

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17436 of Althea Forrester and Howard Wilson, pursuant to 11 DCMR § 3103, for an area variance from § 2116.2, to allow the location of a parking space in the front yard of an existing single-family row dwelling, in the R-5-B district at premise 1466 Belmont Street, N.W. (Square 2660, Lot 810).¹

HEARING DATE: February 28, 2006

DECISION DATE: February 28, 2006

DECISION AND ORDER

This application was submitted on September 15, 2005 by Althea Forrester and Howard Wilson (“Applicants”), the owners of the property that is the subject of the application (“subject property”). The application was incorrectly advertised for a special exception under 11 DCMR § 2116.2 and for some time prior to the hearing, there was a question whether the Applicants needed an area variance or a special exception. The Department of Consumer and Regulatory Affairs (“DCRA”) and the Office of Planning (“OP”) treated the application as one for special exception relief. The application itself originally requested an area variance, but this was crossed out and changed to “special exception.” The Applicants originally appeared to be operating under the assumption that a variance was necessary, and on September 20, 2005, they filed a statement with the Board explaining how they met the variance test. Several days prior to the hearing, the Applicants were informed that an area variance, and not a special exception, was definitely needed. At the hearing, the Board gave the Applicants the choice of proceeding at that time or of continuing the hearing to provide them with more time to prepare a variance case. The Applicants decided to proceed at that time and presented their case for a variance.

The Board held the hearing on the application on February 28, 2006 and the same day, decided to deny it, by a vote of 5-0-0.

¹The application was incorrectly advertised for a special exception from § 2116.2. It was finally determined that the necessary relief was actually a variance from §2116.2 because single-family dwellings are excepted out of the regulation under which the Board may grant special exceptions to permit the location of accessory parking spaces other than as stated in the regulations. See, 11 DCMR § 2116.5. The caption has been corrected here.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 21, 2005, the Office of Zoning (“OZ”) gave notice of the application to OP, the District Department of Transportation, Advisory Neighborhood Commission (“ANC”) 1B, the ANC within which the subject property is located, Single Member District 1B05, and the Council Member for Ward 1. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *District of Columbia Register*, and on December 8, 2005, mailed hearing notices to the ANC, the Applicants, and all owners of property within 200 feet of the subject property.

Requests for Party Status. There were no requests for party status.

Applicants’ Case. The Applicants testified to their need for the front yard parking pad and explained how, in their opinion, they met the variance test. They did not present any witnesses.

Government Reports. The Office of Planning submitted a report to the Board dated February 28, 2006, recommending denial of the requested special exception. OP opined that both the curb cut leading to the front yard parking pad and the front yard parking itself would be inconsistent with the intent of the Zoning Regulations and would have an adverse impact on the character of the street.

ANC Report. ANC 1B submitted a report to the Board dated February 4, 2006, recommending denial of the requested special exception, stating that both curb cuts and front yard parking are discouraged by the ANC because of safety concerns and the loss of public curbside parking.

FINDINGS OF FACT

1. The subject property is located at address 1466 Belmont Street, N.W. (Square 2660, Lot 0810), in an R-5-B zone district.
2. The property is a regular rectangle comprising 3,400 square feet and has no significant unusual features.
3. The property is improved with a three-story with basement single-family interior row dwelling.

4. The subject dwelling was constructed circa 1920; therefore there is no requirement in the Zoning Regulations that an off-street parking space be provided for it. See, 11 DCMR § 2100.1.
5. Whether or not an off-street parking space is required, if one is provided, it may only be located in one of the areas set forth in 11 DCMR § 2116.2. These areas do not include the front yard.
6. Other than the area between the street and the dwelling, *i.e.*, the “front yard,” there is no area on the subject property suitable for a parking space because there is no alley behind the property and therefore no access to the rear of the property for parking purposes.
7. None of the other dwellings on the same side of the block as the Applicants have rear access, except one; the owners of that property purchased adjacent land to secure such access.
8. The Applicants propose to put a parking pad in front of the dwelling, with a curb cut on Belmont Street to permit access to it.
9. The parking pad is proposed to enable the Applicants’ elderly relatives to park in front of the subject property when they come to visit.
10. There are 3 curb cuts now on the 1400 block of Belmont Street. Two of these curb cuts are for multi-unit residential developments and both of them lead to underground parking. The third curb cut is in front of one of the dwellings adjacent to the subject property. It leads to a sloped driveway and a below-grade garage, all of which appear to have been constructed prior to the enactment of the Zoning Regulations.
11. The proposed curb cut raises safety concerns because of the dense residential development on the block and the accompanying pedestrian use of the sidewalk in front of the subject property.
12. A curb cut in front of the subject property would remove an on-street parking space which is currently available for public use.
13. Parking on Belmont Street is difficult under the current circumstances, but not impossible.
14. Front yard parking, particularly in a residential area, is generally aesthetically unappealing.

15. The Zoning Regulations generally disfavor the location of a parking space in front of a residential use. *See, e.g.*, 11 DCMR § 2116.2(b)(2) & (3). (Off-street parking spaces generally restricted to a side or rear yard, unless accessory to a “commercial or industrial use.”)

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations 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 Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property ...” D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The “exceptional situation or condition” of a property can arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). 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.” D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2.

The Applicant seeks a variance from the provisions of 11 DCMR § 2116.2 (b), which provides that “Parking spaces shall be located ... [o]n an open area of the lot as follows: (1) [w]ithin a rear yard; (2) [w]ithin a side yard; or (3) ...elsewhere on the lot if accessory to a commercial or industrial use.”

The subject property is not a commercial or industrial use. Therefore parking spaces may only be located in the rear or side yard, not the front yard.

An applicant for area variances must make the lesser showing of “practical difficulties,” as opposed to the more difficult showing of “undue hardship,” which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicants in this case, therefore, had to make three showings: exceptional condition of the property, that such exceptional condition results in “practical difficulties” to the Applicants, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

This application fails to meet the variance test. The subject property has no extraordinary or exceptional condition resulting in any practical difficulty in meeting the Zoning Regulations. It is a regularly-shaped rectangle with no significant unusual feature. Belmont Street is steeply inclined, but this incline affects the entire area, and is not

unique to the Applicants' property. The subject property is in a residential zone, surrounded by other residential uses, and although it is not served by a rear alley, neither are the other dwellings on the block. The property fronts on Belmont Street, and street parking, though sometimes difficult to come by, is available. While Applicants assert that they have a practical difficulty – that being the difficulty of their elderly relatives in parking close to their house - in order to avoid walking up or down Belmont Street, with its steep incline - that difficulty does not arise out of any exceptional condition of the property, but rather out of one shared by the neighborhood. The Board notes that OP indicated at the hearing that there are other options available to the Applicants to assist their elderly relatives with parking which would not require zoning relief.

Because an applicant for a variance must meet all three prongs of the variance test, and the applicants in this case have not met the first two, the Board need not determine whether granting the variance would result in a substantial detriment to the public good or a substantial impairment of the intent, purpose, and integrity of the Zoning Regulations. However, the Board does find that a curb cut would result in the loss of a street parking space and would potentially cause conflict with pedestrian traffic on the sidewalk. Further, because Applicants' property is not unique in any way from that of the other single family dwellings in the neighborhood, those neighbors would be entitled to the same relief, and the zoning regulation prohibiting the front yard parking would thereby be undermined. Accordingly, granting a variance in this case would result in the substantial impairment of the intent and integrity of the Regulations.²

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. Both OP and ANC 1B recommended denial of the special

² Compare BZA Order No. 17477 of Lillian K H Audette Revocable Trust, in which this Board granted a variance for front yard parking. In that case the Board found that the applicant's property was unique as the only single family dwelling on the block without parking and unusually located near a myriad of commercial uses; that such uniqueness resulted in applicant suffering greater practical difficulty in parking than its neighbors; and that no public detriment resulted from granting the variance because additional parking was being created on the block as a result of the applicant's providing two parking spaces on site while removing only one street parking space with the curb cut. Finally, the Board also found that the parking pad would not undermine the residential character of the neighborhood because of the property's close proximity to a commercial area.

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exception originally requested in this application. At the hearing, the OP representative stated that the special exception test is less stringent than the variance test. Accordingly, OP also recommended denial of the variance. The Board agrees with the recommendations made by OP and the ANC.

For the reasons stated above, the Board concludes that the Applicants failed to satisfy the burden of proof with respect to an application for an area variance from § 2116.2, to allow a front-yard parking space. Accordingly, it is therefore **ORDERED** that the application be **DENIED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Gregory N. Jeffries to deny.)

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

Each concurring Board member approved the issuance of this order.

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: OCT 12 2006

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT."

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As Director of the Office of Zoning, I hereby certify and attest that on **OCTOBER 12, 2006**, 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:

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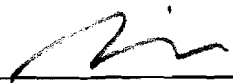
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