

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18060 of Abigail Murray, pursuant to 11 DCMR § 3103.2, for a variance from the lot width and lot area requirements of § 401.3, to allow the construction of two semi-detached one-family dwellings in the R-2 District at premises 4506 Edson Place, N.E. (Square 5132, Lot 160 (83 and 84)).¹

BOARD OF ZONING ADJUSTMENT
District of Columbia

HEARING DATE: May 18, 2010
DECISION DATES: June 15, 2010 and July 20, 2010

CASE NO. 18160

EXHIBIT NO. 21

DECISION AND ORDER

On March 8, 2010, Abigail Murray ("Applicant") filed this application requesting variance relief to permit construction of two semi-detached one-family dwellings in an R-2 Zone District at address 4506 Edson Place, N.E. ("subject property"). The Applicant was directed to file this application with the Board of Zoning Adjustment ("Board") by the Office of the Zoning Administrator ("ZA") at the Department of Consumer and Regulatory Affairs ("DCRA") after a review of the plans showed that several variances would be necessary to allow the Applicant's proposed construction. (Exhibit 4.)

The Board held a public hearing on the application on May 18, 2010, and, at the close of the hearing, kept the record open for certain further information requested of the Applicant. After receipt of the requested further information, the Board attempted to decide the application at its public meeting on June 15, 2010. At the public meeting, however, the Board determined that it again needed more information before deciding the case. Therefore, the Board re-scheduled its decision on the application until July 20, 2010, and allowed the Applicant to submit additional information. Such additional information was received, but the Board, at its public meeting on July 20, 2010, voted 3-0-2 to deny the application.

¹The application was originally advertised as needing lot occupancy relief pursuant to 11 DCMR § 403 as well, but after a typographical error was discovered and corrected, it was determined that this relief was not needed.

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PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 9, 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”) 7C, the ANC within which the subject property is located, Single Member District 7C01, and the Councilmember for Ward 7. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register* and on March 19, 2010, sent such notice to the Applicant, ANC 7C, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 7C was automatically a party to this application. No other requests for party status were received by the Board.

Applicant’s Case. The Applicant testified on her own behalf. She stated that the subject property had been in her family for approximately 50 years and that she is a real estate agent licensed in the District of Columbia and in Maryland. She explained that, after seeing the interior of a pair of semi-detached homes for sale on the same block as her property, she decided to build two semi-detached homes of the same design on the subject property. She testified that, at that point in time, the subject property was divided into two lots, but contends that DCRA personnel told her that she had to combine the two lots into one single lot in order to construct two semi-detached homes. She combined the lots, but then was told by the ZA that she needed a separate lot for each of the semi-detached homes, and that when the now-single lot was split into two lots, each would be substandard for lot area and lot width, necessitating variance relief for any construction.

Government Reports. OP filed two reports with the Board. (Exhibits 20 and 26.) OP’s first report stated that it could not recommend approval of the application, primarily because the first prong of the variance test was not met. OP also opined that the granting of the application would impair the intent, purpose, and integrity of the Zoning Regulations. As to the Applicant’s claim that she was mis-instructed by DCRA personnel to combine the lot, now requiring her to re-subdivide the lot in order to build two semi-detached dwellings, OP notes that “even if the lots had not been combined, the Applicant would still require the relief here requested to construct semi-detached dwellings.” (Exhibit 20, at 3.)

OP’s second report was prepared at the Board’s behest to analyze the possible application of 11 DCMR § 401.4, which provides an exception to § 401.3. OP carefully went through the mathematical calculations provided for by § 401.4, and even considered the application of the ZA’s two percent deviation authority (pursuant to § 407.1). After setting forth its analysis, OP stated its determination that § 401.4 does not apply because, even after taking advantage of the exception it provides, the Applicant’s two lots would not meet the lot area it requires. (Exhibit 26.)

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ANC Report. There are two reports from ANC 7C in the record, both of which are dated May 13, 2010, but one is slightly different from the other. One was submitted to the Board on May 18, 2010, (Exhibit 23) and one was submitted on May 26, 2010 (Exhibit 25, First Attachment). Both reports state that the ANC voted to support the application. But, neither report states the number of ANC members that constitute a quorum, the number of members present at the ANC meeting, or what the actual vote was on the application. Therefore, neither report can be given great weight.

Persons in Support or Opposition. There is a list of 10 neighbors in support of the application in the record. At the top of the list, the document states that the neighbors “support the construction of these homes,” but it is unclear whether the people listed knew variance relief was necessary or whether they would support such relief. (Exhibit 22.)

FINDINGS OF FACT

The Property and the Surrounding Neighborhood

1. The subject property is located at address 4506 Edson Place, N.E., in Square 5132, Lot 160, and in an R-2 Zone District.
2. The subject property is a rectangular vacant lot, with a width of 50 feet and a length of 92.5 feet, for a lot area of 4,625 square feet.
3. On the same block as the subject property, at addresses 4522 and 4522½ Edson Place, N.E., a pair of semi-detached dwellings was recently permitted and constructed on a property approximately the same size as the subject property.
4. The neighborhood surrounding the subject property includes vacant lots, and detached and semi-detached one-family dwellings.

The Applicant's Proposal and Its History

5. The subject property has been in the Applicant's family for approximately 50 years and the Applicant herself is a licensed real estate agent in the District of Columbia.
6. Apparently, until 2009, and for approximately the last 50 years, the subject property was divided into two lots, 83 and 84.
7. Each of these lots had less than 3,000 square feet of land area and was less than 30 feet wide, and so each was substandard for lot area and lot width in this R-2 zone. (11 DCMR § 401.3.)
8. Because the two substandard lots were in common ownership, no new construction on either lot was permitted. (See, Exhibit 26, OP's Supplemental Remarks on the non-applicability of 11 DCMR § 401.4.)

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9. The Applicant combined the two lots – 83 and 84 – into one lot, current lot 160, in 2009.
10. The Applicant alleges that she did so at the instruction of DCRA personnel, whom she claimed also assured her that two buildings could be constructed on the combined lot, notwithstanding the prohibition on such construction in 11 DCMR § 3202.3.
11. The Applicant paid DCRA approximately \$250.00 to combine the lots.
12. Based upon her understanding of her conversation with DCRA personnel, the Applicant paid \$10,000.00 to the architect for a copy of the plans for the semi-detached dwellings at 4522 and 4522½ Edson Place, intending to build the exact same semi-detached dwellings on the subject property.
13. When the Applicant showed the plans to DCRA, she was advised that she could not proceed with construction because, in a residence zone, each structure must be situated on its own record lot.
14. In order to construct the pair of dwellings, the Applicant plans to re-sub-divide the subject lot into two smaller lots, each 25 feet in width, and each with a lot area of 2,312.5 square feet.

The Need for Relief

15. The minimum lot width required for a semi-detached dwelling in this R-2 Zone is 30 feet; therefore, at a width of 25 feet, the Applicant's two lots would each be five feet deficient, necessitating relief from 11 DCMR § 401.3.
16. The minimum lot area required for a semi-detached dwelling in this R-2 Zone is 3,000 square feet; therefore, at an area of 2,312.5 square feet, the Applicant's two lots would each be approximately 700 feet deficient, necessitating relief from § 401.3.

Lack of Exceptional Situation or Condition

17. The subject property is a standard rectangle, and, if left as one lot and not sub-divided, meets the lot width and lot area requirements for a one-family detached dwelling in this R-2 Zone, to wit, 40 feet, and 4,000 square feet, respectively. (11 DCMR § 401.3.)
18. There are six other lots in Square 5132 that are approximately the same size as the subject property and approximately 20 lots in the Square that are smaller than the subject property.
19. Each of the similarly sized lots in Square 5132 appear to be developed with a single building, most likely, in this R-2 Zone, a one-family detached dwelling.
20. If the subject property had never been subdivided into one lot, but had remained as two lots, the Applicant would still have been required to obtain the zoning relief for lot width and lot

area. Therefore, none of the alleged statements made by DCRA personnel caused the need for the zoning relief currently being requested.

21. The lot has a downward slope of approximately 15% toward the north, but this same slope is shared by nearby properties. The slope does not appear to have any particular effect on construction on the subject property.
22. The required lot width and lot area for semi-detached dwellings in this R-2 Zone are set forth in § 401 of the Zoning Regulations and the fact that each dwelling must be set on its own lot is mandated by § 3202.3 of the Zoning Regulations. The Zoning Regulations are available to the general public, including the Applicant.
23. The fact that a pair of semi-detached dwellings was constructed on the same block on property of a size similar to the subject property, has no bearing on the variance relief requested here, and does not exonerate the Applicant from performing her own research and investigation as to the regulations appropriate to her proposed development.

CONCLUSIONS OF LAW

The Variance Standard -

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) (2008 Supp.); (11 DCMR § 3103.2.) The “exceptional situation or condition” of a property need not arise from the land and/or structures thereon, but can also arise from “subsequent events extraneous to the land.” *De Azcarate v. Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978). 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 Applicant in this case is requesting area variances; therefore, she 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 Applicant had to show that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

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The property that is the subject of this application is a regular rectangle which is large enough to support a matter-of-right detached or semi-detached one-family dwelling. Although the property exhibits a slope, the Applicant makes no claim that this slope is an exceptional condition under the first prong of the variance test. In fact, the Applicant does not claim, or attempt to demonstrate, that the property itself is afflicted with any exceptional condition. Instead, the Applicant claims that her personal experiences and expenses in attempting to develop the subject property constitute the exceptional situation necessary to meet the first prong of the variance test.

There are instances where “events extraneous to the land” can constitute the necessary exceptional situation, but the Board does not find that true in this case. The Applicant’s arguments break down into several claims, but, even taken together, they are not sufficient to satisfy the first prong of the variance test. First, the Applicant claims that DCRA personnel “instructed” her to combine lots 83 and 84 in order to construct the proposed semi-detached dwellings.

The Applicant bears the burden of proving that such statements were made. While it is likely that DCRA informed her that no construction could occur on either lot because of their substandard size and common ownership, the Board finds it implausible that any DCRA official tasked with zoning review would have suggested that two buildings can be constructed on a single lot. This is not a matter of technical nuance. This feature of lot control is one of the most basic tenets of the Zoning Regulations. Absent sufficient corroborating evidence, this is simply not something that the Board can take the Applicant’s word for. *Compare Application No. 17108 of Folger Park North, LLC, 52 DCR 2893, 2899 (2005)* where the “evidence indicate[d] that DCRA determined through the subdivision and permit process on seven different occasions that the lots were buildable.”

In addition, no matter what the DCRA personnel may have stated, in order to construct two semi-detached dwellings on the subject property, the variance relief requested here would be necessary. This scenario is distinguishable from *De Azcarate*, where the original lot was conforming and it was subdivided so as to create three lots, one of which was non-conforming. In *De Azcarate*, not only did DCRA confirm the validity of the lots on several occasions, but it even issued a building permit for the non-conforming lot, which later expired. The lot was then sold and the new owner, in reliance upon the former building permit, applied for a new building permit, but the request was denied. Here, the Applicant started out with two lots upon which two semi-detached dwellings could not be built, and now has a single lot with the same infirmity. The difference is that *she now owns a buildable lot*. It may not be capable of being occupied by the two dwellings she envisioned, but that vision could not have been realized even under the lot’s prior configuration.

Second, the Applicant claims that “[w]hat is extraordinary or exceptional” is the fact that the two semi-detached dwellings at 4522 and 4522½ Edson Place were allowed to be constructed on a property of approximately the same size as the subject property. (Exhibit 25, at 2.) The Board understands the Applicant’s consternation, and has no knowledge of how or why these other

semi-detached dwellings were constructed, but the fact that they were constructed does not create any exceptional or extraordinary situation for the Applicant herself. Whether or not these other dwellings exist has no bearing on the necessity of this application, on its own, to meet the three prongs of the variance test.

Third, the Applicant complains of the potential loss of her initial investment of approximately \$15,000.00. Unfortunately, however, part, or perhaps all, of the Applicant's plight, including any monetary loss, resulted from a failure to perform due diligence. Relying on the fact that the two dwellings at 4522 and 4522½ had been constructed, she apparently failed to engage in her own independent research. With a relative minimum of effort, she could have discovered that semi-detached dwellings are allowable in an R-2 Zone, but only on a lot of the required size. The Zoning Regulations clearly spell out, at § 401.3, the minimum required lot sizes for both detached and semi-detached dwellings in an R-2 Zone, and also clearly state, at § 3202.3, that each dwelling would need its own lot. Whether or not practical difficulties are self-imposed is one factor the Board considers in an area variance analysis. *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990). (Exhibit 25, at 2.)

Although the Applicant may have experienced inconveniences and incurred expenses in this endeavor, she has recourse in that the subject property is large enough to construct a matter-of-right detached dwelling with no variance relief. She may be able to recoup at least some of her losses through the construction and sale of a one-family detached dwelling.

Because the application fails to satisfy the first prong of the variance test, the Board need not address the second and third prongs.

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 (2008 Supp.). 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 did not recommend approval of the variance relief, and the Board agrees with OP's recommendation.

Although technically the ANC submissions do not meet the great weight requirements set forth at 11 DCMR § 3115.1, the Board has considered the submissions, which merely state that there are no community objections to the proposed construction, and that it would be a positive addition to the area. This latter statement goes to the third prong of the variance test and the Board notes that OP, to which the Board must also give great weight, has concluded the opposite. In any event, the Board did not reach the third prong issue of adverse impact for the reason stated above.

For all the reasons stated above, the Board concludes that the Applicant has failed to satisfy the burden of proof for a variance from the lot area and lot width requirements of § 401.3. Accordingly, it is hereby **ORDERED** that this application is **DENIED**.

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VOTE: **3-0-2** (Meridith H. Moldenhauer, Shane L. Dettman, and Michael
G. Turnbull to Deny; Nicole C. Sorg not present, not
voting; No other Board member (vacant) participating)

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 04 2011**

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.