

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15493 of Susan Harris, as amended, pursuant to 11 DCMR 3107.2, for a variance from the rear yard requirements (Sub-section 404.1), for a deck addition to a single-family dwelling in an R-4 District at premises 1662 Hobart Street, N.W. (Square 2591, Lot 775).

HEARING DATE: April 17, 1991
DECISION DATE: May 1, 1991

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located at 1662 Hobart Street, N.W. It is situated on the south side of the street and it is zoned R-4.

2. This portion of Hobart Street is a long block that runs east-west from Mount Pleasant Street to Irving Street. The immediate area surrounding the site is characterized by single-family row dwellings and flats. The site is located in the Mount Pleasant Historic District.

3. The subject site is comprised of 2,505 square feet in land area and is improved with a two-story plus basement, end rowhouse. The structure is attached to another house to the east only. To the west of the property is a closed alley area that now belongs to the applicant's neighbor to the west.

4. The structure occupies 1,422.49 square feet of the lot. The average lot width is 28.47 feet. The rear yard measures 20 feet. A 15-foot wide east-west alley abuts the property to the rear. An underground garage is located to the rear of the property and is accessed by the alley.

5. The applicant is proposing to construct a deck addition to the rear of the house. The proposed deck would measure 10 feet by 15 feet, 9 inches and would be approximately 157 square feet in area. It would extend ten feet above ground level. The deck would also extend five feet into the rear yard.

6. In the original application, the applicant sought variances from the maximum allowable percentage of lot occupancy provision and the minimum rear yard requirement in accordance with the Zoning Administrator's memorandum dated December 10, 1990. By

memorandum dated March 12, 1991, the Zoning Administrator eliminated the variance from the lot occupancy provision. On March 22, 1991, the applicant submitted an amended application to request only a rear yard variance of five feet or 25 percent.

7. The applicant stated that her property is affected by extraordinary and unique conditions. She stated that the lot slopes down steeply from front to rear. This slope, she maintains, is a unique condition because most of the District of Columbia is flat. She stated that the few hilly areas have far lower housing density than Mount Pleasant and rear yard requirements do not have the same effect in those areas since the lots are larger than her lot. She further stated that in areas with similar housing density, e.g. Capital Hill, there is little or no slope, kitchen doors are only a few steps from the rear yards, and all rear yards in a given block are essentially the same elevation. As a result, rear yards are easily accessible from the main floor and privacy is provided by high fences. However, because of the slope of her property, the front entrance is approximately 20 feet above the garage floor - the lowest level of the site. The applicant requested that the Board take into account the distance between her rear yard and the rear yards across the alley from her. This distance exists as a result of the topography of her site.

The applicant stated that the property is also unique because of its shape. It is 20 feet wide at the front and 40 feet wide at the rear.

8. The applicant stated that she wishes to construct the deck to provide convenient access to the outdoors from the main living area. She stated that, presently, there is no outdoor recreation area readily available from the main living area because of the distance from this area to the rear yard. The applicant wishes to create a convenient area to sit and enjoy the outdoors or entertain friends. She stated that the deck would be more convenient for supervising young children at play and for entertaining elderly visitors.

9. The applicant stated that there are two alternative decks that could be constructed as a matter-of-right, but neither is practicable. One alternative, at the same height as the proposed deck, would present significant security concerns. This alternative would provide potential intruders access to the house through windows that are almost totally shielded from view by the house itself. In addition, the basement level rear door would be totally screened from view by the deck. With this alternative, the deck would be more visible from the alley and from the rear of houses in the 1700 blocks of Hobart and Harvard Streets.

The second alternative would provide a deck no more than four feet above grade, which would be closer to neighboring properties across the alley. It would not provide convenient access to the outdoors from the main living area, which is the primary reason for wanting to construct a deck. In addition, the space below the deck would be totally unusable, limiting the amount of space available for gardening.

The applicant stated that the front porch would not be suitable for recreation. Outdoor furniture and other items have been stolen from the front porch, which provides no privacy and is subject to noise and fumes from traffic. There is alley access directly across the street which provides a convenient turn-around for many cars. This contributes to the accumulation of exhaust fumes and lack of privacy, and apparently provides an escape route for petty thieves as well.

The applicant maintains that if the application is denied she will have to resort to one of the less desirable alternatives.

10. The applicant stated that the proposed deck would not have an adverse impact on the neighborhood or the Zoning Regulations. She stated that the elevation of the site and the existing alley effectively provide separation from neighbors to the rear. The proposed deck would only be visible to those neighbors from second floor rear windows; it would not be visible from their rear yards or first floors and it would not be readily visible from the alley.

The applicant stated that because of the configuration of the site, the neighbor to the west would not be adversely affected. At the closest point, the proposed deck would be more than 20 feet from the yard to the west. The neighbor to the east has enclosed the end of the rear porch closest to her property. As a result, the proposed deck would be visible only from the rear yard of that property and would not affect the light, air, or privacy of that property.

The applicant stated that she has discussed the proposed deck with neighbors whose properties would be visible from the deck. She submitted into the record a document which acknowledges their notice of the application and also acknowledges that they do not object to her proposal.

11. The applicant maintains that the deck will have a positive effect on the quality of life in the immediate neighborhood. This is because the deck will allow more use of the rear of the property, especially during evening hours. Use of rear yards by residents discourages use of the alleys for unacceptable or illegal purposes. The proposed deck would provide an opportunity to observe foot traffic on the stairs used for access

to Harvard Street from the alley. The increased use of the yard after dark would increase the safety of these stairs, as well as provide increased safety in adjacent areas of the alley.

12. The applicant stated that the variance requested is minimal and would have less of an impact on surrounding properties than a conforming deck.

13. The applicant expressed the view that the quality of urban life is enhanced by using available space in creative ways. Granting her application would provide an additional opportunity for such enhancement. However, denial of her application would be an incentive to abandon urban living and move to the suburbs. She pointed out that many of her neighbors have constructed decks or terraces to make the most of their limited yards.

Finally, the applicant stated that the minimal negative impact of the proposed deck on the quality of life in the community would be far less than the effect of the technical application of the Zoning Regulations.

14. By memorandum dated April 10, 1991, and through testimony at the hearing, the Office of Planning recommended approval of the application.

OP stated that the applicant is proposing to construct a rear deck at the first floor level of the property. The deck would be accessed by a staircase from the rear yard. The space beneath the deck would remain open. The proposed deck would function as an outdoor extension of the existing dwelling's dining room and kitchen.

OP stated that a 20-foot rear yard is required. Because the deck will occupy five feet of the rear yard, only 15 feet will remain. Therefore, a five-foot variance is needed.

OP pointed out that the property slopes sharply from north to south (front to rear). It is also irregularly shaped with a front yard width of 20 feet and a rear yard width of 40 feet. OP is of the opinion that the slope and irregular shape of the lot create a practical difficulty for the owner. Because of these conditions, the matter-of-right alternatives are not as practical as the one proposed.

OP expressed the opinion that the proposed deck addition would not negatively impact abutting properties in terms of light, air and the overall quality of the environment. OP stated that the proposed construction would meet all other zoning requirements for the R-4 District including lot occupancy, lot area, building height, and lot width. Thus, the proposed deck would have no significant impacts on adjacent properties.

OP is of the opinion that the requested variance is minor and that the use and design of the deck would not impair the intent, purpose and integrity of the R-4 District. Therefore, OP recommends approval of the application.

15. By memorandum dated April 5, 1991, the Department of Public Works concluded that there are no transportation impacts related to the application. Therefore, the department has no objection to the applicant's request.

16. By letter dated April 3, 1991, the Metropolitan Police Department (MPD) stated that the property is located in the Fourth District and is patrolled by Scout Car 136. The MPD further stated that it does not appear that the change proposed by this application will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Accordingly, the MPD does not oppose the application.

17. Advisory Neighborhood Commission (ANC) 1E, by letter dated April 5, 1991 and through testimony at the hearing, expressed its support for the application. The ANC representative testified that the ANC was of the opinion that the proposed deck would not adversely affect the houses in the 1600 block of Harvard Street. The ANC representative pointed out that no one at the ANC meeting came forward to oppose the application.

18. No one from the neighborhood testified in support of the application.

19. Two neighbors testified in opposition to the application. One neighbor in opposition resides at 1653 Harvard Street, N.W. She argued that the application fails to meet the requirements for granting the variance requested.

First, she maintains that the property is not unique. She stated that all of the properties from 1650 Hobart Street to the subject property have varying degrees of slope to their back yards. Except for three of the properties, none of them has a main living area level with the back yard. Like the subject property, all of these properties rely on stairs to reach the rear yard. She stated that the evidence provided by the applicant could apply to any of the homes in the 1600 - 1700 blocks of Hobart Street.

Second, the opposing neighbor argued that granting the application will adversely affect surrounding properties. The properties behind the subject property are located on Harvard Street. The Hobart Street houses are located at the crest of a hill, therefore, the Harvard Street properties are located "below" the houses on Hobart Street. Also, the alley between the two streets is very narrow, bringing the lots even closer together.

The neighbor stated that to allow the deck addition to extend into the rear yard will reduce the privacy of the property owners on Harvard Street. This is because placing a deck closer to the alley will enable the applicant to see the entire rear yard area of properties on Harvard Street. This neighbor indicated that her property is located behind 1650 and 1652 Hobart Street, five houses away from the subject property. She stated that from her rear porch on ground level, she can see into the rear yard of the subject property. She can also see the applicant's back door. The opposing neighbor maintains that the proposed deck would be visible from the first floor levels of homes on at least part of Harvard Street, including her own property.

This neighbor was also concerned about the effect that noise emanating from the subject property will have on nearby properties. She maintains that with the deck being located so high in the air, sounds from use of the deck will be easier to hear.

20. Another neighbor, residing at 1657 Harvard Street also expressed opposition to the deck. He stated that the deck would be visible from his back porch, his basement door and from his dining room and kitchen windows.

He was also concerned about the level of noise that comes from the site. He stated that the applicant seems to have a lot of young people visiting in the summer. Consequently, there is a lot of noise. While it is not offensive, it is loud enough to keep him from listening to his television in his living room while the doors are open. He stated that he is forced to keep his doors closed and his air conditioner running if he wishes to have any quiet in the summer.

This neighbor disagrees with the applicant's view that the proposed deck will help make the area more secure by allowing her to increase the use of her property. The neighbor maintains that he has never had a problem with crime in the area. He believes that the applicant's garage will provide her with adequate security because she can enter the garage, close the door, pass through another door to the stairway which is behind a locked, chain-link door.

Finally, the opposing neighbor agreed with the view that the property is not unique. Therefore, he believed that the application should be denied.

21. In response to the issue of noise, the applicant's adjacent neighbor at 1660 Hobart Street testified that there is no problem with noise coming from the applicant's property. She indicated that she lives in a group house with five residents.

They occasionally have parties that get loud at times. If there is a problem with noise it is probably coming from 1660 not 1662, the applicant's property.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. Most of the properties on Hobart Street slope at the rear.
2. The subject proposal would facilitate the applicant's view of the rear of many properties on Harvard Street.
3. The applicant has designed alternatives to the proposed deck that meet the zoning requirements.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record the Board concludes that the applicant is seeking an area variance to construct a rear deck addition to property located in the R-4 District. Granting such a variance 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 application 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 not met this burden of proof. The Board concludes that the subject property has a similar topography to most other properties on Hobart Street. Most of these properties have a slope at the rear, therefore the subject property is not unique.

Having concluded that the uniqueness test has not been met, the Board finds it unnecessary to address the remaining requirements related to substantial detriment to the public good and impairment to the zone plan. However, the Board is of the opinion that the applicant has alternative solutions that will enable her to achieve her goals as a matter-of-right.

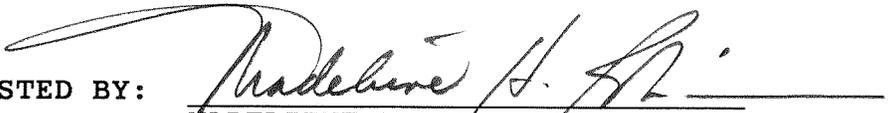
The Board has accorded ANC 1E the "great weight" to which it is entitled.

In light of the foregoing, the Board concludes that the application is hereby DENIED.

VOTE: 3-1 (Sheri M. Pruitt, Paula L. Jewell and Charles R. Norris to deny; William L. Ensign opposed to the motion; Carrie L. Thornhill, not voting, not having heard the case).

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

ATTESTED BY:



MADALIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: JAN 6 1993

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."

15493Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15493

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JAN 6 1993 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:

Susan Harris
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MADELIENE H. ROBINSON
Acting Director

DATE: JAN 6 1993

15493Att/bhs