

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17898 of District-Properties.com, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot width and lot area requirements under § 401 and a variance from the side yard requirements under § 405 to construct a new one-family detached dwelling in the R-2 district at premises 311 56th Street, N.E. (Square 5264, Lot 15).

HEARING DATES: March 24, 2009 and April 7, 2009
DECISION DATE: May 19, 2009

DECISION AND ORDER

This self-certified application was submitted October 17, 2008 by District-Properties.com, LLC, the owner of the property that is the subject of the application (“Applicant”). Following a public hearing, the Board voted 3-0-2 on May 19, 2009 to grant the application.

PRELIMINARY MATTERS

Application. The application was filed pursuant to 11 DCMR § 3103.2 for area variances from the lot width and lot area requirements under § 401 and from the side yard requirements under § 405 to allow construction of a new one-family detached dwelling in the R-2 district at Square 5264, Lot 15.

Notice of Application and Notice of Public Hearing. By memoranda dated October 17, 2008, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 7; Advisory Neighborhood Commission (“ANC”) 7C, the ANC for the area within which the subject property is located; and the single-member district ANC 7C05.

A public hearing was scheduled for March 24, 2009. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on January 9, 2009 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 7C. Notice was published in the D.C. Register on January 9, 2009 (56 DCR 264). The hearing was continued to and completed on April 7, 2009.

Requests for Party Status. In addition to the Applicant, ANC 7C was automatically a party in this proceeding. There were no additional requests for party status.

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Applicant's Case. The Applicant, represented by Mohammad Sikder, requested variance relief from the minimum lot area, lot width, and side yard requirements to allow construction of a three-story, one-family detached dwelling on a nonconforming lot. The Applicant testified that he had sent letters by certified mail to the owners of each of the adjoining lots but had not received any response. The Applicant also attended a meeting of ANC 7C and the Northeast Boundary Civic Association to present his plans for the property.

Government Reports. By report dated March 17, 2009 and through testimony at the public hearing, the Office of Planning recommended approval of the application.

ANC Report. By letter dated March 13, 2009, ANC 7C indicated that the ANC had considered the application at a public meeting held March 12, 2009 with a quorum present. ANC 7C requested a continuance so that the ANC could have additional "time to obtain information from the developer regarding the impact the development and this variance request" would have in the community.

By letter dated May 12, 2009, ANC 7C indicated that, at the conclusion of a public meeting held April 9, 2009 with a quorum present, the ANC unanimously voted to recommend denial of the application. According to the ANC, the Applicant had been unable to address concerns raised by neighbors of the subject property that (i) the amount of relief needed to build the proposed house was too large, (ii) the Applicant had not contacted the owner of the adjacent lot regarding use of the lot, (iii) the design of the Applicant's proposed house would not "fit with the design and look of the current homes on 58th Street, N.E., and (iv) the Applicant had not requested "the opinion and input of the residents on the design" of the proposed house.

Persons in opposition. The Board heard testimony and received a letter from persons in opposition to the application, who stated that the height of the Applicant's proposed dwelling was excessive and would be out of character with existing houses in the neighborhood, or who opposed construction on the subject property in favor of maintaining the "present number of homes."

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is a rectangular lot located on the east side of 58th Street, N.E. (Square 5264, Lot 15). The lot is presently unimproved. A public alley 20 feet wide abuts the property at the rear.
2. The subject property is approximately 25 feet wide and 140 feet deep, and has a lot area of 3,500 square feet. The property is nonconforming with respect to lot area and lot width, as the R-2 district requires a minimum lot area of 4,000 square feet and a minimum lot width of 40 feet for a one-family dwelling. *See* 11 DCMR § 401.3.

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3. Properties adjacent to the subject property are under separate ownership. The parcel to the north is developed with a one-family detached dwelling. The parcel to the south is a large vacant lot, approximately 6,800 square feet in area. The Applicant sent a certified letter to the owner of that parcel, seeking to buy part or all of the property, but did not receive a response.
4. Most properties in the vicinity of the subject property are improved with one-family detached or semi-detached dwellings or row dwellings. The square also contains an apartment building and some vacant lots. Generally, the area surrounding the subject property is characterized by low-density residential dwellings.

The Applicant's Project

5. The Applicant proposes to construct a new three-story, one-family detached dwelling on the subject property. The three-bedroom house will be 19 feet wide and 40 feet long, and will be set back approximately 20 feet from the front property line.
6. The Applicant will provide three foot side yards on each side of the house, as well as a rear yard of approximately 95 feet. The R-2 district requires side yards at least eight feet wide and a rear yard at least 20 feet deep. *See* 11 DCMR §§ 405.9, 404.1.
7. The house will be a distance of approximately eight to 10 feet from the residence located on the abutting property to the north. The property abutting to the south is presently undeveloped.
8. The Applicant will install brick and metal fences, 42 inches high, along the side property lines and in front of the house, and a stockade fence, six feet high, around the rear yard.
9. A parking pad, 20 feet by 16 feet, will be provided in the rear yard, accessible from the alley. The Applicant will install a garage door, eight feet high, at the entrance to the parking pad. A walkway, three feet wide, will connect parking pad and the house.
10. The front of the house will be clad in brick veneer, while the sides and back will have HardiPlank siding.

Zone Plan

11. The subject property is located in the R-2 district, which “consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. It shall be expected that these areas will continue to contain some small one-family detached dwellings.” 11 DCMR § 300.1.

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12. The proposed three-story house will have a building height of 35 feet. The R-2 district allows a maximum height of 40 feet and three stories. 11 DCMR § 400.1.
13. Lot occupancy after construction of the house will be approximately 21.7 percent. The R-2 district permits a lot occupancy of 40 percent for a one-family dwelling. 11 DCMR § 403.2.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks area variances from the lot width and lot area requirements under § 401 and from the side yard requirements under § 405 to construct a new one-family detached dwelling in the R-2 district at 311 56th Street, N.E. (Square 5264, Lot 15).

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 Board concurs with the Applicant and the Office of Planning that the subject property faces an exceptional situation or condition as a lot that was established in its current size and shape prior to the original adoption of the Zoning Regulations. The lot was created as a relatively small, narrow parcel that lacks the width and area now required under the Zoning Regulations, such that the now-applicable area requirements cannot be satisfied on the subject property. The strict application of the Zoning Regulations to the subject property would result in practical difficulty to the owner, because development consistent with the R-2 designation of the property could not occur on the lot without variance relief. The subject property cannot be enlarged to a conforming size through the acquisition of adjoining property, as one abutting property is already improved and the owner of the other, unimproved parcel is apparently not interested in selling any part of that lot.

The Board also concurs with the Applicant and OP that the requested variances 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. The Applicant’s project will provide infill development of a new one-family detached dwelling, with parking, in a location designated for relatively low-density residential development. The new house will not impair the light and air available to any nearby residences, as the Applicant’s dwelling will be located eight to 10 feet from the only abutting residence.

The Board is required to give “great weight” to any issues and concerns raised by ANC 7C in this proceeding. The Board credits the unique vantage point that ANC 7C 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 not be approved. ANC 7C recommended denial of the application on the grounds that the Applicant had not addressed certain concerns raised by neighbors relating to the degree of relief requested, the Applicant’s failure to contact the owner of the adjacent lot, and the design of the Applicant’s proposed house, especially the Applicant’s failure to obtain input from neighboring residents on the design.

There is no legal requirement for applicants to confer with adjacent property owners or respond to their neighbors’ concerns outside of the record before the Board. While the Board encourages such behavior, it cannot deny an application on this basis. An applicant for a variance must convince the Board that the relief is needed and will not cause substantial detriment to the public good nor impair the intent, purpose, and integrity of the zone plan. After taking into account the concerns expressed in the record, the Board has concluded that the Applicant has met its burden.

With regard to design issues, the Board notes that the proposed house will comply with all area requirements applicable in the R-2 district with the exception of the side yards, and concurs with OP that the planned one-family detached dwelling will be consistent with the character of the surrounding residential neighborhood and with the low-density residential intent of the R-2 district.

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 7C, the Board concludes that the Applicant has satisfied the requirements for area variances from the lot width and lot area requirements under § 401 and from the side yard requirements under § 405 to allow construction of a new one-family detached dwelling in the R-2 district at 311 56th Street, N.E. (Square 5264, Lot 15). Accordingly, it is hereby **ORDERED** that this application (pursuant to Exhibit No. 25, revised plans) is **GRANTED**.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull voting to approve; two Mayoral appointees (vacant) not participating, not voting.)

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: AUGUST 25, 2009

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.

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.

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As Director of the Office of Zoning, I hereby certify and attest that on AUG 25 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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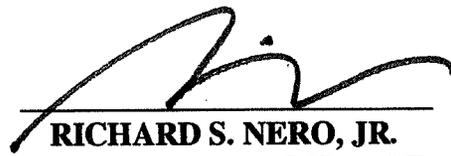
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ATTESTED BY:


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Acting Director, Office of Zoning