FILED
JUL 26 2001
DISTRICT OF COLUMBIA
COURT OF APPEALS

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 00-AA-1162

LOTHROP HOUSE UNIT OWNERS ASSOCIATION, INC., ET AL., PETITIONERS,

v. BZA NO. 16573

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, ET AL., RESPONDENTS.

MARTIN E. HARDY, INTERVENOR.

Petition for Review of a Decision of the
District of Columbia Board of
Zoning Adjustment

(Argued May 2, 2001 Decided July 26, 2001)

Before SCHWELB, REID and WASHINGTON, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

Petitioners, Lothrop House Unit Owners Association, Inc., et al. ("Lothrop"), have asked us to review a final decision rendered August 31, 2000, by the District of Columbia Board of Zoning Adjustment ("BZA") granting Martin E. Hardy's application for area variances, enabling him to construct a two-family flat at 1821-23 Florida Avenue, N.W. in a high density R-5-B residential district. We affirm.

Lothrop argues that the Board failed to apply the standard required by law for granting area variances. This court has held:

> The Board is empowered ... to grant an area variance where it finds three conditions: (1) the property is unique because, *inter alia*, of its size, shape, or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)). In reviewing a decision by the Board, this court must determine "(1) whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings." *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990) (quoting *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570

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A.2d 739, 746 (D.C. 1990)).

After carefully reviewing the evidence, the Board granted Hardy's request to allow variances in zoning regulations in order to construct a two-family flat at 1821-23 Florida Ave., N.W. in a high density R-5-B residential district. The Board found that the lot is a very small, irregularly shaped double trapezoid that is shallow in depth. The Board stated that the physical characteristics of the property supply uniqueness and that the property is virtually unbuildable without zoning relief. The Board also stated that requiring setbacks or applying the existing floor area ratio would result in an uneconomic structure. The Board noted that a smaller structure is economically unfeasible due to the substantial costs of shoring up the retaining/ building wall and the installation of new utilities. The Board also found that continuation of the existing commercial garage use would require special exception approval and would likewise entail zoning relief and substantial repair and reconstruction costs. In addition, the Board concluded that the commercial garage use cannot justify the cost of the proposed renovation. The Board also noted that the existing garages are in an advanced state of decay and disrepair and that the neighborhood will benefit from upgrading the dilapidated garages into a two-family townhouse that is in keeping with the aesthetic integrity of the neighborhood. Moreover, the Board was persuaded to grant Hardy's request for an area variance in light of the fact that Hardy could neither use the property nor develop it for residential use without relief from existing regulations.

The record demonstrates that the Board considered the three conditions necessary to grant an area variance and found that the area variance was appropriate. *See French*, 658 A.2d at 1035. The requested density and area variances are necessary to allow Hardy to change the existing nonconforming commercial garage use, which lack special exception approval and a certificate of occupancy, to a conforming residential use. Additionally, the Board found that the variances will not substantially impair the intent, purpose, and integrity of the zone plan. Because the Board's decision flows rationally from its findings of fact and is supported by substantial evidence in the record as a whole, we find no error in the Board's assessment and we cannot say that the variance was unwarranted.

For the foregoing reasons, the decision of the Board of Zoning Adjustment is therefore

Affirmed.

FOR THE COURT

GARLAND PINKSTON, JR.
CLERK OF THE COURT

Attention:	**Ms Beverley Bailey**	Date:	8/13/01
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