GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13936, of Charles W. Cobb, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the lot occupancy requirements (Sub-section 3303.1), the rear yard requirements (Sub-section 3304.1) and the open court width requirements (Sub-section 3306.1) to construct a sun deck to the rear of an existing single family dwelling in an R-5-B District at premises 1736 U Street, N.W., (Square 151, Lot 172).

HEARING DATES: March 23 and May 11, 1983
DECISION DATES: June 1, 1983 and January 11, 1984

DISPOSITION: The Board DENIED the application by a vote of 4-0 (Carrie L. Thornhill, Maybelle T. Bennett, and Douglas J. Patton to deny; Charles R. Norris to deny by proxy; William F. McIntosh not present, not voting).

FINAL DATE OF ORDER: February 6, 1984

ORDER

The applicant filed a timely Motion for Reconsideration or Rehearing on February 21, 1984. In support of the motion, the applicant alleged that the Board erred in denying the application for the following reasons:

1. The Board did not accept nor give "great weight" to the written recommendation of Advisory Neighbor hood Commission 1C which was profferred to the Board by the applicant at the public hearing of May 11, 1983.

2. The Board erred in Finding of Fact No. 21 by finding that the applicant could not meet the burden of proof necessary for the granting of an area variance.

3. The Board did not consider the applicant's contention that a practical difficulty does exist in that the small size of the subject lot prohibits the use of the rear yard for both parking and outdoor space without the provision of the sun deck.

4. The Board has accorded unequal treatment in its determinations concerning the subject application

as compared with several applications for similar relief recently decided by the Board in determining what constitutes a showing of practical difficulty.

5. The Board, at its public meeting of January 11, 1984, reconsidered its previous decision to grant the application without notifying the applicant of its intention to reconsider the case.

Upon consideration of the Motion, the record in the subject case and its final order, the Board concludes that it has committed no error in deciding the application. The acceptance of the recommendation of ANC 1C into the record in the subject case was properly refused by the Board in that Section 108 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment requires that such recommendation be submitted to the record seven days prior to the public hearing.

The applicant has the burden of proof in presenting evidence in support of his request. The Board was not persuaded by the evidence of record that the necessary burden had been met. The Board notes that it decides each application based on its individual merits and that its decision on a specific application does not create a precedent which is binding in determining subsequent applications for similar relief.

The Board further notes that Section 503.5 of the Rules provides that "The Board, on its own motion, not later than ten days following the filing of the final decision in the record, may decide to reconsider or rehear an application or appeal." The determination to reconsider was made prior to the issuance of a final order. The motion to reconsider was made by a member of the Board, and was an internal deliberation of the Board to which the applicant was not entitled to notice. The Board concludes that its reconsideration of the subject application was proper.

The Board further concludes that the motion provides no new material evidence which was not previously considered by the Board. Accordingly, it is ORDERED that the Motion for Reconsideration or Rehearing be DENIED.

VOTE: 3-0 (Maybelle T. Bennett, Charles R. Norris and Carrie L. Thornhill to deny motion for Reconsideration/Rehearing; William F. McIntosh not voting, Douglas J. Patton 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: APR 19 1984

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."

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