

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15776 of George P. Moody, Jr., pursuant to 11 DCMR 3107.2, for a variance from the minimum width of lot and lot area requirements (Subsection 401.3), a variance from the off-street parking requirements (Subsection 2101.1), and a variance from the minimum side yard requirements (Subsection 405.9) for construction of two semi-detached single-family dwellings in an R-2 District at premises 4413 and 4415 Brooks Street, N.E. (Square 5136, Lots 38 and 39).

HEARING DATES: January 27 and April 14, 1993  
DECISION DATE: May 5, 1993

ORDER

The property which is the subject of this application is located at 4413 and 4415 Brooks Street, N.E., Lots 38 and 39, respectively.

The property is located in Square 5136. The boundaries of the square are Brooks Street to the north, Blaine Street to the south, 44th Street to the west and 45th Street to the east. Banks Place runs through Square 5136, dividing the square in half.

The site consists of two vacant, contiguous lots. A 15-foot wide public alley is located to the west of Lot 38. Another 15-foot wide alley is located to the rear of both lots. The alley at the rear is unimproved.

The applicant proposes to construct a two-story, semi-detached dwelling on each of the two lots.

The site is zoned R-2. The R-2 District permits matter of right development of single-family detached and semi-detached dwellings with a minimum lot area of 3,000 square feet, a minimum lot width of 30 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet. The Zoning Regulations require that one on-site parking space be provided for each of the two proposed semi-detached dwellings.

With regard to land area, Lot 38 contains 2,103.75 square feet and Lot 39 contains 2,033.78 square feet. Each lot is 22.5 feet in width. With the proposed structures, a five-foot side yard will be provided on each lot, however, no off-street parking is proposed.

The applicant is seeking a lot area variance for lot 38 in the amount of 896.25 square feet (29.9 percent), and for Lot 39 a variance in the amount of 966.22 square feet (32.2 percent). For each lot, the applicant is seeking a low width variance in the

amount of 7.5 feet (25 percent), a side yard variance of three feet (37.5 percent), and a parking variance of one space (100 percent).

The Office of Planning (OP) submitted a report dated January 19, 1993, recommending denial of the application. The rationale for this recommendation will be discussed in the issues and arguments section below.

Advisory Neighborhood Commission (ANC) 7D did not submit an official written report related to the application.

#### THE LOT AREA, LOT WIDTH AND SIDE YARD VARIANCES

##### Contested Issues and Arguments:

The issues and arguments related to the lot area, lot width and side yard variances are as follows:

1. Whether there is a unique or exceptional condition related to the property?

The applicant testified that the property was formerly a single lot, but the property was subdivided in 1913, 45 years prior to enactment of the 1958 Zoning Regulations. He stated that he purchased the property in 1987 and the dimensions are the same as they were at the time of subdivision.

The Office of Planning stated that the subject lots are smaller than other lots in the area. Most other lots exceed the 3,000 square-foot minimum lot area requirement.

2. Whether the applicant faces a practical difficulty in developing the property because of unique or exceptional conditions?

The applicant testified that the proposed semi-detached dwellings are allowed as a matter of right in an R-2 District. He testified that because of the substandard lot size and lot width, any permitted use of the property would require variance relief from the minimum lot area and lot width requirements. Therefore, he maintains that the unique lot dimensions make it difficult to comply with the Zoning Regulations in developing these lots.

With regard to the side yard variance, the applicant testified that if eight-foot side yards were provided, the houses could only be 14.5 feet wide. This would only allow for one room (11 feet) and a corridor (3 feet) at the front of the house upstairs and downstairs. From a use standpoint, this would be unacceptable to the market. Based on discussions with others in the building industry, the applicant testified that 17.5 feet is the minimum

acceptable width for a housing unit because it allows room for a bathroom on the first floor and two eight-foot wide bedrooms upstairs.

The applicant testified that the rear cannot be used to make the structure an acceptable size because there is only a two-foot difference between the proposed rear yard and the required rear yard. For these reasons, the side yard variance is needed to construct the houses.

The Office of Planning was of the opinion that the lots are too small to accommodate semi-detached dwellings without substantial zoning relief. OP stated that the applicant could combine the lots since it is unlikely that the lots would be sold individually.

3. Will the proposed construction have an adverse impact on the area or on the zone plan?

The applicant testified that the semi-detached houses would fit well in the community because of the neighborhood's character. He stated that there are two semi-detached dwellings adjacent to the subject property. There are churches nearby, there is a school and a metrorail station close to the site. The applicant acknowledged that there are a number of single-family detached homes in the community but maintains that the proposed structures will not be out of character on the subject property. The applicant noted that the proposed use is allowed as a matter of right in the R-2 District and a detached home would not fit as well as what is proposed.

With regard to the five-foot side yards proposed, the applicant stated that they are wide enough to allow access by emergency vehicles. He noted that now these vehicles often service properties from the street. Therefore, the narrower side yards will not interfere with service.

The applicant also testified that it is difficult to tell the difference between a five-foot and an eight-foot side yard because the three-foot difference is not great. Therefore, from an aesthetic point of view, the slightly smaller side yards will not have an adverse impact on the area.

The Office of Planning stated that the Lincoln Heights neighborhood is a low and moderately-dense residential community. Semi-detached dwellings, rowhouses and garden apartments are the predominate uses. A neighborhood commercial shopping area is located at the southern end of the community at the heavily traveled intersection of Benning Road, Central Avenue and East Capitol Street N.E. The Benning Road Metrorail Station is also located at Central Avenue and Benning Road N.E., two blocks from

the site. Smothers Elementary School is located directly across the street from the site. The East Friendship Baptist Church is located to the west of the site.

OP stated that most of the residential units that are located in the immediate area are single-family, detached dwellings. Semi-detached dwellings are located adjacent to the site; however, this type of housing is atypical for the area. In addition, the average lot size in the subject square is 3,000 square feet. The OP believes that construction of semi-detached units on the property would not be in keeping with the development pattern of the area.

OP is of the opinion that the applicant can develop the site within the framework of the Zoning Regulations. Combined, the lots would measure 4,137 square feet in lot area and 45 feet in width. A single-family detached dwelling could be constructed on the site as a matter of right. Because substantial relief is needed to develop the lots as the applicant proposes, OP believes that to grant the lot area, lot width and side yard variances will impair the intent, purpose and integrity of the zone plan.

The Single Member District (SMD) Advisory Neighborhood Commissioner for SMD 7D-02 testified in opposition to the application. He testified that except for the structures located next to the site, no semi-detached dwellings have been built in the area in the last 25 years.

The SMD Commissioner testified that nearby property owners opposed the proposed construction and favor a single-family detached structure.

A neighbor residing at 231 44th Street, N.E. testified in opposition to the application. He stated that he is a retired builder and in his opinion, the lots are too small for two separate houses. He believes that it is best to build one house on the two lots. He believes that the owner could realize a reasonable profit from a single-family detached dwelling.

The pastor of East Friendship Baptist Church, located adjacent to the site, testified in opposition to the application. He expressed the concern that if the variances are granted the proposed construction will affect the conformity of the area and will cause congestion.

This witness is concerned that granting the side yard variance will create safety problems because it would allow the house on Lot 38 to be built closer to the alley. The witness considers building closer to the alley to be a safety problem because public vehicles use the alley and there are children going to school in the area. In his view, a single-family detached structure would be best at the site.

Findings of Fact:

Based on the evidence of record, the Board makes the following findings of fact:

1. The subject lots were subdivided in 1913 and are narrower and smaller in lot size than other nearby properties.
2. Variances from the lot area and lot width requirements would be needed for any matter of right use of the property.
3. There are uses in the square besides single-family detached homes. These include a metrorail station, a school, churches and two semi-detached residential structures adjacent to the site.
4. The Zoning Regulations for the R-2 District allow the construction of semi-detached dwellings as a matter of right.
5. Because the lots are narrower than required, the owners face difficulties in trying to meet the side yard requirements and construct dwellings that are wide enough to be reasonably marketable.
6. Side yards that are three feet less than required will not create such a noticeable difference as to impact the community adversely.
7. The width of the alley will remain the same, therefore reducing the side yard will have no impact on the use of the alley by children or emergency vehicles.

**THE PARKING VARIANCE**

Contested Issues and Arguments:

The issues and arguments related to the parking variance are as follows:

1. Whether the property is unique or subject to exceptional conditions?

The applicant testified that both of the lots abut an unimproved alley at the rear. With regard to Lot 38, the applicant stated that from the existing alley entering from Brooks Street and at the rear of the property, the slope of the lot increases to approximately seven feet. In addition, the land's terrain is rugged at the rear. Therefore, the applicant believes that the properties are subject to extraordinary conditions.

The Office of Planning stated that there are no extraordinary conditions inherent in the property which would justify approval of the application.

The SMD Commissioner for ANC 7D-02 testified about the topography of the site. He stated that the alley sits a little above the lot at the rear. He stated that this condition has existed for years.

2. Whether the applicant faces difficulties in trying to provide the required parking?

With regard to Lot 38, the applicant stated that while the topography increases about seven feet toward the rear, the maximum slope allowed by the regulations is 6:1. Therefore, the property cannot accommodate a driveway off of the existing side alley without the use of a retaining wall of approximately four feet in height.

The applicant stated that because of the unimproved rear alley, a driveway on either lot would be inaccessible.

The SMD Commissioner stated that he does not know what can be done about the sloping condition at the rear of the lots.

3. What impact will the lack of on-site parking have on the community?

The applicant maintains that parking variances for the two spaces will not have a detrimental effect on the area because there is adequate on-street parking nearby. The applicant stated that he surveyed the area for parking and found that within 200 to 300 feet of the site between 7:00 a.m. and 4:00 p.m., there were 26 parking spaces available and no spaces in use. Between 4:00 p.m. and 7:00 a.m., 20 parking spaces were available and six spaces were in use. Therefore, he noted that parking is adequate except when church is in session or commuters park in the area to use the metrorail.

The other parties to the application did not testify about the impact that the parking variances will have on the area.

3. What impact will the parking variances have on the zone plan?

The applicant indicated that, in terms of parking, there is no significant difference between the proposed semi-detached dwelling use and the single-family dwelling use suggested by opposing parties. He maintains that his inability to provide parking on the lots means that two cars will be on the street as opposed to one car associated with the one dwelling unit. He maintains that the one additional car will not impair the zone plan.

The other parties did not testify about the impact of the parking variances on the zone plan.

FINDINGS OF FACT:

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

1. The unimproved alley at the rear of the two lots makes the rear of the lots inaccessible by automobile.
2. The sloping topography of Lot 38 contributes to the inaccessibility of the lot at the rear .
3. There is adequate space near the site for on-street parking.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicant is seeking area variances to construct two semi-detached dwellings in an R-2 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. The Board further must find that granting 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 with regard to the lot area and width variances, the applicant has met this burden of proof. The Board concludes that the property is unique because it is smaller than other lots in the area. Further, it was subdivided with the current dimensions in 1913 and became nonconforming upon the enactment of the Zoning Regulations in 1958.

Because of the substandard size of the lots, the owner would need variances from the lot width and lot area requirements to establish any matter of right use. These circumstances create a practical difficulty for the owner in developing the property in compliance with the Zoning Regulations.

The Board concludes that the owner faces a practical difficulty in trying to meet the side yard requirements in developing the property. Because the lots are only 22.5 feet in width, to meet the eight-foot side yard requirements, the structures could only be 14.5 feet wide. The Board is of the opinion that 14.5 feet is not a reasonable width for a residential structure. The Board believes that given the size constraints of

the lot, granting the lot area, lot width and side yard variances will allow the applicant to construct dwellings of a reasonable size without substantial detriment to the public good.

The Board is further of the opinion that to allow the lot area, lot width and side yard variances will not impair the intent, purpose and integrity of the zone plan.

With regard to the parking variance, the Board concludes that the topography of Lot 38 and the unimproved alley behind both lots make the lots inaccessible at the rear and create a practical difficulty for the owner in providing parking at the site.

The Board concludes that there is adequate on-street parking in the area, therefore, granting the parking variance will not be of substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan.

In light of the foregoing, it is hereby ORDERED that the application is GRANTED.

VOTE: 4-1 (Maybelle Taylor Bennett, Sheri M. Pruitt, Paula L. Jewell and Angel F. Clarens to grant; Carrie L. Thornhill opposed to the motion).

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

ATTESTED BY:   
MADELIENE H. ROBINSON  
Director

FINAL DATE OF ORDER: SEP 28 1994

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.

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."

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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.

ord15776/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15776

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 28 1994 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:

George P. Moody, Jr.  
4425 Brooks Street, N.E.  
Washington, D.C. 20019

Magnus Blanchette  
3800 Nash Street, S.E.  
Washington, D.C. 20020

George E. Gurley, Chairperson  
Advisory Neighborhood Commission 7-D  
3801 Minnesota Avenue, N.E.  
Washington, D.C. 20019

William Dawson  
231 44th Street, N.E.  
Washington, D.C. 20019

Rev. Willie Green  
1625 Fort Dupont Street, S.E.  
Washington, D.C. 20020

A handwritten signature in cursive script, reading "Madeliene H. Robinson".

MADELIENE H. ROBINSON  
Director

DATE: SEP 28 1994