

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15163 of Saint James Washington Limited Partnership I, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Sub-section 411.11 to allow a roof structure that does not meet the normal setback requirements, a variance from the allowable lot occupancy requirements (Sub-section 403.2), a variance from the floor area ratio requirements (Sub-section 402.4), a variance from the maximum height requirements (Sub-section 400.1), a variance from the open court width requirements (Sub-section 406.1), a variance from the rear yard requirements (Sub-section 404.1), and a variance from the setback requirements for roof structures [Paragraph 400.8(b)] for the proposed construction of an apartment building addition and the conversion of two existing structures into an apartment house in an R-5-D District at premises 2521-2523 K Street, N.W., (Square 15, Lot 802 and 803).

HEARING DATE: October 25, 1989  
DECISION DATE: November 1, 1989

FINDINGS OF FACT:

1. The subject site is located on the north side of K Street between 25th and 26th Street, N.W. and is known as premises 2521 - 2523 K Street, N.W. The property is zoned R-5-D.

2. The property contains 4,800 square feet of land area. The lots are located between two apartment buildings. The rear portion of the site abuts a 20-foot public alley.

3. The lot is improved with two vacant row structures. The building located at 2521 K Street was constructed around 1843. The building located at 2523 K Street has been traced to 1868. The buildings, known as the Cooper Houses, are in a deteriorating condition and have been uninhabited since September 1, 1983.

4. An application by the previous owner for a permit to demolish the buildings was denied after the buildings were granted landmark status on November 12, 1984.

5. The subject site is located in the Foggy Bottom neighborhood which is generally characterized by high-rise apartment buildings and several hotels.

6. The applicant is proposing to completely restore and rehabilitate the two historic townhouses and construct a new 12-story apartment building to the rear of the existing townhouses. The building will incorporate the townhouses into an integrated design scheme. The completed structure will contain twenty residential units. There will be eight units with one-bedroom plus den, eight units with two-bedrooms plus den and two three-bedroom penthouse units. The two remaining units will be located in the townhouses.

7. Five parking spaces are required. The applicant proposes to create 24 underground spaces to accommodate the parking needs of the new project. There will be ten 9' x 19' spaces and fourteen 8' x 16' spaces.

8. The R-5-D District permits matter-of-right general residential uses of high density development, including single-family dwellings, flats and apartments to a maximum height of 90 feet, a maximum floor area ratio of 6.0 for apartment houses and 5.0 for other structures and a maximum lot occupancy of 75 percent. The proposed apartment building is a matter-of-right use in this zone District.

9. Prior to finalizing the design on this project, the developer met with the Historic Preservation Review Board (HPRB) and Advisory Neighborhood Commission (ANC) 2A. The HPRB and ANC were most concerned with the preservation and restoration of the Cooper House structures rather than merely their facades. The ultimate design, which sets the new building back from the Cooper House and places it at the rear of these historic structures, responds to the major concern of the HPRB and the ANC.

10. Section 406.1 of the Zoning Regulations requires that open courts be at least 10 feet wide. The courts provided by this proposal are 6.62 feet and 3.0 feet. Variances in the amount of 3.8 feet (33.8%) and 7.0 feet (70%) are therefore being requested. The applicant indicated that the design of the new construction follows the rear building lines of the two existing structures. Because these structures differ in depth, a nonconforming court is created. It would therefore be impractical to limit the construction to the rear portion of the site and conform to the court requirements.

11. Pursuant to Section 404.1, the rear yard is required to be at least 27.5 feet in depth. The applicant stated that having to place the new structure at the rear of the lot creates an encroachment on the rear yard. Therefore, no rear yard is provided and a variance of 27.5 feet is being sought.

12. Section 405.2 allows a 75 percent lot occupancy in the R-5-D District. Approximately 91 percent of the lot is

to be covered. The applicant pointed out that the design constraints make it difficult to meet the 75 percent lot occupancy requirement, address the concern of the HPRB and render the project feasible.

13. Section 411.11 empowers the Board to approve the location, design, number and all aspects of roof structures, even if the roof structure does not meet the normal set back requirement of sub-section 400.8.

Section 400.8(b) requires that roof structures be set back from all exterior walls a distance of at least equal to its height above the roof upon which it is located. In this case, the roof structure is 12.5 feet in height. The setbacks are as follows: 0.0 feet, 6.0 feet, 11.0 feet and 5.0 feet. Variances are being requested in the following amounts: 12.5 feet (100%), 6.5 feet (52%), 1.5 feet (12%) and 9.5 feet (76%). The applicant stated that the stringent design requirements imposed by the HPRB make a uniform roof structure setback impossible. It was noted that the proposed project is stepped back from the original historic residential structures to maintain their integrity. Thus, the penthouse has been placed toward the rear of the new addition. The applicant maintained that irregular placement of the roof structure is the only practical way of providing the needed structure.

14. The R-5-D District permits a maximum height of 90 feet, pursuant to Section 400.1. The proposed structure is 107.5 feet in height. The applicant is therefore requesting a height variance of 17 feet 6 inches. According to the applicant's architect, only 11 feet of this added height can be seen by passers-by. He further indicated that the additional height compensates for the inability to build a new one on the front of the lot where the Cooper Houses are located. He noted that because these structures occupy so much space on the lot, no new saleable area is available up to a height of 20 feet.

15. Section 402.4 allows a Floor Area Ratio (FAR) of 6.0 for residential development in the R-5-D District. The applicant seeks approval of a 7.7 FAR for this project. A variance of 1.7 FAR (8,100.0 square feet or 28.13%) would therefore be needed. The applicant pointed out that 1.1 FAR is taken up by the Cooper Houses with their courts and porch. The new structure above grade, therefore, contains only 6.6 FAR, only .6 FAR over what is permitted. The applicant stated that the bulk is similar to other buildings in the area.

16. The developer testified that the apartment building was designed so as to maximize the light and air of its future residents. The design is also sensitive to the adjacent buildings that have windows on the lot line because it is stepped back from these structures.

17. The applicant stated that the proposal represents an opportunity to return the site to a viable use, to retain the existing buildings in their entirety and to end the five year process of attempting to preserve these badly deteriorating structures.

18. The Office of Planning (OP), by memorandum dated October 18, 1989, recommended approval of the application. OP noted that the proposed residential use of the site is permitted as a matter-of-right. In OP's opinion, the location of the two landmark structures on the subject site is an exceptional condition which has created an exceptional and extraordinary practical difficulty for the property owner. Because of the HPRB's interest in preserving the historic structures and its strong interest in ensuring that the new construction would not be built directly above the landmark buildings or overshadow them, the proposed construction has been pushed back toward the rear portion of the site to allow for separation and differentiation. OP pointed out that without the landmark structures on the lot, an apartment building comparable to the one proposed could be built without variance relief.

19. The Office of Planning noted that the property is located on the portion of K Street which consists of eight lanes of traffic with a dividing center strip. It is a major arterial street that carries heavy east-west vehicular traffic. OP noted further that the project provides enough parking to respond to the concerns of neighbors and that the building's design minimizes the impact on the light and air of the adjacent structures to the east and west. Finally, OP stated that the proposal provides for adaptive re-use of the existing buildings and the conversion of an underutilized site to increase the housing stock of the area.

20. The Board is in accord with the opinion of the Office of Planning.

21. Advisory Neighborhood Commission (ANC) 2A, by report dated October 17, 1989, expressed its support for the application. The ANC's major concern was that the Cooper Houses would be preserved. The ANC was pleased with the proposal to do this and with the fact that more housing would be added to the area.

22. The ANC indicated that it would prefer less height and bulk but the ANC recognizes the special problems created both by the narrowness of the site and the necessity of preserving the integrity of the Cooper Houses. The ANC was impressed with the setback provided from the Cooper Houses and the street. However they wanted the applicant to eliminate one of the balconies and set back another balcony more than originally intended.

23. Responding to these concerns of the ANC, the developer indicated that the balconies must remain to provide adequate light and air to those units and the height of the structure was reduced an additional three feet.

24. Finally, the ANC expressed its appreciation for the developer's cooperation in working with the ANC's architect and consultant in creating a more acceptable design.

25. The representative of ANC-2A-03, single member district in which the property is located, testified in opposition to the granting of height and FAR variances. She stated that the proposed building would be the tallest in Foggy Bottom and that those who live closest to the site will be adversely affected by its height. She further stated that the developer failed to support his statement that resulting profits from the project would be exceeded by the cost of preserving the Cooper Houses if the FAR and height variances are not granted. Furthermore, she indicated that the ANC members who support the project are not those who would be most affected by it. Finally, she indicated that the residents want a covenant of assurance that the property will be used for long term residential purposes only.

26. The Board finds that the property is in an R-5-D District which permits residential and many non-residential uses as a matter-of-right. Therefore, the Board finds that the use of the property is not before it, and the Board has no jurisdiction over a covenant that would limit the use. The Board finds further that its decision in this matter cannot be based on economic factors, therefore, detailed financial information from the developer would be irrelevant.

27. A neighbor residing across the street from the site at 950 - 25th Street, opposes the height of the proposed structure. She maintained that it would be out of scale with the remainder of the neighborhood.

28. A member of the Board of Directors of the Foggy Bottom Historic District Conservancy testified in opposition to the height and resulting FAR. He argued that from the street the building looked like a skyscraper and that it is inappropriate to have it located so close to the low-rise historic district of Foggy Bottom.

29. One letter of support and seven letters in opposition were submitted into the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking variances and a special exception to allow the construction of an apartment building behind an historic landmark. The granting of variances 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 granting the requested relief will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met this burden of proof.

In the Board's opinion, the narrowing of the lot at the rear, the location of neighboring structures at their contiguous property line and the presence of the landmark structures creates an exceptional condition in the development of the property. The applicant is required to restore, preserve and design around the historic structures. The applicant is unable to demolish them and construct a new building that would not need variance relief. The Board therefore concludes that this is an exceptional condition which creates a hardship for the owner in meeting the requirements of the Zoning Regulations.

The Board is of the opinion that the applicant has made every effort to address the concerns of the Historic Preservation Review Board and the Advisory Neighborhood Commission. The project was designed to minimize its effect on surrounding properties and minimize the view from the street while preserving the existing structures. Additionally, the project provides more than adequate parking. The Board concludes that this project will not adversely affect neighboring property or parking conditions in the area.

As to the special exception relief requested, the Board concludes that a special exception the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of sub-section 411.11 and 3108.1 and that the relief requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. The Board finds the applicant has met its burden.

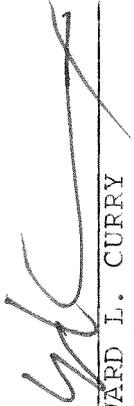
The Board concludes it is impracticable because of the size and configuration of the lot and the design requirements of the Historic Preservation Review Board tend to make full compliance restrictive, prohibitively costly and unreasonable.

The roof structure is consistent with the requirements of 11 DCMR 411.3 and 411.5. The intent and purpose of section 411 will not be materially impaired by the structure, and the light and air of adjacent buildings shall not be adversely affected.

Further, the Board concludes that the variances can be granted without substantial impairment to the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. The Board has afforded the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is hereby GRANTED.

VOTE: 4-1 (Paula L. Jewell, Charles R. Norris and William F. McIntosh to grant; Carrie L. Thornhill to grant by proxy; Tersh Boasberg 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: JUL 30 1990

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS 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 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15163

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 JUL 30 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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A handwritten signature in black ink, appearing to read "E. L. Curry".

EDWARD L. CURRY  
Executive Director

DATE: JUL 30 1990