

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19037 of Derek S. Mattioli, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the enlargement of nonconforming structure requirements under § 2001.3 to allow the construction of a two-story rear open deck addition at an existing one-family dwelling in the R-4 District at premises 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102).

HEARING DATE: July 7, 2015
DECISION DATE: July 7, 2015

DECISION AND ORDER

This application was submitted on April 30, 2015 by Derek S. Mattioli, the owner of the property that is the subject of the application. The application requested area variances from the lot occupancy requirements under § 403, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the enlargement of nonconforming structure requirements under § 2001.3 to allow the construction of a two-story rear open deck addition at an existing one-family dwelling in the R-4 District at 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated May 7, 2015, 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 May 11, 2015 the 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 May 15, 2015 (62 DCR 6008).

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 from Mark O’Donnell, a resident of the 1300 block of Massachusetts Avenue S.E. near the subject property.

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Applicant's Case. The Applicant provided testimony and evidence describing a planned two-story rear deck addition to his dwelling. According to the Applicant, the deck addition would extend the usable living space behind the dwelling, would "beautify the area," and would "bring the structure in line with construction on adjoining properties." (Exhibit 4.)

OP Report. By memorandum dated June 30, 2015, the Office of Planning indicated it was not opposed to the zoning relief requested by the Applicant. (Exhibit 72.)

DDOT. By memorandum dated June 25, 2015, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 65.)

ANC Report. By letter dated June 12, 2015, ANC 6B indicated that, at a properly noticed public meeting on June 9, 2015 with a quorum present, the ANC voted 9-0 in support of the application. (Exhibit 36.)

Person in opposition. The Board received a letter in opposition to the application from the zoning committee of the Capitol Hill Restoration Society, stating that the Applicant had not met the burden of proof for variance relief. (Exhibit 73.)

FINDINGS OF FACT

The Subject Property

1. The subject property is located on the south side of Massachusetts Avenue, S.E. near its intersection with 14th Street (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 street frontage and approximately 17 feet wide at the rear, with a depth of 41 feet on the west lot line and approximately 39.5 feet on the east lot line.
3. The subject property is improved with a one-family row dwelling, built in 1908, that is two stories in height. The rear yard is accessible only through a door at the basement level.
4. A paved walkway, approximately three feet wide, abuts the rear lot line of the subject property to provide pedestrian access to Independence Avenue. The walkway is used by the Applicant and residents of nearby dwellings to provide rear access to the properties and for the removal of trash and recyclable materials.
5. 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

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DCMR § 401.1.) Lot occupancy is approximately 81%, where a maximum of 60% is permitted, and the rear yard is approximately seven feet, where a minimum of 20 feet is required. (11 DCMR §§ 403.2, 404.1.)

6. 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. The subject property is one of the smallest in the square.
7. The subject property is 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 zone is "the stabilization of remaining one-family dwellings." (11 DCMR § 330.2.)
8. The Applicant previously constructed a rear porch addition to the dwelling that did not comply with zoning requirements and was not built in accordance with a building permit. The Applicant's prior request for variance relief to allow the rear porch addition was denied by the Board. *See* Application No. 18556 (order issued June 30, 2014). The Applicant subsequently removed the rear porch addition.
9. The Applicant now proposes to construct a rear addition comprising two open decks, on the first and second floors of the dwelling. The decks would be constructed 18 feet across the rear of the dwelling and extend approximately six feet into the rear yard. The decks would not be enclosed but would have a wrought iron railing around their perimeters.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks area variances from the lot occupancy requirements under § 403, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the enlargement of nonconforming structure requirements under § 2001.3 to allow the construction of a two-story rear open deck addition at an existing one-family dwelling in the R-4 District 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 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.)

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Based on the findings of fact, the Board concludes that the application satisfies the requirements for variance relief in accordance with § 3103.2. The Board concurs with the Office of Planning that the subject property “exhibits an exceptional condition with regard to the size of the lot and location of the lot on Square 1037 which poses a practical difficulty in meeting the maximum lot occupancy and minimum rear yard requirements.” (Exhibit 72.) The subject property is faced with an exceptional situation relating especially to the small size of the lot. Given the triangular shape of Square 1037, and the location of the subject property close to its most narrow point, the subject property is one of the smallest and most shallow parcels in the square. Its area is less than half of the minimum required in the R-4 zone and only slightly more than half of the average lot area in the square, which OP calculated at 1,557 square feet. The subject property lacks a useful rear yard, since the existing dwelling occupies more than 80% of the lot and is situated relatively close to the rear lot line of the shallow parcel.

The Board concludes that the strict application of the Zoning Regulations would create a practical difficulty to the Applicant as the owner of the property. Variance relief would be needed for any enlargement of the Applicant’s relatively small dwelling. The Applicant’s planned rear deck addition would increase the useable living area at the dwelling, and would create an area of outdoor space where a rear yard consistent with the Zoning Regulations is not feasible.

The Board does not find that approval of the requested variance relief would cause substantial detriment to the public good or would substantially impair the intent, purpose, and integrity of the zone plan. As noted by OP, “[t]he proposed style and materials (wrought iron and wood) ... appear to be consistent with the established character of the immediate neighborhood and more specifically, the character of the rear yard areas adjacent to the Applicant’s property, which is primarily pressure-treated wood decking.” (Exhibit 72.) The Applicant described meetings with the staff of the Historic Preservation Office, who provided assistance in devising a design for the deck that would be historically appropriate for the setting.

The Board finds no merit in the assertions by the party in opposition that the planned rear addition would impair light and air available to nearby properties, or impinge on the privacy of those properties. The open design of the deck addition will allow greater circulation of air than would an enclosed addition. Many nearby properties also have rear deck additions, and the Applicant’s decks will not significantly affect the privacy currently available at any neighboring dwelling. Similarly, the Board was not persuaded by the party in opposition that the Applicant’s proposed deck would “choke off that whole end of the block” since the new construction will be limited to the Applicant’s property and will not affect the existing walkway that abuts the rear lot line of the subject property. The planned deck addition will be consistent with the primary purpose of the R-4 District of stabilizing the one-family dwellings by creating usable outdoor space at the Applicant’s residence.

The Board is required to give “great weight” to the recommendation of the Office of Planning. D.C. Official Code § 6-623.04 (2012 Repl.). In this case, OP did not oppose approval of the

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application, and its report concluded that the application had met the requirements for the requested variance relief.

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 did not express any issues or concerns but voted unanimously in support of the application. For the reasons discussed above, the Board concurs with the ANC’s recommendation that the requested zoning relief should be granted.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for area variances from the lot occupancy requirements under § 403, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the enlargement of nonconforming structure requirements under § 2001.3 of the Zoning Regulations to allow the construction of a two-story rear open deck addition at an existing one-family dwelling in the R-4 District at 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102). Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7.**

VOTE: 3-0-2 (Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen voting to approve; Lloyd L. Jordan abstaining; one Board member not present, not voting.)

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

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 14, 2016

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

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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.