

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 (Subsection 320.3) to allow a four-unit apartment building in an R-3 District at premises 2791 28<sup>th</sup> Street, N.W. (Square 2109, Lot 801).

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

**DISPOSITION:** The application was granted by a vote of 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).

**FINAL DATE OF ORDER:** August 21, 1995

**ORDER UPON RECONSIDERATION**

**PROCEDURAL MATTERS:**

The Board granted the application at its public meeting of May 5, 1993. The order was issued on August 27, 1995. By the time the order was issued, three of the Board members who heard the application were no longer on the Board.

By letter dated August 28, 1995, Phil Mendelson, Commissioner of Advisory Neighborhood Commission (ANC) 3C moved for reconsideration of the Board's decision. In his motion, he noted the lack of the majority members and cited the Administrative Procedures Act (D.C. Code Subsection 1-1509(d), which requires that the order be issued by a majority of the Board members who heard the application or that parties be allowed to file exceptions to a proposed order. He requested that the decision of the Board be vacated and that the existing Board members review the record and issue proposed findings of fact and conclusions of law as required.

By letter dated October 3, 1995, the applicant requested denial of the motion essentially because it took the Board so long to issue the order. The late filing of this response was waived by the Board as requested by the applicant.

By letter dated September 1, 1995, Peter Espenschied, a party in support of the application, requested that the Board deny the motion based on his interpretation of the APA which would allow an order to be issued even though a majority of the Board Members were not currently sitting.

Finally, a letter dated September 9, 1995 was received from Maureen Blum, the Single Member District Commissioner for ANC 3C03. She stated that the ANC did not consider the motion nor has it voted to reverse its earlier decision to support the application. Ms. Blum expressed her support for the application and requested that the Board deny the motion for reconsideration.

The motion, responses and record in the case were sent to Mr. Ellis, Mr. Clarens, Mrs. Hinton and Mrs. Richards. At the public meeting of October 4, 1995, the Board considered the motion and responses.

In the opinion of the Board, the two-year period of time that passed before the order was issued was entirely too long and the public is not served by such delays. The Board granted the motion and reconsidered the application as requested by the movant.

Upon reconsideration of the application, the Board determined that the record is unclear as to whether or not the subject structure was originally built as a four-unit building, although the evidence showed that it was used as such from early on.

The Board further concluded that the physical conditions of the site existed when the applicant purchased the property and that her circumstances did not involve a self-created hardship. Therefore, the Board determined to amend the order of August 21, 1995 to change Finding of Fact No. 1 and the Conclusions of Law to be consistent with these views.

The Board concluded that the previous Board did not err in its decision to grant the application and the Board adopted the order, as amended. The body of the order appears following the vote on the Motion for Reconsideration.

**VOTE: 4-1** (Craig Ellis, Susan Morgan Hinton, Angel F. Clarens and Laura M. Richards to **APPROVE** the Motion for **RECONSIDERATION**; John G. Parsons opposed to the motion by absentee vote).

#### **SUMMARY OF EVIDENCE OF RECORD:**

1. The subject site is located at 2791 28<sup>th</sup> Street, N.W., on the east side of 28<sup>th</sup> 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 are 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, cannot 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:**

1. From early on, the subject site was used as a four-unit building.
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.



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.

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 TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ord15810/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 15810**

As Director of the Board of Zoning Adjustment, I certify and attest that on  
FEB 18 1998 a copy of the order entered on that date in this matter was  
mailed first class, postage prepaid to each party who appeared and participated in the public  
hearing concerning this matter, and who is listed blow:

Mary A. O'Donovan  
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Phil Mendelson, Chairperson  
Advisory Neighborhood Commission 3C  
2737 Devonshire Place, N.W.  
Washington, D.C. 20008

Attested By:

A handwritten signature in black ink, appearing to read "Madeliene H. Dobbins", written over a horizontal line.

**MADELIENE H. DOBBINS**  
Director

Date: FEB 18 1998

attest/ljp