GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In Re:

Sam Homes, L.L.C.
1340 and 1342 Montague Street, NW
Square 2796 Lot(s) 46 (per sub)
Zoned: R-1-B

BZA APPLICATION NO. 17059

BRIEF OF APPLICANT

I. Background

This matter is before the Board of Zoning Adjustment pursuant to the Application of Sam Homes, L.L.C. for the following relief:

Variance from Section 401.3 the minimum lot width requirements for single-family dwellings in the R-1-B Zone.

The Applicant proposes to build two (2) single family detached houses on a parcel that is approximately 80' wide and 131' deep. The two (2) lots meet all of the zoning regulations with the exception of the minimum lot width requirement of §401.3 of the Zoning Regulations.

Initially, Applicant sought to construct two (2) semi-detached dwellings and a row house on the Montague Street property. This plan required three (3) variances, specifically:

1. Variance from Section 201.1(a) to allow the construction of two (2) semi-detached and one (1) row single family dwelling in the R-1-B Zone.

2. Variance from Section 401.3 the minimum lot width and lot area requirements for single-family dwellings in the R-1-B Zone.

BZA
Case No. 17059
Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO. 17059
EXHIBIT NO. 26

3. Variance from Section 405.9 the minimum side yard setback requirements for single-family dwellings in the R-1-B Zone.

After meeting with ANC 4A, Applicant amended its plan and instead, decided to build two (2) single family detached homes on the property. At its November 4, 2003 meeting, ANC 4A voted to support the Application.

II Discussion

As noted above, the Application of Sam Homes, L.L.C. is before the BZA pursuant to §3103.2 for a variance from §401.3, the minimum lot width requirements in the R-1-B Zone district. The property, due to its large size, (approximately 80' wide and 131' deep), would be impractical to develop as a single family detached residence required under the zoning regulations. The cost of a residence commensurate with the size of the property would cause a burden to the owner since the cost of such residence would be prohibitive.

Granting the requested variance would allow construction that is identical in size and dimension to the properties immediately to the west and north of the subject property and therefore would not be of substantial detriment to the public good. Further, since the contiguous properties to the west and north are on 40' wide lots, the granting of the requested variance would not be inconsistent with the general intent and purpose of the Zoning Regulations.[1]

[1] The property to the immediate east of the subject property is zoned R-5-A. The properties to the east of the subject property are semi-detached and row dwellings.

III. Legal Tests for a Variance

This Application requests a single area variance – that is, a variance relating to height, width, setbacks, floor area ratio and lot occupancy. Palmer v. BZA, 287 A.2d 535, 541 (D.C. 1972). The standards by which the Board of Zoning Adjustment can, and should approve an area variance has been clearly defined by the District of Columbia Court of Appeals. An area variance should be granted when the following conditions are shown to exist:

1. The property is unique because of its size, shape, topography and other extraordinary or exceptional situation or condition.

2. The owner would encounter exceptional practical difficulties as a result of the strict application of the Regulations to its particular property; and

3. The variances would not cause substantial detriment to the public good and would not impair the intent, purpose and integrity of the Zone Plan. Carliner v. BZA, 412 A.2d 52, 53 (D.C. 1980); Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment, 534 A.2d 939 (D.C. 1987).

A. The subject property is unique due to its size.

The subject property is approximately 80' wide by 131' deep. Each of the properties to the west and across the street to the north of the subject property is 40' wide. The adjoining westerly lots as well as those to the north were established prior to the current zone plan, and the lot herein is over twice the size of these neighboring lots. Each of the houses to the west and north of the subject property is approximately 24' wide, the same dimension as that proposed by the Applicant. (See Exhibit 1 attached hereto). A single house on the current lot, with 8' side yards, would be 64' wide, nearly three (3) times larger than the neighboring properties.

B. Sam Homes, L.L.C. would encounter exceptional practical Difficulty as a result of the strict application of the Zoning Regulations.

If the requested variance is not approved by the BZA, the Applicant's only recourse is to build one (1) single family detached property. That property, if minimum side yards are maintained, would exceed the size of all neighboring properties and, in some cases, it would be nearly three (3) times larger.[2] Further, the construction cost for a single property, as well as the purchase price and carrying costs (approximately $150,000.00 to date), would render the cost of said property to be prohibitive. Such a result would not be reasonable since the other properties in the R-1-B Zone are 40' wide. The zoning regulations, having been amended after the surrounding properties in the R-1-B Zone were established with a 40' width, now require a width of 50'. To deny the requested variance, the subject property would not be of a size compatible with the neighboring properties and would, due to it's size, be difficult, at best, to sell since there would be no lots or houses of comparable size in the neighborhood. In view of the cost of the property, the carrying charges and building costs of approximately One Hundred Fifty and 00/100 Dollars ($150.00) per square foot for a 4,000 square foot house, the total cost of a single residence on the subject property would be Seven Hundred Fifty Thousand and 00/100 Dollars ($750,000.00). Considering such a large investment and outlay of capital, a fair and reasonable return would, at a minimum be 20% or One Hundred Fifty Thousand Dollars ($150,000.00). Adding the expected return ($150,000.00) to the cost of the property including, construction and soft costs, ($750,000.00), the cost of the property would minimally be Nine Hundred Thousand and

[2] The properties to the east are 20' wide row dwellings. The subject property, if the variance request is not approved, would be 4' wider than the three (3) dwellings to the east.

00/100 Dollars ($900,000.00). It would be unlikely, if not impossible, to sell the subject property for that amount.

To qualify for the requested variance it must be shown that the regulations:

> Preclude the use of the property in question for *any* purpose for which it is reasonably adapted, i.e., can the premises be put to *any* conforming use with a fair and reasonable return arising out of the ownership thereof? (Emphasis in original.)

Palmer, at 542 *citing* 2 A. Rathkopf, the Law of Zoning and Planning 45-1 (3d ed. 1962). Here, if the Applicant is required to proceed without the requested variance, Applicant would not be able to obtain a reasonable return in view of the value of the surrounding properties.

C. The requested variance would not cause substantial Detriment to the public good and would not impair the Intent, purpose and integrity of the Zone Plan.

The requested variance asks that the Applicant be permitted to subdivide a lot that is 80' wide into two (2) 40' wide lots. Each lot's width would be ten (10) feet smaller than that required by §401.3 of the Regulations. The lot size proposed by the Applicant would be in keeping with the neighboring lots in the R-1-B Zone.

The R-1-B Zone abuts the subject property on its western and northern sides. The houses to the west of the subject property are on 40' wide lots and those across the street on the northern side of the property are also 40' wide. To make two (2) lots of the same width of the subject property would not be any detriment to the public good nor would it impair the intent, purpose and integrity of the Zone Plan.[3]

[3] The property to the east of the subject property is zoned R-5-A and the property immediately to the east is 20' wide. These two (2) properties will not adversely affect those properties in the R-5-A Zone.

IV. Community Support for the Application

The Applicant notes that the Advisory Neighborhood Commission 4A voted to support the instant Application at its November 4, 2003 meeting.

V. Conclusion

For reasons set forth herein, the Applicant respectfully requests that its request for variance under §401.3 be granted.

Respectfully submitted,

CRAIG ELLIS & ASSOCIATES, L.L.C.



CRAIG ELLIS, Esquire
1436 Fenwick Lane
Silver Spring, MD 20910
(301) 608-0571

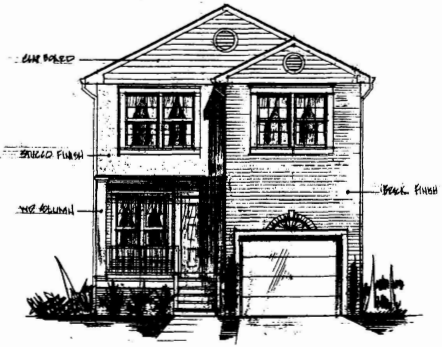
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Applicant was sent via first-class mail, postage prepaid on this 1st day of December, 2003 to:

Mr. James Jones
Chairman, ANC 4A
7600 Georgia Avenue, NW
Washington, DC 20012

CRAIG ELLIS, Esquire
Craig Ellis & Associates, L.L.C.
1436 Fenwick Lane
Silver Spring, MD 20910
(301) 608-0571

EXHIBIT 1



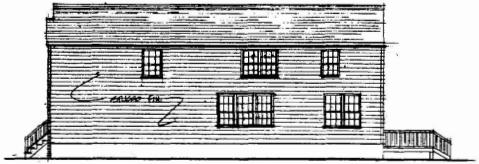
FRONT ELEVATION



LEFT ELEVATION



REAR ELEVATION

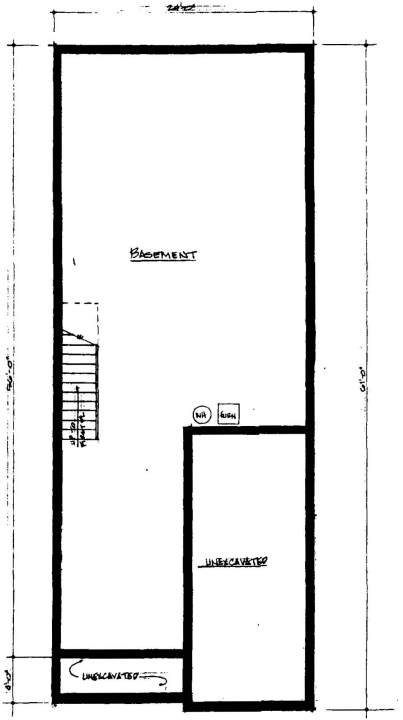


RIGHT ELEVATION

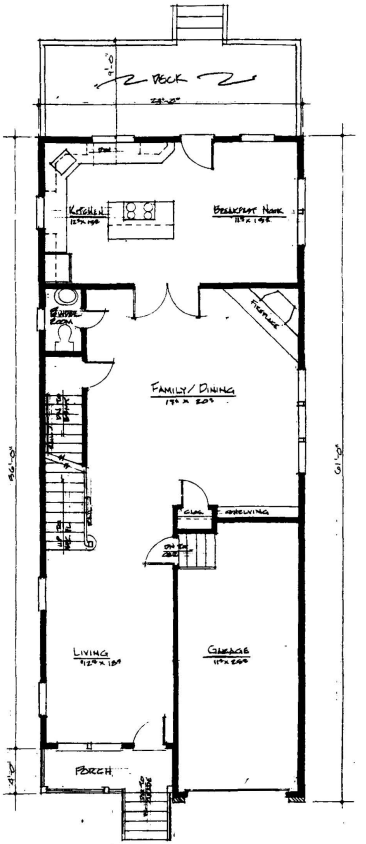
qds ASSOCIATES, INC.

MONTAGUE HOMES

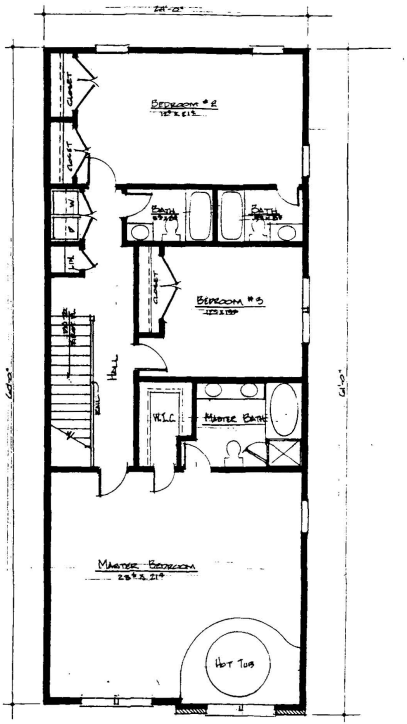
PRELIMINARY PLANS



BASEMENT FLOOR PLAN



FIRST FLOOR PLAN



SECOND FLOOR PLAN

qds

MONTAGUE HOMES

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., November 27, 2001

Plat for Building Permit of SQUARE 2796 LOT 46

Scale: 1 inch = 20 feet Recorded in Book 87 Page 58

Receipt No. 006378

Furnished to: OLIVER

Surveyor, D.C.

By: L.E.S.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon; it is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

