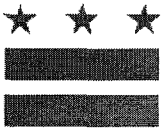
GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Corporation Counsel

Economic Development Cluster



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OFFICE OF ZONING
DISTRICT OF COLUMBIA

MEMORANDUM

TO: **Jerrily Kress, FAIA**
Director
Office of Zoning

FROM: **Alan H. Bergstein, Chief**
Land Use & Public Works Section

DATE: **February 17, 2000**

SUBJECT: **Proposed Order in Board of Zoning Adjustment Application No. 16438**
Howard University of the District of Columbia

In response to the request of the Board of Zoning Adjustment, we have drafted a proposed order for its use in this case. The proposed order is attached. Please do not hesitate to call Assistant Corporation Counsel Patricia N. Young at (202) 442-9776 if you have any questions concerning this matter.

AHB/pny
(WL-99-329)

Attachment

cc: Sherri M. Pruitt

BZA
Case No. 16438
Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO.16438
EXHIBIT NO.26

GOVERNMENTOF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
Order No. _____

Application No. 16438 of the Howard University of the District of Columbia ("Howard" or "Applicant") pursuant to 11 D.C.M.R. §3107.2, for a variance from §2101 of the Zoning Regulations relating to the off-street parking space requirement for new construction, to waive the requirement to allow a single family dwelling and one flat in an R-4 District to be constructed at 5th Street and Oakdale Place, N.W., 2021 through 2031 5th Street, N.W. (Square 3080, Lot 844).

HEARING DATE: March 17, 1999

DECISION DATE: March 17, 1999

DECISION AND ORDER

PRELIMINARY MATTERS:

The applicant is the Howard University of the District of Columbia ("Howard"). Howard is represented in these proceedings by counsel, Cynthia A. Giordano, Esq. of the law firm of Linowes and Blocher LLP, Howard's project architect, Kent MacDonald of Sorg & Associates, and Howard's project manager, C. Peter Behringer of Behringer & Associates. Pursuant to 11 DCMR §3107.2 (1995)[1], on January 11, 1999, Howard filed an application with the Board of Zoning Adjustment (Board) for a variance from the off-street parking space requirement for a single-family dwelling and one flat found in 11 D.C.M.R. §2101. Howard is seeking this variance to allow construction of the new residential building without providing off-street parking.

By memoranda dated January 12, 1999, the Office of Zoning advised the Acting Zoning Administrator, the Office of Planning, and Advisory Neighborhood Commission ("ANC") 1B, the ANC for the area within which the subject property is located, of the application.

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[1] The Board's rules of practice and procedure were amended and renumbered effective October 31, 1999. The amendments do not affect this application. *See* 11 D.C.M.R. §3102.2, 46 D.C. Reg. 7853 (Oct. 1, 1999). To conform to the citations used in the Salters' application, all citations to the Board's rules are to the rules as published in 11 D.C.M.R. ch. 31 and 33 (1995).

The Board scheduled a public hearing on the application for March 17, 1999. Pursuant to 11 D.C.M.R. §3317.3, the Office of Zoning mailed Ms. Giordano, the owners of all property within 200 feet of Howard's property, and ANC 1B` notice of the hearing. Notice was also published in the D. C. Register at 46 DCR 1005 (February 5, 1999). Mr. Behringer submitted an affidavit of posting, stating that on March 1, 1999, he placed zoning posters on the Fifth Street and Oakdale Place street fronts of the property in plain view of the public.

On March 17, 1999, the Board held a public hearing on the application. The Board heard testimony from Mr. Behringer and the architect. There was a resolution in opposition to the grant of the variance from ANC 1B. There was no report from any government agency, however, Mr. Behringer submitted a copy of the Historic Preservation Review Board Staff Report and Recommendation as an exhibit.

ANC 1B Commissioner Lawrence Guyot testified in opposition to the application. Advisory Neighborhood Commission 1B by a resolution dated March 17, 1999 and by the testimony of Commissioner Guyot at the public hearing, opposed the request for grant of a variance and endorsed the position of the LeDroit Park Civic Association "LPCA" as stated in LPCA's letter dated March 16, 1999. Commissioner Guyot testified that the grant of the variance would have a negative impact on the neighborhood in terms of completion of development of this corner lot, ease of sale of the housing units once completed, and increasing on-street parking congestion.

At the conclusion of the hearing, the Board, by a 4-0 vote, denied the application.

FINDINGS OF FACT:

1. The proposed premises that are the subject of this application, 2021 through 2031 5th Street, N.W., are in an R-4 zoned district. The applicant's new construction will be a single-family dwelling and one flat. The property is located at the corner of Oakdale Place and 5th Street, N.W. The site, Lot 844 of Square 3080, is at the rear of Howard University Hospital, west of 4th Street, N.W., north of Florida Avenue, N.W. and east of Georgia Avenue, N.W. The site is within the LeDroit Park Historic District.

2. The applicant is seeking a variance from 11 D.C.M.R. §2101, for relief from providing off-street parking for the proposed single-family dwelling and flat.

3. Under §2101 of the Zoning Regulations, a single-family dwelling must have one parking space and a flat must have one parking space for every two units.

4. As a part of its redevelopment of its properties in the LeDroit Park community and those near the Howard University Hospital, Howard is constructing a range of homes affordable by both lower and middle income homebuyers. Howard is constructing this single-family dwelling and flat for sale to middle income homebuyers. Off-street parking is an important amenity for the higher-priced homes intended for middle income purchasers.

5. The proposed project was submitted to the Historic Preservation Review Board ("HPRB") because the new construction will be located in the LeDroit Park Historic District. Howard appeared before the HPRB at a hearing held on November 19, 1998. The HPRB Staff Report recommended that the Review Board deny the curb cuts necessary for on-site parking and direct Howard to seek relief from the on-site parking requirements from the Board. The HPRB denied the request to approve curb cuts on 5th Street and Oakdale Place, N.W.

6. The Historic Preservation Review Board Staff Report and Recommendation noted the following:

> LeDroit Park was created in the 1870s as an early suburb in which the green spaces surrounding the houses were an important element in creating the park-like feeling of the neighborhood. Originally, yards had no fences between them, and the entire neighborhood was intended to be seen as a continuous garden. While this character has been somewhat compromised over the years, curb cuts and automobile parking within public view are quite uncharacteristic.

7. After appearing before the HPRB, the applicant met with the LeDroit Park Civic Association ("LPCA").

8. The LPCA took the position that off-street parking enhanced the desirability and marketability of the living units, that off-street parking could be screened appropriately with landscaping to give the appearance of green space around the houses, and that screened off-street parking was not detrimental to the character of the historic district.

9. After meeting with the LPCA, the applicant contacted the HPRB Staff and requested reconsideration, but the HPRB Staff declined to reconsider its recommendation to deny the curb cuts until Howard sought zoning relief from the Board as required by the HPRB.

10. The Board finds that the property is a large corner lot in need of substantial rehabilitation but that the lot is sufficient in size to accommodate on-site parking thereon required by 11 D.C.M.R. §2101, provided that the on-site parking may be accessed from the adjacent streets.

11. The Board finds that strict application of 11 D.C.M.R. §2101 will not result in exceptional practical difficulties and undue hardship upon the owner of the property nor prohibit the development of the property because the applicant may gain access to the property and the on-site parking from the adjacent streets through the use of curb cuts.

12. The existing demand for street parking already far exceeds the available street parking in these blocks of 5th Street and Oakdale Place, N.W.

13. In addition to parking by residents of these blocks, employees, patients and visitors of Howard University Hospital park on 5th Street and Oakdale Place, N.W. because of their proximity to the rear doors of the hospital.

14. The grant of a variance would introduce additional cars onto these blocks where the available street parking is already exhausted, at all times, by the parking of the residents and temporary visitors to the these blocks.

15. Residents of the older homes on this block must park on the street because the older homes do not have off-street parking either because the lots are too small or the alley that serves them is too small to permit use to access off-street parking.

16. Upon its completion, the redevelopment project will introduce an unknown number of additional residential cars onto these and the surrounding streets. Overall, parking is already a significant problem on these streets and in the surrounding LeDroit Park neighborhood. The Board finds that the variance cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.

CONCLUSIONS OF LAW AND OPINION:

The Board is authorized under the Zoning Act of 1938, 52 Stat. 797, as amended, D.C. Code §5-424(g)(3) (1994 Repl.), to grant variances. Howard applied under 11 D.C.M.R. §3107.2 for a variance from the off-site parking space requirements of 11 D.C.M.R. §2101 to construct a single-family dwelling and one flat with providing the on-site parking. The notice requirements of 11 D.C.M.R. §3317 for the public hearing on Howard's application have been met.

The application, which seeks relief from an on-site parking requirement for new construction, requests an area variance. An area variance, relating to such restrictions such as side yard, rear yard, frontage, setback or minimum lot requirements, does not alter the character of the zoned district, whereas a use variance seeks a use ordinarily prohibited in the particular district. *Monaco v. District of Columbia Board of Zoning Adjustment,* 409 A.2d 1067, 1072 (D.C. 1979). The proposed variance does not seek a use ordinarily prohibited in this district, therefore it is an area variance.

To meet their burden of proof under D, C. Code §5-424(a)(3), as restated in Subsection 3107.2, for an area variance, Howard must demonstrate that, by reason of exceptional narrowness, shallowness or shape of their lot or by reason of exceptional topographical or other extraordinary or exceptional conditions of their lot, the strict application of §2101 will result in peculiar and exceptional practical difficulties. *See Monaco v. District of Columbia Board of Zoning Adjustment, Ibid.* Under Subsection 3107.2, Howard must also show that a variance 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 Map.

The Board concludes that Howard has not met its burden of proof under Subsection 3107.2 for the requested variance. First, Howard has not demonstrated that its property is exceptional or unique. The corner lots are of sufficient size to accommodate the minimum of one off-street parking space required for units by the Zoning regulations. Finding of Fact 10.

The fact that the property is located in a historic district and that the HPRB has disallowed the use of curb cuts does not make the property unique or warrant the grant of a variance. *Capital Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment,* 534 A.2d 939, 942 (D.C. 1987).

Second there is no undue hardship in requiring Howard to provide the off-street parking. Although the two residential units are not accessible from any alley, the required off-street parking could be accessed from the street provided the curb is cut at each of the units. Findings of Fact 10, 11.

Finally, Howard has not met its burden of proof as to the third prong of the three-part test for the grant of a variance. The requested variance would allow Howard to construct two residential units without providing on-site parking for either unit, thereby impairing the intent, purpose, and integrity of the R-4 zone plan.

The Board further concludes that the applicant has not met its burden in demonstrating that the construction of the single-family dwelling and the flat without off-street parking is not likely to become objectionable to, or adversely affect, adjoining and nearby property owners because of the increased number of residential cars that will require street parking. The parking in this area is already quite congested and often demand for parking exceeds the available street parking causing inconvenience to the residents of the community. Findings of Fact 12, 13. Permitting the introduction of an unknown number of additional residential vehicles without adding the minimum number of on-site parking spaces will be a substantial detriment to the public good and substantially impair the intent, purpose, and integrity of the R-4 zone plan.

ANC 1B submitted a written report in opposition to the Board, as required in 11 D.C.M.R. §3307. In addition, the Commissioner of ANC 1B testified in opposition to the grant of the variance. The Board, in denying this application has taken into account the ANC's unique vantage point and found its advice persuasive as to the adverse effects the grant of a variance will have upon the community. The Board is also persuaded that on-site parking may be provided in a manner, screening and landscaping, that is not objectionable to the community and promotes the green open spaces character of the historic district. In doing so, the Board gave ANC 1B the great weight to which it is entitled.

For the reasons stated above it is hereby ORDERED that the application is DENIED.

VOTE: 4-0 (Sheila Cross Reid, Anthony Hood, Jerry Gilreath, Betty King to deny).

THE DECISION TO DENY THE APPLICATION WAS MADE BY THE BOARD OF ZONING ADJUSTMENT AT ITS PUBLIC MEETING OF MARCH 17, 1999.

EACH CONCURRING MEMBER OF THE BOARD HAS READ AND APPROVED THE ISSUANCE OF THIS ORDER AND AUTHORIZED THE UNDERSIGNED TO EXECUTE IT ON THEIR BEHALF.

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

ATTESTED BY: _____
JERRILY KRESS, FAIA
DIRECTOR, OFFICE OF ZONING

Final date of Order:_____

UNDER 11 DCMR § 310.1, "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 BEFORE THE BOARD OF ZONING ADJUSTMENT."