Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING -- October 12, 1966

Appeal No. 8962 Pearl M. Ulrich, appellant.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and unanimously carried, the following Order was entered at the meeting of the Board on October 17, 1966.

EFFECTIVE DATE OF ORDER -- May 8, 1967

ORDERED:

That the appeal for a variance of the use provisions of the R-1-B District to permit a four-unit apartment at 2515 - 30th Street, NE., lot 61, square 4355, be denied.

FINDINGS OF FACT:

(1) The property is improved with a two-story detached frame structure containing three apartments.

(2) The present zoning is R-1-B which permits single-family detached dwellings on a lot containing at least 5,000 square feet. Apartments and conversions to apartments are not permitted under this zoning classification.

(3) Appellant seeks a variance from the use provisions of the R-1-B District to permit a 4-unit apartment building at this location.

(4) In 1931 the Department of Licenses and Inspections issued a building permit to construct a single-family frame structure.

(5) The record contains affidavits submitted by the appellant to show that in 1931 four gas meters and four electric meters were installed in the building (See Exhibits Nos. 13 and 14).

(6) There is no evidence that any building permit was issued for any later work and no certificate of occupancy was issued in 1931 for the four dwelling units that were established. In addition, there is no evidence that the structure was ever used as a single-family dwelling, but there is evidence that the structure has been used as a four-unit apartment.

(7) In 1965 appellant voluntarily reduced the number of apartments from four to three by constructing a connecting door through the party wall. This was accomplished without a building permit and no certificate of occupancy for the new use was obtained.

(8) Article 71 of the 1958 Zoning Regulations includes provisions to protect the rights of nonconforming uses.

(9) Persons from the surrounding neighborhood appeared in opposition to the granting of this appeal. Their principal argument was that this is a predominantly single-family residential area and that over the years the owners have voluntarily eliminated similar apartment uses created during the World War II housing crisis.

Opposition to this appeal was registered by the Woodridge Civic Association, the Gateway Civic Association, and the Northeast Neighborhood Council. The record contains petitions in opposition with 128 signatures thereon.

OPINION:

It is the opinion of the Board that appellant has not presented sufficient evidence to establish that a 4-unit apartment building was the lawful use of the structure at the time the 1958 Zoning Regulations were enacted.

From the facts submitted at the public hearing, it is clear that the only building permit that was issued in 1931 was for a single-family frame structure. However, four apartment units were constructed in the building and were used until 1965. In 1965 the number of apartments was voluntarily reduced from four to three with no building permit or certificate of occupancy for the changes.

The Zoning Regulations require that a use must be lawful at the time the Regulations were enacted or changed. Since the four apartments were established without securing a building permit and a certificate of occupancy, they cannot be considered a lawful use within the meaning of the Zoning Regulations. The same holds true for the more recent converion of the building into three apartments. A lawful nonconforming use never came into existence and appellant is precluded from establishing such a nonconforming use at this date.

We are further of the opinion that the proposed apartment use is inconsistent with the present zoning and would be contrary to the purpose and intent of the Zoning Regulations and Map. The neighborhood in which this structure is located is already developed with predominantly single-family dwellings and should remain so.

The appeal must therefore be denied.