

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 20121 of Bridges 2 Psychological Services and Consultation LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for a use variance from Subtitle U § 201.1 to allow a medical office use in an existing building in the R-2 Zone at 639 Atlantic Street, S.E. (Square 6163, Lot 127).

HEARING DATES: October 30 and December 11, 2019, January 29, March 4, July 15, and September 16, 2020
DECISION DATE: September 23, 2020

DECISION AND ORDER

This application was filed on July 17, 2019 by Angelina Dickerson, the owner of the property that is the subject of the application, on behalf of Bridges 2 Psychological Services and Consultation LLC (collectively, the “Applicant”).¹ Following a public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by memoranda dated August 19, 2019 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 8 as well as the Chairman and the at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 8E, the ANC in which the property is located, Single Member District ANC 8E07, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on August 16, 2019 (66 DCR 10525) as well as through the calendar on the Office of Zoning website.

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 8E were automatically parties in this proceeding. The Board received no requests for party status.

Applicant’s Case. The Applicant provided evidence and testimony in support of the application for a use variance to allow a medical office use in the existing building at the subject property.

¹ Bridges 2 Psychological Services and Consultation LLC, is owned by Angelina Dickerson, who also owns the subject property.

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OP Report. The Office of Planning recommended denial of the application by memoranda dated October 18 and November 27, 2019 and September 2, 2020. (Exhibits 37, 54, 81.)

DDOT Report. By memorandum dated October 4, 2019, the District Department of Transportation indicated no objection to the Applicant's proposal except to note that the vehicle parking spaces at the subject property should be accessible from the abutting public alley, not a curb cut on Atlantic Street. (Exhibit 34.)

ANC Report. ANC 8E submitted a letter indicating that, at a public meeting on January 6, 2020 with a quorum present, the ANC voted to support the request for relief to allow a counseling/medical office use at the subject property. (Exhibit 73.)

Persons in support. The Board received letters from persons in support of the application.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the south side of Atlantic Street between 6th and Barnaby Streets, S.E., with the address 639 Atlantic Street, S.E. (Square 6163, Lot 127).
2. The subject property is rectangular, 75 feet wide and 110 feet deep. Its lot area is 8,250 square feet.
3. The subject property was improved with a one-story building. A deck addition extended along the southeast side of the building to a rear door. The northeastern portion of the lot was paved and used for vehicle parking accessible via a curb cut on Atlantic Street.
4. The existing building was previously used as a community-based residential facility ("CBRF") for six persons, with two rotating staff.
5. According to the Applicant, the existing building was constructed in the 1990s for use as a CBRF and has never been used as a principal dwelling, although the Applicant also referred to "retrofitting" the building for use as a CBRF. (Exhibit 42.) The Office of Planning testified that the building was originally constructed for residential purposes, although the "house has been a Community-Based Residential Facility for over 13 years, for which limited interior alterations were done to make it handicap accessible for residents." (Exhibit 37.)
6. The Applicant indicated that the subject property was offered for lease for a period of eight months (April-December 2018) "without fielding any interest for any use permitted in the R-2 zone district." (Exhibit 42.)

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7. The Applicant entered into a lease agreement with a potential tenant in early 2019 to use the existing building at the subject property as a medical office and approached the Department of Consumer and Regulatory Affairs to obtain a certificate of occupancy.² The Applicant claimed to have been misinformed by DCRA that medical office use was permitted at the site and was “made to expend a significant amount in upgrades ostensibly to comply with construction codes requirements to enable issuance of a [certificate of occupancy].” (Exhibit 42.)
8. On August 14, 2019, DCRA issued a conditional certificate of occupancy to the Applicant authorizing medical office use at the subject property. The conditional certificate of occupancy stated, as “Conditions/Restrictions,” that the “Conditional C of O for medical office to expire on December 31st 2019, subject to BZA # 20121 approval and issuance of B1904855.” (Exhibit 43.)
9. The prospective tenant identified by the Applicant did not establish any use at the subject property, which remained vacant for a year. The Applicant then opted to use the subject property for her business offering mental health services including individual, group, and family therapy.
10. The Applicant proposed to use the existing building as medical offices, without significant changes to the exterior of the building. The front portion of the building would be configured as a conference room and waiting area. The remainder of the first floor would contain four offices, three bathrooms, a kitchen, and a laundry room. Four vehicle parking spaces would be provided on-site.
11. A public alley, 15 feet wide, abuts the subject property along its rear (south) lot line.
12. The subject property is located in a Residential House zone, R-2.
13. The Residential House zones are residential zones designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. 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 lot width for the subdivision and creation of

² As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. *See* D.C. Official Code § 10-561.01 *et seq.*

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new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D, Chapter 1.)

14. The purpose of the R-2 zone is to provide for areas with semi-detached houses and avoid denser types of residential development. 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 houses.
15. Properties to the north, across Atlantic Street, as well as properties in the same square to the southeast, fronting on Barnaby Street, are located in a Residential Apartment (RA) zone, RA-1. Other properties, to the east of the subject property across Barnaby Street, are in a Residential Flat (RF) zone, RF-1.
16. Properties in the vicinity of the subject property along the south side of Atlantic Street are predominantly improved with semi-detached principal dwellings. The surrounding area is residential in character.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a use variance from Subtitle U § 201.1 to allow a medical office use in an existing building in the R-2 zone at 639 Atlantic Street, S.E. (Square 6163, Lot 127). 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.

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the letter submitted by ANC 8E, the Board concludes that the application failed to satisfy the burden of proof with respect to the requested variance.³ The Board did not conclude that the subject property was faced with any exceptional situation or condition, or that the strict

³ The Board was not persuaded by the Applicant’s estoppel argument. “[T]he defenses of estoppel and laches are judicially disfavored in the zoning context because of the public interest in enforcement of the zoning laws.” *Beins v. District of Columbia Bd. of Zoning Adjustment*, 572 A.2d 122, 126 (D.C. 1990) (citing *Goto v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d at 925) (D.C. 1980).) Moreover, the Board’s authority with respect to variances is stated in the Zoning Act and does not extend to encompass equitable remedies such as estoppel. The Board considered the Appellant’s arguments to the extent they were relevant to the criteria for approval of a use variance but, for the reasons discussed in the order, did not conclude that the application satisfied the requirements for approval of the requested use variance as set forth in the Zoning Act.

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application of the Zoning Regulations would result in undue hardship to the Applicant. Moreover, approval of the requested variance would substantially impair the zone plan.

For purposes of a use variance, the “exceptional condition” requirement may be satisfied by elements including a characteristic of the land, *see Fleischmann v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561 (D.C. 2011); ‘(a) condition inherent in the structures built upon the land,’ *Capitol Hill Restoration Soc'y, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); or prior zoning actions regarding the property.” *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097–98, 1100 (D.C. 1979) “The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; however, the critical requirement is that the extraordinary or exceptional condition must affect a single property.” *Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082–83 (D.C. 2016)” *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1217 (D.C. 2016).

In this case, the Applicant argued that the subject property faced an exceptional situation or condition due to a variety of factors, including the size of the lot (the largest lot in the square, and the only lot containing a detached building), the proximity of the subject property to properties in other zones (which contained semi-detached dwellings or apartment houses), characteristics of the existing building (which was configured with features suitable for CBRF use), and its history of use as a CBRF (which the Applicant asserted was in the nature of an institutional use). The Office of Planning disagreed, not finding any exceptional condition created by the size of the lot, the characteristics of the existing building, or zoning history.

The Board does not find that the subject property is faced with any exceptional situation or condition that would warrant approval of the requested use variance. The subject property is unusual in that the lot is relatively large and contains a detached building, unlike most of the nearby properties. However, the Board does not conclude that the subject property faced any exceptional situation or condition for purposes of the request for variance relief because the Applicant did not identify any feature of the subject property that would preclude its use in a manner that is permitted, whether as a matter of right or by special exception, in the R-2 zone. The Applicant’s desire to use the existing building for a medical office use did not create any exceptional condition, because generally an applicant’s desire to utilize property for a certain use is not by itself sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations, *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972).

The Board does not find that the strict application of the Zoning Regulations would result in undue hardship to the owner of the subject property. The Applicant did not demonstrate that the building could not be adapted for a use that would not require a use variance; that is, any use permitted in the R-2 zone as a matter of right or by special exception.⁴ The Board was not persuaded that the

⁴ Angelina Dickerson, a clinical psychologist who owns Bridges 2 Psychological Services and Consultation LLC, testified that she “purchased [the subject property] thinking it was a commercial investment, so that [she] could provide

relatively minor elements cited by the Applicant – five-foot wide corridors, a commercial-grade fire alarm and sprinkler system, accessible bathrooms, self-closing fire doors – rendered the building unusable as a dwelling or other use permitted in the R-2 zone. Instead, the Board agreed with the Office of Planning that the “floor plans show that the house still has a residential interior layout.” (Exhibit 54.) A “use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.” *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). The Board was not persuaded by the Applicant’s arguments that the existing building was not suitable for residential use, given that the cost of removing interior renovations installed for the prior CBRF use did not appear “prohibitive” as claimed by the Applicant, and that the building did not appear suitable for lease only for a medical office use. The Applicant did not demonstrate that any major changes were needed but only that the existing building had wider hallways and certain other features that were useful for the CBRF but not typical in a principal dwelling. The Board agreed with the Office of Planning that “[t]here appears to be no significant interior or exterior alterations to the building to prevent it from continuing as a residential building or other use permitted, and therefore anticipated, by the low-density residential zone. (Exhibit 37.) Compare, *Dwyer v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 306, 307 (D.C. 1974), affirming the Board’s decision to deny a use variance that would have permitted general office use in a residential zone, where the Board did not find any undue hardship to the owners based on claims that their building could not be rented as a single-household residence because of its size and interior arrangement related to prior use as a medical office and that the cost of converting the building to multi-family use would be prohibitively expensive.

The Applicant also argued that use of the subject property as a dwelling would not “generate adequate income to service the debt,” especially since the property was classified as commercial for purposes of its property tax assessment. According to the Applicant, those factors, along with the costs of “retrofitting for suitability” for use as a dwelling, “conspire[d] to result in the hardship of expectation of a return on investment.” (Exhibit 42.) “At some point economic harm becomes sufficient [to establish undue hardship], at least when coupled with a significant limitation on the utility of the structure.” *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990). In this case, the Board did not find any significant limitation on the utility of the existing building at the subject property and was not persuaded that the Applicant’s financial situation constituted undue hardship. The Applicant unfortunately relied on inaccurate information provided by real estate agents in deciding to purchase the property as an investment for commercial purposes. The Applicant also assumed that classification of the subject property as a commercial property for purposes of real property taxation meant that commercial uses were permitted there under the Zoning Regulations. Those errors were regrettable but did not constitute a basis for a finding of undue hardship. Neither factor cited by the Applicant related to the zoning classification of the subject property, which could have been discerned before the purchase was

mental health services” there in the future. Dr. Dickerson did not consider living at the subject property or operating the medical office use as a home occupation. (Transcript of December 11, 2019 at 259-260; see Subtitle U § 251.)

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completed.⁵ *See Dwyer* 320 A.2d at 308 (hardship, if any, had not resulted from the location, situation, or condition of the property, but solely from the owners' appropriation of the building for commercial purposes without first having obtained the necessary change in zoning; to countenance such a procedure and standard for the procurement of a variance is to encourage the destruction of planned zoning in the District of Columbia (quoting *Clouser v. David*, 114 U.S.App.D.C. 12, 13, 309 F.2d 233, 234 (1962)).

Approval of the requested variance would not appear to result in substantial detriment to the public good. However, approval of the application would substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map, by allowing a non-residential use in a low-density residential zone where the requirements for approval of a use variance have not been met. The R-2 zone is intended primarily to provide for areas with semi-detached dwellings but also specifically contemplates "some detached houses." Approval of the requested use variance would not be consistent with the purposes of the Residential House zones to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development and to recognize and reinforce the importance of preservation of housing stock and low- and moderate-density housing to the overall housing mix and health of the city.

Great weight. 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 agrees with OP's recommendation that the application should be denied.

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 8E submitted a letter in support of the application without stating any issues or concerns pertaining to the zoning relief requested by the Applicant. The Board credits the views expressed by ANC 8E but concludes that the ANC did not address the requirements for approval of the requested use variance and therefore did not offer persuasive advice to the Board that would support approval of the application.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has not satisfied the burden of proof for a use variance from Subtitle U § 201.1 to allow a medical office use in an existing building in the R-2 Zone at 639 Atlantic Street, S.E. (Square 6163, Lot 127). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: **4-0-1** (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Anthony J. Hood to DENY; one Board seat vacant)

⁵ For the same reasons, the Board finds no merit in the Applicant's claim that DCRA required expenditures to render the existing building suitable for use for commercial purposes. The Applicant did not demonstrate any zoning history that would support claims of an exceptional situation or practical difficulty, especially since the conditional certificate of occupancy was expressly conditioned on approval of zoning relief to allow the Applicant's planned non-residential use.

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. PARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 4, 2024

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.

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.