

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14043, of Larry B. Puchall and David Dana, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a row dwelling, a non-conforming structure, which now exceeds the lot occupancy limitations (Paragraph 7105.12) and the rear yard requirements (Sub-section 3304.1 and Paragraph 7105.12) in an R-4 District at premises 1306 Riggs Street, N.W., (Square 239, Lot 96).

HEARING DATES: October 12, 1983 and April 11, 1984
DECISION DATE: June 6, 1984

FINDINGS OF FACT:

1. The subject application was originally scheduled for the public hearing of October 12, 1983. The applicants requested that the case be continued because counsel had recently been retained and was unavailable on the scheduled date and, further, to allow time for a property line dispute with an adjacent neighbor to be resolved. The case was postponed. The matter was readvertised and heard at the public hearing of April 11, 1984, following resolution of the property line issue.

2. The subject property is located on the south side of Riggs Street between 13th and 14th Streets to the east and west, and between R and S Streets to the south and north, and is known as premises 1306 Riggs Street, N.W. It is zoned R-4.

3. The subject site is improved with a three-story plus basement row structure which is occupied as a flat, a use permitted as a matter-of-right in the R-4 District.

4. The existing structure was originally constructed in approximately 1899 and occupies 538.39 square feet of the lot. The structure was renovated in 1980 and purchased by the applicants in 1981.

5. The subject site is rectangular in shape with a frontage of seventeen feet on Riggs Street and a depth of forty-six feet. The adjacent property to the east has the same lot and building dimensions as the subject property. The remaining lots on the south side of Riggs Street all contain in excess of 1,000 square feet of lot area.

6. The R-4 District requires a minimum lot area of 1,800 square feet and minimum lot width of eighteen feet. The lot is non-conforming with respect to lot area and lot width. The subject lot has a lot area of 782 square feet and lot width of seventeen feet.

7. The existing structure is nonconforming as to percentage of lot occupancy. The R-4 District provides for a maximum lot occupancy of sixty percent. The existing structure exceeds the maximum lot occupancy allowed by 69.19 square feet or approximately fifteen percent.

8. Paragraph 7105.12 of the Zoning Regulations provides that enlargements or additions may be made to a nonconforming structure providing such structure is conforming as to percentage of lot occupancy and further provided that the addition is conforming as to use and structure, does not increase or extend any nonconforming aspect of the structure, and does not create any new nonconformity of the structure and addition combined. Because the existing structure exceeds the allowable percentage of lot occupancy, no addition can be made to the subject premises without variance relief from the Board.

9. The existing rear yard of the subject premises is approximately twelve feet deep. The R-4 District requires a minimum rear yard of twenty feet.

10. In late 1982, the applicants hired a contractor to construct a sundeck at the rear of the subject premises.

11. The applicants were informed by the contractor that zoning variances were necessary because the premises exceeded the maximum allowable lot occupancy but that the zoning process would significantly delay the project. The applicants were further advised by the contractor that he had completed several projects without zoning approval and that no adverse consequences had resulted. The contractor recommended that the applicants not attempt the zoning process.

12. The applicants proceeded with the construction of the deck without zoning approval. The problem was brought to the attention of the District of Columbia Government after completion of the deck when a neighboring property owner complained that the sundeck encroached upon her property. The applicants then initiated the subject variance application and ordered a D.C. Government survey of the property to address the property line dispute.

13. The sundeck as constructed is triangular in shape, approximately four feet in height, is below the level of the main floor of the existing structure, and occupies approximately fifty-eight percent of the rear yard. The applicants

are seeking area variance relief necessary to authorize the continuation of the existing sundeck.

14. Because the sundeck is only four feet in height and is located entirely below the level of the main floor of the existing structure the area of the sundeck is not included in building area and no increase in the percentage of lot occupancy would result.

15. The existing sundeck occupies approximately fifty-eight percent of the existing twelve foot rear yard. Because the sundeck occupies more than fifty percent of the existing rear yard, a variance of 100 percent of the required rear yard is necessary.

16. Prior to the construction of the sundeck, the rear of the premises contained a sunken patio area which attracted little light, was damp, provided little storage space and was generally unattractive. The sundeck provides table or seating space on one level and a hot tub on the lower level.

17. Prior to the April 11, 1984, public hearing, the D.C. survey was completed and indicated that the sundeck did not encroach upon the neighboring property.

18. Counsel for the applicants was not present at the public hearing of April 11, 1984, due to illness. One of the applicants appeared at that public hearing and testified as to the conduct of the contractor and architect, and the lack of expertise on the part of the applicants in construction and zoning matters. The applicant further testified that neither the contractor nor the architect informed the applicants of the needed rear yard variance and that neither the architect nor the contractor were licensed at the time that the sundeck was designed and constructed.

19. No testimony was offered at the public hearing regarding any exceptional or extraordinary condition of the property or the practical difficulty which would occur to the owners of the property if the requested variances were not granted.

20. Subsequent to the public hearing, counsel for the applicants submitted proposed findings of fact and a memorandum in support of the requested variances. Counsel argued in this submission that the subject lot is affected by an exceptional condition in that it is unusually small, the existing structure presently exceeds the allowable percentage of lot occupancy, compliance with the applicable Zoning Regulations regarding lot occupancy and rear yard would require demolition of part of the existing building, and that the sundeck does not interfere with the light, air and/or privacy of surrounding dwellings or generate any adverse impact on neighboring property.

21. In application No. 14071, the Board granted a variance from the rear yard requirements to allow for the construction of a rear deck. Counsel for the applicant argued that the subject property is affected by similar conditions in that both properties were developed prior to the current Zoning Regulations and are small in comparison with other lots in the same square, and that the requested relief should therefore be granted. The Board notes that the property involved in application No. 14071 differs from the subject property in that it is located in the R-3 District. The lot is irregularly shaped, and the existing structure does not exceed the allowable lot occupancy. The Board notes that, in any event, every application is considered based on its individual merits and that the decision of the Board in the cited case is therefore, not of a precedential nature for the subject application.

22. Advisory Neighborhood Commission 2C, by memorandum dated October 4, 1983, indicated that it had received no citizen objection to the application. The ANC submission does not meet the requirements of Sections 108.1 (b), (c), (d), (e), (f), (g), and (h) of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment. The Board, therefore, can not give "great weight" to the report of the ANC.

23. There was no opposition to the granting of the application at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicants are seeking area variances, the granting of which requires proof through substantial evidence of a practical difficulty upon the owner of the property arising out of some extraordinary or exceptional situation or condition of the property. The Board must further find that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan. The Board concludes that the applicants have not met the burden of proof.

The Board concludes that there is no practical difficulty inherent in the property which would sustain the area variances requested. While the subject lot is non-conforming as to lot area, lot width and rear yard, this condition is not sufficient in itself to support the granting of the requested variances. The lot is developed in excess of the permitted lot occupancy and does not provide the required twenty-foot rear yard at present. The addition, of the sundeck, while not increasing the lot occupancy, requires a 100 percent variance from the required rear yard. The applicants' sole justification for the

sundeck is for convenience and as a recreational area. A convenience is no grounds to sustain an area variance. The Board further concludes that the granting of the requested variances would result in no rear yard being provided and is therefore a substantial impairment of the intent and purpose of the zone plan for the R-4 District.

The Board is of the opinion that the applicants acted less than diligently in the matter of ensuring that the sundeck met the requirements of the Zoning Regulations. If the applicants had acted more responsibly, building permits would have been applied for prior to construction. They would then have been aware of the extent of the variances necessary for the construction of the sundeck and no construction would have taken place without the proper variance relief. The Board is further of the opinion that the applicants would suffer no practical difficulty if the Zoning Regulations were strictly applied and the sundeck was dismantled, other than the expense of demolition. The applicants should more properly seek redress in other forums from the architect and contractor responsible for the construction of the sundeck. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 3-1 (Walter B. Lewis, Charles R. Norris and William F. McIntosh to deny; Carrie L. Thornhill opposed to the motion; Douglas J. Patton 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:

AUG 17 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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