

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



**Application No. 17736 of District-Properties.com, LLC**, pursuant to 11 DCMR § 3101.2 for a variance from the rear yard requirement of § 404, a variance from the side yard requirement of § 405, and a variance from the parking requirement of § 2101.1, to allow the construction of a new one-family semi-detached dwelling in the R-5-B district at premises 1961 H Street, N.E. (Square 4506, Lot 163).<sup>1</sup>

**HEARING DATES:** March 25, 2008 and May 27, 2008  
**DECISION DATE:** July 1, 2008

**DECISION AND ORDER**

This application was submitted to the Board of Zoning Adjustment (“BZA” or “Board”) on September 20, 2007 by District-Properties.com, LLC (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The self-certified application requested variance relief to allow the construction of a new one-family dwelling on a vacant lot in an R-5-B zone district.

The Board held a hearing on the application on March 25, 2008 which, due to a failure to post the property, was continued to May 27, 2008, at which time a decision on the application was set for July 1, 2008. At its public decision meeting on July 1, 2008, the Board denied the application by a vote of 4-0-1.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated September 28, 2007,

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<sup>1</sup>The application was originally advertised for a variance from the rear yard requirement of § 404 and a variance from the floor area ratio requirement of § 402 in order to permit construction of a row dwelling, but during the proceedings, the plans were changed, necessitating a change in the relief requested and the classification of the dwelling to be constructed.

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the Office of Zoning (“OZ”) provided notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 5B, the ANC within which the subject property is located, Single Member District 5B12, and the Councilmember for Ward 5. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and sent such notice to the Applicant, ANC 5B, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 5B was automatically a party to this application. The Board granted party status to the only immediate neighbor of the subject property, who appeared and testified in opposition at the hearing.

Government Reports. On March 18, 2008, the Office of Planning filed a report with the Board recommending approval of the revised application. Prior to filing this report, OP had worked with the Applicant to reduce the proposed floor area ratio (“FAR”) of the dwelling, eliminating the need for FAR relief. OP also recommended that the Applicant add a small side yard where none was originally proposed, and that he drop plans for a driveway off H Street, N.E., and request a parking variance instead. The Applicant agreed to both recommendations, as depicted in the final plans. *See*, Exhibit No. 20. In its report, OP addressed the final relief requested and opined that the application met the test for each variance.

ANC Report. ANC 5B did not file a report with the Board or appear at the hearing.

Persons in Support or in Opposition. Other than the neighbor granted party status, no one appeared as a person in support or opposition to the application and no letters in support or opposition were filed in the record.

**FINDINGS OF FACT**

The subject property and the surrounding neighborhood

1. The subject property is located at address 1961 H Street, N.E., at the southwestern corner of the intersection of H Street, N.E. and 21<sup>st</sup> Street, N.E., and in an R-5-B zone district (Square 4506, Lot 163).
2. The subject lot is currently vacant and is the last lot in a long line of lots fronting on H Street, N.E., each of which is improved with a row dwelling.
3. The subject property has a lot width of 19 feet, and an area of approximately 935 square feet.

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4. The Zoning Regulations do not prescribe a minimum lot width or area for a one-family dwelling in an R-5-B zone. *See*, 11 DCMR § 401.3.
5. Inclusive of a 15 foot deep building restriction line, Applicant's property is 30.93 feet deep on the east and 67.45 feet deep on the west. Not including the area in front of the building restriction line, the property is, accordingly, 15.93 feet deep on the east and 52.45 feet deep on the west.
6. The eastern side lot line, as it continues south from H Street, angles away from 21<sup>st</sup> Street and continues at an angle until it reaches the western side lot line, ending at a point, thereby turning the southern half, *i.e.*, the rear portion, of the lot, into a right triangle.
7. The neighborhood surrounding the property generally consists of two-story row dwellings and garden apartments, with a prominent exception in that a multi-family housing project is located directly south of, and also across 21<sup>st</sup> Street from, the subject property.

The proposed project

8. The Applicant proposes to construct a 1,586-square-foot, three-story, semi-detached dwelling, the lot occupancy and FAR of which would be within the maximum permitted in the R-5-B zone. *See*, 11 DCMR §§ 403.2 and 402.4.
9. The proposed dwelling will share a party wall with the row dwelling to the west.
10. The rear yard of the proposed dwelling will average eight feet in depth, when 15 feet is required. 11 DCMR § 404.1.
11. Pursuant to 11 DCMR § 405.5, the proposed semi-detached dwelling does not need to provide a side yard because it is a corner lot, but the application proposes a three-foot side yard running alongside part of the dwelling from its front wall to a point just beyond where the eastern side lot line angles toward the west. Alongside the rest of the eastern side of the dwelling, there will be no side yard.
12. Because the proposed semi-detached dwelling will have a side yard, it must be a minimum of eight feet in width, and therefore variance relief for the five-foot deficit is needed. *See*, 11 DCMR §§ 405.2 and 405.9.
13. The dwelling will not include a parking space, necessitating relief from the parking requirement of 11 DCMR § 2101.1.

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14. The proposed dwelling will include a porch which appears to be located in front of the building restriction line and for which a public space permit will be required.

The variance relief

*Exceptional condition*

15. The subject property is exceptionally small.
16. The subject property is irregularly shaped in that it is twice as deep on its west side, the side adjacent to the next row dwelling, as on its east side, along 21<sup>st</sup> Street, N.E.
17. The property is a corner lot with no rear alley access to the property.

*Practical Difficulty*

18. Due to the small size of the property, the angled side lot line and the building restriction line at the front of the property, the Applicant is unable to construct a dwelling within a reasonable building envelope without relief from the 15-foot rear yard depth requirement.
19. DDOT will not permit a curb cut at the proposed location because of its proximity to the intersection of H and 21<sup>st</sup> Streets, N.E.
20. Due to the size and configuration of the property, the lack of alley access and DDOT's refusal to permit a curb cut, the site cannot be developed without relief from the parking requirements.
21. Because the property narrows to less than 7 feet at the southern end of the house, the Applicant cannot provide an 8 foot side yard.

*Substantial detriment to public good and impairment of zone plan*

22. The proposed dwelling will have a 3-foot side yard along 21<sup>st</sup> Street, whereas all other buildings along 21<sup>st</sup> Street are set back more than 10 feet.
23. The proposed dwelling will be three stories tall; whereas all the other row dwellings in the line along H Street are two stories tall.
24. The record is unclear as to whether the proposed dwelling will align with the other row dwellings along H Street or will project further forward. The Applicant's front porch will be in front of the building restriction line; whereas the location of the front porches of the other row dwellings with respect to the building restriction line was not established.

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25. If the proposed dwelling does not align with the other row dwellings along H Street, it will be out of character with the neighborhood and will impede views along H Street, N.E.
26. The treatment of the side of the proposed dwelling facing 21<sup>st</sup> Street is inconsistent with other building faces along 21<sup>st</sup> Street, the latter of which present more fully articulated facades.

**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), 11 DCMR § 3103.2.

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship,” must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case therefore had to demonstrate an exceptional situation or condition of the property, that such exceptional condition results in “practical difficulties” to the Applicant, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The subject property is exceptionally small and oddly-shaped, coming to a narrow point at its rear. In addition, it has no alley access and because of its corner location, any building will have facades on two streets.

The exceptional condition of the property presents practical difficulties for the Applicant in constructing the proposed dwelling. The small size of the lot leaves little room for a parking space and leads the Applicant to build up. The odd shape of the lot precludes a rear yard of the requisite depth. The corner lot aspect prohibits the cutting of a curb cut, preventing the provision of the required parking space. The corner lot aspect also makes

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some side yard/court space along 21<sup>st</sup> Street preferable, which then creates the need for another variance in order to maintain a practicable dwelling width.

All of these practical difficulties, however, point up the fact that the proposed dwelling is incompatible with the neighborhood and will have a substantial detriment to the public good. The lot is small, and the Board concludes, too small for the proposed dwelling to be in harmony with the neighborhood. Because of the small size of the lot, the applicant has designed a dwelling that will be three stories tall, when all the other row dwellings in the line fronting H Street, N.E. are only two stories tall. Such a three-story dwelling will be out of character with the other dwellings on the row. Further, as set back only three feet on the side from 21<sup>st</sup> Street, the proposed dwelling will be out of harmony with the other buildings along that street, that are set back at least 10 feet from the street. Finally, the lack of clarity with respect to whether the Applicant's front porch will align with the other dwellings along H Street raises further concern with respect to the compatibility of the proposed dwelling with the other dwellings in the row.

In conclusion, although the first two prongs of the variance test are met, the third prong is not. The subject corner lot is too small and too exposed to support the Applicant's proposal without substantial detriment to the public good. "It is well established that a variance may not be granted, even to alleviate a bona fide serious hardship to the owner, if the granting thereof would adversely affect the surrounding neighborhood." *Roumel v. D.C. Bd. of Zoning Adjustment*, 417 A.2d 405, 409 (D.C. 1980), quoting *Clerics of St. Viator, Inc. v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291, 294-295 (D.C. 1974).

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.

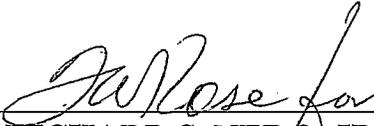
There was no report from the ANC to which to accord great weight. However, OP recommended granting the requested variances. The Board agrees with OP with regard to the first two prongs of the variance test, but disagrees with it as to the last prong. OP, in its report, recognized that the proposed dwelling would have some negative impact on the neighborhood and on the immediate neighbor, but concluded that it did not rise to the level of substantial detriment to the public good. After considering all the evidence in the record, and for the reasons set forth above, the Board is convinced that granting the requested relief would result in a dwelling that is out of character with the dwellings on the two streets it would front and would result in substantial detriment to the public good. Accordingly, the Board concludes that the Applicant has failed to satisfy the burden of

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proof under § 3103.2 with respect to area variances from the rear yard requirements of § 404, the side yard requirements of § 405, and the parking requirement of § 2101.1. It is therefore **ORDERED** that the application be **DENIED**.

**VOTE:**       **4-0-1** (Ruthanne G. Miller, Shane L. Dettman, Mary Oates Walker and Michael G. Turnbull to deny. No fifth member participating or voting.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**  
Each concurring Board member has approved the issuance of this order.

**ATTESTED BY:**   
**RICHARD S. NERO, JR.**  
Acting Director, Office of Zoning

**FINAL DATE OF ORDER:** DEC 31 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.

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As Director of the Office of Zoning, I hereby certify and attest that on **DECEMBER 31, 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:

Mohammad Sikder  
District-Properties.com, LLC  
2615 Evarts Street, N.E.  
Washington, D.C. 20018

Begashaw Bedada  
Takelech Sisay  
1607 Lorelei Drive  
Ft. Washington, Maryland 20744-3782

Chairperson  
Advisory Neighborhood Commission 5B  
1355 New York Avenue, N.E.  
Washington, D.C. 20002

Single Member District Commissioner 5B02  
Advisory Neighborhood Commission 5B  
1355 New York Avenue, N.E.  
Washington, D.C. 20002

Matthew LeGrant, Zoning Administrator  
Dept. of Consumer and Regulatory Affairs  
Building and Land Regulation Administration  
941 North Capitol Street, N.E., Suite 2000  
Washington, D.C. 20002

Harry Thomas, Jr., City Councilmember  
Ward Five  
1350 Pennsylvania Avenue, N.W., Suite 107  
Washington, D.C. 20004

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441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcoz@dc.gov](mailto:dcoz@dc.gov)

Web Site: [www.dcoz.dc.gov](http://www.dcoz.dc.gov)

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Bennett Rushkoff, Esquire  
Acting General Counsel  
Department of Consumer and Regulatory Affairs  
941 North Capitol Street, N.E., Suite 9400  
Washington, D.C. 20002

ATTESTED BY:

  
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**RICHARD S. NERO, JR.**  
Acting Director, Office of Zoning

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