

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17949 of Mohammad Sikder, pursuant to 11 DCMR § 3103.2, for variances from the minimum lot frontage requirement under § 401.6, the minimum rear yard requirement under § 404, and minimum side yard requirements under §§ 405.3 and 405.9 to construct a one-family semi-detached dwelling in the R-2 district at premises 410 57th Street, NE (Square 5229, Lot 800).¹

HEARING DATE: July 21, 2009
DECISION DATE: September 15, 2009

DECISION AND ORDER

This self-certified application was submitted March 25, 2009 by Mohammad Sikder (“Applicant”), the owner of the property that is the subject of the application. As amended, the application requested area variances from the minimum lot frontage requirement under § 401.6, the minimum rear yard requirement under § 404, and the minimum side yard requirements under §§ 405.3 and 405.9 to construct a one-family semi-detached dwelling in the R-2 district at 410 57th Street, NE (Square 5229, Lot 800). Following a public hearing, the Board voted 4-0-1 on September 15, 2009 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated March 30, 2009, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 7; Advisory

¹ The advertisement in this case reflected the Applicant’s original request solely for a variance from the lot width requirements under § 401. At the public hearing, the Applicant was permitted to amend the application to seek area variance relief from provisions pertaining to lot frontage, rear yard, and side yard needed to allow construction of the planned semi-detached dwelling. The Board agreed with the Office of Planning that relief from lot width requirements under § 401 was not needed because the subject property satisfied the minimum width requirement of 30 feet for a semi-detached dwelling when measured perpendicular to the side lot lines, consistent with the definition of lot width set forth in § 199 of the Zoning Regulations.

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 July 21, 2009. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on May 4, 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 May 8, 2009 (56 DCR 3664).

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.

Applicant’s Case. The Applicant requested area variances needed to allow construction of a one-family semi-detached dwelling on the subject property. The Applicant asserted that the application satisfied the requirements set forth in the Zoning Regulations, noting that the property was nonconforming and could not be improved without variance relief.

Government Reports. By report dated July 14, 2009 and through testimony at the public hearing, the Office of Planning recommended approval of the variance relief necessary to allow construction of the Applicant’s proposed dwelling; that is, area variances from § 401.6, pertaining to minimum lot frontage; from § 404, relating to the rear yard; from § 405.3, which requires a side yard on each freestanding side of a one-family dwelling that does not share a common division wall with another building; and from § 405.9, concerning the minimum width of side yards.

By supplemental report dated August 31, 2009, OP reiterated its recommendation of approval of the requested variances, and provided additional information about the alley system in the vicinity of the subject property. OP provided an illustration showing the portions of the public alley system that had been paved or had never been constructed, as well as “which portions are true public alleys rather than informal cartways established over the years by repeated use.” The subject property was depicted as an informal cartway. OP noted that once the Applicant’s planned dwelling was constructed and the site was no longer available for use as an informal cartway, the neighboring properties would continue to have alley access through the paved alley to the north. Based on its discussions with DDOT, OP indicated that property owners could ask to have unpaved alleys placed on the District’s paving schedule.

ANC Report. By letter dated July 17, 2009, ANC 7C indicated that the ANC had considered the application at a public meeting held July 11, 2009 with a quorum present. At the conclusion of the meeting, ANC 7C approved a motion recommending against approval of the requested variance relief because the Applicant had been unable to adequately address concerns raised at the meeting by residents of 57th Street. The concerns related to the large amount of space needed to build the planned home; the possibility that the house would be rented out, and thus likely to become part of a voucher program and the source of problems on the street; the proposed design of the house, which would “not fit with the design and look of the current homes” in the vicinity; and the Applicant’s failure to “request the opinion and input of residents on the design of the

dwellings prior to designing the dwellings on paper to ensure their concerns can be addressed or a compromise can be reached.” In a subsequent letter, dated August 27, 2009, ANC 7C reiterated its recommendation against approval of the requested variance relief, because of the large amount of space needed to build the planned home and because the proposed design of the house would “not fit with the design and look of the current homes” on 57th Street, NE

Person in opposition. Caroline Bradley, a resident of the 400 block of 57th Street, NE, testified in opposition to the application, stating that construction of a house on the subject property would diminish air quality in the neighborhood, disturb parkland, and block access to the rear alley, thereby impeding trash collection and emergency vehicles.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is an irregularly shaped, five-sided parcel located on the west side of 57th Street, NE between Dix and Eads Streets (Square 5229, Lot 800). The lot is unimproved.
2. The subject property was created as a tax lot more than 100 years ago as part of a railroad right of way, and is nonconforming with respect to lot frontage. The site, which is at an angle to the other lots in the square, has frontage of only eight feet, seven inches along 57th Street because of the generally triangular shape of its eastern portion. A minimum of 14 feet of street frontage is required in the R-2 zone. *See* 11 DCMR § 401.6.
3. The subject property is 30 feet wide as measured perpendicular to the side lot lines, which extend 151 feet on the north and almost 88 feet on the south. The lot area is 3,897 square feet.
4. A 20-foot wide public alley abuts the property at the rear. The plat obtained by the Applicant from the Office of the Surveyor depicts another public alley, ranging in width from 12 to 20 feet, as abutting the subject property along its southern property line. The latter alley has not been constructed, except for a curb cut located just south of the subject property. Given the overgrown, wooded nature of the area abutting the subject property to the south and the existence of the curb cut, the subject property has been used over the years as an informal, unpaved cartway connecting 57th Street with the north-south alley at the rear of the subject property.
5. Properties to the north of the subject property are developed with row dwellings and a semi-detach dwelling. The remainder of the square is improved primarily with one-family detached and semi-detached dwellings.

The Applicant's Project

6. The Applicant proposes to construct a new two-story, one-family semi-detached dwelling located on the southern property line of the subject property. The three-bedroom house will have the same east-west orientation of neighboring dwellings and will be set back 30 feet from the street, slightly further than the neighboring dwellings due to the subject property's narrow frontage along 57th Street. The house will be approximately 17 feet wide and 45 feet long. Its front façade will feature brick veneer, with siding on the other elevations.
7. The Applicant will provide a side yard at least four feet wide on the north side of the house, where the side yard will range in width from four feet to more than 16 feet. The R-2 zone requires side yards at least eight feet wide. *See* 11 DCMR § 405.9. The abutting property to the north is improved with a semi-detached dwelling. The minimum distance from the neighboring dwelling to the subject property is three feet.
8. The proposed dwelling was sited along the southern property line so as to maximize its distance from the neighboring dwelling and to locate the house closer to the street, similar to nearby residences. However, because of the irregular nature of the southern property line, the house thus located will not satisfy the rear yard requirement of at least 20 feet in the R-2 zone. *See* 11 DCMR § 404.1. The property will contain an area approximately 30 feet by sixty feet at the rear of the dwelling. One parking space, accessible from the alley, will be located in this area.
9. The location of the house along the southern property line will also eliminate the possibility of providing a side yard on the southern side of the house. In the R-2 zone, a one-family dwelling that does not share a common division wall with another building is required to have a side yard on each resulting free-standing side. *See* 11 DCMR § 405.3.

Zone Plan

10. The subject property is located in the R-2 zone 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.
11. The proposed two-story house will have a building height of 25 feet, six inches. The R-2 district allows a maximum height of 40 feet and three stories. *See* 11 DCMR § 400.1.
12. Lot occupancy after construction of the house will be 21 percent. The R-2 zone permits a maximum lot occupancy of 40 percent for a one-family dwelling. *See* 11 DCMR § 403.2.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks area variances from the minimum lot frontage requirement under § 401.6, the minimum rear yard requirement under § 404, and the minimum side yard requirements under §§ 405.3 and 405.9 to construct a one-family semi-detached dwelling in the R-2 district at 410 57th Street, NE (Square 5229, Lot 800). 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 shape prior to the adoption of the Zoning Regulations. The lot was created as an irregularly shaped parcel, very narrow and generally triangular at one end, and situated at an angle from surrounding properties, 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 a 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 from the street frontage requirement, and could otherwise result in the development of a very narrow dwelling (only 12 feet wide at most) placed closer than necessary to the abutting residence. The planned house has been designed and located on the lot so as to minimize its potential impacts on neighboring properties, but that location – specifically with respect to the siting of the house along the southern property line – created the need for additional variance relief from side yard and rear yard requirements.

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 semi-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.

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 “the large amount of space” needed to build the planned house; the

possibility that the house would be rented out; the proposed design of the house, which would “not fit with the design and look of the current homes” in the vicinity; and the Applicant’s failure to “request the opinion and input of residents on the design of the dwellings prior to designing the dwellings on paper to ensure their concerns can be addressed or a compromise can be reached.” The Board concurs with OP that approval of the requested variance relief is appropriate under the circumstances, and notes that whether the house will become renter- or owner-occupied is not germane to its deliberations on zoning matters. With regard to design issues, the Board notes that the proposed house will comply with height and lot occupancy requirements applicable in the R-2 zone, and concurs with OP that the planned one-family semi-detached dwelling, which will replicate the rowhouse pattern on the block, will be consistent with the character of the surrounding residential neighborhood and with the low-density residential intent of the R-2 zone.

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 minimum lot frontage requirement under § 401.6, the minimum rear yard requirement under § 404, and minimum side yard requirements under §§ 405.3 and 405.9 to construct a one-family semi-detached dwelling in the R-2 district at 410 57th Street, NE (Square 5229, Lot 800). Accordingly, it is hereby **ORDERED** that the application, pursuant to the plans marked as Exhibit No. 7, as revised by Exhibit No. 20, is hereby **GRANTED**.²

VOTE: 4-0-1 (Marc D. Loud, Shane L. Dettman, Meridith Moldenhauer, and Anthony J. Hood voting to Approve; one Mayoral Appointee (vacant) not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of Board members approved the issuance of this Order.

² At its decision meeting on September 15, 2009, the Board voted to approve the application subject to a condition that would have required the Applicant to use best efforts to work with the District Department of Transportation (“DDOT”) to pave a portion of the unpaved alley abutting the subject property, and, if not so paved by DDOT within 18 months, to pave the alley at the Applicant’s sole expense and cost. The condition was adopted in response to testimony by neighbors that the Applicant’s proposed development would end the neighbors’ use of the subject private property, which had served over the years as an informal public cartway. However, the Board declines to include the condition in its final order in light of concerns about the enforceability of the condition. The Board notes that owners of nearby properties may petition DDOT to pave any public alleys in the vicinity of the subject property, regardless of the Applicant’s proposed construction.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: FEB 05 2010

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17949

As Director of the Office of Zoning, I hereby certify and attest that on FEB 05 2010, 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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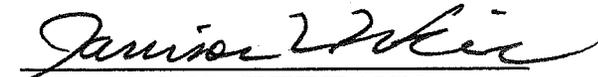
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