

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17558 of Principality, L.L.C., pursuant to § 3103.2, for a variance from the lot width requirement of § 401, a variance from the lot area requirement of § 401, and a variance from the side yard requirement of § 405, to allow the construction of a new one-family detached dwelling in the R-2 District at premise 3357 Martin Luther King, Jr. Avenue, S.E. (Square 6004, Lot 12).¹

HEARING DATE: January 23, 2007
DECISION DATE: March 6, 2007

DECISION AND ORDER

This application was submitted by Principality, L.L.C. (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The self-certified application requested variances from the applicable lot width and side yard requirements to permit the construction of a one-family detached dwelling on a vacant lot at 3357 Martin Luther King, Jr. Avenue, S.E. (“MLK, Jr. Ave.”)

The Board held a hearing on the application on January 23, 2007, at which it determined that the Applicant also needed a variance from the minimum lot area requirement of § 401.3.

The Applicant addressed this variance, as well as the originally-requested variances, and, at the close of the hearing, the Board kept the record open for further information from the Applicant and for a report from the affected Advisory Neighborhood Commission (“ANC”), ANC 8C. The Board also set a decision date of March 6, 2007, when, at a decision meeting, the Board deliberated on the application, and voted 5-0-0 to approve it.

¹During the hearing, it was discussed whether § 401.2 of the Zoning Regulations applied here, rendering these requests for relief unnecessary. Section 401.2 permits, as a matter-of-right, construction on an unimproved lot in single ownership on November 1, 1957 which has a lot width or lot area smaller than that mandated by the Zoning Regulations for the zone district in which the lot is located, if both the lot width and lot area are at least 80% of the mandated lot width and area. The lot width mandated by the regulations for a detached one-family dwelling is 40 feet, 80% of which is 32 feet. Because the lot width of the Applicant’s lot is only 25 feet, it is less than 80% of 40 feet, and therefore, § 401.2 cannot apply.

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PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 19, 2006, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), ANC 8C, the Single Member District member for District 8C03, and the Councilmember for Ward 8. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and, on October 31, 2006, mailed such notice to the Applicant, ANC 8C, and all property owners within 200 feet of the subject property.

Request for Party Status. ANC 8C was automatically a party in this proceeding. Mrs. Jacson Evans, an adjacent neighbor residing at 3359 Martin Luther King Jr. Avenue, S.E., requested, and was granted, party status by the Board. She expressed concerns about the proximity of the proposed new dwelling to her home, and its effect on her privacy, the sunlight reaching her home, and her access to the side of her own home, for maintenance and repair purposes.

Applicant’s Case. The Applicant and his attorney described the proposed project and how it met the three prongs of the variance test.

Government Reports. The Office of Planning filed a report with the Board dated January 16, 2007, recommending approval of the two requested variances, and pointing out the need for, as well as recommending approval of, a variance from the lot area requirement. OP opined that the less-than permitted lot width, leading in turn to a less-than permitted lot area, resulted in a lot on which nothing could be built if the Applicant were not granted the variances requested. OP also mentioned that the Applicant had agreed to enlarge its side yards somewhat and to re-position its windows in order to accommodate the neighbor who had been granted party status.

ANC Report. No ANC report was filed in this case.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 3357 Martin Luther King, Jr. Avenue, S.E., in Square 6004, Lot 12, and in an R-2 zone district.
2. The subject property is 25 feet wide by approximately 132 feet deep, resulting in a lot area of approximately 3,301 square feet.

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3. Although there are other lots of similar width in the area, some are developed with semi-detached units or were developed before the 1958 version of Zoning Regulations went into effect.
4. The property is one of only two vacant, unimproved lots on a street of primarily detached one-family dwellings, with a few semi-detached one-family dwellings. The other vacant, unimproved lot on the block is in the same ownership as one of the lots adjacent to it.
5. The subject lot slopes upward toward the rear, with the rear of the lot a few feet above the alley which it abuts.
6. Across Martin Luther King, Jr. Avenue to the east and southeast is an activity and educational facility operated by the National Children's Center, and Ballou High School is beyond.
7. One of a pair of units constituting a semi-detached one-family dwelling is located on the lot adjacent to the subject property to the north, and on the adjacent lot to the south is a detached one-family dwelling.
8. Houses in the square, and in the neighborhood generally, tend to be very close together, with many houses having side yards of less than eight feet.
9. As far as can be determined, the subject lot has never been developed, and it has been vacant for at least 17 years.
10. The property has been offered for sale to the adjacent homeowners and to the public, but with no response.

The Proposed Project

11. The Applicant proposes to construct a three-story plus basement one-family detached dwelling, which will be 19 feet wide and 60 feet deep.
12. The house will be set back approximately 15 feet from the front of the lot and will have a deck at the rear, with a 46-foot rear yard abutting a 15-foot wide public alley.
13. After some leveling of the rear yard adjacent to the public alley, parking will be provided in the rear, accessed from the alley.
14. The house will have side yards of three feet on each side, when side yards of a minimum of eight feet are required by the Zoning Regulations. 11 DCMR § 405.9.
15. At 25 feet wide, the subject lot is 15 feet narrower than the 40 feet mandated by the Zoning Regulations for a lot containing a detached one-family dwelling, and is 5 feet narrower than the 30 feet mandated for a lot containing a semi-detached one-family dwelling. 11 DCMR § 401.3

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16. At 3,301 square feet, the lot area of the subject lot is approximately 700 feet smaller than the 4,000 square feet mandated by the Zoning Regulations for a lot containing a detached one-family dwelling. 11 DCMR § 401.3.

The Requested Relief

Exceptional Condition

17. The subject lot is a narrow, internal lot bounded on both sides by lots improved with residential structures, therefore, it cannot be expanded.

18. The Zoning Regulations require a lot width of 40 feet for a detached one-family dwelling, and the subject lot, at 25 feet, is just over half the width required by the Zoning Regulations.

19. Other than a detached one-family dwelling, a semi-detached single family dwelling is the only other appropriate matter-of-right use permitted in this zone, and the width of the subject lot is 5 feet narrower than the lot width required for a semi-detached dwelling.

20. Because of the too-narrow lot width, the lot area, although large enough for a semi-detached one-family dwelling, is not large enough for a detached one-family dwelling.

21. As noted in Finding of Fact No. 3, the subject lot slopes upward toward the rear.

Practical Difficulty

22. Providing two eight-foot side yards would result in a house only nine feet wide.

23. Although the subject lot is fairly deep, its too-narrow lot width results in an inability to provide a reasonably-configured one-family detached dwelling if the required eight-foot side yards are also provided.

No Substantial Detriment to Public Good or Zone Plan

24. The detached one-family dwelling is a matter-of-right use in this R-2 district.

25. The three-foot side yards proposed are not out of character for the neighborhood, as most of the houses on the block have smaller-than-required side yards.

26. The windows on the proposed dwelling have been placed so as not to significantly interfere with the privacy of the neighbors, nor will the dwelling itself unduly restrict the air or sunlight reaching nearby dwellings.

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such 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 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 only 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.

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). Because area variances are being sought in this case, the Applicant had to make three showings: exceptional condition of the property, that such exceptional condition results in “practical difficulties” to the Applicant, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The narrowness of the subject lot is an exceptional condition that results in practical difficulties to the Applicant. The lot is long, but narrow. The Applicant has been unable to sell the lot, so has decided to build on it. The only uses appropriate for this lot are a detached one-family dwelling or a semi-detached one-family dwelling, but the 25-foot lot width is too small for either use to be constructed as a matter-of-right. Therefore, any construction would need lot width relief. As a result of the narrow lot width, the lot area is also too small for a matter-of-right detached dwelling. As a further result of the narrow lot width, the provision of two eight-foot side yards results in an unreasonably narrow nine-foot wide dwelling. Therefore, it is practically difficult for the Applicant to construct a reasonably-sized detached one-family dwelling within the parameters of the Zoning Regulations.

The proposed dwelling will not cause a substantial detriment to the public good or a substantial impairment of the Zoning Regulations or Zone Plan. It is a matter-of-right use in this R-2 zone and is compatible with the character of the block and the area. The

dwelling is designed to comport harmoniously with the neighborhood and its three-foot side yards are also consistent with the narrow side yards of many of the nearby dwellings. The windows on the proposed dwelling have been placed so as to not unduly interfere with the privacy of the neighbors. Development of the subject lot will remove an eyesore and put a vacant lot to a productive use.

Great Weight

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.

The Office of Planning recommended that all the requested relief be granted and the Board agrees. The Board did not receive a written report from the full ANC 8C and therefore has no ANC position to which to afford great weight.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to variance relief from the lot width requirement of §401.3, the lot area requirement of §401.3, and the side yard width requirement of §405 in this R-2 zone district. Therefore, it is hereby **ORDERED** that this application (pursuant to revised plans – Exhibit No. 27) be **GRANTED**.

VOTE: 5-0-0

(John A. Mann II, Curtis L. Etherly, Jr., Ruthanne G. Miller and Geoffrey H. Griffis to grant; Gregory N. Jeffries to grant by absentee vote)

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

Each voting Board member has approved the issuance of this Order.

ATTESTED BY: _____


JERRILY R. KRESS, FAIA 
Director, Office of Zoning

FINAL DATE OF ORDER: **AUG 23 2007**

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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 § 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.

IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Director of the Office of Zoning, I hereby certify and attest that on **AUGUST 23, 2007**, 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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ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR