GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16919 of Mike Meier, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to allow the construction of a new apartment building under subsection 330.5, in an R-4 District at premises 4517 Georgia Avenue, N.W. (Square 3016, Lot 13).

HEARING DATE: December 10, 2002
DECISION DATE: January 21, 2003

DECISION AND ORDER

The applicant in this case is Mike Meier, the owner of the lot that is the subject of the application. A signed self-certification form and application was filed with the Board of Zoning Adjustment on June 13, 2002, pursuant to 11 DCMR § 3103.2, for a variance from 330.5, relating to a new apartment building in a R-4 district at premises 4517 Georgia Avenue, N.W. (Square 3016, Lot 13). The Applicant seeks to construct a five-unit apartment building, three stories in height, with four accessory parking spaces. After a public hearing, the Board voted 3 to 1 to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated June 25, 2002, the Office of Zoning advised the Applicant, the Office of Planning, the Department of Public Works, ANC 4C (the ANC for the area within which the subject property is located), the single member district ANC 4C07, and the Councilmember for Ward 4, of the application.

The Board scheduled a public hearing on the application for December 10, 2002. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed the Applicant, the owners of all property within 200 feet of the subject property, ANC 4C, the single member district ANC 4C07, the Department of Public Works, and the Office of Planning, letters dated July 31, 2002, providing notice of hearing.

The Applicant's affidavit of posting indicates that one zoning poster was placed at the subject property on September 14, 2002.

Board of Zoning Adjustment
District of Columbia
CASE NO.16919
EXHIBIT NO.43

Requests for Party Status. Ms. June McCloud, who lives adjacent to the subject property, requested party status. Ms. McCloud's request was granted by the Board prior to the hearing, as a preliminary matter.

Applicant's Case. Mike Meier, the property owner and Applicant, submitted memoranda dated June 13 and July 29, 2002, supporting his application. Mr. Meier also presented his case at the hearing. He stated that his proposed apartment building, to be built on a now vacant lot, would replace a blight on the community with an architecturally outstanding project, thereby benefiting the surrounding community. Mr. Meier also emphasized that he could not develop the property economically as a matter of right.

Government Reports. The Office of Planning ("OP") report, recommending denial of the application, was received on September 24, 2002. The Office of Planning recommended denial because it concluded that the property could be developed with a matter of right development, with no zoning relief required, and that the owner will therefore experience no practical difficulties in developing the property.

ANC Reports. The ANC 4C report, dated September 18, 2002, stated that the ANC voted to approve the project by a vote of 5 to 0 on September 17, 2002. The report references a Special Public Meeting, at which all 5 Commissioners were present and discussed the application.

Parties and Persons in Support of the Application. Karen W. Archer, ANC elect for single member district 4C07, wrote a letter in support of the application. Councilmember Adrian Fenty spoke at the hearing, and submitted a statement, in support of the application. Merrit Drucker, Neighborhood Services Coordinator for the neighborhood, wrote a letter in support of the application. Also writing in support of the application was Sean Lilly.

Parties and Persons in Opposition to the Application. There was one party in opposition to the application. Ms. June McCloud objected to the size and location of the proposed development.

Hearing. A hearing was held on the application on December 10, 2002. Board members present at the hearing included: Geoffrey Griffis, Anne Renshaw, Carol J. Mitten, Curtis Etherly, and David Zaidain. Testimony was received from the Applicant, the Office of Planning, June McCloud, and Councilmember Adrian Fenty. At the close of the hearing, the record was left open to accept, from the Applicant, details of the estimated costs of developing the subject property, a site survey, a roof plan, and site clearing cost estimates, and any responses thereto. A submission from the Applicant was received by the Board on January 6, 2003, detailing the site clearing costs and some of the costs associated with developing the property.

Decision Meeting. At its decision meeting of January 21, 2003, the Board, by a vote of 3 to 1, denied the application.

FINDINGS OF FACT

1. The applicant proposes to construct a five-unit apartment building on the subject property.

2. The subject property is in an R-4 District.

3. An apartment building is not allowed as a matter of right in an R-4 District, pursuant to 11 DCMR § 330.5.

4. No provision of the Zoning Regulations allows a new apartment building as a special exception in an R-4 District.

5. The R-4 District is not intended for apartment building uses, but instead for smaller scale uses such as row houses and flats.

6. The Applicant states that matter of right use of this lot is not feasible due to economic circumstances in the neighborhood.

7. The Applicant states that the proposed building will be a benefit to the community because of its architectural merit and because it will be placed on an abandoned lot that has become an eyesore to the community.

8. The Applicant alleges that there may be additional costs to developing this lot because of the presence of the foundation from a previous building and because the retaining wall may have to be rebuilt after utility connections are made.

9. ANC 4C offers support for the application because of the development's perceived benefit to the community.

CONCLUSIONS OF LAW

The Applicant seeks a variance in a R-4 District for Square 3016, Lot 13, from 11 DCMR § 330.5, which does not allow the Applicant's proposed use, an apartment building, in an R-4 District.

The Board is authorized to grant a variance from the strict application of the Zoning Regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property . . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property. . . ." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2. Relief can be granted only "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. *Id.*

A use variance, such as is being requested here, cannot be granted absent a showing that the strict application of the Zoning Regulations would result in "exceptional and undue hardship upon the owner of the property," because a use variance "seeks a use ordinarily prohibited in the particular district" and thus would "alter the character" of that zoned district. *Palmer v. Board of Zoning Adjustment for the District of Columbia*, 287 A.2d 535, 541 (D.C. 1972). The Applicant's property is in an R-4 zone, which "shall not be an apartment house district." 11 DCMR § 330.3. "An inability to put property to a more profitable use or loss of economic advantage is not sufficient to constitute hardship. It must be shown that the regulations preclude the use of the property in question for any purpose for which it is reasonably adapted, *i.e.*, can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof?" *Palmer, supra*, 287 A.2d at 542.

There is not sufficient evidence in the record of undue hardship to the Applicant arising out of the nature of the property or the application of the Zoning Regulations to the property. The Applicant testified merely that he cannot develop the property as a matter of right given current economic conditions in the area and the small size of the lot. However, to support the granting of a variance, the hardship must be due to "unique circumstances peculiar to the applicant's property and not to general conditions in the neighborhood." *Palmer v. Board*, 287 A.2d at 539. "To grant a variance when the conditions are not unique would result in similar demands from neighboring property owners" and would in effect amend the Zoning Regulations, "thereby undermining the function of the Zoning Commission whose task it is to make the basic legislative judgments in drafting regulations." *Id.* Here, economic difficulties in developing a single, modest sized, lot as a matter of right are not unique to the subject property but apply to virtually every property in that neighborhood.

While there are two physical circumstances that arguably make this property different from others: the need to remove buried debris from the razed house and the fact that the retaining wall may need to be rebuilt after utility connections, these alone cannot constitute the type of unique circumstances the justify a variance where they establish only speculative and likely minimal financial impact on the Applicant.

In addition, the requested variance cannot be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. As previously noted, apartment houses are not permitted in an R-4 district, except through limited conversion of pre-1958 buildings, 11 DCMR §§ 330.5. Apartment houses are allowed as a matter of right only in an R-5 district, which permits the highest density residential development and is "designed to permit a flexibility of design by permitting . . . all types of urban residential development. . . ." 11 DCMR § 350.1. The

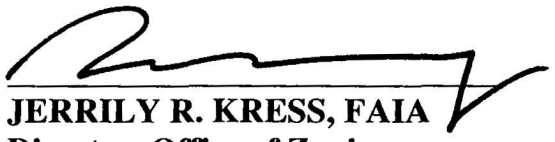
Board therefore concludes that an apartment house is not consistent with the purpose of the R-4 district and would tend to erode the low-density nature of the R-4 district. While it may be that there are several apartment buildings in the immediate vicinity of the subject property, this does not justify the granting of a variance. What it might justify, however, is the rezoning of that particular area, as was stated by the Board in its deliberations for this case.

DECISION MEETING, January 21, 2003

VOTE: 3-1-1 (Anne M. Renshaw, Carol J. Mitten, Geoffrey H. Griffis to deny, Curtis L. Etherly, Jr. to approve, David A. Zaidain not present, not voting).

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

Each concurring member has approved the issuance of this Decision and Order and has authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY: 

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 2 6 2003

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL. CB/rsn

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BZA APPLICATION NO. 16919

As Director of the Office of Zoning, I hereby certify and attest that on MAR 2 6 2003 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:

Mike Meier
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June C. McCloud
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rsn

ATTESTED BY:

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