

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARINGS--May 18 and Oct. 12, 1966

Appeal No. 8739 Elvin L. Brincefield, appellant.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and carried with Mr. William S. Harps dissenting, the following Order was entered at the meeting of the Board on October 17, 1966.

EFFECTIVE DATE OF ORDER -- Feb. 20, 1967

ORDERED:

That the appeal for a rehearing for a variance from the use provisions of the R-5-B District to permit contractor's shop and office in the building at 2910 Harvard Court, NW., lot 34, square 2670, be denied.

FINDINGS OF FACT:

(1) The facts and opinions contained in the previous case concerning this property are stated in the BZA Order of August 8, 1966 and in a dissent by Mr. William S. Harps dated August 8, 1966 and are incorporated in this Order.

(2) In this rehearing appellant argues that the hardship requirement which has normally been applied only to land is equally applicable to a building which has unusual conditions which make it impossible to use the building within the terms of the Zoning Regulations.

(3) To prove hardship, appellant states that he was unable to obtain loans for the purchase of this property from a number of different lending institutions because the property and the existing building were restricted to R-5-B uses and no use of the property within that zoning classification could be made.

OPINION:

It is the opinion of the majority of the Board that the rehearing of this appeal has produced no new facts or arguments which were not developed at the hearing of May 18, 1966.

This appeal must be denied because (1) any hardship must be found in the land and not in the building, (2) appellant has not established any hardship in the land itself, (3) appellant has not established that "strict application" of the R-5-B zoning would result in a

OPINION Cont'd

hardship, (4) appellant has not established that the injection of his operation into this residential neighborhood would be without detriment to the public good, and (5) appellant has not established that this relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING -- May 18, 1966

Appeal No. 8739 Elvin L. Brincefield, appellant.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and carried with Mr. Davis and Mr. Harps dissenting, the following Order was entered at the meeting of the Board on May 31, 1966.

EFFECTIVE DATE OF ORDER -- August 8, 1966

ORDERED:

That the appeal for a variance from the use provisions of R-5-B District to permit contractor's shop and office on the first floor of building at 2910 Harvard Court, NW., lot 34, square 2670, be denied.

FINDINGS OF FACT:

(1) This appeal was amended at the public hearing to request a variance from the use provisions of the R-5-B District to permit the first floor of premises 2910 Harvard Court, NW., to be used as a contractor's shop and the second floor to be used as a contractor's office.

(2) Appellant presented information regarding the legal status of Harvard Court, (Exhibit 18). The office of the Surveyor for the District of Columbia describes Harvard Court, NW., as a public alley.

(3) Appellant's property is located on an alley lot in an R-5-B District. The alley on which the subject property is located is twenty (20) feet wide and has its principal means of ingress from an alley.

(4) Appellant's property is improved with a two story brick structure which was constructed in 1912 as a garage. It was used for this purpose for many years by the owners of Henderson Castle, where their automobiles were garaged. The second floor was used as residence quarters for the drivers.

(5) Appellant purchased the subject premises about seven (7) years ago with the intention to remodel the building for living purposes. However, it was determined that the property could not be used for this purpose. Appellant presented a statement (Exhibit 9) showing that the cost of remodeling the building into three rental units would be \$30,000 to \$35,000.

(6) Appellant is now in the contracting business with a shop in Brentwood, Maryland, and offices on Connecticut Avenue. He proposes that the premises be used by his contracting firm as an office and garage. The first floor would be used as a garage. The second floor would be used only for offices. The building would also house small equipment used by the workmen on various contracting jobs.

(7) Approximately 28 workment are employed by the company. Five persons are employed as office personeel, two of whom are outside salesmen. Two truck drivers would come to the shop to get equipment, arriving around 7:30 a.m. and returning around 4:00 p.m. The office personnel would work from 8:00 a.m. to 4:30 p.m., five days a week.

(8) There are other commercial uses in the immediate vicinity of the subject premises.

(9) In support of the variance request, appellant cites the Alley Dwelling Law, D.C. Code, Sections 5-103 through 5-116 (1961), and Section 7507 of the Zoning Regulations of D.C. Under the Alley Dwelling Law, it is the policy of the Congress to eliminate "buildings in alleys as dwellings for human habitation" as such uses are "injurious to the public health, safety, morals and welfare." Section 7507 specifically limits and prohibits certain dwellings on an alley lot and furthers the policy of the Alley Dwelling Law.

OPINION:

The subject property is located in an alley and is in an R-5-B zone. However, these facts are immaterial in deciding an appeal for a variance. This Board has never heretofore granted a variance on the ground that a hardship lies in the zoning. Granting of this appeal would therefore create a dangerous precedent.

We could hardly find that appellant would suffer a hardship if his property was not improved and was vacant. If the property were vacant, the owner would have to construct a building if he wished to improve the property, and this Board would not permit him to build and occupy an office and shop building under an appeal for a variance. To permit this in the present appeal, having to do with an improved lot, really means that we would find a hardship in the building itself, which we have consistently refused to do.

In order to grant a variance, the statute requires that the Board find that the relief "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 maps." We cannot make the necessary findings to satisfy this part of the variance statute.

In the first place, the injection of a contractors shop with trucks, noise, and employees coming and going, would hardly be said to be without detriment to the good of the residential neighborhood in which the property is located.

In the second place, the requested variance, applying as it must to the land and not to the building (the variance would continue if the building were demolished), could effectively inhibit or prevent the R-5-B development which the zoning plan and map contemplate.

This appeal must be denied because (1) any hardship must be found in the building and not in the land, (2) appellant has not established any hardship in the land itself, (3) appellant has not established that "strict application" of the R-5-B zoning would result in a hardship, (4) appellant has not established that the injection of his operation into this residential neighborhood would be without detriment to the public good, and (5) appellant has not established that this relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and map.

The appeal is denied.

Mr. Davis and Mr. Harps dissent.

DISSENTING OPINION BY MR. WILLIAM S. HARPS:

Mr. Harps makes the following additions to the facts as stated in the decision of the majority (the numbers correspond with the majority's Findings of Fact):

(3) The lot measures 50' x 50' and contains 2,500 square feet of land.

(5) However, it was determined that the property could not be economically used for this purpose.

(8) The east (facing) side of the alley is zoned C-2.

(10) The viewing of the property showed that the building was set back about five (5) feet from the alley line and faced a wide private alley used by trucks servicing the stores in the C-2 zone fronting on Fourteenth Street. The exterior inspection also indicated that the building was well constructed and was apparently in good condition.

As aforesated in the majority opinion, the subject property is located in an alley, is zoned R-5-B, is improved with a combination garage and dwelling building 1912.

Inasmuch as the site is improved, its only legal use is as a garage for private passenger automobiles on the first floor with living area above. The exceptions permitted with BZA approval under Section 3104.43 of the Regulations are either not possible or not practical: Not possible to use the building for the storage of wares and goods because it contains in excess of 2,500 square feet and not practical to use it as a parking lot because demolition would be necessary, nor as a parking garage because the building is too small to construct a ramp and utilize the second floor; nor as a one story garage because the use of the second floor would be lost.

Section 8207.11 does not specifically use the word land, however the characteristics of the "property" which must be "exceptional" or "extraordinary" are characteristics which most reasonably are interpreted as characteristics of land rather than of a structure. The subject property is unique because it was built in 1912 for a use which has no market in its present location. As a non-conforming structure, it can be used, as is, providing there is a market. No evidence was presented at the hearing concerning marketability. It apparently can be converted to a multi-family building, but at a cost not commensurate with the economic level of the immediate

(Harp's opinion cont'd)

neighborhood. It appears to this member that strict application of the regulations definitely result in peculiar and exceptional practical difficulties to the owner and that these difficulties arise out of the structure. Inasmuch as the structure was built in 1912 for a use, outmoded now, I believe the difficulties are valid under the regulations.

Further, I believe that the proposed use would not result in substantial detriment to the public good. The alley is used by commercial vehicles. Commercial vehicles park in the private alley facing subject and use the private alley to serve the rears of existing legal stores. These stores and the C-2 zoning facing subject constitute the neighborhood as much as the residences and apartments do. As a matter of fact, 16 of the 25 structures within 100 feet of subject are commercial 75 percent of the land in the same area is zoned C-2.

If the variance were granted in perpetuity it might be an effective bar assembly for proper R-5-B development. The present market price of R-5-B land in neighborhoods similar in potential to subject for apartment development indicates that assembly of the five properties abutting subject and susceptible to assembly, are too valuable now to warrant demolition for R-5-B apartment use. With the exception of one, they are 3 story row brick houses in apparently good condition with many years of remaining economic life.

I am of the opinion that the appeal should be granted with a time limit of 5 years with no bar to filing for renewal at the end of the term. If the business has proved to be a nuisance or if the neighborhood is apparently ripe for assembly for the zoned (R-5-B) use at the end of the 5 year term, the Board can act on the pertinent facts.