

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18675 of David and Cathy Brooker, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio limitation under § 402.4, a variance from the lot occupancy requirements under § 403.2, a variance from the minimum rear yard requirements under § 404.1, a variance from closed court width and area requirements of § 406.1, and a variance to increase the existing nonconforming aspects of the building under § 2001.3 to allow the construction of two-story carriage house garages in the DC/R-5-B Zone District at premises 1617 and 1619 19th Street, N.W. (Square 134, Lots 18 & 19).

HEARING DATE: December 18, 2013

DECISION DATE: December 18, 2013

DECISION AND ORDER

This self-certified application was submitted on September 27, 2013 by David and Cathy Brooker (the “Applicant”), the owners of the property that is the subject of the application. The application requests an area variance from requirements applicable to floor area ratio (“FAR”) under § 402.4, lot occupancy under § 403.2, rear yard under § 404.1, closed court width and area under § 406.1, as well as enlargement of a nonconforming structure under § 2001.3 in the DC/R-5-B Zone District at 1617 and 1619 19th Street, N.W. (Square 134, Lots 18 & 19) (the “Subject Property”). Following a public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 1, 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 2; Advisory Neighborhood Commission (“ANC”) 2B, the ANC in which the subject property is located; and Single Member District/ANC 2B-03. Pursuant to § 3113.13, the Office of Zoning mailed letters on August 22, 2013 providing notice of the hearing to the Applicant, ANC 2B, and the owners of all property within 200 feet of the subject property. Notice of hearing was published in the *D.C. Register* on October 11, 2013 (60 DCR 14615).

Party Status. The Applicant and ANC 2B were automatically parties to this proceeding. John D. Hassell, the adjacent property owner, submitted a request for party status in support of the

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application in which he expressed concerns about the impacts of the construction process on his property. (Exhibit 24.) The Board denied his party status request as his concerns were not related to the zoning relief and as he intended only to make a brief statement in support of the application.

Applicant's Case. The Applicant provided evidence and testimony describing the proposed two-story carriage house garage additions and asserted that the application satisfied the requirements for area variance relief. The Applicant argued that the prior demolition of the carriage houses that had once been on the property, as well as the structures' existing nonconformities, constituted an exceptional condition. The Applicant claimed that these circumstances would cause a practical difficulty, as constructing an addition that conforms to the Zoning Regulations would be more costly. Further the Applicant argued that the carriage house additions were necessary to provide additional living space and a secure garage so that the Applicant can "age in place." Finally, the Applicant provided evidence of support from the Historic Preservation Review Board, adjacent property owners, and neighborhood groups to show that the project would have no negative impacts on the surrounding neighborhood.

OP Report. By memorandum dated November 26, 2013, OP recommended denial of the requested relief. OP indicated that, although the proposed construction would not cause harm to the public good or the zoning plan, the Applicant did not demonstrate that the property is constrained by an exceptional condition that causes a practical difficulty. (Exhibit 25.)

DDOT Report. By memorandum dated December 3, 2013, the DDOT indicated that it had no objection to the relief requested. (Exhibit 27.)

ANC Report. By letter dated October 14, 2013, ANC 2B indicated that it discussed the application at its properly noticed meeting on October 9, 2013. With a quorum present, the ANC voted 8-0-1 to support the application. (Exhibit 22.) Two representatives of ANC 2B, Stephanie Maltz and Leo Dwyer, testified during the hearing about the ANC's deliberations on the matter and noted that the ANC's support for the relief requested was based on factors such as the benefit to the neighborhood, the modest increase in density, and the project's design.

Persons in support. John D. Hassell, owner of the adjacent property located at 1621 19th Street, N.W., testified in support of the application. Mr. Hassell expressed no concerns about the proposed addition itself, but raised his concerns about how the construction process might cause disturbances and security risks to the tenants of his property. Whit Fletcher, owner of 1611 19th Street, N.W., also testified in support of the proposed development. The Board also received seven letters of support from neighboring property owners. (Exhibit 26, exhibit C).

FINDINGS OF FACT

1. The property includes two adjacent rectangular lots that are located on the east side of 19th Street, N.W. between Corcoran Street, N.W. and Q Street, N.W. at 1617 and 1619 19th Street,

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N.W. (Square 134, Lots 18 & 19) (the Subject Property). Each lot contains 1608 square feet of land area and is approximately 16 feet wide. Both lots are level and flat.

2. The Subject Property is improved with a three-story, three-unit apartment building on Lot 18 at 1617 19th Street, N.W. and a three-story, one-family, owner-occupied residence on Lot 19 at 1619 19th Street, N.W.
3. The Subject Property is mapped within the Dupont Circle Overlay District (DC) and is zoned R-5-B.
4. The Dupont Circle overlay is intended to preserve and enhance "a unique resource to the District of Columbia" through retention of "its low scale, predominately residential character, independent small retail businesses, human scale streetscapes, and historic character, given the high-density development pressures caused by the proximity of the Central Employment Area and Dupont Circle Metrorail Station." (11 DCMR § 1501.1.)
5. The R-5 districts are general Residence districts designed to permit flexibility of design by permitting, in a single district, all types of urban residential development if they conform to the height, density, and area requirements. (11 DCMR § 350.1.) The R-5-B Zone District permits a moderate height and density. (11 DCMR § 350.2.)
6. The Subject Property is surrounded by similar row dwellings, which are used as one-family dwellings or apartment houses. To the rear of the Subject Property is a public alley.
7. The Subject Property is nonconforming with regard to lot occupancy. Subsection 403.2 requires dwellings in the R-5-B Zone District to have a maximum lot occupancy of 60%. The structure on Lot 18 has a lot occupancy of 66% and the structure on Lot 19 has a lot occupancy of 67%.
8. The Subject Property is also nonconforming as to open and closed court requirements. Subsection 406.1 requires a closed court, when provided, to have a minimum area of 350 square feet. Lot 19 provides a closed court with an area of 37 square feet. Subsection 406.1 also requires that an open court have a minimum width of six feet. Lot 18 provides an open court that measures 4.5 feet wide.
9. The Applicant provided an analysis of 50 surrounding properties within the R-5-B Zone District, demonstrating that 40 of those properties contain nonconforming structures. Many of these structures are nonconforming in terms of floor area ratio (FAR), lot occupancy, rear yard, and/or court requirements.
10. The Subject Property once contained two-story carriage houses in the rear yard, but the structures were demolished over 70 years ago.

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11. Some residences in the neighborhood have retained their original carriage house structures, including the four properties to the south; however, many carriage houses in the Dupont Circle area have been similarly demolished. The adjacent property at 1621 19th Street, N.W. lacks its original carriage house.
12. The Applicant proposes to construct two-story carriage house structures on Lot 18 and Lot 19, each with a connection to the principal structure on the lot. The carriage house addition would contain a garage on the first level, studio living space on the second level, and a green roof.
13. The Applicant proposes to demolish an existing addition to the main structure on Lot 18 and to remove a rear deck and carport from the main structure on Lot 19. The Applicant would also install an elevator within the existing open and closed court adjacent to the north side of the structure on Lot 19.
14. The gross floor area of the finished project would equal 3,365 square feet on Lot 18, which equals a FAR of 2.09. The gross floor area on Lot 19 would equal 3,597 square feet, with a FAR of 2.24. Subsection 402.4 dictates that the maximum FAR for properties in the R-5-B Zone District is 1.8.
15. The proposed construction will increase the lot occupancy to 77% on Lot 18 and 88% on Lot 19. The maximum lot occupancy permitted in the R-5-B Zone District is 60%. (11 DCMR § 403.2.)
16. The carriage houses would be located at the rear lot line, and accordingly, no rear yard would be provided for either lot. Subsection 404.1 requires each lot to have a rear yard with a depth of at least 15 feet.
17. The area between the proposed carriage house structure and the rear of the main structure would be a closed court, measuring 373 square feet on Lot 18 and 134 square feet on Lot 19. The closed courts would be approximately 10 feet wide for both lots. Subsection 406.1 requires that closed courts, where provided, must have an area of at least 350 square feet and a width of at least 15 feet.
18. The proposed additions would increase the existing nonconformities with regard to lot occupancy and closed court, therefore the project requires relief from § 2001.3.
19. The Applicant wishes to construct the proposed additions because the closed garage would enhance security, the additional space would create more storage for both buildings, and the plan allows for private green space. In addition, the Applicant plans to use the living space created by the second-level garage addition to house a caretaker or family member in the future.

20. The construction of the carriage house additions, with the requested relief, would cost approximately \$236 per square foot. The construction costs would increase to \$900 per square foot without the requested relief, as compliance with the zoning regulations would require the demolition of the back portion of the existing structures on each lot.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests area variances from the floor area ratio (FAR) limitation under § 402.4, the lot occupancy requirements under § 403.2, the minimum rear yard requirements under § 404.1, the closed court width and area requirements of § 406.1, as well as an area variance to increase the existing nonconforming aspects of the building under § 2001.3 to allow the construction of two-story carriage house garages in the DC/R-5-B Zone District at premises 1617 and 1619 19th Street, N.W. (Square 134, Lots 18 & 19). The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07 (g)(3) (2012 Repl.) to grant variance relief from the strict application of the Zoning Regulations. As noted by the District of Columbia Court of Appeals:

An applicant must show, first, that the property is unique because of some physical aspect or “other extraordinary or exceptional situation or condition” inherent in the property; second, that strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant; and third, that granting the variance will do no harm to the public good or to the zone plan.

Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939, 941 (D.C. 1987).

When determining whether the property is subject to an exceptional condition, the Board must find that there are “unique circumstances peculiar to the applicant’s property” and that these circumstances are not merely “the general conditions of the neighborhood.” *Palmer v. Bd. of Zoning Adjustment*, 287 A.2d 535, 539 (D.C. 1972). For the second aspect of the variance test, the Court of Appeals has held that the more stringent “undue hardship” standard applies to use variances, while an applicant seeking an area variance must show only “practical difficulties.” *Id.* at 540-41. The Court did not explicitly define “practical difficulties,” but notes that an applicant must show that strict compliance with the Zoning Regulations would be “unnecessarily burdensome.” *Id.* at 542.

The Board finds that the property is not subject to an exceptional condition. The two lots are rectangular, level, and flat. Their size and lot occupancy are typical of other properties in the neighborhood. As the Applicant pointed out, 40 out of 50 surrounding properties in the area have nonconforming aspects, including FAR, lot occupancy, rear yard, and court requirements. Therefore, the Board finds that the Subject Property’s existing nonconformities do not comprise an exceptional circumstance, but rather demonstrate the “general conditions of the neighborhood.” Additionally, the Applicant claims that the demolition of the Subject Property’s

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original carriage house constitutes a unique condition. Although some properties in the neighborhood have maintained their original carriage houses, other properties, including the lot to the north of the Subject Property, have similarly had their carriage houses demolished in the past. Accordingly, the Board concludes that the prior demolition of the Applicant's carriage houses is not an exceptional condition.

Having found that the Applicant has failed to meet the first prong of the variance test, the Board need not discuss the second and third prongs. Nevertheless, for the purposes of creating a complete record the Board will address these two elements.

As to the second element, even if these asserted exceptional conditions gave rise to an exceptional situation, the Applicant has failed to show how these unique circumstances would constrain the property and cause a practical difficulty. The Applicant contends that compliance would be unnecessarily burdensome because the construction of the proposed carriage house addition would be more costly if the project were designed so not to exceed FAR and lot occupancy limits. Further, the Applicant wishes to build the carriage house addition to ensure safety and to provide additional living space for a family member or future caretaker.

As to the issue of cost, the Court of Appeals has held that "a substantial increase in the cost of an intended improvement coupled with some loss in the overall utility of the property was not a practical difficulty that merited an area variance." *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990) (discussing *Barbour v. Bd. of Zoning Adjustment*, 358 A.2d 326 (D.C. 1976)). For this reason, the Board finds that the increase of construction costs from \$236 per square foot to \$900 per square foot, along with the Applicant's inability to add apartment and garage space to the Subject Property does not constitute a practical difficulty. As the property is currently improved with a three-story, owner-occupied dwelling and a three-story, three-unit apartment house, the inefficacy of adding additional living space can be deemed "some loss to the overall utility of the property," but it does not amount to a more significant burden that would warrant an area variance.

With respect to the Applicant's desire for more space, it is well settled a zoning variance cannot be granted on the basis of the property owner's personal circumstances, but must be based on the unique circumstances of the property itself. *Capitol Hill Restoration Society, Inc. v. D.C. Bd. of Zoning Adjustment*, 398 A.2d 13, 15-16 (D.C. 1979). As this Board has stated, "[v]ariance relief is extraordinary relief in that it permits what would otherwise not be permitted, and it cannot be granted merely for personal preference." *Application No. 17977, of Frederic and Laure-Anne Badey* (2009).

Finally, the Board agrees with the Office of Planning that granting the variance would do no harm to the public good or to the zone plan. However, since the Applicant failed to meet its burden on the first two elements, the variance must be denied.

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The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)). In this case, for the reasons discussed, the Board concurred with OP’s recommendation to deny the application.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC in its written report. (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) (2012 Repl.)).) After deliberating on the matter at a regularly scheduled, properly noticed meeting, ANC 2B voted in support of the application principally based upon the project’s design, its modest increase in density, and the benefit to the neighborhood in restoring the historic carriage house. Thus the ANC’s concerns were only relevant to the third prong of the variance test pertaining to the potential harm of granting the relief requested. As noted, the Board concurs with the ANC’s conclusion on this issue. However, because the Applicant failed to show an exceptional condition on the property, the Board cannot follow the ANC’s recommendation that the application be granted.

Based on the findings of fact and conclusions of law, the Board finds that the Applicant has not satisfied the burden of proof with regard to the request for area variances from the FAR limitation under § 402.4, the lot occupancy requirements under § 403.2, the minimum rear yard requirements under § 404.1, the closed court width and area requirements of § 406.1, an enlargement of the existing nonconforming aspects of the building under § 2001.3 to allow the construction of two-story carriage house garages in the DC/R-5-B Zone District at premises 1617 and 1619 19th Street, N.W. (Square 134, Lots 18 & 19). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: **3-1-1** (Peter G. May, S. Kathryn Allen, and Jeffrey L. Hinkle to Deny the application; Lloyd J. Jordan to Approve the application; 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 15, 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.