

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13486 of Ruth L. Borden, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the rear yard requirements (Sub-section 3304.1) to construct a rear deck in an R-3 District at the premises 2425 39th Place, N.W., (Square 1810, Lot 155).

HEARING DATE: May 20, 1981

DECISION DATE: June 3, 1981 and September 4, 1981

FINDINGS OF FACT:

1. The subject site is located on the east side of 39th Place between Calvert and Benton Streets and is known as premises 2425 39th Place, N.W. It is in an R-3 District.

2. The subject site is non-conforming as to lot area and lot width. Its lot area measures 1512 square feet. Its lot width is eighteen feet. The site is improved with a two story brick row structure. Because of a change of grade there is an eight foot drop from the first floor front to the rear yard. There is a public alley to the rear of the property.

3. The rear portion of the subject structure has an existing second story deck enclosed by a wooden railing. Beneath the deck on the ground level is the entrance to an in-house garage. The subject deck was constructed without a permit in October 1980. In December 1980 the applicant was advised by the D.C. Building Inspector's office that a permit must be obtained. The subject application was filed March 17, 1981. The applicant testified that she was led to believe by her contractor that no permit was required.

4. The applicant testified that the subject deck was a replacement for a wooden landing and stairway leading to the backyard. The old stairway had rotted and had to be replaced. The original wooden landing extended approximately four feet into the rear yard.

5. The subject deck measures approximately eighteen feet wide and 10.3 feet deep having a rear yard measuring 14.40 feet. The applicant now seeks a variance of 5.6 feet or twenty-eight percent.

6. There were many letters of record in favor of the application on the grounds that there are several decks on the alley to the rear of the subject premises in the same general size and style. They are aesthetically pleasing and an improvement to the neighborhood. Among the letters of approval were those from the renters and owner of the property immediately south of the subject property and directly across the alley from the subject property.

7. In BZA Order No. 12546, dated February 3, 1978 the Board granted a rear yard variance of ten feet for the construction of a rear deck at 2435 39th Place, some five houses north of the subject site. There was no opposition to that application.

8. Advisory Neighborhood Commission - 3B, by letter of May 20, 1981, advised the Board that the ANC had voted to support the application. No reasons for the recommendation were given. In the absence of such, the Board cannot give the great weight to the issues and concerns of the ANC that is required under statute.

9. The owners of the property immediately to the north of the subject site appeared at the Public Hearing in opposition to the application on the grounds that the existing deck interfered with their light and air, was a violation of their privacy, and an infringement on the use and enjoyment of their property. The opposition testified that they have a patio in their rear yard. The subject deck which is eight feet above the ground looks directly into their patio. They further argued that with a depth of 10.3 feet the opposition can no longer enjoy the privacy of their breakfast room without staring into the deck. The opposition further argued that since the applicant had received notice from the BZA on the aforementioned application no. 12546, the applicant knew or should have known that a variance and permit were required for the construction of the subject deck. The opposition further testified that on the second day of construction, they personally advised the applicant that she needed a permit. The opposition further testified that some fifty-three dwellings about the subject alley and that there are no more than four decks in existence. The opposition also contended that the property to the immediate south is occupied by renters, not the owner. The absence of the owner on the premises created no problem since such owner did not have to live with so great an expansion into the rear yard. Such an absentee owner did not have her privacy violated. The opposition also argued that they received no notice of the ANC meeting where they could have argued their position. The opposition finally argued that the subject deck was not a replacement of the former landing and stairway. The deck is approximately six feet deeper and thirteen feet wider.

10. The applicant did not rebut the major points raised by the opposing neighbors. The Board finds that the deck as built does adversely affect the light and air of the adjoining property.

11. After the Board's decision to deny the application was made on June 3, 1981, but prior to the filing of the order, the applicant submitted a Motion to Reopen the Record dated August 20, 1981. The motion requested that the Board, with or without further hearing, reopen the record to admit certain affidavits and exhibits in support of the application. The basic argument of the motion was that the applicant was unrepresented by counsel at the original hearing and was thus unprepared to respond effectively to the opposition raised by her neighbors, who were represented by counsel. The opposing neighbors, by letter dated August 26, 1981, opposed the Motion. Upon consideration of the Motion and the opposition thereto, the Board determined that a full hearing on the merits had occurred, that the applicant could have been represented at the original hearing by counsel if she had so desired and that no useful purpose would be served by reopening the record. The Board denied the motion, and directed the staff to issue this order based on the record as it was developed through the hearing on May 20, 1981.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking an area variance, the granting of which requires evidence of a practical difficulty inherent in the land itself. The Board concludes there is no such practical difficulty. The variance requested is twenty-eight percent. The applicant could have built a deck four feet in depth as a replacement to the prior landing and stairway. However, the applicant chose imprudently to build a deck that is some 2.5 times deeper. The Board further concludes that the applicant should have had knowledge that she was permitting construction of a deck illegally.

In addition to the greatness of the variance the Board cannot grant a variance where the relief requested would cause substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. In the light of the substantive concerns raised by the opposition the Board concludes that the relief cannot be granted. Also, the fact that the subject deck may be aesthetically pleasing to the neighborhood and of great pleasure to the applicant are no grounds for granting an area variance. It is therefore hereby ORDERED that the application is DENIED.

VOTE: 3-1(William F. McIntosh and Connie Fortune to deny, Charles R. Norris to deny by proxy; Douglas J. Patton opposed to denial)

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

ATTESTED BY: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 10 SEP 1981

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."