

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - February 14, 1968

Appeal No. 9489 Harriett S. Straus, appellant.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and unanimously carried, with Mr. Scrivener absent, the following order was entered at the meeting of the Board on February 14, 1968.

ORDERED:

That the appeal for a variance from the use provisions of the R-3 District to permit a flat at 1222 - 29th Street, N.W., lot 188, Square 1210, be denied.

FINDINGS OF FACT:

1. The subject property is located in an R-3 District.
2. The property is improved with a 2-story and basement brick row dwelling.
3. Appellant acquired the property in May 1965 with the purported representation being made that a rental unit could be maintained in the basement.
4. The basement contains a complete apartment unit and it is asserted that the unit existed at the time the property was purchased.
5. Appellant states that a tenant was living in the basement at the time the property was purchased. The appellant lives on the upper floors.
6. Testimony at the public hearing indicated that the appellant would not be in financial difficulty if the basement unit could not be rented.
7. The record contained a building Permit No. B101195 issued June 3, 1963, to "reinstall brick front steps, new wood door and mullioned windows, as per plat, plan and application. Exterior work only. Recommended, provided transom be provided with lights with vertical dimensions greater than horizontal dimensions." Permit No. 99864 is partially illegible. It appears to indicate a permit to install a bath on the ground floor and a kitchen on the second floor, all interior work.

8. By letter dated June 15, 1965, the Zoning Administrator for the District of Columbia informed the appellant that the subject property was being used in violation of the Zoning Regulations and was ordered to remove the kitchen unit from the basement of the premises.

9. The record contains one letter and a petition containing 25 signatures from residents of the area supporting the granting of this appeal.

10. There was opposition to the granting of this appeal registered at the public hearing by residents of the area and by the Citizens Association of Georgetown. The record contains a letter opposing the granting of this appeal.

11. Flats are first permitted as a matter of right in the R-4 District under the Zoning Regulations.

OPINION:

We are of the opinion that this appeal must be denied.

In order to support a variance from the use provisions of the statute, there must be a showing that the property cannot be used for its zoned purpose. There is no such showing in this case. The evidence only points to the fact that the property has been converted for two family units and that the removal of the rental unit would result in some financial hardship to the appellant. This is not a hardship within the meaning of the variance clause of the Zoning Regulations.

Further, the evidence indicates that the property has been used since purchase without the benefit of an occupancy permit. In fact appellant was notified that the premises violated the Zoning Regulations shortly after the purchase was made. This Board cannot assume the responsibility for representations made by real estate agents making a sale of property. We must enforce the regulations as written. It appears that ¹⁹⁵⁸ the property was converted some time after May 12, ~~1960~~.

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the date of enactment of the current Zoning Regulations, and therefore cannot qualify as a nonconforming use under the regulations. There must have been a legal use, a use with benefit of an occupancy permit, to qualify as a valid nonconforming use. Under the facts in this case, we find no justification for a variance from the use provisions of the R-3 District and must therefore deny this appeal.

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED:

By:


CHARLES E. MORGAN
Secretary of the Board

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING - February 14, 1968

Appeal No. 9489 Harriett S. Straus, appellant.

The Zoning Administrator of the District of Columbia, appellee.

Meeting: February 14, 1968

EFFECTIVE DATE OF AMENDMENT: February 14, 1968

ORDERED:

That the Order of the Board effective February 14, 1968 denying a variance from the use provisions of the R-3 District to permit a flat at 1222 - 29th Street, N.W., lot 188, Square 1210, be amended as follows:

That the "Opinion" portion of this appeal be amended to read:

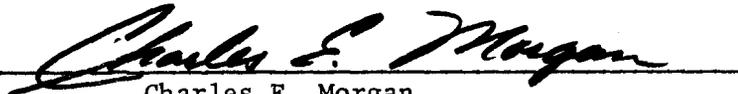
It appears that the property was converted some time after May 12, 1958, the date of enactment of the current Zoning Regulations, and therefore cannot qualify as a nonconforming use under the regulations. (Paragraph 3 of the 'opinion', line 9)

This amendment does not alter any other terms in the Board's Order effective February 14, 1968.

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

ATTESTED:

By:



Charles E. Morgan
Secretary of the Board