

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15702 of Nora Pouillon, pursuant to 11 DCMR 3107.2, for a variance from the minimum lot area and width requirements (Subsection 401.3), and a variance from the rear yard requirements (Subsection 404.1) for construction of a detached single-family dwelling in an R-1-B District at premises 4401 35th Street, N.W. (Square 1971, Lot 8).

HEARING DATE: September 9, 1992
DECISION DATE: October 7, 1992

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located at 4401 35th Street, N.W., on the northeast corner of the intersection of 35th and Yuma Streets, N.W. The subject lot is unimproved and consists of 3,769 square feet of land area. It is triangular in shape with 65 feet of frontage on 35th Street and 106.98 feet of frontage on Yuma Street. It abuts 35th Street to the west, Yuma Street to the south, and a semi-detached dwelling to the northeast. The property is zoned R-1-B.

2. The area surrounding the site is characterized by single-family detached and semi-detached dwellings and low-rise apartments in an R-1-B zone district. A motel, a bank and other commercial uses are located in an adjacent C-3-A zone district along the western side of Connecticut Avenue between Albemarle and Yuma Streets. Connecticut Avenue, which is a 130-foot wide major arterial, is located to the west of the subject site and is the western boundary for the 3400 block of Yuma and Albemarle Streets. The University of the District of Columbia is located to the south of the subject site across Yuma Street.

3. The applicant proposes to construct a single-family dwelling with two stories, an attic and a basement. The proposed structure would have three bedrooms and two bathrooms on the second floor, one bedroom in the attic, a kitchen, dining room, living room and front porch on the first floor level and a family room, a play area and a garage at the basement level.

4. The property is located in the R-1-B District which permits matter of right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet. A minimum depth of 25 feet is required for a rear yard in the R-1-B District.

5. The applicant's property, which contains 3,769 square feet, is 1,231 square feet (or 25 percent) less than the 5,000 square feet required in an R-1-B District. The applicant's lot is an average width of 43.83 feet, 6.17 feet (or 12 percent) less than the 50-foot width required in the R-1-B District. With the proposed structure the rear yard would measure an average of 24.05 feet, .95 feet (or 4 percent) less than the 25-foot rear yard required. Based on these measurements, the applicant is requesting variances from the minimum lot area, lot width and rear yard requirements.

6. The applicant maintains that the subject application meets the requirements of the Zoning Regulations related to variances. The applicant's architect stated that the property is unique because of its shape which is an irregular polygon. He further stated that the size and shape of the property create practical difficulties in developing the property. He noted that the lot was subdivided in 1950, prior to enactment of the Zoning Regulations. The property is also subject to a 15-foot building restriction line. He stated that any proposed construction on the substandard-sized lot would require variance relief.

7. The applicant maintains that granting the variances will not be of substantial detriment to the public good. The applicant's architect stated that locating a house on the subject lot will help complete the neighborhood. He also stated that the scale, style and materials to be used for the new house will be compatible with neighboring properties. The house will have a masonry foundation and will be covered with stucco. He stated that the residences to the west of the site on Yuma Street are two-story stucco or wood-sided houses. He stated that the proposed structure will be a two-story residence that is broken into two masses--the main house (which will be similar in width to other houses on the north side of 35th Street), and a smaller wing to the west of the site. The house will have double-hung windows and a gable roof that is perpendicular to the street. These characteristics are typical on this street.

8. The applicant maintains that the subject lot is not the only nonconforming lot in the area. Many of the other lots within Square 1970 are either less than the minimum lot area required, less than the minimum lot width required, or both. The lots on the north and west sides of 35th Street are single-family detached dwellings. None of these lots meet the 5,000 square foot area requirement for R-1-B. With the exception of lot 49, none of these lots meet the 50-foot width requirement.

9. It is the applicant's view that the proposed structure will help buffer the other houses from the noise and traffic on Yuma Street.

10. By report dated September 1, 1992, and through testimony at the hearing, the Office of Planning (OP), noted the physical characteristics of the subject site, the proposed use, and the relief requested. With regard to the variances from the minimum lot area and minimum lot width, OP noted that subdivision of the lot occurred prior to the enactment of the Zoning Regulations. Therefore, development of the lot for any permitted use would necessarily be nonconforming in terms of lot area and width and would require variance relief.

With regard to the rear yard variance, OP stated that it is minor and is largely attributed to the irregular polygon-line shape of the site and the 15-foot deep building restriction line that traverses the front of the property along 35th Street N.W. In the opinion of OP, the applicant is faced with a practical difficulty due to the irregular shape and the substandard size of the subject site, along with the 15-foot deep building restriction line at the front of the property. OP believes that the relief requested in this case, if granted, would result in a development that would not be inconsistent with the general character of the immediate area. Moreover, the Office of Planning believes that the proposed construction would contribute positively to the immediate neighborhood. Therefore, OP recommends that the Board grant the relief requested.

11. By letter dated July 6, 1992, the Metropolitan Police Department stated that based upon its review of this application, it does not appear that the construction proposed by this application will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Accordingly, the department does not oppose this application.

12. By memorandum dated August 12, 1992, the D.C. Fire Department stated that it has evaluated the application to determine its impact on emergency operations. Based on this review, the Fire Department stated that it has no objection to the application. The Fire Department noted that fire and life safety features required by city codes such as fire alarms, sprinkler systems, standpipe systems, exits, fire rated separations, fire extinguishers, etc., shall be determined during the plan review process as part of the building permit application review.

13. By report dated September 2, 1992 and through testimony at the hearing, Advisory Neighborhood Commission (ANC) 3F expressed two concerns about the proposed use. First, the ANC was concerned that the height of the planned house does not conform to the row of houses of which it would become a part. Therefore the planned height of the new house would make it an unsightly addition to the row.

To resolve this problem the ANC recommends that approval shall be subject to the condition that the plans for the proposed house be modified so that its maximum height from the street grade is no greater than the house next door at 4405 35th Street, N.W. This is not to suggest that the proposed dwelling will not be higher in elevation than the house next door (4405 35th), as the elevation of 35th Street rises from north to south. ANC 3F recommends that the proposed house at 4401 35th Street measure the same height from the street grade as the one next door at 4405 35th Street.

Secondly, ANC 3F is concerned about the possible need for a three-way stop sign at the intersection of 35th and Yuma Streets to protect the public safety after a house is built on the subject lot. Therefore, the ANC recommends that before granting the application, the Board should ask the Department of Public Works, Bureau of Traffic Services for its plans to protect traffic safety at the intersection of 35th and Yuma Streets, and the Board should satisfy itself that the proposed house will not unsafely obstruct motorists' vision there.

14. No one appeared at the hearing to testify as a neighbor in support of the application.

15. A number of neighbors testified in opposition to the application, raising the following issues: the quality of the neighborhood, the small size of the lot, the compatibility of the proposed structure and traffic safety.

The quality of the neighborhood. One neighbor testified that the quality of life in the neighborhood has deteriorated greatly in the last few years with the arrival of the University of the District of Columbia (UDC) and several office buildings on Connecticut Avenue. He feels that to construct a house at the subject site would only aggravate the situation by further crowding the area.

Another neighbor testified that the neighborhood is small with homeowners who have roots in this city. She is concerned that the applicant will rent the house to a number of tenants rather than have homeowners live there. She noted that the proposed house will have a garage for only one car. She stated that currently the streets are inundated with cars because there is inadequate parking in the area. People drive in from Maryland to park in this neighborhood because the Metro is nearby, and many cars belong to people who attend UDC. These cars create a great deal of congestion. This neighbor stated that she would prefer a family-oriented neighborhood, not one with commercial rental properties.

The size of the lot. Two neighbors testified that the lot is too small to allow the proposed construction. It is almost 25 percent smaller than it is required to be, a substantial variance from the required lot size. Also, the lot violates three different requirements of the Zoning Regulations. They believe that to allow the proposed structure would create a substantial detrimental impact on the neighborhood.

One neighbor testified that lot size is not an extraordinary condition. He stated that the subject lot is located at the most prominent point in the neighborhood and it would do great damage to the neighborhood to allow a nonconforming building to be constructed there.

This neighbor also testified that the applicant purchased the subject lot and the property adjacent to it at the same time. He stated that upon enactment of the Zoning Regulations, all lots subdivided prior to enactment were grandfathered in if they had 80 percent of the lot area required (i.e. 4,000 square feet). These people actually paid for buildable lots and had restrictions placed on them. He stated that the applicant actually purchased a developed lot with a "large side yard" and now she wishes to get variances to build a house in what is really the side yard to her property. He believes that to grant the requested a relief will encourage land speculation--where someone purchases a non-buildable lot next to a house, then seeks variance relief to build on it.

Compatibility of the structure. One neighbor testified that because of the location of the tree on the property, the new house will be more visible and will stick out more prominently as one travels down Yuma Street to 35th Street.

Traffic and parking. Three neighbors expressed a concern about the traffic and parking problems in the neighborhood.

One neighbor was concerned that the structure may somehow interfere with the unpaved informal sidewalk on Yuma Street. He stated that cars are parked all along the street and if pedestrians cannot use this sidewalk, they will have to walk in the middle of the street.

Other neighbors testified that there is a problem with visibility in two respects. First, when one travels on 35th Street toward Yuma Street, it is difficult to see the traffic passing on Yuma Street. Second, when one travels quickly on Yuma Street from Connecticut Avenue, one may not see 35th Street until reaching the top of the hill where Yuma Street and 35th Street intersect. When it is fully parked it is impossible to see any pedestrians or vehicles in that area. In this neighbor's view, with the proposed house there, the visibility will be blocked so that drivers will be

unable to see cars that approach the intersection at the same time. There have already been a couple of accidents within the last couple of years and because of this situation more accidents are inevitable.

16. The applicant's architect responded to the concerns expressed by the ANC and opposing neighbors. With regard to the height of the structure, he stated that the house will step up at the same increment as the other houses. He stated that the proposed structure may appear higher due to some topographical differences between the subject lot and other lots on the street. Also, the roof slope is steeper than that of adjacent properties to allow for a habitable attic. He believes that the steepness of this roof slope may make the structure appear taller than the rest. The architect stated that the height of the house is in conformance with the code requirements for height and no variance relief is being sought relative to this issue.

The architect testified that the project is very much in conformance with the general quality and character of the neighborhood. It is a single-family detached home of proper scale and of materials that are similar to others in the area. It is not an unusual project, nor is it bringing in a different use.

The architect informed the Board that if the Board was concerned about the use of split-faced block, the applicant would consider using brick at the base of the structure.

The architect testified that having someone live in the new house will bring about a certain amount of security that is not associated with a vacant lot.

17. At the end of the hearing the Board requested that the ANC facilitate a meeting between the applicant and the community to discuss the outstanding issues raised at the hearing. Participants were allowed to submit into the record reports about the meeting.

18. The Board received letters from the applicant, the architect, and the ANC.

The applicant pointed out that not everyone in the neighborhood opposed the project, that the dialogue was useful and that agreement was reached on some points.

The architect stated that the neighbors raised concerns about the building height and the materials at the base of the building. He stated that to address these concerns, the applicant offered to lower the roof slope of the building and change the materials of the base from split-faced concrete block to brick.

The architect noted the applicant's suggestion that the ANC encourage appropriate city agencies to study remedies to the traffic conditions at 35th and Yuma Streets. He also noted that the applicant offered her full support to any neighborhood initiative to install sidewalks along Yuma and 35th Street.

The ANC 3F letter stated that the ANC voted not to object to the application and to recommend that the application be approved if the applicant's plans are modified as follows:

- a. The maximum height of the proposed house, relative to the curb in front of the house, shall be no greater than the height of the duplex building next door on the lot to the north. ANC 3F intends to have the height of the northern wall of the proposed house, measured from the curb to the top of the roof, not exceed the height of the exposed or northernmost wall of the duplex residential structure immediately to the north, measured in the same way.
- b. The facade of the house shall be changed from stucco to brick so as to give the house a more substantial appearance.

The ANC stated that the applicant appears to be willing to agree to those two recommendations. The ANC stated that while these two modifications would not fully satisfy neighborhood concerns, they would accommodate those concerns as much as possible short of denying the application.

Finally, the ANC stated that it is concerned about the possible need for a three way stop sign at the intersection of 35th and Yuma Street for greater public safety. Therefore, the ANC will request that the Bureau of Traffic Services initiate a traffic study of this intersection.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. The polygon shape of the lot is unusual for the area in which it is located.
2. The subject lot, Lot 8, is a lot of record. It is not merely the side yard of the adjacent property.
3. For any construction to occur on the site, a variance from the lot area would be necessary because of the substandard size of the lot.

4. The applicant proposes to construct a single-family dwelling, not a multi-unit structure. A single-family dwelling is compatible with other uses in the neighborhood.

5. The applicant will use materials that are compatible with the materials used on other structures in the immediate area.

6. The height proposed meets the requirements of the Zoning Regulations.

7. The traffic safety problems existing at the intersection of Yuma and 35th Streets would be more appropriately addressed by the Department of Public Works than by this Board.

CONCLUSION OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record the Board concludes that the applicant is seeking variances from the area, lot width and rear yard requirements to construct a single-family dwelling in an R-1-B District.

Granting such variances requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. Further, the Board must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the burden of proof. The subject lot was created prior to the enactment of the current Zoning Regulations. The Board concludes that the substandard size of the lot makes it impossible for the applicant to comply with the Zoning Regulations. Further, the irregular shape of the lot is a unique condition of the property creating a practical difficulty for the owner in developing the property consistent with the Zoning Regulations.

The Board concludes that the applicant proposes to build a single-family dwelling and that the materials to be used will compliment those of other houses in the area.

The Board concludes that there will be one off-street parking space provided at the site as required by the Zoning Regulations. This parking space will help to reduce any impact that the applicant's proposal will have on parking.

The Board concludes that the owner of the subject property cannot be held solely responsible for the traffic problem existing at the intersection of 35th and Yuma Streets. The Board concludes that the applicant is willing to work with the community to have the appropriate safety mechanisms or signs installed to reduce the likelihood of accidents there. The Board concludes that it would impair the intent of the zone plan to keep the owner from developing the property so as not to further exasperbate the traffic problem nearby.

The Board further concludes that because of the physical characteristics of the lot, variance relief would be needed to develop the property in any manner. The Board believes that to deny the relief requested would essentially render the lot unusable, thereby impairing the intent, purpose and integrity of the zone plan.

Based on the foregoing, the Board ORDERS that the application is hereby GRANTED, SUBJECT to the CONDITION that construction shall be in accordance with the revised plans marked as Exhibit No. 30 of the record with the exception that the exterior materials of the structure shall be brick.

VOTE: 5-0 (Angel F. Clarens, Maybelle Taylor Bennett, Paula L. Jewell, Sheri M. Pruitt and Carrie L. Thornhill to grant).

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

ATTESTED BY: 
MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 24 1993

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15702Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15702

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 24 1993 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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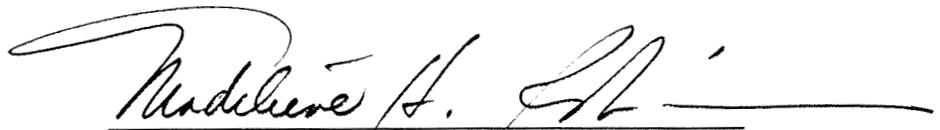
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MADELIENE H. ROBINSON
Director

DATE: AUG 24 1993

157027Att/bhs