

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14020 of Tina Conner, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against permitting an addition to a nonconforming structure which now exceeds the lot occupancy requirements (Paragraph 7105.12) for a proposed roof deck and porch enclosure in an R-3 District at premises 3403 Dent Place, N.W., (Square 1291, Lot 209).

HEARING DATES: September 21 and November 9, 1983
DECISION DATE: February 1, 1984

FINDINGS OF FACT:

1. The application was first scheduled for the public hearing of September 21, 1983. The application appeared on the preliminary calendar since no affidavit of posting was filed as required by the Supplemental Rules of Practice and Procedure before the BZA. Upon questioning by the Board, it was disclosed that the property had never been posted, another prerequisite of the Rules. The Board continued the application to the public hearing of November 9, 1983.

2. The subject site is located on the north side of Dent Place, N.W. between 34th Street on the east and 35th Street on the west. The site is in an R-3 District and is known as premises 3403 Dent Place, N.W.

3. The subject lot is rectangular in shape. Its dimensions are sixteen feet on the north and south sides and sixty-four feet on the east and west sides. The lot area is 1,024 square feet.

4. The subject site is improved with a two-story brick structure that is currently being used as a flat. There is a wooden porch at the rear of the dwelling that is enclosed on its second story. The rear yard is enclosed by a wall located on the rear lot line.

5. There is access to and from the subject site through Dent Place on the south. There is no alley access.

6. The subject square and the surrounding neighborhood are developed with rowhouses and semi-detached dwellings on lots of varying sizes. The subject lot is smaller than most lots in the subject square and the neighborhood. The neighborhood area is zoned R-3 on all

sides of the subject site and is primarily residential in use. The subject neighborhood is part of the Georgetown Historic District.

7. The subject dwelling was constructed prior to the enactment of the Zoning Regulations. The Zoning Regulations adopted in 1958 rendered the dwelling a nonconforming structure. The structure is located on a lot that is less than the minimum size required by the Zoning Regulations for lots in an R-3 District. The area of the existing lot is 1,024 square feet, whereas a minimum of 2,000 square feet is required. The existing lot occupancy is 776.3 square feet, whereas only 614.4 square feet is permitted. This creates an excess lot occupancy of 161.9 square feet or twenty-six percent. The width of the subject lot is sixteen feet, whereas a minimum width of twenty feet is required. The existing rear yard depth is approximately four feet, whereas a minimum depth of twenty feet is required.

8. The subject dwelling is owned by the applicant, who occupies the second story as a dwelling unit. The ground floor is used as a rental apartment unit. The subject building is thus devoted to a nonconforming flat use.

9. The enclosed porch at the rear of the structure is used as a sleeping room for the second floor dwelling unit. The dimensions of the structure are sixteen feet from east to west and 50.1 feet from north to south. The front of the dwelling has an entry area with a north-south depth of 3.95 feet. The enclosed porch at the rear has a north-south depth of 6.5 feet. This leaves less than four feet of rear yard depth after the thickness of an eight inch brick wall at the rear lot line is computed.

10. The dwelling has an undersized open court adjacent to the rear two-fifths of its east side. The width of the court is approximately 3.67 feet, whereas a minimum of fifteen feet of width is required.

11. The applicant finds that the site provides no useable outdoor space for recreation because the lot is almost entirely occupied by the dwelling.

12. The applicant proposes to construct a roof deck and an exterior stairway for access to the roof deck and repair the enclosed porch. The deck would provide 135 square feet of outdoor recreation space for the main dwelling unit on the site only. The addition would thus serve the conforming dwelling use. The deck railing would be no higher than the front of the dwelling structure. The slatted floor of the deck would allow rain to pass through to the roof where it would drain to the ground. The access stairway would lead from the second story to the roof deck. The stairway would be located entirely over the footprint of

the side court, which would remain open at ground level. The enclosed sleeping porch would be fitted with new windows, siding and cladding to make it completely weather tight.

13. The entire dwelling was used as a rental property until its recent purchase by the applicant. Repairs are needed, especially for the sleeping porch. There would be no changes made in the use or occupancy of the subject structure if the proposed changes were made. The roof deck would be exclusively for the use of the owner and could be reached only through the second story unit.

14. The proposed construction would not increase the lot occupancy of the subject structure. However, the construction of an addition to a building that exceeds the maximum permitted lot occupancy requires variance relief even if the addition would not increase the lot occupancy.

15. The Board of Zoning Adjustment has the power to grant variances under Paragraph 8207.11 of the D.C. Zoning Regulations where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.

16. Paragraph 7105.12 of the D.C. Zoning Regulations provides that enlargements or additions may be made to a nonconforming structure provided such structure is conforming as to percentage of lot occupancy, and further provided that the addition or enlargement itself is conforming as to use and structure, does not increase or extend any existing nonconforming aspect of the structure, and does not create any new nonconformity of structure and addition combined.

17. The subject lot is exceptionally narrow and shallow and therefore the area of the lot is less than the 2,000 square feet required by the R-3 District. The existing lot depth is sixty-four feet. At the existing depth, the width of the lot would have to be 31.25 feet in order to yield 2,000 square feet of area. At the existing width of sixteen feet, the depth of the lot would have to be 125 feet in order to yield an area of 2,000 square feet.

18. The proposed construction would not increase the nonconformity of the subject structure. The enclosed sleeping porch to be rehabilitated, the deck to be constructed on the roof and the access stairway to be built over the open court would all be in locations that are already part of the building area. The rear yard would remain at its existing size.

19. There would be no adverse impact on the light and air to surrounding properties due to the openness of the deck, its railings and its access stairway. There are no alternative locations possible for providing such a deck and its access stairway. Repairs to or enclosure of the existing porch can be done as a matter of right.

20. One owner of neighboring property submitted a letter to the record supporting the application on the grounds that the existing porch enclosure and roof are badly in need of repair and improvement.

21. Some owners of neighboring property submitted letters to the record opposing the application on the grounds that the rear porch is in a dangerous rotting condition and is pulling away from the house and that the applicant has failed to correct this. The Board finds that neither the letters in support or opposition address zoning issues.

22. Advisory Neighborhood Commission 2E, by report dated September 8, 1983, opposed the application on the grounds that there is no "hardship" reason for the proposed alteration, personal convenience being the over-riding factor, and the premises and open court are already nonconforming. Accordingly, with all members of the Commission present, ANC 2E voted unanimously to oppose BZA Application No. 14020 on the ground that it would increase the intensity of use of an existing nonconforming structure and open court and would invade the privacy of all adjoining property owners.

23. The Board is required by statute to give great weight to the issues and concerns of the ANC. In addressing these concerns the Board finds that a practical difficulty and not a hardship is the test for an area variance. Further, the proposed construction would not increase the intensity of use of the existing nonconforming structure. The use would continue to be that of a two-story dwelling. The open court and roof area where construction would occur are already included in the building area. The repairs to the enclosed porch would make the entire structure safer and more secure.

24. At the public meetings of December 7, 1983, and January 11, 1984, the Board deferred a decision on the application. The transcript of the public hearing of

November 9, 1983, which the Board wanted to review, was not available for the Board's perusal.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met this burden of proof in showing a practical difficulty inherent in the property. The small area, narrowness and the shallowness of the subject lot and the existing nonconformity of the subject dwelling are exceptional conditions which cause any addition to the subject structure to violate the zoning regulations. The proposed construction will not increase the nonconformity of the structure as to lot occupancy because all construction will occur at locations that are included in the existing lot occupancy.

The Board further concludes that permitting the proposed roof deck, access stairway and rehabilitation of an enclosed porch will not cause substantial detriment to the public good nor will it substantially impair the intent and purpose of the zone plan. The proposed improvements will permit a reasonable use of private property. Accordingly, it is hereby ORDERED that the application is GRANTED.

VOTE: 3-1 (Walter B. Lewis, Carrie L. Thornhill and William F. McIntosh to grant; Douglas J. Patton opposed to the motion; Charles R. Norris not voting, not having heard the case).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: MAY - 4 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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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