order/SS/BHS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION NO. 15161

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 FEB 22 1991 and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and to is listed below:

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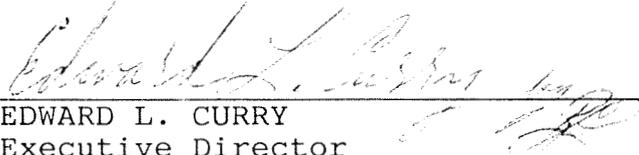
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EDWARD L. CURRY
Executive Director

DATE: FEB 22 1991

ATT. 3/BHS