

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15294 of Terence O'Toole, pursuant to 11 DCMR 3107.2, for a variance to allow a driveway which is less than 28 feet from another driveway on an adjacent lot [Paragraph 2117.8(d)] for a driveway as access to a single-family row dwelling in a D/R-3 District at premises 2127 R Street, N.W., (Square 2514, Lot 4).

HEARING DATE: May 9, 1990  
DECISION DATE: May 9, 1990 (Bench Decision)

FINDINGS OF FACT:

1. The subject site is located on the north side of R Street, N.W. between Florida Avenue and 22nd Street. It is improved with a three-story brick row house. The lot contains 1,964.0 square feet in land area and averages 25.37 feet in width. The existing single-family row dwelling occupies 1,070.75 square feet of the lot or 54.52 percent in lot occupancy. The subject lot does not abut a public alley.

2. The area surrounding the subject property is characterized primarily by a mix of residential uses including single-family row dwellings, rooming houses and large apartment buildings. The area is also dotted with foreign embassies and chanceries, small office buildings, restaurants, hotels and night clubs. Florida Avenue, N.W. is situated one-half block to the east of the property, Massachusetts Avenue and Sheridan Circle are located one block to the south.

3. The subject site is zoned D/R-3. The D (diplomatic overlay) District permits the location of chanceries subject to the disapproval of the Board of Zoning Adjustment. The R-3 District permits matter-of-right development of single-family residential uses including detached, semi-detached, and row dwellings with a minimum lot area of 2,000 square feet, a minimum lot width of 20 feet, a maximum lot occupancy of 60 percent, and a maximum height of three stories/40 feet. The provisions regulating both Districts apply.

4. The applicant purchased the property in August 1989 with plans for major renovations. Part of the renovations included the construction of a driveway and garage in the basement area in front of the house.

Presently, there is a small tree located on public property in front of the house. In July 1989, prior to finalizing the purchase of the house, the owner applied for a permit to construct the driveway and garage. On July 21st he received approval of the applications. The garage permit was issued on July 28th. However, on September 13, 1989, approval for the driveway permit was withdrawn. The Zoning Administrator's office explained to the owner that to allow the driveway to be constructed in accordance with the plans submitted, would violate the Zoning Regulations which requires a minimum of twenty-eight feet (28') between the driveways of adjacent row houses. A permit to construct a driveway had previously been issued to the owner of 2125 R Street, the property adjacent to the subject site. If both driveways are built, they would be within 28 feet of each other. The applicant immediately submitted, through his architect, a revised driveway and garage plan allowing 28 feet between the respective driveways. On September 15, 1989 the new plan was approved. On October 18, 1989 the applicant was advised that a permit would be needed to remove the small tree. The applicant applied for the tree permit and in early December 1989, the Department of Public Works (DPW) refused to grant a permit to either remove or relocate the tree. The applicant made a formal appeal from this decision to DPW on December 12, 1989, requesting that the earlier DPW decision be reversed, citing the hardship and inequities of the situation. On January 16, 1990 DPW replied and upheld the earlier decision, refusing to allow removal of the tree. DPW stated that the tree in question is a linden tree, which is a 'prized species'. DPW also suggested that the applicant seek a variance from the 28-foot limitation with the Board of Zoning Adjustment, so that the tree could be saved and the driveway constructed. DPW offered its support in pursuing the variance with the BZA. After further discussion with DPW, the applicant filed the subject application requesting relief from the Zoning Regulations. The applicant is using his original plans in this application.

5. The proposed driveway will be 9 feet in width and 29 feet in length. Two curb cuts will be made at the entrance of the driveway to allow for access to and from the street.

6. The applicant indicated that location of his property behind a public tree which the city deems worthy of saving is an exceptional condition which creates a practical difficulty for the owner in his attempt to construct a driveway on his property in strict compliance with the Zoning Regulations. He indicated that the driveway would provide the security and ease of access to the house needed by his family. If he cannot remove the tree or get relief from the Zoning Regulations, the driveway cannot be constructed.

7. The applicant testified that parking conditions in the area would not be affected if the variance were granted. The applicant also testified that there are many driveways in the neighborhood and many of them are less than 28 feet away from driveways on adjacent property.

8. By memorandum dated May 2, 1990, the Office of Planning (OP) recommended approval of the requested variance. OP is of the opinion that the applicant is faced with a practical difficulty in constructing a driveway, maintaining a tree and still complying with the driveway requirements of the Zoning regulations. Without variance relief, the driveway cannot be built. OP noted that granting the application would allow the city to maintain a valuable street tree and still allow the applicant to provide off-street parking. OP is, therefore, of the opinion that granting the relief requested would not cause substantial detriment to the public good nor would it impair the intent, purpose or integrity of the zone plan.

9. Advisory Neighborhood Commission (ANC) 1D, by letter dated May 1, 1990, expressed support for the subject application. The ANC was pleased that the applicant informed his neighbors of his plans.

10. The Department of Public Works, Chief of the Tree Division, expressed strong support for the application because of the city's interest in saving the existing street tree.

11. A neighbor residing at 2338 Massachusetts Avenue, N.W. testified in opposition to the application. He opposed the application on historic preservation grounds, stating that it is undesirable to have a driveway constructed underneath of a bay window and leading into the facade of the house. He indicated that the matter needed to be presented to the Historic Preservation Review Board (HPRB) for review. He noted however that HPRB review could take place after the Board made its decision on the application.

12. One letter and a petition containing 27 signatures in support of the application were submitted into the record. Three letters in opposition were received.

#### 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 variance to allow a driveway which is less than 28 feet from a driveway on an adjacent lot. 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.

The Board is of opinion that the close proximity of the house to the tree is an exceptional condition which creates a practical difficulty for the owner in his effort to provide off-street parking.

The Board concludes further that the driveway can be constructed without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zone plan.

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: 4-0 (Charles R. Norris, William F. McIntosh, Paula L. Jewell and Carrie L. Thornhill to grant, Lloyd Smith not voting, not having heard the case).

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

ATTESTED BY:

  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER:

AUG 17 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 2038, 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."

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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.

15249order/BHS24

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



APPLICATION NO. 15294

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mailed to all parties, dated AUG 17 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

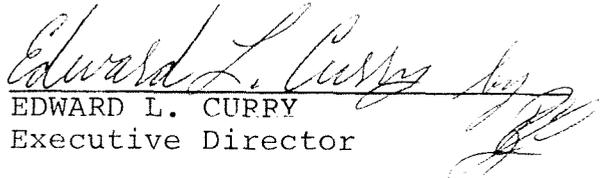
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Advisory Neighborhood Commission 1-D  
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Washington, D.C. 20009

  
EDWARD L. CURRY  
Executive Director

DATE: AUG 17 1990