GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: December 2, 2003

SUBJECT: BZA Application 17089

APPLICATION
James Gushner, the Applicant, is requesting variances from the lot occupancy limitation under Section 403.2, the minimum required rear yard set back under Section 404.1, nonconforming structure provisions under Section 2001.3, and the limitation on structures taller than four feet above grade in any required yard under Section 2503.2 for a proposed addition to a single-family dwelling on property located at 5822 Sherier Place, N.W. (Square 1545 Lot 62) pursuant to Section 3103 under Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning.

The Office of Planning (OP) believes variances are necessary from Section 2116.1 to locate an accessory parking space off-site on lot 39; Section 403.2 to increase the allowable lot occupancy above 40%; and Sections 2001.3 (a) and (b)(2) to continue a nonconforming "court" and decrease a nonconforming rear yard. In conversation with the Office of Corporation Counsel, it was agreed that approval of the variance to increase the nonconformity of the rear yard set back assumes the minimum requirement will not be met. As a result, staff's recommendation for approval of a variance from Section 2001.3 reflects support for relief from the minimum required rear yard set back under Section 404.1.

SUMMARY RECOMMENDATION
OP therefore recommends approval of:

- A variance from Section 2116.1 to allow a parking space accessory to the subject one-family dwelling on the nearby property under common ownership on Buchanan Street (Square 1454 Lot 39);
- A variance from Section 403.2 to increase the allowable lot occupancy to 54%;
- A variance from Sections 2001.3 (a) to allow the continuation of the existing 0.7 foot front yard "court"; and
- Variance from Section 2001.3 (b)(2) to decrease the existing nonconforming rear yard set back with the proposed addition from 5 feet to 4 feet.

BZA
Case No. 17089
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO. 17089
EXHIBIT NO. 24

SITE AND AREA DESCRIPTION

The subject property is approximately 0.05-acre (2,346 square foot) in size southwest of Sherier Place, N.W. The sloping 28-32 x 76-foot lot is developed with a one story one-family detached dwelling (circa 1939) surrounded by a green vinyl-coated woven-wire fence approximately four feet tall. D.C. Office of Tax and Revenue land records indicate the dwelling has a gross floor area of 773 square feet with an unfinished basement, and a total of six rooms including three bedrooms. There are no on-site parking spaces. An adjacent District of Columbia property to the west that encompasses former Great Falls Electric Railway Company right-of-way is 30-feet wide and extends the length of the square (refer to Exhibit 1).

A stand of trees occupies the adjacent lot to the north. Properties further north and northwest are developed with other one-story bungalow dwellings. Properties south and east across Sherier Place are developed with 2 and 3-story bungalows. The District property and the lot further west that abuts an alley 15-feet wide are cleared and vacant. Note that the Applicant owns both the subject property and the alley lot with a Buchanan Street address, and that they plan to construct a two-car garage on the alley lot. The overall area is zoned R-1-B (refer to Exhibit 2).

APPLICANT'S PROPOSAL

The Applicant would like to increase livable square footage on this property by: expanding the basement to add a recreation room; extending the first floor to enlarge the living room, update the kitchen, and replace the existing screen porch with a new family room and rear deck; creating a new second floor with a new master bedroom, master bathroom, a second bath and two other bedrooms; and creating a partial third floor for two bedrooms and one bathroom. This effectively increases the number of bedrooms from three to five since no bedrooms would remain on first floor. Plans also include reconstructing the existing porch and steps in the front yard, and constructing a new two-vehicle parking garage on the associated alley lot.

After the reviewing the plans, the Department of Consumer & Regulatory Affairs Zoning Review Branch issued a letter dated September 8, 2003 outlining variances required from the following provisions of the Zoning Regulations: Sections 2001.3 (a) and (b) for an addition to an existing nonconforming dwelling; Section 403.2 to exceed the allowable lot occupancy; and Section 2503.2 to allow a proposed deck more than four-feet tall in the required rear yard set back. The Applicant submitted the instant application as a result.

EXISTING ZONING AND RELIEF REQUESTED

The site is zoned R-1-B. Respectively, Sections 201.1 (a) and (i) of the Zoning Regulations allow one-family detached dwellings and private garages on alley lots, subject to conditions, as a matter of right in this zone district. Section 199 of the Zoning Regulations includes the following definition:

> **"Building area** - the maximum horizontal projected area of a building and its accessory buildings. The term "building area" shall include all side yards and open courts less than five feet (5 ft.) in width, and all closed courts less than six feet (6 ft.) in width. Except for outside balconies, this term shall not include any projections into open spaces authorized elsewhere in this title, nor shall it include portions of a building that do not extend above the level of the

main floor of the main building, if placed so as not to obstruct light and ventilation of the main building or of buildings on adjoining property."

Note that the zoning tabulation provided by the Applicant includes the front yard set back in building area and lot occupancy calculations. The property is also subject to the following zoning provisions:

Standard	R-4 Requirement	Existing	Proposed	Required Relief
Lot Area	5,000 s.f.	2,346 s.f.[1]	Same	N/A
Lot Width	50 feet	76 feet	Same	N/A
Floor Area	N/A	773 s.f.[1]	1,262 s.f.[2]	N/A
Floor Area Ratio	N/A	N/A	N/A	N/A
Height	40 feet/3 stories	20 feet	30 feet	N/A
Lot Occupancy (max.)	40 %	33 %[3,4]	54 %[3,4] (nonconforming)	Variance/SE
Court	4 in./foot of height, at least 5 ft.	0.7 feet (nonconforming)	0.7 feet (nonconforming)	Variance/SE
Rear Yard	20 feet	5-6 feet (nonconforming)	4-6 feet[5] (nonconforming)	N/A
Side Yard	8 feet	8+ feet	8+ feet	N/A
Parking (on-site)	1 space	0 space	0 space	Variance/SE
Parking (off-site)	--	--	2 spaces[6]	

Zoning Regulations require the provision of parking spaces for building additions:

"2100.6 When the intensity of use of a building or structure existing before May 12, 1958, is increased by an addition of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement specified in § 2101, parking spaces shall be provided for the addition, subject to §§ 2100.7 through 2100.9.

2100.7 Parking spaces shall not be required for the addition unless the addition increases the intensity of use of the building or structure *by more than twenty-five percent (25%)* of the aggregate. ..."

Note this proposal increases the dwelling floor area more than 25%. Section 2116 requires "... all parking spaces to be located on the same lot as the buildings to be served" (inclusive of

[1] District of Columbia land records
[2] From zoning tabulation sheet provided by the Applicant
[3] Estimates include the area of the existing open court 4 ft. wide
[4] Reflects exceeding maximum 40% lot occupancy and minimum 5 ft. open court under Zoning Regulations
[5] The northeast corner of the proposed 6-foot tall deck would set back four feet from the rear property line, while the existing screened porch is set back 5 feet
[6] Parking spaces in planned garage on nearby alley lot owned by Applicant.

Section 214). Regulations also include provisions for expansion of nonconforming buildings devoted to conforming uses:

> "2001.3 Enlargements or additions may be made to the structure; provided, that the following requirements shall be met:
>
> (a) The structure shall conform to percentage of lot occupancy requirements; and
> (b) The addition or enlargement itself shall:
> (1) Conform to use and structure requirements; and
> (2) Neither increase or extend any existing, nonconforming aspect of the structure; nor
> (3) Create any new nonconformity of structure and addition combined."

The proposal would exceed the allowable lot occupancy, extend the nonconforming "court" area in the front yard, and increase a "nonconforming aspect" by reducing the rear yard set back from five to four feet.

ANALYSIS
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 are "area" variances requiring that circumstances surrounding the requests are "unique" and that the usual application of the referenced regulations would result in "peculiar and extraordinary practical difficulties."

Compliance with Section 3103.2:
In accordance with Section 3103.2 of the Zoning Regulations, the Applicant's application includes the following justifications for granting the requested "area" variances:

- Extraordinary or exception conditions: The small size and shallowness of the property, and the existence of the former railroad right-of-way which bisects two nonconforming lots under single ownership, in conjunction with the nonconforming location with a rear yard of five feet "make it difficult to design an addition to the house in compliance with the Zoning Regulations."

The application states, "the proposed improvements on the two lots is consistent with the intent of the Zoning Regulations and Map. ... The combined footage ... equals 5546 sq. ft., and exceeds the minimum 5,000 sq. ft. required for Zone R-1-B ... the proposed house ... on Lot 36 and garage ... on Lot 39 represent a combined lot occupancy of 36%, well under the maximum 40% allowed."

Placement of the dwelling also creates a "court" along the front property line that increases the building area and lot occupancy without expanding the ground floor plate or potential interior space. Staff also notes the sloping topography causes the height of the ground floor deck to be over six feet in the rear yard while the architect indicates the height of the ground floor elevation near the street is approximately 3.5 feet.

- Peculiar and Extraordinary Practical Difficulties: Staff concurs that it is not possible to construct an addition beyond a required 25-foot rear yard set back on a lot only 28-33 feet deep. The reason the deck is required to maintain the required set back is because it exceeds four feet in height in the rear yard. This is largely due to the sloping site. The location of proposed deck would only increase the existing nonconforming setback a minimal amount by reducing the rear yard one foot.

  The lot size places absolute limits on expansion of the building footprint. Although the front "court" increases the building area, staff also thinks extending this set back allows the existing dwelling and new addition appear more continuous. Based on the submitted plans, the proposed dwelling and garage appear to compatible with residences on nearby properties to the south and west.

  Expansion of the one-family dwelling also triggers the need for a parking space, but the only space for any significant expansion is also area where on-site parking could be located. Although the Applicant plans to construct a parking garage on the alley lot under common ownership, parking on this property cannot be considered "accessory" to the dwelling because of the bisecting District property.

The submission concludes, "The Granting of this application will not be of substantial detriment to public good in terms of traffic, noise and lighting, etc." Reducing the rear yard from five to four feet "impacts only a 30 ft. wide utility right-of-way that is used for an utility easement," and "Parking on Sherrier Place will actually be improved with the construction of a two-car garage on associated Lot 39". Staff concurs that these circumstances constitute a peculiar practical difficulty, and concludes the listed variances can be granted without impairing the intent, purpose and integrity of the zone map as embodies in the Zoning Regulations and Map.

COMPREHENSIVE PLAN

The Comprehensive Plan Generalized Land Use Map designates this area for Low Density residential development characterized by single-family detached and attached dwellings as predominant uses.

COMMUNITY COMMENTS
Advisory Neighborhood Commission (ANC) 3D recommended approval of this request during a regular meeting on November 5, 2003 (refer to Exhibit 3), and 12 neighboring property owners submitted letters of support.

RECOMMENDATION
The Office of Planning recommends approval of the following:

- A variance from Section 2116.1 to allow a parking space accessory to the subject one-family dwelling on the nearby property under common ownership on Buchanan Street (Square 1454 Lot 39);
- A variance from Section 403.2 to increase the allowable lot occupancy to 54%;
- A variance from Sections 2001.3 (a) to allow the continuation of the existing 0.7 foot front yard "court"; and
- Variance from Sections 2001.3 (b)(2) allow decrease the existing nonconforming rear yard set back of the proposed addition from 5 feet to 4 feet.

AA/afj

Attachments:

Exhibit 1 D.C. Surveyors Plat dated April 29, 2003 (annotated)
Exhibit 2 Aerial Including Zoning
Exhibit 3 Letter from John W. Finney, Chair, Advisory Neighborhood Commission (ANC) 3D to Geoffrey Griffis, Chair, The Board of Zoning Adjustment dated November 12, 2003

Exhibit 1

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., 1-29, 2003

Plat for Building Permit of SQ-1454 LOTS 39 & 2 ... 807

Scale: 1 inch = 20 feet Recorded in Book AET Page 35 24...

Receipt No. 4227

Furnished to: T. STANNARD

Surveyor, D.C.

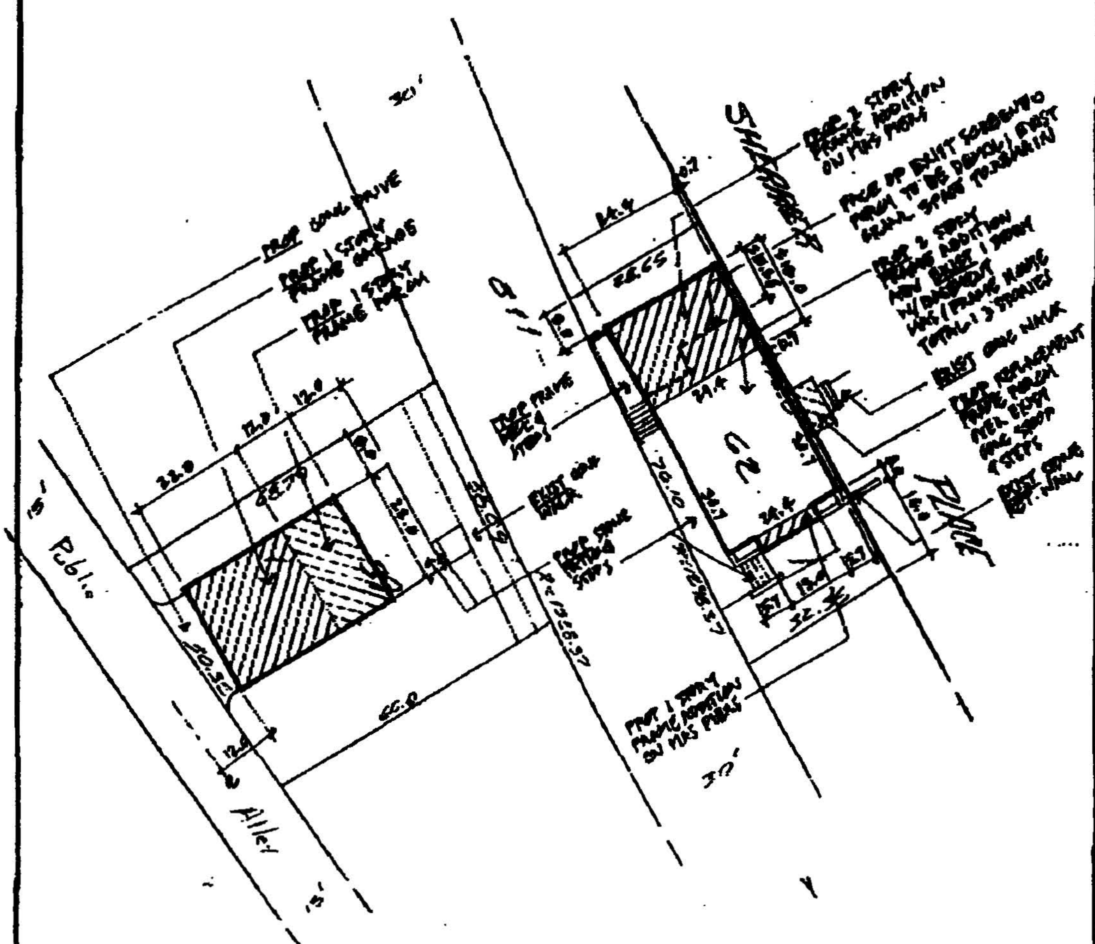
By: DH

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly plotted; [illegible]

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.



Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

November 12, 2003

Mr. Geoffrey Griffis, Chair
Board of Zoning Adjustment
441 4th Street NW Suite 210-S
Washington DC 20001

Re:BZA case number 17089 (5822 Sherier Place NW)

Dear Mr. Griffis:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on November 5th, 2003 at Sibley Memorial Hospital's Ernst Auditorium. Proper notice of this meeting was given in the Northwest Current paper, by fax, by phone and through our website. A quorum (4) was present at all times.

One of the items on our agenda was BZA #17089, 5822 Sherier Place NW, owned by Mr. James Gushner. After viewing the plans and taking testimony from the owner and his architect, ANC3D voted 7-0 to approve the special exceptions sought by Mr. Gushner for expanding his existing home at 5822 Sherier Place. NW.

The case involves an unusual case of a non-conforming lot where the owner's property is divided into two lots by a former trolley right-of-way established a century or so ago and whose current ownership is a mystery that neighbors would just as soon not solve as the abandoned right-of-way is incorporated into neighborhood use.

Taken individually, neither lot can meet the requirement of 40 percent lot occupancy. Taken together, as the owner proposes and the commission endorses, the proposed house would occupy 36 percent of the combined lots and thus meet the zoning requirement. The house also would meet the setback required for side yard That leaves the question of the requirement of a 25-foot rear-yard setback. Here the question can be answered by imaginative use of the 30-foot-wide right-of-way. If the purpose of a rear-yard setback is to

provide green space behind a house, and then the right-of-way can serve that purpose. There is BZA precedent for using the right-of-way in this manner to meet rear-yard setback requirements. In a recent case involving 5812 Sherier, just two houses down from the home in question, the BZA, under similar circumstances, approved a special exception based on use of the right-of-way to meet the rear-yard setback. The Commission urges the Board to apply that precedent in this case.

The Commission found that the proposed new house is proportional in size to two existing, adjoining houses on that side of Sherier. The Commission noted that plans for the house had been approved by 18 neighbors on Sherier. The Commission also found that the granting of the application would not cause significant traffic, noise or lighting problems in a delightfully eclectic, tightly woven community.

ANC3Dtherefore urges the Board that its views be given the 'great weight' to which it is entitled under DC law by the Board and that the Board approve the application.

Sincerely yours,

John W. Finney
Chair, ANC3D



BZA Application No. 17089
5822 Sherier Place NW

N

Feet

0 20 40 60

Government of the
District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ October 27, 2003

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.