

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18482 of District Properties, LLC, pursuant to 11 DCMR § 3103.2, for variances from lot width and lot area requirements under section 401, and a variance from the side yard requirements of section 405, to allow the construction of a one-family detached dwellings in the R-1-B District at premises 5008 13th Street, N.W. (Square 2806, Lots 53).

HEARING DATES: January 15, 2013 and February 26, 2013
DECISION DATE: February 26, 2013

DECISION AND ORDER

This self-certified application was submitted on September 27, 2012 by District Properties LLC (“Applicant”). The application requested variance relief to permit construction of a one-family detached dwelling in an R-1-B Zone District located at 5008 13th Street, N.W. Following a public hearing, the Board voted 5-0-0 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 27, 2012 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”) 4C, the ANC within which the subject property is located. Pursuant to 11 DCMR § 3113.14, OZ mailed letters providing notice of the hearing to the Applicant, ANC 4C, and all owners of property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on November 9, 2012 at 59 DCR 12887. A hearing was scheduled for January 15, 2013.

Party Status. Pursuant to 11 DCMR § 3199.1(b), the Applicant and ANC 4C were automatically parties. Ms. Susan Reith filed a request for party status on January 29, 2012. (Exhibit 27.) Ms. Reith did not explain how she met any of the criteria for being granted party status, but simply claimed that she owned the subject property. The Board denied the party status request for the reasons set forth in the conclusion of law portion of this order.

Requests for Postponement. Through a letter dated January 8, 2013, the Chairman and Vice Chairman of ANC 4C requested the Board to postpone the scheduled January hearing to the

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following month in order to give the Applicant an opportunity to make a presentation before a community meeting and for the ANC to vote on the proposal. The ANC's community meeting was originally scheduled for the second Wednesday in January, but was postponed until January 16th to accommodate the swearing in ceremony for the newly elected Commissioners. The Board granted the request and postponed the hearing to February 26, 2013.

In a letter dated January 29, 2013, Ms. Reith requested that the February hearing be postponed. Ms. Reith's letter included documents that she claimed proved that the District's tax sale of the subject property was unlawful and that by right of inheritance the property remained hers. (Exhibit 26.) The Board denied the request because the assertion that the Applicant was not the owner of the property was not a basis for postponing the proceeding, but required the Board to rule on this issue.

OP Report. In a report dated December 31, 2012, OP recommended approval of the variance relief requested. The report addressed the three part area variance test and concluded that the Application satisfied its requirements. The report concluded that the substandard size of the lot was an exceptional condition that made it practically difficult to construct a one-family dwelling that conformed to the side yard requirements. OP found that there would be no detriment to the public good nor would there be substantial impairment to the zone plan. Rather the proposal would provide a needed infill development of a vacant lot. The report further noted that the proposed five foot side yards would be adjacent to existing eight foot side yard resulting in a total of 13 feet of open yard on each side of the proposed structure.. This would protect the light, air, and privacy of all affected properties consistent with the purpose of the side yard requirement.

DDOT Report. The Department of Transportation submitted a report dated October 19, 2012, stating that the proposed project would have no adverse impacts on the District's transportation network. (Exhibit 28.)

ANC Report. By letter dated February 6, 2013, ANC 4C indicated that at a properly noticed public meeting held on January 16, 2013 and with a quorum present. ANC 4C voted unanimously to support the application with two conditions. (Exhibit 28.)

FINDINGS OF FACT**The Applicant**

1. The Applicant is District Properties, which is controlled by Mr. Mohammed Sikder.
2. The last deed recorded in the land records of the District of Columbia (recorded October 25, 2012), states that RUPSHA 2007 LLC owns the property that is the subject of this Application. (Exhibit 29.)
3. Mr. Sikder also controls RUPSHA 2007 LLC. (Exhibit 29.)

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4. Ms. Reith's request for party status was based solely upon her claimed ownership of the subject property and in no other respects explained how her "interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public." (11 DCMR § 3113.21.)¹

The Subject Property

5. The subject property is located in the R-1-B District, on 5008 13th Street N.W. (Square 2806, Lot 53). The lot is currently vacant and has been so for several years. However, there was almost certainly an improvement on the property at the time the current version of the Zoning Regulations became effective in May of 1958.
6. The R-1-B District permits one-family detached dwellings as a matter of right. (11 DCMR § 201.1(k).)
7. The neighborhood surrounding the subject property is developed with one-family detached and semi-detached dwellings. One-family detached dwellings abut the subject property's side lots lines.

The Applicant's Project

8. The Applicant proposes to construct a one-family detached house with one parking space at the back of the house that will be accessible from the rear alley.
9. The proposed two-floor plus basement dwelling would have a footprint of 1,355 square feet and consist of four bedrooms, four full bathrooms, one half bathroom, a kitchen with separate dining space, a living room, and a family room.

Zoning Relief Required

10. The subject lot is 35 feet wide while the R-1-B district requires a minimum width of 50 feet for all structures other than a public school. (See 11 DCMR § 401.3.) In addition, the lot area is 3,500 square feet while the minimum required in the R-1-B District is 5,000 square feet for those same types of structures. *Id.*
11. Subsection 401.1 of the Zoning Regulations provides that "in the case of a building located, on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title."
12. The proposed new building would provide a five foot side yard on each side. The R-2 Zone requires side yards at least eight feet wide. (See 11 DCMR § 405.9.)

¹ At the time of the hearing this provision was codified at 11 DCMR § 3106.3.

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13. Apart from the side yards, the proposed building would comply with all other provisions of Title 11.

Exceptional Condition

14. The lot on the subject property is substandard in size, extremely narrow, and was created prior to the enactment of the current version of the Zoning Regulation in May 1958.
15. Neither of the adjacent properties is vacant or owned by the Applicant, and therefore there is no means by which the subject property can be made to conform to the minimum lot dimensions required.

Practical Difficulty

16. Strict compliance with the side yard requirement would result in a dwelling only 19 feet wide, which is inadequate for residential use.

No Impairment to Zone Plan

17. The subject property is located in the R-1-B Zone District, which “is designed to protect quiet residential areas ... with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes.” (11 DCMR § 200.1.)
18. The proposed dwelling will require less height and lot occupancy than permitted and will provide a greater rear yard depth than required in an R-1-B District.
19. The project would result in an infill development on a vacant lot.
20. The Applicant will revise the front setback to be equivalent to the neighboring properties.

No Harm to the Public.

21. The abutting property owners to the north and south of the subject properties provide compliant eight-foot side yards that together with the five-foot wide yards proposed by the Applicant will result in an effective separation of thirteen feet on each side.
22. The Department of Transportation, in a report dated October 19, 2012, concluded that the proposed project would have no adverse impacts on the District’s transportation network.

CONCLUSIONS OF LAW

Preliminary Matter

As noted Ms. Reith requested party status based solely upon her assertion that the tax sale of the subject property to its current owner should not be recognized due to alleged defects in the

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notification process required by statute. If the Applicant were not the owner of the subject property, the consequence would not be Ms. Reith being made a party to this proceeding, but to the proceeding being dismissed. As will be explained, the Board concluded that it must recognize the Applicant as the owner of the subject property and since Ms. Reith offered no other basis for granting her party status, her request was denied.

Through a submission dated February 25, 2013, the Applicant presented a deed recorded in the land records of the District of Columbia on October 9, 2012 indicating that RUPSHA 2007 LLC is the current owner of the subject property. In that same submission the Applicant established the relationship between itself and RUPSHA 2007 LLC.

Ms. Reith does not contest that the deed is currently in effect pursuant to D.C. Code § 42-401. Rather, Ms. Reith claims that the Board should not recognize the deed because of defects in the tax sale that preceded it. As the Court of Appeals has stated:

It is firmly established in this jurisdiction that the District of Columbia “may affect a valid conveyance of property for nonpayment of real estate taxes only by ‘strict compliance’ with the tax sale statute and regulations.” *Boddie v. Robinson*, 430 A.2d 519, 522 (D.C.1981) (citations omitted). ... Accordingly, “[i]f the District fails to comply in every respect with the statute and regulations, the sale is invalid and must be set aside.” *Keatts v. Robinson*, 544 A.2d 716, 719 (D.C.1988).

Associated Estates, LLC v. Caldwell, 779 A.2d 939, 943 -944 (D.C 2001).

However, it is the Superior Court of the District of Columbia and not the Board of Zoning Adjustment that can order a tax sale to be set aside. Since that has not occurred as to this property, the Board must recognize RUPSHA 2007 LLC as its owner and is satisfied that the Applicant’s relationship to that entity permitted it to file this application. Since Ms. Reith stated no basis other than her purported ownership interest for granting party status, she failed to prove that her “interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public.” (11 DCMR § 3113.21.) For this reason, the Board denied Ms. Reith’s request for party status.

The Merits of the Application**The Variance Standard**

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 ... 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)

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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). Since area variances are sought by the Applicant, the Applicant must comply with the three prong test: (1) that an exceptional situation results in a “practical difficulty” in complying with the Zoning Regulations; (2) the granting of the relief will not be substantial detriment to the public good; and (3) the granting of the variances will not substantially harm the Zone Plan.

Exceptional Situation Resulting in a Practical Difficulty

The lot is only 35 feet wide, which makes it extremely narrow. It also has only 3,500 square feet of land in a zone District where a minimum of 5,000 square feet is required. The lot’s substandard size and the fact that it was created prior to the adoption of the 1958 Zoning Regulations results in an exceptional condition. The Applicant owns no adjacent vacant property that could be used to create a conforming lot. These exceptional conditions lead to a practical difficulty, because strict compliance with the requirement for two eight-foot wide side yards within this substandard lot would result in a 19 foot wide building, which is far too narrow for a habitable dwelling.

No Substantial Detriment to the Zone Plan

The grant of this variance will not substantially impair the intent, purpose, and integrity of the Zone Plan. The proposed one-family detached dwelling is a matter-of-right use in this R-1-B zone and is appropriate for the block and the area. To ensure that will be the case, the Applicant agreed to comply with the OP recommendation to revise the front setback so it would be equivalent to the neighboring properties. The Board has made that commitment a condition of its approval. Except for the substandard side yard, the proposed structure meets all other the applicable matter of right area requirements. The Board also concurs with OP’s report that “the proposal would provide infill development consistent with the surrounding neighborhood and would close a long vacant gap in the street pattern while improving the streetscape of 13th Street.”

No Substantial Detriment to the Public Good.

Nor will the grant of the relief cause substantial detriment to the public good. Although the dwelling will provide side yards only five feet deep, the abutting properties to the north and

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south provide compliant eight-foot side yards resulting in a separation of 13 feet. This will ensure adequate light, air, and privacy for all affected properties. As noted, the Department of Transportation submitted a report dated October 19, 2012, stating that the proposed project would have no adverse impacts on the District's transportation network.

Satisfaction of § 401.1.

Subsection 401.1 of the Zoning Regulations provides that "in the case of a building located, on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title." Since this lot only recently became vacant, the only reason the Applicant may not construct the proposed building is because it will not comply with the applicable side yard requirements. The Board's decision to grant the side yard variance rendered the proposed building fully compliant with other provisions of the Zoning Regulations. Therefore the precondition of § 401.1 for new construction is met. Even if that not the case, the Board's basis for granting the side yard variance would also justify relief from the minimum lot dimension requirements of § 401.3.

Great weight to the Office of Planning

The Board is required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. The Board has carefully considered the OP's recommendation for approval and concurs in its recommendation. In addition, the Board agrees with OP's recommendation that the Applicant should revise the front setback of the house as to be equivalent to neighboring properties and has made that a condition of this order.

Great weight to the ANC

The Board is required by Section 13(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)) to give great weight to any issues and concerns raised in the written report submitted by ANC 4C in this proceeding. As noted, ANC 4C voted to support the application subject to the following two conditions, which were agreed to by the Applicant:

1. The vacant lot will be restored to its original dwelling – a single family house that conforms to the current structure of homes within the neighborhood.
2. The proposed project's intent is specifically to build a single family house on the vacant lot for residential/living for Mr. Sikder's family – no usage for rental of the property as a boarding facility for purposes to serve multiples of residents living quarters; no transitional group home facility; no transitional housing; and no transferral to Condo/Apartment.

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As to the first condition, pursuant to § 3125.8, the Applicant may only construct a one-family dwelling consistent with the approved plans and will be required by this order to conform the front setback to be equivalent to the neighboring properties. Therefore the first condition has been met. To the extent that the second condition is seeking to limit occupancy of the dwelling to Mr. Sikder's family or preclude rental to persons with disabilities, the Board cannot impose such limitations. Rather, the Board interprets the ANC's condition as limiting the use of the building to that of a one-family dwelling and has imposed that as a condition of approval. The Board believes that it has adequately responded to the ANC's issues and concerns and thereby has given it the great weight to which it is entitled.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the written report of ANC 4C the Board concludes that the Applicant has satisfied the requirements for area variances from the minimum lot area and lot width requirements, and the minimum side yard requirement to construct a one-family, detached dwellings in the R-1-B Zone District at 5008 13th Street, N.W. (Square 2806, Lot 53). Accordingly, it is hereby **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The approved building shall only be used as a one-family dwelling.
2. Pursuant to 11 DCMR § 3125.7, approval of this application includes approval of the plans submitted with the application for the construction of the proposed one-family detached dwelling. Further, pursuant to 11 DCMR § 315.8, the Applicant shall carry out the construction of the dwelling only in accordance with the plans approved by the Board, except that the plans filed for a building permit to construct the dwelling shall depict a front setback that is equivalent to the neighboring properties.

VOTE: 5-0-0 (Lloyd J. Jordan, Nicole C. Sorg, S. Kathryn Allen, Jeffrey L. Hinkle, and Peter G. May 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:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 16, 2013

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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.

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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR 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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.