

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - June 18, 1969

Appeal No. 10050 Vega Investment Corporation, appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried with Arthur B. Hatton dissenting in part, the following Order was entered at the meeting of the Board on June 24, 1969.

ORDERED:

That the appeal for variance from the provisions of 7205 and 7502.2 to permit private swimming pool and parking in front of and within 10 feet of residence at 2931 Garfield Street, NW., Lot 129, Square 2113, be denied.

FINDINGS OF FACT:

1. The subject property is located in an R-1-B District.
2. The property is improved with a detached brick single-family dwelling.
3. Appellant proposes to provide an off-street parking space and a swimming pool in front of the subject dwelling. It is alleged that the hardship is caused by the ascending grade from the middle of the dwelling to the rear lot line which is sufficiently severe to preclude the location of either a parking space or pool. There is no alley to the rear of the premises.
4. Retaining walls will be needed to place the parking at its proposed location in front of the building.
5. The shape of the lot is unusual in that it is located to the rear of two lots directly on Garfield Street and has access to Garfield Street only over a narrow strip running between those two lots.

Appeal No. 10050  
PAGE 2  
Sept. 10, 1969

6. The location proposed for the swimming pool is in front of the building on the subject lot and to the rear of the buildings on the two lots fronting on Garfield Street. Although these dwellings do not have swimming pools, such pools could be constructed as a matter of right and would be in front of the dwelling on the lot which is the subject of this appeal.

7. Appellant proposes to erect a sapling picket fence and plantings for screening the proposed pool. When completed, the pool is to be on grade level with the patio located on Lot 128.

8. Opposition to the granting of this appeal was registered at the public hearing.

9. The record owner of Lot 128 objects to the granting of this appeal and alleges that a swimming pool at the proposed location would adversely affect the re-sale value of Lot 128 and its improvements. It is additionally stated that the proposed fence screening would downgrade this adjoining lot in that the subject property is higher in grade than Lot 128 and that the pool will interfere with enjoyment of the rear yard thereof.

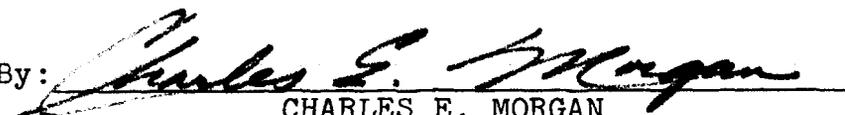
10. A petition in opposition to the granting of this appeal is contained in BZA File No. 10050.

OPINION:

We are of the opinion that this appeal must be denied. Although appellant has proven a hardship as required under the variance clause of the Zoning Regulations, it has not been established that the requested relief can be granted without adversely affecting the use of adjoining property. The proposed location of the swimming pool may tend to adversely affect the use and enjoyment of the adjoining property.

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

ATTESTED:

By:   
CHARLES E. MORGAN  
Secretary of the Board

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Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - July 16, 1969

Appeal No. 10050 Vega Investment Corporation, appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellant.

On motion duly made, seconded and carried with Arthur B. Hatton absent, the following Order was entered at the meeting by the Board on July 22, 1969.

ORDERED:

That the petition for reconsideration of the decision denying variance from the provisions of 7205 and 7502.2 to permit private swimming pool and parking in front of and within 10 feet of residence at 2931 Garfield Street, NW., Lot 129, Square 2113, be denied.

FINDINGS OF FACT:

1. Comes now appellant to request that this Board reconsider the subject appeal denied June 24, 1969, after public hearing June 18, 1969.

2. Appellant entered into a contractual agreement for the construction of the proposed swimming pool.

3. A permit to construct the subject pool was obtained from the Government of the District of Columbia.

4. The contractor for the subject pool was turned away from the subject property upon attempting to begin construction after securing the necessary permit.

5. The Swiss Embassy and the Maret School, adjoining property owners, offer no objection to the granting of this appeal.

6. Objection to the granting of reconsideration in this appeal was registered at the public hearing.

Appeal No. 10050  
PAGE 2  
Sept. 10, 1969

OPINION:

We are of the opinion that this request for reconsideration must be denied, but without prejudice to re-submission. The major point of concern expressed in the Order of the Board issued June 24, 1969 was the location of the proposed swimming pool in relationship to the adjoining property, and the lack of protection of such property. No new evidence has been proffered in support of the petition for reconsideration which was not or could not have been given at the original hearing. Until such time as new plans with regard to the location and screening of the proposed swimming pool are submitted, this Board retains jurisdiction for future action.

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

ATTESTED:

By:



CHARLES E. MORGAN  
Secretary of the Board

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARINGS - June 18, 1969 and  
July 16, 1969

Appeal No. 10050 Vega Investment Corporation, appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried with Arthur P. Davis not voting, the following Order was entered by the Board on August 8, 1969.

EFFECTIVE DATE OF ORDER - August 21, 1969

ORDERED:

That the appeal for variance from the provisions of 7205 and 7502.2 to permit private swimming pool and parking in front of and within 10 feet of residence at 2931 Garfield Street, NW., Lot 129, Square 2113, be conditionally granted.

FINDINGS OF FACT:

1. The subject appeal was originally denied by this Board June 24, 1969.
  2. Reconsideration was requested by the appellant and denied without prejudice by Order of the Board on July 22, 1969.
  3. Appellant has now submitted new plans showing a new location for the subject swimming pool.
  4. BZA Exhibit No. 26 indicates that the proposed pool will now be located 15 feet from the rear property line of Lot 128.
  5. The grade level of the pool will be five (5) feet below the existing grade level in order that the pool might be on grade level with the patio of the adjoining Lot 128.
  6. Fence screening with plantings are provided and will conceal the off-street parking space to be provided.
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Appeal No. 10050  
PAGE 2  
August 21, 1969

OPINION:

We are of the opinion that appellant has proven a hardship within the meaning of the variance clause of the Zoning Regulations and that a denial of the requested relief will result in peculiar and exceptional practical difficulties and undue hardship upon the owner. We hold that the requested 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.

As stated in FINDINGS OF FACT No. 5 in our Order of June 24, 1969 denying this appeal, the subject lot is unusual in both shape and location with respect to the adjoining lots which face on Garfield Street and because of this condition, appellant's front yard adjoins the rear yards of two adjoining lots facing Garfield Street. The Zoning Regulations permit a swimming pool to be located in a rear yard as a matter of right, but appellant cannot take advantage of this because of the steep grade of her rear yard which precludes its use for either a swimming pool or automobile parking. The opponent, owner of Lot 128, may, as a matter of right, locate a swimming pool in her rear yard immediately adjacent appellant's front yard, and we believe that all of these facts constitute grounds for a variance within the meaning and intent of the variance statute.

Appellant has relocated the swimming pool an additional ten (10) feet from the adjoining property line. Screening will be provided for the pool which is now located on grade level with the patio of the adjoining neighbor's property.(Lot 128). In our view, the proposed will not adversely affect the use or enjoyment of adjoining and neighboring properties.

Appeal No. 10050

PAGE 3

August 21, 1969

OPINION Cont'd:

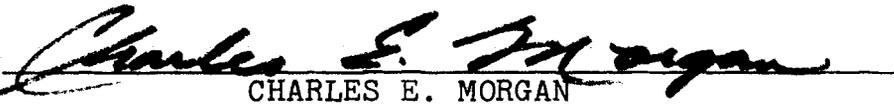
This Order shall be subject to the following condition:

This appeal is granted subject to the location of the swimming pool and parking space as shown in BZA Exhibit No. 26.

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

ATTESTED:

By:



CHARLES E. MORGAN  
Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DIRECTOR OF INSPECTIONS WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARINGS - June 18, 1969 and  
July 16, 1969

Appeal No. 10050 Vega Investment Corporation, appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried with William S. Harps not voting, the following Order was entered at the meeting by the Board on September 3, 1969.

EFFECTIVE DATE OF ORDER - Sept. 3, 1969

ORDERED:

That all previous Orders issued by this Board in this appeal are hereby vacated and a new hearing in this appeal is scheduled for September 17, 1969.

FINDINGS OF FACT:

1. Petitioner, the adjoining owner of Lot 128, requests that this Board reopen the subject appeal for the purpose of allowing further argument with respect to the previous Order granting this appeal.

2. It is alleged that no notice of the petition for rehearing was received by the adjoining property owner, nor by any other persons opposing the appeal.

OPINION:

The subject appeal was before the Board for reconsideration based on a new location for the proposed swimming pool, and petitioner alleges "lack of information" with regard to these proceedings.

The United States Court of Appeals for the District of Columbia Circuit has held in Robey vs. Schwab that when an appellant submits new plans which were not known to opponents at a hearing on which an Order was issued, and when opponents so request, the Board shall reopen the proceedings and hold a new hearing on the basis of the new plans. Such new plans have been submitted in this case and a new hearing on the basis of them is therefore required.

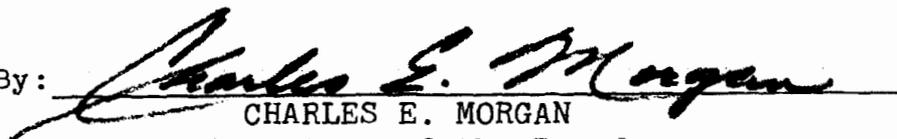
Appeal No. 10050  
PAGE 2  
Sept. 3, 1969

OPINION Cont'd:

It is therefore ordered that the Orders of the Board first denying and then granting this appeal be vacated. A new hearing on the new plans will be held on September 17, 1969.

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

ATTESTED:

By:   
CHARLES E. MORGAN  
Secretary of the Board