GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18430 of Jomo B. Oludipe, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements of § 401.3, and a variance from the side yard requirements of §405.9, to allow the construction of two one-family, semi-detached dwellings in the R-2 District at premises 154 and 156 Forrester Street, S.W. (Square 6239, Lots 11 and 12).

HEARING DATES: November 2, 2012, December 4, 2012
DECISION DATE: December 4, 2012

DECISION AND ORDER

On June 14, 2012, Jomo B. Oludipe ("Applicant") filed an application requesting variance relief to permit construction of two semi-detached, one-family dwellings in an R-2 Zone District at address 154 and 156 Forrester Street, S.W. ("Subject Properties"). The Applicant was directed to file this application with the Board of Zoning Adjustment (the "Board") by the Office of the Zoning Administrator ("ZA") at the Department of Consumer and Regulatory Affairs after a review of the plans showed that the variances[1] were necessary to allow the Applicant's proposed construction. Following a public hearing, on December 4, 2012, the Board voted 4-0-1 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated June 19, 2012, 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 ("DDOT"), Advisory Neighborhood Commission ("ANC") 8D, the ANC within which the subject property is located, Single Member District 8D04, and the Councilmember for Ward 8. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register* and on August 3, 2012, sent such notice to the Applicant, ANC 8D, and all owners of property within 200 feet of the subject property. At the November 2, 2012 hearing the Board discovered that the Applicant had not

[1] The ZA's letter erroneously cited 11 DCMR § 404.1 as the Regulation requiring an eight foot minimum side yard in the R-2 Zone District. The correct cite is 11 DCMR § 405.9.

posted the street frontage of the Subject Properties with a hearing notice as required by 11 DCMR § 3113.14, and continued the hearing to December 4, 2012 to permit the Applicant to do so. The Applicant submitted an affidavit demonstrating compliance with 11 DCMR §§ 3113.14 and 3113.15, prior to the hearing on December 4, 2012.

Parties. ANC 8D was automatically a party to this application. No other requests for party status were received by the Board.

Applicant's Case. The Applicant requested area variances needed to construct two one-family, semi-detached dwellings on the Subject Properties. The Applicant asserted that the application satisfied the requirements set forth in the Zoning Regulations, and pointed out that development of semi-detached dwellings on the lots without relief would result in very narrow structures, no more than 14 feet wide. The Applicant submitted plans and architectural drawings showing his proposed development for the Subject Properties, comprised of two one-family, semi-detached dwellings, each sited on its own lot.

Government Reports. By report dated October 16, 2012, OP recommended approval of the variance relief necessary to allow construction of the Applicant's proposed two one-family, semi-detached dwellings, that is, area variances from: § 401.3 for lot area and lot width; and from § 405.9, for the minimum width of side yards. The report addressed the three part area variance test and concluded that the Application satisfied its requirements. The report indicated that the Subject Properties were formerly developed with two semi-detached dwellings similar to what the Applicant was proposing, that these structures were demolished in the 1970s, and that the lots had been vacant since that time. The report further indicated that granting the variances would allow the Applicant to develop the Subject Properties in a manner consistent with the development pattern of the rest of the block, and that almost all the lots on the same side of the street have identically sized lots, and are developed with similar semi-detached dwellings with four foot side yards.

DDOT submitted a report dated October 18, 2012, stating that the proposed project would have no adverse impacts on the District's transportation network.

ANC Report. By letter dated December 3, 2012, ANC 8D indicated that the ANC considered the application at a public meeting held on November 15, 2012 with a quorum present. At the conclusion of the meeting, ANC 8D approved a resolution opposing the application. The letter stated that the ANC voted to oppose the application because the ANC believed the Applicant had not provided sufficient evidence that his proposed project was cohesive with the neighborhood, that the proposed project would burden adjacent homes, that a single family dwelling on the Subject Properties was preferable to the Applicant's proposal, and that the Applicant had not satisfied his burden of proof.

FINDINGS OF FACT

The Subject Properties and Surrounding Area

1. The Subject Properties are adjacent parcels located on the south side of Forrester Street, S.W., between Martin Luther King Jr. Ave, S.W. and Galveston Place, S.W. (Square 6239, Lots 11 and 12).

2. The lots were subdivided prior to the enactment of the 1958 version of the Zoning Regulations when the neighborhood was developed around 1941.

3. The Subject Properties were formerly developed with two semi-detached dwellings in separate ownership. The lots have been vacant since the 1970s.

4. The Subject Properties are identical in size and shape. Both lots are rectangular, 22 feet wide and 112 feet deep, containing 2,464 square feet of lot area. They are nonconforming as to minimum lot area and lot width.

5. The properties directly to the east and west of the subject are identical in size and shape to the Subject Properties. The properties are developed with one-family, semi-detached dwellings with four foot side yards. A public alley 16 feet wide abuts the properties to the rear.

6. The predominant development pattern on the block is semi-detached, single family dwellings with four foot side yards, on lots with the same dimensions as the Subject Properties. The seven properties immediately to the west of the Subject Properties on the south side of Forrester Street, S.W. are developed with semi-detached, single family dwellings with four foot side yards, on lots with the same dimensions as the Subject Properties. The 18 properties immediately to the west of the Subject Properties on the south side of Forrester Street, S.W. are developed with semi-detached, single family dwellings with four foot side yards, on lots with the same dimensions as the Subject Properties.

The Applicant's Project and Relief Required

7. The Applicant proposes to construct two, one-family, semi-detached dwellings, on the Subject Properties, one on each lot. Each dwelling will be two stories, and 31 feet, two inches in height. The semi-detached dwellings will each have a four foot side yard, measured from the side of the buildings to the lot lines, whereas eight foot side yards are required. (11 DCMR § 405.9.)

8. As noted, both lots are 22 feet wide and contain 2,464 square feet of lot area. The minimum lot width for a one-family semi-detached dwelling in the R-2 Zone is 30 feet and the minimum lot area is 3,000 feet.

Zone Plan

9. The Subject Properties are 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 is expected that these areas will continue to contain some small one-family detached dwellings. (11 DCMR §300.1.)

10. The proposed two-story dwellings will have building heights of 31 feet, two inches. The R-2 Zone District permits a maximum building height of 40 feet and three stories. (*See* 11 DCMR § 400.1.)

11. The lot occupancy of the Subject Properties will be 38%. The R-2 Zone District permits a maximum lot occupancy of 40%. (*See* 11 DCMR § 403.2.)

12. The Subject Properties will have a 44-foot minimum rear yard. The R-2 Zone District permits a 20-foot minimum rear yard. (*See* 11 DCMR § 404.1.)

13. The semi-detached, one-family dwelling is a matter-of-right use in the R-2 Zone District.

14. The lot width, lot area and four foot side yards proposed are not out of character for the vicinity, as most of the neighboring properties have the same lot dimensions and side yards.

15. The windows on the proposed dwellings have been placed so as not to significantly interfere with the privacy of the neighbors, nor will the dwellings themselves unduly restrict the air or sunlight reaching nearby dwellings.

CONCLUSIONS OF LAW

<u>The Variance Standard</u>

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.) The "exceptional situation or condition" of a property need not arise from the land and/or structures thereon, but can also arise from "subsequent events extraneous to the land." *De Azcarate v. Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978). 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, he 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 variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

Exceptional Situation

The lots have an exceptionally long and narrow shape, 22 feet in width and 112 feet deep. They have also been vacant since the 1970s. Subdividing the two lots would create a large lot that would be out of character with the neighborhood. Although other properties in the area have similar lengths and widths, the property is generally exceptional within a larger geographic context. Together these represent a confluence of factors demonstrating an exceptional condition or circumstances.

Practical Difficulty

The narrowness of the lots creates a practical difficulty in conforming to the Zoning Regulation's minimum side yard requirement. Strict application of the side yard requirement would require construction of very narrow structures, creating a practical difficulty for the owner. Development of the lots with semi-detached dwellings with conforming side yards would result in buildings just 14 feet wide. The fact that these lots have remained vacant for three decades corroborates the finding that they cannot be developed under matter of right standards.

Zone Plan

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 proposed project maintains the block's development pattern of semi-detached single family dwellings with four foot side yards on 22-foot wide lots. The Project will not impair the light and air available to nearby residences. The windows have been placed so as not to significantly interfere with the privacy of the neighbors.

Great weight to the Office of Planning

The Board is required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP

recommendations. The Board has carefully considered OP's recommendation for approval and concurs in its recommendation.

Great weight to the ANC

The Board is required by § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to any issues and concerns raised in the written report submitted by ANC 8D in this proceeding. The Board credits the unique vantage point that ANC 8D 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 8D recommended denial of the application on the grounds that the Applicant had not provided sufficient evidence that his proposed project was cohesive with the neighborhood, that the proposed project would burden the space of adjacent homes, that a single family dwelling on the Subject Properties was preferable to the Applicant's proposal, and that the Applicant had not satisfied his burden of proof.

The Board is not persuaded by the ANC's statement that the Applicant had not provided sufficient evidence that the project was cohesive with the neighborhood. The plans submitted with the application show that the project is composed of semi-detached row dwellings with four-foot side yards. The lot size, lot width, side yards and proposed development envelope of the Applicant's proposal are the same as the predominant development pattern of the block. The Board believes that the proposed development is consistent with the character of the surrounding residential neighborhood and with the low-density residential intent of the R-2 Zone. For this reason the Board is not persuaded by the ANC's advice.

The Board does not find the ANC's advice that the proposed project would be a burden on the space of adjacent homes persuasive. The lot size, lot width, side yards and proposed development envelope of the Applicant's proposal are the same as the adjacent properties to the east and west on the south side of Forrester Street. The four foot side yard of the proposed project would match the four foot side yard of the adjacent properties creating an eight foot space for light and air to circulate and reach the adjacent semi-detached dwellings.

The Board does not find the ANC's recommendation that the Applicant develop the properties with a single family dwelling legally persuasive because semi-detached dwellings are permitted in an R-2 Zone. Whether the ANC would prefer to see a different type of matter of right development is not relevant to any of the three prongs of the variance test.
Finally, the Board does not find the ANC's advice that the Applicant has not met the relevant legal standard persuasive because, for the reasons discussed above, the Board has concluded that the Application has entirely met its burden.

Based on the findings of fact, and having given great weight to the recommendations of OP and to the written report of ANC 8D, the Board concludes that the Applicant has satisfied the requirements for area variances from the minimum lot area and lot width requirements of § 401.3, and the minimum side yard requirement under § 405.9, to construct two one-family, semi-detached dwellings in the R-2 Zone District at 154 and 156 Forrester Street, S.W. (Square 6239, Lots 11 and 12). Accordingly, it is hereby **ORDERED** that the application, subject to Exhibit 29 – Revised Plans, is **GRANTED**.

VOTE: **4-0-1** (Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Robert E. Miller to APPROVE; one Board seat vacant.)

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: May 7, 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.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.