

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18556 of Derek S. Mattioli, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, a variance from the rear yard requirements under § 404, a variance from the court requirements under § 406, and a variance from the nonconforming structure provisions under § 2001.3 to allow a rear addition to an existing row dwelling in the R-4 District at premises 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102).¹

HEARING DATES: September 10, 2013
DECISION DATE: September 10, 2013

DECISION AND ORDER

This application was submitted on March 7, 2013 by Derek Mattioli (the “Applicant”), the owner of the property that is the subject of the application. The application requested area variances from the minimum requirements under the Zoning Regulations for lot occupancy (§ 403), rear yard (§ 404.1), court width (§ 406.1), and enlargement of a nonconforming structure (§ 2001.3) to allow a rear porch addition to a nonconforming one-family row dwelling that does not comply with the minimum lot occupancy requirement in the R-4 zone at 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102). Following a public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 11, 2013, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6B, the ANC in which the subject property is located; and Single Member District/ANC 6B08. Pursuant to 11 DCMR § 3112.14, on March 22, 2013 the

¹ This caption has been modified to reflect the relief finally requested by the Applicant. The application initially sought special exceptions pursuant to §§ 404.1, 406.1, and 2001.3, consistent with a referral from the Office of the Zoning Administrator dated February 6, 2013. That referral was corrected by a subsequent memorandum from the Office of the Zoning Administrator, dated March 18, 2013, which stated that review of the Applicant’s plans indicated that approval was required as variances from the specified provisions.

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Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on March 22, 2013 (60 DCR 4196) and on June 14, 2013 (60 DCR 8945).

Party Status. The Applicant and ANC 6B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application submitted by Mark O'Donnell, a resident of Massachusetts Avenue near the subject property.

Applicant's Case. The Applicant provided evidence and testimony in support of his request for variance relief to allow a rear porch addition to his row dwelling. The Applicant contended that the porch addition, which was already constructed and replaced a smaller porch, did not create any adverse impacts on adjoining properties but provided "additional living and work areas and enhance[d] the functionality of the first floor of the dwelling." According to the Applicant, the area occupied by the new porch was "unusable for any other purpose due to its small size and the proximity of trash storage on that level" by the Applicant and his neighbors. (Exhibit 32.)

OP Report. By memorandum dated July 16, 2013, the Office of Planning recommended denial of the application. According to OP, the Applicant had not demonstrated any exceptional situation related to the property that would result in practical difficulty, and the enclosed porch proposed by the Applicant would cause substantial detriment to the public good as well as impairment to the zone plan. (Exhibit 30.)

DDOT. By memorandum dated April 4, 2013, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 21.)

ANC Report. By letter dated May 17, 2013, ANC 6B indicated that, at a properly noticed public meeting, held May 14, 2013 with a quorum present, the ANC voted 4-2-3 to take no position on the Applicant's request for zoning relief. (Exhibit 27.)

Party in opposition. The party in opposition asserted that the Applicant's rear porch addition should not be approved because it would block light and air to nearby residences, which are "already too densely packed." According to the party in opposition, the Applicant could not demonstrate exceptional circumstances or practical difficulties "to justify his requests for zoning variances," and thus approval of the requested variances would encourage owners of other properties in the vicinity also to "build on virtually 100 percent of the block." (Exhibit 26.)

Persons in support. The Board received letters in support of the application from some persons living in the vicinity of the subject property. The letters stated that the Applicant's porch addition was visible from the back porches of other nearby residences but was not objectionable.

Persons in opposition. The Board also received a letter and heard testimony from persons in opposition to the application. By letter dated June 3, 2013, the Capitol Hill Restoration Society

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(“CHRS”) urged denial of the requested variances, indicating that its zoning committee had voted to oppose the application on the ground that the Applicant “has failed to prove all of the tests” for variance relief since his “property has no exception[al] condition or uniqueness because there are many properties along Massachusetts Avenue ... that are identical to the subject property” and the Applicant “has no difficulty in complying in all ways with the zoning regulations, and can put the property to sufficient use without the variances.” The CHRS zoning committee also concluded that “granting this application would undermine the R-4 zoning on Capitol Hill,” citing the 96% lot occupancy proposed by the Applicant. (Exhibit 29.)

FINDINGS OF FACT

1. The subject property is located on the south side of Massachusetts Avenue near its intersection with 14th Streets, S.E. (Square 1037, Lot 102). Square 1037 is generally triangular, defined by Massachusetts Avenue on the north, 13th Street on the west, and Independence Avenue on the south. The eastern portion of the square becomes narrower as it approaches 14th Street.
2. The subject property is generally rectangular, although slightly irregular in shape. The lot is 20 feet wide at the front and approximately 17 feet wide at the rear, with a depth of 41 feet on the west lot line and approximately 39.5 on the east lot line. The lot is improved with a one-family row dwelling, constructed in 1909, that is approximately 30 feet deep.
3. A paved walkway, approximately three feet wide, abuts the rear lot line. The walkway is used by the Applicant and the residents of nearby dwellings to provide rear access to the properties and to store trash and recycling bins.
4. The subject property is nonconforming with respect to lot area, lot occupancy, and rear yard. Lot area is 818 square feet, where a minimum of 1,800 square feet is required. (11 DCMR § 401.1.) Considering only the row dwelling, without any rear porch, lot occupancy is 88%, where a maximum of 60% is permitted, and the rear yard is approximately 10 feet, where a minimum of 20 feet is required. (11 DCMR §§ 403.2, 404.1.) However, the nonconforming nature of the property is not unusual among properties in the same square or in the general vicinity.
5. The Applicant’s residence abuts similar row dwellings. Properties in the vicinity are also improved with row dwellings. The lots on the eastern end of the square, especially those facing Massachusetts Avenue, are smaller than other nearby properties. While the subject property is one of the smallest in the square, OP report indicates that 73% of the lots in the same square are nonconforming with respect to lot area.
6. The Applicant’s residence contains 1,214 square feet of floor area, which OP states is “comparable to the floor area of homes located on similarly-sized lots.”

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7. The Applicant's residence previously had a covered rear porch addition that was approximately four feet wide and had a setback of 4.16 feet from the rear property line. The prior addition extended across the eastern half of the width of the dwelling.
8. The Applicant seeks variance relief to allow a rear porch addition to the row dwelling. As proposed, the one-story porch would be supported by posts approximately six feet high, accessible from the first level of the house above the basement entry. The porch would have a roof and would be enclosed with screens. The porch would be approximately 6.67 feet deep and 18 feet wide, with an area of approximately 120 square feet.
9. The rear porch addition planned by the Applicant has already been built. According to the Applicant, the porch was built by a licensed contractor who obtained a building permit. However, the building permit authorized a deck that conformed to the zoning regulations whereas the actual work went beyond the scope of what DCRA authorized, which led to a DCRA enforcement action. The Applicant stated that the porch was completed in 2009 at the cost of \$20,000. (Exhibit 32.)
10. With the porch addition, the rear yard at the subject property is reduced to 1.2 feet. Lot occupancy increased to 96%. The porch, as constructed, also created open courts on both sides of the dwelling that do not meet the minimum zoning requirements for court width. The courts are 0.75 feet wide on the west and one foot wide on the east, where a minimum of six feet is required on both sides. (11 DCMR § 406.1.)
11. The already completed rear porch addition is visible from Independence Avenue at the entrance to the walkway at the rear of the subject property.
12. The subject property and surrounding properties are located in the R-4 district, which is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) The "primary purpose" of the R-4 district is "the stabilization of remaining one-family dwellings." (11 DCMR § 330.2.)
13. The property is located within the Capitol Hill historic district.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks area variances from the minimum requirements under the Zoning Regulations for lot occupancy (§ 403), rear yard (§ 404.1), court width (§ 406.1), and enlargement of a nonconforming structure (§ 2001.3) to allow a rear porch addition to a nonconforming one-family row dwelling that does not comply with the minimum lot occupancy requirement in the R-4 zone at 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, "by reason of

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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. (*See* 11 DCMR § 3103.2.)

Based on the findings of fact, the Board finds that the application does not satisfy the requirements for the requested variance relief. The Board does not find that the subject property is faced with an exceptional situation or condition, or that the strict application of the Zoning Regulations would create a practical difficulty to the Applicant as the owner of the property. As noted by the Applicant, the subject property is nonconforming in several respects, which reflects the creation and development of the subject property before the Zoning Regulations went into effect. However, the nonconforming nature of the property is not unusual among properties in the same square or in the general vicinity, and does not itself create an exceptional situation or condition. The Board does not credit the Applicant’s contention that the lot is extraordinarily small and shallow. The subject property is relatively small but is generally rectangular in shape, without significant changes in grade. The building on the subject property is similar to the buildings on the abutting lots, as well as to many other buildings in the vicinity. According to the Office of Planning, which found no exceptional situation or practical difficulty in this application, “it is common for properties in the Capitol Hill Historic District to be smaller than required by the Zoning Regulations” and the Applicant’s dwelling is comparable in size to neighboring dwellings on similar lots.

The Applicant contended that the strict application of the Zoning Regulations would result in practical difficulty by not allowing the porch addition, which the Applicant claimed gives access to “fresh air that is not affected by trash storage prior to collection” as the residence now has “a livable and usable back lot area while continuing to maintain space underneath for garbage cans.” However, the Board concurs with the Office of Planning that the rear addition is not needed, in this instance, to improve circulation, “which can often be problematic in older homes,” or to address building code issues. Because the Applicant’s porch does not provide conditioned space, the addition does not significantly increase the living area of the dwelling.

Nor does the Board credit the Applicant’s contention that the rear yard is not otherwise usable. Without the addition, the rear yard at the subject property is not exceptionally small. While existing conditions, including the need to store trash and recycling containers, may limit the utility of the space, the Applicant has not shown an inability to make the rear yard a usable space. The Board concludes that the Applicant did not demonstrate any practical difficulty arising from the strict application of the Zoning Regulations that would warrant approval of the requested area variances.

The Board finds no merit in the Applicant's contention that the cost of removing the illegally constructed porch addition constitutes practical difficulty for purposes of a request for variance relief. Although a building permit was obtained for a matter of right project, the construction went beyond that permissible under the Zoning Regulations. As noted by the Office of Planning, "[h]ad a building permit [for the constructed deck] been applied for, the applicant would have been aware of the extent of relief necessary in order to proceed with the project in a legitimate manner."

The Board concurs with OP's conclusion that approval of the application would cause substantial detriment to the public good. The addition, as built, almost completely eliminated any rear yard setback separating the dwelling on the subject property from the public walkway that abuts the rear lot line. The enclosed porch addition is also out of character with other rear additions along the alley, which are primarily open decks used to provide outdoor recreational space.

The Board concurs with OP's conclusion that approval of the requested zoning relief would substantially impair the intent, purpose, and integrity of the Zoning Regulations, because the porch addition "impairs the intent of the regulations both to provide open space on residential lots and to prevent further additions on overbuilt lots." As OP notes, the "lot occupancy provisions are intended to provide some open area on even the smallest of lots," but the porch addition "provides little separation between dwellings adjacent to the walkway and no useable outdoor space on an otherwise small lot." The Board finds that approval of variance relief under the circumstances – where the Applicant did not demonstrate an exceptional situation or practical difficulty arising from the strict application of the Zoning Regulations that would warrant the significant degree of variance relief needed to permit the porch addition – would substantially impair the intent, purpose, and integrity of the Zoning Regulations.

The Applicant cited a number of prior orders in support of his contentions that the Board has taken into account the need for more living space and improved functionality in granting variances to other Capitol Hill homeowners with exceptionally small houses and lots, and has granted variances to legitimize construction that had already taken place. A review of those orders indicates nothing that requires approval of this application. While in some instances the prior applications included similar requests for relief, each case is distinguishable from this application in some respect, because the circumstances of each application are different.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be denied.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 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) (2001)).) In this case, ANC 6B declined to take a position on the Applicant's request for zoning relief. Accordingly, the ANC raised no issues or concerns to which the Board can give great weight.

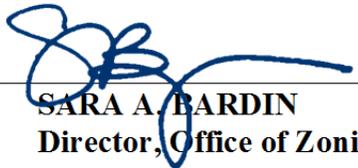
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Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for area variances from the minimum requirements under the Zoning Regulations for lot occupancy (§ 403), rear yard (§ 404.1), court width (§ 406.1), and enlargement of a nonconforming structure (§ 2001.3) to allow a rear porch addition to a nonconforming one-family row dwelling that does not comply with the minimum lot occupancy requirement in the R-4 zone at 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: **4-0-1** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Peter G. May to Deny; one Board seat vacant.)

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

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 30, 2014

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.