

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17477 of Lillian K. H. Audette Revocable Trust, pursuant to 11 DCMR § 3103.2, for a variance to permit the location of a parking space, serving a single-family dwelling, in the front yard under subsection 2116.2, in the R-3 District at premises 2407 37th Street, N.W. (Square 1300, Lot 327).

HEARING DATE: May 23, 2006
DECISION DATES: June 6 and July 11, 2006

DECISION AND ORDER

SELF CERTIFICATION:

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

PRELIMINARY MATTERS:

1. The Board of Zoning Adjustment (the "Board"), pursuant to its rules, provided proper and timely notice of the public hearing on this Application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission ("ANC") 3B, the ANC within which the site is located, and to owners of property within 200 feet of the subject site.
2. Pursuant to 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements which are necessary to establish the case for variances pursuant to 11 DCMR §§ 3103.2.
3. The Applicant presented testimony and evidence in the present case in support of the proposed variance relief necessary to permit parking in the front of the Site between the existing building and the property line.
4. The Applicant submitted 26 letters in support of the Application from surrounding neighbors including the two adjacent property owners on either side of the subject property.
5. The Applicant also submitted photos of the area surrounding the subject property with a key map and narrative indicating the location of each photo.

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6. There were no persons or parties in opposition to the Application.
7. The Office of Planning ("OP") timely filed a report on May 16, 2006 in support of the Application. OP, by its report and by testimony at the hearing, recommended that the Application be approved as proposed, provided that the curb cut is limited to a 15-foot maximum width.
8. ANC 3B, which is automatically a party to this Application, voted 3-1 to support the proposed curb cut and variance request at its July 14, 2005 regularly scheduled and duly noticed meeting. The ANC submitted a letter on July 15, 2005, to the D.C. Department of Transportation expressing its support on grounds that the proposed curb cut would remove two cars from the street while only causing the loss of one public parking space. The ANC also noted therein the diligence of the Applicants in informing their neighbors of their proposed plans. This letter was submitted to the record by the Applicant.

FINDINGS OF FACT:

1. The subject site is known as 2407 37th Street, N.W., and consists of Lot 327 in Square 1300 (the "Site"). Square 1300 is generally bounded by Calvert Street to the north, Holy Rood Cemetery to the south, Tunlaw Road to the west, and Wisconsin Avenue to the east.
2. The Site is rectangular in shape, with approximately 85-95 feet of depth and 26 feet of frontage along 37th Street. The Site is improved with a semi-detached home located on the east side of 37th Street. Thirty-Seventh Street runs in a north/south direction dividing Square 1300. The Site does not have alley access or other vehicular access to the rear of the property.
3. The Site is located in the R-3 Zone District and borders the C-2-A District at the rear of the Site. Except for the two adjacent residences, nearby properties to the north and south are occupied by commercial uses or parking lots for the commercial uses fronting on Wisconsin Avenue. Approximately 26 feet to the north of the Site, are commercial uses which extend up 37th Street for approximately 500 feet to Calvert Street. To the east are the commercial uses fronting on Wisconsin Avenue. The properties across 37th Street to the west are residential row houses.
4. The Site is located in a small island of residential use surrounded on three sides by commercial uses. At the rear of the property, it adjoins commercial properties fronting on Wisconsin Avenue; it is only 60 feet from the parking lots serving those commercial properties.

5. On its northern side, the Site is located only 26 feet from commercial uses located along 37th Street.
6. There exist 31 commercial uses within a two block radius of the Site that do not have dedicated parking. Sixteen of the 31 commercial uses are bars, restaurants or night clubs.
7. There are 30 single family homes on this block of 37th Street and approximately 130 single family homes in square 1300. The Applicant's home is the only single family dwelling on the block in the Square without alley access or other parking that has the ability to park two cars in its front yard without encroaching on the public space. The house to the north of the site is used as a multi-family dwelling and the house to the south has an adjoining parking lot.
8. Applicant's home was built prior to enactment of the Zoning Regulations. Therefore, there is no requirement in the Zoning Regulations that an off-street parking space be provided for it. *See* 11 DCMR §2100.1
9. The R-3 District is designed essentially for row dwellings, but there shall be included in an R-3 District, areas within which row dwellings are mingled with one-family detached dwellings, one-family semi-detached dwellings, and groups of three or more row dwellings.
10. The Site is designated by the Comprehensive Plan Generalized Land Use Map as low density commercial. The Site and the surrounding lots on the east side of 37th Street were part of a Planned Unit Development and Map Amendment application approved in 1980 (Z.C. Order No. 322) in which the R-3 zoned properties were rezoned to C-2-A. The PUD approval and rezoning expired without the project being built.
11. The proposed parking space will be partially screened from view by retaining walls with flower boxes and planters.

CONCLUSIONS OF LAW AND OPINION

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist: the property is unusual because of its size, shape, topography or other extraordinary or exceptional situation or condition; the owner would encounter practical difficulties if the zoning regulations were strictly applied; and the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as

embodied in the Zoning Regulations and Map. The Applicant is seeking a variance to permit the location of parking serving a single family dwelling in the front yard. Based upon the evidence and testimony, the Application meets all three prongs of the area variance test.

A. The Site is Unusual because of its Size, Shape, or Topography, or is Affected by an Exceptional Situation or Condition.

The exceptional situation or condition in this case arises out of a confluence of factors, which together affect this property in an exceptional way. See Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1169 (DC 1990) (Uniqueness for purposes of the variance test can arise from a confluence of factors.)

The Site does not have vehicular access to the rear of the property. The Site contains an existing single family semi-detached home which takes up nearly the entire width of the lot leaving only a small side yard of 3.3 feet and there is not a public alley at the rear of the property. Therefore, vehicular access to the rear of the Site is impossible. The Site and its adjacent neighbors are the only residential properties on this block of 37th Street without alley access or other parking. The Applicant's home is the only single family dwelling on the block without parking. The house to the north of the site is used as a multi-family dwelling and the house to the south has an adjoining parking lot.

This exceptional situation is compounded by the Site's unusual proximity to a myriad of nearby commercial uses. The site is located near the convergence of 37th Street and Wisconsin Avenue. As those two streets get closer together, the lots become more shallow and the residences, including Applicant's, back directly onto commercial parcels. The Site is also located only 26 feet from the commercial uses located along 37th Street to its north and, is only 60 feet from the parking lots serving the commercial uses on through lots fronting on Wisconsin Avenue. There are 31 commercial uses within a two block radius of the Site that do not have dedicated parking. Sixteen of the 31 commercial uses are bars, restaurants or night clubs. Without the ability to have off street parking, the Applicant suffers the burden of the surrounding commercial uses that other single family dwellings in the area do not.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner.

A strict application of the Zoning Regulations would require that the off-street parking spaces be located either in a permitted garage, within a rear yard or within a side yard of the Property.

The unique position of the lot within the Square and the unique lack of alley access make it practically difficult for the Applicant to meet Section 2116.2. The Site has a side yard of only 3.3 feet and no vehicular access to the rear. Therefore, parking cannot be located at the rear or side of the Site. The only possible location for parking is in the front yard between the building and the property line.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

There will be no substantial detriment to the public good or substantial impairment to the intent, purpose and integrity of the zone plan by approving the requested variance relief.

Currently, there exists space for three cars to park on 37th street in front of the Site. The proposed curb cut and drive entrance will remove only one public parking space from 37th Street, but the Applicant's two cars will now be parked off of the street. Therefore, there will be a net reduction with one less car parked on the street. Both the Office of Planning and the ANC noted the benefit of this net reduction of one less car on 37th street. Adjoining neighbors on either side of the Site submitted letters of support as did 24 other neighbors within a 200-foot radius of the property.

The integrity of the zone plan will not be substantially impaired by the requested variance. The regulations disfavor parking in front yards, in general, in residential districts, for aesthetic reasons and because of the resulting loss of public parking spaces on the street as a result of a curb cut. *See e.g.*, 11 DCMR §2116.2 (b)(2) and (3.). (Off-street parking spaces generally restricted to a side yard or rear yard, unless accessory to a “commercial or industrial use.”) The Board agrees with the Office of Planning that these underlying policies are not undermined in this case. In this case, a parking space would not detract from the residential character of the block for the following reasons. Due to its close proximity to the surrounding commercial uses and its land use designation, the Site appears as a transitional area. The proposed parking will be partially screened from view by retaining walls with flower boxes and planters, as indicated on the Applicant’s landscaping plan, and will not adversely affect the area. The Applicant surveyed the surrounding neighborhoods and submitted photos of several examples of front yard parking in the area. As noted by both OP and the ANC, the front yard space will have a positive effect on the neighborhood - removing two cars from the street while removing only one parking space. The Board has previously granted relief from Section 2116.2 in unique situations where the variance test has been met (to allow parking between the building and the property line (See Summary Orders BZA Case Nos. 14961, 14838, 15267, 14633 and 17364).

The Board has afforded great weight to the OP analysis and report. The Board concurs with OP's support of the variance relief. The Board concludes that, based upon the evidence and testimony in the record, the Site is uniquely situated and subject to an exceptional situation. The Board further concludes that the Applicant has demonstrated a practical difficulty in this case. Parking cannot be accommodated in the rear or side of the Site. The Board finds that the variance can be granted without substantial detriment to the public good or substantial impairment to the zone plan. Two cars will be removed from the street while only removing one public parking space. Furthermore, given the surrounding commercial uses and the nature of the surrounding area, the Board finds that the granting of the variance would not be detrimental to the public good nor impair the intent, purpose or integrity of the Zone Plan. The Board acknowledges the ANC's support of the variance and concurs with its conclusion that granting the variance would have the positive effect of removing two cars from the street while removing only one parking space.

In light of the foregoing, the Board concludes that the Applicant has met the burden of proof for the variance from the area requirements for parking under Section 2116.2 of the Regulations.

The Board hereby **ORDERS** that the Application be **GRANTED, SUBJECT to the following CONDITION:**

1. The parking space shall be constructed in accordance with the drawings and plans prepared by Boeckl Gates Inc., attached to Exhibit 31 in the record.

VOTE: **3-2-0** (Geoffrey H. Griffis and Ruthanne G. Miller to approve; John A. Mann II to approve by absentee ballot; Curtis L. Etherly, Jr. opposed to the motion; Anthony J. Hood opposed to the motion by absentee ballot)

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

Each concurring member has approved the issuance of this Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA

Director, Office of Zoning

FINAL DATE OF ORDER: **SEP 20 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."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL

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FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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As Director of the Office of Zoning, I hereby certify and attest that on **SEPTEMBER 20, 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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