

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15458 of Michael H. Haberman, pursuant to 11 DCMR 3107.2, for a variance from the 900 square feet of lot area per apartment requirements (Sub-section 401.3), and a variance from the rear yard requirements (Sub-section 404.1) for the conversion of a dwelling into a 4-unit apartment house in an R-4 District at premises 2001 - 1st Street, N.W., (Square 3117, Lot 70).

HEARING DATE: February 27, 1991  
DECISION DATE: March 6, 1991

**FINDINGS OF FACT:**

1. The property is located at the northeast corner of the intersection of First and U Streets and is known as premises 2001 First Street, N.W. It is zoned R-4.

2. The property is rectangular in shape with a frontage of eighteen feet along First Street and a depth of 66 feet for a total lot area of 1,188 square feet.

3. The property is improved with a three-story brick structure which was built in approximately 1906. Each level of the building contains approximately 1,150 square feet of gross floor area.

4. The site is located approximately one block north of Rhode Island Avenue and one block west of North Capitol Street. To the north of the site are several large government and private institutional facilities including the Prospect Hill/Glenwood Cemeteries, McMillan Reservoir, Washington Hospital Center, Veterans Administration Medical Center and the National Rehabilitation Hospital. Northwest of the site are several new residential developments including Park Place, Trinity Walk, the Cloisters, and the Heights. The area immediately surrounding the subject site is predominantly developed with large single family row dwellings. There are two small convenience grocery stores in the immediate area and the vacant property immediately adjacent the subject site to the east is used for parking purposes.

5. The subject site has a history of commercial use on the first floor with residential use on the second and third floor since prior to 1940 as evidenced by BZA Order No. 365 dated August 7, 1940, which approve a change of nonconforming use from a grocery store to a cleaning and laundry agency. The most recent Certificate of Occupancy No. B143282 was issued on September 12, 1985 for the purposes of "Dry cleaning; dropoff only".

6. The first floor of the property has been vacant and

boarded up for a number of years and is currently in a state of disrepair. Because of its vacant condition and its ground floor location, the first floor of the property has attracted unlawful vagrants and drug dealers to the detriment of the immediate neighborhood. The second and third floors have continued to be used residentially and are currently occupied as a rooming house by six tenants.

7. The applicant proposes to renovate the premises and convert the first floor to residential use. The second and third floors would contain two duplex, three bedroom apartments containing approximately 1,150 square feet of floor area. The first floor would contain two one-bedroom apartments, each containing approximately 575 square feet of floor area. The applicant proposes to offer the apartment units for rent at moderate price levels.

8. Sub-section 401.3 of the Zoning Regulations provides that a structure existing on May 12, 1958 in the R-4 District may be converted into an apartment house provided that the site contains 900 square feet of lot area per dwelling unit. The site contains 1,188 square feet of lot area. The conversion of the premises into a four-unit apartment building would require a minimum lot area of 3,600 square feet. A variance from the lot area requirements of 2,412 square feet or 67% is therefore required.

9. Sub-section 404.1 of the Zoning Regulations requires a minimum rear yard of twenty feet in the R-4 District. The existing building occupies approximately 98% of the lot with an existing rear yard which is eight feet in depth. The applicant proposes to replace an existing wooden porch with a stairway to access the apartment unit on the upper levels. As revised, the plans for the stairway addition would provide for a five foot rear yard. A variance of 15 feet or 75% is therefore required.

10. The Zoning Administrator has determined that no on-site parking is required for the proposed apartment building based on a parking credit for the previous use of the site. The applicant does not propose to provide any on-site parking due to the existing lot coverage and shallow rear yard.

11. The applicant's architect testified that the large size of the existing structure plus the provision of windows on three sides of the structure make it conducive to conversion to apartment use. The size and design of the proposed units is comparable to similar units in the area.

12. The applicant's architect testified that the renovation of the existing structure would cost between \$50 and \$75 per square foot. The matter-or-right use of the structure as a flat would result in the provision of two units containing approximately 1,725

square feet of floor area each. Apartment units of that unusually large size would not be marketable as moderately priced rental units. The matter-of-right use of the structure as a single-family dwelling would not be desirable from a marketing standpoint in that it would provide for a 3,450 square foot home, with minimal yard space, in a busy corner location, and across the street from a commercial use.

13. The majority of the row dwellings in the immediate area are smaller than the subject premises constructed on larger lots, and many are developed for matter-of-right use as flats. While there are several corner lots in the neighborhood which are developed with similarly sized structures, the applicant noted that none of those structures have a history of commercial use in the first floor.

14. The applicant's architect testified that the proposed renovation would require the removal and replacement of all the existing plumbing and electrical systems, walls, ceilings, floors, windows, cabinets, and fixtures due to the existing physical deterioration and the unsafe condition of the existing systems. The architect also indicated that adequate insulation and fire proofing including a fire wall in the center of the building would need to be installed to meet minimum District of Columbia regulations.

15. The applicant testified that he is unable to acquire additional land adjacent to his property in order to enlarge the subject lot. He has been unsuccessful in his attempt to contact the owner of the vacant property to the immediate east of the subject site. The property to the immediate north is developed with a row dwelling. The site abuts public rights of way to both the south and west.

16. The applicant testified that the proposal would have a positive impact on the neighborhood in that a partially vacant and boarded up structure would be renovated; additional moderately priced housing units would be added to the city's inventory of housing stock; the full occupancy of the structure would act as a deterrent to the continued presence of vagrants, drug dealers and crime at that location; the proposal would help to stabilize the neighborhood which is currently in a state of transition; and, the proposed use would result in less density than the previously existing commercial/residential use of the site.

17. The Office of Planning (OP), by memorandum dated February 20, 1991, recommended that the application be denied. OP was of the opinion that there is no practical difficulty associated with the subject property and that the property can be used as intended by the Zoning Regulations without depriving the owner of reasonable use. The OP was further of the opinion that the requested relief

was excessive and could result in overcrowding and undue concentration of population on the site.

18. Advisory Neighborhood Commission (ANC) 5C, by letter dated February 19, 1991, indicated that a motion to support the application failed for want of a second. No further action regarding the application was taken by the ANC.

19. The Department of Public Works (DPW), by memorandum dated February 19, 1991, offered no objection to the project from a transportation perspective. The Metropolitan Police Department, the D.C. Fire Department and D.C. Department of Recreation and Parks offered no objection to the subject application.

20. The Department of Housing and Community Development (DHCD), by memorandum dated February 26, 1991, opposed the application unless the number of units proposed were reduced from four to two. The rationale for DHCD's position is generally summarized as follows:

- a. The proposed rear yard is well below the minimum rear yard standards.
- b. The R-4 District is not an apartment district and the subject site falls far short of the minimum lot area requirement.
- c. Assuming one car per dwelling unit, a minimum of four additional cars would be parked on the street. On street parking is not problematic at present, but a continued trend of subdividing large dwellings into smaller units could escalate the problem to become critical in the future.

21. The single Member District Commissioner for ANC 5C-04 appeared at the public hearing in support of the application. The record also contains a petition of approximately 40 signatures in support of the application. The support was generally based on the following:

- a. The structure is large enough to accommodate the proposed four units.
- b. The proposed renovation and conversion will enhance and stabilize the corner of First and U Streets.
- c. The previous commercial use will be replaced by more desirable use as moderately priced housing.
- d. The applicant has been a "good neighbor", active in community efforts to improve the area.

22. The owner of 2302 First Street appeared at the public hearing in opposition to the application. The opposition was generally based on the following:

- a. The existing community is comprised of single-family dwellings. The R-4 District is not an apartment district.
- b. The existing structure could be renovated as a single-family dwelling consistent with the neighborhood.
- c. There are presently many vacant apartment units in nearby developments.
- d. A rental property tends to attract transient tenants who generally fail to maintain the property in a manner comparable to that of owner-occupied homes.
- e. The Bloomingdale Civic Association voted to oppose the application.

23. In addressing the recommendations of the OP and the DHCD, as well as the concerns raised by the opposition, the Board finds that the existing structure is large enough to accommodate the proposed four units, however, the size of the subject lot does not even meet the 1,800 square feet lot area requirement for development of a single-family row dwelling in the R-4 District. The applicant is unable to enlarge the site due to its proximity to public rights-of-way and his inability to purchase additional land. The conversion of the first floor commercial space to residential use is in keeping with the Zoning Policy encouraging the phasing out of nonconforming uses. The renovation and occupancy of the subject structure for residential purposes, rental or ownership, would result in the removal of a vacant boarded up commercial space at a busy intersection and restore the structure to a viable use more in keeping with the R-4 District than the previous commercial uses.

**CONCLUSIONS OF LAW AND OPINION:**

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires a showing of an exceptional or extraordinary condition of the property which creates a practical difficulty upon the owner.

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 in 1958 and does not currently meet the minimum lot size or rear yard requirements for the R-4 District. The majority of row dwellings in the subject square are smaller

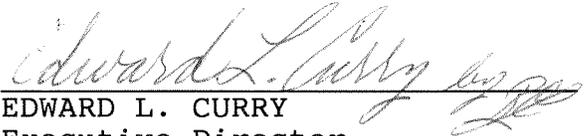
than the subject structure and are located on larger sized lots. The applicant is unable to obtain additional property in order to increase the size of his lot. The proposed use is more in keeping with the R-4 District than the previous commercial/residential use. The size of the existing structure and its use history differentiates the subject structure from nearby single-family dwellings. The subject property has never contained fewer than three units, two residential and one commercial, and the applicant would suffer a practical difficulty if forced to try to renovate the structure for single-family use as set forth in Findings of Fact No. 12.

The Board further concludes that the requested relief can be granted without causing substantial detriment to the public good. The additional residential units will add to the District's housing supply in furtherance of the policies of the District. The strong showing of community support through the record reflects the positive reception the project has within the community. The Board is further of the opinion that the relief can be granted without substantially impairing the intent, purpose and integrity of the zone plan. **ACCORDINGLY, it is ORDERED that the application is GRANTED.**

VOTE: 5-0 (Sheri M. Pruitt, Charles R. Norris, Paula L. Jewell and Carrie L. Thornhill to grant; William L. Ensign to grant by proxy).

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

ATTESTED BY:

  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: \_\_\_\_\_

JUN 28 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

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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.

**15458Order/SS/bhs**

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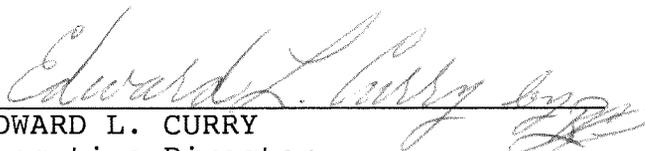
As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN 28 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Michael H. Haberman  
1716 Florida Avenue, N.W.  
Washington, D.C. 20009

George W. Crawford  
2302 First Street, N.W.  
Washington, D.C. 20001

Richard L. Sowell  
38 V Street, N.W.  
Washington, D.C. 20001

James Berry, Jr., Chairperson  
Advisory Neighborhood Commission 5C  
1723 - 3rd Street, N.E.  
Washington, D.C. 20002

  
EDWARD L. CURRY  
Executive Director

DATE: JUN 28 1991

15458Att/bhs