

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18659 of Elodie Goirand and Andreas Xenophontos, pursuant to 11 DCMR § 3103.2 for a variance from the requirements for side yard under § 405.9 and a variance from the front yard setback requirements under § 1543.4 to allow construction of a front room at a one-family detached dwelling in the WH/R-1-B District at premises 4540 Lowell Street, N.W. (Square 1608, Lot 68)¹

HEARING DATE: November 19, 2013

DECISION DATE: January 29, 2014

DECISION AND ORDER

This self-certified application was submitted on August 23, 2013 by Elodie Goirand and Andreas Xenophontos (together, the “Applicant”), the owners of the property that is the subject of the application. As amended, the application requested an area variance from the side yard setback requirement of § 405.9 as well as an area variance from the front yard setback requirements of § 1543.4 of the Wesley Heights (WH) overlay district to allow construction of a front room at a one-family detached dwelling of the WH/R-1-B zone at 4540 Lowell Street, N.W. (Square 1608, Lot 68). Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 26, 2013, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3D, the ANC in which the subject property is located; and Single Member District/ANC 3D01. Pursuant to 11 DCMR § 3112.14, on September 16, 2013, the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 3D, and the owners of all property within 200 feet of the subject property.

¹ The caption has been revised from that used in the public hearing notice in this case to reflect an amendment to the self-certified application requested by the Applicant to seek an area variance from the side yard setback requirement under § 405.9 rather than special exception approval under § 223 to allow an addition to a one-family dwelling not meeting the requirement for side yard under § 405.9.

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Party Status. The Applicant and ANC 3D were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Peter and Sally Baker, who live in the dwelling immediately to the west of the Applicant's property.

Applicant's Case. The Applicant provided evidence and testimony describing the renovation and enlargement of the one-family detached dwelling at the subject property, a project that was originally approved as an addition to a nonconforming structure but that subsequently gave rise to a need for zoning relief for a portion known as the "Front Room." According to the Applicant, the Department of Consumer and Regulatory Affairs ("DCRA") issued building permits for and performed inspections of the renovation project, but issued a notice to revoke the building permits after the Applicant demolished "a small area of original wall that was originally meant to be retained" but was removed, on the advice of a structural engineer, due to damage discovered once the project was underway. The Applicant stated that DCRA "recharacterized" the project as a "raze and new construction" due to the scope of demolition work undertaken by the Applicant, which was outside the scope of the approved permits, and noted that the Front Room could not be permitted as an addition to a nonconforming structure once the original dwelling had been removed.

While the majority of the Applicant's project complied with applicable zoning requirements for new construction, the Front Room portion – once it was no longer characterized as an addition to a nonconforming structure – required relief from zoning requirements for the minimum side yard and front yard setbacks. The Front Room was originally permitted to encroach into the required front and side yard setbacks as the replacement of a covered porch that was built as part of the original dwelling before the current Zoning Regulations went into effect. The Front Room, the sole portion of the Applicant's project that was at issue in this proceeding, would be constructed on the same footprint as the covered porch, and would have the same area (approximately 10 feet by 11 feet) but would be enclosed and would have a slightly lower roof than the covered porch. The Applicant stated that the principal purpose of the Front Room was to provide space for a bathroom on the first floor of the dwelling, and that a bathroom could have been provided elsewhere in the new construction, probably as a projection into the rear yard, but the re-use of the original footprint was considered the most efficient option.

OP Report. By memorandum dated November 12, 2013, OP recommended denial of variance relief from the setback requirements of § 405.9 for the side yard and § 1543.4 for the front yard.² The report stated that OP did not find specific uniqueness that imposed a practical difficulty that would be unnecessarily burdensome to the Applicant. According to OP, the Applicant's project, while "relatively modest," would "nevertheless have some impact on the character of the neighborhood and the goals of the WH overlay" by disrupting the pattern of setbacks on the block, which the overlay was designed to protect. (Exhibit 27.)

² The OP report noted that the application originally requested special exception relief under § 223 for the proposed side yard, instead of a variance from § 405.9, but stated that the Zoning Administrator considered the Applicant's project one of "new construction" since the entire one-family dwelling had been demolished, and therefore the Front Room project was not eligible for relief as an addition under § 223.

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DDOT. By memorandum dated September 30, 2013, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 24.)

ANC Report. By letter dated November 12, 2013, ANC 3D indicated that, at a properly noticed public meeting, held November 6, 2013 with a quorum present, the ANC voted 10-0-0 “to deny approval” of the application. The letter states that the ANC’s vote was based on factors including that the Applicant’s “construction deviated from approved construction plans” and the determinations by the Zoning Administrator that “the property was a raze, not a renovation/addition” and that the Applicant “knowingly exceeded the scope of the construction permit.” According to ANC 3D, the Applicant “has not met the burden for variance relief (§ 3103.2) for either the front yard or side yard setback restrictions in that the applicant has not identified any undue hardship or exceptional difficulties that would justify variance relief, nor has the Applicant “met the burden for variance relief of the Wesley Heights Overlay District (WHOD) ... in that the new structure visibly intrudes upon the harmonious design of houses falling within the Wesley Heights Overlay District, reduces the access to air and light of the neighboring property, including their ability to add to their property within existing zoning rules; and the new structure is inconsistent with provisions of the Zoning Regulations for the Wesley Heights Overlay District.” (Exhibit 28.)

Party in opposition. The party in opposition argued that, by “razing the existing structure,” the Applicant had “forfeited the legally nonconforming classification of the residence and with it, the reduced setback requirement,” so that the new construction must comply with the eight-foot side yard setback requirement of § 405.9. The party in opposition objected that the Applicant’s “illegal construction...has decreased the space” between the two dwellings while the party in opposition was “entitled to the side yard prescribed by § 405.9 and the light and air it affords their residence.” According to the party in opposition, the Applicant’s project would not comply with the front and side yard setback requirements and, as a result, has “significantly degraded the amount of light and air previously afforded [the party’s] residence,” with a design that was “both out of compliance with the applicable zoning provisions and is not harmonious with the neighborhood as a whole.” (Exhibit 25.) The party in opposition contended that the open nature of the now-removed covered porch had allowed light to pass through it to the neighboring property, while the Applicant’s proposed Front Room would block light and air.

Persons in support. The Board received letters in support of the application from persons living in the vicinity of the subject property. The letters urged approval of the application, stating that the addition was previously a covered porch, built on the original footprint, and was not likely to have a negative impact on other properties.

Person in opposition. The Board heard testimony in opposition to the application from George Watson, testifying on behalf of the Wesley Heights Historical Society. He described the historical background of the Wesley Heights overlay district, and asserted that the application should be denied because the Front Room would not be consistent with the purpose and intent of the overlay to preserve the current density of the neighborhood, allow reasonable opportunities

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for owners to expand their dwellings, and preserve access to light and air and the harmonious design and attractive appearance of the neighborhood.

FINDINGS OF FACT

The Subject Property

1. The subject property is an interior lot located on the south side of Lowell Street, N.W. near its intersection with Foxhall Road (Square 1608, Lot 68).
2. The subject property was previously improved with a two-story one-family detached dwelling built around 1930, before the 1958 Zoning Regulations became effective. The original dwelling had a covered front porch at its northwest corner. The porch was open, with columns supporting a peaked roof. After a renovation and enlargement project undertaken by the Applicant, the property is now improved with a new three-story one-family detached dwelling. As part of the project, the Applicant proposes to replace the porch with a new enclosed room, known as the Front Room.
3. The subject property is a rectangular parcel 50 feet wide and 150 feet deep, with an area of 7,500 square feet.
4. The lots abutting the subject property to the east and south have similar dimensions, while the two lots fronting on Lowell Street to the west of the subject property are relatively shallow and wider. Two large lots, fronting on Foxhall Road, abut the subject property to the west. All of the surrounding parcels are improved with one-family detached dwellings.
5. The property abutting to the west, owned by the party in opposition, is relatively small at 75 feet wide and 50 feet deep, with an area of 3,750 square feet where a minimum of 5,000 square feet is required.
6. The subject property and other lots in the immediate vicinity are zoned R-1-B. Since 1992, Square 1608, including the subject property, has been included within the Wesley Height overlay district. (See Z.C. Order No. 718, Case No. 90-5, effective September 11, 1992).
7. The Wesley Heights overlay district requires that all residential buildings must have a front yard setback not less than “the average setback of all structures on the same side of the street in the block where the building in question is located.” (11 DCMR § 1543.4.)
8. The mapping of the Wesley Heights overlay district created a nonconforming structure at the subject property since the front yard setback of the original front porch was two feet, four inches where, pursuant to the overlay district, a front yard setback of at least 13 feet is required.

9. The Applicant's dwelling and an accessory building located in the rear yard create a lot occupancy of 30%. The rear yard is 88 feet deep, while the side yards are eight feet on the east and 3.7 feet on the west. A minimum of eight feet for each side yard is required pursuant to § 405.9.

The Applicant's Project

10. After living at the subject property for 18 years, the Applicant began a project to renovate and enlarge the dwelling on the subject property. As part of the renovation project, the Applicant planned to replace a covered front porch, located at the northwest corner of the dwelling, with an enclosed room known as the "Front Room." The Front Room would be built on the same footprint and have the same dimensions (10.4 feet by 10.9 feet) as the porch, and would serve primarily to provide space for a first-floor bathroom at the dwelling.
11. The Applicant's project was initially considered an addition to the original dwelling; however, because of the degree of demolition ultimately undertaken by the Applicant, the nature of the development changed such that the project was considered new construction. After beginning the renovation project, the Applicant discovered that a 15-foot long portion of a structural wall, which the Applicant had expected to retain, was not viable due to damage caused by moisture, rot, and termite activity. This wall was unrelated to the Front Room.
12. The plans submitted with the Applicant's permit applications indicated that some demolition of the existing dwelling was proposed at the subject property, but the planned demolition did not encompass the structural wall at issue. Acting on the advice of a structural engineer who determined that the wall was structurally insufficient, the Applicant demolished the wall in February 2013. Because the Applicant did not seek to amend the permit to reflect the additional demolition, the project exceeded the scope of the authorized demolition. The Zoning Administrator subsequently determined that, due to the scope of demolition, the Applicant's project should be considered a raze and new construction, rather than modification of a nonconforming structure. As a result, the Front Room could not be considered an addition to a nonconforming dwelling that could be constructed as a matter of right, but required zoning relief. Construction of the Front Room was substantially completed before the Zoning Administrator issued a final written determination that the project was considered new construction because of the degree of demolition undertaken by the Applicant.
13. The one-story Front Room will be built on the same footprint and have the same dimensions (10.4 feet by 10.9 feet) as the porch. The Front Room will have a side yard of 3.7 feet along its side length (that is, 10.9 feet), where a minimum of eight feet is required under § 405.9. The Front Room will also have a front yard setback of two feet, four inches along its front length (that is, 10.4 feet), where a minimum of 13 feet is required under § 1543.4. The roof of the new Front Room will be approximately one foot lower than the roof that covered the porch.

14. The Applicant's project increased both the height and density of the dwelling at the subject property. Other than the Front Room portion, the project was undertaken within matter-of-right limits set forth in the Zoning Regulations. The height of the dwelling will not exceed the applicable maximums of 40 feet and three stories. (11 DCMR § 400.1.) Lot occupancy after completion of the project will be 28.8%, where a maximum of 30% is permitted as a matter of right. (11 DCMR §§ 403.2, 1543.2.) The rear yard setback will be 88 feet where a minimum of 25 feet is required. (11 DCMR § 404.1.)
15. Like the prior front porch, the Front Room will be located at the northwest corner of the dwelling, which has been enlarged by the Applicant's renovation project. The Applicant submitted shadow studies showing that the shadow cast by the three-story dwelling would encompass any shadow that would otherwise be created by the Front Room.
16. After completion of the project, the Applicant's dwelling will be three stories and almost 40 feet in height. The Applicant estimated its prior height at two stories and about 25 feet. The Applicant's dwelling is sited approximately 7.5 feet above street level.
17. As part of the Applicant's project, a nonconforming portion of the dwelling, located behind the Front Room, was removed. That portion had the same nonconforming side yard setback as the Front Room (that is, 3.7 feet) for a distance of approximately seven feet. The renovation project reduced the length of the non-conforming side yard on the western side by removing a portion, approximately seven feet by 4.7 feet in dimension, of the existing dwelling that was located just behind the covered porch.

Harmony with Zoning

18. The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes. (11 DCMR § 200.1.) Zoning provisions applicable in the R-1 zone are intended to stabilize the residential areas and to promote a suitable environment for family life. (11 DCMR § 200.2.)
19. The Wesley Heights (WH) overlay district was established to preserve and enhance the low density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area. (11 DCMR § 1541.1.) The purposes of the overlay district include to: (a) preserve in general the current density of neighborhood; (b) allow reasonable opportunities for owners to expand their dwellings; and (c) preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood. (11 DCMR § 1541.3.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks area variances from the side yard setback requirement of § 405.9 and the front yard setback requirement of § 1543.4 of the Wesley Heights overlay district to allow construction of a front room at a one-family detached dwelling at 4540 Lowell Street, N.W. (Square 1608, Lot 68). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted 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. (See 11 DCMR § 3103.2.)

Based on the findings of fact, the Board finds that the application satisfies the requirements for the requested variance relief. The subject property is faced with an exceptional situation or condition, such that the strict application of the Zoning Regulations would result in practical difficulty to the Applicant as the owner of the property, due to the belated discovery of a structurally deficient wall, the removal of which caused the re-characterization of the Applicant’s renovation project as new construction that must comply with current zoning requirements rather than an addition to a nonconforming structure built before the Zoning Regulations went into effect. The damaged nature of the wall was not apparent until after the Applicant began a project to renovate and enlarge the dwelling in a manner that did not require zoning relief. But for the removal of the wall, the entire project, including the enclosure of the covered porch to create the Front Room, could have been undertaken as a matter of right as the renovation of a legally nonconforming structure. The Applicant demolished the wall, which was not related to the Front Room, on the advice of a structural engineer once the wall was found to have been extensively damaged and therefore no longer viable as a structural element of the building. By the time the wall was removed, the Applicant’s project was well underway. Absent variance relief, the Applicant would have been required to revise the renovation project to eliminate the planned first-floor bathroom, which was the principal purpose of the Front Room, or to incur considerable expense in redesigning the renovation and redoing the construction to remove the enclosed Front Room and creating a new room to serve the same function elsewhere on the first floor of the dwelling, likely in the rear yard, instead of reusing the existing footprint of the former covered porch.

The party in opposition argued that the subject property did not face any exceptional situation given that the Applicant’s lot was rectangular and located in a neighborhood where front porches and tear-downs were not uncommon. This argument does not address the particular significance of the belated demolition that occurred on the Applicant’s property, which altered the project from one that could have been undertaken as a matter of right to new construction that required compliance with current zoning standards or variance relief from those requirements.

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The requested variance relief can be granted without causing substantial detriment to the public good. The Front Room will be a one-story addition built within the same footprint as a covered porch that existed since the dwelling was constructed around 1930. Based in part on the shadow studies submitted to the record by the Applicant, the Board finds that the addition will have no impact on the light, air, or privacy of the neighboring properties, including the residence of the party in opposition located immediately to the west of the subject property. The Board was not persuaded by the party in opposition that the previous open porch “allowed a significant amount of light and air onto the...front yard” of the neighboring dwelling but that “[n]ow that the open-air porch has been replaced with an enclosed portion of new construction...the light and air previously enjoyed by [the party in opposition] has been severely reduced.” (Exhibit 25.) Rather, the Board concludes that any effect on light, air, and privacy created by the dwelling at the subject property is due to its recent enlargement, which was undertaken as a matter of right by the Applicant, and is not attributable to the enclosure of a relatively small room at the northwest corner of the dwelling.

The requested variance relief can also be granted without causing substantial impairment of the zone plan. But for the re-characterization of the project as new construction, the Front Room could have been created as a matter of right as the enclosure of a nonconforming porch. The requested variances are consistent with both the R-1 District, which was designed to protect quiet residential areas and promote a suitable environment for family life, and the Wesley Heights overlay district, which is intended to preserve the existing density, access to air and light, and the harmonious design and attractive appearance of the neighborhood while allowing reasonable opportunities for owners to expand their dwellings.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board does not concur with OP’s conclusion that the application did not present a specific uniqueness that would impose a practical difficulty that would be unnecessarily burdensome to the Applicant, and thus the Board was not persuaded by OP’s recommendation that the application should be denied. OP did not anticipate that the Applicant’s “relatively modest” project would cause substantial detriment to the public good, but did assert that the Front Room would “nevertheless have some impact on the character of the neighborhood and the goals of the WH overlay” by disrupting the pattern of setbacks on the block. The Board does not agree, primarily because the Front Room will occupy the same space as the prior nonconforming covered porch, which was already in existence when the overlay went into effect, and thus will not alter the pattern of setbacks on the block.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (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) (2001)).) In this case, ANC 3D voted to oppose the Applicant’s request for zoning relief, partly on grounds related to construction undertaken by the Applicant outside the scope of permits issued for the project, which is a violation of the Construction Codes, not the Zoning Regulations. For the reasons discussed above, the Board does not agree with the ANC’s assertion that the Applicant

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has not satisfied the burden for variance relief from either the front or side yard setback requirements. Similarly, the Board does not concur with the ANC's contentions that the proposed Front Room would intrude on the "harmonious design of houses" or otherwise conflict with the Wesley Heights overlay district, reduce the light or air available to neighboring properties, or diminish the ability of owners of neighboring properties "to add to their propert[ies] within existing zoning rules."

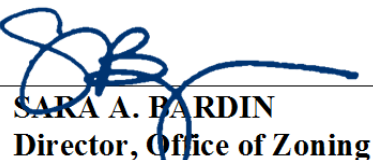
Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for an area variance from the side yard setback requirement of § 405.9 as well as an area variance from the front yard setback requirements of § 1543.4 of the Wesley Heights (WH) overlay district to allow construction of a front room, replacing a prior covered porch, at a one-family detached dwelling of the WH/R-1-B zone at 4540 Lowell Street, N.W. (Square 1608, Lot 68). Accordingly, it is **ORDERED** that the application (pursuant to Exhibit 10 – Plans) is **GRANTED**.

VOTE: **3-0-2** (Lloyd J. Jordan, S. Kathryn Allen, and Robert E. Miller voting to Approve; Jeffrey L. Hinkle not present, not voting; one Board seat vacant.)

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: August 14, 2014

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

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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.

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.