

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12957, of R.M. and Olivine Small, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7107.23) and the open court requirements (Sub-section 3306.1 and Paragraph 7107.22) to allow an addition to a row dwelling which is a non-conforming structure in an R-4 District at the premises 1318 North Carolina Avenue, N.E. (Square 1034, Lot 133).

HEARING DATE: July 11, 1979

DECISION DATES: August 8, September 5, and December 5, 1979

FINDINGS OF FACT:

1. The application was originally scheduled for the Public Hearing of June 13, 1979. On that date, at the request of the applicants, the hearing was continued to July 11, 1979 since counsel for the applicant had been recently retained and the husband applicant was absent due to illness.
2. The case was heard on July 11, 1979 by Leonard L. McCants, Chloethiel Woodard Smith, Charles R. Norris and Walter B. Lewis. Following the hearing, on August 8, 1979, at its regular public meeting a motion to deny the application made by Charles R. Norris seconded by Chloethiel Woodard Smith failed for lack of a majority by a vote of 2-2 (Charles R. Norris and Chloethiel Woodard Smith to deny, Leonard L. McCants opposed, Walter B. Lewis opposed by proxy, and William F. McIntosh not voting, not having heard the case). The Board deferred further discussion at that time and requested William F. McIntosh to read the record and be prepared to vote on the case.
3. At it's public meeting held on September 5, 1979, on a motion made by William F. McIntosh, seconded by Leonard L. McCants, the Board granted the motion by a vote of 3-2 (William F. McIntosh, and Leonard L. McCants to grant, Walter B. Lewis to grant by proxy, Charles R. Norris and Chloethiel Woodard Smith opposed).
4. Prior to the issuance of a final Order in this case, the Board received a draft Order prepared by the staff carrying out the decision to grant the application. At the direction of the Chair, the matter was placed on the calendar for further consideration at the public meeting of December 5, 1979.

5. At the public meeting held on December 5, 1979, pursuant to Section 5.44 of the Supplemental Rules of Practice and Procedure, on a motion made by Walter B. Lewis, seconded by William F. McIntosh, the Board determined to reconsider its previous decision by a vote of 5-0 (Walter B. Lewis, Leonard L. McCants, William F. McIntosh, Charles R. Norris and Chloethiel Woodard Smith to reconsider).

6. After further discussion of the matter based on the record, the Board concluded that the record of the case did not support its previous decision to grant the application. On a motion made by Walter B. Lewis, seconded by William F. McIntosh, the Board denied the application without prejudice by a vote of 5-0 (Walter B. Lewis, William F. McIntosh, Leonard L. McCants, Charles R. Norris and Chloethiel Woodard Smith to deny).

7. The subject property is located on the north side of North Carolina Avenue between 13th and 14th Streets, N.E. and is in an R-4 District. The property has been owned and occupied by the applicants since 1949.

8. The subject site is approximately 1559 square feet in area and is improved with a two story row dwelling. Most of the dwellings on the north side of North Carolina Avenue between 13th and 14th Streets, N.E. are similar in structure to the subject property. Most were constructed prior to May 12, 1958, the effective date of the current Zoning Regulations.

9. The subject structure is a non-conforming structure in terms of the lot area, lot width and open court requirements of the current Zoning Regulations.

10. The applicant removed the rear wooden porches on the first and second floors of the dwelling which had rotted away and could no longer be repaired. The applicant proposed to construct an enclosed two story rear addition in place of the porches. The addition would be used as miscellaneous rooms, but was proposed primarily to insulate the dwelling from the cold weather, and to relieve the necessity of constantly repairing and replacing the wooden porches which previously existed.

11. The applicant seeks a variance of 37.49 square feet from the lot occupancy requirements and a 3.21 foot variance from the open court requirements of the Zoning Regulations. The addition will extend approximately 3.5 feet from the rear building line.

12. Sometime in November of 1978 the applicant commenced work on the construction prior to obtaining a building permit. On November 24, 1978, building permits Nos. B-265693 and B-265694 were issued. On November 29, 1978 these permits were cancelled as having been issued in error, the error being that the building would exceed the allowable percentage of lot occupancy. The open court was not a question on the initial approval since the plat did not show an open court. The applicant was advised that the permit would not be issued without the approval of the BZA. A stop work Order was issued and the applicant ceased work. The applicant was allowed however, to winterize the addition to protect it while the Board was deciding the case.

13. Other properties on the same subject block to the east and west of the subject property have rear additions that protrude beyond their abutting properties.

14. The subject property is essentially similar to the other properties which adjoin it to the east and west.

15. The applicants presented no evidence or testimony that the subject property is exceptional, extraordinary or unique or that there was some condition arising out of the property that qualified it for a variance.

16. The applicant expended approximately \$8,200 for the work which occurred prior to the cancellation of the permits and the cessation of work on the addition. The applicants contended that the loss of that money constituted a hardship sufficient to justify the granting of the variance.

17. The applicants also contended that the Board was estopped from preventing the completion of the addition in accordance with the plans approved on November 24, 1978. The applicants relied on the decision of the District of Columbia Court of Appeals in the case of Wieck v. District of Columbia Board of Zoning Adjustment, 383 A. 2d 7.

18. The abutting property owners at 1320 North Carolina Avenue objected to the application on the grounds that the proposed addition will have an adverse affect on their light, air and circulation and that the structure was illegally constructed. There were many letters from neighboring property owners in the record supporting these contentions. There were also, on record, many letters in favor of the application on the grounds that the ugliness of the rear yard would be improved.

19. The Capitol Hill Restoration Society opposed the application on the grounds that there is no testimony or evidence in the record to show that exceptional topographical conditions existed at the time of the adoption of the Zoning Regulations or that the property was affected by any other exceptional or extraordinary circumstances. The Society stated that the addition is planned to increase the value and desirability of the subject property. The Society stated that the initial construction plans to replace the porches would not have necessitated a zoning variance, but the applicant opted to extend the structure and the needed variance. The Society stated that the financial loss that the applicant would suffer if the variances were denied is not a basis for granting a variance and that the adverse affect to the abutting property owners should be considered as a detriment to the public good. The Board concurs with the position of the Society.

20. Advisory Neighborhood Commission - 6A opposed the application on the grounds that the granting of the variances would adversely impact contiguous properties, serving only the expedencies of the applicants. The Commission also found that neighbors in the affected area were opposed to the contemplated changes and the ANC strongly supported those sentiments. The Board concurs.

21. The Board also notes that an objection was raised that not all persons within 200 feet of the subject property were notified of the public hearing on this application. The Board finds, that while this may be so, substantial notice was given and the Board is confident that all issues which any opposition could have raised have been considered at this hearing.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicants are seeking area variances, the granting of which requires a showing of a practical difficulty upon the owner of the property which stems from the property itself. The Board concludes that there is no exceptional or unusual condition about the subject property and that there is no proof of a practical difficulty in the property itself.

The hardship alleged by the applicants (finding No. 16) is a personal financial hardship, and does not arise out of any condition of the property itself. It is thus not a proper decision for the granting of a variance. The Board notes that the applicants could have enclosed the prior existing addition and in so doing would not have required any variances nor created an adverse affect on the abutting property owners.

As to the estoppel issue raised by the applicants, the Board concludes that it is not estopped from denying this application. The Board concludes that this case can be distinguished on two grounds from the Wieck case. First, all of the work undertaken in the Wieck case was done pursuant to lawfully issued permits. Second, in the Wieck case, several years passed between the issuance of permits and the attempts by the zoning authority to enforce the Zoning Regulations. In the present case, only five days passed between the issuance of the building permits and their cancellation. The Board further concludes that the applicants did not meet the burden of proving that the District was estopped.

The Board further concludes that the application cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

The Board notes the substantial opposition to this application, including abutting property owners, the Capitol Hill Restoration Society and the Advisory Neighborhood Commission. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled.

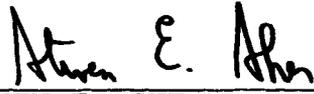
The Board concludes that the applicants have not met their burden of proof to establish that the variance should be granted. The Board notes that the applicants have the option of rebuilding the porches in accordance with the Zoning Regulations. The Board notes however, that the applicants may wish to reapply to the Board if they can present additional evidence to justify the granting of the variance so as to meet the burden of proof established in Paragraph 8207.11 of the Zoning Regulations.

Accordingly, it is ORDERED that the application is DENIED WITHOUT PREJUDICE to the refiling of a future application.

VOTE: 5-0 (Walter B. Lewis, William F. McIntosh, Charles R. Norris Chloethiel Woodard Smith and Leonard L. McCants to DENY WITHOUT PREJUDICE).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

4 JAN 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT".