

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13305, of Stephen G. and Jane C. Posniak, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the rear yard requirements (Sub-section 3304.1 and Paragraph 7107.22) to construct a one story rear addition to an existing dwelling which is a non-conforming structure in an R-2 District at the premises 5025 - 42nd Street, N.W., (Square 1738, Lot 810).

HEARING DATE: July 30, 1980
DECISION DATE: September 3, 1980

FINDINGS OF FACT:

1. The subject property is located in an R-2 District at the southeast corner of the intersection of 42nd and Garrison Streets, N.W.
2. The subject property is improved with a two story plus basement detached single family dwelling. The dwelling was constructed in 1923, prior to the adoption of the present Zoning Regulations in 1958.
3. The subject property is thirty-five feet wide along Garrison Street and 80.5 feet deep along 42nd Street. There are fifteen foot building restriction lines along both streets.
4. The front door of the dwelling faces 42nd Street. For zoning purposes, the front of the dwelling faces Garrison Street.
5. The applicant proposes to construct a one story addition at the rear of the house. The addition would be sixteen feet wide and extend ten feet to the rear of the present house. The addition would be adjacent to the dining room of the house and would be used as a family room, den or an additional bedroom.
6. The existing lot is non-conforming as to the area and width requirements of the regulations for a detached dwelling in an R-2 District. The regulations require a minimum lot area of 4,000 square feet and a minimum lot width of forty feet. The subject lot is 2,817.5 square feet in area and is thirty-five feet wide.

7. The existing dwelling is also non-conforming as to the side yard and rear yard requirements. The existing side yard on the east side of the building is 2.9 feet wide. The Zoning Regulations require a side yard to be a minimum of eight feet wide. The existing rear yard is 19.8 feet deep. The regulations require a minimum rear yard of twenty feet.

8. The proposed addition will have a side yard of 15.3 feet on its west side and 3.7 feet on its east side. The addition will thus have a side yard on its east side which is 0.8 foot greater than the side yard of the main portion of the building. The side yard of the addition does not meet the requirement of the regulations, and a variance of 4.3 feet is required.

9. The rear yard behind the addition will be only 9.8 feet. A variance of 10.2 feet is thus required.

10. The size and design of the addition will be similar to the enclosed one story porch at the front of the house facing Garrison Street. The proposed addition will not be out of architectural character with either the existing structure or the surrounding neighborhood.

11. The applicants contend that the property is affected by an extraordinary condition by virtue of the size of the lot and the presence of two building restriction lines. The Board agrees with the contention of the applicant. As demonstrated by figures in the record, the lot is one of only twelve lots in the area that have two building restriction lines. Additionally, the area within the building restriction lines constitutes about fifty-five per cent of the lot. The applicants thus are severely restricted as to where they can build on this property.

12. The area of the lot is larger than either of the two abutting properties, yet the building area for the subject site is 1,099.94 square feet, lower than the 1187 and 1366 square feet of the two abutting lots.

13. The building with the proposed addition would not exceed the maximum allowable lot occupancy of forty per cent.

14. If the applicants were required to observe the rear yard requirement, no addition would be built at all. If the side yard requirement were adhered to, the addition would be limited to less than twelve feet in width.

15. Advisory Neighborhood Commission - 3E, by letter dated July 23, 1980, reported that it did not oppose the application. The ANC reported that it knew of no objection to the application, and that it believed that the structure would not be grossly non-conforming. The ANC did not believe that granting the variances would result in any violation of the integrity, intent or purpose of the zoning plan or map.

16. The owner of the abutting property to the east at 4130 Garrison Street, N.W. appeared at the hearing and opposed the application. She stated that the proposed addition would cut off the view of her property to and from 42nd Street, and would prevent light from penetrating to her rear yard, especially at night. She further argued that the addition would reduce the accessibility of her property for police or fire personnel.

17. As to the points raised in opposition, the Board finds that the property at 4130 Garrison Street has no alley access at the rear or side. The owner of that property has no right to access or view across the subject property. The proposed addition will be no closer to the adjoining property than the present house. As to the concern about light, the Board finds that the nearest street lights are located a considerable distance away from the property at 4130 Garrison Street, and that there are already existing natural barriers which cut down on light to the rear yard.

18. As a partial response to the opposition's concerns, at the hearing, the applicants offered to move all trees, shrubs and other possible obstacles to light in the space which would be left as a rear yard. That offer was confirmed by written submission of the applicants dated August 20, 1980. The applicants also agreed to mount a light on the wall of the addition to provide illumination for the adjacent rear yard.

19. There was a petition in the record from the owners and occupants of surrounding properties in support of the proposed variances.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the requested variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the applicants have demonstrated that an exceptional condition exists and that they would suffer a practical difficulty if the Zoning Regulations were strictly applied.

The Board concludes that the weight of the testimony and evidence in the record is that the proposed addition will not be objectionable and will not be inconsistent with the intent and purposes of the regulations. As to the objections of the abutting property owner, the Board concludes that a property owner has no inherent right to access or view across other property. The Board notes however, that the applicant has offered to ameliorate some of the concerns of the opposition, as to lighting of the rear yard.

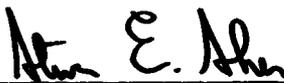
The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. The Board concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and maps. It is therefore ORDERED that the application is GRANTED. SUBJECT to the following CONDITIONS:

1. The applicant shall remove all trees, shrubs and other obstacles to light in the remaining 9.6 feet of the open rear yard.
2. The applicant shall install an outdoor lamp activated by a photo-electric cell on the upper wall of the proposed addition closest to the rear yard of premises 4130 Garrison Street with such lamp being focused to provide illumination for said rear yard during all periods of darkness. The applicant shall be responsible for the maintenance and operation of such lamp.

VOTE: 4-0 (Connie Fortune, Walter B. Lewis and Charles R. Norris to GRANT; William F. McIntosh to GRANT by PROXY; Leonard L. McCants not present, not voting).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

15 OCT 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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.