

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING -- January 18, 1967

Appeal No. 9070 Hampshire Gardens, Inc., 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 January 27, 1967.

EFFECTIVE DATE OF ORDER -- May 22, 1967

ORDERED:

That the appeal for a variance from the use provisions of the R-1-A District to permit erection of a Home for the Elderly and Nursing Home and a variance to allow FAR and lot occupancy in accordance with R-5-C requirements at Porter Street and Klingle Road, NW., lot 803, square 2216, be denied.

FINDINGS OF FACT:

- (1) The subject property is located in an R-1-A District.
- (2) The property was inspected by the Board on January 17, 1967.
- (3) The property is a single lot containing approximately 77,678 square feet and located between Porter Street and Klingle Road, NW. at the apex of the intersection of these two streets. The Indian Embassy is also located between these two streets and abuts the subject property to the west.
- (4) The property consists of a high rocky bluff having a very steep side facing Porter Street and a more gradually inclined side facing Klingle Road.
- (5) Appellant purchased the property in 1959 at a price of \$26,500 for the purpose of erecting a single-family residence for the president of appellant company.
- (6) The president of the appellant company testified that the cost of construction of a single-family home on the site, including the cost of an access road to such a dwelling was prohibitive.

(7) Evidence was produced to show the following costs of rock excavation on the site for the following types of structures:

Single family dwelling	\$ 78,700.00
Six single family dwellings	\$168,750.00
Nursing home as proposed	\$296,750.00

These costs were submitted by Morauer & Hartzell, Inc., contractors. (See Exhibit No. 28)

(8) The property has been the subject of three applications to the Zoning Commission for changes in zoning, with the following results:

- (a) ZC No. 62-30 -- to change from R-1-A to R-5-D.  
Denied without hearing - April 17, 1962.
- (b) ZC No. 62-64 -- to change from R-1-A to R-5-C.  
Denied without hearing - December, 1962.
- (c) ZC No. 64-74 -- to change from R-1-A to R-5-A.  
Denied without hearing - November 3, 1964.

(9) Appellant proposes to erect on the site a building to house elderly persons containing approximately 200 living units and accommodating approximately 400 persons.

(10) Appellant testified that the property has been for sale for the past three years, that no stipulated price has been asked for the property, and that there have been no offers.

(11) Considerable opposition to the granting of this appeal was registered by residents of the neighborhood. The file contains twenty-one letters opposing this appeal and a petition in opposition signed by twenty-seven residents of the neighborhood.

(12) By letter dated January 17, 1967 (Exhibit No. 19) the Embassy of India expressed its opposition to this appeal. The Committee of 100 on the Federal City also opposes the granting of this appeal.

(13) The record contains a letter from the United States<sup>Department</sup> of the Interior, National Park Service, National Capital Region, National Capital Parks (Exhibit No. 22), states in part:

"Based on our understanding of the variances sought by the applicant, the principal difference between the present proposal for the nursing home use in a residential zone and previous requests for rezoning for apartment use is one of

activity and not density. It is recalled for instance, that in 1962 the proponents of a R-5-C rezoning request on this same property planned an apartment development for 325 units on 41% of the site. Whereas, the present nursing home plan will provide space for approximately 400 in a structure that will utilize, it seems, even more of the land.

"In past rezoning proposals the National Park Service has been concerned, among other things, with the impact proposed construction would have on adjacent park property due to the extensive grading required by the topographic character of the site. There is little question in our view that some damage in parklands would result from such construction activity. This concern is, we feel, actually applicable to the present proposal since we are not assured that this damage can be avoided.

"In addition, we are concerned with the impact that development of this proposal will have on the esthetics of what must be considered as a unique natural atmosphere created by the adjacent parklands and single family residences in the neighborhood. While high density residential structures virtually surround this part of Rock Creek Valley, their impact is not a strong visual one. We find that a development of the scope proposed would dramatically alter the appearance of this area and, thus, we object to granting the variances requested."

OPINION:

In order to grant the use variance requested here we must make findings of fact that the hardship required by the variance statute has been established by competent and convincing testimony and evidence, and we must also find that the requested relief will not have an adverse affect on the neighborhood and on the zone plan for the city, which both the Regulations and the variance statute are designed to protect. We do not believe that the record in this case permits us to make findings of fact favorable to appellant with respect to either of these parts of the variance statute.

The testimony with respect to hardship is that the expense of rock excavation for the foundation of a single-family home and an access road to the home from Porter Street is prohibitive. This argument fails to satisfy the requirement of the variance statute for at least these reasons:

1. Some other owner might find it possible and desirable to expend the money necessary to make the required rock excavations.
2. The record does not establish that a single-family residence cannot be constructed on the site without material removal of rock (we note the construction of residences on similar terrain in Bel Air, California and elsewhere).
3. Appellant's efforts to sell the property and recoup its investment have not been sufficiently active to establish that the property is not saleable for its zoned purpose. In other words, the record does not establish that application of the pertinent Zoning Regulation, which restricts the property to a single-family use, necessarily creates a hardship on the present corporate owner.

This property is located in a zoning district having the highest single-family classification in the District of Columbia. The Regulations for this district (Section 3101.1) are designed to stabilize the area and to promote a suitable environment for single-family family life. "For that purpose only a few additional and compatible uses are permitted." Nursing homes of the type proposed by appellant are first permitted in residential areas zoned R-4, a district which permits multi-family residential buildings, and which is far less restrictive than the R-1-A zoning of the subject property. The Regulations themselves are therefore authority for holding that the proposed use is not compatible with the R-1-A zoning.

The subject property, being high above the surrounding area and streets, dominates not only the residential area to the north and west and also the surrounding and adjacent area of Rock Creek Park. To inject a large institutional building on this high, dominating property would in our opinion be disruptive of the residential area and injurious to enjoyment of the Park.

The proposed location seems to us to be singularly bad from the standpoint of access to and from the proposed building. Porter Street is a high speed east-west artery leading across Rock Creek Park. Vehicles travelling west on Porter Street and turning to enter the grounds of the institution would hold up west bound

traffic in making the turn and would have to cross the east bound lane. The only alternative to this unsatisfactory situation would be the installation of traffic lights on Porter Street at the entrance to the property, which would also be disruptive of traffic on Porter Street. Further, anyone coming to the institution from the east and not travelling by automobile would be required to go on foot across the east and west bound lanes of Porter Street. Further, Klingle Road is a narrow street almost completely used by fast moving through traffic travelling between Rock Creek Park and Cleveland Park. Any traffic to or from the proposed institution would be highly disruptive of traffic on Klingle Road.

It is believed that if a hardship is found under the variance statute, the relief granted should be consonant with the existing zoning. Applied to this case, this would require that if we should find a hardship inherent in this property, we should relieve it only by permitting some single-family use of less restrictive character than the existing R-1-A zoning. The proposed institution would be completely out of harmony with the existing zoning and we cannot grant the relief requested for this reason.

The Zoning Commission has refused on three occasions to rezone this property and, in view of this action, there would have to be compelling reasons to permit us to find the existence of a hardship or to permit us to place a large institutional type building in this restricted area, a thing which the Zoning Commission has refused to do.

For all of these reasons the appeal must be denied.