

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING -- December 14, 1966

REHEARING -- May 17, 1967

Appeal No. 9052 Harrell Brothers Builders, Inc., appellant.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and carried with Messrs. William S. Harps and Arthur P. Davis dissenting, the following Order was entered at the meeting of the Board on May 22, 1967.

ORDERED:

That the appeal for a variance from the FAR requirements of the R-5-A District and from the provisions of Section 7202 to permit waiver for one off-street parking space for apartment building at 4241 Foote Street, NE., lot 69, square 5091, be denied.

FINDINGS OF FACT:

- (1) The subject property is located in an R-5-A District.
- (2) The property has a frontage of 50 feet on Foote Street, NE., a depth of 92.50 feet and contains approximately 4,625 square feet.
- (3) The property is now improved with an apartment building containing five units and having five off-street parking spaces.
- (4) The architect represented the owner at the original hearing on December 14, 1966. At the public hearing on March 22, 1967, the owner asserted that all pertinent facts were not presented and requested a rehearing.
- (5) At a meeting held March 29, 1967 the Board granted the request for a rehearing, to be held on May 17, 1967.
- (6) It was stated that the property is approximately five feet above the street grade at Foote Street and within fifty feet drops to the level of the street.

(7) Appellant stated that a water problem was encountered when the lot was taken down to grade and in order to keep the water from draining onto the adjoining property, the property had to be graded so that only one apartment was above ground.

(8) Additionally, appellant states that retaining walls were erected to avoid the anticipated water damage, and that the cost of such walls cannot be recovered without renting the other basement apartment.

(9) No opposition to the granting of this appeal was registered at the public hearing.

OPINION:

We are of the opinion that appellant has failed to prove any hardship relating to the property which will justify a variance from the FAR requirements of the zoning district. The property has been improved with a building utilizing the available FAR. The requested variance would permit appellant to utilize an additional apartment and thereby exceed the allowable FAR. Although the asserted difficulties are those which we recognize as part of the construction trade, they do not directly relate to the zoning of the property.

The variance clause of the regulations permits variances where "by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation *** would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property." We find that none of these situations exist to the extent necessary to support a variance from the regulations. We are mindful that any piece of property can mean some sort of hardship upon the owner. However, every hardship cannot be construed as that kind of hardship sufficient to permit a variance to be granted.