

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17463 of ARCH Training Center, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, to convert a vacant community residence facility and re-occupy it as an apartment house (29 units), and pursuant to 11 DCMR § 3104.1, for a special exception to construct a multi-family apartment house in the R-5-A District at premises 2025 Fendall Street, S.E. (Square 5777, Lot 952).

Hearing Date: May 9, 2006
Decision Dates: May 9, 2006 and June 27, 2006

DECISION AND ORDER

This application was submitted on November 30, 2005 by ARCH Training Center, Inc. (“Applicant”) the owner of the property that is the subject of this application (“Property”). The Applicant requested an area variance for relief from the parking requirements of 11 DCMR § 2101.1. At the hearing, the Applicant also requested special exception relief to construct a multi-family apartment house in the R-5-A Zone District, as required by 11 DCMR § 353. The Applicant requested the variance and the special exception to allow the renovation of a vacant structure to an apartment house (“Project”) located at 2025 Fendall St., S.E.

The Board of Zoning Adjustment (“Board”) held a public hearing on the application on May 9, 2006, and a special public meeting on June 27, 2006, and by a vote of 5-0-0 the Board granted the application with one condition.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated December 5, 2005, the Office of Zoning gave notice of the application to the Office of Planning, the District Department of Transportation, Advisory Neighborhood Commission (“ANC”) 8A, Single Member District 8A04, and the Councilmember for Ward 8. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the public hearing in the *D.C. Register*, and on February 27, 2006 sent notice to the Applicant, all property owners within 200 feet of the Property, and ANC 8A.

Requests for Party Status. ANC 8A was automatically a party to the proceeding. The Frederick Douglass Community Improvement Council (“FDCIC”) was granted party status at a special public meeting held on June 27, 2006.¹

Government Reports. The Office of Planning submitted a report recommending approval of the application on April 25, 2006. The report stated that, based on discussions with the Zoning Administrator, the Office of Planning concluded that the Project required a special exception pursuant to § 353 of the Zoning Regulations. The report indicated that the Office of Planning requested comments from: (1) the D.C. Board of Education for comment and recommendation as to the adequacy of existing and planned schools to accommodate the numbers of students that can be expected to reside in the project; (2) the D.C. Department of Transportation (“DDOT”) and the D.C. Department of Housing and Community Development (“DHCD”) for comment and recommendation as to the adequacy of public streets, recreation, and other services to accommodate the residents of the project. The report stated that DDOT responded that it had no concerns about the project, and that the Board of Education and DHCD had no comments. The report analyzed the application in light of the three pronged variance test, and the special exception requirements, and concluded that the parking variance and the special exception should be granted.

ANC Report. ANC 8A submitted a letter dated May 2, 2006, stating that at its regularly scheduled meeting, with a quorum present, the ANC voted unanimously to oppose the parking variance request, and to express a desire that the Applicant reduce the number of units in the project to 18 to 20. The letter stated the ANC’s belief that the conversion proposed by the Applicant would lead to an increased demand for parking in the area, and increased traffic congestion. The letter did not express a position with respect to the special exception.

FINDINGS OF FACT

1. The Property is located at 2025 Fendall St., S.E. (Square 5777, Lot 952). It is located at the corner of Fendall and V Streets, S.E. in the Old Anacostia neighborhood. The Property is not within the Anacostia Historic District. The Property is located in an R-5-A Zone District.

2. The Property is improved with a three-story (plus basement) brick structure. The building is in derelict condition with numerous broken windows and other signs of physical neglect. It is secured by a chain-link fence.

¹ A discussion of the Board’s post-hearing grant of party status appears in the conclusions of law section below.

3. The building on the Property was constructed in 1942 as an apartment house. A 1977 Certificate of Occupancy authorized a rooming and boarding house for 130 residents. In 1979 it was converted to a Community Based Residence Facility.
4. The Property has been listed vacant in the Department of Consumer and Regulatory Affairs' Vacant Property Database since November, 2001.
5. The existing structure occupies 67 percent of the lot. The building has roughly a C-shape, with the front entryway recessed, and fronted with a canopy and walkway. The front entryway yard is roughly 32 feet deep and 32 feet wide. In the center of the front yard are cement steps, a ramp, and a walkway leading to the entrance. The side yard along V Street, S.E. (on the south side of the Property) is approximately 4 feet wide. The side yard on the north side of the Property is approximately 9 feet wide. A rear yard approximately 14 feet wide extends from the north side yard to approximately 35 feet from the south side yard, at which point the building juts out to the property line, blocking access to the rear yard from V Street, S.E.
6. The immediate vicinity of the Property is entirely residential and exhibits a mixed housing pattern as allowed by the surrounding R-5-A and R-3 Zone Districts. To the west of Fendall Street, S.E. Square 577 is improved with a mixture of row dwellings, low-rise apartment buildings, detached and semi-detached houses, and a vacant nursing home. A number of the buildings are vacant and boarded up. To the east of Fendall Street, S.E. are predominantly garden apartments. Fort Stanton Park lies further to the east on the other side of the apartment buildings. A mixed pattern of residential buildings exists to the north and south. Two blocks to the north is Good Hope Road, S.E., an underutilized commercial strip.
7. Three bus stops are located within 1,000 feet of the Property, serving six bus routes. The Project is approximately one mile from the Anacostia Metro Station.
8. The Applicant proposes to renovate the building and convert it back to its original apartment house use. The Applicant intends to create 29 units to be sold as affordable condominiums. The basement level will include a recreation room for use by the residents. The proposed unit mix will be as follows: Studio--2 Units; 1 Bedroom--6 Units; 2 Bedrooms--21 Units. The apartments will range in size from 495 square feet for the Studios to 902 square feet for the largest 2 Bedroom Units.
9. Section 2101.1 of the Zoning Regulations requires that the Applicant provide 29 on-site parking spaces.
10. No on site parking spaces will be provided.

11. In accordance with its mission of community development, the developer of the Property has offered to provide a van to the building's condominium association for its use in shuttling residents of the Property to and from the Anacostia Metro station and other common destinations as determined by the association. (See Exhibit 33 in the Record, "Proposal to Provide a Van.")

CONCLUSIONS OF LAW

Party Status Request

FDCIC filed a party status application on April 21, 2006. Due to a clerical error, the Board was unaware at the hearing that FDCIC had filed its written party status request. The Board became aware of the party status request only when, towards the end of the hearing, a FDCIC representative informed the Board that she had not had an opportunity to speak, and requested the Board rule on FDCIC's party status request. In the absence of the written documentation the Board did not rule on the party status request; however, the Board, with no objection from the Applicant, allowed FDCIC to make a presentation at the hearing, and gave FDCIC the opportunity to cross-examine the Applicant's witnesses.

Several days after the hearing, an Office of Zoning staff person discovered that FDCIC had in fact filed a timely written party status request, and that it was inadvertently omitted from the case file. When the Board was informed of the situation it convened a special public meeting. At the special public meeting, the Board re-opened the record to include the mistakenly omitted party status request, and voted to grant FDCIC party status. The Board determined that FDCIC had actually been given *de facto* party status at the hearing with no objection from the applicant and therefore there was no prejudice to FDIC or the applicant by granting the written request upon its discovery. Further, because FDIC had had the opportunity to participate as a party, no further proceedings were necessary.

Parking Variance

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799; D.C. Official Code § 6-641.07(g)(3) (2001 ed.)) to grant variances from the strict application of the Zoning Regulations. The Applicant seeks complete relief from the requirement that it provide 29 on-site parking spaces. 11 DCMR § 2101.1.

Under the three-prong test for variances, the Applicant must demonstrate that: (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone

plan. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990); 11 DCMR § 3103.2.

The exceptional situation or condition of a property can arise out of the structures existing on the property itself. *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). An applicant for an area variance must make the lesser showing of “practical difficulties,” as opposed to the more difficult showing of “undue hardship,” which applies to use variance cases. *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). In order to prove “practical difficulties,” an applicant must demonstrate: (1) that compliance with the area restriction would be unnecessarily burdensome; and, (2) that the practical difficulties are unique to the particular property. *Gilmartin*, 579 A.2d at 1170.

The Applicant in this case must therefore show: (1) an exceptional condition of the property; (2) that creates “practical difficulties” for the Applicant; and (3) granting the variance will not impair the public good or intent or integrity of the Zone Plan and Regulations.

An exceptional condition of the Property creates practical difficulties for the Applicant.

The exceptional condition of the Property is the existing building on the Property, the size and shape of the lot, and the way in which the building occupies the lot. The building has roughly a C-shape, with the front entryway recessed, and fronted with a canopy and walkway, and occupies 67 percent of the lot. While the front entryway yard is roughly 32 feet deep and 32 feet wide, cement steps, a ramp, and a walkway leading to the entrance of the building are in the center of the front yard. The side yard along V Street, S.E. (on the south side of the Property) is only 4 feet wide (approximately). The side yard on the north side of the Property is only 9 feet wide (approximately). A rear yard approximately 14 feet wide extends from the north side yard to approximately 35 feet from the south side yard, at which point the building juts out to the property line, blocking access to the rear yard from V Street, S.E.

The Board concludes that the amount of the lot occupied by the building, combined with the way in which it occupies the lot leaving only relatively small unoccupied portions in isolated areas, constitutes an exceptional condition on the property.

The size and positioning of the existing building on the Property creates a practical difficulty for the Applicant because it leaves no room to place any parking spaces on the Property, let alone the 29 that are required by the Zoning Regulations.

The building was constructed in 1942, at which time there were no parking requirements for multi-family residential buildings. There is little to no space remaining on the lot that could be used to park cars, and the little space that does exist is inappropriate for parking use. The building occupies 67 percent of the lot, and there is no side or rear yard that will accommodate either a driveway or parking spaces. The front of the building includes an indented setback for the entrance of the building. It would be an inappropriate place to park cars in the front yard because it would be unaesthetic, unsafe, and is prohibited by the Zoning Regulations. See 11 DCMR § 2116.5. The side and rear yards are too small to allow parking.

Granting the variance will not impair the public good or integrity of zone plan or Regulations.

The requested variance can be granted without detriment to the public good and without impairment to the zone plan.

An apartment house is an acceptable use in an R-5-A Zone District, which is the first zone in which a new apartment house is allowed as a matter of right.

There is adequate on-street parking in the vicinity. There are three bus stops within 1,000 feet of the Property serving six bus routes. The developer also proffered to donate a van to the condominium association with the intent that the association will use the vehicle to provide shuttle service to the nearby Metro station and shopping. In its proposal to provide a van to the association, the developer represented that the provision of this van meets with the developer's mission to provide affordable and environmentally friendly housing in Washington, D.C.

Special Exception

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) to grant special exceptions, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in this title.

Section 353 of the Zoning Regulations requires special exception review by the Board of Zoning Adjustment for all new residential developments in R-5-A Zone Districts except one-family detached and semi-detached dwellings. The Applicant proposes to use the Property as an apartment house, and is therefore required to satisfy the requirements of § 353.

When considering an application under § 353, the Board is required to refer the application to the D.C. Board of Education for comment and recommendation as to the adequacy of existing and planned schools to accommodate the numbers of students that can be expected to reside in the project, 11 DCMR § 353.2; to the D.C. Departments of Transportation (“DDOT”) and Housing and Community Development (“DHCD”) for comment and recommendation as to the adequacy of public streets, recreation, and other services to accommodate the residents of the project, 11 DCMR § 353.3; and the Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the future residents of the project and the surrounding neighborhood.

The Office of Planning forwarded the application to the Board of Education, DDOT, and DHCD, for their review and comment. DDOT stated it had no concerns about the project, while the Board of Education and DHCD had no comments. The Office of Planning stated that since the proposed renovations to the building would be internal, there would be no changes that would affect the light and air of neighboring properties, and the federal parklands at the eastern end of V Street, S.E. were in walking distance and provide recreation space.

The Board concludes that the project is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

Great Weight to Office of Planning and ANC 8A

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04. Great weight means an acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning recommended granting the parking variance and the special exception, and the Board agrees with its analysis and recommendation.

ANC 8A recommended denial of the parking variance, and took no position with respect to the special exception. ANC 8A was concerned that the renovated apartment building would have too many units, resulting in parking problems for the area surrounding the building. The building is well served by public transportation, and the Applicant has agreed to donate a van to the homeowners association so it can operate a shuttle service to the nearby Metro station and other destinations. The Board is therefore not persuaded that ANC 8A’s issues and concerns warrant a denial of the variance.

Based on the above record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a variance from the parking requirements of 11 DCMR § 2101.1, and for special exception relief to construct a multi-family apartment house in the R-5-A Zone District, as required by 11 DCMR § 353.

It is therefore **ORDERED** that the Application is **GRANTED, SUBJECT** to the following **CONDITION**:

The Applicant shall provide a van, free of charge, to the building's condominium association no later than the date that the last dwelling unit in the Project is sold to be used for a shuttle service for the association for a period of at least two years from the date that the van is donated.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II, Curtis L. Etherly, Jr. and John G. Parsons to approve the motion).

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

Each concurring Board member approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning 

JAN 26 2007

FINAL DATE OF ORDER: _____

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND

REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITION IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17463

As Director of the Office of Zoning, I hereby certify and attest that on **JANUARY 26, 2007**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Cynthia Giordano, Esquire
Nathan Gross, AICP
Arnold & Porter LLP
555 12th Street, N.W.
Washington, D.C. 20004

Rachael Gautier, Vice President
ARCH Training Center, Inc.
1227 Good Hope Road, S.E.
Washington, D.C. 20020

Frederick Douglass Community Improvement Council
2009 18th Street, S.E.
Washington, D.C. 20020

Chairperson
Advisory Neighborhood Commission 8A
2100 Martin Luther King, Jr. Avenue, S.E.
Washington, D.C. 20020

Single Member District Commissioner 8A04
Advisory Neighborhood Commission 8A
2100 Martin Luther King, Jr. Avenue, S.E.
Washington, D.C. 20020

Councilmember Marion Barry
Ward Eight
1350 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20004

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Bill Crews
Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Harriet Tregoning
Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002

Alan Bergstein
Office of the Attorney General
441 4th Street, N.W., 7th Floor
Washington, D.C. 20001

Jill Stern
General Counsel
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning ✓

TWR