GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application Number 16962 of Mr. & Mrs. Aislee Smith, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, a variance from the rear yard requirements under § 404, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow the construction of a three-story addition to a row dwelling in an R-4 District at premise 2304 1st Street, N.W. (Square 3125, Lot 75).

HEARING DATE: January 7, 2003
DECISION DATE: February 4, 2003

DECISION AND ORDER

The applicants in this case are Mr. and Mrs. Aislee Smith ("Applicants"), the owners of the property that is the subject of this application. The property is improved with a nonconforming Edwardian-era row house, which had a garage attached at the rear. The garage was structurally unsound and recently razed. The Smiths would like to replace the garage on the old footprint and add a three-story addition on top of it. Realizing that they needed zoning relief in order to effectuate their plans, the Applicants filed the appropriate application with the Board of Zoning Adjustment of the District of Columbia ("Board").

On January 7, 2003, the Board held a public hearing on the application. The Applicants testified on their own behalf and their neighbors, Mr. and Mrs. Shafer, testified as parties in opposition. The hearing was completed on January 7th, but the Board determined that additional information was needed from the parties prior to making its decision. After receipt of such information, the Board held a public decision meeting on February 4, 2003 and, for the reasons stated below, voted 5-0-0 to partially grant and partially deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 29, 2002, the District of Columbia Office of Zoning ("OZ") notified the City Councilmember for Ward 5, Advisory Neighborhood Commission ("ANC") 5C, as well as the ANC member for Single Member District 5C05, the District of Columbia Department of Transportation ("DDOT") and the District of Columbia Office of Planning ("OP"), of the filing of the application. Pursuant to § 3113.13

BZA
Case No. 16962
Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
CASE NO.16962
EXHIBIT NO.43

of Title 11 of the District of Columbia Municipal Regulations ("DCMR"), the OZ published notice of the hearing on the application in the District of Columbia Register and on November 8, 2002, mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the date of the hearing. Further, Applicants' affidavit of posting indicates that on June 28, 2002, they placed a zoning poster on the subject property, in plain view of the public.

Requests for Party Status. The Board granted party status to Mr. Lonzo Shafer, one of the Applicants' next door neighbors. ANC 5C was automatically a party to the proceeding. There were no parties in support.

Applicants' Case. The Applicants both testified to the need for the expansion of their home. They testified in support of their variance application and presented a letter from a consulting engineer recommending demolition of their garage for reasons of public safety. Their architect, however, was not present at the hearing and therefore, did not testify.

Government Reports. On January 28, 2003, OP filed a late report, which was accepted by the Board. OP recommended approval of the variance relief requested by the Applicants, as well as two areas of relief not advertised: a variance from § 401, minimum lot dimensions, and a variance from §2300.2, private garages and carports.

ANC Report. By letter dated January 2, 2003, ANC 5B indicated that it voted 7-0 at a December 17, 2002 meeting, with a quorum present, to support the application.

Parties and Persons in Support. There were no parties in support of the application. Mr. George Crawford and Mrs. Harriet Crawford, the Applicants' next door neighbors to the south, testified as persons in support. The record also contains several letters in support of the application from community members.

Parties and Persons in Opposition. Mr. Lonzo Shafer, the Applicants' next door neighbor to the north, testified as a party in opposition. Although his wife, Mrs. Deborah Shafer, had not filed an individual party status application, she testified in opposition to the application along with her husband. The Shafers testified that their light and air would be greatly diminished by the Applicants' proposed addition and that the character and uniformity of the neighborhood would be detrimentally altered if the application were granted. They also testified concerning the possible impact of the construction on the party wall in the rear of their property.

Hearing. The Board held, and completed, a public hearing on the application on January 7, 2003.

Decision Meeting. At the public decision meeting on February 4, 2003, the Board voted 5-0-0 to partially grant and partially deny the application, for the reasons stated below.

FINDINGS OF FACT

1. The subject property is located in an R-4 zone district in Ward 5, at street address 2304 First Street, N.W.

2. The subject property is improved with a nonconforming four-level, three-story row house, built in 1907. The row house fronts on First Street, N.W. and is bounded in the rear by a 12-foot, 7-inch wide alley.

3. The subject property is in a residential area, with row houses essentially surrounding the subject site. All, or substantially all, of these surrounding row dwellings are set back 6.5 feet from the front lot line, as is the Applicants.'

4. The lot on which the Applicants' row dwelling is sited is 1, 632.63 square feet in size, and 17.65 feet wide. The lot is nonconforming because, in an R-4 district, the zoning regulations require a minimum lot size of 1,800 square feet and minimum lot width of 18 feet. (*See,* 11 DCMR § 401.3). Lots of this or similar size, however, appear to be the rule, rather than the exception, in the neighborhood. All 17 lots on Applicants' block are either 1632 or 1633 square feet in size.

5. The Applicants propose to expand and modernize their row dwelling by attaching a large addition in the rear. The proposed addition will consist of a private garage on the ground floor, an expanded kitchen on the first floor, a bedroom on the second floor, and a sunroom on the third floor. The upper floors of the addition will be set back from the rear lot line 4 feet, 10 inches, but the ground floor garage will extend to the lot line.

6. The new garage will replace, and share the same footprint with, a garage previously on the site, which was razed for public safety reasons.

7. The proposed addition will reduce the minimum building setback from the rear lot line from the required 20 feet to 0 feet. (*See,* 11DCMR § 404.1).

8. The proposed addition will increase the dwelling's lot occupancy from the maximum allowable 60% to 79%. (*See,* 11 DCMR § 403.2).

9. The row dwelling has an open court area between it and the adjacent row dwelling to the south. All the row dwellings in the surrounding neighborhood have such open courts, often with the property line dividing two adjacent lots running through the center of the court area, as is the case with the subject property and its southern neighbor.

CONCLUSIONS OF LAW

The Board is authorized to grant a variance from the strict application of the zoning regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only "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 Map." *Id.* In this context, the Board must consider the effect of the variance relief on the "public good," including the surrounding properties, and the size and massing of a building which would result from the granting of such relief. The Applicants are applying for area variances and so must make the lesser showing of "practical difficulties," and not the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment,* 287 A.2d 535, 541 (D.C. 1972).

The Garage

The Applicants razed their garage because it was structurally unsound. If it had been sound, it would still be standing and still be of use. The Applicants, therefore, had an off-street parking space, which they have now lost and would like to replace. Although they are not required to provide an off-street parking space, they propose to build a new garage on the old one's footprint in order to furnish one parking space. In order to do so, however, they need variances from § 401, to permit a lot width of less than 18 feet, § 403, to permit a lot occupancy of more than 60%, § 404, to permit a rear yard of less than 20 feet, and § 2001.3, to permit the enlargement of their nonconforming row dwelling.[1]

[1]During the hearing, there was some question as to whether the Applicants needed relief from § 2115.1, which states that "required" parking spaces be 9 feet wide by 19 feet long. The Applicants' new garage will provide a parking space which is only 18.1 feet long, but the Board has determined that, by virtue of the

The Applicants' position is brought about by the unique circumstance that the previous garage was in such poor, actually dangerous, condition that it had to be razed. If it had been salvageable, the Applicants could have repaired it as a matter-of-right. Practical difficulty arises in that there is no other appropriate location on the lot to accommodate a parking space. It makes sense to re-build the garage on the footprint of the old one and will not cause any detriment to the public good or the zone plan. In fact, the Board finds that the public good will be enhanced by the re-construction of the garage, as it will open up an on-street parking space.

The Addition to the Row Dwelling Located Over the Garage

Other than for the re-building of the garage, however, the Board concludes that the Applicants failed to show any extraordinary or exceptional situation or condition of the subject property to support the granting of variance relief. It is true that the Applicants' lot is nonconforming, but there are legions of such nonconforming lots in the neighborhood, in fact, throughout the District of Columbia. Ownership of a nonconforming structure on a nonconforming lot does not automatically entitle one to a variance, let alone to 4 variances. There must be something more. There must be something that is unique to the Applicants' particular structure and/or lot in order to make variance relief a possibility. As stated by the District of Columbia Court of Appeals, "[t]he critical point is that the extraordinary or exceptional condition must affect a single property." *Gilmartin v. District of Columbia Board of Zoning Adjustment,* 579 A.2d 1164, 1168 (D.C. 1990). Although sympathetic to the Applicants' claimed need for more living space, the Board cannot find any extraordinary or exceptional situation or condition of the Applicants' property. Indeed, the Applicant himself, in response to a question as to the lot widths of "other properties," (presumably other nearby properties), stated "[t]hey're all the same." (Transcript ("Trans.") of January 7, 2003 Public Hearing, at 48, line 5). His nonconforming lot width cannot therefore constitute the uniqueness required for variance relief.

The Applicants rely not only on the nonconformity of their lot to establish uniqueness, but also on the existence of an open court between their home and the home to the south. Applicants claim that the court causes a decrease in the width

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fact that the Applicants' dwelling was built before 1958, § 2100.1 exempts it from a parking space requirement. Therefore, § 2115.1 is inapplicable.

Also, OP suggested that the Applicants might need relief from § 2300.2 to permit a reduction of the setback of the private garage from the centerline of the abutting alley. Section 2300.2, however, only applies to garages that are "accessory buildings," which is not the case here.

of their dwelling as one travels from front to back. Here again, however, it appears from the record that virtually all the row dwellings in the neighborhood share a similar court feature. When discussing the challenges caused by the interior configuration of their home, which are partially due to the existence of the court, the Applicant stated "most of these row homes are very similar." (Trans. at 27, lines 20-21). This sentiment was echoed by the Applicants' southern, court-sharing neighbor, who stated, "we have all the same issues that they have on their property." (Trans. at 56, lines 2-3). Further, as to practical difficulties, the cut-out of the court may force smaller rooms inside the dwellings, but the Applicants made no showing of any attempt to work within the zoning regulations to modify their home's interior to provide more, or a better-configured, living area. In fact, other than one conclusory statement as to their inability to expand their home into the court area, the Applicants made no showing of practical difficulties caused by either the nonconforming size of their lot or by the existence of the court area.

The Applicants' proposed addition is also rather large and out of proportion with the neighborhood. From the record, it appears much larger than other, more modest, additions in the neighborhood. Even with its proposed setbacks, it will likely have a negative effect on the privacy, light, and air of adjacent properties and therefore variance relief cannot be granted without substantial detriment to the public good. The Board concludes that the Applicants' proposed addition will negatively impact the public good and that it impairs the integrity of the R-4 zone plan by substantially impinging on the open space above the Applicants' rear yard area.
The Board also notes that the Applicants knew of the existence of the court, as well as the interior configuration and nonconformities of the property, when they purchased it.

The ANC and OP Recommendations

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). The ANC, in its report, did not bring up any special concerns, and no ANC representative testified at the hearing. Therefore, the Board need only consider the ANC's recommendation to approve the variance relief requested. The Board, as stated above, agrees with OP's suggestion that relief from § 401 is necessary with respect to the replacement of the garage, but has carefully considered both OP's overall recommendation of approval and that made by the ANC, and finds them unpersuasive when weighed against the evidence in the record and the applicable legal principles.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicants have satisfied the burden of proof with respect to the

application for variance relief from § 401, § 403, § 404 and § 2001.3, but only with respect to re-construction of the previously-existing garage. Concomitantly, the Board concludes that the Applicants have failed to satisfy the burden of proof with respect to the application for variance relief from § 401, § 403, § 404 and § 2001.3 with respect to any construction other than the re-construction of the garage. It is therefore **ORDERED** that the application is **PARTIALLY GRANTED,** in order to permit re-construction of the garage only, and **PARTIALLY DENIED,** insofar as the requests for relief pertain to any construction other than the re-construction of the garage.

VOTE: **5-0-0** (Geoffrey H.Griffis, Anne M. Renshaw, David Zaidain, Curtis Etherly, Jr. and Zoning Commission Member Anthony Hood, to partially grant and partially deny.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each voting Board member (other than former member Renshaw) has approved the issuance of this Order partially granting and partially denying this application.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 27 2003

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.

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 PURPOSES OF SECURING A BUILDING PERMIT.

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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY

OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. 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 DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. LM/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16962

As Director of the Office of Zoning, I hereby certify and attest that on MAY 27 2003 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

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