

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 15568 of Howard University, pursuant to 11 DCMR 8102 and 8206, from the decision of the Zoning Administrator, dated July 8, 1991, to the effect that the height of a university building located in the R-5-B District is limited by the provisions of the Act to Regulate the Height of Buildings in the District of Columbia, June 10, 1910, as set forth in Subsection 2511.1 of the Zoning Regulations, as related to the proposed construction of an addition to an existing dormitory in the R-5-B District at premises 345 Bryant Street, N.W., (Square 3068, Lot 30).

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

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The subject case is an appeal from the decision of the Zoning Administrator, dated July 8, 1991, that the height of a building located on the east side of 4th Street N.W., between College Street on the north and W Street on the south, is not subject to the business street provisions of 11 DCMR Subsection 2511.1 because the proposed building is located on a residentially zoned lot. At issue in this case is the appellant's proposal to construct an addition to the Bethune Dormitory Complex on the Central Campus of Howard University.

2. The appellant's proposal for the subject site was conceived in the late 1970's as three, eight-story interconnected buildings. It was represented as such in the 1980 and the 1988 Howard University Central Campus Plan. Those plans were presented in 1981 and 1988, respectively, for the Board's review and approval. By BZA Order No. 13416 dated March 22, 1982, and BZA Order No. 14733 dated December 23, 1988, the Board concluded that Howard University's Central Campus Plans, including the proposed addition to Bethune Dormitory, met the requirements of 11 DCMR Subsections 210 and 3108.1 of the Zoning Regulations.

3. The appellant proposes to modify its original proposal for the subject site. The current proposal, which is the subject of the instant appeal, contemplates the construction of an addition to the existing Bethune Hall Dormitory which would result in a single seven-story building measuring approximately 67 feet in height.

4. The appellant's rationale for the location and height of the subject structure is summarized as follows:

a. The subject site is located on university-owned property within the approved Central Campus Plan area.

b. The proposed use, height and bulk is consistent with other university buildings in the immediate area.

c. All of the property in the 4th Street corridor between W Street on the south and Howard Place on the north is owned by the University and used exclusively for University purposes.

d. The Harriett Tubman Quadrangle of five dormitories is located immediately to the north of the Bethune site, which enhances the efficiency of management and student conveniences associated with having those dormitories in close proximity.

e. The proposed height of the Bethune addition is consistent with the heights of other buildings in the area, including the existing Bethune Hall Dormitory within the Harriet Tubman Complex which is 69 feet in height; and, the Frazier Hall Dormitory in the Harriet Tubman Complex which is 70 feet in height.

4. Howard University, established as a private nonprofit corporation, historically has had a close relationship with the federal government. Many of its buildings, including the Bethune Hall Dormitory, were built by the federal government. As a consequence, the Bethune Hall Dormitory building was not subject to the Zoning Regulations at the time of construction and was built to a height that exceeds the 50-foot height that a residence street designation would mandate for that site.

5. The portion of 4th Street N.W. that abuts the subject area is 50 feet wide. A zone district line bisects the street with an SP-2 District being to the west of the line and an R-5-B District to the east.

6. The Building Height Limitation Act of 1910, D.C. Code Subsection 405 (1981 ed.), limits building heights in the District of Columbia according to the classification and width of the street that abuts the proposed structure. Buildings on "business streets" are permitted greater heights under the Height Act than buildings on "residence streets". The Act does not specify the justification for these distinctions, nor define the terms "business" or "residence" street.

7. The Zoning Regulations define a "business street" as one whose "...sides and portions...are located within a Special Purpose, Waterfront, Mixed-use, Commercial or Industrial district."

8. The appellant argued that the plain meaning of Subsection 2511.1 with its plural form of the words "side" and "portion" requires both sides of 4th Street to be designated as a business street. The appellant further argued that it makes no difference that one side of 4th Street is in a residence district because the regulation requires both sides and portions of a street located in a Special Purpose district to be designated a business street.

9. The Appellant also asserted that there is no regulation that prevents a building located in a residence district from being deemed to be on a business street and that there is no regulation that requires a street that is split-zoned residential and commercial to be treated as a business street on one side and a residence street on the other.

10. By testimony at the public hearing, the Zoning Administrator supported his position, as follows:

a. The height of buildings in the District of Columbia is governed by both the DCMR 11 Zoning Regulations and the Act to Regulate the Height of Buildings in D.C. June 10, 1910. When determining the allowable height of a structure, the more restrictive of the two laws must apply.

b. The Act of 1910 further reads in part, as follows: "On a residence street, avenue or highway, no building shall be erected, altered or raised in any manner so as to be over 90 feet in height at the highest point of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue or highway upon which it abuts, diminished by ten feet, except on a street, avenue or highway 60 to 65 feet wide, where a height of 50 feet may be allowed, and on a street, avenue or highway 60 feet wide or less where height equal to the width of the street may be allowed.

c. Subsection 2511.1 of the D.C. Zoning Regulations, reads as follows: "For the purpose of administering this title, that portion of the Act (Act of 1910) referred to in Section 2510 that designates certain streets as business streets shall be interpreted to mean those sides and portions of any street located in a Special Purpose, Waterfront, Mixed-use, Commercial or Industrial district.

d. The property in question is located in an R-5-B District on the east side of 4th Street, between Bryant and College Streets N.W. The property located on the south side of Bryant Street and on the north side of College Street is also zoned R-5-B. The property located on the west side of 4th Street is zoned SP-2.

e. The width of 4th Street between Bryant and College Streets is only 50 feet. The R-5-B District generally permits a maximum height of 60 feet. However, the Act of 1910 limits the allowable height of a building in a "residence street" to that equal to the width of the street.

f. In most instances, the zone boundary line extends to the middle of the adjacent street. Because the subject property is located in an R-5-B District, the adjacent portion of 4th Street is determined to be located in a "residence district" for zoning purposes. If the subject lot were on the west side of 4th Street in the SP-2 District, the Zoning Administrator would interpret the permitted height, based on the allowance for a "business street."

g. The interpretation in the instant case would set citywide precedent in applying the criteria set forth in the Height Act and the Zoning Regulations based on the existing zoning and any further map amendments adopted by the Zoning Commission.

11. In response to the Zoning Administrator's testimony, counsel for the appellant noted that the precedential aspects of the subject case would be limited in that this particular situation is the only case in the District in which a 50-foot wide street is split-zoned between SP and residential zones thereby restricting the allowable height to less than would be permitted as a matter of right in the underlying zone if the adjoining street is classified as a "residence street."

12. Counsel for the appellant noted that there are basically two instances where streets are split-zoned between commercial and residential districts. Neither of those instances produce a situation similar to the instant case. First, in uptown neighborhood centers, underlying zoning is generally C-1 for small strip centers adjacent to R-2 or R-3 residential areas and are located on 50-foot wide streets. The maximum height for both the commercial and residential areas is limited to 40 feet under the

Zoning Regulations, thereby prohibiting a height in excess of the width of the street absent variance approval by the Board.

The second instance occurs in the downtown area where the underlying zones are generally the C -3-A zone abutting an R-5-D zone on a 90-foot street. The maximum height for C-3-A is 65 feet and for R-5-D is 90 feet. Again, the Height Act would not prohibit the maximum building height allowed under the Zoning Regulations.

13. Advisory Neighborhood Commission (ANC) 1B did not submit written issues and concerns relative to the subject appeal.

14. Two neighborhood residents testified at the public hearing on the appeal expressing concern relative to the reference to 4th Street as a "business street". The residents' testimony did not oppose the subject appeal and noted that the appellant represents a good neighbor and a dynamic social, academic, and political force in the community.

15. At the conclusion of the public hearing, the Board left the record open to receive a report from the Office of Planning to determine whether there are existing similar zoning patterns in the city with respect to matter of right development and the Height Act.

16. By memorandum dated October 9, 1991, the OP submitted its evaluation of the planning and zoning impacts and precedent-setting possibilities which could result from a decision to grant the subject appeal. The OP was of the opinion that the proposed height of the dormitory building would be compatible with existing buildings in the area and is appropriate for location on the central campus.

Regarding the precedent-setting nature of the Board's decision, the OP found the appellant's argument persuasive in that the appellant's research indicated that no other instance could be found in the District of Columbia where the underlying zoning permits a greater height than the Height Act would permit based on the width of the abutting street. However, the OP was unable to substantiate the appellant's findings because of severe time constraints.

With respect to the interpretation of the applicable regulations, the OP indicated that it could find no sound rationale for designating 4th Street as a "business street" simply because an SP district is located across the street from the subject site. The OP noted that a possible solution to this issue would be for the appellant to request a map amendment from the Zoning Commission which would change the zoning in the subject square from R-5-B to SP-2.

17. By submission received on October 18, 1991, counsel for the appellant responded to the OP report as follows:

a. The OP's response to the proposed height of the subject structure is consistent with its findings based on its review in conjunction with the special exception for further processing sought by the appellant in Application No. 15551.

b. The OP's response to the precedent-setting nature of the case is consistent with the evidence of record in which the appellant argues that the planning and zoning process would not be harmed if the subject appeal were granted.

c. The OP's response to the interpretation of the applicable requirements is not helpful to the Board's deliberations because it ignores the applicable Zoning Regulations and incorrectly assumes that a regulation exists which precludes 4th Street from being designated as a "business street" in the subject area.

FINDINGS OF FACT:

1. The Board finds that the appellant has failed to demonstrate that the decision of the Zoning Administrator is in error.

2. The Board does not accept the appellant's argument that the plain meaning of Subsection 2511.1 requires that both sides of 4th Street be designated as a "business street" because of the plural form of the words "side" and "portion." The Board notes that Paragraph 199.2(b) of the Zoning Regulations reads as follows:

"Words in the singular number shall include the plural number, and words in the plural number shall include the singular number."

Therefore, the Board finds that the pluralization of terms in the wording of Subsection 2511.1 has no major impact on the interpretation of that provision.

3. The Board finds that zoning district boundary lines are intended to follow existing lot lines, the center lines of streets, alleys, and natural water courses as set forth in Section 107.5 of the Zoning Regulations. In the instant case, the Board finds that 4th Street is split-zoned with SP-2 zoning on the west side and R-5-B zoning on the east side. Based on the location of the zone district boundary line in the center of 4th Street, the Board

finds that the term "business street" would apply to the west sides or portions of 4th Street which are located in an SP District but would not be applicable to the east side or portion of 4th Street which is located in an R-5-B District for the purpose of applying the limitations set forth in the Height Act.

4. The Board notes that while there is no regulation which specifies that a street which is split-zoned be designated as a business street on one side and a residence street on the other, the Board finds that it would be unreasonable to accept that the regulations as written, would allow for the designation of a "business street" for purposes of determining the height of a building which directly abuts a street located in a residence district, simply because the zoning on the other side of the street would allow for such a designation.

5. The Board notes that the proposed height and use seem to be in harmony with existing development and the general purpose and intent of the Zoning Regulations. However, the Board finds that the material facts presented in the instant case are not sufficient to justify the designation of an entire street as a business street on a city-wide basis if any side or portion of such street is located in a Special Purpose, Waterfront, Commercial or Industrial district.

6. The Board finds that, although the appellant has shown evidence that there are few, if any, similar situations in the District, future rezonings could possibly be impacted by a decision favorable to the appellant. The Board further finds that in instances of conflict between the provisions of the Zoning Regulations and any statute or other municipal regulations, the higher or more restrictive provisions would apply as set forth in Sections 101.3 and 101.4 of the Zoning Regulations.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the appellant has failed to demonstrate that the Zoning Administrator's decision is in error. The Board concludes that, based on the circumstances presented, the Zoning Administrator correctly interpreted the provisions of the Zoning Regulations and the Height Act in determining the permitted height on the subject lot. Subsection 2511.1 provides that a business street shall mean those sides and portions of any street located in a Special Purpose, Waterfront, Mixed-Use, Commercial or Industrial District. There is no existing zoning regulation which sets forth any circumstances or criteria which would deem appropriate the designation of "business street" for an entire street simply because any side or portion of a split-zoned street is located in an SP, Waterfront, Mixed-Use, Commercial or Industrial District.

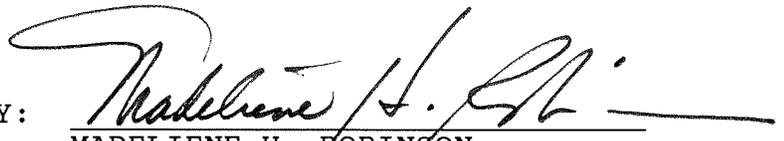
The Board concludes, based on the circumstances affecting the subject site, that the subject lot abuts a street located in a residential zone district and that the Zoning Administrator properly applied the criteria set forth in the Zoning Regulations and the Height Act. The Board notes that the appellant's argument that the resulting height of the proposed structure as a result of the designation of this portion of 4th Street as a residence street is inconsistent with existing institutional development in the area and that the overall zoning policy of maintaining reasonable and uniform heights should more appropriately be presented as part of a petition for a map amendment before the Zoning Commission. The Board concludes that the inconsistencies related to existing height and development relative to the subject site do not represent a basis for overturning the Zoning Administrator's interpretation of the existing regulations which must be uniformly applied throughout the District of Columbia.

Accordingly, it is ORDERED that the appeal is hereby DENIED and the decision of the Zoning Administrator is hereby UPHELD.

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

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

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER:

OCT 22 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."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15568

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on OCT 22 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:

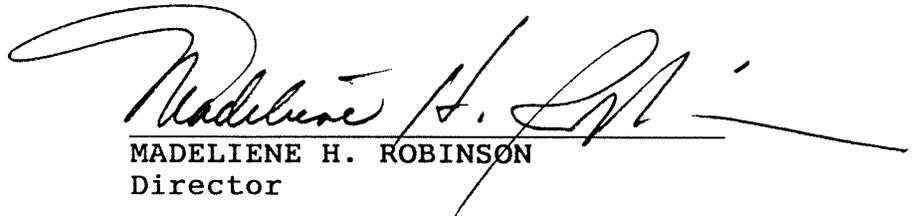
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MADELIENE H. ROBINSON
Director

DATE: OCT 22 1993