

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 16210 of Thomas M. and Mildred T. Diggs, pursuant to 11 DCMR 3107.2, for a variance to allow open parking spaces to be located within the front yard of a dwelling [Paragraph 2116.2(b)] for construction of a retaining wall, walkway and parking pad in an R-1-B District at premises 1349 Otis Street, N.E. (Square 3965, Lot 20).

**HEARING DATE: February 19, 1997**

**MEETING DATE: March 5, 1997**

**ORDER**

**SUMMARY OF EVIDENCE**

The property which is the subject of the application is located on the south side of Otis Street, between 13th and 14th Streets, N.E. The property consists of one lot of record containing 7,500 square feet of land area. The lot is 50 feet wide and 150 feet deep. The site is developed with a two-story plus basement single-family detached dwelling built in 1957.

The applicants propose to install a two-car open parking pad on the northeast corner of the front yard of their property, with a retaining wall and walkway.

**Issues and Arguments:**

- 1. Whether there exists a unique or exceptional situation or condition related to the property which creates a practical difficulty for the owner in making reasonable use of the property?**

The applicant testified that their property is similar to other properties in the area that have parking pads for either one or two cars and is in keeping with the residential character of the area. The applicant further testified that the topography of the site slopes from front to rear.

He testified that the site is located across the street from Fort Bunker Hill Park, a large federal park which is a constant threat of potential vandalism, other life endangering criminal actions, etc. The park is unattended, unlit, generally unpoliced, and overgrown with brush and trees. He stated that the current Zoning Regulations prevent the reasonable use of the subject property for parking close to the house and under the surveillance of a security light mounted on the front wall of the house and wired into the burglar alarm.

With regard to practical difficulty, the applicant testified that the Zoning Regulations reduce the opportunity for a general beautification and enhancement of a potentially useful area at the site and they also help to block the establishment of realistic property valuation.

The applicant testified that they wish to install the parking pad on the site because of concerns with safety if they are required to park on the street. They are also concerned with vandalism of automobiles parked on the street in the area.

The applicant also testified that the Zoning Regulations frustrate the express will of the 5th Distr. police chief, the current and former ANC Commissioners and a vast majority of neighbors who voted overwhelmingly to support the variance.

By report dated February 12, 1997, the Office of Planning (OP) recommended denial of the application. OP noted the location of the property and indicated that the area surrounding the site is characterized by detached single-family dwellings and religious institutional uses. OP noted that Fort Bunker Hill Park is located across the street from the subject lot and that the Franciscan Monastery is located diagonally across 14th Street N.E. from Square 3965. OP stated that the subject property is similar to others in the area and is not affected by any extraordinary or exceptional situation or condition that would justify the granting of the requested zoning relief. In fact, OP noted, the applicants have a two-car garage which could house their two cars.

A neighbor who resides at 1351 Otis Street, N.E., adjacent to the subject site, testified in opposition to the application. He maintained that the applicants do not face a practical difficulty because they can park their cars in their garage and in the driveway. He stated that the proposal is more of a matter of convenience than of need.

Responding to the suggested parking location, the applicant stated that they use their garage for storage of all the maintenance material required for a piece of property and they were informed that to park in the manner suggested by the opponent is illegal.

**2. Whether granting the application would be of substantial detriment to the public good?**

The applicant testified that there will be no detriment to the public good, as evidenced by the majority of the neighbors in the square supporting the application. They stated that the application was supported at the ANC committee on the whole meeting and that 96.3 percent of the area residents approve the proposal, as opposed to the 3.7 percent of neighbors supporting the opponent's position.

Advisory Neighborhood Commission 5A submitted a report dated February 10, 1997, in support of the application.

Visual impacts: The Office of Planning stated that because the proposed parking pad would permit the storage of two automobiles in the front yard of a property in a residential district (R-1-A), it is of the opinion that the proposal would cause adverse visual area impacts as well as adverse impacts on the residential character of the area.

Impact on the adjacent property – parked cars: On the issue of impacts, the adjacent neighbor testified that he is concerned with possible damage to his property. He stated that the project, as

proposed, is hazardous because there's a chain linked fence on a sloped parking pad and since it is narrow, one car has to be parked very close to the edge. He noted that his house is located only 30 inches from the property line and the parking pad is very close to his house. He is concerned that the car parked closest to his house will slip off of the parking pad onto his property. He stated that the applicants could lose control of their car and the car could come off of the parking pad into the second story of his house. Such an incident could endanger the life of anyone who happens to be on his porch.

Responding to the neighbor's concerns the applicants testified that to prevent cars on the subject site from sliding into 1351 Otis St., they have in place three 6"x6"x8' pressure treated wooden barriers bolted to the concrete pad.

Water drainage problems: The adjacent neighbor testified that the proposed project would create water drainage problems for him. He stated that the drainage system on his property consists of one four-inch drain, which is barely adequate to take in water from his own property and he does not think it was designed to take in water from the adjacent property. He stated that his other neighbor – to the east – built his property up quite high, several feet higher than his own, which exacerbated a bad water problem. He further testified that at some time in the past, the applicant had taken his downspout with holes drilled in it, and continued it alongside his house in order to disperse water onto the dirt that was between their houses. This was to take some of the strain off of his drainage problem. Now, he stated, that pipe is gone and there is nothing to absorb the water because the area is covered with concrete.

Another neighbor who resides at 1328 Newton Street testified in opposition to the application. He stated that the applicant's downspout does not directly connect to a sewer but to the ground. Therefore, there is no place for the water to go except onto the adjacent property. This neighbor testified that if the applicant wishes to, he could connect with the sewer to correct the water problem.

The applicant testified that water is channeled into the existing underground drainage and a catch basin to collect water from the concrete pad, which was in the aforementioned downspout. This takes care of the drainage from the new pad and a northeast corner of the house where a downspout came down to the walkway. The applicant stated that within the last three days of this hearing, the water has been re-channeled by manipulating the downspout so that the water drains into an existing catch basin underground to the street sewage. The only water running into the neighbor's property now is from the walkway.

Responding to the opponents, the applicant testified that with the proper maintenance of the storm sewer on the opponent's property, water would not be a problem. The adjacent neighbor took exception to this comment.

The location of parked cars: Both opponents noted that in the R-1 District, it is illegal for cars to park cars in front of the building line as the applicants wish to do.

Advisory Neighborhood Commission 5A submitted a report dated February 10, 1997 in support of the application. The ANC noted the concrete barrier in place to prevent cars from

sliding onto the adjacent property. The ANC also noted the downspout at the subject site and the need for connecting it to an existing underground drainage and catch basin to collect water from the concrete pad.

**3. Whether granting the application would impair the intent, purpose and integrity of the zone plan?**

The applicant maintained that such a comparatively small adjustment in land use could not possibly impair the intent, purpose and integrity of the Zoning Regulations and Map. He stated that this conclusion is also appropriate given the large amount of support from neighbors.

The Office of Planning was of the opinion that the proposed parking pad would impair the intent, purpose and integrity of the R-1-B zone district because it would provide for automobile parking on the front yard of the property, which is not permitted in a residential district. Therefore, OP recommended denial of the application.

**FINDINGS OF FACT:**

Based on the evidence of record, the Board makes the following findings of fact:

1. The applicants' house is similar to others in the area.
2. The applicants have a garage on site in which to park their vehicles.

**CONCLUSIONS OF LAW AND OPINION**

Based on the application on record, the Board concludes that the applicant is seeking a variance to allow a parking pad to be located in the front of the structure in an R-1-B District. The granting of such a variance requires a showing through substantial evidence that there exists a unique or exceptional situation or condition related to the property which creates a practical difficulty for the owners in complying with the Zoning Regulations. The Board must also find that granting the application will not be of substantial detriment to the public good, nor will it impair the intent, purpose and integrity of the zone plan in accordance with the Zoning Regulations and Map. The Board concludes that the applicant has not met this burden of proof.

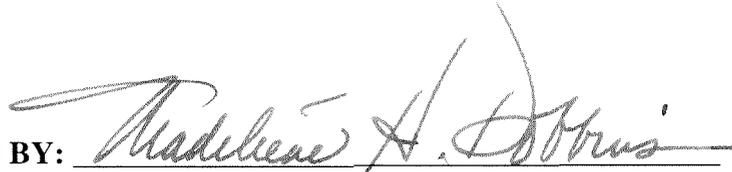
The Board concludes that the applicants have failed to demonstrate that their property is unique as it relates to other properties in the area. They have also failed to show that they face a practical difficulty by not being allowed to park on this parking pad, given that they have a garage on-site that can be used for parking. Since the applicants have not met the first test for the granting of variance relief, the Board finds it unnecessary to address the remaining standards related to impacts on the public good and impairment of the zone plan. Because the ANC only raised two issues, both of which relate to impacts, the Board concludes that it has accorded the ANC the "great weight" to which it is entitled.

In light of the foregoing analysis, the Board hereby **ORDERS** that the application be **DENIED**.

**VOTE: 3-0** (John G. Parsons, Susan Morgan Hinton and Sheila Cross Reid to deny; Laura M. Richards and Angel F. Clarens not voting, not having heard the case).

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

ATTESTED BY:



**MADELIENE H. DOBBINS**

**Director**

FEB 19 1998

**FINAL DATE OF 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 15210**

As Director of the Board of Zoning Adjustment, I certify and attest that on  
FEB 19 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:

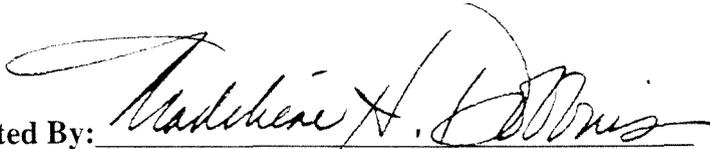
Mr. & Mrs. Thomas Diggs  
1349 Otis Street, N.E.  
Washington, D.C. 20017

Richard Senerchia'  
1351 Otis Street, N.E.  
Washington, D.C. 20017

Mr. Bernard Cain  
Mr. John Cain  
1328 Newton Street, N.E.  
Washington, D.C. 20017

Robert I. Artisst, Sr.  
1353 Otis Street, N.E.  
Washington, D.C. 20017

Joseph L. Bowser, Chairperson  
Advisory Neighborhood Commission 5A  
Slowe School Demountable  
14<sup>th</sup> & Irving Streets, N.E.  
Washington, D.C. 20017

Attested By:   
**MADELIENE H. DOBBINS**  
Director

Date: FEB 19 1998

attest/ljp