GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17313
EXHIBIT NO. 33

Application No. 17313 of Edward Ertel and Jennifer Squires, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403 and a variance from the nonconforming structure provisions under section 2001.3, to allow an addition to a single family row dwelling in the R-4 District at premises 924 G Street, SE (Square 949, Lot 33).

HEARING DATE: April 26, 2005
DECISION DATES: May 3, 2005; July 12, 2005 and August 2, 2005

DECISION AND ORDER

Edward Ertel and Jennifer Squires (the applicant), owner of the subject property, filed this application for variance relief on February 25, 2005 Following a public hearing on April 26, 2005, the Board of Zoning Adjustment (the Board) voted to approve the variances.

PRELIMINARY MATTERS

Self-Certification
The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 5).

The Application The application requested relief from the lot occupancy provisions under § 403 of the Zoning Regulations and the nonconforming structure provisions under § 2001.3 of the Zoning Regulations. The applicant initially proposed to build a two-story addition that would have resulted in a lot occupancy of 99%. However, the applicant ultimately revised its application, proposing to build a one-story sunroom that would result in a lot occupancy of 92%.

Notice of Public Hearing The Director of the Office of Zoning provided notice of the hearing in accordance with 11 DCMR 3113.13. Pursuant to § 3113.14 and 3113.15, the Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 19).

ANC 6B The subject site is located within the jurisdiction of ANC 6B, which is automatically a party to this application. In its report dated April 25, 2005, ANC 6B indicated that at a regularly scheduled monthly meeting with a quorum present, it voted that it had "no objections" to the variance application.

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Requests for Party Status There were no requests for party status.

Persons in Support The Board received one letter in support from a neighboring property owner. It also received a petition in support that had been signed by several neighboring property owners (Exhibit 21).

Persons in Opposition The Board received a letter in opposition from the Capitol Hill Restoration Society, stating that the application did not meet the variance test (Exhibit 22). In addition, the Board heard testimony to this effect from Gary Peterson, Chair of the Society's Zoning Committee.

Government Reports

OP Report OP reviewed Applicant's initial variance application and prepared a report recommending denial of the variance request (Exhibit 20). OP concluded in its report that there was no exceptional situation that led to a practical difficulty in meeting the zoning requirements. OP further concluded that expanding the non-conforming lot would be contrary to 11 DCMR 2001.3 and therefore would impair "the intent and integrity of the zoning regulations".

HPRB Staff Report The proposed project was reviewed by staff to the Historic Preservation Review Board (HPRB), and the report was submitted by the applicant (appended to applicant's Exhibit 29). The report noted that staff had no objection to the concept of an addition, but "directed" the applicant to modify the design of the two-story addition to retain a "reasonable amount of open space in the rear yard".

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 924 G Street, SE at the northwest corner of the intersection of 10th and G Streets. The property and properties in all directions are zoned R-4 and are in the Capitol Hill Historic District.

2. The property consists of a two-story, brick, semi-detached row house that fronts on G Street, and a two-story, brick, semi-detached carriage house that fronts on 10th Street. The two structures are separated by an approximately 16-foot deep open court yard that is enclosed by a brick wall at the sidewalk. Both structures are contributing to the historic district. The carriage house is currently used as a rental unit.

3. The corner lot on which the property is located is only about 1,452 square feet in size, and is significantly smaller and shallower than the 1,800 square feet lots that are generally required in the R-4 zone.

4. The comparatively small structures provide insufficient living quarters for the applicant's family; and the applicant is constrained in building an addition by both the size of the site and the configuration of the two structures.

5. Without demolishing the existing structures or adding a third-story addition to the main building (both which the applicant contends would be precluded in the historic district) the courtyard is the only buildable area on the lot.

The Proposed Addition

6. The applicant proposes to add on to the row house by filling in the existing courtyard with a one level sun room. (See revised plans at Exhibit 30).

7. Because the sun room would increase the lot occupancy from 76% to 92% (beyond the 60% lot occupancy permitted under the Zoning Regulations), the applicant requires a variance from § 403 of the Regulations.

8. Because the existing property is already non-conforming for rear yard and minimum lot dimensions, as well as lot occupancy, the applicant would be enlarging an already non-conforming structure and requires relief under § 2001.3 of the Regulations.

9. The Board credits and adopts the finding made by HPRB staff that an enclosed sun room addition would be compatible with the row house (Exhibit 29).

10. Many other corner lots in the neighborhood are at 100% lot occupancy. As a result, increasing the lot occupancy to 92% would not be out of character with the neighborhood.

11. There was no evidence that the sun room addition would have any adverse impacts on neighboring property owners.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799), as amended; D.C. Official Code § 6-641.07(g)(3)(2001), to grant variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief from the non-conforming structure provisions under § 2001.3 to allow a one-story sun room addition to a single family dwelling not meeting the lot occupancy, rear yard or minimum lot size requirements. Pursuant to D.C. Official Code § 6-641.07(g)(3)(2001) and 11 DCMR § 3103.2, the Board may grant a variance upon a finding that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter exceptional practical difficulties or undue hardship if the Zoning

Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to "undue hardship," which is required for a use variance. *Palmer v. Board of Zoning Adjustment,* 287 A2d. 535, 541 (D.C. 1972).

Uniqueness

In determining uniqueness, the Court of Appeals has instructed that the uniqueness need not inhere in the land, but may be found in the structures on the land. *See, Capitol Hill Restoration Society v. BZA,* 534 A.2d at 942. (1987; *Monaco v. BZA,* 407 A2d 1091 (D.C. 1979); *Clerics of St. Viator, Inc. v. BZA,* 320 A2d 291 (D.C.1974.). Moreover, the uniqueness may arise from a confluence of factors. See, *Gilmartin v. District of Columbia Bd. of Zoning Adjustment,* 579 A.2d 1164, 1167 (D.C. 1990). In *Gilmartin* the Court found that the particular location of a carriage house in relation to the property boundaries and easements on the land created a unique confluence of factors that created the need for the variance. In that case the applicants sought a variance from parking requirements in order to convert their carriage house to a single family residence. The Court determined that the location of the easements and the improvement on the property precluded a portion of the property from parking and that this condition, in essence, made the topography of the property unique, made it unlikely that other properties would be affected in the same way and led to the application for the variances.

As in *Gilmartin,* there is in this case a confluence of factors arising from the configuration of the two structures and other constraints on the property that lead this applicant to seek variance relief. The property is a small corner lot with any expansion limited by the two existing structures separated by open space. Both structures are contributing in an historic district. Further, the property is land locked with a blank wall abutting the property. The unique configuration of the existing structures on the property in an historic district together with the other physical constraints on the property lead to practical difficulties in expanding the property to meet the family's needs. No evidence was presented that other properties in the Capitol Hill District share this combination of characteristics, and it is these characteristics that have required the applicant to seek the variance relief.

Practical Difficulties

While there is no governing definition of what constitutes "practical difficulties," the Court of Appeals has provided the following guidance: First, the applicant must show that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties of complying with the regulations are unique to the particular property or arise out of the unique conditions of the property. *Gilmartin* at 1170. *Russell v. District of Columbia Bd. of Zoning Adjustment,* 402 A2d 1231 (1979). "[The second] requirement insures relief for problems peculiarly related to the applicant's

land or structure, and not shared by other property in the neighborhood, thus avoiding a *de facto* amendment of zoning laws." *Russell,* at 1235 , *citing* 3 ANDERSON, AMERICAN LAW OF ZONING § 14.55, at 32 (1968); 3 RATHKOPF, THE LAW OF ZONING AND PLANNING ch. 45, § 2 (4th ed. 1978).

In this case, the unique physical constraints of the existing structures on the property, compounded by the fact that the structures are contributing structures in an historic district leave no viable options for expansion other than on the open space between the two structures, requiring variance relief. Applicant's other options for expansion on this small lot would require either demolition of one of the contributing structures or the addition of a third story to the main structure. Applicant represented that these options would be precluded by the historic preservation limitations. While there is no evidence of HPRB denial of these options, it is noteworthy that the Office of Planning did not oppose the variance on grounds that these or any other alternatives for expansion existed. Even if these were not precluded by HPRB, demolition of a contributing structure (the carriage house) or the addition of a third story to the main house on a street of two-story row houses are both extreme alternatives with unnecessary detrimental consequences – loss of an historic structure or a building out of character with the other houses on the street.

Accordingly, in light of the unique conditions at the property, the only area in which the applicants can expand to accommodate their family needs is the open space between the existing structures, requiring variance relief.

No Substantial Detriment

Relaxing the lot occupancy requirements and nonconforming structure requirements in this case will not result in substantial detriment to the public good or the zone plan. The proposed sun room will provide additional residential living space and is consistent with the intent and purposes of the R-4 zone district. Thus, it will not result in substantial detriment to the zone plan. Nor will the sun room addition result in any detriment to the public good. As explained above, the addition will be compatible with the existing row house and the neighborhood, and will have no adverse impacts on neighboring property owners.

The Board is required under D.C. Official Code § 1-309(d)(2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. As noted, the ANC did not object to the application and therefore had no issues or concerns.

In reviewing a variance application, the Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. The Board does not find OP's advice to be persuasive for the following reasons: OP asserted that there was nothing unique about the property that necessitates a variance. It reasoned that each

of the characteristics of the property individually could be found in other properties- i.e., it is not the only property that has a carriage house or has contributing buildings in an historic district. OP did not take into consideration the "confluence" of the factors that together cause this property to be unique. Nor does the Board agree with OP's assessment relating to practical difficulty. OP stated that the expansion of a small residential structure may be justified only when the exceptional condition is a small lot. That narrow view is not supported in the law. Rather, the Board's consideration of practical difficulties is broad. The Court of Appeals stated on this point: "We repeat the observation we made in *Palmer, supra*, 287 A.2d at 542, that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." See, *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 942 (D.C. 1979) (this court defers to BZA's determination of the practical difficulties so long as the requisite findings of fact are made.) As discussed previously, the existence of the two structures and other noted conditions have the effect of shrinking the usable area of this lot, thereby causing practical difficulty. Finally, OP argued that expanding non-conforming lot occupancy is prohibited under § 2001.3(a) and therefore granting a variance in this case would *per se* be detrimental to the zone plan. OP did not find that the expansion actually had a detrimental impact on the neighborhood or the zone plan. Again, the Board finds that this interpretation is not supported in the law. The Zoning Act authorizes variance relief from the strict application of any and all zoning regulations. Therefore, the Board applies the same variance analysis to this regulation as to any other regulation. Accordingly, there is no detriment to the zone plan by granting the relief in this case.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is **GRANTED** to allow variance relief from the requirements under § 403 and § 2001.3 pertaining to lot occupancy and non-conforming structures to allow the construction of the proposed one-story addition.

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller and John A. Mann, II to approve; Curtis L. Etherly, Jr. to approve by absentee ballot; the Zoning Commission member, not hearing the case, not voting)

Vote taken on August 2, 2005.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

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

FINAL DATE OF ORDER: JAN 23 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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.

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.