GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

Application No. 16709 of Mr. and Mrs. William Brannon, pursuant to 11 DCMR § 3103.2 for variances from the side yard requirements under section 405, rear yard requirements under section 404, lot occupancy requirements under section 403, and subsection 2001.3, to allow an addition to a nonconforming structure in the CAP/R-4 District at premises 301 3rd Street, S.E. (Square 763, Lot 834).

HEARING DATE: June 12, 2001

DECISION DATE: July 3, 2001

DECISION AND ORDER

William F. Brannon and Katherine Smith Brannon, the owners of Lot 834 in Square 763 filed an application with the Board of Zoning Adjustment on February 21, 2001, seeking area variances pursuant to 11 DCMR § 3103.2 from the maximum percentage of lot occupancy, minimum rear yard, and minimum side yard provisions of 11 DCMR §§ 403, 404, and 405, as well as from the provisions of § 2001.3, which restricts additions to nonconforming structures. The Brannons seek to construct an addition to a two-family dwelling in the CAP/R-4 Zone District. The application is self-certified pursuant to § 3113.2. After a public hearing, the Board denied the application on the grounds that the applicants had failed to show that they would encounter practical difficulties if the Zoning Regulations are strictly applied.

BZA Case No. Exhibit No. 47

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 4, 2001, the Office of Zoning advised the Zoning Administrator; the D.C. Office of Planning; the Architect of the Capitol; Advisory Neighborhood Commission (ANC) 6B, the ANC for the area within which the subject property is located; the ANC commissioner for the affected Single-Member District; and the Ward 6 Councilmember of the filing of the application.

The Board scheduled a public hearing on the application for June 12, 2001. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on April 20, 2001, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 6B notice of the hearing. Notice of hearing was also published in the *D.C. Register* on April 27, 2001, at 48 DCR 3652. The applicant's affidavit of posting indicates that on May 23, 2001, a zoning poster was placed on the corner of the subject property at 3rd and C Streets, S.E., in plain view of the public.

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Request for Party Status. The Board granted Douglas C. Dacy party status pursuant to 11 DCMR § 3106.3, finding that his interests, as the owner of the adjacent dwelling at 305 3rd Street, S.E., would be more significantly affected than those of other persons in the general public.

Applicants' Case. The Brannons explained that they would like to convert the property, which they purchased two years ago as a two-unit rental property, to an owner-occupied, one-family dwelling. They presented their building plans, and stated that they were seeking zoning relief to construct an addition that would provide them with an increased amount of interior living space in which to raise a family. Their architect, Jerald Clark, described the addition and the required zoning relief.

Architect of the Capitol Report. By letter dated April 12, 2001, the Architect of the Capitol indicated that the addition would create no adverse effect on the Capitol complex or the Master Plan for the Capitol grounds and related areas, cited in 11 DCMR § 1200.1, or the other special objectives for which the Capitol Interest Overlay District was created.

ANC Report. The Board waived the seven-day filing deadline of 11 DCMR § 3115.1 to accept the ANC's June 5, 2001, written report. In its report, ANC 6B indicates that on May 8, 2001, at a properly noticed meeting with a quorum present, ANC 6B voted to support the application. The written report does not identify any specific issues or concerns with respect to the requested variances. Ann Black and David Sheldon represented the ANC at the hearing.

Persons in Support of the Application. The Board received a letter in support of the project from the Capitol Hill Restoration Society (CHRS). CHRS observed that the building, while not unusually small, is poorly configured internally for single-family use. Mary Weirich, a nearby neighbor, submitted oral and written comments in support of the application. The Board also received supporting letters from four other neighbors, who expressed their appreciation for the Brannons' efforts in painting and landscaping the property and their support for converting the property to an owner-occupied, one-family dwelling. The Brannons also submitted a petition in support of the application signed by approximately 52 of their neighbors.

Parties and Persons in Opposition to Application. Mr. Dacy, the adjacent property owner, presented written and oral testimony that the addition would adversely affect his property with respect to light, air, views, privacy, and water runoff, as well as reduce the value of his property and increase his property insurance premiums. He also argued that the applicants' difficulties were related to their personal aspirations, not practical difficulties resulting from peculiarities of their property.

Closing of the Record. The record closed at the conclusion of the hearing, with the exception of the certain photographs (Exs. 43 and 44), which have since been filed in the record.

Decision Meeting. At its public meeting on July 3, 2001, the Board, by a vote of 3 – 2 – 0, denied the application.

FINDINGS OF FACT

The Subject Property

1. The subject property, Lot 834 in Square 763, with a street address of 301 3rd Street, S.E., is located at the southwest corner of 3rd and C Street on Capitol Hill, in the CAP/R-4 District. The property fronts on C Street, and also has a street address of 227 and 229 C Street. As a result of earlier remodeling, there is no longer an entrance on the 3rd Street side.

2. In the past, there were two, two-story buildings on the property. The first structure was originally a corner store built in the mid-1800s, fronting on 3rd Street. The second structure was built approximately 60 years later as an attached dwelling, fronting on C Street.

3. A previous owner subdivided the property and remodeled the structures in 1963 so that both structures are now one building, located on one lot. Each floor of the building consists of a separate, one-bedroom apartment unit.

4. The existing building is therefore a "flat," defined in 11 DCMR § 199.1 as a two-family dwelling.

5. The minimum lot width in an R-4 District for a flat is 18 feet, while the minimum lot area is 1,800 square feet. 11 DCMR § 401.3. The subject lot, rectangular in shape, is 55 feet wide along C Street and 31.14 feet deep along 3rd Street. With a lot area of 1,712.7 square feet, the property does not conform to the Zoning Regulations.

6. Under § 403.2, the maximum percentage of lot occupancy for a flat in an R-4 District is 60 percent. The existing flat, with 835.5 square feet lot coverage as shown in Exhibit 42, or 49 percent lot occupancy, complies with the Zoning Regulations.

7. Subsection 404.1 requires a 20-foot minimum depth of rear yard in the R-4 District. The flat has a 15.14-foot rear yard, which does not conform to the Zoning Regulations.

8. The Zoning Regulations define the term "side yard" in § 199.1 as "a yard between any portion of a building or other structure and the adjacent side lot line, except as provided elsewhere in this title." The wall of the building on the east side abutting 3rd Street is located on the lot line. The building therefore lacks a "side yard" along the 3rd Street side. However, under § 405.5, a side yard is not required along a side street abutting a corner lot.

9. The building has a 3.92-foot side yard on the west side.

10. Because the building has only one side yard, it is considered a "semi-detached" flat for zoning purposes. *See* 11 DCMR § 199.1 (definitions of "detached one-family dwelling" and "semi-detached one-family dwelling"; a "detached" dwelling is a dwelling completely separated from all other buildings and having two side yards, while a "semi-detached" dwelling has a wall on one side, which is either a party wall or a lot line wall, and one side yard).

11. Under § 405.3, a semi-detached flat in an R-4 District must have a side yard on the free-standing side. Under § 405.6, where a yard is provided in an R-4 District, it must be at least eight feet wide. Further, in the case of a building constructed before May 12, 1958, with a side yard less than eight feet, an addition may be made to the building provided the width of the side yard is not decreased and provided further that the width of the existing side yard is a minimum of five feet. 11 DCMR § 405.8. The existing side yard on the west side of the dwelling does not conform to §§ 405.3 and 405.6, and does not meet the minimum five-foot width requirement of § 405.8 for an addition.

12. The Board finds that the existing building is a "nonconforming structure" as defined in § 199.1 since it does not meet minimum lot area, rear yard, and side yard requirements.

The Proposed Project and Variances

13. The Brannons state that they are seeking variance relief to build a two-story addition to provide the extra living space they would like in order to start a family. The Brannons would convert the two-family flat, which they purchased as an investment property, to an owner-occupied, one-family dwelling.

14. The addition would be constructed along the west side of the building, where it would occupy the entire side yard; and at the rear of the building to the south, where it would occupy the entire rear yard for 25-feet of the width of the lot.

15. The Brannons would attach the addition to the wall of the building on the adjoining lot to the west at 225 C Street, S.E. They would also attach the addition to Mr. Dacy's building to the south at 305 3rd Street, S.E., by 18 inches.

16. Since the building with the addition would no longer have any side yards, it would be a "row dwelling" as defined in § 199.1.

17. The addition would be approximately 360 square feet in size on each floor.

18. The applicants would also construct a front porch, 37-feet wide and 5-feet deep.

19. Under § 401.3, a row dwelling in an R-4 District has the same minimum lot area and minimum lot width requirements as a flat in an R-4 District. Therefore, like the existing building, the building with the proposed addition would be nonconforming with respect to lot area.

20. With 1264 square feet lot coverage, as stated in Exhibit 42, the addition would have a 74 percent lot occupancy. Since the maximum percentage of lot occupancy under § 403.2 for a row dwelling in an R-4 District is 60 percent, the project requires a 14 percent variance.

21. The addition also requires a variance from the minimum rear and side yard requirements, since it would eliminate the existing rear yard for approximately one-half the width of the lot, as well as the existing side yard for the full depth of the building.

22. Finally, the addition requires a variance from § 2001.3(b) and (c) relating to additions to nonconforming structures, since the addition would not conform to lot area, lot occupancy, rear yard, and side yard requirements and would increase the nonconforming rear yard aspects of the existing structure and create a new nonconformity with respect to lot occupancy.

23. Both the existing two-family dwelling and the proposed one-family dwelling are matter-of-right uses in the CAP/R-4 District.

Extraordinary or Exceptional Conditions of the Property

24. The property is somewhat unusual in that two smaller structures have been combined into one building.

Practical Difficulties

25. The applicants are requesting zoning relief based on their desire to convert a two-family rental property to an owner-occupied, one-family dwelling and their personal preferences for a larger home with an improved interior circulation pattern.

26. The applicants currently enjoy full economic use of the property as a rental property, notwithstanding the elongated floor plan and the fact that there is a split floor level, with two or three steps, on each floor.

27. The Board finds that the difficulties faced by the applicants, which involve their personal preferences, are not "unduly burdensome" and do not rise to the level of "peculiar and exceptional practical difficulties" required for variance relief.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code § 6-641.07(g)(3) (2001)), to grant variances from the strict application of the Zoning Regulations. Mr. and Mrs. William F. Brannon are seeking area variances from the maximum percentage of lot occupancy requirements of 11 DCMR § 403, the minimum rear yard and side yard requirements of §§ 404 and 405, and the provisions of § 2001.3, which limits additions to nonconforming structures, in order to construct an addition to a flat and convert the flat to a one-family dwelling in a CAP/R-4 District. The notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the subject property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment,* 579 A.2d 1164, 1167 (D.C. 1990).

In reviewing a proposed variance to determine whether it meets the three-prong test, the Board is required under D.C. Code § 1-309(d) (2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, the ANC's written report, while expressing support for the application, did not provide the Board with the reasons for its recommendation or specify any issues or concerns.

With respect to the variance test, the Board concludes that the property is somewhat unique given its internal configuration. However, with respect to the second test, the Board concludes that the Brannons failed to demonstrate that they would encounter practical difficulties if the Zoning Regulations are strictly applied. The Brannons identified as practical difficulties the amount of interior living space that would be available if they converted the flat to a one-family dwelling without variance relief, the elongated floor plan of the dwelling, and the split floor levels within the building. They would prefer a larger home, with an improved interior circulation pattern, in which to raise a family.

The Brannons have not shown that alternative methods of combining the two units to create a one-family dwelling are unnecessarily burdensome or rise to the level of "peculiar and exceptional practical difficulties" required for variance relief. As in *Barbour v. District of Columbia Board of Zoning Adjustment,* 358 A.2d 326, 327 (D.C. 1976),

> The fact that an expansion requiring a variance is personally preferable to other methods not requiring variances does not constitute a unique property situation. Further, this case does not present a situation where no use could be made of the property absent a variance, as in *A.L.W., Inc. v. District of Columbia Board of Zoning Adjustment,* [338 A.2d 428 (1975)].

Here the Brannons could combine the two units into a one-family dwelling without variance relief, or alternatively, continue the two-family rental use of the property. Since the Brannons have not met the practical difficulty prong of the variance test, it is not necessary to reach the question of whether the requested variances would result in substantial detriment to the public good or the zone plan.

For the reasons stated above, the Board concludes that the applicants have not met their burden of proof. It is hereby **ORDERED** that the application is **DENIED.**

VOTE: 3 – 2 –0 (Carol J. Mitten, Anne M. Renshaw, and Sheila Cross Reid (by absentee vote), to deny; Geoffrey H. Griffis and Susan Morgan Hinton, opposed).

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: SEP 2 6 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

MS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

BZA APPLICATION NO. 16709

As Director of the Office of Zoning, I hereby certify and attest that on SEP 2 6 2001, a copy of the foregoing Decision and Order in BZA Application No. 16709 was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing and who is listed below:

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ATTESTED BY: _____
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