

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18341 of Mohammed Sikder, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements of § 401, a variance from the side yard requirements of § 405, and a variance from the lot occupancy requirements of § 403¹, to allow construction of a new one-family detached dwelling in the R-2 Zone District at 4209 Grant Street, N.E. (Square 5092, Lot 31).

HEARING DATE: May 1, 2012
DECISION DATE: May 1, 2012

ORDER DISMISSING APPLICATION

On January 17, 2012, Mohammed Sikder (the “Applicant”) submitted a self-certified application requesting area variances to construct a one-family detached dwelling in the R-2 Zone District at 4209 Grant Street, N.E. (Square 5092, Lot 31) (the “property”). The Board of Zoning Adjustment (“Board”) found that under § 3126.11 of the Zoning Regulations, the Applicant was barred from submitting this application because it was filed within one year from the date on which another application involving the same property and the same relief, was denied. As a result, the Board dismissed this application when it came before the Board on May 1, 2012.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Filing and Notice of Hearing

By memoranda dated January 19, 2012, the Office of Zoning provided notice of the filing of the application to the Office Planning (“OP”) (Exhibit 12); the affected Advisory Neighborhood Commission (“ANC”) 7D (Exhibit 18); the affected ANC Single-Member District – ANC 7D06 (Exhibit 14); the Councilmember for Ward 7 (Exhibit 15); and the District Department of Transportation (“DDOT”). (Exhibit 16.)

A public hearing was scheduled for May 1, 2012. Pursuant to 11 DCMR § 3113.13, notice of the hearing was mailed to the Applicant, ANC 7D, and owners of all property within 200 feet of the

¹ The Applicant did not request lot occupancy relief under § 403. However, the Office of Planning (“OP”) noted in its report that the proposed lot occupancy would exceed the maximum lot occupancy allowed in the zone. Therefore, the caption is amended to reflect lot occupancy relief as well.

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subject property on February 10, 2012. (Exhibits 17, 18, and 19.) In accordance with 11 DCMR § 3113.4, the Applicant provided an affidavit of posting certifying that notice was posted on April 6, 2012 on the subject property, in plain view of the public. (Exhibit 24.)

Parties

The Applicant and the ANC 7D were automatic parties to this proceeding. There were no requests for party status.

Persons in Support/Opposition

No persons appeared to testify in support or in opposition. However, the Board received letters in opposition from three neighboring property owners. (Exhibits 25, 26, and 28.)

Government Reports

Office of Planning

By report dated April 24, 2012, OP recommended approval of the application with conditions. (Exhibit 27) OP's representative, Matt Jessick, testified at the public hearing regarding the subject application and a previous application that was filed by Mr. Sikder, Application No. 18205. In response to Board questions, Mr. Jessick stated that both BZA applications related to the property at 4209 Grant Street, N.E., and that the Applicant's proposal to build a new one-family detached dwelling was the same in both applications. Mr. Jessick stated that the only difference in the two applications was that the current project proposed a two-story dwelling, whereas Application No. 18205 proposed a three-story dwelling. Mr. Jessick testified that the Applicant sought identical zoning relief in the two applications.

District Department of Transportation

DDOT filed a report dated April 13, 2012, stating that it had no objection to the variances sought. (Exhibit 22.)

FINDINGS OF FACT

BZA Application No. 18205

1. The Applicant proposed to build a one-family detached dwelling in the R-2 Zone District at 4209 Grant Street, N.E. (Square 5092, Lot 31).
2. The Applicant filed Application No. 18205 on February 10, 2011 requesting area variances from the lot area and lot width requirements of § 401, the lot occupancy requirements of § 403, and the side yard requirements of § 405.

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3. The proposed one-family detached dwelling had three stories.
4. On July 12, 2011, the Board voted to deny the requested relief, finding that the Applicant had not met the third prong of the variance test.
5. The Board issued a written order denying the application on October 24, 2012.

BZA Application No. 18341

1. The Applicant proposed to build a one-family detached dwelling in the R-2 Zone District at 4209 Grant Street, N.E. (Square 5092, Lot 31).
2. The Applicant filed Application No. 18341 on January 17, 2012 requesting area variances from the lot area and lot width requirements of § 401, and the side yard requirements of § 405.
3. According to OP, the lot occupancy of the proposed structure was 48.2%², whereas a maximum lot occupancy of 40% is permitted. (See, 11 DCMR § 403.2.) Thus, the proposed structure also required lot occupancy relief under § 403.2.
4. The proposed one-family detached dwelling had two stories and a basement, but the footprint was the same as the proposed dwelling in Application No. 18205.
5. On May 1, 2012, the Board voted to dismiss the Application because it was barred under § 3126.11. This provision bars an applicant from filing a new application on the same facts within one year from the date of denial of a previous application.

CONCLUSIONS OF LAW

Section 3126.11 of the Zoning Regulations states in full:

An appellant or applicant whose appeal or application has been denied shall not institute a new appeal or application on the same facts within one (1) year from the date of the order upon the previous appeal or application.

The above provision precludes the Applicant's filing of Application No. 18341. As detailed in the Findings of Fact, the Board denied the Applicant's first application, BZA Application No. 18205, on July 12, 2011 during its deliberations. Before the Board had even issued its written order on October 24, 2012, the Applicant filed a second application on January 17, 2012. However, a strict reading of § 3126.11 barred the filing of a second application on the same facts prior to October 24,

² The Applicant represented that the proposed lot occupancy was only 39%, just under the maximum limit. However, as OP noted, the lot occupancy calculations must include the western side yard area, an area that apparently was not included in the Applicant's calculations.

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2013. Even if the Board were to use the date of deliberations (July 12, 2011) as the Board's date of denial, a new application on the same facts would have been barred prior to July 12, 2012. The January 17, 2012 filing date for the second application was less than one year after the Board's deliberations of the first application and less than one year after the Board's written order of denial of the first application.

The Board now turns to the question of whether the two applications were based "on the same facts" under § 3126.11. After careful examination, the Board finds that the two applications were based upon the same facts. First, the two applications concern the same property: 4209 Grant Street, N.E. Second, in both applications, the Applicant proposed to build a one-family detached dwelling at the property. And, third, in both applications, the identical zoning relief was required: lot area and lot width relief, side yard relief, and lot occupancy relief.

To be sure, the Applicant changed the design in the second application to propose a two-story dwelling instead of the three-story dwelling that was proposed in the first application. However, neither the proposed height nor the proposed number of stories is related to the zoning relief that was sought (i.e., lot area, lot width, lot occupancy, or side yard requirements) in either application. The Board finds that, for purposes of § 3126.11, the material facts had not changed merely because the proposed dwelling had one less story. *See, Appeal No. 16879 of Nebraska Avenue Neighborhood Association* (2002) (Second appeal of revised permit challenging rear yard compliance was based upon same facts as unsuccessful appeal of original permit where changes to original permit drawings affected only the roof plan/structure and did not impact rear yard requirements).

For the reasons stated above, it is hereby **ORDERED** that the application is **DISMISSED** pursuant to § 3126.11 of the Zoning Regulations.

VOTE: 3-1-1 (Konrad W. Schlater, Rashida Y.V. McMurray, and Lloyd J. Jordan to DISMISS; Jeffrey L. Hinkle opposed to the motion to dismiss; Nicole C. Sorg not voting, being necessarily absent.)

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

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

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 12, 2013

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.

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As Director of the Office of Zoning, I hereby certify and attest that on February 12, 2013, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

M. Sikder
6500 Chillum Place, N.W.
Washington, D.C. 20012

Chairperson
Advisory Neighborhood Commission 7D
5002 Hayes Street, N.E.
Washington, D.C. 20019

Single Member District Commissioner 7D-06
Advisory Neighborhood Commission 7D
4231 Eads Street, N.E.
Washington, D.C. 20019

Yvette M. Alexander, Councilmember
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ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning