

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18082 of Scott and Angie Truesdale, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, a variance from the rear yard requirements under § 404, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow a rear deck addition serving a one-family row dwelling in the R-4 District at premises 1019 Florida Avenue, N.E. (Square 956, Lot 39).

HEARING DATES: July 13, 2010, September 14, 2010
DECISION DATE: September 21, 2010

DECISION AND ORDER

This application was submitted on April 19, 2010 by Angie and Scott Truesdale, (“Applicants”), the owners of the property which is the subject of this application (“subject property”). The application requests three area variances necessary to permit the Applicants to construct a raised rear deck. The one-family dwelling on the subject property is nonconforming for lot occupancy and rear yard, and the proposed deck would increase both nonconformities.

The Board of Zoning Adjustment “(Board)” held a hearing on the application on July 13, 2010, but continued the hearing until September 14, 2010, in order to permit the Applicants to revise the plans. Even after such revision, however, the Board decided, at the September 21, 2010 Public Meeting, to deny the application by a vote of 3-1-1.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 22, 2010, 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, Advisory Neighborhood Commission (“ANC”) 6A, the ANC within which the subject property is located, ANC Single Member District 6A01, and the Councilmember for Ward 6. Pursuant to 11 DCMR § 3113.13, OZ published notice of the

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hearing on the application in the *D.C. Register*, and on April 23, 2010, sent such notice to the Applicants, ANC 6A, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 6A was automatically a party to this application. There were no requests for party status from anyone else.

Applicants' Case. The Applicants presented their own case. They testified as to the existing situation and how, in their opinion, the application met the three-pronged variance test. They explained that they needed both parking and increased open space in the rear yard for security reasons and to accommodate a growing family.

Government Reports. OP filed two reports with the Board concerning the application. The first, dated July 6, 2010, recommended denial of the application and opined that the subject property did not meet the first prong of the variance test. OP also felt that the application did not meet the third prong of the variance test, stating that the 96% lot occupancy originally requested would be detrimental to the Zone Plan and the public good. (Exhibit 25.)

OP's second, or Supplemental, Report, dated September 7, 2010, reiterated its position of denial and pointing out that even with the revised plans the lot occupancy would be 94.7%. The Supplemental Report also reiterated that OP does not find the subject property to be exceptional or beset with any extraordinary condition(s). (Exhibit 29.)

No other government agencies submitted reports.

ANC Report. ANC 6A submitted a letter, dated April 9, 2010, stating that, at a properly-noticed public meeting on April 9, 2010, the ANC voted 4-3 to support the application. The ANC letter does not, however, specify whether a quorum was present at the meeting, one of the criteria necessary for "great weight." (11 DCMR § 3115.1(d).) The ANC letter noted that the ANC was aware that the lot occupancy proposed by the application was high, but felt that it was balanced by three factors: development and rehabilitation of older properties in the area, support of adjacent property owners, and enhanced public safety in the alley. (Exhibit 23.)

Another submission, signed by four Commissioners of ANC 6A, (Exhibit 28, dated August 30, 2010), was submitted to the Board on September 10, 2010. The letter reiterates that the ANC voted to support the application, but explains why these Commissioners believed that the application fails to meet the three prongs of the variance test. Since these Commissioners did not purport to speak for the ANC, their view cannot be given great weight.

Persons in Support or Opposition. The immediate neighbors supported the application (Exhibit 7) and the Board also received a letter in support from Councilmember Tommy Wells. (Exhibit 27, p. 3.)

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FINDINGS OF FACT

The Subject Property and the Surrounding Neighborhood

1. The subject property is located at address 1019 Florida Avenue, N.E. (Square 956, Lot 39), in an R-4 Zone District.
2. The subject lot is a rectangle, 16 feet wide by 75 feet long, when the minimum lot width required is 18 feet, making this lot nonconforming for lot width. (11 DCMR § 401.3.)
3. The subject lot has an area of 1,200 square feet, when the minimum required is 1,800 square feet, making this lot nonconforming for lot area. (11 DCMR § 401.3.)
4. The lot is improved with a two-story row dwelling constructed in 1900, the lot occupancy of which is approximately 78%, when a maximum of 60% is permitted. (11 DCMR § 403.2.) The dwelling is therefore nonconforming for lot occupancy.
5. The existing rear yard is 18 feet long, when 20 feet is required, making this lot also nonconforming for rear yard. (11 DCMR § 404.1.)
6. Attached to the rear of the dwelling is an existing rear deck, measuring 12 feet by five feet, which has steps leading down into the rear yard.
7. The subject row dwelling fronts on Florida Avenue between 10th and 11th Streets and abuts a 10-foot wide public alley at the rear.
8. On-street parking is not permitted on Florida Avenue in the vicinity of the subject property except between 7:00 and 10:00 a.m. on Sunday, and parking on other local streets leaves vehicles subject to criminal activity in the area.
9. There is a parking pad in the rear yard of the subject dwelling, accessible from the alley and protected by a solid roll-down gate.
10. The remainder of Square 956 has either row dwellings or flats, some with open space in front of them, available for recreational use by the dwelling owners.
11. The surrounding neighborhood includes residential structures, some retail uses, places of worship, and Gallaudet University.

The Applicants' Proposal

12. The Applicants propose to construct a new deck in the rear yard which would be approximately eight feet high, and would be attached to the lower existing rear deck by a four-foot wide staircase leading up to the proposed deck.

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13. The proposed deck would be constructed over the parking pad, providing covered parking for one vehicle.
14. The proposed deck would be 12 feet by eight feet and would be set back from the rear lot line approximately four and one-half feet.
15. The eastern side of the proposed deck would be on, or very nearly on, the eastern lot line, while its western side would be less than five feet from the western lot line, creating an open court less than five feet in width, which would count toward lot occupancy. (11 DCMR § 199.1, definition of “Building area.”)
16. With the construction of the proposed deck, two areas of nonconformity would be increased, triggering the need for relief from 11 DCMR § 2001.3: the lot occupancy on the subject lot would be 94.7% and the rear yard would be reduced to four and one-half feet.

The Variance Test – Lack of Extraordinary or Exceptional Condition or Situation

17. The subject lot is a regularly-shaped rectangle, with no oddities of shape, contour, or gradient.
18. The subject row dwelling is one of eight attached and similarly-situated row dwellings fronting along Florida Avenue.
19. None of these eight attached row dwellings have any significant open area in front of them, between the front of the dwellings and the Florida Avenue right-of-way, nor do many of the other row dwellings in the Square.
20. Seventy percent of the lots in Square 956 are either the same size or smaller than the subject lot.
21. The subject lot has a useable rear yard of 18 feet from the rear edge of the existing deck to the rear lot line, which contains a surface parking space and adjacent open space. The proposed elevated rear deck would cover a significant portion of what is now open space.
22. The proposal would result in a lot occupancy of approximately 95% in this R-4 Zone District, significantly more than even the 75% maximum lot occupancy permitted in the R-5-E District, the most dense residential zone district. (11 DCMR § 403.2.)

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

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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) (2008 Supp.), 11 DCMR § 3103.2.) 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) (2008 Repl.), 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. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicants in this case are requesting area variances; therefore, they had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. Lastly, the Applicants had to show that the granting of the variance would not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The subject lot does not exhibit any extraordinary or exceptional situation or conditions. It is a regularly-shaped rectangular lot, and is not particularly small or narrow for a neighborhood of older row dwellings. It has no significant gradient change or other topographical features. It is improved with a row dwelling with a rear yard, which at 18 feet long, is slightly less than the 20 feet required in the R-4 District, but is of a reasonable size to be used and enjoyed. In this rear yard is a parking pad which is used to park the Applicants’ vehicle. The parking pad abuts a 10-foot wide rear public alley and is protected by a solid roll-down gate. The subject lot is not unique and provides the row dwelling with a useable rear yard and parking space.

The Applicants posited that the crime in the area was an exceptional situation, necessitating parking in the rear yard, and that the elevated deck allowed them to keep the parking space, but use the deck area above it to increase the amount of open space available. Crime in the neighborhood, however, is not unique to the subject lot. It affects the whole neighborhood, and, as discussed at the hearing, has been found by the Board in the past not to constitute an exceptional situation under the first prong of the variance test. *See, e.g., Board Order No. 17833 of Timothy Lawrence* (2008), and *Board Order No. 15695 of Jared Fuchs* (1992), cited therein. (See also, Hearing Transcript of July 13, 2010, p. 47, lines 13-20.)

Furthermore, the current lot occupancy of the row dwelling is 78%, already 18% over the maximum 60% permitted. (11 DCMR § 403.2.) With the addition of the proposed deck, the nonconforming lot occupancy would be increased to be approximately 35% over the 60% permitted. And, the already nonconforming rear yard would be reduced from 18 feet to approximately four and one-half feet, which is approximately one-fifth of the minimum permitted 20 feet. (11 DCMR § 404.1.) Taken together, the magnitude of the relief, resulting in almost 100% lot coverage in an R-4 Zone District, is too great to countenance, particularly in light of the fact that both areas of relief extend existing nonconformities. *Cf., Zoning*

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Commission Order 02-37 (2002). (*Sua sponte* review of BZA Application No. 16869 of King's Creek, LLC.)

Because the Board concludes that the application fails to meet the first prong of the variance test, this order need not address the second and third prongs of that test.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by OP. 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 twice recommended denial of the variance relief, and the Board agrees with this recommendation.

The ANC report did not indicate that a quorum was present; therefore, great weight cannot be given to its issues and concerns. However, the Board notes that ANC 6A voted to support the variance relief, even while noting the almost 100% lot coverage that would result. The ANC opined that this lot coverage was balanced by three factors – development and rehabilitation of older properties, support of adjacent neighbors, and enhanced public safety in the alley. While all of these are important issues, and all appropriate for consideration by an ANC, they do not "fit" within the three prongs of the variance test, until perhaps the third prong, (effect on public good and Zone Plan and Regulations) which is not reached in this case. The Board finds the first prong of the variance test not met by this application, and so cannot agree with the position of the ANC.

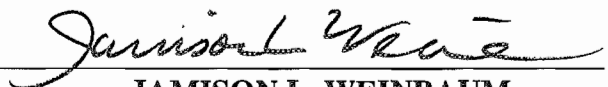
For all the reasons stated above, the Board concludes that the application fails to satisfy the burden of proof for variances from the lot occupancy, rear yard, and nonconforming structure requirements, pursuant to 11 DCMR §§ 403, 404, and 2001.3, respectively. Accordingly, it is hereby **ORDERED** that the application is **DENIED**.

VOTE: **3-1-1** (Meridith H. Moldenhauer, Jeffrey L. Hinkle, Anthony J. Hood, to Deny; Nicole C. Sorg, to approve; No other Board member (vacant) participating)

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

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

ATTESTED BY: _____



JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: NOV 24 2010

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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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NOV 24 2010

As Director of the Office of Zoning, I hereby certify and attest that on _____, 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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