

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15399 of Glenn and Tanina Richardson, pursuant to 11 DCMR 3107.2, for a variance from the 9 x 19 foot required size of a parking space requirement (Sub-section 2115.1), and a variance from the provision that all parking spaces shall be located on the same lot with the building they are intended to serve (Sub-section 2116.1) for two flats in an R-5-B District at premises 1501 Swann Street, N.W., (Square 191, Lot 113 and 114.

HEARING DATE:           October 17, 1990  
DECISION DATE           November 7, 1990

Findings of Fact:

1. The property is located on the north side of Swann Street between 15th and 16th Streets and is known as premises 1501 and 1503 Swann Street, N.W. It is zoned R-5-B.

2. The property consists of two lots, each of which is seventeen feet in width and 82 feet in depth for a total lot area of 1,394 square feet. The lots are generally rectangular in shape and topographically level.

3. The property has a total frontage of thirty-two feet along Swann Street, abuts a ten foot wide public alley to the east and a fourteen foot wide public alley to the north. The adjacent property to the west is developed with a row dwelling.

4. The site is located between the Dupont Circle and Logan Circle neighborhoods. This area contains row dwellings and mid-rise apartment buildings. The 16th Street corridor is located west of the site. The corridor contains more intense land uses including high-rise residential development and professional office space. Churches and other institutional facilities are scattered throughout the community.

5. The site is zoned R-5-B. This zoning district permits matter-of-right development of general residential uses, including single-family dwellings, flats, and apartments to a maximum lot occupancy of 60%, a maximum floor area ratio (FAR) of 1.8 and a maximum height of 60 feet. The Zoning Regulations require one parking space for each two dwelling units for flats in the R-5-B District.

6. The property has recently been improved with two four-story plus basement flats. The buildings were constructed as a matter of right and the exterior of the buildings has been completed.

7. By Order Nos. 9193 and 9317, the Board approved the location on the subject site of four accessory parking spaces to serve the apartment building located across the 10 foot wide public alley to east at 1822-24 - 15th Street, N.W. The Board required that a covenant be provided by the owner to insure that the parking spaces would be available as long as the apartments which they are designed to serve are used. Such covenant was filed on August 29, 1967.

8. The covenant which was filed on August 19, 1967 stated that the subject property would be used for "no purpose other than accessory parking spaces". The originally recorded covenant was amended on April 25, 1989 to allow for the use of the site in accordance with the provisions of the R-5-B District. The requirement to provide four accessory parking spaces to serve the apartment building at 1822-24 - 15th Street remained unchanged.

9. The development of the site for two flats commenced pursuant to Building Permits Numbered B-49007275 and B-49007276 dated May 22, 1990. The matter-of-right development included the provision of two nine by nineteen foot parking spaces to serve the newly constructed flats, as well as the retention of four nine-by-nineteen parking spaces to serve the apartment building at 1822-24 - 15th Street as required by the covenant.

10. The applicants are proposing to provide two 8.5 x 19 foot parking spaces to serve the residential development. The Zoning Regulations require 9 x 19 foot parking spaces. The proposed parking spaces would be provided in a horizontal position, crossing lot lines. Accordingly, an additional variance is required to allow parking spaces to be located on a lot other than that containing the building (Sub-section 2116.1).

11. As approved by the Building Permits issued in May, 1990, the parking layout provides six full size parking spaces. Three of the parking spaces are accessible via the 14 foot wide public alley to the north. The remaining three parking spaces are accessible via the 10 foot wide public alley to the east. However, the approved parking spaces directly abut the property lines to the north adjacent to the 14 foot wide public alley and almost directly abut the rear wall of the flats, resulting in a lack of ingress or egress into the building and a rear yard for the new residential units consisting entirely of a paved parking area.

12. The applicants are proposing to provide four 8.5 by 19 foot parking spaces accessible via the 14 foot wide public alley to the north and two 9 by 19 foot parking spaces accessible from the 10 foot wide public alley to the east. The proposed configuration of parking spaces would allow the applicant to set back the parking spaces two feet from the property line to the north and to provide an eight foot open area between the rear of the buildings and the

parking area, thus providing a rear yard for the residential units.

13. The applicants testified that the proposed parking layout would result in superior access to the parking spaces. The applicants further testified that the two foot set back from the northern property line would enhance vehicular circulation in the public alley system.

14. The applicants testified that the requirement to provide four parking spaces for an off-site apartment building constitutes an unusual condition affecting the property. The buildings have been constructed consistent with the Zoning Regulations and, in fact, cover only 42.6% of the lot when 60% lot occupancy is permitted. Even with only 42.6% lot occupancy, however, it is difficult to accommodate the two required parking spaces and the additional four spaces required for the apartment building at 1822-24 - 15th Street in the rear yard of the site.

15. By memorandum dated October 10, 1990, the Office of Planning (OP), recommended approval of the application. The OP was of the opinion that the applicants are faced with a practical difficulty in strictly complying with the regulations due to the covenant affecting the site. OP noted that without the variance relief, the applicants could provide the required parking spaces. However, the rear yard of the existing project would become a paved parking area. OP concluded that this situation could deprive the owners of reasonable use of the property. OP concluded that there would be no substantial detriment to the public good and the intent, purpose and integrity of the Zoning Regulations and Map would not be impaired if the applicants' request were approved.

16. The Department of Public Works (DPW), by memorandum dated August 31, 1990, indicated that it has no objection to the proposed request. The Department of Public Works recommended that the applicants should resurface that portion of the abutting 10-foot wide public alley to the east that has been damaged because of construction. In addition, the Department of Public Works recommended that the applicants should allow for a four foot setback from the 14-foot wide public alley to the north to allow better turning to the four parking spaces that will be accessed from the alley.

17. At the public hearing, the Board waived its seven day filing requirement to accept the written report of Advisory Neighborhood Commission (ANC) 1B. By letter dated October 11, 1990 and by representative at the public hearing, ANC 1B offered no position on the granting of the subject application.

18. Two nearby property owners appeared at the public hearing in support of the application. The support was generally based on enhanced circulation in the public alley system and improved access

to the parking area of 1514 T Street which is located immediately north of the subject property across the 14 foot wide public alley.

19. Two representatives of the Residential Action Coalition and two neighboring property owners testified in opposition to the application. The opposition was generally based on the following:

- a. The language of the 1967 covenant restricts the use of the property to accessory parking for 1822-24 - 15th Street.
- b. Construction of the site is limited to an attendant's shed by Board Order Nos. 9193 and 9317.
- c. An increase in the number of apartment units in the building at 1822-24 - 15th Street in 1984 should require the provision of additional parking spaces on the subject lot.
- d. There is an existing critical on-street parking situation in the area which would be exacerbated by the increase in the number of units at 1822-24 - 15th Street without the requisite increase in the number of accessory parking spaces assigned for use by residents of that apartment building.
- e. The provision of two flats plus six parking spaces on the subject property would result in the loss of open space more suitable for landscaping than a paved parking area.
- f. The need for variance relief is based on a "self-imposed hardship" in that the applicants were aware of the covenant when the property was purchased and developed.

20. In addressing the issues and concerns raised by the opposition, the Board finds as follows:

- a. Although the covenant related to the provision of four parking spaces on the subject property may have been entered into as a direct result of the Board's Order No. 9317, the Board was not an active party in the filing of such covenant nor is the Board the appropriate body which would have jurisdiction over the enforcement of the terms of the covenant or the propriety of any amendments or changes thereto. The Board's sole interest expressed through the covenant is the insurance of the continued availability of four parking spaces on the subject property as accessory spaces to the apartment at 1822-24 - 15th Street for as long as that use continues.
- b. The Board's Order Nos. 9193 and 9317 limit the use

conducted on the property and structures built thereon to parking, and an attendant's shelter "unless such use or structures are otherwise permitted in the zone district in which the parking lot is located." The R-5-B District permits the use of the property for flats as a matter-of-right. In addition, the flats have been constructed in compliance with all the area requirements of the R-5-B District.

- c. The increase in the number of apartment units at 1822-24 - 15th Street and the companion need for additional parking spaces is not at issue before the Board in the instant case. This issue should more properly be addressed through the permit and or enforcement branches of the City Government in an attempt to establish whether such increase in units complies with all applicable requirements or whether enforcement measures are necessary to bring the property into compliance with all applicable regulations.
- d. In Monaco vs. The Board of Zoning Adjustment, (407 A.2d 1091, DC App., 1979), the D.C. Court of Appeals found that "extraordinary circumstances" are not limited to the physical aspects of the land, that past zoning history can be taken into account in the uniqueness facet of the variance test, and that a restrictive covenant could be considered as an extraordinary condition as it effectively restricted design, height and use to that which the Board of Zoning Adjustment considered compatible with surrounding properties. In this instance, the covenant restricts the use of at least a portion of the property and compliance with that restriction inhibits the design of the residential use of the site.
- e. The applicants have demonstrated that the property can be developed as in compliance with the Zoning Regulations and the restrictive covenant. However, such matter-of-right development results in the provision of a paved parking area from the rear building line to the northern property line, thereby eliminating the opportunity to provide for landscaped open space, room for storage of trash receptacles, and ingress and egress to the rear of the structure. The Board finds that the applicants' proposal is more in keeping with the concern expressed by the opposition that open landscaped areas be retained in this residential area rather than be paved for parking purposes.

21. In response to the report of the Department of Public Works, the applicants testified that the vehicular circulation

patterns in the public alley system would not be greatly enhanced by increasing the set back from the northern property from two to four feet. However, such additional setback would reduce the amount of usable open space at the rear of the building and thereby inhibit the reasonable use of the property by the residents.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicants are seeking area variances, the granting of which requires a showing of a practical difficulty upon the owner arising out of some unique or exceptional condition inherent in the property itself. The Board, further must find that the granting of the requested relief will not result in substantial detriment to the public good nor substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the site is affected by an exceptional situation as a result of the history of zoning actions and the related restrictive covenant. The Board further concludes that the requested variance relief is minimal. The layout and size of the parking spaces, proposed, will not diminish the provision of parking as required by prior Board decisions and the existing restrictive covenant. The use of the property for residential purposes and the provision of the requisite number of parking spaces is not affected by the variation in size and location of the parking spaces.

The Board further concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. Accordingly it is hereby ORDERED that the application is GRANTED, SUBJECT to the CONDITION that the parking layout shall be in accordance with the revised plat marked as Exhibit No. 28B of the record.

VOTE: 3-0 (Carrie L. Thornhill and Paula L. Jewell to grant; John G. Parsons to grant by proxy; Sheri M. Pruitt not voting, not having participated in the case; Charles R. Norris 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: \_\_\_\_\_

JAN 15 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 ON 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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