

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**Application No. 16447 of Mary French**, pursuant to 11 DCMR § 3107.2, for a use variance to convert an existing single-family dwelling into a three-unit apartment building, basement through second floor, under Section 201.1 of the use provisions in an R-1-B District at premises 5424 MacArthur Boulevard, N.W. (Square 1444, Lot 812).

**HEARING DATE:** April 7, 1999  
**DECISION DATE:** April 7, 1999

**ORDER**

**PROCEDURAL MATTERS:**

Mary L. French, the owner of the subject property, brought this Application. Testimony was received from the Applicant at the public hearing held on the Application on April 7, 1999. Notice of the Application was sent to the Office of Planning and to Advisory Neighborhood Commission ("ANC") 3D on February 2, 1999. Public notice of the hearing on the Application was given on February 18, 1999. On March 15, 1999, ANC 3D submitted a letter in opposition to the Application.

**FINDINGS OF FACT**

1. The subject property is located at 5424 MacArthur Boulevard, N.W. (Square 1444, Lot 812) in Ward 3. The property is zoned R-1-B.
2. The property is developed with a single-family, detached dwelling, which is presently rented by the Applicant to one or more tenants.
3. The Applicant requested a use variance from the Board in order to convert the property into three apartments, on the basement, first, and second floors, to rent to individual tenants.
4. The Zoning Regulations define "apartment house" as "any building . . . in which there are three (3) or more apartments . . . providing accommodation on a monthly or longer basis." 11 DCMR § 199.1.
5. The Applicant's only ground for requesting the variance was her inability to rent the property as a single-family house, due to changes in the neighborhood that made the property unappealing to families, including that the block now contains several commercial properties and rented residential properties.
6. The Applicant has rented the property to individual tenants.

7. ANC 3D opposed the Application based on the ANC's belief that the requested variance would set a precedent that "would destroy the 'integrity of the neighborhood which overwhelmingly consists of single family homes.'" The ANC suggested that the Applicant consider renting the subject property as a group house, which could generate additional income.

#### **CONCLUSIONS OF LAW AND OPINION:**

The Board is authorized to grant a variance from the strict application of the Zoning Regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property . . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property. . . ." D.C. Code § 5-424(g)(3), 11 DCMR § 3103.2. Relief can be granted only "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. *Id.*

A use variance, such as is being requested here, cannot be granted absent a showing that the strict application of the Zoning Regulations would result in "exceptional and undue hardship upon the owner of the property," because a use variance "seeks a use ordinarily prohibited in the particular district" and thus would "alter the character" of that zoned district. *Palmer v. Board of Zoning Adjustment for the District of Columbia*, 287 A.2d 535, 541 (D.C. 1972). The Applicant's property is a single-family, detached dwelling located in an R-1 zone, which is "designed to protect quiet residential areas now developed with one-family detached dwellings . . ." 11 DCMR § 200.1. There is no evidence in the record of any undue hardship to the Applicant arising out of the nature of the property or the application of the Zoning Regulations to the property. Instead, the Applicant testified merely that she has been unable to rent the property to a single family rather than to a group of individuals. The Board concludes that the Applicant failed to demonstrate that any hardship would result from the strict application of the Zoning Regulations to the subject property.

The Applicant testified that, because of changes in the character of the neighborhood, including the increased prevalence of commercial uses and renter-occupied houses on MacArthur Boulevard, and because the property lacks a yard for children, she has been unable to rent the subject property to a single family. The Applicant contended that the property would be easier to rent as apartments, and that she has resisted renting the property to a group of tenants because they would not care for the property as well as tenants of individual apartments would. While the Applicant testified that she has been unable, despite her diligent efforts, to rent the property to a single family, she acknowledged that the property has been rented to individual tenants.

The Board concludes that the changes in the neighborhood described by the Applicant are not a valid basis to grant a use variance. To support a variance, the hardship must be due to "unique circumstances peculiar to the applicant's property and not to general conditions in the neighborhood." *Palmer v. Board*, 287 A.2d at 539. "To grant a variance when the conditions are

not unique would result in similar demands from neighboring property owners” and would in effect amend the Zoning Regulations, “thereby undermining the function of the Zoning Commission whose task it is to make the basic legislative judgments in drafting regulations.” *Id.* The Applicant also testified that her property couldn’t attract single-family tenants because the dwelling lacks a yard for children. The Board concludes that the absence of a yard does not constitute a hardship sufficient to warrant the grant of a variance. The Applicant has rented, and continues to rent, the property to individual tenants, and thus reasonable use can be made of the property in a manner consistent with the Zoning Regulations.

“The Board generally cannot grant a variance just because the property makes it difficult for the owner to construct a particular building or to pursue a particular use without a variance if the owner could use or improve the land in other ways compatible with zoning restrictions.” *Draude v. District of Columbia Board of Zoning Adjustment*, 527 A.2d 1242, 1255 (D.C. 1987), citing *Palmer v. Board*, 287 A.2d at 540 (use variance cannot be granted unless reasonable use cannot be made of the property in manner consistent with the Zoning Regulations). To be granted a variance, the applicant must show that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may reasonably be adapted. *Bernstein v. District of Columbia Board of Zoning Adjustment*, 376 A.2d 816, 819 (D.C. 1979). See also *Silverstone v. District of Columbia Board of Zoning Adjustment*, 396 A.2d 992 (D.C. 1979).

Moreover, the requested variance cannot be granted, “without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” D.C. Code § 5-424(g)(3), 11 DCMR § 3103.2. As previously noted, the “R-1 district is designed to protect quiet residential areas now developed with one-family detached dwellings . . . .” 11 DCMR § 200.1. Apartment houses are not permitted in R-1 districts as a matter of right or by special exception. 11 DCMR §§ 201.1, 205-221. Similarly, apartment houses are not permitted in the R-2 zone, which is designed to protect areas developed with one-family, semi-detached dwellings “from invasion by denser types of residential development,” 11 DCMR § 300.1, or in R-3 districts. In areas zoned R-4, apartment houses are not permitted except through limited conversion of existing buildings. 11 DCMR §§ 330.5, 350.4, 401.3. Apartment houses are allowed as a matter of right only in an R-5 district, which permits the highest density residential development and is “designed to permit a flexibility of design by permitting . . . all types of urban residential development. . . .” 11 DCMR § 350.1. The Board concludes that an apartment house is not consistent with the purpose of the R-1 district and would tend to erode the low-density nature of the R-1 district.

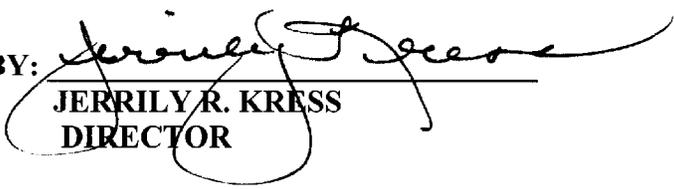
The Board has accorded ANC-3D the “great weight” to which it is entitled. The record reflects that the affected ANC voted unanimously to oppose the Application. The Board concurs that granting the requested variance would jeopardize the integrity of the neighborhood of single-family detached dwellings.

It is hereby **ORDERED** that the application for a use variance be **DENIED**.

**VOTE: 3-0** (Sheila Cross Reid, John Parsons, and Jerry Gilreath to deny.)

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

ATTESTED BY:

  
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**JERRILY R. KRESS**  
**DIRECTOR**

**FINAL DATE OF ORDER:** MAR - 9 2000

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 FOR 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. 16447**

As Director of the Office of Zoning, I certify and attest that on  
MAR -- 9 2000 a copy of the decision entered on that date in this matter was  
mailed first class, postage prepaid to each party in this case, and who is listed below:

Mary L. French  
5420 MacArthur Boulevard, N.W.  
Washington, D.C. 20016

The Chairperson  
Advisory Neighborhood Commission (ANC) 3D  
P.O. Box 40846  
Washington, D.C. 20016

Attested By:

  
JERRILY R. KRESS, FAIA  
Director

Attest 16447/JKN