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GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

**MEMORANDUM**

**TO:** Board of Zoning Adjustment

**FROM:** Andrew Altman
Director

**DATE** February 2, 2001

BZA
Case No. 16653
Exhibit No. 22

**SUBJECT:** BZA Application 16653

## APPLICATION

Pursuant to 11 DCMR 3103.3 of the Zoning Regulations, the applicant, Demtria-Danyell Gibson is proposing to renovate an existing non-conforming row dwelling unit, and to construct a new two-story rear addition to the premises at 821 12th Street, N.E., Lot 128, which is on Square 1003. The applicant is seeking Board of Zoning Adjustment approval of a variance under § 2001.3 (a) (b) and (c) to allow enlargement to an existing non-conforming single-family dwelling in an R-4 zone District. R-4 districts are designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) families.

## SUMMARY RECOMMENDATION

The Office of Planning recommends that the Board of Zoning Adjustment approve the application submitted by Demtria-Danyell Gibson, seeking relief pursuant Section 3103.3 of the Zoning Regulations, to renovate an existing non-conforming roe dwelling, located in the R-4 Zoned District. The applicant is requesting an area variance under § 2001.3 of the Zoning Regulations to allow the construction of a new two-story addition to a non-conforming residential structure in a R-4 Zoned District.

## SITE AND AREA DESCRIPTION

The subject property is at 821 12th Street, N. E., Square 1003, Lot 128. The site currently is developed with a two-story row dwelling that was purchased by Ms Demtria-Danyell Gibson through the District's Homestead Program. The unit is on the east side of 12th Street, N.E., with similar uniformly constructed row dwellings on both sides. The area

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surrounding the subject property can be characterized as containing additional row dwellings to the north and west and commercial services to the south (approximately one block) along the H Street commercial corridor. Many of the residential structures in the area are in poor to fair condition, and show signs of needing investment.

## APPLICAN'S PROPOSAL

The applicant, Demtria-Danyell Gibson, is proposing to renovate a single-family row dwelling and continue using the structure as a single-family dwelling. The applicant proposes to construct a new two-story rear addition to offset the inadequate building size.

The structure is located on Lot 128, which is on Square 1003. The structure is a nonconforming dwelling in a R-4 zoned District. The nonconformance is based of the fact that the subject lot does not meet the minimum lot size permitted in the R-4 Zone District. R-4 Districts require a minimum lot area of 1,800 square feet, and a lot width of 18 feet. The subject lot contains only 528 square feet and the width is only 13 feet.

## REQUESTED ZONING RELIEF

Pursuant to Section 3103.3 of the zoning regulations, the applicant is requesting a variance from the enlargements or additions requirements, which can be made to a nonconforming structure devoted to conforming uses.

## AUTHORITY TO GRANT VARIANCES

11 DCMR, §3103.3 cites the D.C. code provision that authorizes the BZA to grant the requested variance "where, by reason of exceptional narrowness, shallowness or shape of a piece of property, 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 any regulation … would result in

- peculiar and exceptional practical difficulties to or
- exceptional and undue hardship upon the owner of the property …;

provided, that the relief can be granted

- without substantial detriment to the pubic good and
- without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."

**DOES THE APPLICATION MEET THE VARIANCE TEST?**

1. With respect to exceptional narrowness, shallowness or shape of a piece of property:
   It does meet the test.
   The subject lot is considered "substandard" in size, when compared to the minimum lot size permitted in R-4 zone districts. The inadequacy of the lot size is the basis for the applicant having to seek variance relief.

   The property was purchased through the Department of Housing and Community Development, Homestead Program, a housing preservation program. The program was established to provide much-needed homeownership opportunities to low and moderate-income residents. The program gives first-time homebuyers, who otherwise might be unable to purchase a house, a chance to become homeowners in the District of Columbia. The Homestead Housing Preservation Program also enables organized groups of low and moderate-income residents to acquire multi-family properties and convert the buildings to cooperatives and condominiums

   Another goal of the Homestead Program is to remove blighted and dilapidated properties in the District, by selling them to low and moderate-income purchasers, for as little as $250.00 per unit. The sold properties are then renovated, using a $10.000 deferred loan, which is made available through the Homestead Program, when the property is sold. The homebuyer is responsible for securing financing for the balance of the rehabilitation expenses. Once the properties are purchased and rehabilitated, they are returned to the active tax rolls.

   According to Lynn French, director of the Department of Housing and Community Development Homestead Program, the subject house has had approximately 5 potential purchasers, over the last five years. Each of the potential purchasers after conferring with architects concluded that the structure needed extensive renovations (gutting) and modifications, in order to be made livable. Their architects advised the prospective purchasers that the exceptional narrowness, shallowness and the extremely small size of the lot and complying with the zoning regulations of the assigned zoning district (R-4), would be difficult. In each case, the prospect purchaser opted not to complete the purchase. Ms. French believes that until the property is purchased, renovated and occupied, it remains prey for vandals, provides a haven for negative behavior and is a negative reflection on the community.

2. With respect to peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property:

It does meet the test.

The applicant, in this case, purchased the subject property, through a D.C. government-housing program established for first-time purchasers, without regard for the irregular shape or size of the property. If the requested relief is not granted, it is very likely that the property will remain unoccupied in an area devoted to residential uses

The applicant is requesting an area variance under §2001.3 of the Zoning Regulations to allow an addition to a non-conforming residential structure in an R-4 District. § 2001.3 does permit enlargements or additions to a non-conforming structure, provided that the following requirements are met:

(a) **The structure shall conform to percentage of lot occupancy requirements.**

The subject structure cannot conform to the percent of lot occupancy required, because the lot is substandard in size to the minimum lot size permitted in R-4 zone districts. The subject lot is only 526 square feet and 13 square feet in width. The minimum lot size permitted in a R-4 zone district is 1,800 square feet and 18 feet in width.

**LEGAL SUPPORT**

**[Palmer V. Board of Zoning Adjustment, supra at 542.]**

"It appear from the foregoing that the exceptional shape or contour of a particular piece of property may be the ground for granting a variance, if the strict application of the zoning regulations would result in "peculiar and exceptional practical difficulties" to the owner. This language may well have some application to the merits of petitioner's case but nowhere in its opinion did the Board advert to this aspect of the matter."

The subject lot is substandard in size, to the minimum lot area permitted in R-4 zoned districts.

**In [Palmer, Supra, Chief Judge Hood, after reiterating the threshold requirement of all variance cases – that the difficulty or peculiarity associated with the applicant's property be unique in that it in uncommon to the entire neighborhood or community, Otto v. Steinhilber, 282 N.Y. 71., 24 N.E.2d 851 (1939) -- dealt at length with the different hardship standards**

**applicable to use and area variances, respectively. The burden upon applicants seeking a use variance is more severe in that a showing of "exceptional and undue hardship" must be made. Yet where a substantial lot is the subject of a hardship application, proof of only "peculiar and exceptional difficulties" is involved.**
**As Judge Hood summarized it:**

**" Where substandard lots are involved the practical difficulty is perforce of an extreme nature -- an inability to put the lot to any conforming use. In these instances the concept of "practical difficulty" and "undue hardship" overlap so that the courts often tend to speak of them synonymously. The statute, however, does not require the owner to make such a stringent showing with respect to area variance. Generally it must be shown that compliance with the area restriction would be unnecessarily burdensome" . . . Palmer v. Board of Zoning Adjustment, supra at 542.]**

The two-story addition proposed by the applicant will add approximately 130 square feet of livable space to the subject dwelling, which currently contains only 338 square feet of livable space and consumes approximately 64.2 per cent of the lot. If the area variance is granted, the reconstructed dwelling will contain 468 square feet of livable space and consume about 89 per cent of the lot. If the relief were not granted, the very small size of the unit would render the livable space insufficient for adult occupancy.

**( c) The addition or enlargement itself shall not increase or extend any existing, nonconforming aspects of the structure, and shall not create any new nonconformity of structure and addition combined.**

The proposed use, which is single-family residential, does not conform to the Zoning requirements. However, because the structure is on a substandard lot, it is impossible to renovate it, (including adding a two-story addition to the rear of the building) and be in conformance with the structure requirements of R-4 zone districts.

The two-story addition proposed by the applicant will add approximately 130 square feet of livable space to the subject dwelling, which currently contains only 338 square feet of livable space and consumes approximately 64.2 per cent of the lot. If the area variance is granted, the reconstructed dwelling will contain 468 square feet of livable space and consume about 89 per cent of the lot. If the relief were not granted, the very small size of the unit would render the livable space insufficient for adult occupancy.

The requested improvements to the subject structure would add an additional 130 square feet of livable space to the subject dwelling, therefore adding to an existing non-conformance regarding lot occupancy and rear yard setback. The fact that the owner knew or should have known of the area restrictions before she purchased the property does not alter the lesser standard. . **[Palmer V. Board of Zoning Adjustment, supra at 542.]**

## CONSISTENCY WITH THE COMPREHENSIVE/WARD SIX PLANS

The Comprehensive Plan Generalized Land use Map depicts the area around the subject dwelling as being in the moderate density residential land use category. Row houses and garden apartments are the predominant uses in this category. Low-density housing may also be included in the moderate density land use category, as appropriate uses. The project conforms to the land use map.

§1707 of 10 DCMR Ward 6 Plan, Actions to Implement the Housing Objectives, §1707.1, states that, among the actions to implement housing are the following:

a) Promote preservation and enhancement of low- and moderate-income housing development opportunities, and provide incentives to encourage low- and moderate-income home ownership.
b) Provide incentives to encourage home ownership and occupancy.

## COMMUNITY COMMENTS

The applicant indicated that the project was presented to ANC 6-A and that the ANC supports the application. OP contacted the ANC chairperson, Mr. Marvin F. Fields. Mr. Fields confirmed that ANC 6A, at its Zoning and Licensing Committee meeting, held on January 10, 2001, voted to recommend that the full ANC 6A approve the project. The full ANC concurred with the recommendation of the Committee, and at its regular monthly meeting, held on January 24, 2001, voted unanimously to support the project.

## RECOMMENDATION

It is OP's conclusion that the applicant has met the burden of proof, pursuant to 11 DCMR 3103.3 of the Zoning Regulations, for the granting of a variance from § 2001.3, to permit the renovation of a nonconforming residential dwelling at premise 821 12th Street, N. E., and the building of a two-story addition to the dwelling. OP concludes that the requested area variance 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 Maps. It is therefore the Office of Planning's recommendation that the application for an area variance, to renovate a non-

conforming residential dwelling, and the construction of a new two-story rear addition to the structure, located in the R-4 Zoned District, be approved by the Board of Zoning Adjustment.