

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17778 of Lorraine Purnell, pursuant to 11 DCMR § 3103.2 and § 3104.1, for a variance from the floor area ratio (FAR) requirements under § 402, and for a special exception under § 223, to construct a garage serving a one-family row dwelling not meeting the lot occupancy requirements, in the R-5-A District at premises 222 Emerson Street, N.W. (Square 3323, Lot 12).

HEARING DATE: June 10, 2008
DECISION DATE: July 1, 2008

DECISION AND ORDER

Lorraine Purnell, the owner of the subject property (the applicant), filed an application for zoning relief on January 22, 2008. During a public hearing on June 10, 2008, the Board of Zoning Adjustment (the Board) indicated that the applicant had not adequately addressed the variance test under District law in order to obtain zoning approval for the project. As such, the Board left the record open so that the applicant could either: (a) bring the proposed addition into compliance within allowable FAR limits, obviating the need for a variance; or, (b) establish that the proposed project met the variance test. The applicant indicated she would bring the addition into FAR compliance. While the applicant did revise her plans, she did not bring it into FAR compliance. According to her own calculations, the FAR at the proposed project continued to exceed the allowable FAR limits. As a result, the Board voted to deny the variance and special exception at a decision meeting on July 1, 2008. A full explanation of the facts and law that support the Board's decision follows.

PRELIMINARY MATTERS

The Application The initial application sought special exception relief under § 223 but did not seek variance relief (Exhibit 1). However, the self-certification form filed with the application indicated that the applicant also needed variance relief from the FAR limits applicable to the zone in which the property is located. (Exhibit 2, "Form 135 – Side 2"). The self-certification chart stated that the maximum allowable FAR in the R-5-A zone is "0.9", and that the FAR provided by the proposed construction – "0.95" -- exceeded this amount.

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

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission (ANC) 4D, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 20).

ANC 4D The subject site is located within the jurisdiction of ANC 4 D, which is automatically a party to this application. However, the ANC neither filed a report nor appeared during the Board proceedings.

Representation The applicant did not appear at the public hearing, but authorized her architect, Mr. Yettekov Wilson, to represent her. (Exhibit 5).

Requests for Party Status There were no requests for party status.

Persons in Support No persons appeared at the public hearing in support of the application. Nor did the Board receive any letters in support of the application.

Persons in Opposition The Board received a letter in opposition from Ms. Robin Robinson, a neighboring property owner residing at 224 Emerson Street, NW (Exhibit 22). Ms. Barbara Willis, another neighboring property owner residing at 220 Emerson Street, NW, appeared during the proceedings and testified in opposition to the application. Ms. Willis testified that, as proposed, the garage would not align with other neighboring properties and would obstruct her view. She also testified that the garage would be acceptable if its depth were reduced by five feet. (T. p. 38).¹

Government Reports

OP Report OP reviewed the application and prepared a report concluding that the applicant had satisfied the test for a special exception under § 223, but had not satisfied the test for a variance to exceed the maximum permitted FAR. Specifically, OP asserted that the applicant had not established any exceptional condition that would result in a practical difficulty in compliance with the FAR limit. (Exhibit 23) Stephen Rice, the OP representative who prepared the report, testified at the hearing and suggested that the depth of the garage be reduced to bring the proposal into compliance with FAR requirements, thereby removing the need for variance relief. After the Applicant submitted revised plans, OP filed a supplemental report concluding that the revised application did not eliminate the need for variance relief and that the applicant had still not addressed the variance test. (Exhibit 27).

¹ All transcript citations are to the transcript of June 10, 2008, and are hereafter designated “T., p. ___”.

FINDINGS OF FACT

The Site and Surrounding Area

1. The property is located at 222 Emerson Street, NW, Lot 12, Square 3323 in the R-5-A zone district. It is improved with a one-family row dwelling.
2. The rest of Square 3323 is also developed with row dwellings which have two or two and one-half stories. The abutting row dwellings are practically identical to the subject property.
3. The Square itself is triangular in shape and has a T-formed alley network that links New Hampshire Avenue and 3rd Street from east to west, and Decatur Street to the south. Most of the lots on the Emerson Street side of the Square have a narrow rectangular shape and have similar dimensions. (See Exhibit 6).

The Proposed Project

4. The applicant proposes to construct a detached garage in the rear yard. The original proposal showed a garage width of 16 feet and a depth of 25 feet, and also included a mezzanine space above the garage space.
5. Revised plans submitted by the applicant reduced the garage depth from 25 feet to 21.33 feet. (Exhibit 26). The revised plans did not change the 16 foot width.²

The Zoning Relief

6. Without the proposed garage, the lot occupancy at the property is 36%, which conforms to § 403 of the Zoning Regulations.³ With the proposed construction of the garage, however, the lot occupancy would increase to 59% and would, thus, be non-conforming. (Exhibit 23, OP Report, p. 2 chart). Therefore, the addition would not be permitted as a matter-of-right, but would be permitted as a special exception under § 223 of the Regulations. Accordingly, the applicant seeks relief from this Board under § 223 of the Regulations.
7. The maximum floor area ratio (FAR) allowed in the zone is “.9”. 11 DCMR 402.4.⁴ Without the proposed garage, the existing FAR at the property is “.72” and, therefore conforms to the Regulations. However, with the garage as originally proposed, the FAR would be “.95” and

² The chart in the OP Supplemental Report indicates that the revised garage width would be “reduced” to 19 feet instead of 16 feet. However, the Board believes the “19” is a typographical error, since the width of the entire lot is only 16 feet.

³ Section 403.2 provides that the maximum lot occupancy in this zone for structures, other than a church or public school, is 40%.

⁴ FAR is defined as “a figure that expresses the total gross floor area as a multiple of the area of the lot. This figure is determined by dividing the gross floor area of all buildings on a lot by the area of that lot. 11 DCMR 199.

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would, therefore exceed the maximum allowed. (Exhibit 4, Self-Certification Chart and Exhibit 27, Supplemental OP Report). As proposed in the revised plans submitted, the FAR would be “.918” and would still exceed the maximum allowed. (Exhibit 26, Self-Certification Chart and Exhibit 27, Supplemental OP Report).

9. Accordingly, the proposed project also requires relief from the FAR limits of the Regulations. Because FAR relief is not available as a special exception under § 223⁵, the applicant must obtain a variance from the FAR requirements.
10. The Applicant presented no evidence that the property was subject to an exception condition and the project architect conceded that there was nothing different about this property compared to other neighboring properties (T., p. 21).

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.

This application must be denied because the applicant has made no showing whatsoever that the variance test has been met. Despite having had ample opportunity to do so, the applicant never submitted anything in writing which even attempted to address the variance test. Nor did the applicant offer any testimony in support of the three-pronged test cited above. In fact, the project architect conceded that the property did not differ from others in the neighbor (Finding of Fact 10). In addition, the survey submitted by the applicant shows that the subject property is similar to other nearby properties, and that most of the lots on the Emerson side of the Square have a narrow rectangular shape and have similar dimensions. (Finding of Fact 3).

It does appear that the applicant attempted to eliminate the need for variance relief. In preparing revised plans, she did significantly reduce the FAR. Unfortunately, she did not reduce it sufficiently to eliminate the need for relief, and the FAR still exceeded what was allowed, albeit by a very small amount. However, no matter how *de minimus* the relief that is requested, the

⁵ Section 223 does not provide for relief under § 402, governing FAR requirements.

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Board has no authority to waive the FAR requirements. It is true that the Regulations allow for "minor flexibility" in certain situations. For instance, § 2522.1 allows deviations of certain area requirements up to two per cent. However, this provision does not allow deviations from the FAR requirements, only the lot occupancy requirements and requirements relating to minimum areas of lots, courts and roof structures. 11 DCMR 2522.1(a). Thus, notwithstanding the minimal nature of the relief, the variance test must be met.

In reviewing a variance application, the Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. As explained above, the Board agrees with OP that the applicant has not adequately addressed the variance test. A similar great weight requirement exists for the written report of an affected Advisory Neighborhood Commission, but, as noted, ANC 4D did not submit a report.

The Board also denies the request for a special exception because the increased lot occupancy was based upon the same plans that depict a structure exceeding matter of right FAR.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **DENIED**.

VOTE: 3-0-2 (Ruthanne G. Miller, Shane L. Dettman, and Michael G. Turnbull voting to deny the application; Marc D. Loud being necessarily absent; and Mary Oates Walker not having participated)

Vote taken on July 1, 2008

ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:



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

FINAL DATE OF ORDER: JAN 15 2009

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 FOR THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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As Director of the Office of Zoning, I hereby certify and attest that on **JANUARY 15, 2009**, 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:

Yettekov Wilson
601 16th Street, N.W.
Washington, D.C. 20011

Lorraine Purnell
222 Emerson Street, N.W.
Washington, D.C. 20011

Chairperson
Advisory Neighborhood Commission 4D
143 Kennedy Street, N.W.
Washington, D.C. 20011

Single Member District Commissioner 4D05
Advisory Neighborhood Commission 4D
143 Kennedy Street, N.W.
Washington, D.C. 20011

Muriel Bowser, City Councilmember
Ward Four
1350 Pennsylvania Avenue, N.W., Suite 406
Washington, D.C. 20004

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

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

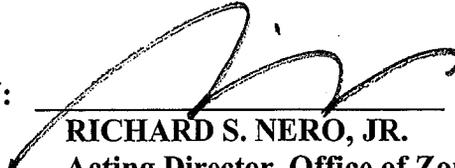
E-Mail: dcoz@dc.gov

Web Site: 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:



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

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