

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15810 of Mary Aileen McCarthy O'Donovan, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 320.3) to allow a four-unit apartment building in an R-3 District at premises 2791 28th Street, N.W. (Square 2109, Lot 801).

HEARING DATE: April 14, 1993
DECISION DATE: May 5, 1993

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The subject site is located at 2791 28th Street, N.W., on the east side of 28th Street, one-half block north of Woodley Road, N.W. The site is zoned R-3.

2. The site comprises 2,649 square feet of land area and is improved with a three-story rowhouse type residential structure that was constructed in 1963. The existing structure currently contains four apartment units (one apartment each in the basement and on the first floor, and two apartments on the second floor). A paved parking area that can accommodate up to seven cars is located on the rear portion of the property.

3. The applicant is requesting a use variance to allow the continuation of a four-unit apartment use in the subject structure. The applicant also is requesting, in the alternative, a use variance to allow for a basement apartment.

4. The subject site is located in an R-3 District. 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 of three stories/40 feet. An apartment house or a flat is not allowed in an R-3 District.

5. The applicant maintains that she bought the subject property in 1986 as a four-unit apartment house with no prior knowledge of the fact that the existing use was not in compliance with the Zoning Regulations.

6. The applicant testified that when she purchased the property, in order to qualify for a loan, she was required to submit three rental applications. The applications were submitted and were accepted by the lenders. There was no indication to suggest that the building was not a legitimate four-unit apartment house.

7. The applicant further testified that the apartment use of the structure does not cause any traffic congestion since there is ample on-site parking spaces for tenants and guests. The applicant also testified that reconverting the structure to a conforming use would be very difficult due to the fact that the structure was built with two separate entrances to the ground and first floors. The applicant stated that 40 of her neighbors have signed a petition in support of this application.

8. By report dated April 6, 1993 and through testimony at the hearing, the Office of Planning (OP), recommended denial of the application. The OP stated that the approval of a use variance requires the existence of a hardship, unique to the specific property itself, that would result were this application granted. In the opinion of the Office of Planning, the subject property is similar in size to other properties in the area except that it has already been converted to an apartment house. While it would be a financial hardship for the applicant to convert the structure to a single-family dwelling, the requested variance would permit an intensity of use at the site that is not appropriate for an R-3 zone district. In the opinion of the Office of Planning, the proposal would impair the intent, purpose and integrity of the Zoning Regulations by establishing an apartment house in an R-3 District.

9. By letter dated April 8, 1993 and through testimony at the hearing, Advisory Neighborhood Commission (ANC) 3C recommended approval of the application with the condition that there shall be no more than two units in the building. A representative of the ANC testified at the hearing that many neighbors support the variance request and that the ANC put the condition on its recommendation feeling that perhaps that was closer to the intent of the Zoning Regulations.

10. The applicant's next door neighbors (husband and wife) and another neighbor testified in favor of the application. They testified that the use of the subject property as an apartment house was established long before the applicant bought the property. The neighbors further testified that the property is well managed and well maintained with adequate off-street parking. It has been used consistently over the last 30 years as a multi-family dwelling with no adverse impact on the neighborhood. One of the neighbors also testified that in his opinion, the building was built as a multiple-unit dwelling and without extremely extensive physical reorganization of the building, a substantial portion of it would have to be left vacant in order to comply with the regulations, creating a hardship to the owner of the property.

11. One couple and two individuals (including one ANC Commissioner) who are residents and homeowners in the neighborhood testified in opposition to the application. They testified that

there is nothing exceptional or unique about the property and any alleged hardship to the owner is self-created and therefore, can not meet the criteria for the use variance. The neighbors further testified that the character of the neighborhood would be negatively impacted if the requested variance is to be granted. These neighbors also submitted letters to the record in opposition of the application.

12. Three other homeowners and residents of the neighborhood had submitted letters to the record in opposition of the application but did not testify at the hearing.

13. The Board at the end of the public hearing left the record open to receive the history of the applicant's tax records for the property and any other evidence that the applicant can provide to support her request for a use variance. The requested documents were submitted to the record on April 12, 1993 as part of the applicant's post hearing submission.

FINDINGS OF FACT:

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

1. The property was clearly built as a four-unit apartment building. The record indicates that the property was used consistently as a four-unit apartment building since its construction.

2. Tax records indicate that the property was continuously assessed as a four-unit apartment building while under the ownership of both the previous and the current (the applicant) owners. There is no record to indicate that the property was not constructed as a four-unit apartment building.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing of undue hardship upon the owner of the subject premises arising out of some unique or exceptional condition in the property so that the property cannot reasonably be used for the purposes for which it is zoned. The Board must further find that the relief requested 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 Map.

The Board concludes that the applicant has provided sufficient proof to establish an undue hardship inherent in the property. The historic use of the subject property as a four-unit apartment house suggests strongly that the property was intended originally for

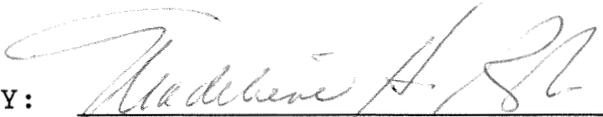
physical arrangements of kitchens and bath rooms, the separate entrances and accesses to the different portions of the building, clearly indicate that the structure is intended to be used as an apartment house. Moreover, the existing on-site parking spaces provided on the property are further indication that the building has always been used for multi-family dwelling purposes. To convert the subject structure to a single-family use would entail extensive interior and exterior alterations to the structure and would result in a substantial portion of it being left unused, furthermore, the cost of conversion would not be economically feasible. Therefore, the Board concludes that a conversion of the property to a single-family dwelling would not result in a reasonable use of the property.

The Board further concludes that the relief can be granted without substantial detriment to the public good. The Board notes that the subject premises has been used as a four-unit apartment house for over 30 years without creating any adverse impacts on the neighborhood. The Board further concludes that the requested relief can be granted without substantially impairing the intent, purpose and integrity of the zone plan.

Accordingly, is hereby ORDERED that the application is GRANTED.

VOTE: 3-1 (Carrie L. Thornhill, Sheri M. Pruitt, Paula L. Jewell to approve; John G. Parsons to deny by absentee vote; Angel F. Clarens not voting, not having heard the case).

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

ATTESTED BY: 
MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 21 1995

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS 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.

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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, 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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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 21 1995 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:

Mary A. O'Donovan
2791 28th Street, N.W.
Washington, D.C. 20008

Peter Espenschied
3414 Newark Street, N.W.
Washington, D.C. 20016

Mr. Jeremy C. Bates, Chairperson
Advisory Neighborhood Commission 3C
2737 Devonshire Place, N.W.
Washington, D.C. 20008

Phil Mendelson
2737 Devonshire Pl., N.W.
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Marilyn Mentz
2718 27th Street, N.W.
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Hans Israelsson
2716 27th Street, N.W.
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Janet Frank
2716 27th Street, N.W.
Washington, D.C. 20008

A handwritten signature in cursive script, reading "Madeliene H. Robinson".

MADELIENE H. ROBINSON
Director

DATE: AUG 21 1995