GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director
Office of Planning

DATE: March 15, 2001

SUBJECT: Waiver of Rules for Late Submittal of a Revised Report concerning BZA Application 16685 requesting a Special Exception and variance for an addition to a dwelling located at 321 4th Street, S.E.

The attached revised report, concerning an application from Ms. Sherri Finkel, requesting the zoning relief pursuant to Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning, in the form of a variance from the requirements of Section 403.2 to increase the allowable percentage of lot occupancy for a dwelling in the CAP/R-4 District, and a Special Exception under Section 223.1 to allow a dwelling extension with nonconforming side yards, is submitted less than 7 days prior to the Board of Zoning Adjustment's Public Hearing. The Office of Planning respectfully requests that the Board waive its rule and accept the report into the record.

BZA
Case No. 16685
Exhibit No. 25

Board of Zoning Adjustment
District of Columbia
CASE NO.16685
EXHIBIT NO.25

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: March 15, 2001

SUBJECT: BZA Application 16683

APPLICATION

Application of Ms. Sherri Finkel requesting the following zoning relief pursuant to Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning:

- A variance from the requirements of Section 403.2 to allow the percentage of lot occupancy to exceed that allowed for a single-family dwelling in the CAP/R-4 District.
- Special Exception relief under Section 223.1 to allow a dwelling extension with nonconforming side yards. (Section 3104.1)

SUMMARY RECOMMENDATION

The Office of Planning recommends conditional approval of a Special Exception under Section 223.1 from the requirements of Sections 403 (lot occupancy), 405 (side yard) and 406 (court width) of the Zoning Regulations.

Staff also determined that this proposal would require a variance from Section 2001.3 (a) and (c) to allow enlargement of an existing nonconforming building, and recommends conditional approval of said variance. (Section 3103.2) The conditions are that the applicant:

- Applies for a building permit within thirty days of the effective date of the BZA Final Order; and
- Secures a Certificate of Occupancy for the existing addition with six months of the BZA Final Order.

SITE AND AREA DESCRIPTION

The subject property at 321 4th Street, S.E., an interior lot located west of 4th Street, N.E., is developed with a two-story single-family dwelling of masonry construction. A wooden fence surrounds the side and rear yards. Next to and west of the property (and behind all the dwellings fronting 14th Street, N.E.) is the Robert Brent Elementary School site. Note that the school gymnasium blocks visibility into the rear yard of the subject property from the west.

North and south of the property are similar semi-attached and detached residences, a three-story flat, and the Washington City Church of the Brethren at the intersection of North Carolina Avenue and 4th Street, S.E. To the east, across 4th Street, S.E., are two- and three-story masonry row dwellings and the Ebenezer Methodist Church at the intersection of D Street and 4th Street, S.E. The surrounding property is zoned Capital Interest District (CAP)/R-4 and located in the Capitol Hill Historic District.

The existing dwelling was constructed in 1900 and renovated in 1975. The building has a total floor area of 1,083 square feet, and is constructed to the front and (southern) side property lines. It is also set two-feet back from the northern property line.

APPLICANT'S PROPOSAL

Ms. Sherri M. Fickel, the applicant, acquired the subject property in 1995. The applicant proposed to replace the existing brick patio behind the dwelling with a 14' x 10.5' glass-enclosed sunroom addition with a rooftop deck. Late last year, her contractor submitted construction plans to the Department of Consumer and Regulatory Affairs (DCRA). In a letter to the Board of Zoning Adjustment (BZA) dated December 5, 2000, Zoning Administrator Michael D. Johnson stated that the proposed addition required:

- A variance from Section 403.2 to allow a percentage of occupancy in excess of that allowed for a single-family dwelling in CAP/R-4 District. (Section 3103.2)
- Special exception to allow the (addition) with nonconforming side yards pursuant to Section 223.1.

The applicant submitted the necessary BZA application. Issuance of the building permit was delayed pending BZA action. However, OP staff observed during a site visit that the referenced addition has been constructed and appears to be in use. A review of DCRA files confirms that no building permit was issued.

The applicant provided architectural elevations and a deck-framing plan with this application.

EXISTING ZONING AND RELIEF REQUESTED

The subject property is seventeen feet wide and approximately 100' long with an area of 1,700 square feet. Under the current regulations, the minimum lot width and area in an R-4 district for a semi-detached single-family dwelling is thirty feet and 3,000 square feet, respectively. Based on City assessment records, this lot was established before 1958 and before the adoption of Title 11 in 1995. Therefore, this property is a legally nonconforming lot.

The Zoning Regulations define a "Dwelling, one-family, single-detached" as "a one-family dwelling, the wall on one (1) side of which is either a party wall, or a lot line wall, having one side yard." This definition applies to the subject property. Section 330.5 lists a "one-family semi-detached dwelling" as a use permitted by right in this zoning district. Therefore, the use continues to be a conforming use.

The existing yards are a zero to the south, a northern side yard of two feet, and a rear yard of approximately 55'. The addition has a side yard of four feet to the south, a northern side yard of two feet, and a rear yard of 41'.

"Courts" are formed between the northern and southern dwelling walls, and the adjacent property lines. The southern court is five feet wide and the northern court is two-feet wide. Consistent with the Building Area definition in the Zoning Regulations, the northern court will be included in the building area.

The property and development are also subject to the following requirements:

Standard	**CAP/R-4 Requirement**	**Existing Building**	**Building & Addition**	**Required Relief**
Lot Area	3,000 s.f.	1,700 s.f.	Same	Non-conforming
Lot Width	30 feet	17 feet	Same	Non-conforming
Floor Area	---	1,128 s.f.	1,348 s.f.	N/A
Floor Area Ratio	1.8	0.66	0.79	N/A
Lot Occupancy (max.)	40% (single-family semi-detached dwelling)	36%	45%	Variance
Side Yard	8 feet	2 feet (North) 0 feet (South)	2 feet 5 feet (addition)	Variance
Court (open)	4 inch/foot height (minimum 6 feet)	5 feet	5 feet	Variance
Height	40 feet (or three stories)	2 stories	2 stories	N/A
Parking spaces	1	0	0	Variance
Front Yard	0 feet	0 feet	Same	N/A
Rear Yard	20 feet	55 feet	41 feet	N/A

With regard to the parking requirement, the existing use predates the current requirements. Expansion of this building would not increase the number of dwelling units on the property, so the proposed expansion may not require provision of on-site parking.

Based on this information, it has been determined that:

- The detached single-family dwelling use and addition are permitted by-right.
- The property does not meet the minimum lot width and size requirements of the R-4 District for detached single-family dwellings.
- The dwelling and addition do not meet the side yard requirement.
- The dwelling and addition do not meet the open court width requirement (south side).
- The expanded building exceeds the maximum allowable lot occupancy.

In her letter to the BZA dated March 9, 2001, the applicant stated that the special exception is requested to "provide … extra indoor space … without taking up too large a portion of my back yard." She stated that her house was built in 1917, and she believed the existing five-foot side yard was required of dwellings prior to 1958. "To maintain the current look of the property, and to construct an extension of a useable width, I am requesting this exception."

As to the variance request, she indicated, "While the house is detached, it was built in 1917 very much as a 'row-style house' ". She also believes "this to be an unusually narrow lot for a fully detached house and therefore we are requesting a variance for this very small difference."

In closing, the applicant notes, "In regard to both requests …, the extension will not adversely effect the use or enjoyment of nearby properties."

ANALYSIS
The applicant's proposal is subject to the following provisions of the Zoning Regulations.

The subject building is nonconforming. Section 2001.3 allows additions or enlargements to nonconforming structures provided that the following requirements are met:

"(a) The structure shall conform to percentage of lot occupancy requirements;
(b) The addition … itself shall conform to use and structure requirements; and
(c) The addition or enlargement shall not increase or extend any existing non-conforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined."

The single-family dwelling and addition:

(a) do not conform to the lot occupancy requirements;
(b) conform to the use and structure requirements; and
(c) extend existing nonconformities by extending nonconforming side yards further west.

Therefore, a variance is needed from this regulation.

The proposed addition would not meet the side yard and court width requirements, and would exceed the maximum allowable lot occupancy for a detached single-family dwelling. Approval of a special exception would address all these inconsistencies.

Section 3103.2 grants the Board of Zoning Appeals (BZA) the power to grant variances from regulations set forth under the Zoning Act "[w]here by reason of exceptional narrowness, shallowness or shape of a piece of property at the time of the original adoption of the regulations, or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code Ann. §§5-413 to 5-432 (1981) would result in peculiar and extraordinary practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided the relief can be granted without substantially impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Map."

The type of zoning relief needed is an "area" variance, requiring that the circumstances surrounding this request are "unique" and that the usual application of the referenced regulations would result in "peculiar and extraordinary practical difficulties."

Section 3104.1 grants the Board of Zoning Appeals (BZA) the authority "to grant special exceptions where in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps."

The requested special exception must also meet the standards listed under Section 223.1. This zoning regulation permits an addition to a one-family dwelling that does not comply with the requirements of Title 11 (in this case, lot occupancy, side yard and court width requirements under Sections 403, 405 and 406, respectively) if approved by the BZA, based on certain conditions (as outlined under Section 223.2):

"(a) The light and air available to neighboring properties shall not be unduly affected;
(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
(c) The addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the street frontage; and
(d) In demonstrating compliance with ¶¶(a), (b), and (c) of this subsection, the applicant shall use graphical representations … sufficient to represent the relationship of the proposed addition to adjacent buildings and view from public ways."

Under Section 1202.1, the BZA must also consider whether a special exceptions request for properties in the Capital Interest District (CAP):

"(a) Is compatible with the present and proposed development of the neighborhood;
(b) Is consistent with the goals and mandates of the United States Congress set forth in the Master Plan for Future Development of the Capitol Grounds and Related Areas (Public Law 94-59, July 25, 1975, 89 Stat. 288, 289); and

(c) Is in accordance with the plan promulgated under the Act."

Compliance with Section 3103.2:
The subject property is small compared to current Zoning Regulations for a single-family dwelling: it is approximately 43% narrower and smaller in area than the current minimum requirements. It is one of the two smallest lots on the square (two smaller lots are incorporated into the Brethren church site).

This dwelling is "semi-detached" which makes it more difficult to meet the area requirements. The fifteen-foot wide dwelling is squeezed onto a lot seventeen feet wide. Semi-detached and detached structures are also limited to maximum lot occupancies of 40% while row dwellings are allowed 60% lot occupancies. Thus, the lot dimensions and dwelling characteristics combine to create a unique situation on this square.

The inability to construct a sunroom with roof deck does not constitute "exceptional or extraordinary practical difficulty". However, any addition to the existing building that respected the referenced side yard requirements would have a total width of one foot, and no addition would be allowed under the referenced lot occupancy limitation.

Therefore, strict application of the referenced regulations, as adopted, would result in "peculiar and extraordinary practical difficulties" with regard to any dwelling expansion. In this unique situation, a variance could be granted "without substantially impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Map."

Compliance with Section 223.1
The applicant provided building elevations and a roof-decking plan. Based on this information and the site visit, it does not appear that the addition:

- Unduly affects the light and air available to neighboring properties;
- Unduly compromises the privacy of use and enjoyment of neighboring properties; and
- Is visible for any street frontage.

Compliance with Section 1202.1:
The proposed addition:

- Is compatible with the present and proposed development of the neighborhood; and
- Is consistent with the goals and mandates of the Master Plan for Future Development of the Capitol Grounds and Related Areas.

Compliance with Section 3104.1
Based on the compliance of the proposal with the referenced Sections, OP staff determined the requested special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property".

COMPREHENSIVE PLAN

The Comprehensive Plan Generalized Land Use Map designates the general surrounding area for medium density residential uses, with single-family detached and semi-detached as the predominant uses. The Comprehensive Plan, which is the legal basis for zoning in the District, enunciates, as its first principle, the importance of stability for residential neighborhoods. Under Section 101, Major Themes, the plan states:

> "The successful and creative functioning of neighborhoods is a fundamental concern. Citizen participation in civic improvement starts from the interest that people have in their neighborhood blocks and the day-to-day relationships therein. ...The District elements of the Plan propose that the residential character of neighborhoods be maintained and improved. ...Ensuring good quality neighborhoods is of utmost importance to the District."

In Title 11, the Land Use Element, the Plan gets quite specific. Section 1103, Objectives for Residential Neighborhoods, states:

> "The residential neighborhood objectives are to conserve the essentially satisfactory qualities of the District's many stable residential neighborhoods, to enhance other neighborhoods to improve and achieve stability, to redirect public and private initiatives to neighborhoods most in need of improvement and stability, to encourage development of adequate neighborhood shopping and support services in all sections of the District, to protect residential neighborhoods from disruptive uses and to prevent concentrations of non-residential uses in residential neighborhoods."

Policies in support of these objectives include "(1) Promote the conservation, enhancement and revitalization of the residential neighborhoods of the District for housing and neighborhood-related uses; ..."

Housing objectives for Ward 6 under Subsection 1705.1 include:

"(b) To stimulate production in Ward 6 of new and rehabilitated housing ... to provide housing opportunities and allow for residential growth and stability according to area needs, (and) encourage row house construction compatible with the existing neighborhoods ..."

Objectives for preservation and historic features in Subsection 1725.1 include:

"(b) To protect and preserve the historic character of the residential neighborhoods in the Capitol Hill ... Historic District ...;
(c) To encourage new development and renovations of structures that are sensitive to the character of the historic districts in Ward 6." [parentheses and dittos added]

COMMUNITY COMMENTS
Advisory Neighborhood Commission (ANC) 6B and the Capitol Hill Restoration Society (CHRS) were notified about this proposal. No comments have been received.

AGENCY COMMENTS
This proposal is subject to review by the Historic Preservation Review Board (HPRB). However, the HPRB has not seen this proposal. HPRB staff indicated that it is likely this addition would be approved if submitted. However, if the BZA approves this request, the applicant must formally submit a building permit application. Issuance of that permit will be subject to HPRB staff approval.

RECOMMENDATION
The existing addition is apparently illegal because it was constructed without an approved building permit. In order bring this structure into compliance, the Office of Planning recommends approval of the special exception and the required variance subject to a condition that the applicant:

- Apply for the building permit within thirty days; and
- Secure a Certificate of Occupancy for the existing addition within 180 days of the effective date of the BZA Final Order.

Note that it appears that a separate variance would not be required from Section 403.2 since the lot occupancy issue would be addressed by the special exception.

Attachment: Exhibit 1 Sanborn Map

AA/afj