

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



**Application No. 17848-A of Anne M. Holbrook**, 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, and a variance from the nonconforming structure provisions under § 2001.3 to allow an addition to an existing one-family row dwelling in the R-4 district at premises 1515 Massachusetts Avenue, S.E. (Square 1072-S, Lot 10).

**HEARING DATE:** December 2, 2008 and December 9, 2008  
**DECISION DATE:** December 9, 2008

**CORRECTED DECISION AND ORDER\***

This application was submitted June 30, 2008 by Anne Holbrook, the owner of the property that is the subject of the application (“Applicant”). Following a public hearing, the Board voted 5-0-0 on December 9, 2008 to deny the application.

**PRELIMINARY MATTERS**

Application. The application was filed pursuant to 11 DCMR § 3103 for area variances from the maximum lot occupancy requirement under § 403 and the minimum rear yard requirement under § 404 to allow construction of an addition to an existing row dwelling in the R-4 district in Square 1072-S, Lot 10. The self-certified application was later amended to add a request for an area variance from the nonconforming structure provisions under § 2001.3.

Notice of Application and Notice of Public Hearing. By memoranda dated July 2, 2008, the Office of Zoning sent notice of the application to the Office of Planning; the District Department of Transportation; the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6B, the ANC for the area within which the subject property is located; and the single-member district ANC 6B08.

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\*This order was corrected to include the original hearing date and to accurately reflect the year of the hearing and decision as 2008, not 2009. The changes are underscored above.

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A public hearing was scheduled for December 2, 2008. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on September 18, 2008 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 6B. Notice was published in the D.C. Register on September 26, 2008 (55 DCR 9986). The hearing was continued to and completed on December 9, 2008.

Requests for Party Status. In addition to the Applicant, ANC 6B was automatically a party in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant requested variance relief from lot occupancy, rear yard, and nonconforming structure requirements to allow construction of a two-story rear addition to a one-family row dwelling. (The Applicant also planned to construct a third-story addition on a portion of the row dwelling, a project that did not require zoning relief.) The Applicant explained her proposal to enlarge the row dwelling, which she described as extraordinarily small, to meet her need for increased living space, particularly since her fiancé moved into the house, and to add environmental features, especially a green roof on a portion of the dwelling's roof. According to the Applicant, her row dwelling was one of only two owner-occupied houses in a row of eight similar small row dwellings, and the other owner-occupied house had already been enlarged. The Applicant testified that the existing rear yard was not needed because the subject property had a large open space in the front yard, and was not usable due in part to criminal activity in the alley behind the subject property, and that construction of the planned rear addition would help improve safety in the alley by increasing visibility.

The Applicant contended that several characteristics made the subject property exceptional and made it difficult for the owner to comply with the Zoning Regulations, including that the lot was "exceptionally small," at one-third the minimum size required in the R-4 district; the maximum permitted lot occupancy on the site would allow "very small house only two rooms deep," which was "too small for a family or even more than one person"; the lot was "exceptionally narrow," resulting in difficulty in creating functional rooms; any rear addition to the house would create a nonconforming rear yard; and the house did not have a basement. The Applicant also asserted that granting the requested relief would not cause substantial detriment to the public good, because the rear addition would be visible only from the rear alley, and would not generate traffic, noise, or light, and because neighboring properties had already been enlarged by similar additions.

Government Reports. By report dated November 25, 2008 and through testimony at the public hearing, the Office of Planning ("OP") recommended denial of the application. OP objected to the degree of variance relief requested – an increase in lot occupancy from 60 percent, the maximum permitted as a matter of right, to 90 percent, and a reduction of the required rear yard from 20 feet to five feet – and indicated its preference for a design that would conform to special exception criteria under § 223. OP did not agree that the subject property was exceptionally small, noting that half of the properties in the same square had lot areas between 600 square feet (the size of the Applicant's lot) and 700 square feet. OP also testified that the strict application

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of the Zoning Regulations would not cause practical difficulty, since a third-story addition could be built as a matter of right and a rear addition could be designed consistent with the requirements for special exception relief pursuant to § 223. OP concluded that approval of the requested variances would be contrary to the intent of the Zoning Regulations and possibly detrimental to the public good, because allowing an addition, with its resulting significant increase in lot occupancy, to a property that was similar to many others on the same square could lead to greatly increased density on the square, with lot occupancies at levels more appropriate in a commercial zone than in a residential area. OP also suggested that the Applicant could investigate the possibility of closing the rear alley, which is not used for vehicular traffic or parking, as a means of increasing the size of the Applicant's lot.

ANC Report. At a regularly noticed public meeting held November 11, 2008 with a quorum present, ANC 6B voted 5-3 to support the application. By letter dated November 12, 2008, ANC 6B indicated that its vote was based on its belief that "the strict application of the regulations would result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner."

Persons in support. The Board heard testimony and received letters from persons in support of the application who commented favorably on the Applicant's project. The persons in support included near neighbors of the subject property, including one who also hoped to construct a rear addition to enlarge her row dwelling. The Board also received a letter in support of the application from Ed Brandt, sector lead in Landscaping and Structural Pest Management at the Environmental Protection Agency, who expressed support for the Applicant's plan to install a green roof on the row dwelling.

**FINDINGS OF FACT**

**The Subject Property and Surrounding Area**

1. The subject property is a rectangular parcel located on the north side of Massachusetts Avenue, S.E. (Square S-1072, Lot 10). The property is approximately 12 feet wide and 50 feet deep, with an area of approximately 603 square feet.
2. The subject property is located in a generally triangular-shaped square bounded by Massachusetts Avenue on the south, 15<sup>th</sup> Street on the west, Independence Avenue on the north, and 16<sup>th</sup> Street on the east. Two public alleys are located near the subject property. One alley runs generally north-south between Independence Avenue, where the alley is 24 feet wide, to Massachusetts Avenue, where it narrows to 12 feet in width. The second alley runs generally east-west from its intersection with the first alley into the interior of the square. The width of this alley ranges from approximately 9.7 feet to approximately 20 feet. The second alley abuts the rear lot line of the subject property at a point where the alley is relatively narrow and turns slightly, impeding visibility.

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3. The subject property is improved with a one-family row dwelling built around 1902. The two-story row dwelling has a floor area of 710 square feet, and is one of eight substantially identical dwellings in the row, each located on a similarly sized lot. The remainder of the square is developed with several similar two-story row dwellings and two commercial buildings. Some of the row dwellings have been enlarged previously through the construction of rear additions.
4. The row dwelling is set back approximately 30 feet from Massachusetts Avenue.
5. The site is not located within a historic district.

**The Applicant's Project**

6. The Applicant proposed to enlarge the existing row dwelling by constructing a one-story addition to create a third floor for a portion of the house as well as a two-story addition, with a roof deck, at the rear of the dwelling. The proposed additions would increase the floor area of the house to 1,265 square feet.
7. The new third story would create a new family room, approximately 17 feet deep by 12 feet wide (approximately 200 square feet in area). The third-floor addition would be set back approximately 12 feet, seven inches from the front of the dwelling so as to minimize its appearance from the street and to create room for installation of a green roof, approximately 12 feet square, in the area between the front of the dwelling and the new third-floor addition. The Applicant may construct the third-story addition as a matter of right.
8. The rear addition would be approximately 15 feet, nine inches deep by 12 feet wide, with a footprint of 188.5 square feet, and would be constructed in the rear yard of the dwelling. The first floor of the new addition would be used to create a dining room and storage space, while the second story would house a new master bedroom and bathroom so that an existing bedroom in the house could be converted to a closet and a laundry facility. A roof deck (approximately 15 feet, nine inches deep by 12 feet wide, and 189 square feet in area) would be built on the roof of the new two-story rear addition behind the third-story family room addition.

**Zone Plan**

9. The subject property is located in the R-4 zone district, which is designed to include those areas now developed primarily with row dwellings. 11 DCMR § 330.1.
10. The subject property is nonconforming with respect to lot area, at approximately 603 square feet, where a minimum of 1,800 square feet is required, and with respect to lot width, at 12 feet, where a minimum of 18 feet is required. 11 DCMR § 401.3.

11. The proposed rear addition would increase the lot occupancy of the subject property from 58.8 percent to 90 percent. A maximum lot occupancy of 60 percent is permitted in the R-4 zone. 11 DCMR § 403.2.
12. The existing rear yard is 20 feet, six inches deep. After construction of the rear addition, the rear yard would be five feet deep. A minimum rear yard of 20 feet is required in the R-4 zone. 11 DCMR § 404.1.

### **CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks area variances from the lot occupancy requirement under § 403, the rear yard requirement under § 404, and the nonconforming structure provisions under § 2001.3 to allow construction of a rear addition to an existing one-family row dwelling in the R-4 district at 1515 Massachusetts Avenue, S.E. (Square 1072-S, Lot 10). The Board is authorized under § 8 of the Zoning Act to grant variance relief 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 a specific piece of property,” the strict application of the Zoning Regulations 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. 11 DCMR § 3103.2.

The Applicant contended that the subject property was exceptional due to its small lot area and narrow configuration, as well as its position abutting a dead-end rear alley that created a location for criminal activity. The Board was not persuaded that the Applicant’s property is faced with an “extraordinary or exceptional situation or condition” within the meaning of the Zoning Act. The subject property – while relatively small in terms of lot area and width compared to other properties located in the R-4 zone, including some other row dwellings in the same neighborhood – is one of a row of eight dwellings, where each house is substantially identical to the others and all are located on similarly sized lots. In addition, several other properties in the same square are similar two-story row dwellings, and according to the Applicant, only one residential lot on the square meets the minimum area and width requirements of the R-4 district. The nonconforming size of the subject property does not constitute an exceptional circumstance, especially when other properties in the immediate vicinity are similarly situated.

The Board was not persuaded that practical difficulties faced by the Applicant result from the strict application of the Zoning Regulations, rather than from changes in the Applicant’s use of the property and her desire to enlarge the house by constructing a rear addition of the proposed size. The Applicant can enlarge the house without zoning relief through the construction of a

larger third-story addition. The planned addition would create one room on the third floor while also providing for a green roof at the front of the house and a roof deck at the rear. The Board acknowledges the Applicant's desires to set back the planned third-story addition so as to minimize its visibility from the street and to create room for installation of a green roof, but these choices by the Applicant were not mandated by the Zoning Regulations or other legal requirements. The Applicant could also seek a special exception under § 223 to allow construction of a rear addition, albeit one not as large as that proposed in this application. According to OP, with special exception approval, the Applicant could build a rear addition with a depth of about 5.6 feet. Even with the proposed third-story setback (a design feature strongly supported by OP to minimize the visual impact of a third-floor addition), a dwelling of over 1,115 square feet would be possible – about 150 square feet less than the Applicant proposed in this proceeding. The Board also agrees with OP that the Applicant could file an application with the Surveyor of the District of Columbia requesting the Council of the District of Columbia to enact legislation to close the rear alley. If the Council did so, half of the alley abutting the property would be added to the Subject Property's lot, which would allow for a larger rear addition without requiring the same degree of zoning relief.

As proposed in this application, the planned rear addition would require substantial variance relief that would create two additional nonconforming elements at the subject property by allowing a rear yard of only five feet where a minimum of 20 feet is required, as well as lot occupancy of 90 percent where a maximum of 60 percent is allowed as a matter of right and 70 percent may be permitted by special exception. The Applicant did not demonstrate practical difficulties sufficient to warrant the significant variance relief requested when other projects, which could be completed as a matter of right or by special exception, might address the Applicant's practical difficulties satisfactorily.

The Board concludes that the requested relief cannot be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board credits the testimony of the Office of Planning that approval of the requested variances would weaken the intent of the Zoning Regulations that small lots should be developed with small buildings. As the Applicant acknowledged, the subject property is "one of a group of eight properties with uniquely small lot sizes." Approval of the requested variances for the subject property could encourage owners of neighboring properties, each of them also "uniquely small," to seek approval of rear additions to enlarge their small houses. If the Board granted variances to each similarly situated property, the relief would effectively amend the zoning of the parcels so as to allow a maximum lot occupancy much greater, and rear yards much smaller, than the requirements approved by the Zoning Commission and set forth in the Zoning Regulations. The Board credits the testimony of the Office of Planning that the Applicant's proposed rear addition would represent "a significant departure" from the character of adjacent properties, since approval of the variances could encourage neighboring property owners to seek similar relief. Such relief could potentially lead to substantial increases in pervious surface and building density and to the near elimination of the limited open space within the square.

The Board is required to give "great weight" to any issues and concerns raised by ANC 6B in this proceeding. The Board credits the unique vantage point that ANC 6B holds with respect to the impact of the requested zoning relief on the ANC's constituents. However, the Board concludes that the ANC did not offer persuasive evidence that would cause the Board to find that the requested zoning relief should be approved. The ANC's submission stated only its conclusions that "the strict application of the regulations would result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner," without giving reasons or stating any specific issues or concerns.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the written report of ANC 6B, the Board concludes that the requested zoning relief cannot be approved without impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. For the reasons stated above, the Board concludes that the Applicant has not satisfied the requirements for area variances from the lot occupancy requirement under § 403, the rear yard requirement under § 404, or the nonconforming structure provisions under § 2001.3 to allow construction of a rear addition to an existing one-family row dwelling in the R-4 district at premises 1515 Massachusetts Avenue, S.E. (Square 1072-S, Lot 10). Accordingly, it is hereby **ORDERED** that the application is **DENIED**.

**VOTE: 5-0-0** (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker,  
Shane L. Dettman, and Gregory N. Jeffries voting to deny)

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

A majority of Board members approved the issuance of this Order.

ATTESTED BY:



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

**FINAL DATE OF ORDER:**     AUG 10 2009    

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.

**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 **AUGUST 10, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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Bennett Rushkoff, Esquire  
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**ATTESTED BY:**

A handwritten signature in black ink, appearing to read "RN", is written over a horizontal line.

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