CAPITOL HILL RESTORATION SOCIETY
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April 22, 2005

Jerrily R. Kress, FAIA
Director, Office of Zoning
Suite 210
441 4th Street, NW
Washington, DC 20001

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RE: BZA# 17313

Dear Director Kress,

The Capitol Hill Restoration Society Zoning Committee at a meeting held on April 14, 2005, considered the above case. The case involves the application of Edward Ertel and Jennifer Squires for a variance from the lot occupancy and nonconforming structure provisions to allow an addition to a single-family row dwelling in a R-4 District located at 924 G Street, SE. As explained below, the Committee voted unanimously to oppose the application. The Committee also believes that the applicant must apply for a rear yard variance.

The subject property is a 1,452 square foot lot that is improved with two residential structures. The first structure fronts G Street and contains approximately 681 square feet on each of two floors. The second structure is at the rear of the property and faces 10th Street. It is a two-story carriage house that has been converted to residential use and contains approximately 431 square feet on each floor. There is a courtyard of approximately 16 feet in depth that separates the two buildings. The neighboring house to the west is two stories high and presents a solid brick wall to the courtyard.

The applicant proposes an addition that would fill in the courtyard resulting in 100% lot occupancy. The applicant also proposes a curb cut on 10th Street to allow for the construction of a two car underground garage. The applicant also wants to construct a roof deck to replace the lost courtyard.

The applicant sites as reasons for the variances that: 1. They have two children and need more room, 2. The carriage house is a contributing structure to the Historic district and cannot be torn down, 3. The rental unit in the carriage house produces crucial income for them, and 4. No neighboring properties will be affected by the addition.

Preliminarily, we note that the proposed work would require an additional variance from the minimum rear yard requirement. Under section 404.1, a residence in an R-4 zone must have a rear yard at least 20 feet in depth. In its current condition, the property has a rear yard of more than 35 feet - measured from the rear of the primary structure to the

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rear lot line - of which 19.3 feet is occupied by the accessory structure. The proposed construction would completely eliminate the existing required rear yard.[1]

The BZA is authorized to grant variances 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...." Relief can only be granted "without substantial detriment to the public good and without substantial impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." The applicant in the case must make three showings: uniqueness of the property, that such uniqueness results in "practical difficulties" to the applicants, and that the granting of the variances would not impair the public good or the intent and integrity of the zone plan and regulations. The applicant has not made these showings and the application must be denied.

Uniqueness

The applicant does not articulate his arguments in a way that fits the test for a variance and one is left to guess the "uniqueness" argument. However, it appears that the applicant is arguing that the fact that no neighbor is impacted by the proposed addition and the fact that the carriage house can't be demolished because it is a contributing structure make the property unique. Attached are photographs of two corner properties, 822 G Street SE and 116 9th Street SE, where the same argument could be made. When determining whether a property is unique for variance purposes, "the 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). This property is not unique. Also, this "no harm, no foul" approach seems to be a way to try and sneak in the test for a special exception as a test for a variance.

The fact that the property is in a historic district also does not make it unique. *Capitol Hill Restoration Society v. District of Columbia Board of Zoning Adjustment,* 534 A.2d 939, 940 (D.C. 1987). Approximately 8,000 contributing properties are within the Capitol Hill Historic District and this property is not uniquely affected.

Practical Difficulties

Again, the applicant does not specifically enumerate the practical difficulties, but they appear to be that the applicant wants more room and also wants the rental income from the carriage house. This does not meet the test of practical difficulties. There is no showing that the matter-of-right use cannot be made of the property. There is nothing

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[1] Under section 2500.3, up to 30% of a "required rear yard" may be occupied by accessory structures. Here, the minimum rear yard is 20 feet, of which 16.2 feet is unoccupied; as a result, the existing required rear yard is less than 20% occupied (3.8/20), and is therefore conforming.

that causes any real practical difficulty in abiding by the zoning regulations. The preferences of a particular applicant do not determine practical difficulty.

Effect on Public Good and Intent, Purpose and Integrity of Zone Plan

One of the purposes of the zoning regulations is to prevent overcrowding of land, 11 DCMR 101.1(b). For this reason, the percentage of lot occupancy for an R-4 property has been set at 60 percent and may, with a special exception, increase to 70 percent. Clearly any lot occupancy over 70 percent is strongly disfavored by the regulations and the proposed addition would substantially impair the integrity of the zone plan as embodied in the zoning regulations.

Based on all of these reasons, the applicant has failed to satisfy the burden of proof and the application must be denied.

Respectfully,

Gary M. Peterson, Chair
Capitol Hill Restoration Society
Zoning Committee

CC: Edward Ertel

822 G St, SE

116 9th St, SE