GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORADUM

TO: Board of Zoning Adjustments

FROM: Andrew Altman, Director
Office of Planning

DATE: June 13, 2001

SUBJECT: Waiver of Rules for Late Submittal of Final Report on Case No. 16730

The attached Final Report concerning the application for the Variance Requests located at 1320 13th Street, NW is being submitted less than 7 days prior to the Board of Zoning Adjustment's consideration of the item and scheduled public hearing. The Office of Planning respectfully requests that the Board waive its rule and accept the report into the record.

Attachments

AA/jm

BZA
Case No. 16730
Exhibit No. 44

Board of Zoning Adjustment
District of Columbia
CASE NO.16730
EXHIBIT NO.44

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustments

FROM: Andrew Altman

DATE: June 13, 2001

SUBJECT: BZA Application #16730 (Bundy Development Corporation)
1320 13th St., NW (Square 243, Lot 26)

I. APPLICATION

This report summarizes the Office of Planning's (OP) review of the above application from The Bundy Development Corporation (the Applicant) to the Board Zoning Adjustments pursuant to 11 DCMR §3103.1 for variances from the Zoning Regulations §400.1 (Height), §401.4 (FAR Limitations), for the property described as Lot 26 of Square 243 (the Property) in northwest DC. The report presents the Office of Planning's findings and recommendations to the Board of Zoning Adjustment.

II. RECOMMENDATION SUMMARY

The Office of Planning recommends the BZA deny the variance requests for relief from height and FAR restrictions.

III. SITE AND AREA DESCRIPTION

Square 243 in northwest DC is located at Logan Circle and is bounded by O Street to the north, 13th Street to the east, N St on the south, and Vermont Avenue to the west. Lot 26 fronts on 13th street in the middle of the block. The Property is slightly trapezoidal in shape, narrowing with the block to the north (see aerial). It is 5,436 square feet in size and is otherwise not affected by unique or special conditions due to shape, narrowness, or other topographical conditions. Immediately to the north and south of the site are 3-story town homes. At the southern end of the block is a 90-foot tall apartment building under construction on a property that is zoned R-5-E. The Applicant's property is zoned R-5-C and is part of the Logan Circle Historic District.

IV. PROJECT DESCRIPTION

The Applicant's proposed project is a 19,061 square foot (3.5 FAR), 5-story, 77-foot tall residential condominium building of 19 units. The average height of each floo,r from floor to floor, is 12.5 feet. The building had been designed to R-5-D standards of 3.5 FAR and maximum height of 90-feet based on information the applicant received from the Office of Zoning. The historic preservation review process modified the design of the project to its current 75-foot height.

V. COMPREHENSIVE PLAN

The language found in the Comprehensive Plan regarding Logan Circle is largely found in the Ward 2 Element of the Plan. The section discusses the circle's rebirth and does not provide much guidance towards this case. The Comprehensive Land Use Map of the Plan identifies this site in the Logan Circle area as a Moderate Density Area. Row houses and garden apartments are the predominant uses; it may also include low-density housing.

VI. ZONING

The current R-5-C zoning around Logan Circle is the result of an extensive effort undertaken to rezone the area that started in 1997. The property was originally zoned R-5-D, but as a result of Zoning Commission Case #97-7, it was rezoned to R-5-C, which permits apartment buildings with 3.5 FAR, 60 feet in height. Per section 350.2 cited below, R-5-C is closer in agreement to the Comprehensive Plan than R-5-D, but it is still defined as medium density, which is one step higher than the Comprehensive Plan.

> 350.2 The R-5 districts are subdivided into R-5-A, R-5-B, R-5-C R-5-D and R-5-E districts. In R-5-A districts only a low height and density shall be permitted; in R-5-B a moderate height and density shall be permitted; in R-5-C a medium height and density shall be permitted, and in R-5-D and R-5-E districts a relatively high height and density shall be permitted.

To fully understand the applicants situation, a timeline of events involving the property is extremely helpful.

- 4/4/97 - Office of Planning (OP) files a setdown report to the Zoning Commission (ZC) to amend the zoning regulations for Comprehensive Plan consistency. The property is setdown to R-5-B.
- 7/21/97 - ZC holds hearing on text amendments. It was decided that the map amendments would be heard at later date.
- 1/ 5-8 /98 - ZC begins the consideration of the Map amendments.
- 3/9/98 & 4/13/98 - ZC votes on amendments, but not Logan Circle. Public notice is sent to reopen record until 9/30/98.

- 11/9/98 - ZC decides to postpone again.
- 12/14/98 - ZC decides to have additional public hearings.
- 4/23/99 - OP submits its Final Recommendations to the ZC.
- 5/6/99 - ZC- holds public hearings.
- 7/12/99 - ZC votes to approve amendments. Property rezoned from R-5-D to R-5-C.
- 10/1/99 - Office of Zoning publishes proposed rule making in DC Register.
- 10/29/99 - Applicant closes on property.
- 11/5/99 - Amendments receive National Capital Planning Commission approval.
- 11/10/99 - OZ certifies R-5-D zoning to applicant.
- 1/10/00 - OZ processes Order No. 914
- 2/25/00 OZ publishes Order No. 914 in DC register
- 1/22/01 ANC 2F approves project for Historic Preservation Review. Concerns expressed that the project not "loom" over the surrounding properties.
- 1/25/01 - Historic Preservation Review Board (HPRB) holds conceptual review.
- 2/22/01 - HPRB holds final review. Applicant asserts the zoning is R-5-D, which permits 90-foot buildings. HPRB approves the project at 75 feet.
- 3/20/01 Zoning Administrator certified R-5-D on plat.

Based on discussions with the Office of Corporation Counsel, the certification she received was not in error, but in fact technically correct. According to Section 3028.9, the official zoning of the site would not have changed until the order appeared in the DC Register on February 25th, 2000.

3028.9 A written order setting forth a final action shall become final and effective upon publication in the *D.C. Register,* unless a later effective date is provided for by the Commission. An amendment to the Zoning Map approved in connection with an application for a planned unit development shall, however, become effective only upon completion of the process required by Chapter 24, and upon filing with the District a covenant ensuring compliance with approved plans.

It should be noted that Zoning Case 97-7 was properly publicized in the DC Register and the property was properly posted at the time of the applicant's 60-day purchase option. Once the proper procedures are carried out, the onus is on the applicant to be aware that a property is currently under the jurisdiction of a zoning case that could result in the down zoning of the property.

A different standard is applied to the issuance of building permits. Per section 3202.5, in cases where properties are under the jurisdiction of a zoning case, a building permit must be in accordance with the most restrictive classification being considered.

3202.5 If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application, and the completion of work pursuant to the permit, shall be governed as follows:

(b) If the application is filed after the date on which the Zoning Commission has made a decision to hold a hearing on the amendment, the application may be processed, and any work authorized by the permit may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding, or in accordance with the most restrictive zone district classification being considered for the site;

In this case, if building permits had been applied for at the time of certification (11/10/99) they would have been limited to R-5-B. Therefore if a building permit had been issued at the higher zoning of R-5-D it would have been incorrect.

VII. ANALYSIS

The Applicant is requesting variance relief from Subsections §400.1 (Height), §401.4 (FAR Limitations). In accordance with Section §3103.2, the Board of Zoning Adjustments may grant variances when:

1. The Property exhibits unique characteristics of size, shape, topographical conditions or other extraordinary or exceptional situation…
2. Strict enforcement would result in exceptional practical difficulties or undue hardship; and
3. Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zoning Regulations and Map.

Test #1

The Office of Planning is sympathetic to the applicant's situation. A combination of:

- the Zoning Regulation's differential treatment between final & effective zoning and the issuance of building permits, and
- the applicant's continued could faith efforts, including receiving a plat certified by the Zoning Administrator that the property was R-5-D,

have created an "extraordinary or exceptional situation" with regards to development of the property. While the zoning case was otherwise properly noticed and posted, the applicant's interactions with District staff may have set the applicant on a path that was not corrected until just a few months ago.

Test #2

The applicant has argued that, due to these circumstances, she has incurred additional costs of architectural fees, legal fees and others. Fees, however, are a cost of development and do not constitute a practical difficulty toward developing the property in accordance with the correct zoning of the property. The practical difficulty here is difficult to quantify. The applicant did not request written certification of the zoning, until after closing, so it cannot be argued that the applicant relied on official certification of higher density in purchasing the property. In addition, since the applicant was obviously aware of the need for H.P.R.B approval of any new construction, it could not have relied on the 90' height permitted by R-5-D.

The applicant has also argued that the R-5-C classification itself is difficult to build to because of market conditions. However, zoning only determines the type and scale of project that is appropriate to an area, it is not, nor should it be based on what the market believes is feasible.

Test #3

This test asks what harm is done by granting a variance. On one level, OP believes this case would be a detriment to the public good and impair the integrity of the zoning regulations. The neighborhood and other community stakeholders also acted in good faith during the Zoning Commission Case that resulted in downzoning the property. This is particularly so with regards to the height of 90 feet that would be allowed by an R-5-D classification. A building 90 feet in height in the location of the property at the middle of the block would be inconsistent with the surrounding properties.

The applicants drawing in the prehearing statement demonstrates this. The tall building on the left in the drawing is a 90' tall building currently under construction down the block where the zoning is R-5-E. The applicant's building is the 5-story apartment building to the right of the center. The purpose of ZC case #97-7 was to provide a gradual stepping down in height as Logan Circle is approached. From the drawing it can be seen that the height of a 90-foot tall building in the middle of the block would clearly violate the intent of the Zoning Regulations. However, the Historic Preservation Development Review process has mitigated this impact by limiting the height of the building to 75 feet, which is more appropriate to the urban landscape of the neighborhood. Again the drawings provided in the pre-hearing statement demonstrate this.

It is important to note that but for the controls of the historic preservation review process, the harm to the intent of the zoning regulations would have been considerable, therefore any precedent set by this case could result in harm to the public good where those same controls do not exist.

VIII. COMMUNITY COMMENTS

When the Historic Preservation Review Board (HPRB) under the belief it was R-5-D was reviewed the property, the community represented by ANC-2F and the Logan Circle Community Association expressed concern over the height of the building. However, the community

unanimously approved the project after the height of the building was reduced to 75 feet. This vote included ANC commission members who participated in the ZC case to downzone the area.

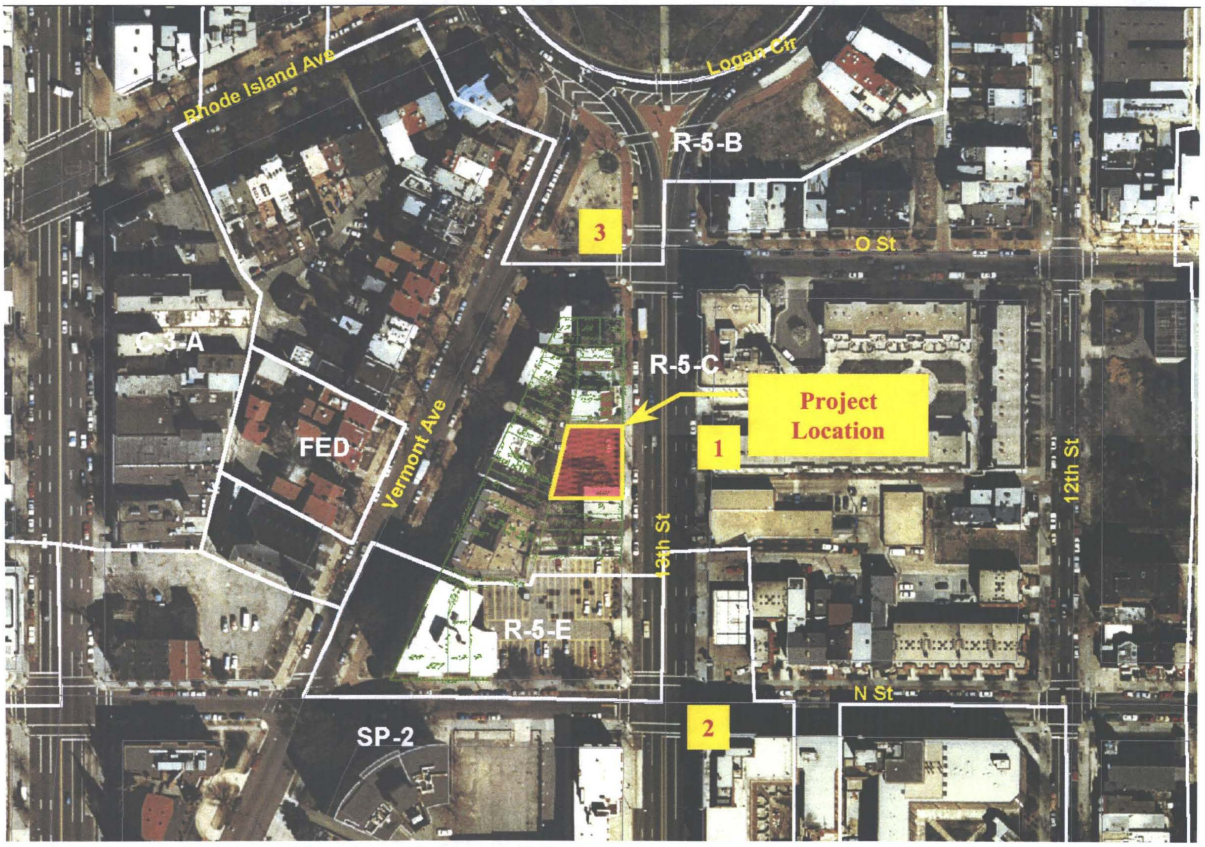
Once the error was uncovered, the applicant filed for the variance to reach the height approved by HPRB. In application for the variances, the ANC voted unanimously against the project.

The applicant has submitted several letters of support from private citizens.

IX. OFFICE OF PLANNING RECOMMENDATIONS

As stated above, the Office of Planning is sympathetic to the applicant and believes the order of events to be unfortunate. Further, OP takes the approval of the HPRB that a 75-foot tall building would be acceptable in the Logan Circle Historic District as evidence that the harm to the intent of the zoning regulations has been mitigated. However, OP believes that the events do not constitute a practical difficulty and that the precedent of allowing potential error to continue after it has been caught could result in harm to the intent of the Zoning Regulations. Therefore the Office of Planning recommends against granting a variance for this case.

AA/ar



Aerial Photo of Project with locations of photos



1. Panorama Photo of Project site facing west from across the street



2. Photo facing NW from intersection of 13th and N St, NW



3. Photo of 1325 13th Street facing SE from intersection of 13th and O Street, NW