

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13840 of Edward Boniface, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a non-conforming structure which now exceeds the allowable percentage of lot occupancy (Paragraph 7107.21) and against allowing an addition to a dwelling on an alley lot where the alleys leading to public streets are less than thirty feet wide (Sub-section 7606.2) for a proposed second story addition to a non-conforming structure located on an alley lot in an R-4 District at the premises 15 Brown's Court, S.E., (Square 870, Lot 853).

HEARING DATE: October 20, 1982
DECISION DATE: October 20, 1982 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located in the center of the square bounded by Independence Avenue and A, 6th and 7th Streets, S.E. The subject property is an alley lot known as premises 15 Brown's Court, S.E.
2. Brown's Court is a thirty foot wide alley which runs east-west through the middle of Square 870. The alley connects to 6th Street on the west, but is only fifteen feet wide where it adjoins the properties that front on 6th Street. There is also a fifteen foot alley perpendicular to Brown's Court which connects to Independence Avenue.
3. The subject property is located at the southeast corner of the intersection of Brown's Court and the fifteen foot alley. The lot is 79.81 feet wide and 41.08 feet deep. It has an area of 3,278.59 square feet.
4. The subject property is improved with a one-story brick building used as a single family dwelling. The building was originally built as a warehouse and still retains much of the appearance of a non-residential structure. The building has brick walls, a cement floor, a five inch thick concrete roof, reinforced concrete beams and two twenty-four inch square columns in the middle.
5. The existing building has sixty-six feet of frontage on Brown's Court and extends to a depth of thirty-seven feet. The building occupies 2,442 square feet of the lot. The existing building has only one bedroom.

6. The existing building has a 9.08 foot rear yard on its south side, and a 13.81 foot side yard on its east side.

7. The applicants propose to construct a second story addition to accommodate additional bedroom space. The addition would be located at the west end of the lot. The addition would measure twenty-eight feet along Brown's Court and extend to the full depth of the building. The west, north and south walls of the addition would follow the west, north and south walls of the existing building.

8. The maximum permitted percentage of lot occupancy for a semi-detached dwelling in an R-4 District is forty percent. For the subject lot, only 1311.44 square feet may be occupied. The existing building exceeds the maximum permitted, and is thus a non-conforming structure.

9. The addition would cover only 1,036 square feet. It would not increase the existing lot occupancy of the property.

10. A variance from the limitation imposed by Paragraph 7107.21 is required because the existing building exceeds the permitted lot occupancy.

11. The design of the residential unit on the first floor was severely constrained by the non-residential type of construction used for the original building. Modification of the existing building to accommodate a reasonable sized living unit would be extremely difficult. It is impractical to rearrange the existing living unit to accommodate additional bedrooms.

12. All of the surrounding alley dwellings, as well as the surrounding row dwellings, flats and apartments which face on the surrounding streets, are at least two stories in height.

13. The immediately adjoining house to the west is two stories in height. The east wall is a party wall with the subject building and has no windows.

14. The remaining three sides of the subject lot face alleys.

15. At the point where Brown's Court extends to 6th Street, the alley is only fifteen feet wide. The lots on either side of the alley are improved, and there is no way to expand the width of the alley. Sub-section 7606.2 prohibits the construction of an addition to a dwelling on an alley lot where the alley leading to a street has a width of less than thirty feet. A variance from this sub-section is required.

16. Under the Zoning Regulations, uses permitted on an alley lot as a matter of right are public or private parking garages, museums, art galleries, private clubs, and churches. With Board approval, the property can be used for the storage of wares and goods or as a parking lot, subject to the conditions set forth in Paragraph 3104.43 of the Zoning Regulations. In view of the location, shape and size of the subject property and adjacent uses, the proposed use of the property for single family residences is the only feasible use. Were the subject property to be used for any other purpose, the more intense use would almost certainly prove objectionable.

17. All of the surrounding properties facing Brown's Court are devoted to conforming residential or parking usage.

18. The Office of Planning and Development, by memorandum dated October 13, 1982, and by testimony at the public hearing, recommended approval of the application. The OPD reported that the subject property was developed prior to the adoption of the present Regulations, and that the addition proposed would not exacerbate any of the existing non-conformity. The Board so finds.

19. Advisory Neighborhood Commission 6B, by letter dated October 4, 1982, supported the application. The ANC noted that the addition will not add to the present lot occupancy and that there are other second story residences on Brown's Court. The ANC heard no opposition to the application. The ANC believed that the application could be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan. The Board concurs with the findings and recommendation of the ANC.

20. There was no opposition to the application at the hearing or in the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and evidence of record, the Board concludes that one of the requested variances is an area variance, and the other is a use variance. As the Board has concluded in previous cases, the variance to allow construction of or an addition to a dwelling on an alley lot, fronting on alleys less than thirty feet wide, is a use variance, because what is at issue is the use of the property. The variance from Paragraph 7107.21 is an area variance, because it relates to the size and configuration of the property, rather than its use.

The granting of a use variance requires the showing of an undue hardship upon the owner of the property arising out

of some unique or exceptional condition arising out of the property itself. The granting of an area variance requires the showing of a practical difficulty, instead of a hardship.

The Board concludes that the applicant has made the required showing. The Board concludes that no other use permitted in the R-4 District can reasonably be made of the subject property, and that the location of the lot, its size and its shape constitutes a hardship and a practical difficulty for the owners. As the Board has found, other uses in the R-4 District are permitted on this lot as a matter-of-right or as special exceptions. The Board further notes that the subject lot is more suitable for residential use than other uses which are permitted as a matter of right or by special exception under the Zoning Regulations.

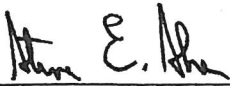
The Board concludes that the existing nonconforming building, the type of construction of the existing building and the height of the existing building creates an exceptional condition of the property. The strict application of the Regulations would prevent the applicants from creating a reasonable addition to the property to result in a two-bedroom living unit. The Board notes that the addition itself, at the second story level, is below the permitted lot occupancy and that the addition will not increase the lot occupancy.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. The Board concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. It is therefore ORDERED that the application is GRANTED.

VOTE: 5-0 (Connie Fortune, Maybelle T. Bennett, Douglas J. Patton, William F. McIntosh and Charles R. Norris to grant).

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

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

FEB - 4 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL

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RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING
ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS
AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH
PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE
OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES,
INVESTIGATIONS AND INSPECTIONS.

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