

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16349 of Henrietta Dunyer Testamentary Trust pursuant to DCMR 3107.2 for a variance from the maximum allowable floor area ratio requirements of Section 771.2, and a variance from the parking space requirements of Section 771.2 for the construction of an addition to an existing building in a C-2-A District at the premises 210 7th Street SE (Square 900, Lot 66).

HEARING DATE: June 3, 1998
DECISION DATE: June 3, 1998 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

The subject premises are known as 210 7th Street, SE. The site is located in a C-2-A District. Two 10-foot wide public alleys along its northern and eastern sides bound the property.

The current zoning (C-2-A) for the subject site allows a floor area ratio (FAR) of 2.5 for a two-story building of which only 1.5 FAR may be used commercially. The current use of the building is retail and services on the first floor. The applicant proposes to add space on the second floor for offices and is requesting a variance from the maximum allowable FAR requirements of Section 771.2. The applicant is also requesting a variance from the parking space requirements of Section 771.2 for the construction of an addition to an existing building in a C-2-A District at the subject site. The approximate size of the proposed addition is 3,500 square feet.

The Variance from the Allowable Floor Area Ratio

Issues and Arguments:

The applicant testified that under the current zoning (C-2-A), only 1.5 FAR of the existing 2.5 FAR might be used for commercial uses. He further testified that the uniqueness of the project is determined by existing market forces which indicate that if the proposed space is used for retail services, the project would not work because while there is a market for office space in this neighborhood, the market for additional retail space is poor.

Advisory Neighborhood Commission (ANC) 6B supports the applicant's testimony. The ANC submitted a statement dated May 5, 1998, in which they supported the applicant's testimony that additional mixed use has not worked on streets in areas like 7th Street and Pennsylvania Avenue, based on the quality of the existing commercial activity in the neighborhood.

The applicant testified that granting this application would not be of substantial detriment to the public good as use of the proposed space would provide services that would primarily serve neighborhood needs.

Carol Press, who lives at 217 8th which is immediately behind the subject property, testified in opposition to the project. She was concerned about the potential for negative impacts on the area environment during and after the project was completed. She identified the following concerns:

- (a) How would construction of the proposed addition be carried without blocking the alley?

The architect for the project responded that the alley was not going to be blocked at any time during construction of the project. He indicated that a permit to block the alley would be required, and such a permit was not issued for the type of construction proposed for this project.

- (b) What would the height of the building be with the proposed addition and what are the architect's plans for relocating the existing air conditioning unit?

The architect explained that the existing structure is 15 feet, nine inches and the proposed addition would be 12 feet, four inches. He further stated that it is a part of the plan to move the air conditioning unit to the center of the roof of the second floor.

- (c) She is opposed to the inconvenience of having office windows adjacent to her bedroom windows.

The applicant responded that the height of the addition is well within the height requirement allowed in the C-2-A regulations. Also the addition will be set back from the rear of the property by the rear yard which actually exceeds the rear yard requirements. The windows discussed will be farther back from the property line than is required by the Zoning Regulations.

- (d) She is opposed to the proposed size of the addition. She would prefer a smaller addition, which would be more in keeping with the neighborhood.

The applicant responded that the Capitol Hill Historic Preservation Review Board endorsed the site, which is within the Capitol Hill Historic District.

The applicant argued that granting the variances would not impair the intent, purpose and integrity of the Zoning Regulations. The proposed project would provide a service that was needed and welcomed by the neighborhood.

In its submission, the ANC stated that it supported the application because it would serve neighborhood needs.

FINDINGS OF FACT:

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

1. Under the current zoning (C-2-A), only 1.5 FAR of the 2.5 FAR may be used for commercial use.
2. Additional retail space does not appear to be needed in the neighborhood.
3. There is a market for office space in the neighborhood.

The Parking Variance

Issues and Arguments:

The applicant testified that the project is presented with a unique situation because the existing one-story building occupies 98% of the lot and physically it is not possible to accommodate any parking spaces. The applicant further testified that granting this application would not be of substantial detriment to the public good as there is public parking on an adjacent lot and the need for parking only increases on the weekends when the office would be closed. The applicant testified that granting this application would not be of substantial detriment to the public good as use of the proposed space would provide services that would serve neighborhood needs.

The ANC stated in its submission to the Board that it finds that there is parking available in the area between 9:00 a.m. and 5:00 p.m. on weekdays, and since the parking situation around the subject site is presently acceptable, they recommend granting the applicant's request to dispense with the parking requirement.

The ANC further testified that the applicant has proven to be a good neighbor and that the ANC enthusiastically and strongly supported the application and recommended its approval.

The Office of Planning (OP) did not submit a report. The Department of Public Works (DPW) indicated that it was unable to complete its review because of insufficient information regarding the subject BZA case.

FINDINGS OF FACT:

- (1) The lot is unable to accommodate the required parking spaces.
- (2) The need for parking spaces for visitors to the proposed second floor of the subject project will be on the weekdays, not evenings or weekends.
- (3) There is parking available in this area between 9:00 a.m. to 5:00 p.m. on weekdays.

CONCLUSIONS OF LAW AND OPINION:

Based on the application before the Board, the Board concludes that the applicant is seeking a variance from the maximum allowable floor area ratio and a variance from the parking space requirements for the construction of an addition to an existing building in a C-2-A District.

The granting of such variances requires a showing through substantial evidence of a unique or exceptional situation or condition affecting the subject property, which creates a practical difficulty on the owner in complying with the Zoning Regulations. The applicant must also demonstrate that granting the application will not be of substantial detriment to the public good and will not impair the intent, purpose and integrity of the Zone Plan.

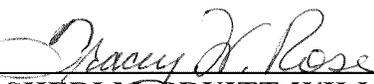
With regard to the FAR variance, the Board concludes that the applicant has met the burden of proof. With regard to the parking variance, the Board concludes that the applicant has met the burden of proof. The Board is of the opinion that the neighborhood in which the project is proposed will benefit from the additional office space. Finally, the Board concludes that granting the application would not be of substantial detriment to the public good nor would it impair the intent, purpose or integrity of the Zone Plan.

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

VOTE: **3-0** (Betty King, Maurice Foushee and Sheila Cross Reid to grant).

This order was issued as a proposed order pursuant to the provisions of D.C. Code Section 1-1509(d). The proposed order was sent to all parties on October 26, 1998. The filing deadline for exceptions and arguments was close of business (4:45 p.m.) on Monday November 9, 1998. The deadline for responses was close of business (4:45 p.m.) on Monday November 16, 1998. No party to this application filed exceptions or arguments relating to the proposed order, therefore, the Board of Zoning Adjustment adopts and issues this order as its final order in this case

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT – BETTY KING,
JERRY GILREATH AND SHEILA CROSS REID.**

ATTESTED BY: 
for **SHERI M. PRUITT-WILLIAMS**
Interim Director

Final Date of Order: NOV 20 1998

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.

Ord16349/POH

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No.16349

As Interim Director of the Office of Zoning, I hereby certify and attest that on NOV 20 1998 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class 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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Attested by: *Sherry M. Pruitt-Williams*
for **SHERI M. FRUITT-WILLIAMS**
Interim Director

Date: NOV 20 1998

Attest 116349/POH