

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



**Application No. 18047 of James Ravitz**, pursuant to 11 DCMR § 3103.2, for a variance from the court requirements under § 406, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow a rear addition to an existing one-family row dwelling in the R-3 District at premises 1425 33rd Street, N.W. (Square 1244, Lot 172).

**HEARING DATE:** March 16, 2010  
**DECISION DATES:** April 6, 2010 and September 21, 2010

**DECISION AND ORDER**

This application was filed on January 12, 2010, by James Ravitz (“Applicant”), the owner of the property that is the subject of the application (“subject property”). The Zoning Administrator referred the Applicant to the Board of Zoning Adjustment (“Board”) for zoning relief necessary to enable the construction of a proposed rear addition on the nonconforming one-family dwelling on the subject property. (Exhibit 3.)

The Board held a public hearing on the application on March 16, 2010 and scheduled a decision for April 6, 2010. At the decision meeting, four members participated, and the vote was a 2-2 tie. Therefore, the decision on the application was “tabled” and postponed to enable a different member to read the record and participate in the voting.

On September 21, 2010, the second decision meeting on the application was held, with four members again participating, one of whom was newly participating on this case. At that decision meeting, the Board voted 3-1-1 to deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated January 15, 2010, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation, Advisory Neighborhood Commission (“ANC”) 2E, the ANC within which the subject property is located, Single Member District 2E03, and the Councilmember for Ward 2. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing date in the *D.C. Register*, and sent such notice to the Applicant, ANC 2E, and all owners of property within 200 feet of the subject property.

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Requests for Party Status. ANC 2E was automatically a party to the application. No one else requested party status.

Applicant's Case. The Applicant and his architect testified as to how, in their opinions, the proposed project met the variance test. The Applicant also filed a detailed post-hearing submission trying to elaborate on his theories of how the variance test was met. (Exhibit 31.)

Government Reports. OP filed a report with the Board on March 9, 2010, stating that OP could not recommend approval of the application because it did not meet the first prong of the variance test. OP opined that the subject property exhibited no exceptional condition, and therefore could show no practical difficulty arising from such a condition. OP also stated that granting the requested relief would impair the intent, purpose, and integrity of the Zoning Regulations. (Exhibit 23.)

The U.S. Commission of Fine Arts filed a letter with the Board dated June 19, 2009 stating that it had no objections to the two-story addition proposed by the application. (Exhibit 8.)

ANC Report. ANC 2E filed a report with the Board stating that, at a properly noticed public meeting, with a quorum present, the ANC voted unanimously to support the application based on the neighbors' support and the fact that the addition would not increase the lot occupancy on the subject property. (Exhibit 32.)

Persons in Support or Opposition. Two close neighbors wrote letters in support of the application and Councilmember Jack Evans also filed a letter in support. (Exhibits 30, 27, and 34.)

**FINDINGS OF FACT**

The Property and the Surrounding Area

1. The subject property is located at address 1425 33<sup>rd</sup> Street, N.W., in Square 1244, Lot 172, and in an R-3 Zone District.
2. The subject lot is a regular rectangle fronting on 33<sup>rd</sup> Street, and abutting a 16-foot wide public alley in the rear.
3. The subject lot is improved with a two-story row dwelling constructed in 1911. Extending seven feet from the rear wall of the original dwelling is a one-story addition constructed sometime before 1928.
4. There is a detached garage, accessible from the public alley, located within the 41-foot-long rear yard of the dwelling.
5. The lot is 100 feet long by 16.87 feet wide, for a lot area of 1,687 square feet. The lot is

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nonconforming for lot width and lot area because the R-3 District requires a minimum lot width of 20 feet and a minimum lot area of 2,000 square feet for a row dwelling. (11 DCMR § 401.3.)

6. The subject row dwelling has a “dogleg” which creates an open court four feet, 10 inches wide between the south wall of the dwelling and the southern lot line, along approximately the rear 16 feet of the dwelling. The court is nonconforming because the R-3 District requires a minimum open court width of six feet. (11 DCMR § 406.1.)
7. The lot occupancy of the subject row dwelling and garage is approximately 75%, making it nonconforming for lot occupancy because a maximum of 60% lot occupancy is permitted in this R-3 District. (11 DCMR § 403.2.)
8. Square 1244 is split-zoned and contains a mix of uses, with row dwellings occupying roughly the western third of the Square. In the middle of the Square is an elementary school. Low-scale commercial and retail uses line the eastern third of the Square, and fall within a C-2-A Zone District.

The Applicant’s Proposal

9. The Applicant proposes to raze the existing one-story rear addition and replace it, on the same footprint, with a new, two-story rear addition.
10. The proposed addition will extend seven feet from the rear of the original dwelling, and will be 12 feet wide and 22 feet high, adding 85 additional square feet in area to the dwelling with the new second story.
11. The addition will increase the height of the nonconforming court, extending the nonconformity and requiring relief from 11 DCMR §§ 406 and 2001.3(b)(2).

The Variance Test – Lack of Extraordinary or Exceptional Condition or Situation

12. The subject lot is an unremarkable rectangle, with no oddities of shape, contour, or gradient.
13. Of the 27 residential lots in Square 1244, 13 are nonconforming for both lot width and lot area and nine are narrower than the subject lot.
14. The row dwelling is flanked by row dwellings on either side which are approximately the same size as the subject row dwelling.
15. The subject lot and row dwelling are nonconforming in several respects and the dwelling and garage already occupy 75% of the lot, 15% more than permitted in this R-3 Zone District, and equivalent to the maximum lot occupancy permitted in the R-5-E Zone, the most dense residential zone district. (11 DCMR § 403.2.)

## **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) (2008 Supp.); (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) (2008 Repl.); (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 is requesting area variances, therefore, it had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. Lastly, the Applicant had to show that the granting of the variance would not impair the public good or the intent or integrity of the zone plan and Regulations.

The subject lot does not exhibit any extraordinary or exceptional situation or conditions. It is a regularly shaped rectangular lot and is not particularly small or narrow for a neighborhood of older row dwellings. It has no significant gradient change or other topographical features. It is improved with a row dwelling and rear detached garage. The garage provides secure parking and is accessible from the rear alley. The subject lot is not exceptional, nor is there anything particularly unusual about the subject row dwelling.

The Applicant’s need for more space inside the dwelling to accommodate a growing family does not factor into a variance analysis because it is a personal factor, which applies to this Applicant, but may not apply to a different individual residing in the same dwelling. A variance runs with the land, and only those factors independent of an applicant may be considered by the Board.

As there is no exceptional condition or situation exhibited by the subject property, the first prong of the variance test is not met and the Board need not address the second and third prongs. The Board notes, however, that the subject lot and the dwelling are nonconforming in several respects and the Zoning Regulations generally disfavor additions to nonconforming structures, particularly where, as here, the lot occupancy is already significantly more than permitted, and a particular instance of nonconformity – the height of the nonconforming court -- will be enlarged/extended by the addition. (*See, e.g.*, 11 DCMR § 2000.2.)

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by OP. 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. OP recommended denial of the variance relief, and the Board agrees with this recommendation.

ANC 2E voted to support the application based on the support of the adjacent neighbors and the fact that the lot occupancy would not be increased by the addition.<sup>1</sup> Notwithstanding the neighbors' support or other potentially positive factors concerning the addition, however, the Board must apply the variance test and the application fails on the first prong of that test. Therefore, the Board cannot agree with the position of support of the ANC.

For all the reasons stated above, the Board concludes that the application fails to satisfy the burden of proof, pursuant to 11 DCMR § 3103, for variances from lot occupancy, open court width, and nonconforming structure requirements under 11 DCMR §§ 403, 406, and 2001.3, respectively. Accordingly, it is hereby **ORDERED** that the application is **DENIED**.

**VOTE TO APPROVE**

**MADE ON APRIL 6, 2010:**            2-2-1            (Shane L. Dettman and Nicole C. Sorg to Approve; Meridith H. Moldenhauer and Michael G. Turnbull to Deny; No other Board member (vacant) participating)

**VOTE TO DENY**

**MADE ON APRIL 6, 2010:**            2-2-1            (Meridith H. Moldenhauer and Michael G. Turnbull to Deny; Shane L. Dettman and Nicole C. Sorg to Approve; No other Board member (vacant) participating)

**VOTE TO DENY MADE**

**ON SEPTEMBER 21, 2010:**            3-1-1            (Meridith H. Moldenhauer, Michael G. Turnbull, and Jeffrey L. Hinkle to Deny; Nicole C. Sorg to Approve; No other Board member (vacant) participating)

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

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

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

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<sup>1</sup>This may not be true in any event because once the existing addition is razed, and the lot occupancy of the dwelling and garage is reduced below 75% by the loss of that addition, the construction of the new addition would re-establish the lot occupancy as 75%, which is technically an increase back up to 75%.

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**FINAL DATE OF ORDER:** January 24, 2011

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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As Director of the Office of Zoning, I hereby certify and attest that on JAN 24 2011, 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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ATTESTED BY:

  
JAMISON L. WEINBAUM  
Director, Office of Zoning

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