

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment



Application No. 17422 of Avram Fechter, pursuant to 11 DCMR § 3103.2, for a variance from the lot width requirement under § 401 to allow the construction of two single-family semi-detached dwellings in the R-2 zone district at premises 5930 and 5932 3rd Street, N.W. (Square 3290, Lot 63).

HEARING DATE: February 14, 2006

DECISION DATE: February 14, 2006

DECISION AND ORDER

This application was submitted August 26, 2005 by Avram Fechter (“Applicant”), the owner of the property that is the subject of the application. By memorandum dated June 10, 2005, the Office of the Zoning Administrator indicated that the Applicant’s plans to construct two semi-detached dwellings at the subject property required variance relief from § 401.3 to allow lots of less than the minimum required width and from § 406.1 to allow open courts for each dwelling at less than the minimum required width.¹ Following a hearing on February 14, 2006, the Board voted 5-0-0 to deny the application.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memoranda dated August 29, 2005, the Office of Zoning provided notice of the application to the Office of Planning, the District Department of Transportation, the Councilmember for Ward 4, Advisory Neighborhood Commission (“ANC”) 4B, and Single Member District/ANC 4B06. Pursuant to 11 DCMR § 3113.13, on November 30, 2005 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 4B, Single Member District/ANC 4B06, the Councilmember for Ward 4, and owners of property within 200 feet of the subject property.

Party Status. In addition to the Applicant, ANC 4B was automatically a party in this proceeding. There were no additional requests for party status.

Applicant’s Case. The Applicant presented evidence and testimony describing plans to construct two single-family semi-detached dwellings on the subject property, and indicated that the requested variance was necessary because the property could not

¹ No open courts were at issue in the Board proceeding; therefore, the need for variance relief from § 406.1 was not considered.

otherwise be developed with semi-detached dwellings. According to the Applicant, the strict application of the Zoning Regulations to the subject property would limit the type of dwelling that could be constructed to single-family detached, but the intent of the Zoning Regulations was not to restrict the use or building type that could be constructed within the R-2 zone. The Applicant also contended that the subject property was unique in that it was a long-time vacant lot where infill development could occur, and that the subject property could not be profitably developed with a single-family detached dwelling.

Government Reports. By memorandum dated January 31, 2006, the Office of Planning (“OP”) declined to recommend approval of the variance request to reduce the minimum lot width so as to allow the development of two semi-detached single-family dwellings. According to OP, the subject property was not unique and no practical difficulty would hinder the development of a matter-of-right single-family dwelling there.

ANC Report. Advisory Neighborhood Commission 4B did not submit a report.

Person in Support of the Application. One person, a resident of property adjoining the subject property, testified in favor of the application, citing the benefits of development at the subject property, currently a poorly maintained vacant parcel, but also indicating that a single-family detached dwelling would fit in with the neighborhood better than the proposed semi-detached dwellings.

Person in Opposition to the Application. The Board received one letter in opposition to the application from a resident living across the street from the subject property. The letter asserted that construction of “two single-family semi-detached dwellings would change the characteristics of the neighborhood.”

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 5930 and 5932 3rd Street, N.W., on the west side of 3rd Street between Oglethorpe and Peabody Streets, N.W. (Square 3290, Lot 63).
2. The subject property is a rectangular lot bounded by 3rd Street on the east, a 15-foot-wide public alley on the west, and single-family dwellings on the north and south. The lot is 43 feet wide and 140.45 feet long, and has an area of 6,050 square feet.
3. The subject property is currently unimproved but previously contained a single-family one-story dwelling that was demolished at some point in the 1990’s.
4. Properties in the vicinity of the subject property are primarily small single-family detached dwellings and semi-detached dwellings. The east side of Square 3290, fronting

on 3rd Street, contains eight single-family detached dwellings (on lots ranging from 41 to 50 feet wide) and two semi-detached dwellings (each on a lot 25 feet wide), in addition to the subject property. The properties in Square 3290 fronting on Oglethorpe, 4th, and Peabody Streets contain predominately semi-detached dwellings (on lots an average of 27 feet wide), as well as two detached dwellings and one row dwelling.

Applicant's Project

5. The Applicant proposed to build two single-family semi-detached dwellings at the subject property, which would be subdivided into two lots. Each dwelling would be a two-story brick building 13 feet, six inches wide, set back 15 feet from 3rd Street and extending 77 feet, six inches. Each dwelling would have an eight-foot side yard and a rear yard almost 48 feet long. Each rear yard would contain a concrete parking slab accessible from the public alley that would provide one parking space for each dwelling.

Requested Variance

6. Zoning requirements for a semi-detached dwelling in the R-2 zone include a minimum lot width of 30 feet and a minimum lot area of 3,000 square feet. 11 DCMR § 401.3. The Applicant proposed to build two semi-detached dwellings, each located on a lot that would be 21 feet, 6 inches wide. The proposed subdivided lots would each satisfy the minimum lot area requirement but would deviate from the required minimum lot width by eight and a half feet (30 percent).

7. For structures other than semi-detached dwellings in the R-2 zone, the Zoning Regulations require a minimum lot width of 40 feet and a minimum lot area of 4,000 square feet. 11 DCMR § 401.3.

8. The Board credits the testimony of the Office of Planning that the subject property does not have any unique features due to any exceptional narrowness, shallowness, or shape at the time of the original adoption of the regulations. The Board also finds that the subject property – a flat, rectangular parcel previously developed with a single-family detached dwelling – does not face any exceptional topographical conditions or other extraordinary or exceptional situation or condition.

9. The Applicant did not demonstrate that any practical difficulties would be caused by the strict application of the Zoning Regulations to the subject property, which could be developed with a single-family detached dwelling as a matter of right.

Harmony with Zone Plan

10. The R-2 district “consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. It shall be expected that these areas will continue to contain some small one-family detached dwellings.” 11 DCMR § 300.1.

11. The Board credits the testimony of the Office of Planning that, while semi-detached dwellings are permitted in the R-2 zone, not all lots within the R-2 zone are suitable for semi-detached dwellings. Prior use of the subject property for a single-family detached dwelling, and the continued use of adjoining lots for detached dwellings, suggests that the subject property was created for a detached dwelling, consistent with the retention of small detached dwellings in the R-2 zone.

CONCLUSIONS OF LAW

The Applicant seeks variance relief from the lot width requirement under § 401 to allow the construction of two single-family semi-detached dwellings in the R-2 zone district at premises 5930 and 5932 3rd Street, N.W. (Square 3290, Lot 63). The Board is authorized to grant a variance from the strict application of the Zoning Regulations where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of the property, the strict application of any zoning regulation 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. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2.

Based on the above findings of fact, and having given great weight to the recommendation of the Office of Planning,² the Board concludes that the Applicant has not satisfied the burden of proof with respect to the requested variance from the lot width requirement under § 401.

The Board was not persuaded that the subject property has any unique or exceptional features such that the strict application of the Zoning Regulations would result in practical difficulties to the Applicant as the owner of the property. As set forth above, the property is neither unique with respect to its topography nor is it impaired by any exceptional condition or circumstance. The property presents no difficulty for the owner to construct a single family dwelling as allowed by the Zoning Regulations. In fact, the evidence indicates that a single family dwelling previously existed on the property. (Finding of Fact #3)

Because the Applicant must meet all three prongs of the variance test, and in this case does not meet the first two, the Board need not reach the third prong - whether the relief could be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan. However, the Board notes that it concurs with the Office of Planning that the requested variance could not be granted

² The affected Advisory Neighborhood Commission did not participate in this proceeding.

without substantially impairing the intent, purpose, and integrity of the zone plan. The area in the immediate vicinity of the subject property is developed primarily with single-family detached dwellings on lots similar in size to the subject property. The proposed subdivision would create two new non-conforming lots substantially less in width than prescribed. Other lots in the same square that are developed with semi-detached dwellings are all significantly wider than the Applicant's proposed subdivided lots. The subject property is only three feet wider than the minimum width necessary for a single-family detached dwelling in the R-2 zone, while the Applicant's proposed subdivided lots would each be almost thirty percent narrower than the minimum lot width required for semi-detached dwellings.

Accordingly, this application fails all three prongs of the variance test, and it is therefore **ORDERED** that the application is **DENIED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Gregory N. Jeffries to deny the application).

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

Each concurring Board member approved the issuance of this order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning 

FINAL DATE OF ORDER: SEPTEMBER 28, 2006

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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BZA APPLICATION NO. 17422

As Director of the Office of Zoning, I hereby certify and attest that on **SEPTEMBER 28, 2006**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning 

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