

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12565, of Paul S. and Susan Au Allen, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the percentage of lot occupancy (Sub-section 3303.1) and rear yard (Sub-section 3304.1) requirements to permit a rear deck in the R-5-B District at the premises 2009 "Q" Street, N.W., (Square 93, Lot 802).

HEARING DATE: January 25, 1978
DECISION DATE: April 5, 1978

FINDINGS OF FACT:

1. The subject property is located on the north side of "Q" Street between 20th and 21st Streets, N.W., and is in an R-5-B District.
2. The applicant seeks the Board's permission to finish constructing and maintain a rear deck as an addition to the subject flat which deck was partially constructed without proper permits.
3. Construction of the rear deck was undertaken by a contractor hired by the applicant. The contractor had the responsibility to secure proper permits, and the applicant believed that such permits had been secured. After the deck had been partially constructed, the applicant was served with a stop work order from the Permit Branch because proper permits had not been issued. After the issuance of the stop work order, the applicant did not continue with construction of the deck except to erect a railing around it and place additional support beams.
4. The applicants applied for a building permit on July 12, 1977. By letter of September 13, 1977, the applicants were advised by the Zoning Administrator that the deck would require the approval of the Board. On December 1, 1977, the applicant filed an application with the Board.

5. The proposed deck as now constructed covers the entire area which it would cover when finished. The deck is located at the level of the main floor, which is approximately eight feet off the ground at the rear of the house. There are steps leading to the ground from the deck along the east lot line of the property. The deck is supported by six three-inch standard pipe columns has two-by-six inch floor joists running across the width of the lot, and is enclosed by a railing three feet, three-inches in height.

6. The application requests lot occupancy and rear yard variances. In an R-5-B District, the maximum lot occupancy permitted is sixty per cent. For this lot of 1933.03 square feet, a maximum occupancy of 1159.82 square feet would be permitted. The applicant proposes an occupancy of 1660.00 square feet, thus requiring a variance of 500.18 square feet or forty-three per cent. In an R-5-B District, a rear yard of fifteen feet is required, while an average of only 13.65 feet has been provided. Thus, a variance of 1.35 feet, or nine per cent, is required.

7. The existing building on the lot already occupies very close to the maximum permitted occupancy. If the Board were to allow any reasonable deck on the rear of the house, a lot occupancy variance would be required.

8. There are already three support columns in place at the rear end of the deck. These columns are located 1.35 feet into the required rear yard.

9. A deck is required in order for the applicant to have some reasonable use of the rear of the property in relation to the main floor, which is one-story above grade at the rear of the house.

10. At the public hearing, the adjoining home owners to the west of the subject property objected to the granting of the application on the grounds that the proposed addition would intrude into their privacy and would restrict their sunshine and ventilation.

11. The wall of the adjoining building to the east is a solid masonry wall with no windows, and extends as far back as the deck. There would thus be no adverse effects on that building from the deck.

12. There are letters on file in support of the application by neighboring residents. One letter is signed by nine residents in favor of the application.

13. At the Board's suggestion, the applicant and the opposition attempted to work out a design of the deck acceptable to both. The parties eventually informed the Board that no such arrangement could be concluded.

14. On March 16, 1978, members of the Board made an inspection of the subject site, accompanied by both the applicant and the parties in opposition.

15. Advisory Neighborhood Commission 2B, made no recommendation on the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact, and the evidence of record including the personal inspection of the site made by members of the Board, the Board concludes that the requested variances are area variances, the granting of which requires the showing of a practical difficulty upon the owner of the property. The Board concludes that the applicants have demonstrated that strict compliance with the regulations would create such difficulties for them, in that they would have no reasonable method for using the rear yard from the main floor of the building.

The Board notes that the deck has been partially constructed without a proper building permit having been secured. The Board views such violations of the law with great concern, and will not lightly accept as a basis for granting a variance, the fact that actions have already been undertaken without a building permit. The Board notes that as to the rear yard variance requested in this case, to require the applicant to remove the support posts and set the rear edge of the deck back less than two feet would be so minimal as to be unreasonable and unnecessary.

In concluding that an exceptional situation exists and that a practical difficulty would result, the Board is mindful of the request that a variance can be granted only "without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the zone plan." The Board notes that the abutting owners to the west have objected to the deck.

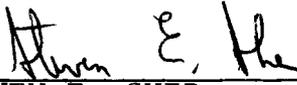
The Board further notes that if the house and deck had been arranged differently, the applicant could construct a deck along the full length of the west lot line except for the rear fifteen feet. The Board however, concludes that the objections raised by the opposition also have some validity, and the Board is in the position of having to weigh and balance the concerns of both the applicants and the opposing parties.

The Board therefore hereby Orders that the application is GRANTED subject to the CONDITION that the floor and west wall of the deck shall be set back a minimum of eight feet from the west lot line of the lot. The support columns and floor joists may remain as they were constructed prior to this grant of approval.

VOTE: 4-0 (Chloethiel Woodard Smith, William F. McIntosh, Charles R. Norris and Leonard L. McCants).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

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 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

FINAL DATE OF ORDER: 8 MAY 1978

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12565 of Paul S. and Susan Au Allen, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the percentage of lot occupancy (Sub-section 3303.1) and rear yard (Sub-section 3304.1) requirements to permit a rear deck in the R-5-B District at the premises 2009 "Q" Street, N.W., (Square 93, Lot 802).

HEARING DATE: January 25, 1978

DECISION DATE: April 5, 1978

DISPOSITION: Application GRANTED with conditions by a vote of 4-0 (Chloethiel Woodard Smith, William F. McIntosh, Charles R. Norris and Leonard L. McCants to grant)

FINAL DATE OF ORDER: May 8, 1978

O R D E R

The applicants in this case filed a letter dated October 30, 1978 with the Board on November 6, 1978. The effect of the letter is to ask the Board to reconsider its decision imposing certain conditions upon the granting of the application. The reason for the request derives from the consideration of the deck by the Joint Committee on Landmarks, and the Joint Committee's statement that it "had no objection to the deck as it presently exists." The Board determined to treat Mrs. Allen's letter as a motion for reconsideration, even though it did not explicitly ask for reconsideration or comply with the requirements of Section 5.42 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment.

Section 5.41 of the Rules states "A motion for reconsideration, rehearing or reargument of a final decision may be filed by a party within ten days." Upon consideration of the applicants' letter, the Board determines that the motion is not timely filed. Upon further consideration, the Board determines that even if the motion were timely filed, it would be denied. The letter fails to state a basis of error on the part of the Board. The Board closely and carefully weighed the interest of the applicant and the abutting property owners, and arrived at a reasonable decision of the matter. The Joint Committee found two possibilities acceptable; either

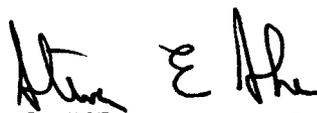
the deck as approved by the Board or the deck as originally constructed were not objectionable. The applicants are thus free to complete the deck in accordance with the Board's Order.

It is therefore ORDERED that the motion for Reconsideration be DENIED.

DECISION DATE: January 10, 1978
VOTE: 4-0 (William F. McIntosh, Chloethiel Woodard Smith, Charles R. Norris and Leonard L. McCants to deny motion for reconsideration).

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

ATTESTED By:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 11 JAN 1979