

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17737 of District Properties.com LLC, pursuant to 11 DCMR § 3103.2, for variances from the lot area and lot width requirements of § 401, and a variance from the side yard requirements of § 405, to allow the construction of a new one-family detached dwelling in the R-1-B District at premises 4527 Douglas Street, N.E. (Square 5115, Lot 20).

HEARING DATE: March 25, 2008

DECISION DATE: May 6, 2008

DECISION AND ORDER

This application was submitted on September 20, 2007 by District Properties.com, LLC, (“Applicant”), the owner of the property that is the subject of the application (“subject property.”) The self-certified application requested three variances necessary to permit the Applicant to construct a new one-family detached dwelling on the subject property.

The Board of Zoning Adjustment (“BZA” or “Board”) held a hearing on the application on March 25, 2008 and set a decision date of May 6, 2008. At the decision meeting on May 6th, the Board voted 4-0-1 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 28, 2007, the Office of Zoning (“OZ”) provided notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation, Advisory Neighborhood Commission (“ANC”) 7D, the ANC within which the subject property is located, the Single Member District member for district 7D03, and the Councilmember for Ward 7. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing in the *D.C. Register*, and sent such notice to the Applicant, ANC 7D, and all owners of property within 200 feet of the subject property.

Requests for Party Status. There were two opposition party status requests in this case; one was filed with the Board before the hearing, and the other was made at the hearing. Both requests were from the adjacent neighbors and both were granted. These neighbors asserted that the subject property is too small for the proposed construction, and that the construction would result in a loss of natural green space, sunlight, and a fire buffer area. The opponents also argued that the proposed dwelling would not harmonize with the existing neighborhood and would likely

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cause runoff and related water management problems. Finally, the two parties questioned the Applicant's business conduct and its ownership status with regard to the subject property.

Applicant's Case. Mohammed Sikder, representing the Applicant, testified at the hearing. He explained what the project entailed and how it met the variance tests.

Government Reports. The Office of Planning filed a report with the Board on March 18, 2008, recommending approval of the application. At the hearing, the Board requested that OP file a supplemental report addressing the concerns of the two party-opponents. OP filed a Supplemental Report on April 15, 2008, addressing these concerns, and again recommended approval.

In its original report, OP points out that the subject lot was created prior to the enactment of the Zoning Regulations' requirement of a minimum lot area and width. The lot width is only one-half the minimum required and its area is somewhat less than three-quarters of the minimum required. Therefore, OP states that no development could take place on this lot without variance relief for too-small lot area and width. The small size of the lot also makes necessary side yard relief in order to fit a reasonably-sized dwelling on the lot. In its Supplemental Report, OP stresses that this is an infill lot, the development of which is strongly supported by the Comprehensive Plan, and that the lot was "created for development which is consistent in form to that of the neighborhood" because side yards of less than the required eight feet "are not uncommon in the area."

ANC Report. ANC 7D did not file a report or otherwise participate in this case.

FINDINGS OF FACT

1. The subject property is a vacant, interior lot in an R-1-B zone district (Square 5115, Lot 20), at address 4527 Douglas Street, N.E.
2. The neighborhood surrounding the subject lot is developed with detached one-family dwellings and some apartment buildings.
3. The subject lot was created prior to the enactment of the current version of the Zoning Regulations in 1958, and is 25 feet wide and 148.12 feet deep, resulting in a lot area of 3,645 square feet. Section 401.3 of the Zoning Regulations requires a minimum lot width of 50 feet and a minimum lot area of 5,000 square feet for structures of this kind in an R-1-B zone.
4. Because the lot area and width of this unimproved lot is less than 80% of the amount required, it is not subject to the grandfathering provisions of 11 DCMR § 401.2.
5. The adjacent lots on either side of the subject lot are improved with one-family detached dwellings, so the subject lot cannot be expanded.

6. The Applicant proposes to construct a two-story one-family dwelling with one parking space in an internal garage accessed from Douglas Street, N.E., as there is no rear alley behind the property.
7. The proposed dwelling will be 19 feet wide, with three-foot side yards on both sides.
8. Two eight-foot side yards are required in this R-1-B district. 11 DCMR § 405.
9. Each of the adjacent dwellings has a side yard of approximately five feet between it and the lot line of the subject lot. Therefore, there will be approximately eight feet of open area between the proposed dwelling and each adjacent dwelling.
10. There are other lots on the block, as well as in the neighborhood, that have similar dimensions to the subject lot, some of which are vacant and some of which are improved with one-family detached dwellings with too-small side yards.
11. Some of the other nearby lots with similar dimensions abut other vacant lots, making combining of the lots a possibility.
12. No reasonably-sized dwelling could be constructed on the subject lot if the two required eight-foot side yards were provided.
13. The proposed dwelling will be centered on its lot and will have ample open space around it, with a 25-foot front setback and a 48-foot rear yard.
14. The style, height, and massing of the proposed dwelling will be in harmony with the neighborhood.
15. The Applicant offered, in writing, to sell the subject lot to adjacent neighbors on each side of the property, but neither accepted the offer.

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. 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.

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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 and its small lot area for this R-1-B zone are exceptional conditions that result in practical difficulties to the Applicant. The only use appropriate for this lot is a detached one-family dwelling, but the nonconforming lot area and width are both too small for it to be constructed as a matter-of-right. Therefore, any construction would need zoning relief. As a 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. With the requested relief, construction of the proposed detached one-family dwelling is possible, and the Applicant is able to put the subject property to a positive use.

The subject lot was created before the enactment of the Zoning Regulations, and, according to the report of the Office of Planning, R-1-B zoning was designated as the appropriate zoning category for this area, “with the expectation that lots would be combined in order to meet the dimensional requirements.” Exhibit No. 21, at 3. Unfortunately, this expectation cannot be fulfilled with respect to the subject lot as the lots on either side are already improved. Along these lines, the Applicant offered, in writing, to sell the subject lot to the adjacent neighbors, and they did not accept the offer.

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-1-B zone and is appropriate for 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. Development of the subject lot will put a vacant lot to a productive use.

The Board recognizes the adjacent property owners’ concerns about potential impacts of the Applicant’s project. This lot has been vacant for many years, and the neighbors have grown used to that condition, but it is a lot which is subject to development with zoning relief. The neighbors also raised questions as to the Applicant’s ownership of the property, but they did not refute his claim of ownership. Lastly, any concerns that the neighbors had/have with the Applicant’s business operations are not within the jurisdiction of the Board.

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

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two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning recommended approval of the application, and reiterated this recommendation in its Supplemental Report, even after hearing the objections of the neighboring property owners. The Board agrees with the recommendation of the Office of Planning. ANC 7D did not file a report with the Board or participate in this case in any way.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for variances from the lot area and lot width requirements of § 401 and a variance from the side yard requirement of § 405 of the Zoning Regulations. Accordingly, it is **ORDERED** that the application be **GRANTED**.

VOTE: 4-0-1 (Ruthanne G. Miller, Marc D. Loud, Shane Dettman, Michael G. Turnbull to approve; no fifth member participating or voting)

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

Each concurring Board member has approved the issuance of this order.

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JUL 10 2008

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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.

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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 **JULY 10, 2008**, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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ATTESTED BY:


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TWR