

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17977 of Frederic and Laure-Anne Badey, pursuant to 11 DCMR § 3103.2, for a variance from the height requirements of subsections 2500.4 and 2500.6, a variance from the use provisions of subsection 2500.5, and a variance from the side yard requirements of subsection 2500.6, to allow a second story addition to an existing accessory building proposed for living quarters, in the R-4 District at premises 541 14th Street, S.E. (Square 1043, Lot 860).

HEARING DATE: October 27, 2009

DECISION DATE: October 27, 2009

DECISION AND ORDER

This application was filed on June 3, 2009 by Frederic and Laure-Anne Badey (collectively, “Applicant”), the owners of the property at 541 14th Street, S.E., the subject of this application (“subject property”). The self-certified application requests two area variances and a use variance in order to add a second story to an existing detached garage and to use that second story as a dwelling unit.

The Board of Zoning Adjustment (“BZA” or “Board”) held a public hearing on the application on October 27, 2009, and at the close of the hearing, deliberated on the application and denied it by a vote of 3-0-2.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated June 5, 2009, 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”), and the Councilmember for Ward 6. By memoranda dated July 31, 2009, OZ sent notice of the filing of the application to Advisory Neighborhood Commission (“ANC”) 6B, the ANC within which the subject property is located, and to Single Member District 6B06.¹ Pursuant to 11 DCMR § 3113.13, OZ published notice of

¹On June 6, 2009, OZ had erroneously sent notice of the application to ANC 6A and Single Member District 6A06. This error was corrected with the subsequent July 31st mailings to the correct entities -- ANC 6B and Single Member District 6B06.

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the hearing in the *D.C. Register*, and provided such notice to the Applicant, ANC 6B, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 6B was automatically a party to this application. There were no requests for party status.

Applicant's Case. The Applicant's architect presented the case for the variances. He explained that, due to the narrowness of the property, the Applicant could not add a bedroom at the rear of the dwelling without losing a bedroom at the same time, making it a futile endeavor, and necessitating the addition on top of the garage. The Applicant anticipates using the addition to provide a living space for his overseas relatives, who often come and visit for long periods.

Government Reports. The Office of Planning filed a report with the Board recommending denial of both the area and use variance requests. OP opined that the property exhibited exceptional conditions, but that these conditions did not give rise to either practical difficulties in complying with the Zoning Regulations, necessary for the area variance, or undue hardship on the property owner, necessary for the use variance. OP also stated that granting the variances would substantially impair the intent and/or integrity of the Zoning Regulations and Map. Exhibit No. 26.

ANC Report. ANC 6B submitted a letter to the Board taking no position on the application. Exhibit No. 24.

Persons in Support or Opposition. The Board received one letter in support of the application. Exhibit No. 23.

FINDINGS OF FACT

The subject property and the surrounding area

1. The subject property is located at address 541 14th Street, S.E., in Square 1043, Lot 860, and in an R-4 zone district.
2. The Square is split-zoned, R-4, C-M-1, and C-2-A, and contains a mix of residential, commercial, and government uses.
3. The property fronts 14th Street to the east and abuts an improved 25-foot wide rear alley to the west.
4. The property is improved with a pre-1958 two-story row dwelling, encompassing approximately 1,160 square feet.
5. Along the north side of the dwelling, beginning at approximately its center, and extending to its rear, is a dog-leg, slightly-less-than-3-foot-wide open court.

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6. At the rear of the property is a one-story detached garage, which is approximately 14 feet high and occupies approximately 624 square feet.
7. To the north and south of the property are two-story row dwellings. Some of these dwellings have detached garages behind them, all of which are one story high.

The Applicant's Proposal

8. The Applicant proposes to add a second story to the detached garage, resulting in a 22-foot height, and necessitating relief from the height requirements for accessory buildings found in 11 DCMR §§ 2500.4 and 2500.6.
9. The addition of the second story also necessitates relief from the requirement that a 2-story accessory structure have a side yard whose width is "equal to the minimum width of a required side yard in the district in which it is located." 11 DCMR § 2500.6.² (Emphasis added.)
10. The second story will be outfitted as, and used as, a dwelling unit, necessitating use variance relief from 11 DCMR § 2500.5, which permits such use only in R-1-A and R-1-B zone districts.
11. The first floor of the garage will continue to be used for vehicle parking.
12. An external staircase will be constructed to provide access to the second floor dwelling unit.

Variance relief

Exceptional condition

13. The subject property is long, narrow, and irregularly shaped. It is approximately 130 feet long and 13 feet wide for the first 100 feet starting from 14th Street. The rear 30 feet of the property widen out to approximately 27 feet, and this is where the garage is located.
14. Four lots to the south of the property are also 13 feet wide, but this is not common elsewhere in the Square, and is unusually narrow compared to District-wide norms.

²It is not entirely clear that this relief is necessary. The "*district in which the 2-story accessory building is located*"--R-4 -- does not require side yards in this situation, making it appear that § 2500.6 would not require a side yard here. But, without a variance, 2-story accessory buildings are not permitted in an R-4 district at all. They are only permitted in R-1-A and R-1-B districts, both of which require 8-foot side yards. Therefore, the apparent intent of § 2500.6 is to retain an 8-foot side yard next to a 2-story accessory building. The Board therefore concludes that the better interpretation of § 2500.6 is that which requires a side yard for a 2-story accessory building, even in this R-4 zone.

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No practical difficulty

15. The lot occupancy of the dwelling and garage on the property is 58%, where 60% is permitted as a matter-of-right, or 70% with a special exception. See, 11 DCMR §§ 403.2 & 223.
16. A third story could be added on the dwelling, as three stories are permitted in the R-4 zone. 11 DCMR § 400.1.
17. The open court could be filled in to add interior living space to the dwelling.
18. A new bedroom could be added at the rear of the existing dwelling.

No undue hardship

19. The subject property has been successfully used for residential purposes for many years, and is so used by the Applicant.

Substantial impairment to intent and integrity of Zoning Regulations

20. The proposed second story addition to the garage would be an anomaly in the neighborhood and would create a disjointed “look” along the alley.
21. The height and story limitations on accessory buildings in the Zoning Regulations prescribe their appearance and development density in order to maintain the character of the zone district.
22. Two-story accessory buildings on alleys, with dwelling units, are narrowly circumscribed by the Zoning Regulations and are permitted only in R-1-A and R-1-B districts because of the greater requirements for minimum lot area and minimum yard widths imposed in these zones.

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 the 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. Bd. 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,

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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.

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship,” must be made for a use variance. *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting area variances and a use variance. Therefore, it had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in both “practical difficulties” in complying with appropriate area requirements and an “undue hardship” to the Applicant in complying with appropriate use requirements. Lastly, the Applicant had to show that the granting of the variances would not impair the public good or the intent or integrity of the Zone Plan and Regulations.

Exceptional Conditions

The subject property exhibits exceptional conditions and meets the first prong of both the area and use variance tests. It is exceptionally narrow, at 13 feet wide for 100 feet of its 130-foot length, making for a very narrow dwelling. It is also oddly-shaped in that it bumps out to a width of 27 feet for the rear 30 feet of its length.

Practical Difficulties

Although the property exhibits exceptional conditions, they do not give rise to practical difficulties to the Applicant in complying with the Zoning Regulations. The lot size may be unusual, but notwithstanding the narrowness of the lot, a new bedroom could be added at the rear of the existing dwelling. The Applicant’s architect explained that the Applicant chose not to add a bedroom at the rear because the existing rear bedroom would then have to be converted to a hallway or entry space to the new bedroom, resulting in its loss. Hearing Transcript at 71, lines 16-21 and at 72, line 1.

The Applicant may have opted for a vertical addition on the garage for the placement of a new bedroom, but there is another option available without the need for variance relief. In fact, it would be possible to leave the existing bedroom and pass through it to the new bedroom. The inconvenience caused as a result of this shared access would be minimal in view of the fact that the added bedroom will only be used on a temporary basis. *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976) (inconvenience resulting from reduction of living space if kitchen addition were constructed without a variance “did not rise to the level of ... ‘peculiar and exceptional practical difficulties.’”) Nor did the need for the side yard variance result from any exceptional condition. The variance is needed because the existing one-story garage was built without such a side yard. The Applicant has not alleged that this is at all exceptional.

Even if the exceptional circumstances had led to practical difficulties, it would not be appropriate to grant the area variances sought. Variance relief is extraordinary relief in that it permits what

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would otherwise not be permitted, and it cannot be granted merely for personal preference, such as the Applicant's wish to have a bedroom to accommodate visiting relatives.

Undue Hardship

The District of Columbia Court of Appeals ("DCCA") has interpreted "undue hardship" in the context of a use variance, to mean that a property cannot be put to any use for which it can be reasonably adapted. *See, Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). ("A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.") *See also, Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816, 819-820 (D.C. 1977) ("[I]t must be shown that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may be reasonably adapted.")

The application fails on this prong of the use variance test. The property is being used by the Applicant as his dwelling, with the accessory garage being used as a garage. There is no evidence, and no claim that, the exceptional conditions of the property render the residential use of the property impossible or unreasonably difficult. The property is therefore being successfully used for the use permitted in the R-4 zone district and the Applicant's personal preference to create more space for visiting relatives does not rise to the level of "undue hardship" necessary to grant a use variance.

Substantial Impairment of Intent and Integrity of Zone Plan and Zoning Regulations

The Zoning Regulations strictly control the location, density, and height of accessory structures. With one specific exception, they are restricted, in all zones, to 15 feet, or one story, in height. 11 DCMR § 2500.4. The one exception is that 2-story accessory structures are permitted in R-1 zones. § 2500.5. But, even this exception is tightly restricted by height – to a maximum of 20 feet – and by use – it may only be used as living quarters for domestic employees of the owner of the main building. §§ 2500.5 and 2500.6. A further restriction is imposed on a 2-story accessory building. Whereas a one-story accessory building used as a garage and located in a rear yard would not require a side yard (11 DCMR § 2300.2(a)), a 2-story accessory building, even if located in a rear yard, must have a side yard equal in width to that required in the zone district in which it is located, which would in the normal course be either an R-1-A or an R-1-B district, necessitating an 8-foot side yard. § 2500.6.

The Zoning Regulations' strict regulation of accessory structures permitted in a given zone district maintains the regularity of development within the zone, preventing an over-massive built environment. The height and massing of the two-story accessory structure requested by this application would undermine the character of the R-4 zone district and therefore impair the intent and integrity of the Zone Plan and Zoning Regulations. Along the row of adjacent one-story garages facing the alley, this 2-story structure "sticks out like a sore thumb." *See, Exhibit No. 7,*

sheet SK1.2. It would create a disharmonious note along the alley, and is contrary to the intent of the Zoning Regulations to strictly control the size and location of accessory structures.

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. OP recommended denial of both the area and use variance requests, and the Board agrees. ANC 6B, although it filed a letter with the Board properly noting the procedural information necessary to accord it great weight, took no position on the substance of the application to which to accord such great weight.

For all the above reasons, the Board concludes that the Applicant has failed to satisfy the burden of proof necessary under § 3103.2 with respect to all the area and use variances requested herein. Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman, and Meridith H. Moldenhauer to Deny; two members not participating or voting)

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

A majority of Board members approved the issuance of this order.

ATTESTED BY:


JAMISON L. WEINBAUM

Director, Office of Zoning

FINAL DATE OF ORDER: MAR 19 2010

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.

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As Director of the Office of Zoning, I hereby certify and attest that on MAR 19 2010, 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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