

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15448 of Paul and Henry Sliwka, as amended, pursuant to 11 DCMR 3107.2, for a variance from the minimum width of lot and lot area requirements (Sub-section 401.3), a variance from the rear yard requirements (Sub-section 404.1), a variance from the location of off-street parking requirement (Sub-section 2116.1), a variance from the width of alley requirements (Sub-section 2507.2) and a variance from the size of parking space requirement (Sub-section 2115.1) for the construction of two, single-family row dwellings in an R-4 District at premises 628 and 630 Browns Court, S.E., (Square 870, Lots 72 and 73).

HEARING DATE: February 20, 1991
DECISION DATE: March 6, 1991

FINDINGS OF FACT:

1. The subject site consists of two adjacent alley lots located at 628 and 630 Brown's Court, S.E. Brown's Court is a 30-foot wide, east-west public alley which is located in the interior of Square 870. Square 870 is bounded by Independence Avenue, S.E. to the south, A Street, S.E. to the north, 7th Street, S.E. to the east and 6th Street, S.E. to the west. The property is located in an R-4 District.

2. The immediate area surrounding the site is developed primarily with single-family row and semi-detached dwellings. The area also has some low-rise apartment buildings interspersed with the single-family dwellings.

3. Each lot is comprised of 626.5 square feet of land area and is currently vacant. The two lots have access to the west through a 15-foot wide public alley that connects 6th Street with Brown's Court. The subject lots have access to Independence Avenue to the south through a 15-foot wide alley.

4. Lots 72 and 73 are adjacent lots. Lot 72, the eastern most lot, is located on the corner. Each lot is 14 feet wide.

5. The applicants propose to construct a two-story single-family dwelling on each lot. The structures will be 14 feet wide, 20 feet high and 24 feet, 9 inches deep.

6. The applicants are requesting variance from five provisions of the Zoning Regulations. Sub-section 401.3 requires a minimum lot width of 18 feet. The lots are only 14 feet wide, therefore a four-foot variance is needed.

Sub-section 401.3 also requires a minimum lot area of 1,800

square feet. Each lot contains 626.5 square feet. A variance of 1,173.5 square feet (or 65.2%) is being requested. Sub-section 404.1 requires a minimum rear yard of twenty feet (20'). The structures will be set back two feet (2') from the front property line, leaving a rear yard of only eighteen feet (18'). A two-foot (2') rear yard variance is therefore requested.

Sub-section 2116.1 provides that the parking spaces shall be located on the same lot with the building or structure that they are intended to serve. The applicants propose to provide one parking space for each lot. However, these spaces will be located almost entirely on lot 72. Only 32 square feet of the rear of lot 73 will be devoted to the parking spaces.

Sub-section 2115.1 provides that automobile parking spaces shall be a minimum of nine feet (9') in width and nineteen feet (19') in length. The parking spaces for this project will measure eight feet (8') by sixteen feet (16'), the dimensions prescribed in the Zoning Regulations for compact cars. (Sub-section 2115.3). The application has been amended to include a request for a variance from Sub-section 2115.1.

Sub-section 2507.2 states that a one-family dwelling shall not be erected or constructed on an alley lot unless the alley lot abuts an alley thirty feet (30') or more in width and has from the alley access to a street through an alley or alleys not less than thirty feet (30') in width. Brown's Court, the alley that abuts the subject lots, is 30 feet wide where the lots are situated. However, it narrows to 15 feet as it moves toward 6th Street. The alley perpendicular to Brown's Court, leading to Independence Avenue, is also only 15 feet wide.

7. The applicants maintain that the application meets the standards for granting the requested variances. The applicants indicated that the lots were subdivided prior to 1958 and the enactment of the current Zoning Regulations. The small lot size and narrow lot width are conditions which make the applicants unable to develop the lots in compliance with the Zoning Regulations. The applicants also pointed out that lot 72 has an easement granting use of a portion of the lot to lots 70 and 73. Lot 70 is located directly behind lot 72. Lot 73 is the adjacent lot. The easement permits the crossing of the northermost portion of lot 72 to access lots 70 and 73. Because the rear of lot 73 is landlocked, a parking space located on this lot could not be used without crossing lot 72. The two spaces located on lot 72 will be compact spaces because the rear yard is not deep enough for standard sized spaces.

8. The applicants maintain that the proposal will not be of substantial detriment to the public good. The applicants indicated that although the lots are small and narrow, they reflect the size and shape of alley lots throughout the Capitol Hill Historic District. They are, in fact, larger and wider than neighboring lots further down the court. In spite of the land area

limitations, the applicants worked with the historian from the Historic Preservation office and designed the structures to be compatible with other properties in the neighborhood. The applicants decided against a proposal to build one large house on the two lots because they were advised that such a structure would be out of sync with what presently exists and because they wanted to provide moderate income housing.

9. Placing the parking space for lot 73 on lot 72 will not affect the general public. Nor will the creation of compact, as opposed to standard, spaces detrimentally affect the neighborhood. These conditions will only affect the residents at the subject properties.

10. The location of the houses and parking spaces on an alley that narrows near the access point will not have a substantially detrimental impact on the congestion in the alley over what presently exists. Presently, three cars park at the site.

11. The applicants testified that the request is for the smallest possible number of variances, given the condition of the lots. They indicated that while a 60 percent lot occupancy is allowed, each structure will cover only 55.31 percent of the lot. This will keep density to a minimum and keep the two new homes from significantly altering the appearance and living conditions of Brown's Court, S.E.

12. The Office of Planning (OP), by report dated February 13, 1991, recommended approval of the application. OP stated that the applicants are proposing to construct two, two-story single-family row houses on two substandard-sized lots. The applicants have investigated a number of other options for developing the site in an attempt to satisfy the concerns of the Advisory Neighborhood Commission (ANC) 6B, the Capitol Hill Historic Restoration Society, and the immediate neighbors.

13. By memorandum dated December 11, 1990, the District of Columbia Fire Department stated that it has evaluated the application to determine its impact on emergency operations. The Fire Department stated that the existing 30-foot and 28-foot alleys are sufficient for the Department's access during emergency conditions. Therefore, the Fire Department has no objection to the variances requested.

14. By letter dated December 12, 1990, the Metropolitan Police Department indicated that the property is located in the First District and is patrolled by Scout Car 25. The Police Department stated that, having reviewed the proposal, it does not appear that the change proposed by this application will affect the public safety in the immediate area or generate an increase in the level of police service now being provided. Accordingly, the

department does not oppose this application.

15. By memorandum dated February 20, 1991, the Department of Housing and Community Development stated that it supports the notion of infill development, where appropriate, and views the low density development sought by the applicant on Browns Court as a unique opportunity for creative housing development, so long as emergency security and safety access are not sacrificed.

16. The Historic Preservation Review Board (HPRB), submitted a report dated February 7, 1991. The HPRB stated that the applicant proposes the construction of two two-story brick rowhouses on Browns Court, a former alley that is wide enough to incorporate building lots and has been built on since the nineteenth century. The row includes both historic and non-historic row houses, historic carriage houses, and twentieth-century garages.

The proposed structures are to be on 14-foot wide lots, with parking pads behind the houses on private land. The houses are designed as simple, flat-fronted structures with corbelled cornices and flat roofs - similar in design to the row houses on Browns Court. A smooth, hard, red brick and tinted mortar will be used.

The HPRB finds the proposal to be consistent with HPRB-approved projects and with D.C. Law 2-144. The HPRB therefore recommends approval of the application.

17. In testimony at the hearing the applicant indicated that the Historic Preservation Division was opposed to the proposal to build one house on the property because it would be inconsistent with the character of the neighborhood.

18. Advisory Neighborhood Commission (ANC) 6B expressed opposition to the application in its report dated February 12, 1991. ANC 6B raised the following issues and concerns:

- a. The subject premises are located within the Capitol Hill Historic District, on a row of small houses on undersized lots.
- b. The applicant seeks to build two (2) single-family structures on two (2) vacant undersized lots on the end of a row of similarly sized dwellings by means of "in-fill" construction.
- c. The applicant's hardship stems from the undersized dimensions of the two recorded lots and the easements by deed which attend the property.
- d. A petition has been received from affected residents and

property owners on Browns Court opposing the application and citing concerns over density and parking congestion.

- e. The applicant retains the option to build one single-family structure on the combined lots which would diminish the degree and nature of variance relief to be sought.
- f. The Commission concludes the relief sought cannot reasonably be granted without substantial detriment to the public good, or substantially impairing the general intent, purpose and integrity of the Zoning Regulations and Maps.

19. A representative of ANC 6B testified that the ANC's main concerns centered around density and parking congestion. The Board finds that while the proposed construction will bring more people to the area, any type of development would bring more people. To build only one structure on the lots would still require variance relief because the properties do not meet all of the Zoning Regulations, even when combined. Furthermore, the Historic Preservation Division informed the applicant that such a house would be out of character for the area.

20. The Board finds that by providing two off-street parking spaces, the applicant has attempted to minimize the impact of the proposal on parking congestion.

21. By letter dated February 13, 1991, the Capitol Hill Restoration Society (CHRS) opposed the application because the lots are so small, and the two houses would have an adverse impact on density and parking. CHRS indicated that it would, however, support the construction of only one dwelling.

22. A neighbor residing at 636 Brown's Court testified in opposition to the application. She indicated that the area is already very congested in terms of traffic and parking.

23. A neighbor residing at 645 A Street also testified in opposition to the application. He raised the following concerns: (a) the lots are very small; (b) the proposal eliminates the back yard for lot 72; (c) the history of the neighborhood should not influence the development of these lots; (d) the proposal of two houses is too dense whereas one house would have fewer adults; and (e) Brown's Court is a very congested area in terms of parking.

24. A resident of 15 Brown's Court also testified in opposition to the application. He was concerned that in emergencies, fire trucks will be unable to gain access to the site. He was also concerned about the small size of the lots and the parking congestion.

25. In response to the concerns of neighbors, the Board finds that the small lots only affect those who reside on them - not the general public. The Board also finds that the addition of two more cars to Brown's Court will not substantially impair traffic and parking. Further, the Board points out that the report from the Fire Department indicates that emergency operations in the area will not be impaired by the proposal.

26. No one from the neighborhood testified in support of the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record the Board concludes that the applicants are seeking variances for the construction of two single-family dwellings in an R-4 District. The granting of a variance requires evidence of a practical difficulty upon the owner arising out of some extraordinary or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board further must find 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.

The Board concludes that the applicant has met the burden of proof established for the requested relief.

The Board concludes that the small lot area, the narrow lot width, and the location of the lots on an alley are extraordinary conditions which create a practical difficulty for the owners in developing the properties in conformity with the Zoning Regulations.

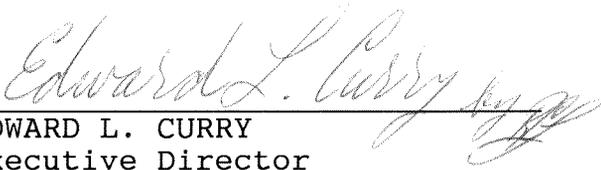
The Board is of the opinion that granting the requested variances will not cause substantial detriment to the public good nor will it substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that it has afforded ANC 6B the "great weight" to which it is entitled. In accord with above, it is hereby **ORDERED** that the application is **GRANTED**.

VOTE: 3-0 (John G. Parsons, Charles R. Norris and Paula L. Jewell to grant; Sheri M. Pruitt and Carrie L. Thornhill 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 1 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 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.

15448Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15448

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 1 1991 a copy of the order entered on that date in this matter was 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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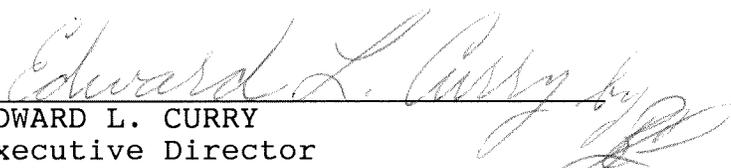
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EDWARD L. CURRY
Executive Director

DATE: AUG 1 1991

15448Att/bhs