GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

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Application No. 17321 of Darcy E. Flynn, pursuant to 11 DCMR § 3103.2, for variances from the lot area and lot width requirements under section 401, a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, a variance from the side yard requirements under section 405, and a variance from the off-street parking requirements under subsection 2101.1, to allow the construction of a new single-family detached dwelling in the R-2 District at premises 1000 block (south side) of Taussig Place, N.E. (Square 3890, Lot 117).

HEARING DATE: May 17, 2005
DECISION DATE: June 7, 2005

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17321
EXHIBIT NO. 30

DECISION AND ORDER

This self-certified application was submitted March 11, 2005 by the owner of the property that is the subject of the application, Darcy Flynn ("Applicant"). The application requested variances from lot area, lot width, lot occupancy, rear yard, side yard, and off-street parking requirements to allow construction of a new single-family detached dwelling in the R-2 District at 1041 Taussig Place, N.E. (Square 3890, Lot 117).

Following a hearing on May 17, 2005 and a public meeting on June 7, 2005, the Board voted 5-0-0 to deny the application.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memoranda dated March 15, 2005, the Office of Zoning provided notice of the application to the Office of Planning, the Department of Transportation, the Councilmember for Ward 5, Advisory Neighborhood Commission ("ANC") 5A, and Single Member District/ANC 5A05. Pursuant to 11 DCMR § 3113.13, on March 22, 2005 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 5A, and owners of property within 200 feet of the subject property. Notice was also published in the D.C. Register on March 25, 2005 (52 DCR 3097) and April 1, 2005 (52 DCR 3237).

Party Status. Parties in this proceeding were the Applicant and ANC 5A.

Applicant's Case. The Applicant, represented by Jacob Abbott, stated that the requested variances were needed to allow construction of a single-family dwelling, consistent with others in the neighborhood, on a narrow, shallow lot. The Applicant asserted that the

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variances would not have any adverse impact on the neighborhood with regard to traffic, noise, lighting, or other conditions because the proposed use and configuration of the dwelling would be consistent with houses already located on the same block. With respect to parking, the Applicant stated that a parking space on the subject property would be difficult to access because of the narrowness of the alley. The Applicant asserted that ample on-street parking was available on the block.

Government Reports. By memorandum dated May 10, 2005, the Office of Planning ("OP") recommended approval of the requested variances. According to OP, the variances would not be a detriment to the public good and the resulting new house would be in character with the other dwellings on the same block. According to OP, the subject property is a substandard lot too narrow and shallow to meet zoning requirements, and strict application of the Zoning Regulations would result in practical difficulties to the Applicant. The Office of Planning also stated that the requested variances would not cause substantial detriment to the public good or impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map, noting that the Applicant intended to develop the property for single-family residential use and that the planned dwelling would not negatively impact traffic, noise, or light.

ANC Report. By report submitted May 27, 2005, ANC 5A opposed the application. At a public meeting on May 25, 2005, with a quorum present, the ANC voted 9-0 to recommend denial of the requested variances, stating that the subject property, a substandard lot, was unsuitable for construction of the proposed single-family detached dwelling.

According to the ANC, other houses on the same block did not exceed allowable lot occupancy, and the neighboring property to the west of the subject property would be adversely impacted by the Applicant's planned modular dwelling with respect to privacy, noise, light, air, and use. ANC 5A asserted that the specific dwelling proposed by the Applicant would be incompatible with the subject property in light of the need for several variances. ANC 5A contended that a dwelling could be built on the subject property that would meet zoning requirements with respect to lot occupancy, rear yard, and side yards, and that the Applicant's choice of modular home was not an appropriate design for the site but "an unnecessary limitation" fashioned by the Applicant.

ANC 5A also opposed the requested parking variance, stating that the subject property had access from the alley, and that most dwellings on the block have garages or parking pads. According to the ANC, on-street parking is adequate in the vicinity of the subject property during the day, but is scarce at night.

Persons in Support of the Application. The Board received approximately 14 letters indicating support for the application from owners of property within 200 feet of the subject property.

Persons in Opposition to the Application. The Board received a letter and heard testimony from four persons in opposition to the application. The persons in opposition alleged that the Applicant had failed to present the application to ANC 5A, made errors in the application, and failed to satisfy the requirements for a grant of variances.

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 1041 Taussig Place, N.E. (Square 3890, Lot 117), on the south side of Taussig Place in Ward 5. The property is currently undeveloped except for a dilapidated garage structure at the rear of the lot, which the Applicant proposed to remove. A 15-foot public alley provides access to the rear of the lot.

2. The subject property is a rectangular lot, 57.5 long and 39 feet wide, and has a lot area of 2,242.5 square feet.

3. The subject property is zoned R-2, which requires a minimum lot area of 4,000 square feet and a minimum lot width of 40 feet. The subject property is nonconforming with respect to lot area and lot width.

4. The area surrounding the subject property is residential, developed primarily with single-family detached dwellings and some semi-detached dwellings. Several institutional uses are located nearby, including Providence Hospital, Howard University School of Dentistry, the Hospital for Sick Children, and Catholic University.

5. The Comprehensive Plan Generalized Land Use Map designates the subject property in the low-density residential land use category.

The Applicant's Project

6. The Applicant proposes to construct a two-story single-family detached dwelling on the subject property. The dwelling would be 24 feet wide and 28 feet long, not including wooden porches at both the front and rear of the house. Each porch would be 24 feet wide and six feet deep.

7. The rear yard would be 12.5 feet deep. The R-2 zone requires a rear yard of at least 20 feet. 11 DCMR § 404.

8. The property would have side yards 7.5 feet wide on both sides of the house. One side would contain a landing (4 by 8 feet) providing access to a side entrance to

the dwelling. The R-2 zone requires side yards with a minimum width of 8 feet. 11 DCMR § 405.

9. Lot occupancy after construction of the dwelling would be 42.8 percent. The R-2 zone permits a maximum lot occupancy of 40 percent. 11 DCMR § 403.

10. The Applicant does not propose to provide any off-street parking on the subject property. The Zoning Regulations require one off-street parking space for each dwelling. 11 DCMR § 2101.1.

11. The Applicant's need to construct a house 24 feet wide was the result of the model of a factory-built house selected by the Applicant. The Applicant stated that conversion of the model to a narrower dwelling, so that the side yards would meet minimum zoning requirements, would create additional costs, and that the inclusion of front and rear porches, thereby increasing lot occupancy, would enhance the dwelling and make it similar to some other houses on the same block.

CONCLUSIONS OF LAW

The Applicant requests variances from the lot area and lot width requirements under section 401, a variance from the lot occupancy requirement under section 403, a variance from the rear yard requirements under section 404, a variance from the side yard requirement under section 405, and a variance from the off-street parking requirement under subsection 2101.1, to allow the construction of a new single-family detached dwelling. The Board is authorized to grant a variance from the strict application of the zoning regulations 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, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2.

The subject property does not meet zoning requirements with respect to lot width or lot area. The width of the subject lot is one foot less than the prescribed minimum lot width, but its lot area is only 56 percent of the minimum lot area required in the R-2 zone. The lot's dimensions, which predate the current zoning requirements, give rise to an exceptional situation or condition of the property.

However, the Board is not persuaded that the strict application of the zoning regulations would result in exceptional practical difficulties to the Applicant. Rather, most of the variances requested by the Applicant – that is, variances from rear yard, side yard, and

parking requirements – arise from the Applicant's choice of a particular design of modular dwelling. The Applicant did not persuasively explain why the use of a pre-engineered modular house was necessary, or why the design of the proposed dwelling could not be adapted to meet matter-of-right requirements applicable to the subject property.

The Board notes that the Office of Planning recommended approval of the application, but finds that OP did not offer persuasive advice with respect to how any practical difficulties faced by the Applicant in constructing a single-family dwelling on the subject property would result from the strict application of the zoning regulations rather than from the Applicant's choice of modular home. The Board disagrees with ANC 5-A's contention that variance relief should be denied because the lot area of the subject property is less than that specified in Section 401.2. 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. The Board agrees with the ANC, however, for the reasons set forth above, that variance relief should be denied because the Applicant failed to show the practical difficulty of building a structure in compliance with the rear yard, side yard and parking regulations.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues and concerns of ANC 5A, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the application for variances to allow construction of a single-family detached dwelling in the R-2 zone at 1041 Taussig Place, N.E.

Accordingly, it is therefore **ORDERED** that the application is **DENIED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Carol J. Mitten and John A. Mann, II to deny).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

JAN 23 2006

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.