

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



**Application No. 17707 of Kathryn Hodges**, pursuant to 11 DCMR § 3103.2, for variances from the lot area and lot width requirements of § 401, and a variance from the side yard requirement of § 405.9, to allow the construction of a new semi-detached dwelling in the R-2 District at premises 5369 Hayes Street, N.E. (Square 5209, Lot 29).

**HEARING DATE:** January 22, 2008

**DECISION DATE:** February 12, 2008

**DECISION AND ORDER**

This application was submitted on July 27, 2007 by Kathryn Hodges (“Applicant”), the contract purchaser of the property that is the subject of the application (“subject property”). The Applicant had written permission from the owner of the subject property to submit, and prosecute, this application. (Exhibit No. 7). The self-certified application requested three variances necessary to permit the Applicant to construct a one-family semi-detached dwelling on the subject property.

The Board of Zoning Adjustment (“Board” or “BZA”) held a hearing on the application on January 22, 2008. At its decision meeting on February 12, 2008, the Board voted 4-1-0 to deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated July 31, 2007, the Office of Zoning (“OZ”) provided notice of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation, Advisory Neighborhood Commission (“ANC”) 7C, the ANC within which the subject property is located, the Single Member District member for district 7C06, and the Councilmember for Ward 7. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing in the *D.C. Register*, and sent such notice to the Applicant, ANC 7C, and all owners of property within 200 feet of the subject property.

Requests for Party Status. A neighbor requested opponent party status, asserting that the proposed dwelling is too large for the lot, and that it may cause an increase in traffic on Hayes Street. The neighbor, however, did not appear at the hearing, and her request was denied by the Board.

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Applicant's Case. The Applicant appeared alone and represented herself. She testified concerning the nature of the proposed project and the variances requested. She stated that she based her design on the dwelling to the east, which had received similar variance relief from the Board in Board of Zoning Adjustment Order No. 17511.

Government Reports. The Office of Planning filed a report with the Board dated January 15, 2007 recommending partial approval and partial denial of the application. OP recommended approval of the variances from lot area and lot width, but recommended denial of the side yard variance. OP suggested that some degree of side yard relief could be acceptable, but not such as proposed, whereby the dwelling is constructed on one side lot line, leaving a 5-foot side yard between the dwelling and the other side lot line.

ANC Report. The Board did not receive a report from ANC 7C.

**FINDINGS OF FACT**

*The Subject Property and the Neighborhood*

1. The subject property is located in an R-2 zone district at address 5369 Hayes Street, N.E., on Square 5209, Lot 29.
2. The subject lot is vacant and dates to at least 1906.
3. The lot is 25 feet wide and 100 feet long, resulting in an area of 2,500 square feet.
4. In an R-2 zone, the minimum permissible lot width is 30 feet and the minimum permissible lot area is 3,000 square feet. 11 DCMR § 401.
5. Therefore, the lot's area and width are both 83% of what is required.
6. The lot is a straightforward rectangular shape fronting on Hayes Street and has no rear alley.
7. The property is flanked to the west and east by two similarly shaped rectangular lots, neither of which is owned by the Applicant.
8. On the lot to the east is a semi-detached one-family dwelling built on that lot's eastern lot line, resulting in a five-foot side yard between its western wall and the eastern lot line of the subject property.
9. The neighborhood is comprised of one-family detached and semi-detached dwellings, with a few churches in the area.

*The Proposed Project*

10. The Applicant proposes to construct a 20-foot wide, three-story one-family semi-detached dwelling on the subject property.

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11. A one-family semi-detached dwelling is a matter-of-right use in the R-2 zone district and is defined as a dwelling “the wall on one (1) side of which is either a party wall, or lot line wall, having one (1) side yard.” 11 DCMR § 199.1, definition of “Dwelling, one-family detached.”
12. The proposed structure meets the latter portion of this definition because its eastern wall is a “lot line wall” and it will have one side yard between its western wall and its western lot line.

#### *Variance Relief*

13. Pursuant to 11 DCMR § 401.2, a structure may be erected on a substandard vacant lot “if both the lot area and width of lot are at least 80% of the lot area and width of lot specified under § 401.3; provided, that the structure shall comply with all other provisions of” Title 11.
14. Since the subject property’s lot’s area and width meets 83% of both requirements, a new structure may be built as long as all other area requirements are met.
15. In this R-2 district, § 405.9 of the Zoning Regulations requires a minimum side yard width of eight feet. 11 DCMR § 405.9.
16. The proposed side yard would have a width of five feet.
17. Providing a single eight-foot side yard would only reduce the width of the proposed dwelling by three feet, allowing for a building width of 17 feet.

#### **CONCLUSIONS OF LAW**

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship 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 the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property .... D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only “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 Applicant in this case, therefore, had to make three showings: exceptional condition of the property, that such exceptional condition *results in* “practical difficulties” to the Applicant, and that the granting of

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the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

Because the lot's width and area meet at least 80% of that required, construction of a new structure is permitted on this lot as long as it complies with all other provisions of Title 11. 11 DCMR § 401.2. That is not that case here because the proposed structure will have a five-foot side yard, whereas an eight-foot side yard is required. The Applicant desires to build a dwelling with a width of 20 feet. A 17-foot wide dwelling, built on the eastern lot line with a conforming eight-foot western side yard, could be constructed as a matter-of-right semi-detached dwelling. The Applicant has not explained why construction of a matter-of-right structure, three feet narrower than proposed, would present a practical difficulty. In fact, internal space lost due to the slightly narrower dwelling could be made up by making the dwelling deeper, as there is a rear yard of 46 feet, when only 20 feet is required. 11 DCMR § 404.1. The Board therefore concludes that any practical difficulty in complying with § 405.9 does not arise out of the exceptional condition of the property, as it must in order to grant variance relief.

Since the Applicant did not demonstrate why variance relief from the side yard requirement of § 405.9 is warranted, it follows that no variance can be granted from the requirement of § 401.2 that a structure on this size lot meet that and all other requirements of Title 11.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of 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. ANC 7C did not file a report with the Board and so there is nothing to which the Board can accord great weight.

The Office of Planning did not object to lot area, lot width, and partial side yard relief, but did object to the elimination of the eastern side yard. OP proposed as an acceptable solution a 17-foot wide detached dwelling in the center of the property with four-foot side yards on each side. OP's position was premised on its belief that § 405.3 requires two side yards when a one-family dwelling is not attached to another dwelling, even if it has a lot line wall, as here. While the Board entertained this reading of the regulation at the hearing and in its deliberations, and provided the Applicant the opportunity to revise her plans to meet OP's concerns, that interpretation is contrary to past precedent. The Board rejected this very same contention in *Appeal No. 16935 of Southeast Citizens for Smart Development*, 50 DCR 8108 (2003), in which the Board noted that:

By definition, a semi-detached dwelling is required to have only one side yard, not two. [Appellant's] interpretation of § 405 would, in effect, require two side yards instead of one whenever a semi-detached dwelling has a lot line wall instead of a common division wall. ... [T]he BZA reads § 405.3 of the Zoning Regulations to require only one side yard for one family semi-detached dwellings.

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*Id.* at 8118. See e.g., *Appeal No. 17085 of Louise and Larry Smith and Mary Ann Snow and James Marsh*, 52 DCR 5270, 5275 (2005) (§405.3 “does not prohibit the construction of new end-unit row dwellings, or any new row dwelling, regardless of whether the structure shares one or (sic) common division wall, or none at all.)

While the Board does not find persuasive OP’s recommendation that variance relief is required from § 405.3, it does find persuasive OP’s assessment that Applicant has not shown why a 17-foot wide dwelling with the same square footage as proposed, but extending deeper into the yard would result in a practical difficulty upon the owner.

Accordingly, Applicant has failed to meet the variance test with respect to § 405.9 and thereby § 401.2. Therefore, it is hereby **ORDERED** that the application is **DENIED**.

**VOTE:** 4-1-0 (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, and Mary Oates Walker to deny; Anthony J. Hood, to approve)

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

Each concurring Board member approved the issuance of this order.

ATTESTED BY:

  
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**JERRILY R. KRESS, FAIA**  
Director, Office of Zoning

**FINAL DATE OF ORDER:** JUN 13 2008

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

LM

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As Director of the Office of Zoning, I hereby certify and attest that on **JUNE 13, 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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**ATTESTED BY:**

  
**JERRILY R. KRESS, FAIA**  
**Director, Office of Zoning**

TWR