

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18823 of Peggy Joyner, as amended¹ pursuant to 11 DCMR § 3103.2 for area variances from the lot occupancy requirements under § 403 of the Zoning Regulations, the rear yard requirements under § 404 of the Zoning Regulations, and the nonconforming structure requirements under § 2001.3 of the Zoning Regulations, to construct additions to an existing row house dwelling and detached garage located at 738 Quincy Street, N.W. (Square 3130, Lot 55).

EXPEDITED REVIEW

CALENDAR: September 6, 2014

HEARING DATES: November 18, 2014, December 9, 2014, and February 3, 2015

DECISION DATE: February 3, 2015

DECISION AND ORDER

On June 26, 2014, Peggy Joyner, (the “Applicant) filed an application with the Board of Zoning Adjustment (the “Board”) seeking special exception relief from the Zoning Regulations, to allow additions to an existing nonconforming dwelling and detached garage, and an elevated walkway connecting the new second-story garage with the main floor of the existing dwelling. Following revisions to the proposal and a request for a variance instead of a special exception, the Board held a full public hearing on the matter. After the hearing, the Board voted to approve the proposal, as revised.

PRELIMINARY MATTERS

Authorization. The Applicant in this case is Peggy Joyner, owner of the property located at 738 Quincy Street, N.W. She was represented by Catarina Ferreira, an architect with the firm “archi-TEXTUAL, PLLC.” (Exhibit 13.)

Notice of Public Hearing. 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,

¹ The Applicant initially sought a special exception, but as will be explained in greater detail, she amended her request to seek variance relief from the lot occupancy requirements, the rear yard requirements, and the nonconforming structure requirements. The caption reflects these changes.

BZA APPLICATION NO. 18823

PAGE NO. 2

Advisory Neighborhood Commission (“ANC”) 4C, and the District of Columbia Office of Planning (“OP”).

The Initial Special Exception Application. The application was filed by Ms. Ferreira on June 26, 2014, seeking a “special exception”² encompassing the lot occupancy requirements under § 403 of the Zoning Regulations, to allow the rebuilding of an existing screened porch at the residence, the addition of a second story onto an existing one-story garage building at the rear of the lot, and an elevated walkway to connect the garage to the dwelling. (See, Exhibit 1, Application and Exhibit 6, Self-Certification form.) The Applicant asserted that the existing nonconforming lot occupancy was 69%, and the proposal would result in a new lot occupancy of 70%. (Exhibit 6, Self-Certification form, and Exhibit 5, Architect’s Statement, dated June 20, 2014.)

The Applicant also stated that the special exception application qualified for “Expedited Review” pursuant to § 3118 of the Regulations. Accordingly, she requested a “Waiver of Public Hearing for Expedited Review” (Exhibit 2), and the matter was scheduled for the Expedited Review Calendar on September 6, 2014.

The Request for Variance Relief. The Applicant did not file a formal request to amend her application or to remove the application from the Expedited Review Calendar. However, the Board treats her submissions as such. The Applicant filed a Statement dated September 9, 2014, clarifying that she was requesting area variances from the lot occupancy requirements and the rear yard requirements. (Exhibit 27.) Ms. Ferreira explained that the existing lot occupancy was actually 70%, not 69% as she had initially thought; and the proposed additions would result in a lot occupancy of 80%, not 70% as she had initially thought. The Board therefore concluded that the proposed project would not qualify for special exception relief under § 223³; and that variance relief is required for this project.

Accordingly, the application was removed from the Expedited Review Calendar and set for public hearing on November 18, 2014. The hearing was thereafter continued to December 9, 2014, due to the Applicant’s initial failure to post placards at the property in accordance with the requirements under § 3113. Thereafter, the Applicant filed an Affidavit of Posting indicating that she had complied with the posting requirements. (Exhibit 31.)

ANC 4C Report. The subject site is located within the jurisdiction of ANC 4C, which is automatically a party to this application. By a Report dated October 30, 2014, ANC 4C indicated that, at a properly noticed meeting on that date, with a quorum present, the ANC voted 7-0-1 to recommend approval of the request for relief.

Requests for Party Status. The Board received no requests for party status.

² There is no reference to § 223 in the initial filings. However, the Board assumes the Applicant’s initial intent was to seek relief under this provision of the Zoning Regulations.

³ Under § 223, the granting of relief may not result in a lot occupancy that exceeds 70%. (11 DCMR §223.3.)

BZA APPLICATION NO. 18823**PAGE NO. 3**

Persons in Support. No persons appeared at the hearing to testify in support of the application. However, the Board received letters in support from four nearby neighbors, two of whom were located adjacent to the property (Exhibits 14 and 29) and two of whom were located across the alley from the subject property. (Exhibits 15 and 28.)

Persons in Opposition. No persons appeared at the hearing to testify in opposition to the application, nor were any letters received from persons in opposition to the application.

Government Reports:

Office of Planning (“OP”) Report. OP reviewed the application and prepared a report stating it could not recommend approval of the variance relief, stating the alleged exceptional qualities of the lot did not result in practical difficulty that was sufficient to warrant the extent of the relief proposed. (Exhibit 32.) OP noted, however, that the proposal would not result in a detriment to the public good. Because the lot is next to public space, OP stated that the lot is perceived to be larger than it is, and the lot coverage therefore appears to be a smaller percentage than it actually is. OP opined further that the proposal would begin to erode the intent of the R-4 District and would, thus, impair the zone plan. However, OP also noted that “the proposed additions are similar in size to other similar deck and walkway additions in other R-4 districts and are essentially accessory uses to the main residential use of the property as they are one-story and unenclosed.” Finally, OP notes that the project would also require relief from § 2001.3, since the existing structures are nonconforming with respect to lot occupancy.

District of Columbia Department of Transportation (“DDOT”). DDOT submitted a report stating that it has no objection to the application. (Exhibit 26.)

FINDINGS OF FACT**The Subject Property and Surrounding Area**

1. The subject property is located at 738 Quincy Street, N.W., in Square 3130, Lot 55, in the R-4 Zone District.
2. The property is a rectangular lot approximately 2,434 square feet in area, with a frontage of 20 feet on Quincy Street.
3. The rear of the lot is 20 feet in width and abuts a 15-foot wide public alley.
4. The lot is an end row lot that is adjacent to an empty enclosed public space to the west. The public space and the subject property are at the same elevation.
5. The lot is improved with a row dwelling and a one-story garage at the rear of the property. At the rear of the dwelling, there is a flight of stairs that lead to the rear yard.
6. The nearby properties are also predominantly row dwellings.

BZA APPLICATION NO. 18823

PAGE NO. 4

7. From east to west along the alley side of the block, there is a drop in elevation of about 10 feet between the adjacent property to the east, and the subject property.

The Proposal

8. The Applicant proposes the following: enclosure of the existing porch at the dwelling, construction of a new second-story addition located above the existing one-story detached garage (to be used as a gym), construction of a new wooden deck at the rear of the dwelling with stairs to the rear yard, and construction of an elevated walkway connecting the new second-story garage with the main floor of the existing dwelling.
9. During the course of the proceedings, the Applicant reduced the width of the elevated walkway from four feet to three feet. (Hearing Transcript ("T."), February 3, 2015, p. 33-34.)

The Zoning Relief Required

10. Subsection 403.2 allows a maximum lot occupancy of 60% in the R-4 Zone District. The dwelling and garage currently occupy 70% of the lot. With the additions described above, the lot occupancy will be 79%.⁴ Thus, an area variance is needed from the requirements of § 403.2.
11. Subsection 404.1 requires a minimum rear yard of 20 feet in the R-4 Zone District. The rear yard at the property is currently 6.5 feet. Construction of the proposed additions will not change the size of the rear yard. Still, an area variance is needed from the requirements of § 404.1.
12. The lot occupancy and rear yard at the property are both nonconforming. However, only the nonconforming lot occupancy will be increased (from 70% to 79%). Because this nonconformity will be increased, relief from the requirements of § 2001.3 is also required.

Exceptional Condition

13. Because of the significant change in elevation on the block, the subject property is at a lower grade than all of the adjacent properties on the block to the east.
14. When comparing the subject property to other properties on the block, there is a significant difference in height between the main level of the dwelling and the rear yard. Most of the properties along the block are about $\frac{1}{2}$ story above the elevation of the rear yard. In contrast, the first floor of the dwelling at the subject property is nearly a full story above the level of the rear yard.

⁴ The initial proposal resulted in a lot occupancy over 82%. However, the Applicant revised the proposed walkway, resulting in slightly decreased lot occupancy of 79%. (T., February 3, 2015, p. 33).

BZA APPLICATION NO. 18823
PAGE NO. 5

15. The only other property on the block at the same grade as the subject property is the public space to the west. Because the public space is unoccupied, and because it is at the same grade as the subject property, it appears that the two properties are one.

Practical Difficulty

16. Due to the significant height between the subject dwelling and the yard, a long flight of stairs is required to reach the yard level.

17. It is practically difficult to go down a full flight of steps to reach the rear yard. Therefore, the Applicant needs a rear deck addition to have convenient access to an outdoor area for grilling and other activities.

18. It is practically difficult to go down a full flight of steps, walk across the yard, and go up another full flight of steps to reach the second story of the garage. Therefore, for convenient access, the Applicant needs an elevated walkway connecting the dwelling to the second story of the garage.

19. The long flight of stairs, rear deck addition, and elevated walkway all contribute to additional lot occupancy.

The Impact of the Proposed Additions

20. Most of the row dwellings in the Square likely exceed the lot occupancy requirements of the R-4 Zone District.

21. The renovation of the existing garage will allow for additional off-street parking.

22. The proposed privacy fence/trellis element under the walkway, and the railings along the deck and walkway, will aid in the privacy and separation of rear yard uses from the adjacent neighbor to the east.

23. The 2,400 square foot area of public space adjacent to the site will help to minimize the impact of the proposed additions. Specifically, the proposed bulk of the additions will be perceived in conjunction with the adjacent open space. Thus, in terms of the “perceived visual impact”, the proposed additions will appear at a mass or bulk that is closer to 40% of the lot, due to the adjacency to the fairly large public space area.

24. When viewed from the public alley, the new garage structure will be a visual improvement.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g) (3) (2008) to grant variance relief from the strict application of the Zoning Regulations. As

BZA APPLICATION NO. 18823**PAGE NO. 6**

noted by the Court of Appeals, the Applicant must meet a three-prong test for the Board to grant relief:

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).

An applicant for a use variance must show that strict compliance with the applicable regulation will result in an undue hardship while an applicant for an area variance must meet the less stringent standard that compliance will result in exceptional practical difficulties. (11 DCMR §3103.7.)

As noted, the Applicant is seeking area variances from the lot occupancy requirement (§ 403), the rear yard requirements (§ 404), and the nonconforming structure requirements (§ 2001.3). Therefore, the “practical difficult[y]” standard will be applied.

The Board finds that the drop in elevation at the subject property presents an exceptional condition. This exceptional condition leads to a practical difficulty in the Applicant’s ability to access outdoor space at the dwelling, and the Applicant’s ability to access the proposed second floor garage.

As explained in the Findings of Facts, the elevation at the property results in a main floor that is a full story above the yard level. Because of this fact, a long flight of stairs is necessary to reach the yard level, the only existing outdoor space at the property. Construction of a deck would provide more convenient outdoor space, but would contribute to additional lot occupancy. Similarly, the only way to access the proposed second floor at the garage would be to walk down a full flight of stairs, walk across the yard, and then walk up another full flight of stairs. Construction of an elevated walkway connecting the dwelling and the garage would remedy this difficulty but would also contribute to increased lot occupancy.

OP states in its report that the Applicant has not established the existence of an exceptional condition. (Exhibit 32.) OP explains that neither the fact that the property is nonconforming, nor the fact that the property is adjacent to public space, constitute an exceptional condition. The Board agrees. However, OP did not address the drop in elevation at the property which results in the main floor of the dwelling being significantly above grade, and the access problems which stem from this fact. At the continued hearing on February 3, 2015, the Applicant submitted photographs which depicted this difference in grade, along with a written explanation. (Exhibit 35, Photographs titled “Contextual Analysis: Square 3130 – Differences in Height Between Main

BZA APPLICATION NO. 18823**PAGE NO. 7**

Level & Rear Yard".) These submissions confirmed the Board's view that the grade change is an exceptional condition at the property.

Turning to the third prong of the variance test, the Board concludes that the proposed project will not impair the public good or the zone plan. As discussed by the Applicant and by OP, the property is an end row house that is adjacent to a landscaped enclosed public space area that is at the same grade as the subject property. As OP states, the proposed bulk of the additions will be perceived in conjunction with the adjacent open space, and the perceived visual impact will be significantly minimized. (Finding of Fact 23.) Furthermore, the renovation of the existing garage will allow for additional off-street parking and will be a visual improvement when viewed from the public alley. (Findings of Fact 21 and 24.) Finally, the proposed privacy fence/trellis under the walkway, and the railings along the deck and walkway, will both aid in the privacy and separation of rear yard uses with the neighbor to the east. (Finding of Fact 22.)

OP claims that the proposed additions will impair the zone plan. It reasons that there will be a significant increase in lot occupancy for one of the largest row house lots in the Square, and that this increase begins to erode the intent and purpose of the R-4 regulations. However, as even OP observes, the proposed additions are similar in size to other similar deck and walkway additions in other R-4 Districts, and most of the row dwellings in the Square already exceed the lot occupancy requirements of the zone. (Exhibit 32, p. 3 and 4; See, also, Applicant's Exhibit 35, "Lot Occupancy Analysis: Square 3130 showing several properties with lot occupancy of 70% or greater.) The Board cannot find that a condition that is so common in the Square and in other R-4 Districts will impair the zone plan.

Advisory Neighborhood Commission

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)(3)(B) requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case ANC 4C recommended approval of the application. For reasons stated in this Decision and Order, the Board finds the ANC's advice to be persuasive.

Office of Planning

The Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive as to the proposed project not impairing the public good. However, for reasons also stated in this Decision and Order, the Board does not find OP's advice to be persuasive regarding the first and second prongs of the variance test, and as to whether the proposed project would impair the zone plan.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application, as amended, is hereby **GRANTED**, to allow area variances from the lot occupancy requirements,

BZA APPLICATION NO. 18823

PAGE NO. 8

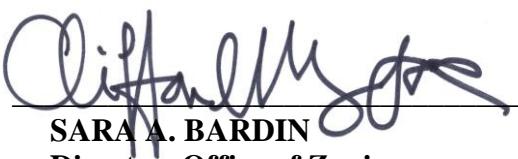
the rear yard requirements, and the nonconforming structure requirements, **SUBJECT TO THE APPROVED REVISED PLANS AS SHOWN ON EXHIBITS 30 AND 37.**

VOTE: 5-0-0 (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, Marnique Y. Heath and Marcie I. Cohen to Approve.)

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

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER August 11, 2015

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.

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

BZA APPLICATION NO. 18823

PAGE NO. 9

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.