

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14215 of Gerald and Ellen Segal, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against permitting an enlargement to a nonconforming structure devoted to a conforming use (Paragraph 7105.12) and the side yard requirements (Sub-section 3305.1) for a proposed third floor addition to a single family dwelling in an R-3 District at premises 3106 N Street, N.W., (Square 1208, Lot 44).

HEARING DATE: December 12, 1984

DECISION DATE: December 12, 1984 (Bench Decision)

FINDINGS OF FACT:

1. The subject premises is located on the south side of N Street, N.W. between 31st Street on the east and Wisconsin Avenue on the west. The site is in an R-3 District and is known as premises 3106 N Street, N.W.

2. The subject lot is formed by two rectangular parcels of land which are joined at one corner to form approximately an "L" shape. The main parcel has dimensions of approximately thirty-five feet from east to west and approximately 120 feet from north to south. The smaller parcel has dimensions of approximately 42.33 feet from east to west and twenty feet from north to south. The total area of Lot 44 is 4,996.6 square feet.

3. The site is improved with a single family detached dwelling. The subject dwelling is a two-story brick structure with an attic. The rear parcel is occupied by a garage that serves the subject site as an accessory use.

4. There is access to and from the subject site through N Street on the north and through a public alley on the south. The public alley is twenty feet wide and connects 31st Street with an interior alley system in the square.

5. The surrounding area is developed with row dwellings, apartment buildings and commercial establishments. The subject square is split-zoned with the northeast corner zoned R-3 and the western and southern sides zoned C-2-A. An R-3 residential district extends to the north and east of the site. The subject site is part of the Georgetown Historic District.

6. The subject dwelling was constructed in the 1920's. The Zoning Regulations enacted in 1958 rendered the dwelling a nonconforming structure. The structure occupies 66.42 percent of the lot or 3,318.94 square feet. The maximum permitted lot occupancy is forty percent or 1,998.64 square feet. The east side yard has a width of 1.99 feet. The minimum required side yard width is eight feet.

7. The subject dwelling is owned by the applicants who use it as their residence. They find that the existing dwelling provides insufficient space for their family's needs. The applicants propose to make an addition to the dwelling by creating a third story where an attic now exists.

8. The existing attic of the subject dwelling is an unfinished space with a sloping roof. The height of the attic varies from eight feet at the front elevation to three feet and five inches at the rear elevation. This attic covers the entire second floor with a pull-down stair for access from the second floor hallway. There are also four existing chimneys.

9. The proposed addition would raise the attic roof to create a new third floor including an extended stairwell from second floor, guest bedroom, a new deck on the existing roof, closet, bathroom, mechanical space and storage. The new roof would not be raised over the entire floor area and would not alter the front elevation in any way.

10. The proposed third story addition would be constructed entirely within the footprint of the existing dwelling. The construction of an addition to a nonconforming structure requires a variance from the provisions of Paragraph 7105.12 of the Zoning Regulations, which prohibits an enlargement to a nonconforming structure devoted to a conforming use. Further, the existing side yard on the east of the structure is narrower than the minimum required width and the proposed addition would follow the existing side yard. Thus, a variance from the side yard requirements of Sub-section 3305.1 would be required.

11. The Board of Zoning Adjustment has the power to grant area variances under Paragraph 8207.11 of the D.C. Zoning Regulations which provides that 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 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 the owner of such property, the Board may grant a variance from such strict application so as to relieve such difficulties,

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 as embodied in the zoning regulations and map.

12. Paragraph 7105.3 provides that enlargements or additions may be made to a nonconforming structure devoted to a conforming use provided the 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.

13. The proposed addition will be conforming as to use, but not as to structure. The addition would extend the existing nonconformity of the east side yard to the proposed third story. It would not increase the nonconformity of the structure as to lot occupancy. The nonconformity of the west side yard would be eliminated in the addition. The west wall of the addition would be 8.16 feet from the west lot line, whereas the west wall of the existing structure is approximately 3.9 feet from the west lot line. The required minimum width for a side yard is eight feet in the R-3 District.

14. The existing historic structure cannot be altered to make it conforming or demolished to permit the construction of a conforming structure. The third story addition would be permitted as a matter-of-right if the existing structure were not nonconforming due to its historic design and construction. The existing structure is oversized for its lot as a detached structure, but would be conforming if it were a row structure with the same size footprint.

15. Advisory Neighborhood Commission 2E, by resolution dated December 6, 1984, reported that it had no objection to the granting of the requested relief. The ANC was of the opinion that the existing structure creates both the nonconformity and the practical difficulty. The ANC noted that the addition will be in accordance with all the provisions of the Zoning Regulations. The Board concurs with the reasoning of the ANC.

16. Two neighbors submitted letters of support to the record. The support was based on the opinion that the addition will not be a problem to the neighbors and that they are in accord with the applicant's objectives.

17. There was no opposition to the application either at the public hearing or of record.

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 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. The existing historic structure on the site is nonconforming because its design predates the Zoning Regulations. These nonconformities create practical difficulties in that it is impossible to utilize the full building envelope permitted at the site without violating the zoning regulations. The proposed addition will be conforming as to use. Its only nonconformity will be an extension of the existing east side yard to a third story. The proposed addition will not increase the nonconformity as to lot occupancy. The nonconformity of the west side yard would be eliminated thus rendering the addition less nonconforming as to structure than the existing dwelling.

The Board further concludes that granting the proposed relief will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The granting of these area variances will permit a reasonable use of private property which has the support of ANC 2E and of interested neighbors. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled by law.

Accordingly, it is therefore hereby ORDERED that the application is GRANTED.

VOTE: 5-0 (Lindsley Williams, William F. McIntosh, Douglas J. Patton, Charles R. Norris and Carrie L. Thornhill to grant).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

20 FEB 1985

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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