

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15547 of General Promotional Technology, Inc., pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Section 320) or, in the alternative, a variance to allow a nonconforming apartment use to extend to portions of a structure not devoted to that nonconforming use (Subsection 2202.3) to allow an existing apartment house to increase the number of units from 13 to 14 from the basement through the third floor in an R-3 District at premises 5024 9th Street, N.W. (Square 3007, Lot 64).

HEARING DATE: September 25, 1991  
DECISION DATE: October 23, 1991

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located on the southeast corner of 9th and Gallatin Streets N.W. It is known as premises 5024 9th Street, N.W.

2. The site is improved with a three-story with basement apartment house containing 13 units.

3. The site is zoned R-3. 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 limit of three stories/40 feet.

4. The apartment house is a nonconforming use in an R-3 District. Section 2002.3 of the Zoning Regulations provides that a nonconforming use shall not be extended to portions of a structure not devoted to that nonconforming use.

5. The applicant proposes to construct an additional apartment unit in the basement of the apartment building. He stated that the new unit would be used by a resident manager who would be hired to maintain the building on a daily basis.

6. The applicant is requesting either a variance from the use provisions of 11 DCMR 320, or a variance from Subsection 2002.3 to allow the extension of the nonconforming apartment use.

7. The applicant stated that the basement is very large. It has one apartment and a lot of vacant space. He testified that the storage, laundry and boiler rooms are also located in the basement. He stated that the basement is large enough to accommodate four two-bedroom apartments.

8. The applicant stated that there are problems with the apartment building that create the need for a resident manager. He pointed out that one of the apartment units on the first floor was being used by a resident manager before, but that unit is now being rented to a tenant. The applicant stated that a nice manager's unit is needed to attract the right type of person to the job. He also stated that he sees no problems with constructing such a unit.

9. The applicant testified that he owns the 14-unit apartment building at 906 Gallatin Street located adjacent to the subject site. There is another 14-unit apartment building next to his Gallatin Street property. Also there are townhouses and a park in the immediate vicinity of the site.

10. The Office of Planning (OP), by report dated September 18, 1991 and through testimony at the hearing, recommended denial of the application. OP stated that the site is located in Square 3007. The boundaries of this square are Gallatin Street N.W. to the north, Farragut Street N.W. to the south, Georgia Avenue N.W. to the west and 9th Street N.W. to the east.

OP stated that the site is flat and rectangular in shape and contains 6,684 square feet in land area. The apartment building was built in 1936. The applicant purchased the property in 1987.

OP stated that Square 3007 contains both residential and commercial land uses. Two additional garden apartment buildings are located to the immediate west of the site at 906 and 912 Gallatin Street, N.W. Courtyards provide access into the apartment buildings from Gallatin Street N.W. The C&P Telephone Company, the Goodyear Tire and Rubber Company and two other commercial enterprises operate businesses to the west of the site. These commercial uses are located within a C-2-A zoning district. A 15-foot wide public alley that does not abut the site is located in the subject square.

OP stated that the applicant's property is located in the Petworth neighborhood of Ward 4. Georgia Avenue is the major commercial thoroughfare in the community. However, the predominant land use in the Petworth neighborhood is residential, single-family rowhouses. Garden or walk-up apartment houses are interspersed throughout the neighborhood.

OP stated that the applicant had begun constructing a one-bedroom apartment unit in the basement of the apartment building without a building permit. A stop work order was issued on June 27, 1991 to halt construction of the unit which is approximately 95 percent complete. The applicant is requesting variance relief to complete construction of this unit.

OP pointed out that apartment buildings are prohibited in the R-3 District. Therefore, it was grandfathered in when the 1958 Zoning Regulations became effective. It is a nonconforming structure and a nonconforming use in the R-3 District. The permitted residential use of land in the R-3 District is for single-family, detached and semi-detached dwellings, and rowhouses. An apartment building is first permitted in the R-4 zone district. The majority of the residential structures that are located close to the site are detached, semi-detached and attached homes. The neighborhood is a moderately dense residential community. Occasionally, however, nonconforming apartment houses are found in the R-1 and R-3 zoned areas that are located close to the site. Few apartment houses are located in the R-4 zoned areas that are in close proximity to the site. Although commercially-zoned land, containing a higher density level, is located close to the site, R-3 zoned areas are intended to accommodate single-family homes.

The Office of Planning stated that it has found no exceptional condition, undue hardship or practical difficulty on the owner associated with the subject property. The site's topography is flat, except that at the rear there is an upward slope. The property has a rectangular shape. The land does skew or slant at the rear but this has no effect on the subject apartment house. The structure was built prior to enactment of the current Zoning Regulations. However, the existing Zoning Regulations allowed for the nonconforming use to continue to exist on the site subject to the provisions of Section 2002.

OP stated that the subject structure is one of three buildings that were constructed as multi-family apartment houses in the neighborhood. Nonetheless, to increase the population density of the subject building would be contrary to the intent, purpose and integrity of the R-3 regulations. OP believes that the applicant's proposal would create adverse impacts on the abutting properties. If the population density of the multi-family building is increased in the single-family neighborhood, the abutting property owners could experience environmental impacts such as increased noise, increased pedestrian trips to the neighborhood, and a reduction of the number of on-street parking spaces.

The Office of Planning is of the opinion that if a hardship exists at the site, it is self-imposed. It is not associated with the land. The applicant partially constructed a one-bedroom apartment unit in the basement of the subject structure

without a building permit. Further, the certificate of occupancy issued for the site is for occupancy of an apartment building containing 13 apartment units. OP is sensitive to the fact that the applicant needs an on-site resident manager to manage the building on a daily basis. Based on OP's knowledge of housing in the city, the two-bedroom apartment unit that was originally constructed in the basement of the building was intended to be used as the living quarters for the resident manager. This unit is not used to house a resident manager, it is rented to a tenant.

OP pointed out that as an alternative to the use variance, the applicant is requesting zoning relief to extend the apartment use to portions of the existing structure not devoted to a nonconforming use. Certificate of Occupancy No. B152026 issued by the city and valid for the period November 1, 1990 to October 31, 1991, allows the applicant to operate a 13-unit apartment building on the first through the third floors of the premises. OP's review of occupancy files indicates that the subject building has always housed 13 apartment units. To approve the applicant's request to expand a nonconforming use to this portion of the building would increase the density of the site and would be contrary to the purpose and intent of the R-3 regulations.

In summarizing its recommendation, the Office of Planning stated that it finds no inherent difficulties associated with the shape, size and topography of the land. There are no restricting land controls associated with the site. The age of the subject building does not create a practical difficulty or undue hardship for the applicant. OP is of the opinion that any hardship associated with this site would be self-imposed and not a result of any inherent difficulty associated with the land. OP is also of the opinion that granting the variance would substantially impair the intent, purpose and integrity of the R-3 District. The applicant can continue to have someone visit the site on a regular basis to provide maintenance, or can employ the services of a manager to reside on the site when an apartment unit at the premises becomes available. For these reasons, the Office of Planning recommended denial of this application.

11. The Department of Public Works (DPW) submitted a report dated September 16, 1991. DPW stated that the applicant is not providing off-street parking. Since apartment houses are not permitted in R-3 zoned districts, there is no specified parking requirement. Parking on 9th Street is unrestricted, whereas, the two intersecting streets, Gallatin and Farragut, are restricted by Residential Permit Parking (RPP). A site survey conducted on a weekday during the evening hours revealed that the neighborhood's parking capacity was not exceeded. Moreover, Georgia Avenue, which is one block west of the premises, is well served by metrobus. Based on these factors, DPW concluded that the addition of another

unit to the existing 13-unit apartment house will not have a significant adverse transportation impact in the neighborhood. Therefore, the Department of Public Works has no objection to the subject request.

12. By memorandum dated September 20, 1991, the Fire Emergency Medical Services Department stated that it has evaluated the subject application to determine its impact on emergency operations. Based on its review, the department stated that it has no objection to the application.

13. Advisory Neighborhood Commission (ANC) 4D, which is automatically a party to this application, did not file an official report on the application. The ANC Chairman testified that at the ANC meeting of September 11, 1991, a quorum was not present. He stated however that the ANC commissioners that were present, as well as the eight to ten neighbors in attendance, expressed opposition to the application. The neighbors complained that the applicant is not maintaining the property as it currently exists. Based on the sentiments of the residents and a visit to the site, the ANC Chairman recommended denial of the application.

14. No one from the community testified at the hearing in support of the application.

15. Three neighbors testified in opposition to the application. One opposing neighbor who resides at 4012 9th Street, N.W. testified that the rear of her property runs to the rear of 5024 and 906 Gallatin Street. She stated that for the last two years she has had problems with cars hitting her gate and she has had to have it repaired. She stated that cars are out all night long. The opposing resident also testified that there is a great deal of trash in the area. She testified that she has informed the applicant about these problems but he does not care about the neighborhood.

16. A neighbor residing at 906 Gallatin Street testified that there are two basement apartments in her building and there are several people living in them. She stated that their resident manager lives in unit 304, the apartment unit above hers. She stated that she has complained to the applicant about the terrible trash problem at the rear of the site but the applicant does nothing.

17. Another opposing neighbor, who has resided at the subject property since 1966, testified that when she moved to the apartment, the property was well-kept. There used to be a resident manager who lived in apartment 1A, a basement unit. Next to the resident manager's apartment, there was a laundry room with three washing machines and two dryers. The laundry room also had windows

so that people passing by could see what was going on inside. She stated that about a year ago, the laundry room was moved across the hall to what used to be a storage room. Part of this room is still the utility area with the furnace, the boiler and the gas meters.

The witness testified that another apartment unit was constructed where the laundry room used to be. People have been living in this unit. Since the unit was constructed, the tenants' access to the electric meters has been cut off. If a fuse blows, each tenant is responsible for going down stairs to put in a fuse. The witness testified that she would be afraid to go down to the meter room alone because it is a small narrow space with a dividing wall and one cannot be sure that no one is down there.

The witness testified that the property has deteriorated over time. She raised the following concerns:

- A. It is difficult to communicate with many of the tenants about the rules for upkeep of the property because many of the tenants do not speak or understand English.
- B. There is an excessive amount of garbage piled up around old furniture outside. Because the dumpster is not emptied once a week, the odor is so bad she cannot open her window very wide.
- C. Old trucks have been parked near the site for long periods of time.
- D. A battery was placed upside down on the floor in the hall of the apartment building. The acid drained onto the floor damaging it.
- E. There is no security because the lock and latch on the back door are broken.
- F. Complaints to the applicant do not produce results.

18. Responding to some of the concerns expressed by opposing neighbors, the applicant stated that there have been problems with people breaking the door and window to the laundry room to get into the building. About a year ago there was drug traffic, so the laundry room was moved to a safer place with a lock on it.

The applicant stated that he is trying to improve the situation and the unit is needed to bring in a resident manager to make the improvements.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The subject property is flat and primarily rectangular in shape. There are no unusual characteristics about the shape, size or topography of the property.
2. Currently, there is no resident manager caring for the property.
3. There was formerly a resident manager's unit in the basement of the apartment building.
4. A tenant currently rents the unit formerly used for the resident manager.
5. The area where the applicant proposes to locate the new apartment unit used to be used as a laundry room.
6. The applicant could hire a property manager who lives off-site until a suitable unit becomes available.
7. Currently, the property is not well-kept.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking either a use variance or an area variance to allow the construction of an additional apartment unit in the basement of an apartment building located in an R-3 District.

The granting of a use variance requires a showing through substantial evidence on the record of an undue hardship upon the owner arising out of some unique or exceptional situation or condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board must find that granting the requested relief will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. Finally, the Board must find that the property cannot be used for the purpose for which it is zoned.

The Board concludes that the applicant has not met this burden of proof. The Board concludes that the subject property is not unique with regard to narrowness, shallowness, shape, topographical or any other physical condition. There is nothing about the physical characteristics of the property that create an undue

hardship on the applicant in using part of the property for a resident manager's unit. The applicant could have allowed unit 1A to be used for a resident manager but for a decision to rent that unit to a tenant. The Board notes that the portion of the property that the applicant wishes to convert into an apartment unit had previously been used as a laundry room, evidencing the fact that a resident manager's apartment unit is not the only use to which this portion of the basement can be put.

In light of the foregoing, the Board concludes that the hardship, if any, is self-created and that the applicant has not met the test for the granting of a variance from the use provisions of 11 DCMR 350.4. Therefore, the use variance cannot be granted.

As an alternative to a use variance, the applicant is seeking a variance to allow a nonconforming apartment use to extend to portions of the structure not devoted to that nonconforming use. The granting of such a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional situation or condition of the property. The applicant must further demonstrate that granting the relief requested will not be of substantial detriment to the public good nor will it substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has failed to demonstrate that the property has some unique or exceptional physical condition which creates a practical difficulty for the owner in using a portion of the property for a resident manager's unit. In reaching this conclusion the Board relies on the same analysis as set forth above in discussing the use variance application.

Having decided that the applicant has failed to meet the first test for either variance requested, the Board concludes that it is unnecessary to address the remaining requirements.

The Board concludes that because ANC 4D did not submit an official written report, the ANC is not entitled to "great weight".

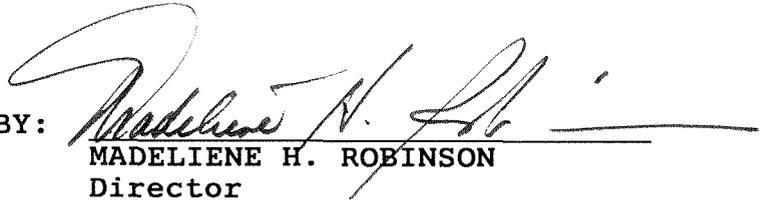
In light of the foregoing, it is hereby ORDERED that the application is DENIED.

VOTE: 3-0 (Paula L. Jewell, John G. Parsons and Carrie L. Thornhill to deny; Sheri M. Pruitt and Charles R. Norris not voting, not having heard the case).

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

ATTESTED BY:

  
MADELIENE H. ROBINSON  
Director

FINAL DATE OF ORDER: APR 23 1993

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."

15547Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15547

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 23 1993 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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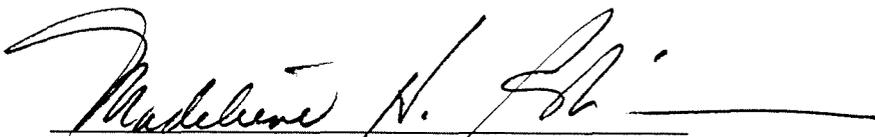
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MADELIENE H. ROBINSON  
Director

DATE: APR 23 1993

15547Att/bhs