

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 20828 of Olufemi Awoseye, as amended, pursuant to 11 DCMR Subtitle X § 1002 for area variances from the subdivision requirements of Subtitle C § 302.1, the minimum lot dimension requirements of Subtitle D § 202.1, and the side yard requirements of Subtitle D § 208.3 to allow the subdivision of an existing record lot into two records lots and a new two-story semi-detached dwelling on each new lot in the R-2 zone at 5321 B Street, S.E. (Square 5304, Lot 6).^{1,2}

HEARING DATES: January 11 and September 20, 2023
DECISION DATE: September 20, 2023

DECISION AND ORDER

This self-certified application was filed August 10, 2022 by Olufemi Awoseye (the “Applicant”), the owner of the property that is the subject of the application. 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 letters, dated September 13, 2022, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Department of Consumer and Regulatory Affairs,³ Advisory Neighborhood Commission (“ANC”) 7E, the ANC in which the subject property is located, and Single Member District ANC 7E06, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 7 as well as the Chairperson of the Council and three at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice

¹ The caption has been revised to reflect that the application was amended. The Applicant originally requested area variances from requirements for side yard under Subtitle D § 206.2 (later renumbered to Subtitle D § 208.3) and minimum lot dimensions under Subtitle D § 302.1 (later renumbered to Subtitle D § 202.1) to allow two dwellings without side yards at the subject property (Exhibit 2). The Applicant subsequently revised the project to propose two semi-detached dwellings and added a request for a variance from the subdivision requirements of Subtitle C § 302.1 to allow the subdivision of the subject property into two record lots (Exhibit 30B).

² By orders issued August 25, 2023, the Zoning Commission approved text amendments that established new zone names and amended some of the regulations applicable to the Applicant’s proposal. (See Zoning Commission Orders No. 18-16 and 19-27.) This order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing.

³ 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.*

was published in the *District of Columbia Register* on October 28, 2022 (69 DCR 013296-013300).⁴

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 7E were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Christopher Austin, the owner of a property on B Street S.E. abutting the subject property.

Applicant's Case. The Applicant provided evidence and testimony in support of the application from Adam Carballo, the project architect. The Applicant originally proposed to build two three-story attached dwellings at the subject property but revised the plans to propose a two-story semi-detached dwelling on each of two new record lots.

OP Report. By reports dated December 29, 2022 and April 21, 2023, the Office of Planning recommended denial of the application. (Exhibits 22 and 32.)

DDOT Report. By memorandum dated December 16, 2022 the District Department of Transportation indicated no objection to approval of the requested relief from side yard and lot dimension requirements because “the proposed action will not have adverse impacts on the District’s transportation network.” (Exhibit 18.)

ANC Report. By report dated September 5, 2023, ANC 7E stated that, at a regularly scheduled meeting on August 8, 2023, with a quorum present, the ANC adopted a motion to oppose the application. (Exhibit 35.)

Party in opposition. The party in opposition, Christopher Austin, asserted that the Applicant’s project would impede existing solar panels on his property, would cause adverse impacts with respect to landscaping and water drainage, and would be inconsistent in an area containing primarily detached principal dwellings.

Person in opposition. The Board received a letter and heard testimony in opposition to the application from the owner of a nearby property, who expressed concerns about increased density and the loss of open space.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the south side of B Street S.E. between 53rd and 54th Streets, with the address 5321 B Street, S.E. (Square 5304, Lot 6).
2. The subject property is rectangular, 40 feet wide and 100 feet deep. The lot area is 4,000 square feet.
3. The subject property is currently configured as a record lot.

⁴ The public hearing was originally scheduled for January 11, 2023 and was postponed twice at the Applicant’s request.

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4. The subject property is generally flat and is unimproved.
5. The Applicant proposed to subdivide the subject property into two lots and to construct a new two-story semi-detached principal dwelling on each new lot.
6. Each new lot would have a lot width of 20 feet and a lot area of 2,000 square feet.
7. Each of the new dwellings would be 15 feet wide. The dwellings would be attached to each other on one side and have a side yard of five feet on the opposite side.
8. Each dwelling would be 26 feet, eight inches and two stories in height, where three stories and 40 feet are permitted. (Subtitle D § 203.1.) Each dwelling would have a basement.
9. Each dwelling would be set back 20 feet from the front lot line and would extend 53 feet, four inches. The resulting rear yard setbacks would be 26 feet, eight inches deep where a minimum of 20 feet is required. (Subtitle D § 207.1.)
10. The lot occupancy on each new lot would be 40 percent, where a maximum of 40 percent is permitted. (Subtitle D § 304.)
11. The properties abutting the subject property along B Street both contain detached principal dwellings. The dwelling on the abutting property to the west has solar panels on its roof, which have been in operation since March 2020.
12. Other properties in the vicinity of the subject property are primarily improved with detached and semi-detached dwellings.
13. The subject property is located in a Residential House (R) zone, R-2. 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. (Subtitle D § 101.1.) 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 matter-of-right development of existing lots of record; (e) establish minimum lot area and lot width for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 101.2.)
14. 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. (Subtitle D §

101.7.) The purpose of the R-2 zone is to provide for areas with semi-detached houses, avoiding denser types of residential development. (Subtitle D § 101.6.)

15. Properties to the west and south of the subject property, including some in the same square, are located in an R-3 zone, which is intended to permit attached dwellings on small lots. The properties directly south of the subject property, fronting on Bass Place, are developed primarily with row dwellings.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks area variances from the requirements for a subdivision under Subtitle C § 302.1, the lot dimension requirements under Subtitle D § 202.1, and the side yard requirements under Subtitle D § 208.3 to allow a subdivision creating two new record lots and a new two-story semi-detached dwelling on each new lot in the R-2 zone at 5321 B Street, S.E. (Square 5304, Lot 6). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (2012 Repl.), to grant variances, as provided in the Zoning Regulations, where, in the judgment of the Board, 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 any regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. (See 11 DCMR Subtitle X § 1002.)

Where a lot is divided, the division generally must be effected in a manner that will not violate zoning provisions for yards, minimum lot width, and minimum lot area. (Subtitle C § 302.1.) The minimum lot dimensions required for a semi-detached building in the R-2 zone are 30 feet in lot width and 3,000 square feet in lot area. (Subtitle D § 202.1.) The Applicant seeks to subdivide the subject lot into two new record lots, each 20 feet wide and having 2,000 square feet in lot area. In the R-2 zone, a semi-detached building is required to provide one side yard of at least eight feet in width. (Subtitle D § 208.3.) The Applicant proposed to build a new semi-detached dwelling on each new lot, where each dwelling would provide one side yard at a depth of five feet. Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns of the affected ANC, the Board concludes that the Applicant has not satisfied the requirements for the requested variance relief.

The Board does not find that the subject property exhibits any extraordinary or exceptional situation or condition. The subject property is regularly shaped, neither exceptionally narrow nor shallow. The subject property is generally flat and does not exhibit any exceptional topographical conditions. The Applicant asserted that the subject property is exceptional as the only unimproved lot in an area where other properties contain detached and semi-detached dwellings (see Exhibit 30C). The Board was not persuaded that the lack of an existing building at the subject property was sufficiently extraordinary or exceptional so as to warrant approval of the requested variance relief.

The Board does not find that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the subject property. The size and configuration of the subject property are sufficient to meet the minimum lot dimension requirements applicable in the R-2 zone.⁵ The Board was not persuaded by the Applicant's contention that the development of two semi-detached dwellings at the subject property would "better conform to the surrounding lots." (Exhibit 30C.) The Office of Planning testified that the subject property has the same "size and width ... as 5 of the 6 other lots on the south side of the 5300 block of B Street, S.E.," and that "[f]our of the five similar lots are occupied by single-household residences." (Exhibit 32.) The Applicant also contended that provision of the required side yards "would severely impact the internal configuration of the building and reduce living space." (Exhibit 30C.) However, as the Applicant acknowledged, that impact would arise because "the subdivided lot size is only 20 feet" and not as a result of the strict application of the zoning regulations to the subject property.

With respect to whether the requested variances could be approved without causing substantial detriment to the public good, the Applicant only asserted that approval of the application "would not negatively impact the scale, aesthetics, density, or character of the neighborhood." (Exhibit 30C.) The Board was not persuaded, in part because the Applicant did not specifically address whether or how the proposed semi-detached dwellings would affect the use of neighboring properties, including with respect to the existing solar array on one abutting dwelling.

The Board concludes that the requested area variances cannot be approved without substantially impairing the intent, purpose, and integrity of the zone plan. The R-2 zone is intended for the development of semi-detached dwellings, as proposed by the Applicant, but only "on moderately sized lots" where denser types of residential development should be avoided. (Subtitle D §§ 101.6, 101.7.) Approval of the application would result in the creation of two new record lots not meeting the minimum requirements for either lot area or lot width for a semi-detached dwelling. Under the circumstances, the new lots could not be considered "moderately sized," especially since the resulting lot width would be too narrow to meet the applicable side yard requirement. Approval of the application would not be consistent with the purposes of the Residential House zones to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses, or with the intent of the R zones to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; to 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; to allow for matter-of-right development of existing lots of record; or to establish minimum lot area and lot width for the subdivision and creation of new lots of record.

⁵ The minimum lot dimension requirements in the R-2 zone for structures other than a semi-detached building are 40 feet in lot width and 4,000 square feet in lot area. (Subtitle D § 202.1.)

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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, in this case, 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 7E opposed the application, citing a concern about whether the Applicant had conducted a study to determine whether approval of the requested zoning relief would negatively impact solar panels on a neighboring property. The Board agrees with ANC 7E that the application did not meet the requirements for approval.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for area variances from the subdivision requirements of Subtitle C § 302.1, the minimum lot dimension requirements of Subtitle D § 202.1, or the side yard requirements of Subtitle D § 208.3 to allow the subdivision of an existing record lot into two records lots and a new two-story semi-detached dwelling on each new lot in the R-2 zone at 5321 B Street, S.E. (Square 5304, Lot 6). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 3-0-2 (Frederick L. Hill, Chrishaun S. Smith, and Anthony J. Hood to DENY; Lorna L. John not participating; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



On behalf of

SARA A. BARDIN

Director, Office of Zoning

FINAL DATE OF ORDER: July 3, 2024

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

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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.