

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17637 of Simon and Robyn Hinson-Jones pursuant to 11 DCMR § 3103.2 for a variance from the lot occupancy requirements under § 403, a variance from the rear yard requirements under § 404, a variance from the court requirements under § 406, and a variance from the nonconforming structure provisions under § 2001.3 to allow an addition to an existing single-family row dwelling in the CAP/R-4 District at premises 320 South Carolina Avenue, S.E., Square 794, Lot 13.

HEARING DATES: July 17 and November 13, 2007
DECISION DATES: December 4 and 18, 2007

DECISION AND ORDER

The application was submitted by Simon and Robyn Hinson-Jones (“Applicants”) who are the property owners of the premises that are the subject of this application (“subject property”). They were assisted at the hearing by their architect, Dennis E. Connors. The application is self-certified. In it, the Applicants requested variance relief from the lot occupancy, rear yard, open court, and nonconforming structure requirements of the Zoning Regulations to permit the construction of a partial third story addition at 320 South Carolina Avenue, S.E. (Square 794, Lot 13).¹

A public hearing on the application was initially scheduled for July 17, 2007. At that time, the Applicants requested postponement of the hearing to allow for project review by the District of Columbia Historic Preservation Review Board (“HPRB”). The request was granted and the July 17, 2007 hearing was rescheduled to November 13, 2007. The Board deliberated on the application on December 4, 2007 and continued this deliberation on December 18, 2007 at which time the Board voted 3-0-2 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 6, 2007, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”),

¹ At the November 13, 2007 hearing, the Applicants’ architect indicated that the only variance relief being sought was to 11 DCMR § 2001.3, for an addition to a nonconforming structure devoted to a conforming use. The other areas of relief -- rear yard, nonconforming court, and lot occupancy -- are existing nonconformities that will not increase. See Hearing Transcript (“Tr.”), Nov. 13, 2007, at 362. Relief is required from §2001.3 because the existing nonconforming structure does not conform to lot occupancy requirements.

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the D.C. Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 6B, the Single Member District (“SMD”) Commissioner 6B03, and the Councilmember for Ward 6. Pursuant to 11 DCMR 3113.13, OZ published notice of the hearing in the *D.C. Register* and, on May 4, 2007, mailed such notice to the Applicants, ANC 6B, and all property owners within 200 feet of the subject property.

Request for Party Status. ANC 6B was automatically a party to the proceeding.

The Board received requests for party status in opposition to the application from Jeffrey Marx, 322 South Carolina Avenue, S.E., and Tania Dmytraczenko, 321 E Street, S.E.

The Board granted party status to Jeffrey Marx, who lives next door to the subject property, finding that he demonstrated that he would be more distinctly impacted by the Applicants’ proposed addition than members of the general public. Mr. Marx raised concerns about the intrusion of the proposed addition on his privacy, particularly the sightline from the addition into his bathroom and a bedroom. Mr. Marx also raised concerns, that the addition would reduce his light and air, would set a precedent for future development on the block, and would impact other close-by dwellings, particularly those across the alley.

The Board denied party status to Tania Dmytraczenko because she did not attend the hearing and did not send an agent who was willing to participate on her behalf. While Ms. Dmytraczenko authorized Mr. Marx to represent her interests, Mr. Marx indicated that he did not have sufficient information to do so.

Applicants’ Case. The Applicants and their architect described the proposed project and how it met the three prongs of the variance tests. After the hearing they submitted revised plans addressing the privacy concerns raised by the opposing party. (*See Exhibit 41*)

Government Reports. The Office of Planning (“OP”) submitted a written report, indicating that OP was not opposed to the Applicants’ proposal as modified in response to recommendations by the Historic Preservation Review Board (“HPRB”) and that the application met the variance test. OP noted that the property was developed prior to the enactment of the Zoning Regulations and was exceptionally small; that no expansion would be possible in conformance with the zoning regulations without demolition of 10.5 percent of the building, and that the modest vertical addition would not increase any existing nonconformities. The report noted that HPRB had approved the conceptual design of Applicants’ project and that the Office of Historic Preservation Staff stated in its report to HPRB that “the architect and Owners have made every effort to ensure invisibility of the addition from the front and have increased the setback of the third floor at the rear from three to six feet. The additional setback allows the house to continue to read as a two-story structure and reduces the perceived increase in height and bulk of the house from the alley. With this change, the proposal is considered a compatible alteration to the historic house.” (*Exhibit 33*)

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ANC Report. ANC 6B filed a report in support of the application. On June 12, 2007, at its regularly scheduled meeting, ANC 6B voted 7-0-1 to recommend approval of the application. The ANC indicated that the addition will not adversely affect neighboring structures regarding light, air, or privacy, as those nearby units are taller than the Applicants' home. The ANC further stated that the addition will be substantially set back from the front of the house and will not affect the scale, rhythm, and style of the surrounding neighborhood. (Exhibit 21)

Party in Opposition's Case. The opposing party, Mr. Jeffrey Marx, raised concerns over reduction in his light and open space and over a loss of privacy. He suggested that the third story addition would diminish the light coming into his side windows and that someone standing on the balcony would be able to look into his bathroom or guest bedroom window or down into his rear yard. Mr. Marx also expressed concern over the height of the addition and its impact on the zone plan and the look of the street.²

At the hearing Mr. Marx indicated that his privacy concerns might be alleviated if the railing of the balcony was brought in and the side screened.³ Mr. Marx disputed that the project met the variance test criteria.

The Board kept the record open for the Applicant to present revised plans to address the concerns raised by Mr. Marx and for Mr. Marx, the ANC, and OP to respond.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 320 South Carolina Avenue, S.E (Square 794, Lot 13) mid-block on the north side of South Carolina Avenue between 3rd and 4th Streets, S.E. Row dwellings abut the subject property on both sides; 322 South Carolina Avenue, S.E. on the east and 318 South Carolina Avenue, S.E. on the west.
2. The subject property is located in the Capitol Hill Historic District and is zoned CAP/R-4.
3. The subject property is occupied with a two-story row dwelling that pre-dates the May 12, 1958 Zoning Regulations, constructed some time between 1892 and 1907.
4. The subject property is nonconforming with respect to lot size. The total lot size is 1,120 square feet where a minimum lot area of 1,800 square feet is required. (11 DCMR § 401.3)

² The proposed addition is within the height limits that apply to the zone; therefore, no relief from height limits was requested or considered.

³ The Applicants' architect noted that, while the balcony was added in response to the HPRB's recommendations for a rear setback, he did not anticipate that HPRB would have an issue with that type of modification to the plans.

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5. The subject property is nonconforming as to lot width. The lot of the subject property is 17 feet wide where a minimum lot width of 18 feet is required. (11 DCMR § 401.3)
6. The subject property is nonconforming as to lot occupancy. The subject property's existing lot occupancy is 70.5 percent where the maximum lot occupancy allowed in the zone is 60 percent. (11 DCMR § 400.1)
7. The subject property is nonconforming as to rear yard. The subject property has a rear yard depth of 17.7 feet whereas a rear yard depth of 20 feet is required. (11 DCMR § 404.1)
8. The subject property has a nonconforming open court, or dogleg, width of 3.3 feet whereas an open court in that zone is required to have a minimum width of 6 feet. Because the court is nonconforming, it is counted in the lot occupancy percentage.
9. There is a 40-foot set back at the front of the subject property from South Carolina Avenue.

The Proposed Project

10. The Applicants request relief to add a partial third floor with balcony to a two-story row dwelling.
11. The proposed addition will have a building height of 32 feet, which is less than the maximum of 40 feet allowed in that zone district. (11 DCMR § 400.1)
12. The proposed addition will have a floor area ratio (FAR) of 1.68, which is within the maximum FAR of 1.8 allowed in the CAP Overlay District. (11 DCMR § 402.4)
13. No windows are proposed on the portion of the building closest to 322 South Carolina Avenue, S.E.
14. In response to HPRB's review, the Applicants set the addition further back from both the front and rear of the building so that it would not be visible from South Carolina Avenue and would continue to read as a two-story building. Thus, the addition was set back 22.6 feet from the front of the building and 6 feet from the rear wall. Besides the setback from the front and rear, the addition was further redesigned so that a small portion hangs over the existing open court (dogleg).
15. In the course of the BZA proceedings, the Applicants modified the plans to address the party in opposition's privacy concerns. The revised plans pull the railing back away from the roofline and recess the corners of the balcony. (Exhibit 41)

Satisfaction of the Area Variance Requirements

Exceptional Condition

16. Both the subject property and the existing structure were in existence prior to the adoption of the Zoning Regulations and became nonconforming with respect to lot area, lot width, lot occupancy, rear yard, and open court upon the adoption of the regulations.
17. The size of the lot is exceptionally small. A 10-foot wide public alley abuts the rear of the subject property at an angle, narrowing further an already shallow rear yard.
18. The Applicants' property and the property to the east are the only properties on the block whose rear yards are impacted by the alley's angle, and whose lot occupancy is increased as a result thereof. These two properties are the only ones with a lot occupancy that exceeds 70 percent of the lot area.
19. The existing dwelling is exceptionally small with only one usable bedroom and bathroom and a kitchen barely large enough to house two persons at one time.
20. Unlike most of the twenty row dwellings located on the north side of the 300 block of South Carolina Avenue, S.E., the Applicants' existing house does not have a basement, third floor, or rear garage structure and is only two stories tall.

Practical Difficulty

21. In light of the existing nonconformities, particularly with respect to lot occupancy, the Applicants cannot make any addition to their dwelling without zoning relief without demolishing a part of the existing structure.
22. The existing building is 10.5 percent above the permitted 60 percent lot occupancy. To bring the building into conformance with the Zoning Regulations, 10.5 percent of the building would have to be removed from the existing footprint.
23. Applicants' building envelope is limited by the 22.6-foot setback from the front and 6-foot setback from the rear, as modified by Applicants in response to HPRB recommendations.
24. Applicants' options for expansion are also limited by the exceptionally wide right-of-way in the front.

No Substantial Detriment to Public Good or Zone Plan

25. The proposed project is a modest vertical addition that will not increase, or create any new, nonconforming conditions.

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26. The property will continue to be used as a single family residence.
27. The proposed addition will be below the height limit and FAR allowed in this R-4 zone in which it is located.
28. The proposed addition will not be visible from the front, from South Carolina Avenue, as a result of its 22.6 foot set back from the front of the building.
29. The six-foot set back from the rear contributes to the preservation of its historic character.
30. With the front and rear set backs, the Office of Historic Preservation Staff determined that the proposed addition is a compatible alteration to the historic house. The HPRB subsequently granted the project conceptual approval. (Exhibit 33, OP Report at 3)
31. The addition will not have an undue impact on the light and air of neighboring properties because of the vertical nature of the addition, the absence of any increase in lot occupancy and the substantial setbacks from the front and rear of the property.
32. The revised plans address the privacy concerns raised by the party in opposition relating to the residence at 322 South Carolina Avenue. The balcony and railing have been reconfigured so as to prevent anyone's views from the balcony into the neighboring house.

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations where “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 the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property.” D.C. Official Code § 6-641.07(g) (3) (2001), 11 DCMR § 3103.2. Relief can only 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. An applicant for area variances must make the lesser showing of “practical difficulties,” as opposed to the more difficult showing of “undue hardship,” which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972).

The “exceptional situation or condition” of a property may arise out of permanent structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). It may also arise out of a confluence of factors. *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164 (1990).

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To determine whether the practical difficulty is of the nature and extent as to warrant an area variance, the Court of Appeals has stated that the standard is that “compliance with the area requirements would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and the circumstances of each particular case.” *Palmer, supra*, at 542. “BZA has the flexibility to consider a number of factors, including, but not limited to: 1) the weight of the burden of noncompliance; 2) the severity of the variance(s) requested; and 3) the effect the proposed variance(s) would have on the overall zone plan.” *Gilmartin, supra* at 1171.

The Board finds that the Applicants have met their burden of proof for the variances requested. With respect to the first prong of the variance test, there is a confluence of factors including the size, width, and depth of the lot, the way the rear yard is angled, and the improvements on the property that lead to the Applicants’ practical difficulty in expanding their dwelling for reasonable residential use.

Applicants’ property falls squarely within the language of the variance statute as a piece of property that was exceptional in shallowness or shape at the time of the original adoption of the regulations. At that time Applicants’ property was exceptionally small with respect to lot size; was abutted by the public alley in the rear at an angle that made its small rear yard even smaller and was improved with the small dwelling that exists to date. The dwelling is smaller than the majority of the twenty row dwellings located on the north side of the 300 block of South Carolina Avenue, S.E., and is without the basement, third floor, and/or rear garage structure that most of those dwellings feature.

Strict compliance with the regulations is practically difficult because the adoption of the Zoning Regulations immediately resulted in the nonconformities that are subsumed in the requested variance relief as well as nonconformities with respect to lot size and lot width. In order to comply with § 2001.3 which allows additions to nonconforming structures if certain requirements are met, Applicants would need to demolish 10.5 percent of their building to meet the 60 percent lot occupancy requirement for this zone.

To determine whether Applicants’ practical difficulty warrants relief, the Board must weigh this burden of compliance with the severity of the relief requested and the effect of the proposed variance. In this case the severity of the relief is small. While the variance relief sought is 10.5 percent in lot occupancy, this percentage includes an open court that is nonconforming as to width and thus counted toward that coverage. (11 DCMR § 406). The lot occupancy is also increased by the manner in which the public alley abuts the rear yard at an angle.

The proposed addition will not cause substantial detriment to the public good or impair the intent, purpose, and integrity of the Zoning Regulations and Map. The project is a modest vertical addition that will not increase any existing non-conformity, nor create any new non-conformity. The addition, together with the existing structure, will continue to be below the maximum allowable height and FAR, will not increase the lot occupancy, and will continue to be used as a single family residence. As affirmed by HPRB’s concept approval, the addition will

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blend harmoniously with the existing dwelling units on the block and with the Capitol Hill Historic District.

The addition will not have an undue impact on light and air of neighboring properties because of the vertical nature of the addition, the absence of any increase in lot occupancy and the substantial setbacks from the front and rear of the property. Further, the revised plans address the opposing party's privacy concerns. There are no windows proposed on the portion of the building closest to his residence, and the balcony and railing have been reconfigured so as to prevent anyone's views from the balcony into his house. Finally, given the development pattern of the block, with three-story as well as two-story homes with existing views into back yards, there will not be an undue impact on the privacy of neighboring rear yards from this addition.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. The ANC submitted a report in support of the application. The Office of Planning indicated that they were not opposed to approval of the application. The Board agrees with the recommendations of the Office of Planning and Advisory Neighborhood Commission 6B.

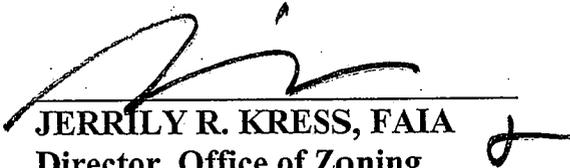
Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicants have satisfied the burden of proof with respect to variance relief from the lot occupancy requirement of § 403, variance from the rear yard requirements § 404, variance from the open court requirements of § 406, and variance from the nonconforming structure requirements of § 2001.3 in the R-4 zone district. Therefore, it is hereby **ORDERED** that this application (pursuant to revised plans marked as Exhibit No. 41 of the record) be **GRANTED**.

VOTE: 3-0-2 (Shane L. Dettman and Ruthanne G. Miller to grant; Michael G. Turnbull to grant by absentee vote; Marc D. Loud and Mary Oates Walker not hearing the case, not voting.)

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

Each voting Board member approved the issuance of this Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 25 2008

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UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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 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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



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As Director of the Office of Zoning, I hereby certify and attest that on **APRIL 25, 2008**, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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