

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19988 of Rupsha 2011 LLC**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the side yard requirements of Subtitle D § 206.2 to construct a new detached principal dwelling unit in the R-2 zone at premises 4417 Foote Street, N.E. (Square 5131, Lot 40).<sup>1</sup>

**HEARING DATES:** May 1, June 5, and July 17, 2019  
**DECISION DATES:** July 31 and September 18, 2019

**DECISION AND ORDER**

This self-certified application was submitted on February 6, 2019 on behalf of Rupsha 2011 LLC, the owner of the property that is the subject of the application (the “Applicant”). Following a public hearing, the Board voted to deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda and letters dated March 15, 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 7 as well as the Chairman and the four at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 7D, the ANC in which the subject property is located, Single Member District ANC 7D05, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on March 8, 2019 (66 DCR 2730) and April 12, 2019 (66 DCR 4782).

Party Status. The Applicant and ANC 7D were automatically parties in this proceeding. There were no requests for party status.

Applicant’s Case. The Applicant provided evidence and testimony in support of the application.

OP Report. By memorandum dated April 17, 2019, the Office of Planning recommended approval of the application. (Exhibit 26.)

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<sup>1</sup> The application initially requested area variances from requirements for side yard, lot area, and lot width. Because the subject property is an existing nonconforming record lot, only relief from the side yard requirements was needed for the Applicant’s proposal in accordance with Subtitle C § 301.1 (a record lot existing before the effective date of the Zoning Regulations that does not conform with lot dimension and lot area requirements may be considered a conforming lot for the purposes of building permits and uses provided that any building will meet applicable development standards and the non-conformity will not be increased). The application was amended to withdraw the requests for variances from requirements for lot area and lot width.

DDOT Report. By memorandum dated April 19, 2019, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 27.)

ANC Report. ANC 7D did not submit a written report to the record for this application.

**FINDINGS OF FACT**

1. The property that is the subject of this application is an unimproved parcel located on the south side of Foote Street, N.E. between 44<sup>th</sup> and 45<sup>th</sup> Streets, N.E. (Square 1818, Lot 849) (Square 5131, Lot 40).
2. The subject property is rectangular, 25 feet wide and 92.5 feet deep. The lot area is 2,312 square feet.
3. The lot abuts a narrow parcel, also 92.5 feet deep, to the west. A public alley, 16 feet wide, abuts the adjoining parcel on the west. Another public alley, 15 feet wide, abuts the subject property and the adjoining parcel along their rear (south) lot lines.
4. The Applicant proposed to build a detached dwelling on the subject property. The planned structure would be 19 feet wide, providing side yards of three feet on each side.
5. The subject property and the surrounding area are located in an R-2 zone.
6. Pursuant to Subtitle D § 206.2, two side yards, each at least eight feet in width, are required for a detached building in the R-2 zone. Pursuant to Subtitle D § 206.3, one side yard, at least eight feet wide, is required for a semi-detached building in the R-2 zone.
7. The proposed detached principal dwelling would comply with development standards applicable in the R-2 zone other than the side yard requirements. The building height would be 27 feet and two stories, where a maximum of 40 feet and three stories is permitted. (Subtitle D § 303.1.) The lot occupancy would be 34.13%, where a maximum of 40% is permitted as a matter of right. (Subtitle D § 304.1.) A rear yard of 38 feet, six inches would be provided, where a minimum of 20 feet is required. (Subtitle D § 306.2.)
8. The subject property is nonconforming with respect to lot width and lot area. In accordance with Subtitle D § 302.1, the required minimum lot width is 30 feet (for a semi-detached building) or 40 feet (for all other structures), and the required minimum lot area is 3,000 square feet (for a semi-detached building) or 4,000 square feet (for all other structures).
9. 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.) 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.)

10. The R-2 zone is intended to provide for areas predominantly developed with semi-detached houses on moderately sized lots that also contain some detached dwellings. (Subtitle D § 300.5.)
11. The lot abutting the subject property to the east is developed with a detached dwelling with a side yard of approximately 50 feet on its west side, facing the subject property. An apartment house is located to the west of the subject property, across the public alley. Properties to the north, across Foote Street, are improved with detached and semi-detached dwellings. Properties to the south, across the public alley, contain semi-detached dwellings.
12. The surrounding neighborhood has a generally low- to moderate-density residential character and is developed primarily with apartment houses, detached dwellings, and semi-detached dwellings.

#### **CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks an area variance from the side yard requirements applicable in the R-2 zone under Subtitle D § 206.2 to allow construction of a detached principal dwelling with two side yards of three feet, where a minimum of eight feet on both sides is required. The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations 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. (*See* 11 DCMR Subtitle X § 1000.1.)

For purposes of variance relief, the “extraordinary or exceptional situation” need not inhere in the land itself. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Rather, the extraordinary or exceptional conditions that justify a finding of uniqueness can be caused by subsequent events extraneous to the land at issue, provided that the condition uniquely affects a single property. *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); *DeAzcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978) (the extraordinary or exceptional condition that is the basis for a use variance need not be inherent in the land but can be caused by subsequent events extraneous to the land itself.... [The] term was designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning

regulations in appropriate cases....); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (for purposes of approval of variance relief, “extraordinary circumstances” need not be limited to physical aspects of the land). The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; the critical requirement is that the extraordinary condition must affect a single property. *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016), citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

In this proceeding, the Applicant asserted that the subject property faced an exceptional situation because the adjoining properties are under separate ownership, precluding their acquisition by the Applicant as a means of forming a larger lot consistent with zoning requirements. The Board does not agree that this constitutes an exceptional situation. The subject property is a regular, rectangular parcel that does not exhibit any unusual topographic conditions or other exceptional features. Neither its narrow size nor the separate ownership of adjoining parcels is unusual.

An applicant for area variance relief is required to show that the strict application of the zoning regulations would result in “practical difficulties.” *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). A showing of practical difficulty requires “[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome....” *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board’s consideration include the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

The Board finds the Applicant’s claim of practical difficulty unpersuasive. According to the Applicant, the requested variance relief from side yard requirements was necessary because otherwise the property could not be developed with a functional dwelling. However, the Applicant acknowledged that a semi-detached dwelling, 17 feet wide, could be built on the lot in compliance with all development standards applicable in the R-2 zone, including side yard setback. In light of the availability of a viable option that would not require zoning relief, the Board concludes that the Applicant did not demonstrate that compliance with the side yard requirements would be unnecessarily burdensome. The Applicant indicated a preference for a detached dwelling over a semi-detached building, which would either have fewer windows or at-risk windows. The Office of Planning opined that the proposed detached dwelling would provide “a layout compatible with contemporary standards and the neighborhood, while maintaining open space on each side of the building” to facilitate future maintenance of the building. The Board appreciates those concerns but concludes that those factors do not create a practical difficulty to the owner of the property sufficient to warrant variance relief in this instance, especially considering the absence of any exceptional circumstances of the property and the intent of the provisions of the R-2 zone.

The requested variance could be granted without resulting in substantial detriment to the public good. However, approval of the application would cause impairment of the zone plan through the granting of a variance where the property does not exhibit any exceptional situation and the strict application of the Zoning Regulations would not cause any practical difficulty to the owner because another option, consistent with all zoning requirements, is available. Under the circumstances, approval of a variance to allow a detached dwelling, not meeting side yard requirements, would not be consistent with the purposes of the Residential House zones to provide for the orderly development and use of land and structures and to allow for the matter-of-right development of existing lots of record, or with the intent of the R-2 zone to provide for areas predominantly developed with semi-detached houses on moderately sized lots.

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.). For the reasons discussed above, the Board does not agree with OP’s recommendation that the application should be approved in this case.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)). In this case, ANC 7D did not submit a report stating any issues or concerns to which the Board can give great weight.

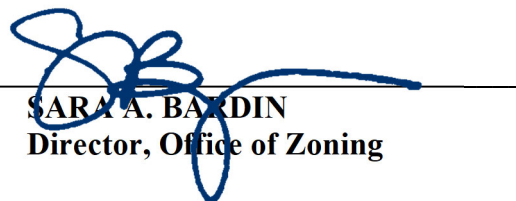
Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for an area variance from the side yard requirements of Subtitle D § 206.2 to construct a new detached principal dwelling unit in the R-2 zone at 4417 Foote Street, N.E. (Square 5131, Lot 40). Accordingly, it is **ORDERED** that the application is **DENIED**.

**VOTE: 5-0-0** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Anthony J. Hood (by absentee ballot) voting to DENY.)

**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:** May 12, 2020

PURSUANT TO 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.