

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16133 of **Florence Z. Facchina**, pursuant to 11 DCMR 3107.2, for a variance from the lot area and width requirements (Subsection 401.3) to construct a detached single-family dwelling in an R-1-B District at premises 3715 Oakview Terrace, N.E. (Square 3926, Lot 34)

HEARING DATE: June 19, 1996

DECISION DATE: July 24, 1996

ORDER

SUMMARY OF EVIDENCE:

The property which is the subject of this application is located at 3715 Oakview Terrace, N.E. (Square 3926, Lot 34). The site contains 4,440 square feet of land area and has a width of 37 feet. It is a vacant lot with a rectangular shape. The lot slopes downward to the north.

The property is located in the Ward 5 neighborhood of University Heights. Square 3926 is bounded by Perry Street to the north, Otis Street to the south, 12th Street to the west and 13th Street to the east. The square does not have an alley system. The subject site abuts a property to the north that is developed with a single-family dwelling. To the south is vacant land that is owned by the Augustinian College. Another single-family dwelling is located on property that abuts the site to the rear (east). At the time of the hearing on this application, there was no land for sale adjacent to the site.

The applicant proposes to construct a detached single-family dwelling on the subject site. The R-1-B District in which the property is located requires a minimum lot area of 5,000 square feet and a minimum lot width of 50 feet. The lot contains only 4,440 square feet in lot area and 37 feet in width. Therefore, the applicant needs an area variance from the minimum lot area requirement in the amount of 560 square feet. She also needs a 13-foot variance from the minimum width of lot requirement. The applicant seeks this variance relief in this application before the Board.

Issues and Arguments:

1. Whether there exists a unique or exceptional condition related to the property which creates a practical difficulty for the owner in developing the property in compliance with the Zoning Regulations?

The applicant maintains that there does exist an exceptional situation related to the property. The applicant's builder testified on behalf of the applicant and stated that the property

consists of a vacant lot that is currently unbuildable because of the topography, its small size and narrow width.

Mr. Corr, a neighbor who resides adjacent to the site to the north, testified in opposition to the application. He conceded that there are many structures in his neighborhood that are built on lots that do not comply with the minimum requirements for lot area, lot width or depth, but in his view these houses could not be built today.

On the issue of practical difficulty, the applicant maintains that because of the conditions related to the property, the lot has been on the market for two years, and no offers have been made for its purchase. The applicant pointed out that they cannot increase lot area to comply with the Zoning Regulations because they have no ownership interest in any of the adjacent lots. They indicated that they have been paying taxes on the lot as an R-1-B lot, but they will lose money if they cannot build on it. Without zoning relief, the lot is rendered unbuildable.

The applicant testified that the property was subdivided prior to 1958. She testified that the lot was purchased as an R-1-B zoned lot, and taxes have been paid on the property as a residential lot.

The Office of Planning (OP), by report dated June 12, 1998, recommended approval of the application. OP stated that the square was subdivided prior to enactment of the Zoning Regulations on May 12, 1958. The Regulations made the lot substandard as to lot area and width. Therefore, the applicant is unable to develop the site without variance relief. OP stated that if the requested relief is not granted, the site cannot be developed. This condition creates a practical difficulty for the applicant in this case.

Also on the issue of practical difficulty, OP pointed out that the property which is located to the south of the site is used by the Augustinian College as part of its campus. The adjacent vacant land is used as part of the turnaround and parking for vehicles associated with the college. The applicant is not able to purchase the abutting vacant land and combine it with the site to create one larger lot-of-record. A single-family dwelling is located on the property situated to the north. Finally, OP expressed the view that without zoning relief in this case, the Board's action would amount to "a taking."

Opponents to the application stated that the applicant knew of the nonconformities when the property was purchased and the community should not have to be sympathetic to the applicant's personal investment for development.

2. Whether granting the application would be of substantial detriment to the public good?

The Proposed Development:

The Office of Planning stated that four detached dwellings front on Oakview Terrace. Of these, one is located on a substandard lot which is smaller than the subject site. Granting the requested relief would not create adverse density concerns on the abutting properties. Further, the site is zoned to accommodate single-family detached dwellings. The applicant is proposing to use it accordingly.

The Drainage and Trees:

On the issues of water runoff, adequate drainage, tree clearance and ground water, the Office of Planning stated that the applicant did not provide it with adequate information on the site's topography, therefore it was difficult to properly address the issues. OP requested that the applicant provide the information on topographical issues for the record or at the hearing.

Mr. Corr, the adjacent neighbor to the north, testified that he collected 31 signatures from neighbors in the area who oppose the application. At the hearing, he testified on behalf of the opposing neighbors. He testified that they are concerned about the siting of the structure in terms of the building restrict line and they are concerned about the topography. The neighbors are concerned that geotechnical reports, site engineering and topographical studies need to be prepared to ensure that there are no adverse effects to what is already a difficult drainage site on this street because there is no D.C. sewer system for their street. The opposing neighbor testified that if the optional basement is built, it would disrupt the site even more.

Mr. Corr testified that if the structure is moved back to comply with the 15-foot building restriction line, it will affect the rear yard of the site in a way that the neighbors feel will not only jeopardize trees that are on the subject lot, but also trees that are on his own lot.

Another opposing neighbor who resides at 3723 Oakview Terrace testified that if the applicant moves the house back to be flat with the other homes more trees will be lost, (at least three trees). This will also cause further erosion of the property, and it will cause further problems with the chain of houses down the street. She testified that the proposed house would go over tree roots connected to trees on the Augustinian property.

This opposing neighbor did not know how the applicant planned to level off the property without digging into any of the adjacent properties, to change the runoff situation. She did not know how this could be done without negatively impacting the trees on the properties located south and north of the subject site.

This opposing neighbor testified that the applicant's proposed drainage system will create problems because the house is at the top of the street. The water will go into the drainage pipe and then will go out onto the street. She testified that during the winter months, they have had problems with water freezing on the street causing cars to slide into other cars.

In response to the concerns expressed by the opposing parties, the builder testified that he is very familiar with the problems in the soil in the Brookland community. He testified that the street does not have a storm sewer, and stated that "it does have water and sewer." He stated that the street slopes but the property is more level than the street. To fix the drainage problem, first they would not be installing a basement. Secondly, they would install a drainage pipe. He stated that he spoke with the plumbing and mechanical people about the drainage issue, and for the area of the house, the size of the house, and the amount of water that would be coming off of the roof, they require nothing more than splash guards. It was also recommended that an option to ease the concerns is to put in a dry well. This would help disperse the water that comes off of the roof back into the soil.

The architect offered the testimony of a soil engineer, who helped him with other properties in areas where they had to put pilings into the ground with beams and spread, as

required by the soil department and building code, before they could get a building permit at DCRA. He stated that the engineer could address concerns with the removal of trees, runoff or how the yard could be graded so that it would not adversely affect the adjoining properties. However, the Board declined to hear the engineer's testimony.

The architect testified that they are not adding water to the neighborhood, they are just putting water back where it would go if the house were not there. He stated that they are willing to build a retaining wall between the two properties to alleviate the problem if that would be in the best interest of the neighbors. In closing remarks, the applicant stated that the real issue is not what impact a house will have on the area but simply that the neighbors do not want any type of house built on that lot.

Finally, on the issue of trees, the applicant's architect testified that he does not believe the trees have anything to do with him as a builder because the applicant could see the trees as an insurance liability and without a permit those trees could be cut down if they are not on public space. He would like to keep as many trees as possible and any tree that would come close to the deck would not be disturbed because the deck would be worked around the tree. The only trees that would be removed would be those located where the house would be built.

Consistency with the neighborhood

Opponents to the application stated that the site plan is inconsistent with the context of the street because of the choice of materials and the proportion of the proposed design. They believe that the materials are substandard because they will not last as long as brick which is more typical in the neighborhood and more aesthetically appealing. They believe that the design is inconsistent with the neighborhood because the other houses are a bit wider along the street frontage and narrower in depth. However, this house is very long in depth and narrow at the front, giving the appearance of a townhouse without neighbors. Additionally, there are no windows along the south facing elevation, and only two windows on the north side.

In response to the opponents' concerns the applicant described the area stating that, aside from Oakview Terrace, Perry Street has semi-detached houses, apartments and commercial property. Various materials are used including brick, shingle and wood. In his view, whatever is going to be built at the subject site would be aesthetically pleasing to the neighborhood. The architect testified that the applicant is willing to work with the community to decide on where the windows should be placed, the particular siding to be used, the color, and other design issues.

He stated that they used a premium vinyl siding on the other two houses that he built in the community. He stated that vinyl siding is now generally used in the building trade, except that on the front of many houses the material is brick veneer. Very few houses are entirely made of brick because it is not cost effective for the area. He stated that he uses upgraded shingles with a textured shingle, fish scale on the front, with a very large dormer.

He stated that on the other houses, he constructed a wrap around porch, but on this one he could not. Therefore, this porch is an open porch on the front. The porch gives the house lines and breaks it up. The builder testified that, with regard to the design, the only downfall is that the house is longer, but windows will be placed on the sides of the house, in each bedroom and in the living room, breaking up the lines of the house. Also, a 10- by 20-foot deck will be located at the rear. The builder testified that currently the plan is not to make the house a

prefabricated structure, however, the applicant is willing to consider prefabrication to ease the neighbors' concerns about the length of the construction process.

The builder testified that the opponent simply does not want a house there. He stated that he questioned the opponent, Mr. Corr, about the fact that he did not want a house on the site because he has enjoyed the vacant lot for six years. The opponent agreed. The builder submitted photographs of two other houses that he built in other areas that blend well with those neighborhoods. He stated that the people in those communities still thank him for those houses. He maintains that the proposed house will look just like the other two.

Mr. Corr, the adjacent neighbor, stated that he would prefer to keep the property vacant. He testified that he made an offer to purchase the property, but it was turned down. Finally the opponent stated that he does not support projects that do not meet the code and the intent of the Zoning Regulations and seem to benefit those people that do not live within the neighborhood or within the District of Columbia.

The Augustinian College, located on Lot 821 at 3700 Oakview Terrace, N.E., submitted a letter dated June 29, 1998, in opposition to the application. The Augustinian College is located on the southern boundary, immediately next to Lot 34, the subject lot. The Augustinian College alleged that the subject lot was part of Lot 821 which was owned by The Congregation of Marians (The Marians). The Marians were in the process of selling Lot 821 to the Augustinian College, however the Augustinian College did not offer The Marians their market price for the property and improvements. Consequently, The Marians separated the subject lot from Lot 821, creating Lot 34. The new Lot 34 was created to be 13 feet narrower than the Zoning Regulations allow for the construction of a dwelling. Lot 34 was subsequently sold to the applicant, Mrs. Facchina. The Augustinian College maintained that when the applicant purchased the property, she was aware that the property was substandard. They further maintain that the applicant does not suffer a hardship because Lot 34 was part of the larger Lot 821 which was, and is, zoned R-1-B. It was the separation that created this condition. They questioned whether the applicant could be deemed to have suffered a hardship when she had prior knowledge of the inadequate size of the lot.

The Augustinian College also raised concerns about the following:

1. the applicant's proposed use of the curbside drain to channel the runoff from Lot 34, alleging that this would create problems for them in entering and leaving Lot 821;
 2. the erosion that would result from failure to channel runoff water properly;
 3. the possible need to undercut their hill to construct a large retaining wall next to the existing dwelling to the south of Lot 34;
 4. the destruction of root structure of the existing trees and shrubs on Lot 821 if the applicant has to level off the land on Lot 34;
3. **Whether granting the application would impair the intent, purpose and integrity of the zone plan?**

Mr. Corr testified that because the lot does not meet area and width requirements, construction on the lot would be too dense for the intent of the zone and nature of the neighborhood. In his view, this one house will set the stage for property owners to build on nonconforming lots. He testified that allowing the construction would be contrary to the intent of the code because the requirements in the Zoning Regulations are defined based on "area of built environment versus area of land." The opposing neighbor testified that the proposed project calls for a level of density that is inconsistent with what is intended in the Zoning Regulations for that neighborhood.

The builder testified that the proposed structure would be built to meet the setback requirements imposed in the Regulations. He stated that there is a chimney measuring two feet by four feet, which has a cantilever that would be set back six feet from the property line in compliance with the Regulations. The 25-foot rear yard requirement would be met. The exterior of the house would be siding as opposed to brick. The applicant testified that the house would still be compatible with the community because there are other houses on the block that are not made of brick and are on lots that are smaller than 5,000 square feet.

The Office of Planning stated that this application meets all zoning requirements, except for the lot area and width requirements. The Office of Planning believes that the intent, purpose and integrity of the Zoning Regulations would not be substantially impaired if this application is approved.

The Office of Planning stated that the applicant must demonstrate through expert testimony or other evidence that the proposed project would not cause adverse impacts on the abutting properties or the neighborhood. If the topographic information provided to the Board is satisfactory, OP would recommend approval of the application.

Advisory Neighborhood Commission 5A

The Board received a letter and petition from the Single Member District (SMD) Commissioner for ANC 5A-06 recommending denial of the application in light of the opposition expressed by area residents. The Board also received a letter from the ANC chairman discussing the meeting that was held by SMD 5A-06 and the concerns of the neighbors. However, no official ANC report was submitted, therefore the ANC's views are not entitled to great weight.

At the conclusion of the hearing, the Board left the record open for the ANC report and requested that the applicant submit a more detailed site plan that shows topographic information and the location of the house to the north of the site. The applicant was asked to submit any other evidence showing how water runoff would be handled. A decision meeting was scheduled for July 10, 1996.

The builder submitted into the record a letter addressed to him dated June 24, 1996 from Paul H. Chung, P.E. of Geotech Engineers, Inc. In that letter Mr. Chung expressed an understanding of the applicant's concern about reducing the surface runoff from the subject property to the neighboring property to the north. The engineering firm recommended that the roof drains be diverted to a dry well for temporary storage of the roof runoff. The firm stated that the net amount of runoff actually running to the neighboring property after the house is built will be significantly reduced with this design. Finally, the firm stated that the dry well may also be used as an infiltration well depending on the soil conditions.

Mr. Corr, the opposing neighbor, submitted into the record a letter dated June 24, 1996 reiterating his view that the applicant only wishes to develop the property for personal economic gain and that she is not faced with a practical difficulty because she had knowledge of the zoning restrictions when she purchased the lot. Finally, he noted that offers were made to purchase the property from the applicant and he reiterated his opposition to the application.

At the public meeting of July 10, 1996, the Board reopened the record to receive additional correspondence from neighbors to the property. The applicant was to respond to that additional information and provide a history of when the subject lot was subdivided.

By letter dated July 17, 1996, the applicant's builder, Mr. Belanger, stated that at the D.C. Surveyor's Office, he learned that Lot 34 was recorded on June 25, 1891 and that the history of Square 3926 shows that Lot 34 has never been joined with any other parcel or lot, nor has it been subdivided. He submitted an excerpt from the Recorder of Deeds office as further evidence that the subject lot has not been subdivided, but has existed with its current boundaries since 1891.

Mr. Belanger stated that when Mrs. Facchina purchased Lot 34, she did not have the option of joining it with all or part of Lot 33 since Lot 33 was already part of Lot 821. He further noted that taxes paid on the property have always been based on the lot being buildable.

In response to the concerns of the Augustinian College about water runoff on Lot 34, Mr. Belanger stated that the water runoff problems are not an issue for the house on Lot 53 which is located adjacent to, and down the hill from, lot 34. The water that does run into lot 34 will be diverted by the grade. By building this proposed structure, the applicant will not be adding water to this lot, merely diverting it around a 640 square foot area. He stated that if any damage does occur to the vegetation on Lot 33 bordering Lot 34, it will be re-landscaped as necessary. He reassured the Board that the driveway bordering Lot 33 will not be undercut into the existing elevation.

Finally, the builder reiterated the applicant's willingness to work with the neighbors to better blend the house with the neighborhood. He noted that as of the date of this letter, he had no formal requests regarding the type of siding, the color of the house or other exterior characteristics.

Findings of Fact:

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

1. The lot was subdivided prior to its purchase by the applicant.
2. When the applicant purchased the property, she was aware that the dimensions of the lot did not meet the requirements of the Zoning Regulations.

Conclusions of Law:

Based on the application and the evidence of record, the Board concludes that the applicant is seeking an area variance to construct a detached single-family dwelling on a lot located in an R-1-B District. The granting of such a variance requires a showing through

substantial evidence that there exists a unique or exceptional situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations. The Board must also conclude that the relief can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zoning Regulations and Map.

The Board concludes that the applicant has failed to meet this burden of proof. The Board is of the opinion that the applicant has not demonstrated that a practical difficulty exists because the applicant purchased the property with knowledge that the lot was substandard in size. In the Board's view, the purchase with notice of the condition of the property amounts to a self-created hardship. The Board concludes that this substandard condition came into existence after the adoption of the Zoning Regulations in 1958, and therefore is not considered to be a practical difficulty. The Board interprets the self-created hardship rule to include circumstances such as these.

The Board concludes that while the Board's decision deprives the applicant of the opportunity to build on the property, the Board's decision does not amount to "a taking" because presumably the inability to build on the site was reflected in the purchase price of the lot.

Having determined that the applicant does not meet the first test for area variance relief, the Board concludes that it is unnecessary to address the remaining tests related to detriment to the public good and impairment of the zone plan.

In light of the foregoing, the Board hereby **ORDERS** that the application be **DENIED**.

VOTE: 4 – 0 (Herbert M. Franklin, Laura M. Richards and Sheila Cross Reid to deny; Angel F. Clarens opposed to the motion by absentee vote).

THE EXCEPTIONS PROCESS:

This order was served as a proposed order pursuant to the provisions of D.C. Code Section 1-1509(d). The proposed order was sent to all parties on June 11, 1998. The filing deadline for exceptions and arguments was July 2, 1998. The deadline for responses was July 23, 1998. No party to this application filed exceptions or arguments relating to the proposed order, therefore, the Board of Zoning Adjustment adopts and issues this order as its final order in this case.

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT – SHEILA CROSS REID, BETTY KING AND HERBERT M. FRANKLIN

ATTESTED BY: 
for **SHERI M. PRUITT-WILLIAMS**
Interim Director

Final Date of Order: AUG 26 1998

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.

ORD16133/TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16133

As Interim Director of the Office of Zoning, I hereby certify and attest that on AUG 26 1998 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

Florence Z. Facchina
6721 Ragdale Road
Hyattsville, Maryland 20783

Edward Belanger
3601 Connecticut Avenue, N.W.
Washington, D.C. 20008

Ed Corr
3719 Oakview Terrace, N.E.
Washington, D.C. 20017

Carla P. Alexis
3723 Oakview Terrace, N.E.
Washington, D.C. 20017

Attested by: Tracey Mitten Rose
for **SHERI M. PRUITT-WILLIAMS**
Interim Director

DATE: AUG 26 1998

Att./TWR