GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19967 of District Properties.com, Inc., as amended, pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from the lot area and lot width requirements of Subtitle D § 302.1, and the side yard requirements of Subtitle D § 206.2, to convert a non-record lot into a record lot and to construct a new detached principal dwelling in the R-1-B Zone at premises 2429 Girard Place, N.E. (Parcel 155, Lot 9).[1]

HEARING DATES: April 10 and May 15, 2019[2]
DECISION DATE: May 15, 2019

DECISION AND ORDER

The application was filed on January 16, 2019, by Mohammad Y. Sikder, the owner of the property that is the subject of the application ("Applicant"). Following public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated February 25, 2019, the Office of Zoning provided notice of the application and of the public hearing to the Applicant, the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 5 as well as the Chairman and the four at-large members of the D.C. Council, Advisory Neighborhood Commission ("ANC") 5C, the ANC in which the subject property is located, Single Member District ANC 5C07, and the owners of all property within 200 feet on the subject property. Notice was published in the *District of Columbia Register* on February 15, 2019 (66 DCR 2130) and on March 1, 2019 (66 DCR 2491).

[1] The original self-certification sought area variances pursuant to Subtitle X § 1002.1 from the lot area and lot width requirements of Subtitle D § 302.1 and from the side yard requirements of Subtitle D § 307.1. Subtitle D § 307.1 was repealed by Zoning Commission Order No. 17-23, issued January 28, 2019. A revised self-certification sought an area variance from the side yard requirements of Subtitle D § 206.2, which was adopted in Order No. 17-23. The revised self-certification supplemented but did not supersede the original self-certification; at the May 15, 2019, public hearing, the Applicant continued to seek an area variance from the dimension requirements of Subtitle D § 302.1. (Transcript of Public Hearing May 15, 2019, hereinafter "May 15 Tr." p. 153.)

[2] At the April 10 hearing, the Board continued the hearing to May 15. (Transcript of Public Hearing April 10, 2019, hereinafter "April 10 Tr." p. 142.)

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 5C were automatically parties in this proceeding. The Board denied a request for party status in opposition to the application, filed by Allyson Finch Wilson on May 15, 2019, because the request was untimely.

Applicant's Case. The Applicant provided evidence and testimony in support of the application from Oumar Seck and Adam Davis.

OP Report. By memorandum dated March 29, 2019, OP recommended approval of the application for area variances from the lot area and lot width requirements of Subtitle D § 302.1, and from the side yard requirements of Subtitle D § 307.1 (Ex. 31).

DDOT. By memorandum dated March 29, 2019, DDOT stated that it had determined that the proposed action will not have adverse impacts on the District's transportation network. (Ex. 30.) DDOT had no objection to the approval of the application.

ANC. On March 22, 2019, ANC 5C filed a report (on Form 129) in which it reported that it had met on March 20 at a properly noticed meeting with a quorum present and had voted to endorse and accept the recommendation of ANC 5C07 to deny the application. (Ex. 28.) Attached to the report was a March 14, 2019 "notice of adverse decision" from ANC 5C07, which reported that, at a March 12 SMD meeting, those in attendance voted unanimously to oppose the project and to recommend denial of the application. (Ex. 29.).

Persons in opposition. The Board received several letters in opposition to the project from neighbors who live near the property. The letters argued that the Applicant failed to meet the requirements for the zoning relief requested and that the project would be inconsistent with the historic character of the neighborhood and would violate the District's fire code.

FINDINGS OF FACT

1. The property that is the subject of this application consists of one lot (Parcel 155, Lot 9) on the south side of Girard Place N.E. with an address of 2429 Girard Place, N.E.

2. The property is located in the Langdon neighborhood. (Ex. 40.)

3. Lot 9 is a rectangular interior lot. (Ex. 33.)

4. The width of the lot is 25 feet, and its depth is 150 feet.

5. The lot width is non-conforming under Subtitle D § 302.1, which requires a lot width of 50 feet.

6. The area of the lot is 3,750 square feet.

7. The lot area is non-conforming under Subtitle D § 302.1, which requires a lot area of 5,000 square feet.

8. Lot 9 is an undeveloped vacant lot.

9. Lot 9 sits between Lot 8 to the east and Lot 60 to the west.

10. Lot 8 is developed with a detached principal dwelling.

11. Lot 60 is developed with a detached principal dwelling.

12. To the east of Lot 8 is Lot 7.

13. Lot 7 is an undeveloped vacant lot.

14. Lots 7, 8, 9, and 60 are neither tax lots nor record lots. (Ex. 31.)

15. Lot 9 is one of six adjacent Parcel lots. (Ex. 31.)

16. Lot 9 has no access to a public alley. (Ex. 31.)

17. Prior to November 2018, Lots 7, 8 and 9 were owned by a single individual. (April 10 Tr., 117-118.)

18. The prior owner of the three lots built a detached principal dwelling on Lot 8 at 2431 Girard Place, N.E.

19. In November 2018, Lots 7, 8 and 9 were sold. (Ex. 43.)

20. The Applicant now owns Lots 7 and 9 and a second developer owns Lot 8. (May 15 Tr., 173-174.)

21. The Applicant owns two non-conforming, non-adjoining lots.

22. The Applicant proposed to convert Lot 9 into a record lot. (Ex. 31.)

23. The Applicant also proposed to construct a new detached principal dwelling on Lot 9. (Ex. 31.)

24. The neighborhood consists primarily of detached dwellings. (Ex. 31.)

25. Some of the detached dwellings in the vicinity of the subject property are on lots with widths of 25 feet. (Ex. 31.)

26. Some of the dwellings were constructed over larger single lots. (May 15 Tr., 169.)

27. Some of the detached dwellings were constructed over two lots. (Ex. 29; April 10 Tr., 118.)

28. The Applicant has not considered the sale of Lot 9 to the owner of Lot 8 and/or the owner of Lot 60. (May 15 Tr., 166.)

29. To the south of Lot 9 are the Green Valley Apartments. (Ex. 33.)

30. Girard Place N.E. dead ends to the west at the eastern boundary of Langdon Park.

31. The property is located in a Residential House zone, R-1-B.

32. The Residential House (R) zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.)

33. The provisions of the R zones are intended to (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and dimensions for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 100.2.)

34. The purposes of the R-1-B zone are to (a) protect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes; and (b) stabilize the residential areas and promote a suitable environment for family life. (Subtitle D § 300.1.)

35. The R-1-B zone is intended to provide for areas predominantly developed with detached houses on moderately sized lots. (Subtitle D § 300.3.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks area variances, pursuant to Subtitle X § 1002.1, from the lot area and lot width requirements of Subtitle D § 302.1, and the side yard requirements of Subtitle D § 206.2, to create a new record lot and to construct a new detached principal dwelling. The Board is authorized under Section 8(g)(3) of the Zoning Act, D.C. Official Code § 6-641.07(g)(3)(2012 Repl.) to grant a variance, as provided in the Zoning Regulations, where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or other extraordinary or exceptional situation

or condition of a specific piece of property, the strict application of any regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property. The Board may grant the variance from such strict application of the regulation so as to relieve such difficulties or hardship, provided such 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.

An applicant for an area variance must prove that, as a result of the attributes of a specific piece of property described in an application, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property. (Subtitle X § 1002.1(a).) In addition, the applicant for a variance shall have the burden of proof to justify the granting of the application according to these standards and shall demonstrate such through evidence in the public record. (Subtitle X § 1002.2.)

Lot 9 must be converted into a record lot for a building permit to be issued. (Ex. 31; May 15 Tr., 166-167; Subtitle A § 301.3.) Conversion of the lot into a record lot requires zoning relief from the lot width and lot area requirements of Subtitle D § 302.1. Construction of the detached dwelling proposed by the Applicant would require approval of variance relief from the side yard requirements. Based on the findings of fact, the Board concludes that the application, as amended, fails to satisfy the requirements for area variances consistent with the requirements of Section 8(g)(3) of the Zoning Act and Subtitle X § 1002.1(a).

First, the Applicant argued that the property has an extraordinary or exceptional situation or condition because the lot has a non-conforming lot width and a non-conforming lot area; the dwelling will not meet applicable side yard setbacks. The Applicant argued that the subject property is unique and in an exceptional situation "because adjacent properties on both sides already [are] developed and in separate ownership. Therefore there is no opportunity to combine both lots to create a conforming lot." (Ex. 40.)

In its report, OP stated that Lot 9 is exceptional in two respects. First, it is neither a tax lot nor a record lot. Second, it "is only 25 feet and cannot be expanded." (Ex. 31.) "Because adjacent properties are developed and under separate ownership, there is no opportunity for this lot to be expanded in width or area."

The Board agrees that there are some unusual attributes to the property – it is narrow, unimproved, and not a record lot – but concludes that the Applicant failed to demonstrate that there is an extraordinary or exceptional situation or condition associated with the property. The subject property is regularly shaped and does not exhibit any unusual topographical features. Lot 9 is one of six similar Parcel lots in close proximity. Lots 7, 8, 9, and 60 appear to be roughly the same width based on a map attached to the OP report. (Ex. 31.) Like Lot 9, those lots appear to have non-conforming lot widths and lot areas. Like Lot 9, two of the six adjacent Parcel lots are undeveloped. In these respects, there is nothing exceptional or extraordinary about the property.

The Applicant owns Lot 9 but does not own the adjacent properties, Lots 8 and 60. Thus the subject property cannot be enlarged. The Board disagrees with OP and the Applicant, however, that this attribute of the property gives rise to an extraordinary or exceptional situation or condition that would meet the requirements for a variance. There is nothing particularly unusual about an interior lot that cannot be expanded because the owner of the lot does not also own the properties by which it is bounded. Such a circumstance may impede the development of the property, but it is not an extraordinary or exceptional situation or condition.

Second, the Applicant argued that the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties. To demonstrate practical difficulties, the Applicant argued that, owing to the unique and exceptional situation claimed by the Applicant, the Applicant has "a practical difficulty to build a house which can be functional. Without BZA relief the property would be incapable of being developed." (Ex. 40.)

A dwelling with two eight-foot side yards on a lot with a width of 25 feet would be 9 feet wide. Thus OP stated that "given that the width of the lot cannot be expanded, the applicant faces a practical difficulty in building a house of a usable width." (Ex. 31.) OP also stated that the Applicant also faced a practical difficulty because Lot 9 "would be unbuildable if it were not converted to a record lot."

The Board concludes that the Applicant has failed to demonstrate that the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties. In its review of an application for a variance, the Board has the flexibility to consider a number of factors including (1) the weight of the burden of strict compliance, (2) the severity of the variances requested, and (3) the effect the proposed variances would have on the overall zone plan. *Gilmartin v District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990). In this case, the weight of the burden of strict compliance does not support the grant of variance relief. The Applicant purchased the property knowing that substantial variance relief would be needed from the requirements for minimum lot dimension and side yard, as stated in Subtitle D § 302.1 and Subtitle D § 206.2, before a dwelling could be built there. The Applicant has not explored the possibility that Lot 9 could be sold to the owners of one or both of the adjoining lots, providing additional side yards for the existing dwellings on those narrow lots. (May 15 Tr., 166.) The severity of the variances requested also militates against approval of the application. Subtitle D § 302.1 requires a lot width of 50 feet; the Applicant seeks a lot width of 25 feet – a 50 percent variance. Subtitle D § 302.1 requires a lot area of 5,000 square feet; the Applicant seeks a lot of 3,750 square feet – a 25 percent variance. Section 206.2 requires eight-foot side yards; the Applicant seeks three-foot side yards – a variance of 62.5 percent. In view of these significant variances, the Board concludes that the Applicant has failed to meet the test for variance relief.

Under Section 8(g)(3), the Board may grant a variance only if it 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. The Applicant argued that an area variance to build a two-story dwelling with basement would not limit the light and air to adjacent properties or to other dwellings in the neighborhood. (Ex. 40.) OP stated that the area variances

would have no substantial impact on the public good. (Ex. 31.) It stated that a dwelling on a vacant lot would replicate the "built character" of the rest of the block and that an infill project would close "a gap in the urban fabric." It also stated that the three-foot yards would be similar to the side yards of similar houses. OP also explained that it had recommended several design changes to the Applicant's architectural plans. The Applicant was amenable to those changes and filed revised architectural plans. (Ex. 33.)

In endorsing the notice of adverse decision written by SMD ANC 5C07, ANC 5C concluded that the project would in fact cause substantial detriment to the public good. (Ex. 29.) The ANC noted "substantial concern regarding the close proximity of the new structure to existing structures on either side" and concluded that the project would be substantially inconsistent with the general intent and purpose of the Zoning Regulations because most nearby dwellings were constructed over two lots and structures built since 2016 comply with the Zoning Regulations.

In this case, the Board concludes that the project would not be consistent with the character of Girard Place, N.E. and would cause, therefore, substantial detriment to the public good. The Board disagrees that an infill project would fill a "gap" along Girard Place, N.E. and thus be consistent with the character of the neighborhood. There are other gaps along the street, intended to preserve open space, which give the neighborhood a distinct character. There are large lots with large side yards, and there are dwellings built on two small lots in the area.

According to the Office of Planning, approval of the requested variances would not substantially impair the zone plan. OP stated that, while the Zoning Regulations specify a minimum requirement for a new record lot in low-density residential zones, the regulations do not intend to prevent appropriate infill development. According to OP, the area variances requested by the Applicant would permit the creation of a record lot and the construction of an "appropriately scaled" dwelling in an R-1-B zone. OP stressed that the dwelling would conform to other development standards for the lot.

The Board does not agree, concluding instead that approval of the application would impair the zone plan because the Applicant's proposal would not be consistent with the purposes of the Residence zones to promote the orderly development and use of land, recognize and reinforce the importance of neighborhood character and improvements to the overall environment and to the overall housing mix and health of the city, allow for the matter-of-right development of existing lots of record, or comply with minimum lot area and dimensions for the subdivision and creation of new lots of record.

The Board credits the testimony of ANC Commissioner Jeremiah Montague that the dwellings near the property generally date back to 1905. (April 10 Tr., 118). Thus, much of the existing development in the neighborhood predates the existing zoning regulations. That does not mean, however, that the Board should override those regulations and allow a development that does not meet current requirements.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) Even before this requirement was adopted by the Office of Zoning Independence Act of 1990, the Court of Appeals held that the Board "is required to demonstrate in its findings that it considered OP's views, and must provide a reasoned basis for any disagreement with them." *Sheridan Kalorama Historical Association v. District of Columbia Board of Zoning Adjustment*, 229 A.3d 1246, 1264 (D.C. 2020), *quoting Glenbrook Road Association v. District of Columbia Board of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992).

OP recommended approval of the zoning relief requested by the Applicant. For the reasons discussed above, the Board does not agree with OP's conclusions that the application met the requirements for area variances from the lot width and lot area requirements of Subtitle D § 302.1 and from the side yard requirements of Subtitle D § 206.2.

Under Section 13(d) of the Advisory Neighborhood Commission Act of 1975, the Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl.).) To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. "An agency must elaborate, with precision, its response to the ANC issues and concerns." *Bakers Local Union No. 118 v. District of Columbia Board of Zoning Adjustment*, 437 A.2d 176, 179 (D.C. 1981), *quoting Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1384 (D.C. 1977); *see also Metropole Condominium Association v. District of Columbia Board of Zoning Adjustment*, 141 A.3d 1979, 1087 (D.C. 2016). The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns," *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978). "ANC concerns must 'relate to … the statutory criteria for granting a special exception." *Bakers Local Union*, 437 A.2d at 179, *quoting Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment*, 403 A.2d 291, 295 (1979).

ANC 5C stated concerns that the Applicant's project would cause substantial detriment to the public good and would be substantially inconsistent with the general intent and purpose of the Zoning Regulations. Specifically, the ANC was concerned about the slight distances between the proposed dwelling and adjacent dwellings, and stated that, because dwellings in the neighborhood date to 1905, the proposed project would be inconsistent with the general purpose and intent of the Zoning Regulations. According to the ANC, the Applicant's project would result in an "awkwardly situated structure" inconsistent with dwellings along the street. For the reasons discussed above, the Board agrees with the ANC that the proposed project would be inconsistent with the character of Girard Place, N.E. and would cause, therefore, substantial detriment to the public good. A dwelling constructed with three-foot side yards will not be consistent with dwellings along the street, where there are "gaps" intended to preserve open space, large lots with large side yards, and dwellings built on two small lots.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant failed to satisfy the burden of proof with respect to the request for area variances, pursuant to Section

8(g)(3) of the Zoning Act and Subtitle X § 1002.1, from the lot width and lot area requirements of Subtitle D § 302.1 and the side yard requirements of Subtitle D § 206.2 to create a new record lot and to construct a new detached principal dwelling in the R-1-B zone at premises 2429 Girard Place, N.E. Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 3-2-0 (Carlton Hart, Lesyllée M. White, and Anthony J. Hood voting to deny; Frederick L. Hill and Lorna L. John opposed)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 7, 2022

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.