

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14265, of Peter D. and Moses Lennon, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against permitting an addition to a dwelling which now exceeds the lot occupancy requirements (Paragraph 7105.12) and from the rear yard requirements (Sub-section 3304.1) to construct a rear deck to a nonconforming structure used as a single family dwelling in an R-4 District at premises 109 Kentucky Avenue, S.E., (Square 1014, Lot 13).

HEARING DATE: March 20, 1985
DECISION DATE: April 3, 1985

FINDINGS OF FACT:

1. The subject property is located on the west side of Kentucky Avenue between 12th and 13th Streets just south of Lincoln Park and is known as premises 109 Kentucky Avenue, S.E. It is zoned R-4.
2. The subject lot is trapezoidal in shape with a depth of 45.44 feet on the north and 50.54 on the south. The width of the lot is eighteen feet. The total lot area is 864 square feet.
3. The subject site is currently improved with a two-story, brick, flat-front Federal style row dwelling. The site is located within the Capitol Hill Historic District.
4. The existing structure was originally constructed in approximately 1916 and occupies 612.8 square feet of the lot. The structure was purchased by the applicants in 1983, and has been substantially renovated.
5. The R-4 District requires a minimum lot area of 1,800 square feet. The subject lot contains 864 square feet of area and is nonconforming with respect to lot area.
6. The existing structure is nonconforming as to percentage of lot occupancy. The R-4 District provides for a minimum lot occupancy of sixty percent. The existing structure exceeds the maximum lot occupancy allowed by 94.4 square feet or approximately eleven percent.
7. 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.

8. The rear yard of the subject premises is irregularly shaped. The average depth of the rear yard is 13.65 feet. The R-4 District requires a minimum rear yard of twenty feet.

9. In July, 1984, the applicants hired a contractor to replace a deteriorated wood stockade fence, restore the lawn area which was partially covered with broken concrete, and construct a fenced deck over the rear yard area.

10. Construction of the deck and fence commenced without the issuance of proper building permits. A stop work order was issued and, except for a temporary barricade for security purposes, no further construction occurred.

11. The applicants applied for the proper building permits and were informed that zoning variances were necessary. Because the subject property is located within the Capitol Hill Historic District, review by the Historic Preservation Review Board was also necessary.

12. The sundeck, as constructed, is below the level of the main floor of the existing structure and occupies approximately ninety-eight percent of the rear yard. The applicants are seeking area variance relief necessary to authorize the completion of the existing sundeck.

13. Because the deck is located entirely below the level of the main floor of the existing structure, the area of the deck is not included in the building area and no increase in the percentage of lot occupancy would result.

14. The existing sundeck occupies approximately ninety-eight percent of the existing 13.65 feet rear yard. The deck runs the full width of the existing dwelling and projects from the rear of the dwelling approximately sixteen feet on the south side and 11.25 feet on the north side. Because the sundeck occupies more than fifty percent of the rear yard, a variance from the rear yard requirements is necessary.

15. Prior to the construction of the sundeck, the rear of the subject premises was in an unsightly condition. The rear yard was enclosed with a six foot stockade fence which

was deteriorated, and listed approximately thirty degrees. The fence created security problems in that there were several broken or rotted posts and the gate could not be secured. The ground of the rear yard consisted of an unrestored area partially covered with broken concrete, bare earth, debris and overgrown weeds.

16. The subject lot is located immediately east of a ninety degree intersection of the alley system which runs through the interior of the square.

17. The narrow width and sharp angles of the alley system preclude the maneuvering of large trash vehicles through the interior alley system for trash pick-up from the rear of the residences in the subject square. Residents of the square deposit their refuse at the alley intersection at the rear of the subject premises for pick-up twice a week. A second trash pick-up point is located in the alley system in the southern portion of the square.

18. The applicant testified that the construction of the sundeck and fence would improve the security at the rear of the premises and allow outdoor use of the rear yard without being directly adjacent to the garbage drop-off area at ground level.

19. The applicant testified that the subject property is affected by an extraordinary or exceptional condition in that the lot area of the site is less than fifty percent of the minimum lot area required in the R-4 District, the existing structure exceeds the maximum lot occupancy of sixty percent, and the location of the existing dwelling on the site results in a rear yard less than twenty feet in depth. The subject site was developed in 1916 and was rendered nonconforming at the time of the adoption of the Zoning Regulations in 1958.

20. The existence of a ten foot public alley to the rear of the site and the right-of-way for Kentucky Avenue at the front precludes the applicant from acquiring additional land in order to comply with the rear yard and lot area requirements.

21. The applicant testified that the strict application of the Zoning Regulations would result in an undue hardship upon the owner in that any addition to the rear of the existing structure would require variance relief and extend the existing nonconformity of the rear yard thus causing a practical difficulty in making reasonable use of private property.

22. The applicant testified that the deck could be built at ground level. However, such a location would not alleviate the unsanitary condition caused by close proximity

to the garbage drop-off location in the alley nor provide reasonable access to the existing basement door at the rear of the premises.

23. The applicant further testified that the proposed sundeck will not interfere with the light, air or privacy of adjacent residents.

24. The proposed sundeck and fence will not extend into or hinder access to the alley.

25. The record contains letters from three immediately abutting property owners offering no objection to the granting of the requested variances.

26. By memorandum dated March 21, 1985, the Historic Preservation Division of the DC Department of Consumer and Regulatory Affairs recommended that the fence be reduced in height from ten feet to seven feet and, in order to lighten the massiveness of the fence, one layer of standing board should be removed and replaced with a trellis or similar treatment.

27. Advisory Neighborhood Commission 6B, by letter dated March 12, 1985, opposed the application on the grounds that it would establish a precedent that would severely impact on future zoning cases.

28. The Capitol Hill Restoration Society, by letter dated March 18, 1985 and a representative at the public hearing, opposed the application for the following reasons:

- a. The deck is nearly complete and was constructed with blatant disregard of Zoning Building and Historic District regulations.
- b. Several neighbors are opposed to the construction the deck.
- c. The Society strongly opposes the total elimination of the rear yard as damaging to the neighborhood due to the limited amount of open space in the interior of this block.
- d. The applicant has other options available for the improvement and enjoyment of his rear yard which would conform with the requirements of the Zoning Regulations.

29. Several nearby residents appeared at the public hearing in opposition to the application. In addition to the issues raised by the Advisory Neighborhood Commission and the Capitol Hill Restoration Society, the residents cited the following:

- a. The subject site is not affected by extraordinary or exceptional conditions. There are several properties in the subject square which are smaller than the subject site and or have a shallower rear yard. The opposition stated that approximately seventy percent of the lots located in the Capitol Hill area are nonconforming under the current Zoning Regulations.
- b. The massiveness of the sundeck and the ten feet high surrounding fence will cut off light and air to adjoining residents in this tightly built square.
- c. The scale of the structure is inappropriate to its location.
- d. The legitimization of deck structures fully covering small yards is likely to intensify problems with rodent control and fire safety.

30. With respect to the issues and concerns raised by the Advisory Neighborhood Commission and the opposition, as follows:

- a. The granting of the application would not be precedent setting. Every application is considered based in its individual merits and, therefore, the decision on the subject application is not of a precedential nature.
- b. The applicants acted less than diligently in ensuring that the sundeck and fence met the requirements of the Zoning Regulations and other D.C. Codes.
- c. While the proposed sundeck will not increase the lot occupancy of the site, it does require an almost 100 percent variance from the rear yard requirements.
- d. The applicants did not indicate that any alternative means of developing the rear of the property had been considered which would conform to current zoning and building regulations.
- e. The existing nonconformity of the site is not sufficient in itself to support the granting of the requested variance relief.
- f. While not at issue before this Board, the height of the fence is in excess of that permitted by the D.C. Building Code and should be brought into conformance in order to minimize its impact

on the area with regard to light and air and the scale of the neighborhood.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and conclusions of law, 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 requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity 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 lot was developed prior to the adoption of the Zoning Regulations in 1958 and is nonconforming as to lot size and rear yard, this condition is not sufficient in itself to support the granting of variance relief. The lot is developed in excess of the permitted lot occupancy and does not provide the required twenty feet rear yard at present. The addition of the sundeck, while not increasing the lot occupancy, requires a variance of approximately ninety-eight percent variance from the required rear yard. The applicants' justification for the sundeck is for security, convenience, and as a recreational area located approximately 4.5 feet above the trash drop-off point in the alley. This is not grounds to sustain an area variance. The Board further concludes that the granting of the requested variances would result in a rear yard of only 0.37 feet. To grant such relief would substantially impair 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. The applicants 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 Board concludes that it has accorded the ANC the great weight to which it is entitled. Accordingly it is hereby ORDERED that the application is DENIED.

VOTE: 3-1 (Charles R. Norris, William F. McIntosh, and Lindsley Williams 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:


CECIL B. TUCKER
Acting Executive Director
Zoning Secretariat

FINAL DATE OF ORDER:

04 SEP 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."

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