

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-06
Z.C. CASE NO. 07-06**

***Sua Sponte* Review of Board of Zoning Adjustment Application No. 17553
May 14, 2007**

This Decision and Order arise from the *sua sponte* review by the Zoning Commission for the District of Columbia (the “Commission”) of an order issued by the Board of Zoning Adjustment (“BZA”) that granted BZA Application No. 17553, concerning a request by Naun Segovia, pursuant to 11 DCMR § 3103.2, for variance relief from building height and story limits, rear yard requirements, and open court requirements to allow the expansion of an existing apartment house from 20 units to 34 units in the R-4 district at premises 1327 Euclid Street, N.W. (Square 2861, Lots 4, 76, and 77). The Commission timely decided to invoke its *sua sponte* review authority. As a result of its review of the record and the submission of the Applicant, the Commission hereby reverses the BZA’s order and denies the application.

Procedural History

The self-certified application was filed with the BZA on September 7, 2006. A public hearing on the application was held January 23, 2007.¹ Parties in the proceeding were the Applicant and Advisory Neighborhood Commission (“ANC”) 1B. The BZA granted the application by a vote of 3-2-0 at a public meeting held February 6, 2007. A summary order reflecting the BZA’s decision was issued March 2, 2007.

At a public meeting of the Commission, held March 12, 2007, Commissioner Jeffries, who had participated in the BZA proceeding on the application, requested that the Commission exercise its *sua sponte* review of the BZA’s decision. The Commission voted 5-0-0 to invoke its *sua sponte* review authority in this case and to stay the BZA’s order pending review by the Commission.

At a public meeting on April 9, 2007, the Commission indicated its general consensus of intent to reverse the BZA’s order. The parties were invited to submit responses to the concerns raised by the Commission by May 7, 2007.

¹ At the hearing, the application was amended to eliminate a request for a variance from the prohibition against enlarging a structure devoted to a nonconforming use under § 2002.5.

By letter dated May 4, 2007, the Applicant requested that the Commission defer its decision in this case while the Applicant pursued an expedited map amendment for approximately one-half of Square 2861, including the subject property, from R-4 to R-5-B. The Applicant indicated that the map amendment would probably be requested by ANC 1B, and after the subject property was rezoned, the Applicant would seek approval of modified design plans for the subject property. ANC 1B did not make a submission to the Commission.

At a public meeting on May 14, 2007, the Commission voted to reverse the decision of the BZA in Application No. 17553, with the stay of the BZA's order continued until this order becomes final.

FINDINGS OF FACT

1. The subject property is located at 1327 Euclid Street, N.W. in the Columbia Heights neighborhood of Ward 1 (Square 2861, Lots 4, 76, and 77).
2. The subject property is an irregularly-shaped parcel with an area of 13,202 square feet, and is improved with a three-story, 20-unit apartment house built in 1961 pursuant to an order of the BZA in Appeal No. 5785 (public hearing January 25, 1960). The building, which is 41 feet in height, extends to the front (southern) and side (eastern and western) property lines. A public alley, which varies in width from 10.5 to 16 feet, extends along the irregular rear property line.
3. The Applicant requested variance relief from the height limit under § 400.1, the side yard requirement under § 405.1, and the open court requirement under § 406.1 to allow construction of a three-story addition that would increase the height of the building to six stories and 60 feet. As proposed, the building would provide six dwelling units on each of the five full floors and two units in both the basement and top floor, for a total of 34 apartments.
4. The proposed building height would exceed – by three stories and 19 feet – the three-story and 40-foot maximums permitted as a matter-of-right in the R-4 district.
5. Properties in the vicinity of the subject property that are zoned R-4 are developed primarily with row dwellings or with three- or four-story apartment dwellings. The R-5-B zone across Euclid Street to the south and southwest of the subject property also contains three- or four-story apartment dwellings, while four- and five-story apartment houses are located in the C-2-B zone along 14th Street. All but one of the multi-family buildings in the immediate vicinity of the subject property were constructed before 1958; the exception was a rooming house that was converted to multi-family dwellings in 1962.

6. The Applicant testified that the existing structure on the subject property presented an exceptional situation or condition in that the building was a “run-down apartment building in a rapidly improving neighborhood” that required renovation “to today’s standards” so as to be competitive and not “a blight on surrounding and recently improved properties.” The Applicant asserted that high construction costs made renovations impractical, creating financial hardship for the property owner in using the property consistent with the Zoning Regulations.
7. The Applicant contended that approval of the requested variances would not create substantial detriment to the public good or be inconsistent with the general intent and purpose of the Zoning Regulations and Map, because the immediate vicinity of the subject property contained structures that exceed current zoning height and story limits and because the use of the building would remain consistent with the apartment uses permitted in the R-4 zone.
8. The Applicant also testified that the requested variances were needed to carry out the proposed renovation because the building was operating at a loss and faced a competitive disadvantage. The Applicant had rejected alternatives available under applicable rental housing laws to reduce operating losses or defray the costs of improvements to the building due to the Applicant’s desire not to raise rents for the building’s tenants. According to the Applicant, seven current tenants of the building would be permitted to move back in to the building after its renovation into units that would be maintained as affordable housing.
9. The Office of Planning (“OP”) recommended denial of the application for failure to satisfy the three-part test for a grant of a variance, and because the proposal was “clearly contrary to the intent of the R-4 (row dwelling and flat) district.” According to OP, the existing building did not constitute an exceptional condition, and the cost of renovations did not create practical difficulties. OP stated that approval of the requested zoning relief, “would be completely contrary to the stated intent of the R-4 district and inconsistent with the character of this district,” noting that the proposed addition would result in a building on the subject property whose height and floor area ratio would exceed that permitted as a matter-of-right in the adjacent R-5-B zone. OP concluded that the requested zoning relief could not be granted without substantially impairing the intent, purpose, and integrity of the zone map because approval of application, “would have a significant negative impact on the character and stability of the surrounding single-family neighborhood, and would be contrary to the stated purposes of the R-4 district” to discourage additional apartment uses.
10. At a public meeting held December 7, 2006, ANC 1B voted 7-0 to oppose the application. At a public meeting held January 5, 2007, ANC 1B voted 10-0 to support the application for variance relief from § 400.1. The ANC noted that zoning relief was

sought, “to construct a building that will greatly serve the neighborhood by continuing to provide low-income rental units; increasing the overall number of units and on-site parking spaces; and creating a façade that is consistent with the design of neighborhood buildings.”

CONCLUSIONS OF LAW

The Zoning Regulations provide that no decision or order of the BZA shall take effect until 10 days after having become final pursuant to BZA rules. 11 DCMR § 3125.9. Within that 10-day period, the Commission may *sua sponte* to review any order or decision of the BZA. 11 DCMR § 3128.1. In this case, the BZA’s order was issued March 2, 2007, and the Commission voted within the 10-day period, on March 12, 2007, to invoke its *sua sponte* review authority.

The Commission may exercise *sua sponte* review when (i) the BZA exceeded its prerogatives and thus in effect changed the zoning, (ii) the basic policy of the Commission, as expressed in the Zoning Regulations, was violated as a result of BZA action, or (iii) in an unusual instance, as determined by the Commission. 11 DCMR § 3128.7. Upon *sua sponte* review, the Commission action may include reversal of the BZA’s decision or order. 11 DCMR § 3128.4(b).

In this case, the Commission concludes that the BZA exceeded its prerogatives and in effect changed the zoning of the subject property by granting the requested variances. The Commission reverses the BZA’s decision because the Applicant failed to satisfy any of the three prongs of the test for variance relief, and because the magnitude of the requested variances, which would have allowed a building larger than that permitted as a matter-of-right in higher-density zone, would have effectively changed the zoning of the subject property.

The BZA is authorized to grant a variance from the strict application of the Zoning Regulations 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, provided that 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 Map. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2. To justify the grant of a variance, an applicant must satisfy a three-prong test by demonstrating: (1) that the subject property was affected by an extraordinary or exceptional situation or condition, (2) that, because of the situation or condition, the strict application of the Zoning Regulations would result in practical difficulties to the applicant, and (3) that the variance can be granted without causing substantial detriment to the public good or substantially impairing the intent, purpose, and integrity of the Zoning Regulations and Map.

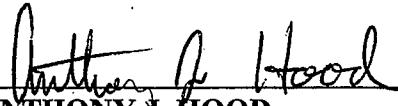
In this case, the Commission finds that the Applicant did not satisfy any of the three prongs necessary to justify the grant of the requested variances. The subject property is not unusual in its shape or topography, or in its need for renovation of an aging building. The Commission does not credit the Applicant's claims that financial hardship necessitated the proposed renovation plan, in part because the evidence provided by the Applicant unconvincingly suggested that the building currently experiences higher operating costs, with 20 units, than would the 34-unit building after a major renovation. Moreover, the Applicant opted not to seek relief available through the rent control program to help fund building improvements. The Commission applauds the Applicant's intention to provide affordable housing in the project, but does not agree that the planned seven units of affordable housing – which lacked a guarantee of long-term affordability – justified the grant of variances.

The Commission also concludes that approval of the requested variances – which were of a magnitude such that the proposed building would significantly exceed the maximum height and number of stories permitted in the R-4 district, and even exceed the height and floor area ratio permitted in the R-5-B zone mapped nearby – would in effect rezone the subject property. The Commission credits the conclusion of OP that the requested variances would be contrary to the purposes of the R-4 district to stabilize the remaining one-family dwellings and not to serve as an apartment house district, and therefore that approval of the application would substantially impair the intent, purpose, and integrity of the Zoning Map.

The Commission's action in this *sua sponte* review of a decision by the BZA is a separate matter independent of the Applicant's recently stated intention to seek a map amendment affecting the subject property. Accordingly, the Commission was not persuaded by the Applicant's submission of May 4, 2007, not to reverse the BZA's decision to grant the requested variances.

The Commission, on May 14, 2007, voted 5-0-0 to **REVERSE** in its entirety the decision of the Board of Zoning Adjustment in Application No. 17553 and to deny the application, and to continue to stay the Board's order until this Order becomes final (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, Michael G. Turnbull, and John G. Parsons to reverse).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the D.C. Register on FEB 8 2008



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-06

FEB 7 2008

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 07-06 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. <i>D.C. Register</i>	6. Councilmember Jim Graham
2. Richard Aguglia, Esq. Hunton & Williams, LLP 1900 K Street, N.W. Washington, D.C. 20006-1109	7. Office of Planning (Harriet Tregoning) 8. DDOT (Karina Ricks)
3. Dee Hunter, Chair ANC 1B P.O. Box 73710 Washington, DC 20056	9. Zoning Administrator (Matthew LeGrant)
4. Commissioner Rosemary Akinmboni 1B08 1339 Fairmont Street NW Washington, 20009	10. Jill Stern, Esq. General Counsel - DCRA 941 North Capitol Street, N.E. Suite 9400 Washington, D.C. 20002
5. Gottlieb Simon ANC 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004	11. Office of the Attorney General (Alan Bergstein)

ATTESTED BY:

Sharon S. Schellin

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning