

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13850, of Francisco Rivas, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a nonconforming structure which now exceeds the lot occupancy requirements (Paragraph 7107.21), the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7107.23), the rear yard requirements (Sub-section 3304.1 and Paragraph 7107.22), the side yard requirements (Sub-section 3305.1 and Paragraph 7107.22) and from the prohibition against allowing an entrance to a garage to be less than twelve feet from the center of the alley (Sub-paragraph 7402.1121) for a proposed rear addition including a garage to a dwelling which is a non-conforming structure in an R-2 District at the premises 3731 Jocelyn Street, N.W., (Square 1873, Lot 54).

HEARING DATE: October 27, 1982
DECISION DATE: December 1, 1982

FINDINGS OF FACT:

1. The subject property is located on the north side of Jocelyn Street between Connecticut Avenue and Chevy Chase Parkway, N.W. at premises known as 3731 Jocelyn Street, N.W. It is in an R-2 District.

2. The subject site is rectangular in shape containing 2,000 square feet of land area and twenty-five feet of frontage on Jocelyn Street. It is improved with a two-story and basement semi-detached dwelling with an existing rear addition of approximately 7.5 feet by 20.0 feet. The structure existed prior to 1958.

3. The site is abutted on the north by a fifteen foot public alley followed by the rear yards of single-family detached dwellings in a large area of R-1-B zoning. To the east of the site is a semi-detached dwelling which shares a party wall with the subject property, followed by several semi-detached dwellings with frontage along Jocelyn Street. To the south across Jocelyn Street is a large area of semi-detached dwellings in the R-2 District. To the west are semi-detached dwellings in the R-2 District and apartment houses fronting on Connecticut Avenue in the R-5-C District.

4. The applicant proposes to rebuild an existing addition and to construct a new two-story rear addition

containing a garage at the ground level and a family room at the second level. The addition will be constructed three feet below grade so that the floor of the garage is at the same level as the basement floor of the principle structure. The floor of the second level of the addition will be at the same level as the first floor of the existing addition.

5. The addition will measure approximately twenty feet by twenty feet and will have a height of fifteen feet above grade. Interior access from the main house is provided at each level. Each level of the proposed addition has separate access to the exterior. An outdoor deck is provided at the second level over the garage measuring approximately three feet by nineteen feet. The addition will be constructed of brick and block.

6. The applicant's wife testified that the proposed addition is to replace a previously existing garage which was demolished in 1968. The applicant's wife was of the opinion that she was entitled to rebuild a garage, since the previous garage existed at the time the property was purchased in 1966. The applicant's wife stated that the proposed garage was typical of other garages in the community.

7. The applicant's wife further testified that the present house has three-bedrooms. The applicant's family comprises five persons. The purpose of the second level of the addition is to provide additional space for family dining.

8. The R-2 District requires a minimum lot area of 3,000 square feet for a semi-detached dwelling. The subject lot contains 2,000 square feet.

9. A minimum width of thirty feet is required and twenty-five feet is provided.

10. A maximum lot occupancy of forty percent or 800 square feet is allowed. The existing building occupies 964 square feet. The addition of 400 square feet will increase the lot occupancy to 1,364 square feet. To effectuate the proposed addition requires a lot occupancy variance of 564 square feet or seventy percent.

11. A rear yard of at least twenty feet is required. The existing building has a conforming rear yard of twenty feet. With the addition, no rear yard would be provided, requiring a 100 percent variance.

12. A side yard having a width of at least eight feet is required on one side of the building. The existing building has a side yard on its west side of five feet. The main portion of the addition is also five feet from the west side lot line. However, a staircase leading from the first

floor to the finished grade extends to within 2.5 feet of the lot line. A variance of 5.5 feet or sixty-nine percent is thus required.

13. The garage entrance is required to be set back from the center line of the alley a minimum distance of twelve feet. The entrance to the garage is located on the alley line. Since the alley is fifteen feet wide, a setback of 7.5 feet is provided, requiring a 4.5 foot variance or thirty-seven percent.

14. The owner of the adjoining semi-detached dwelling at 3729 Jocelyn Street testified in opposition to the application at the public hearing. The basis for his opposition was that the proposed addition would reduce the environmental and aesthetic quality of his rear yard in terms of light, air and sense of openness. The opposition further testified that the addition would reduce the value of his property by ten to fifteen percent, that the addition would set a precedent of increased building mass in the neighborhood which could encourage an increase in the occupancy of structures throughout the community and that the parking and traffic problems presently existing in the neighborhood would be further exacerbated. Letters expressing concerns and opposition were received into the record from four other nearby property owners.

15. No one appeared in favor of the application at the public hearing.

16. Advisory Neighborhood Commission 3G, by letter dated October 13, 1982, recommended denial of the application. The ANC reported that, if approved, the proposed variances could establish a strong and unwise precedent for the expansion of other rowhouse structures in the 3700 block of Jocelyn Street as their rear yards abut the alley between Jocelyn and Kanawha Streets. The bulk of the addition would be out of scale with the character of the structure on the alley in the subject square. The ANC was further concerned that the proposed set back from the alley would not provide sufficient maneuverability for cars entering from the public alley. The Board concurs with the views and recommendation of the ANC except as to the issue of precedent setting. The Board will determine each application on its own merits. The grant of one application will not establish a precedent for the neighborhood. The further issue of devaluation of property is not a determinant of an application. It is the standards of the Zoning Regulations which control.

17. The record was left open at the end of the public hearing. The Board requested the Office of Planning and Development to make a site inspection of the subject property and surrounding properties and to report its findings and recommendation to the Board.

18. The OPD, by memorandum dated November 9, 1982, stated that the subject structure was typical in construction to the majority of structures on the north side of Jocelyn Street in the 3700 block. One one-car garage was noted in the rear yard of one of the eighteen lots which front on the north side of the 3700 block of Jocelyn Street. The garage appeared to have been constructed about the same time as the principle structure, circa 1913. Two one-car garages were noted in the rear yards of those structures in the 3700 block of Kanawha Street. The OPD found no two-story garage structures on any of the lots in the subject square in the R-2 or R-1-B Districts. The OPD further noted that there was a rear deck extending approximately ten feet into the rear yard of one of the semi-detached dwellings fronting on Jocelyn Street.

19. The OPD was of the opinion that the subject property is typical, in terms of physical characteristics such as topography and improvements, of most of the other lots fronting on the north side of Jocelyn Street in the subject square. The Zoning Regulations are clear as to the intent of Paragraph 7107.21, which prohibits the extension of a non-conforming structure unless the area requirements are complied with. The OPD found no justification under Paragraph 8207.11 to support the numerous requested area variances. As far as the affect that the proposed addition would have on the light and air of the neighboring properties, it was the OPD's opinion that given its north-south orientation, its height, and fenestration, the addition would be of detriment from a light, air and privacy standpoint to the adjacent properties to the east and west. In conclusion, the OPD recommended that the application be denied. The Board accepts the findings and concurs with the recommendation of the OPD.

20. The applicant responded to the report and recommendation of the OPD, and raised seven issues. Issues 1 and 3 relate to the findings of existing conditions in the neighborhood. Issue 2 relates to the "grandfather" rights allegedly applicable to the property, as previously described in Finding No. 6. Issues 4 and 7 relate to potential modifications to the plans to meet requirements of the BZA. Issue 5 relates to the assessment of impact. Issue 6 relates to the impact on property values of the proposed addition. In addressing these issues, the Board finds as follows:

- a. In responding to items No. 1 and 3, the applicant agrees with the existing conditions as stated by the OPD. The applicant, however, differs with the conclusions drawn by the OPD. The Board disagrees with the applicant's conclusions that the existence of one garage out of eighteen lots on the northside of the 3700 block of Jocelyn Street can be

characterized as "several garages." Similarly, the existence of three garages in the total R-2 and R-1-B zoned areas of the subject square represents a very few. The one rear open deck in the R-2 and R-1-B area referred to by the applicant sets no precedent. The Board must decide each application on its own merits. The Board further fails to see the comparison between the impact of the subject two-story addition extending into the rear yard twenty feet with an open deck extending into the rear yard ten feet. The Board notes that the applicant did not take issue with the OPD finding that there are no two-story additions in the square.

- b. In response to the "grandfather" issue raised, the Board finds that even if the previous garage was a nonconforming structure, for which there is no corroborating evidence or testimony, it no longer exists. Any new structure must comply with the Zoning Regulations. No rights are vested on the property from the previous structure once it has been razed.
- c. The statutory framework under which the Board operates does not provide for "customary and allowable variances." The Board grants variances from the strict application of the Zoning Regulations where there is substantial evidence of a practical difficulty upon the owner due to some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition.
- d. It is not the proper role of the Board to advise property owners of the manner in which their property should be developed based upon the owners' personal needs. The Zoning Regulations themselves must be consulted as to the manner a piece of property may be used or developed.
- e. The issue of whether the applicant or the opposing neighbor will reside on their respective properties is not material. The variance for the structure, if granted, runs with the land. The impact on the adjoining property would be substantial, regardless of who owns it.

CONCLUSIONS OF LAW AND OPINIONS:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires the showing of a practical difficulty inherent in the property itself.

The Board concludes that there are no practical difficulties unique to the subject property. While it is true that the existing non-conforming structure was built prior to the adoption of the current Zoning Regulations, the requested number and extent of the variances requested is not minimal, but significant. The proposed lot occupancy variance would be seventy percent, the rear yard variance would be 100 per cent, and, the side yard variance would be sixty-nine percent. The variance from the entrance to the garage from the center of the alley is thirty-seven percent. When the garage was demolished, the site became less nonconforming. The addition will now greatly increase the structure's nonconformance. The property has no exceptional physical characteristics, such as topography or improvements, which would distinguish it from most of the other properties fronting on the north side of Jocelyn Street in the subject square. The reasons stated for the variances are personal and are not grounds to substantiate the relief requested. The subject site is too small to accommodate all the facilities the applicant seeks. The resulting density would be too extreme for an R-2 District. The Board further concludes that the requested relief can not be granted without causing substantial detriment to the public good. The adjoining and attached property would be adversely affected by the addition. Light, air, view and the privacy of the adjoining property to the east would be affected by the height and scale of the addition.

The Board is further of the opinion that the relief can not be granted without substantially impairing the intent, purpose and integrity of the zone plan. The Board has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is hereby DENIED.

VOTE: 3-0 (Douglas J. Patton, William F. McIntosh and Charles R. Norris to DENY; Carrie L. Thornhill and Walter B. Lewis not voting, not having heard the case).

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

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

FINAL DATE OF ORDER: MAY 23 1983

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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 SUPPLEMENTAI RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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