

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16351 of Kazys K. Skirpa, et al., pursuant to 11 DCMR 3107.2, for a variance from the maximum lot occupancy requirements (Subsection 403.2), for a variance from the maximum floor area ratio requirements (Subsection 1203.3), and a variance from the off-street parking requirements (Subsection 2101.1) for the proposed construction of a two-unit flat in a CAP/R-4 District at premises 309 6th Street, S.E. and 517 Seward Square, S.E. (Square 844, Lot 831).

HEARING DATE: June 17, 1998

DECISION DATE: July 22, 1998

ORDER

PRELIMINARY MATTER:

1. The applicants indicated that they should not be required to pay the filing fee for the off-street parking variance because of a conflict between the city's zoning and historic preservation review requirements. Specifically, the Historic Preservation Review Board (HPRB) first reviewed the project because it is located in the Capitol Hill Historic District and the Capitol Interest District. As such, HPRB would not allow a curb cut for parking. The application therefore was referred to the Board of Zoning Adjustment (BZA) for review because zoning requires one parking space for a flat in the R-4 District. The applicants' position was they are required to apply for variance relief from the off-street parking requirement based on the recommendation of the HPRB. As such, the required off-street application fee of \$800 should be refunded.
2. The District of Columbia Assistant Corporation Counsel addressed the matter. The Assistant Corporation Counsel indicated that the request for a refund would come under Section 3381 of Title XI and that "any decision of the Director of the Office of Zoning regarding the application fee schedule may be appealed to the Board by the appellate or applicant." Also, Section 3381.4 indicates that "the Board may authorize the refund of all or a portion of the filing fee if it finds that the application was incorrectly filed at the direction of the Zoning Regulation Division of the Department of Consumer and Regulatory Affairs."
3. The Assistant Corporation Counsel's response to the request for refunding the application fee follows:

a. Can the Board Grant a Refund for Reasons Other Than That Specified in its Rules

Based on current rules promulgated in 1994, all applicants shall pay the established fees, except where provided in 11 DCMR, Subsections 3380.3 and 3380.4, and if there was an error in the application of the schedule of fees. The current zoning rules (Section 3381) do not recognize a refund for any other group of persons, other than the two groups and entities identified. To grant the applicants' request, the rules would have to be changed to recognize another class of persons, which would be a waiver for all persons who are required to seek a variance due to a policy of the HPRB. Such action would be the subject of a Zoning Commission rulemaking case. Accordingly, the Board does not have the authority to grant the waiver in this case.

b. If The Board Could Grant the Request, Would That Furnish Grounds For The Type Of Waiver That Has Been Termed A Contradiction Between The HPRB And The Zoning Rules

The HPRB issued a policy decision, which requires the property owners to seek variance relief from the Zoning Regulations. Does a conflict between historic preservation review and zoning requirements furnish grounds for the Board to waive its fees, or for the granting of variance relief? The fees charged are meant to compensate the Board for its costs to hear this case. The issues presented in this application are complex, and this application is exactly the type of case that would take the Board's time and resources. Therefore, the Board should be compensated for hearing the case by enforcement of its fees.

The Board determined that, in this particular case, because a policy decision had been made by HPRB that does not justify waiving the filing fee. Accordingly, the applicants' request for refunding the fee for the parking variance was denied.

SUMMARY OF EVIDENCE:

1. The site is a corner lot with addresses of 309 6th Street, S.E. and 517 Seward Square, S.E. The site extends southward from Seward Square, S.E. along the west side of 6th Street, S.E. The site consists of one unimproved lot (Lot 831). The subject lot contains 1,890 square feet and its dimensions are 21 feet along Seward Square and 90 feet along 6th Street.
2. Pennsylvania Avenue, S.E. bounds Seward Square immediately north of the site. The Avenue serves as a major ceremonial entrance to the U.S. Capitol precinct from the east and is designated as a special street in the Comprehensive Plan for the National Capital.
3. On the west, the site abuts a four-story apartment house at 515 Seward Square, which is owned by the applicants' family. The apartment building extends approximately 75 feet southward from Seward Square. The east facade of the apartment building is unfenestrated. The evidence indicated that this prominent facade is unsightly when viewed from Pennsylvania Avenue.

4. The applicants purchased the vacant lot in 1992. Prior to that time, the property was used for posting and maintaining large billboards for commercial advertisement. The applicants indicated that this use was aesthetically detrimental to the surrounding area and the lot was acquired, in part, to end this practice.

5. The applicants testified as to the difficulties and expense connected with the site. The applicants must arrange for cutting of the grass and removing trash and discards. In addition, the applicants are taxed on the site without benefit of its use

6. To reduce the taxes on the site when it was bought in 1992, the lot was subdivided (combined with the abutting property at 515 Seward Square) by the applicants. Thus, Lot 808 was created. However, in order for the applicants to construct the proposed building on the vacant land, a new lot of record (Lot 831) had to be created. The new lot of record was approved in 1997.

7. The applicants indicated that Seward Square is a short block, and that the houses and apartment building that are located on the block are massive. All of the buildings on the block appear to exceed the allowable lot occupancy and gross floor area. Additionally, the corners of 5th and Seward Square and 6th and Seward Square are distinct and important locations in the Capitol Hill Historic District. As such, the design of any structure at the intersection should be balanced, thereby complementing existing structures.

8. The site is zoned CAP/R-4. The Capitol Interest (CAP) District was established to promote and protect the public health, safety and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction. This special area is adjacent to the U.S. Capitol. Land use controls are in place to reflect the importance of this area to the District of Columbia and the nation. The height of buildings or structures in the Capitol Interest District shall not exceed 40 feet/3 stories, except as specified in Chapters 12 and 20 through 25 of the Zoning Regulations. The R-4 District permits matter-of-right residential uses, including flats, with a minimum lot area of 1,800 square feet, a minimum lot width of 18 feet, a maximum lot occupancy of 60 percent, and a maximum height of 3 stories/40 feet.

9. The applicants proposed to construct a duplex (two-unit building). The building was designed to have the appearance of townhouses: one entrance would be from Seward Square and the other from 6th Street. The height of the building would be approximately 35 feet, and contain three stories plus a basement.

10. By memorandum dated October 30, 1996, the HPRB informed the Board that it approved the conceptual design for the project's construction. HPRB's approval was contingent on the applicants satisfying the project's parking requirement without constructing a new curb cut on the site. The HPRB ruling was based on the Comprehensive Plan for the National Capitol, which states "The landscaped green space on publicly owned, privately maintained front and side yards in Historic Districts and on Historic Landmarks should be preserved. Special care should be taken to protect these historic green areas from being paved over for vehicular parking."

11. The HPRB correspondence noted that if the applicants were unable to reach an agreement with the abutting property owners to allow access through their property for on-site parking, the HPRB would support the application before the BZA for a variance from the on-site parking requirement.

12. The HPRB staff report of March 28, 1996 recommended that the possible means of access to the site could be from the south, where the site abuts an existing 8-foot wide private driveway. The Zoning Administrator, however, determined that the 8-foot driveway would be too narrow for use as access to off-street parking at the rear of Lot 831.

13. In an effort to develop an appropriate design, the HPRB staff and applicants went through a number of iterations for over two years. In the last review of the conceptual plans, the HPRB staff recommended that the applicants seek the necessary approvals to construct a building that is 70 feet long, and contain 78 percent lot occupancy. (The permitted, matter-of-right lot occupancy is 60 percent.) The increased lot occupancy would allow as much of the unfenestrated east facade at 515 Seward Square to be covered. All but about 5 feet would be covered under this plan.

14. The applicants explored several options for developing the site. Options considered, but were rejected, included the construction of a single-family residence and designing a building to conform to lot occupancy and floor area ratio zoning requirements. The matter-of-right designs that were rejected by the HPRB would project only 54 feet along 6th Street, leaving about 20 feet of the wall exposed. The HPRB staff was concerned that this would leave too much of the unfenestrated east facade exposed and looming over the proposed building.

15. Several member of the Michelle Manor Condominium presented testimony in opposition to the requested variances. The condominium association members reside in three separate buildings, nine units, that are located to the south of the site. The residents indicated that granting the off-street parking variance would significantly affect parking and traffic flow in the neighborhood. The association members also indicated that granting the other variances would negatively impact on their light and green space.

16. The record indicates that on-street parking is available, but limited, in the general vicinity of the site. The fact that curb cuts are not permitted in historic districts is of special importance to this application. This situation invariably limits new construction on landlocked lots in historic districts citywide. It was indicated that this matter should be brought to the attention of the Zoning Commission to be considered as a rulemaking case.

17. The applicants stated that the property belonging to the Michelle Manor Condominium is fully exposed to sunlight at all times, and the proposed building would not interfere with light and air to the abutting property. The primary reason is the association's buildings are located in an east/west direction and the proposed building would be constructed in a north/south direction.

18. The application exceeds the lot occupancy zoning requirement by 336 square feet, or 18 percent. The applicants indicated that the proposed building would not occupy excessive green space. Further, the record contains information that indicates that the applicants meet the 20-foot

rear yard requirement, and that the lot size is larger than the required 1,800 square feet for this District.

19. A private roadway that is owned by the Michelle Manor Condominium Association is located at the rear (to the south) of the property. The condominium is located at 311, 313 and 315 6th Street, S.E. The HPRB staff suggested that the applicants seek to use the 8-foot driveway for ingress/egress to the site by securing an easement from the association.

20. The Board, at the public hearing, encouraged the applicants and members of the association to attempt to resolve any outstanding differences that may prevent the parties from reaching an agreement. At the conclusion of the public hearing, the Board requested that the applicants and members of the association attempt to work out an acceptable compromise, and gave an appropriate amount of time to do so.

21. In correspondence dated June 25, 1998, the applicants indicated that the following offer was made to members of the association:

- (a) We receive the right of ingress/egress into our property using your private 8-foot driveway across our joint property line for the distance as indicated in red on the attached excerpt from our topographic survey;
- (b) We will pay \$1,000 each to all of your nine condominium unit owners, i.e., a total of \$9,000;
- (c) We will split 50/50 cost of the three party agreement, recordation fees, survey, etc.
- (d) Above subject to the three party agreement as to ingress/egress to be in compliance with all applicable regulations;
- (e) Driveway repair costs of portion used by us to be shared on a pro-rata unit basis, i.e., total number of units is 11, you have nine we have two;
- (f) Our respective insurance policies to include the arrangement as to liability coverage;
- (g) With agreement to the above, you inform the BZA on or before July 6, 1998, that you support the project and withdraw the concerns voiced and above outlined.

22. The members of the association made a counteroffer and sought to meet with the applicants to narrow their differences, as indicated in correspondence dated June 30, 1998. The parties were unable to resolve all of the issues. Commonalties were reached on some issues; however, on others the parties could not reach agreement. The parties were not able to resolve issues involving cost of the easement (the applicants proposed to pay \$9,000, the association members asked for \$27,000); cost of maintaining the driveway; and, the terms of the agreement during construction.

23. Advisory Neighborhood Commission (ANC) 6B requested that the Board waive the seven-day requirement for filing the report in advance of the hearing. The Board granted the request. By report dated June 16, 1998, ANC voted neither to oppose nor support the application.

24. The Capitol Hill Restoration Society, by report and oral testimony at the public hearing, supported the application and recommended that the Board grant all three variances sought by the applicants. The Society indicated that the conditions imposed by the HPRB present a unique situation that justifies granting the variances. Additionally, the Board has adopted the practice of denying curb cuts within historic districts and the Society supports HPRB's efforts in this regard.

25. The record was closed at the conclusion of the hearing, except for the following items:

- A letter authorizing Lyle R. Schauer to represent the Capitol Hill Restoration Society;
- A letter authorizing Robert Westerfeldt to represent the Michelle Manor Condominium Association;
- A memorandum from the Zoning Administrator addressing why an easement would not work;
- Documents addressing the efforts of the applicants to negotiate with the condominium association on the easement;
- The subdivision plat; and,
- Proposed draft order from the parties.

FINDINGS OF FACT:

1. Based on the design preferred and recommended by the Historic Preservation Review Board, the application requires review by the BZA because the project cannot meet the lot occupancy, floor area ratio, and off-street parking zoning requirements.

2. The site is located in the Capitol Hill Historic District and the Capitol Interest District. As such, new curb cuts are not permitted in this area. Variance relief is required from the off-street parking requirements to allow the lot to be built on.

3. The site has no access to a public alley and vehicular access from 6th Street depends on receiving approval for a curb cut from the HPRB. The HPRB conceptual review recommended that a curb cut not be approved. The HPRB supports a variance from the off-street parking requirements, if that access cannot be obtained over the abutting private driveway.

4. The applicants and members of the Michelle Manor Condominium Association negotiated the terms of an easement over the property at the rear of the site. However, they were unable to reach an agreement.

5. The building was designed to complement the unfenestrated east facade of the structure that is located on the abutting lot. Additionally, any building that would be constructed on the lot would be highly visible from Pennsylvania Avenue.

6. The site is located on a vacant corner lot on a prominent location on Pennsylvania Avenue, S.E. The HPRB staff noted that historic buildings on corner lots have typically exceeded 60 percent lot occupancy in order to create stronger, more defined corners and blocks.
7. The site is important because of its prominent location on Pennsylvania Avenue, S.E., a designated Special Street in the Comprehensive Plan, and a major ceremonial approach to the U.S. Capitol. The proposed building should contribute to, or at least not detract from, the appearance of the Avenue.
8. The site is unique because of a windowless brick wall of the four-story apartment house on the abutting lot to the west (515 Seward Square).
9. The proposed use of the site as a flat is permitted in the R-4 District. The variances are in keeping with the zoning of the site, and the effort to improve the vista from Pennsylvania Avenue, S.E.
10. The subject property cannot be used to construct a flat, without relief from the Board of Zoning Adjustment.
11. The project would markedly improve the appearance of the corner of Pennsylvania Avenue and 6th Street, S.E. The project is also in keeping with the historic character of the Capitol Hill Historic District.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the applicants are seeking variance relief under Subsections 403.2, 1203.3 and 2101.1 to be able to construct a flat at the site. The variances must meet the criteria set forth in Section 3107.2 of the Zoning Regulations, which requires that the application meet the test for exceptional practical difficulty. In addition, the relief requested must not adversely affect the use of neighboring properties, not be of substantial detriment to the public good, and not substantially impair the intent, purpose, and integrity of the Zoning Regulations and Map.

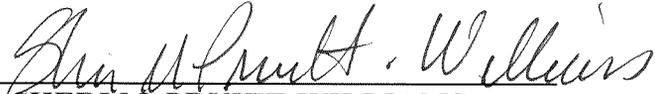
Based on the summary of evidence and findings of fact, the Board concludes that the applicants have met the burden of proof for the three variances. The Board is of the opinion that the requested variances would alleviate extraordinary or exceptional situations or conditions related to the site's size, shape and layout which makes strict compliance with the Zoning Regulations practically difficult.

ANC 6B did not take a position on the application; therefore, the Board could not give the ANC the "great weight" to which it is entitled.

It is hereby **ORDERED** that the application be **GRANTED**.

VOTE: 3-0 (Sheila Cross Reid, Betty King and Angel F. Clarens to grant.)

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

ATTESTED BY: 
SHERI M. PRUITT-WILLIAMS
Interim Director

FINAL DATE OF ORDER: OCT 13 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 AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16351

As Interim Director of the Board of Zoning Adjustment, I hereby certify and attest that on October 12, 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 the matter, and who is listed below:

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ATTESTED BY:


SHERI M. PRUITT-WILLIAMS
Interim Director

DATE: OCT 13 1998