GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

D.C. OFFICE OF ZONING RECEIVED
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In Re:	)	
	)	
Dud L.L.C.	)	**Application No. 17278**
	)	

STATEMENT OF FACTS

On November 23, 2004, Applicant, Dud L.L.C., filed the instant application herein seeking two (2) variances from minimum lot requirements of the R-2 Zone to construct semi-detached houses on adjoining Lots 17 and 18 in Square 5145. Each lot was 25 feet wide or five (5) feet less than the minimum lot width requirement of §401.3 of the zoning regulations. At the February 1st hearing before the Board, the Applicant sought two (2) additional variances waiving §2101.1 and the parking requirements therein due to the fact that the subject properties do not have a usable alley over which the homeowner could have ingress and egress to a rear parking pad.

The Board, at the February 1st meeting required the Applicant to submit additional information in support of its application on the issue of the applicability of §401.2 of the Zoning Regulations to Applicant's request for variance to the minimum lot width requirement of §401.3. A review of the applicable zoning reveals that there is a conflict in the regulations that should be resolved in favor of granting the variance relief requested.

Section 300.1 of the Zoning Regulations states as follows:

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CASE NO.17278
EXHIBIT NO.26

> The R-2 district consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. It shall be expected that these areas will continue to contain some small one-family detached dwellings. (Emphasis added.)

In the instant matter, the Applicant purchased Lots 17 and 18 in Square 5145 as well as the adjacent property located at 554 48th Place, NE, Washington, DC 20019. Lots 17 and 18 are adjacent to each other and are undeveloped. Each lot contains an area of 3000 square feet, per dimensions of 25 feet wide by 120 feet in depth. The subject properties are in an R-2 Zone and pursuant to §401.3, the minimum lot width required is 30 feet. Applicant's lots are 25 feet wide and variance relief from the minimum lot width requirements of §401.3 is therefore needed. Since the lots are adjoining each other, §401.2 impacts the BZA's decision. That section provides:

> Except as provided in §401.3, in the case of an unimproved lot in single ownership on November 1, 1957, which has an area or width of lot less than that specified in §401.3 for the district in which it is located and which does not adjoin another unimproved lot in the same ownership, a structure may be erected on the lot if both the area and width of lot are at least eighty percent (80%) of the area and width of lot specified under §401.3; Provided, that the structure shall comply with all other provisions of this title.

Pursuant to that provision, since the subject lots are adjoining and unimproved, they would not qualify under §401.2 to be developed. However, pursuant to §3303.2 Applicant hereby seeks two (2) variances to the minimum lot requirement of §403.1, and two (2) variances from the parking requirement of §2101.1 since the alley shown on the plat and the Baist Map is nothing more than a paper alley and not accessible for ingress and egress for parking in the rear of the properties.

ARGUMENT

The type of variance sought from the minimum lot width requirements of §401.3 of the Zoning Regulations is an area variance. An area variance may be granted for improvement of property if all of the following conditions are met: (1) the property suffers from "exceptional narrowness, shallowness or shape" or from "exceptional topographical conditions or other extraordinary or exceptional situation or condition"; (2) these exceptional circumstances "result in peculiar and exceptional practical difficulties" to the owner unless he or she can obtain a variance; and (3) variance relief will not create "substantial detriment to the public good" or "substantially impair" the intent, purpose and integrity of the zone plan as embodied in the zoning regulations and map. *Draude v. BZA,* 527 A.2d 1242, 1254 (D.C. 1987); *Roumel v. BZA,* 417 A.2d 405, 408 (D.C. 1980); *Carliner v. BZA,* 412 A.2d 52, 53 (D.C. 1980); *Capitol Hill Restoration Society v. BZA,* 398 A2d 15, 16 (D.C. 1979); *Palmer v. BZA,* 287 A.2d 535, 541 (D.C. 1972).

OP in opposition to the Application asserts that:

> The applicant has claimed that since the properties in this neighborhood were created at 25 feet in width, these properties are unique by being too narrow. There are two problems with this argument. First, uniform creation of 25 foot lots throughout this area removes the argument for uniqueness. Second, the applicant is using the requested width of the lots as it's (sic) own justification; saying the Board should allow narrow lots because the lots are too narrow.

(OP Memorandum dated January 18, 2005 to the BZA at pg. 3). OP's logic on the issue of uniqueness is strained. Lots 17 and 19 are unique in that a review of the surrounding area reveals that these are the only remaining undeveloped 25 feet lots in that square. With a few minor exceptions of homes to the immediate north of the subject properties,

development of the surrounding 25 feet wide properties occurred prior to the enactment of current zoning regulations making the subject properties unique.

The Office of Planning ("OP"), in opposing this Application further states:

> The Applicant has failed to show practical difficulty to meeting the requirements of the ordinance...[A]ll four of the lots to the north [of the subject lots] exceed the requirements of the Zoning Code with at least one of them having been combined since the adoption of the zoning regulations. A single family home could be built on the combined lots without the necessity for any zoning relief.

(OP Memorandum dated January 18, 2005 to the BZA at pg. 4). OP assumes, incorrectly, that if an Applicant seeks to develop two (2) undeveloped adjoining lots, that if combined, would form a lot that could be developed without zoning relief, no variance can be granted as a result of the application of §401.2. The fallacy of OP's argument is that the essence of §401.2 is that undersized lots meeting its description are considered standard and in compliance with the zoning regulations, even though deficient as to lot area. Here the two lots do not meet the test under §401.2 since these are two (2) adjoining unimproved lots to be developed and that the lots, whether combined or not, would also need additional variance relief for parking. Applicant therefore seeks zoning relief by requesting the proposed variances.

Simply combining the lots does not resolve Applicant's problems as OP suggests. First the Applicant would still have to come before the BZA for variance relief to the parking requirements of the zoning regulations.[1] Secondly, the combined lot would not be in keeping with the zone plan. Pursuant to §300.1, an R-2 district should contain

[1] The Applicant could cause a curb cut to be made for a driveway to a garage on the combined property to alleviate the necessity for having to seek the parking variance, however, this would cause the loss of approximately two (2) parking spaces on a street where there is no parking across the street from the subject property due to the location of a public school on that block. In the ANC meeting the neighbors were not in favor of the loss of any parking spaces due to curb cuts.

semi-detached and small single family homes. If the subject property is combined, the Applicant could then build a house that would be 34 feet wide, due to the street set back, to a depth of approximately 80 feet deep and up to three stories, to a height of 40 feet as a matter of right. This property would not be in keeping with the statement in the zoning regulations that the R-2 zone contain small single family detached homes. Under this combined lot scenario, the BZA could not require the Applicant to build a small sized building since it would be as a matter of right, especially if a curb cut is made and a garage is placed in the lower level of the property.

OP acknowledges that approval of the requested variance would not be a substantial detriment to the neighborhood. (OP Memorandum dated January 18, 2005 at pg. 4). Indeed, the property would be developed in keeping with the development plan begun at the south end of the block.[2] The first structure on the corner of 48th Place, NE and Fitch is two (2) semi-detached homes and a row; the second is two semi-detached homes; then across the paper alley, the third contains two (2) semi-detached homes and a row. In keeping with the symmetry, Applicant proposes to build two (2) semi-detached homes on the last two (2) undeveloped properties. Granting the requested variances will not violate §401.2, since that provision permits construction as a matter of right and if a property does not meet its requirements, such as the subject properties, then variance relief should be granted if, as here, the Applicant meets the tests for granting the variances. See, *Russell v. D.C. Board of Zoning Adjustment*, 402 A.2d 1231, 1236 (1979).

WHEREFORE, based upon the foregoing Applicant, Dud, L.L.C. hereby requests that the Board of Zoning Adjustment hereby approve its request for two (2) variances

[2] See the picture contained in OP's report at pg. 2.

from the minimum lot width requirements of §401.3 and two (2) variances from the parking requirements of §2101.1 of the zoning regulations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Statement of Facts was mailed first-class, postage prepaid on this 22nd day of February, 2005 to:

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