GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14099, of Jean C. Key, 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 requirements (Sub-section 3306.1) for a proposed rear addition (carport) to a semi-detached dwelling in an R-2 District at the premises 4407 Hayes Street, N.E., (Square 5129, Lot 82).

HEARING DATE: February 22, 1984
DECISION DATES: March 7 and April 4, 1984

FINDINGS OF FACT:

1. The subject site is located on the south side of Hayes Street, N.E., between 44th Street on the west and 46th Street on the east. The site is in an R-2 District and is known as premises 4407 Hayes Street, N.E.

2. The subject lot is rectangular in shape. Its dimensions are twenty-five feet on the north and south sides and eighty feet on the east and west sides. The lot area is 2,000 square feet.

3. The subject site is improved with a single-family semi-detached dwelling, having its detached side on the east. The subject dwelling is a two story brick structure. A small concrete slab patio having a north-south depth of four feet abuts the rear of the dwelling.

4. There is access to and from the subject site through Hayes Street on the north and through a public alley on the south. The public alley has a width of fifteen feet.

5. The subject square and the surrounding area are developed primarily with medium density residential uses. The area is zoned R-2 on all four sides of the subject site. There is a C-1 strip located one block north a and east of the subject site. Other dwelling in the subject area are similar in size and type to the subject dwelling.

6. The subject dwelling was constructed in 1951, in conformity with the Zoning Regulations then in effect. The Zoning Regulation adopted in 1958 rendered the subject dwelling a nonconforming structure. The area of the subject lot is 2,000 square feet, whereas 3,000 square feet is now

the minimum required lot area. The lot width is twenty-five feet, whereas thirty feet is now the minimum required lot width. The existing side yard has a width of 7.17 feet, whereas the minimum required width for a side yard is now eight feet in an R-2 District.

7. The lot occupancy of the existing structure is 766.69 square feet, less than the permitted maximum of 800 square feet. The rear yard measures 32.83 feet, more than the minimum required rear yard depth of twenty feet.

8. The subject property is owned by the applicant who uses it as a single-family dwelling. The applicant has constructed an open roof-like structure on poles at the rear of the dwelling. The structure is used by the applicant as a carport for on-site parking. The applicant has suffered vandalism to her car when it was parked on the neighborhood streets.

9. The roof of the open structure was not quite completed when the applicant was informed by a D.C. inspector that she needed a building permit to construct a carport. Upon applying for a building permit to complete the carport, the applicant discovered that the construction of the proposed carport would require three variances from the D.C. Zoning Regulations.

10. The dimensions of the completed carport would be twenty-five feet from north to south and fifteen feet from east to west. The open structure is one story high. The distance from ground level to roof is eight feet at the southern end and eight feet, four inches at the northern end adjacent to the house. The materials used in the completed carport would include brick columns built around the supporting metal poles, tin roofing, wooden rafters six feet two inches in length which would support the roof from east to west and a concrete slab to form the floor. At present, gravel has been used to form a floor for the carport. The roof has been partially constructed and loose roofing materials are stacked on top of the roof frame. The use of the carport, if its completion were authorized, would be for on-site parking for the applicant's private automobile.

11. The footprint of the proposed carport addition would have an area of 408.25 square feet and would occupy 49.74 percent of the rear yard. Its width of fifteen feet would be sixty percent of the width of the rear yard. The side yard remaining on the east side of the carport would have a width of 8.67 feet, more than the minimum required width of eight feet.

12. The combined lot occupancy of the existing structure and the addition would be 1,174.94 square feet. This combined lot occupancy would require a variance of 374.94

square feet or forty-six percent from the requirements of Sub-section 3303.1. The depth of the rear yard after the proposed construction would be 7.83 feet, requiring a variance of 12.17 feet or sixty percent from Sub-section 3304.1. There would be an open court created on the west side of the carport which would have a width of 0.67 feet. This open court would require an 88.8 percent variance from the provisions of Sub-section 3306.1.

13. The Board of Zoning Adjustment has the power to grant area variances provided that the applicant makes 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 topographic 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.

14. The applicant argued that the lot size is less than the minimum required area and that this condition makes it impossible to comply with the Zoning Regulations for the proposed structure. The side yard is too narrow to accommodate a carport. The rear yard is the only open space on site that is large enough to accommodate a carport. However the rear yard is so shallow that the proposed carport would intrude into the required rear yard.
The existing lot area is only two-thirds of that required, so that the lot occupancy is necessarily too great if any addition is made to the dwelling.

15. The applicant was of the opinion that the proposed carport would not interfere with the light and air to the adjoining property because it is an open structure. The applicant discussed the proposed construction plans with only one neighbor, who wrote a letter supporting the application. The applicant did not discuss the plans with any other neighbors because she is not acquainted with them.

16. The proposed north-south length of the carport includes four feet that have been added to accommodate the existing patio that adjoins the dwelling structure. This causes the addition to intrude four feet further into to rear yard than would be necessary for the carport alone. The rise in the roof where the carport abuts the dwelling structure is necessary to accommodate the existing patio attached to the house.

17. In the summer, the carport has shaded the lower level of the applicant's dwelling where the sun shines directly on the rear of the dwelling all day until late evening. The existing open structure has reduced the applicant's electricity bills for the summer months.

18. The applicant testified that several nearby dwellings in the subject square have carports constructed at the rear. The applicant did not know whether these structures were constructed legally or not.

19. One neighbor who owns an adjacent dwelling submitted a letter to the record which supported the application. The support was based on the opinion that the applicant is a very respectable and quiet neighbor who has contributed to the neighborhood by beautifying and adding an attractive appearance to her home. The applicant's plans were not objectionable to the neighbor in support.

20. One neighbor who owns a dwelling immediately across the alley to the south submitted a letter to the record which opposed the application. The opposition was based on prior incidents in which the applicant had cleaned and repaired a car in the rear yard before selling it. The opponent also complained that the applicant had begun the structure without a permit.

21. Advisory Neighborhood Commission 7D submitted no recommendations on the application.

22. One person, not a resident of the neighborhood, testified in support of the application. The support was based on a site inspection of the subject premises. The supporter was of the opinion that the applicant was entitled to the variance because the application satisfied the three thresholds of a variance test, as follows:

A. The subject lot is smaller, narrower and shallower than is required for an R-2 dwelling because the site was established before the enactment of the 1958 Zoning Regulations.

B. If the variance is not granted, the applicant will suffer exceptional practical difficulties in utilizing her property.

C. The granting of the variance will not cause substantial detriment to the public good because several dwellings in the square already have enclosed additions which appear to exist compatibly in the neighborhood. The existing additions did not appear to the supporter to block light and air to the adjacent dwellings.

The supporter was of the opinion that the approval of the carport will not substantially impair the intent and purpose of the zone plan because the dwelling will continue to be used as a single-family residence as intended by the zone plan.

23. Two persons, not residents of the neighborhood, testified in opposition to the application. The opposition was based on a site inspection of the subject premises. The opposition was of the opinion that the applicant was not entitled to the variance because the application did not satisfy the three thresholds of a variance test, as follows:

A. The subject lot is not exceptional in comparison with the lot size of other properties in the subject square.

B. Any practical difficulty that the applicant may incur is neither peculiar or exceptional to the subject property. Any peculiar or exceptional conditions relating to the subject site are shared throughout the surrounding community.

C. The applicant did not prove, either through testimony of neighbors or any other evidence, whether or not the light and air requirements would be adequately met. The applicant did not prove that granting of the application would not be objectionable to the neighborhood interest. There was at least one neighbor opposed to the application.

24. The opponents were further of the opinion that since the property now conforms with the rear yard and lot occupancy requirements, it seems inappropriate to create additional nonconformities in the property by granting area variances. The granting of these variances would undermine the intent of the Zoning Regulations which contemplate a rear yard for structures. There is no evidence that properties in the subject square have been granted area variances, including those that have existing additions. Further, variances are not granted to protect personal property such as the applicant's car. Such protection is properly part of police enforcement. The Board concurs with the reasoning of the opposition.

25. The applicant had previously filed the same request in BZA application No. 13827, which was heard at the Public Hearings of September 22, 1982, and November 17, 1982. That application was dismissed by the Board because the applicant was unfamiliar with the Regulations and was unable to present her case.

26. The application was originally scheduled for a decision at the March 7, 1984, public meeting. Only three Board members were present at the Public Meeting of March 7, 1984, and the Board was unable to reach a majority decision. The application was rescheduled for the April 4, 1984, Public Meeting at which time five Board members were present and a majority vote was reached.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking area variances, 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 topographic conditions. The Board must further 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 not met this burden of proof in showing a practical difficulty inherent in the property. The size, narrowness and shallowness of the subject site are not unique or exceptional within the subject square. The subject property and surrounding properties are presently being used for R-2 residential purposes and no practical difficulty has been experienced by the owner in so using the subject property.

The Board further concludes that the granting of a forty-six percent variance from the lot occupancy requirements, a sixty percent variance from the rear yard requirements, and an 88.8 percent variance from the open court requirements in an R-2 District would cause substantial detriment to the public good and would substantially impair the intent and purpose of the zone plan. The requested variances are too large and too numerous. The possible detriment to the neighborhood from the proposed construction has not been refuted by any substantial evidence. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 3-2 (Douglas J. Patton, William F. McIntosh and Maybelle T. Bennett to deny; Charles R. Norris and Carrie L. Thornhill opposed to the motion).

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

ATTESTED BY: Steven E. Sher
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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