

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18223 of Otis Marechaux and Toni Grobstein, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, and a variance from the rear yard requirements under § 404¹ of the Zoning Regulations, to construct a free-standing carport serving a one-family dwelling in the R-5-B District at premises 1757 Seaton Street, N.W. (Square 150, Lot 807).

HEARING DATE: June 14, 2011

DECISION DATE: June 14, 2011

DECISION AND ORDER

Otis Marechaux and Toni Grobstein (the “Applicant”), filed this application on March 31, 2011 for area variances under § 403 (lot occupancy requirements) and § 404 (rear yard requirements) of the Zoning Regulations. Following a full public hearing, the Board of Zoning Adjustment (the “Board”) voted to deny the requested relief. A full explanation of the factual and legal basis for this decision follows.

PRELIMINARY MATTERS

Self-Certification

The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2. (Exhibit 6.) The Self-Certification form stated that relief was sought under §§ 403 (lot occupancy) and 404 (rear yard requirements).

Notice of Public Hearing

Notice. Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent by the Office of Zoning to the Applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission (“ANC”) 1C, and the District of Columbia Office of Planning (“OP”).

Posting. The Applicant posted placards at the property regarding the application and public

¹ The application advertised that relief was also requested under § 2500.3 of the Zoning Regulations. However, the Applicant did not request relief under this provision and therefore it was not considered as being before the Board.

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hearing in accordance with 11 DCMR § 3113.14 through 3113.20. They also submitted an affidavit to this effect in accordance with 11 DCMR §§ 3113.19 and 3113.20. (Exhibit 27.)

ANC 1C The subject site is located within the jurisdiction of ANC 1C, which is automatically a party to this application. No ANC report was received by the Office of Zoning.

Requests for Party Status There were no requests for party status.

Persons in Support/Opposition No persons testified in support or opposition to the application. The Board received letters in support of the application from three neighboring property owners. (Exhibits 9, 10, and 11.)

Government Reports

OP Report OP reviewed the variance application and prepared a report recommending denial of the variance requests. (Exhibit 26.) OP's representative, Arthur Jackson, testified that there were no exceptional conditions at the property that warranted the need for zoning relief, and that the proposal would be a detriment to the zone plan.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 1757 Seaton Street, N.W., Square 150, and Lot 807.
2. Lot 807 is a rectangular shaped interior lot with an area of 950 square feet. The lot is approximately 15.8 feet wide and has frontages along Seaton Street, N.W., and an alley that is 10 feet wide.
3. The lot is located in the R-5-B Zone District, and in the Strivers Section Historic District.
4. The lot is improved with a three-story row dwelling, with fences along both sides of the rear yard and a roll-up gate along the alley. There are existing posts along the paved area at the rear of the dwelling.
5. Lot 807 is small, but its size is typical for Square 150. Like this lot, 30 of the 54 lots on this Square are less than 1,000 square feet.
6. Like Lot 807, 35 of the 54 lots on this Square are 16 feet or less in width.
7. Lot 87 is located at the western end of the block.

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The Proposed Project

8. The Applicant proposes to construct a carport addition on top of the existing posts behind the dwelling in the rear yard.
9. The carport would be approximately 16 feet by 18 feet in dimension. The existing fences and roll-up gate along the alley would remain.

The Zoning Relief

10. The R-5-B District permits a maximum lot occupancy of 60% for all structures except public recreation and community centers. (See, 11 DCMR § 403.2.) Because the proposed addition will result in a lot occupancy of at least 90%², the Applicant requires variance relief under § 403.2. The proposal does not qualify for special exception relief under § 223, because that provision limits the increase in lot occupancy to a maximum of 70%.
11. The R-5-B District requires a minimum rear yard of 15 feet for any structure located in the district. (See, 11 DCMR § 404.1.) Because the proposed addition will reduce the 15-foot rear yard and result in a rear yard of five feet, the Applicant requires variance relief under § 404.1.

Exceptional Condition Inherent to the Property

12. According to the Applicant, the property is located at the west end of the block and therefore receives a disproportionate amount of direct sunlight as compared to the other properties. This excessive amount of sunlight bears directly down on their back yard, which, they claim, results in their car being unacceptably exposed to heat.
13. There is nothing exceptional about the lot's location at the western end of the block. Every block in the District is likely to have an improved property at its western end.
14. The Applicant identified no other exceptional or extraordinary condition inherent in their property and the Board finds that none exist.
15. There is nothing exceptional about the shape of Lot 807, which has a typical rectangular shape.
16. The Board agrees with OP that the size of Lot 807, though small, is typical for the Square.

² In its report, OP stated that the lot occupancy would increase to 95%. However, during the public hearing, the OP representative corrected the 95% figure and testified that the lot occupancy for the proposed project would be either 90 or 92%. (Hearing Transcript, p. 143.)

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17. As Lot 807 is relatively flat, there is nothing exceptional about the lot's topography.

Practical Difficulty

18. The Applicant claims that strict compliance with the lot occupancy and rear yard restrictions is unnecessarily burdensome because it prevents them from protecting their vehicle against direct exposure to excessive sunlight.

19. The Applicant presented no evidence of any adverse consequences resulting from their vehicle's exposure to sunlight that would be greater than what would ordinarily be expected in an urban environment.

Detriment to the Public Good or the Zone Plan

20. The Board finds that erecting a carport above the existing posts would not have a negative impact on the available light or air for neighboring properties.

21. There is no residential zone that allows 90% lot occupancy, either as a matter of right, or by special exception.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799), as amended; D.C. Official Code § 6-641.07(g)(3), to grant variances from the strict application of the Zoning Regulations. As stated above, the Applicant here seeks relief from the lot occupancy and the rear yard requirements.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property has an exceptional size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant/owner will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove "practical difficulties," an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* at 1170.

As to the first prong, the Board finds that there is no exceptional condition at the property. The Applicant alleged that the location of their property at the western end of the block was an exceptional condition.³ If that were the case, every property located on the western end of a

³ The Applicant summarized their position on this prong as follows:

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block would automatically meet the first prong of the variance test. The District of Columbia Court of Appeals has identified that as an unacceptable result:

If the BZA were to grant variances where the hardship or difficulty is not peculiar to a particular piece of property, similar requests could follow from property owners similarly situated, “which, as a matter of due process, would have to be granted.” ... The effect of such decisions by the BZA would be an amendment of the zoning regulations by that body, an action which the BZA is not empowered to take.

Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939, 942 (D.C. 1987), quoting, *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 234 (D.C. 1973).

The Applicant claims no other exceptional or extraordinary condition inherent to their property and the Board finds none exists. See Findings of Fact 13 through 17.

Even if the location of the property were an exceptional condition, the Applicant has demonstrated no practical difficulty, which, as noted, means that strict compliance would be unnecessarily burdensome. The Applicant presented no evidence that their car was being harmed by its exposure to sunlight and the Applicant’s discomfort in entering a hot vehicle does not rise to the level of an unreasonable burden, but instead is a common occurrence in any urban setting.

Turning to the third prong of the variance test, the Board concludes that while the proposal would not result in substantial detriment to the public good, the Board agrees with OP, that a lot occupancy over 90% would impair the intent of the zone plan. As OP points out, there is no residential zone that allows 90% lot occupancy, either as a matter of right, or by special exception. Even in an R-5-E Zone, lot occupancy cannot exceed 75%. The Board agrees with OP that lot occupancy is intended to contribute toward the maintenance of the neighborhood character. To permit a lot occupancy that increases the amount permitted to 90% presumptively impairs the zone plan.

ANC Issues and Concerns

Section 13(b) (d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10 (d)(3)(A)) requires that the Board’s written orders give “great weight” to the issues and concerns raised in the recommendations of the

The unique nature of the property is that it’s at the west end of the block and receives a lot of direct sunlight that’s directly down to the backyard and the car just cooks. That’s the unique nature; none of my neighbors have that issue. (T. at 142.)

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that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

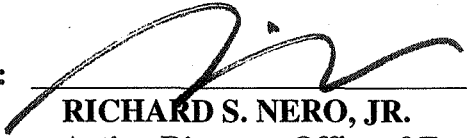
Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 28 – plans) be **GRANTED**.

VOTE: **5-0-0** (Meridith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Anthony J. Hood and Jeffrey L. Hinkle to APPROVE)

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

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

ATTESTED BY:


RICHARD S. NERO, JR.

Acting Director, Office of Zoning

FINAL DATE OF ORDER: December 13, 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.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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As Director of the Office of Zoning, I hereby certify and attest that on December 13, 2011, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANC's and SMD's that have opted to receive notices thusly, 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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