

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15438, of Arthur Hartman as amended, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that does not now meet the minimum rear yard requirements and the addition will increase the nonconformity [Paragraph 2001.3(b) and (c)], and a variance from the rear yard requirements (Sub-section 404.1) for an addition to a nonconforming single-family detached dwelling in an R-1-A District at premises 2738 McKinley Street, N.W. (Square 2308, Lot 8).

HEARING DATE: January 30, 1991 and April 10, 1991
DECISION DATE: May 5, 1991

ORDER

PROCEDURAL MATTERS:

The subject application was originally scheduled for public hearing on January 30, 1991. At the public hearing on that date, the applicant presented his case for a variance from the rear yard requirements to allow for the construction of an addition to his single-family dwelling. During the hearing, questions were raised about whether the existing property was nonconforming in that it does not presently meet the minimum rear yard requirements. The Board therefore questioned whether the correct relief was advertised for the application. Staff was requested to refer the application to the Zoning Administrator for a determination of these matters. The application was rescheduled for hearing on April 10, 1991.

By letter dated April 8, 1991, the Zoning Administrator responded to the Board's referral. Upon examination of the old records on the property, the Zoning Administrator determined that the existing building is a nonconforming structure because the lot does not meet the 25-foot minimum rear yard requirement. Also, he found that Building Permit No. B-168643 was issued on May 10, 1968 for the existing deck. Further, the plat used for the addition in 1968 indicated that what is now being referred to as a "deck" is to be a "new porch below the first floor". Finally, the Zoning Administrator stated that the Board is correct to amend the application to request a variance from 11 DCMR 2001.3(b) and (c) due to the nonconforming rear yard.

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located at 2738 McKinley Street, N.W. The property is zoned R-1-A.

2. The property is in Square 2308, located west of Rock Creek Park. The applicant's property is one of six lots located in a cul-de-sac off Utah Avenue, N.W. Each of the six lots is improved with a single-family detached dwelling.

3. The subject property is rectangular in shape and has a land area of 11,964 square feet. The northeastern side yard is 25 feet wide and the southwestern side yard measures 53 feet. The lot has an average width of 120 feet and an average depth of 91 feet.

4. The lot is developed with a two-story detached dwelling containing 3,969 square feet. The structure was built in 1939 and is made of brick material.

5. The applicant's rear yard abuts the side yard of his adjoining neighbor's property that faces Utah Avenue, N.W. There is no alley access to the rear of the lot. The topography slopes downward at the rear of the property causing the first floor of the house to be approximately five to six feet above grade. There is a deck located at the rear of the property at the first floor level with stairs to the ground level on the southwestern side of the property. The rear yard measures 22.61 feet from the deck to the property line. There is a wood fence, six feet tall, on the rear property line. Because of the slope in topography, one can see over the fence while standing on the deck.

6. The applicant proposes to enlarge his dining room and study, both of which are located on the rear portion of the house. The applicant proposes to construct an addition onto the dining room and study and to change the existing deck by building a new one-story deck with stairs to the ground level off from the dining room addition on the southwestern side of the property. The applicant also proposes to construct a second-story deck over the study addition.

7. The applicant is requesting variance relief from two provisions of the Zoning Regulations: Title 11 DCMR 404 and 2001.3(b) and (c). Section 404 requires a minimum rear yard of 25 feet in the R-1-A District, and 11 DCMR 2001 provides as follows:

2001 NONCONFORMING STRUCTURES DEVOTED TO CONFORMING USES

2001.1 The restrictions set forth in this section shall apply to a nonconforming structure devoted to a conforming use.

2001.2 Ordinary repairs, alterations, and modernization to the structure, including structural alterations, shall be permitted.

- 2001.3 Enlargements or additions may be made to the structure; Provided, that the following requirements shall be met:
- (a) The structure shall conform to percentage of lot occupancy requirements; and
 - (b) The addition or enlargement itself shall conform to use and structure requirements; and
 - (c) The addition or enlargement itself shall not increase or extend any existing, nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined.

9. The Zoning Administrator's memorandum dated April 8, 1991 stated that the new rear yard dimension will become 15.28 feet. However, the Zoning Administrator submitted another memorandum to the Board dated April 9, 1991 stating that the April 8, 1991 calculation was in error. The correct rear yard dimension will be 8.5 feet. Therefore, the applicant is seeking a rear yard variance of 17.5 feet.

10. The applicant maintains that the application meets the requirements of the Zoning Regulations with regard to uniqueness, practical difficulty, the lack of substantial detriment to the public good and the lack of substantial impairment to the intent, purpose and integrity of the zone plan.

The applicant's architect stated that the lot is wide and shallow and, therefore, it is configured differently from other lots in the area. He stated that the positioning of the house on the lot is a unique circumstance making it difficult to use the property in accord with the Zoning Regulations.

The architect testified that the addition to the dining room is needed to accommodate the large numbers of people that the applicant entertains. The architect further testified that the study is disproportionately longer than it is wide. The addition will help to bring that room into proportion and make it more useful.

11. Responding to the suggestion of the Office of Planning, the applicant stated that holly trees were planted in the rear yard as a buffer for their adjoining neighbors. The trees are now about eight feet tall and they will continue to grow. The applicant indicated that the trees are healthy and will also provide a buffer in the winter months because they are evergreens.

12. The Office of Planning (OP), by memorandum dated January 23, 1991 and through testimony at the hearing, recommended

conditional approval of the application for a rear yard variance as originally advertised. OP pointed out that the property is located in Square 2308, the boundaries of which are Oregon Avenue to east, 27th Street and Utah Avenue to the west, Military Road to the south and McKinley Place to the north. OP further noted that a recent subdivision had occurred in Square 2308. In 1989, lots 22 and 23 were created. These lots are located east of the applicant's property, and a single-family home is being constructed on each lot.

OP pointed out that the Saint John's College High School is located on a large campus directly to the south of the site. The private Catholic school and a retirement home for Army officers and their dependents (Knollwood) are the major institutional facilities located close to the site. Rock Creek Park provides scenic open space at the rear of the low density residential community.

With regard to the subject property, OP stated that the applicant is allowed to occupy 40 percent, or 4,786 square feet of the lot area. The existing lot occupancy is 3,289 square feet. Based on the proposed building plans, 314 square feet would be added to the existing footprint of the dwelling unit. As proposed, the structure would occupy approximately 30 percent of the lot.

OP stated that with the exception of the rear yard requirement, the applicant meets all of the zoning requirements. Further, the applicant reviewed various development schemes for the proposed addition, particularly since there is considerable excess property on each side of the dwelling unit. However, the addition could not be accommodated at any other location on the premises because of the structure's placement on the lot. OP pointed out that the property is wide and shallow and that it was developed 19 years prior to enactment of the Zoning Regulations. OP was of the opinion that these conditions create a practical difficulty for the owner in developing the property in accordance with the Zoning Regulations.

With regard to adverse impact, OP stated that the applicant's rear yard abuts a neighboring property owner's side yard. A wooden fence that is approximately six feet high separates the two properties. However, because the rear portion of the subject dwelling is raised by approximately five feet above grade, the sight line from the rear of the applicant's dwelling looks into the abutting neighbor's side and rear yards. OP indicated that the proposed addition will not extend beyond the building line of the existing deck and that a dawn redwood tree on the applicant's property provides some screening when it has foliage.

OP stated that the applicant would be able to see into the abutting neighbors' yards, with or without zoning relief. Accordingly, OP believes that no impacts are anticipated beyond

those that currently exist. However, OP stated that in an effort to minimize any potential adverse impacts, the applicant could provide adequate screening between the subject property and the abutting neighbors. The screening could consist of trees, shrubbery and fencing.

OP was of the opinion that granting the applicant's request would not substantially impair the intent, purpose and integrity of the Zoning Regulations. Therefore, OP recommended approval of the application provided that the appropriate buffering is provided.

13. The Office of Planning submitted a supplemental report dated April 5, 1991, to address the issues raised at the January 30, 1991 public hearing. OP acknowledged the need for a variance from sub-section 2001.3(b) and (c). OP made the following comments:

A building plat from the Surveyor's Office, dated July 12, 1938, indicates that the rear portion of the dwelling was constructed approximately 23 feet from the rear property line. The 1958 Zoning Regulations require a 25-foot minimum rear yard in the R-1-A District. The plat also shows a ten-foot wide building restricting line at the front of the property. The single-family dwelling is setback another 20 feet from the building restriction line for a total setback of 30 feet from McKinley Street, N.W.

There are three single-family homes on the east side of the 2700 block of McKinley Street, N.W. Based on topographic maps available at the Office of Planning, all of the homes were designed to have substantial setbacks from the public right-of-way.

With the addition, no new nonconformity of structure would be created. The nonconformity would not prevent the abutting neighbor to the east from receiving adequate light and air, it would not cause overcrowding of the land and it would not infringe upon the abutting neighbor's privacy.

As proposed, the rear yard would measure approximately 7.5 feet, after the addition, new deck and stair are constructed. To alleviate the potential of any increased noise and visual impacts that may affect the abutting neighbor, the existing rear yard setback should be maintained. Additionally, adequate landscaping should be provided to buffer the area.

14. Advisory Neighborhood Commission (ANC) 3G, by letter dated January 23, 1991, stated that it supports the application as long as the applicants provide appropriate screening in the form of evergreens and a fence. The ANC understands that the erection of

a nine-foot fence would have to be agreed upon between the applicant and his neighbor, and the fence would have to be located on the applicant's property.

ANC 3G noted the objections of the neighbors who reside closest to the applicant at the rear. The ANC stated that no other neighbors are affected by the applicant's proposed plans.

15. Responding to the concerns of the ANC, the applicant indicated that the existing fence would be maintained but that a three-foot extension to the top of the fence is not proposed. The applicant maintains that the trees on the site will provide adequate buffering.

16. No one appeared at the hearing to testify as a party in support of the application.

17. One of the neighbors residing at 5507 Utah Avenue, N.W. testified in opposition to the application. The opposing neighbors were also represented by counsel. The neighbors in opposition own the property that adjoins the subject property at the rear lot line. These neighbors oppose the application and the proposed construction for a number of reasons.

- A. Uniqueness and hardship. The opponents maintain that the applicant's property is not unique and that no exceptional circumstances exist. Counsel for the opponents stated that the other lots in the area have about the same dimensions as the subject lot. Counsel for the opponents also maintained that the additions could be placed on the side of the house where there is adequate space.
- B. Impact of decks. The opponents testified that the existing deck is intrusive. They believe that the additions and decks proposed will also be intrusive because they will allow the applicant to look into their property and limit their privacy. The opponents are particularly concerned with the second story deck above the study. Opponents pointed out that if the applicant creates enclosed additions at the rear of his property the intrusion will occur year round when the additions are used, rather than just in the summer when the applicant uses his existing deck. The opponents requested that the second story deck not be allowed and that the Board limit the use of the first floor deck to a passageway.

The opponents pointed out that, to preserve some of their privacy they have erected a trellis that runs along their side yard. They have a pool in the rear and they use

their rear yard a great deal. The trellis does not extend all the way to the rear therefore, the rearmost portion of their lot is left exposed and easily visible by the applicant.

- C. Buffering. The opponents maintain that they were not consulted about the applicant's landscaping plan. They believe that a nine-foot fence should be provided on the applicant's property because only providing trees will require the opponents to wait several years before the trees grow and fill in enough to provide the kind of privacy desired.
- D. Further encroachment. The opponents request that the applicant not construct the new deck any further into the rear yard than the existing deck.

18. Responding to the concerns of opposing neighbors, the applicant indicated that the property is unique in terms of its development over time and the subsequent adoption of the Zoning Regulations that made the property nonconforming. The applicant also stated that because of the location of the rooms within the house, it would not be useful to create additions on the side of the property.

The applicant stated that the architect has agreed to reduce the height of the first-floor deck to less than four feet above grade, thereby reducing the impact of this deck on the neighbors. The applicant stated that the second story deck is only before the Board because the study addition extends one foot further than is allowed. Were it not for the one foot extension, this deck would be allowed as a matter-of-right.

FINDINGS OF FACT:

The Board finds as follows:

1. The configuration and dimensions of the subject property are different from other lots nearby.
2. The location of the existing house on the subject site is different from other houses nearby.
3. The erection of a three-foot addition to the height of the fence will possibly block the sunlight and hinder the growth of trees on the lot.
4. The trees to be planted on the subject lot will be adequate to screen the neighbors from adverse impact caused by use of the additions and new decks.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking area variances to construct rear additions and decks on a single-family dwelling in an R-1-A District. The granting of a variance requires evidence of a practical difficulty upon the owner arising out of some extraordinary or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board further must find that the requested relief, if granted, will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the burden of proof established for the requested variances. The Board concludes that the property is unique and that the positioning of the dwelling on the lot creates a practical difficulty for the owner in his efforts to use the property in compliance with the Zoning Regulations.

The Board concludes that granting the variance will not be of substantial detriment to the public good. The Board further concludes that granting the relief requested will not substantially impair the intent, purpose or integrity of the zone plan.

The Board concludes that it has accorded ANC 3G the "great weight" to which it is entitled. In light of the foregoing, the Board concludes that the application is hereby **GRANTED**, **SUBJECT** to the **CONDITION** that evergreen trees and/or shrubbery shall be planted and maintained in a healthy growing condition to screen the project from the adjoining residence.

VOTE: 5-0 (Charles R. Norris, Sheri M. Pruitt, Paula L. Jewell and Carrie L. Thornhill to grant; John G. Parsons to grant by proxy).

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

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: JUN 9 1992

BZA APPLICATION NO. 15438
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PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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.

15438Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15438

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN 9 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

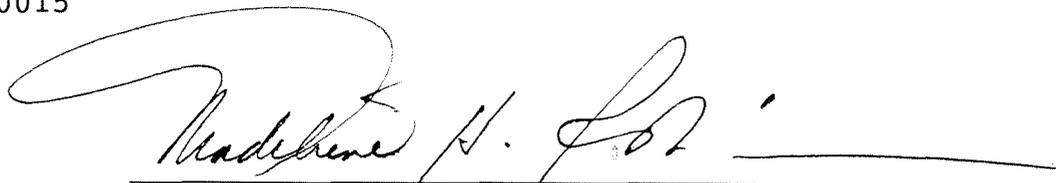
Mr. & Mrs. Arthur Hartman
2738 McKinley Street, N.W.
Washington, D.C. 20015

Robert R. Nettler, Esquire
Robins, Kaplan, Miller & Ciresi
1220 19th Street, N.W.
Suite 700
Washington, D.C. 20036

Susan Carr
5507 Utah Avenue, N.W.
Washington, D.C. 20015

John Wiebenson
1916 S Street, N.W.
Washington, D.C. 20009

Robert Diamond, Chairperson
Advisory Neighborhood Commission 3-G
P.O. Box 6252
Washington, D.C. 20015


MADELIENE H. ROBINSON
Acting Director

DATE: JUN 9 1992

15438Att/bhs