

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15507 of Marion Cieplak, Jr., pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure [Paragraph 2001.3(a),(b) and (c)], a variance from the allowable percentage of lot occupancy requirements (Sub-section 403.2), a variance from the rear yard requirements (Sub-section 404.1), a variance from the width of an open court requirements (Sub-section 406.1), and a variance from the side yard requirements (Sub-section 405.9) for an addition to an existing nonconforming single-family dwelling in an R-2 District at premises 409 Savannah Street, S.E., (Square 5971, Lot 34).

HEARING DATE: May 8, 1991
DECISION DATES: July 10 and July 24, 1991

FINDINGS OF FACT:

1. The property which is the subject of this application is located on the south side of Savannah Street, S.E., between 4th and 5th Streets, S.E., one block from Martin Luther King Jr. Avenue. It is known as 409 Savannah Street, S.E., and it is in an R-2 District.

2. The subject site is a rectangular lot which contains 1,250 square feet of land area. It is 25 feet wide and 50 feet deep.

3. The surrounding area is developed with detached and semi-detached single-family dwellings. The subject site was developed in the early 1900s with a one bedroom with attic single-family dwelling. The existing structure has been vacant and deteriorating for a number of years. At the present time, the structure is in poor condition. The roof has been removed and the rear portion of the structure has been razed and replaced with new foundations.

4. Development of the site is nonconforming with regard to lot occupancy, rear yard, side yard and width of open court requirements. In the R-2 District, a lot occupancy of 40 percent is allowed. (11 DCMR 403.2) The subject structure occupies 70.88 percent of the lot. A 20-foot rear yard is required. (11 DCMR 404.1) A 1.5 foot rear yard is provided. A side yard of 8 feet is required on each side of the structure. (11 DCMR 405.5) The side yards provided are 1.0 foot and 0.7 feet. The width of open court is required to be four inches per foot of height of the court, but not less than 6 feet. (11 DCMR 406.1) The existing open court has a width of only 3 feet.

5. The applicant proposes to restore the structure and replace the attic with a second floor. The plans do not involve extending the footprint of the present structure. The second story will only be 3 feet higher than the attic.

6. On November 7, 1990, the applicant was issued building permit number 49010819 allowing for the alterations and addition as proposed. After inspection of the initial work, the applicant was informed that the Fire Code requires the rear wall of the structure to be made of cinderblock. The applicant had begun to replace the rear wall in an effort to comply with the Fire Code when he was informed that this constituted a change in the footings, and Board of Zoning Adjustment approval would be needed to proceed.

7. In his application before the Board, the applicant is requesting a variance from Section 2001.3 (a), (b) and (c) to allow an addition to an existing non-conforming structure. He is also requesting variances from the maximum allowable percentage of lot occupancy requirements, the minimum rear and side yard requirements, and the minimum width of open court requirement.

8. The applicant stated that his lot is very small in comparison to nearby lots. Because of its size, the lot cannot be made to comply with the Zoning Regulations. Therefore, any alteration to the property would require variance relief. The applicant testified that the renovation is needed because a one bedroom house is not very practical in present times. He also expressed a desire to improve the appearance of the site and eliminate the eyesore caused by the dilapidated structure.

9. The Office of Planning (OP), by memorandum dated May 1, 1991, recommended approval of the application. OP Stated that the size of the existing structure is small and inadequate. OP noted that the existing nonconformities are a consequence of the small size of the lot. It was pointed out that the height of the proposed alteration would slightly increase the height of the structure. The footprint of the structure would remain the same and the existing nonconformities would not be increased.

OP stated that the lots adjoining the site are considerably larger in size and the structures on these lots have larger than required yards. Also, the existing structure is sufficiently separated from other residential structures in this square, therefore, the increased height of the subject structure would not have adverse impacts on the adjoining properties. In the opinion of the Office of Planning, the proposed addition would not adversely impact the surrounding area, nor would it impair the purpose and intent of the zone plan for the city. Accordingly, the Office of Planning recommends approval of this application.

10. By letter dated April 17, 1991, the Metropolitan Police Department stated that it does not appear that the proposed change will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Therefore, the Department does not oppose the application.

11. By memorandum dated April 30, 1991, the Department of Public Works (DPW) pointed out that parking is not required for the proposed request and none is being provided by the applicant. From a transportation perspective, DPW believes that the subject request will have a negligible impact on the local transportation system. Therefore, DPW has no objection to the proposed use.

12. A neighbor residing at 3301 - 5th Street, S.E., expressed a number of concerns with regard to the application and his proposal. She stated that her property adjoins the subject lot at the rear. The subject lot is very small and the new structure appears to occupy an additional three feet at the rear of the site. She is concerned that the structure will exceed, rather than retain, the original footprint.

The neighbor was also concerned that because the dwelling at the site was neglected over a long period of time, the new addition will not be structurally sound. She indicated that very little remains of the original house and that actually a whole new structure must be built.

The neighbor testified that the existing condition of the lot presents a danger to the area children who play on the lot.

This neighbor stated that she would favor a sound structure built on the same footprint as the original building.

13. Another neighbor who lives next door to the site at 401 Savannah Street, S.E., questioned the soundness of a second floor that is added to a house intended to be a one-story structure. She agreed, however, that the proposal would be better than what currently exists on the site.

14. The Board required the applicant to meet with the surrounding neighbors to inform them of his plans and to resolve any conflicts they have with regard to his proposal. The Office of Planning representative was to participate in this meeting and report back to the Board.

15. In a Supplemental Report dated June 12, 1991, the Office of Planning (OP), stated that the existing structure has been vacant and deteriorated for a number of years. The impact of the structure has raised concerns from the community and particularly from the immediate neighbors. Complaints were made in this regard to the Department of Consumer and Regulatory Affairs (DCRA). The

site was inspected by DCRA, and the owner of the property was advised to correct the building code violations and make the building safe. On October 10, 1989, the owner was issued Building Permit No. 48901849 to make repairs and alterations to the structure. However, the work did not proceed in a timely fashion and complaints from the neighbors continued. Subsequently, the applicant applied for a new building permit to remodel the existing structure and add a second floor. The new building permit, which is the subject of this application, was issued on November 7, 1990. The applicant started the project and learned that a new foundation was needed at the rear portion of the structure to satisfy the Building Code requirements. The new foundation deviated slightly from the old foundation. Two field checks were made. The second field check indicated that this deviation ranged from a minimum 0.7 feet to a maximum of 1.35 feet. This deviation triggered the need for the application before the Board. OP notes, however, that the error was made to the detriment of the applicant, and not the neighbors, in that the new footprint is smaller than the previous footprint. The Office of Planning favors the new footprint over the old footprint because it would render the resulting structure less nonconforming.

OP further stated that at the present time, the existing structure is in a precarious condition. The roof of the structure has been removed in anticipation of completing the project. The rear portion of the structure has been razed and replaced with foundations which are in question with respect to their dimensions. The siding on the three existing walls is in poor shape and needs to be replaced. The structure needs to be made secure and safe. The applicant cannot proceed with the work until the stop-work order is lifted.

OP noted that the applicant is agreeable to constructing an essentially new house at the subject site in accordance with the plans submitted, and he has indicated to the Office of Planning his willingness to complete the project as soon as possible.

The Office of Planning therefore recommended approval of the application with the conditions that:

1. The building plans, as submitted, be modified to reflect the footprint of the actual foundation which is now in place; and
2. The construction of the project be completed within a period of six months from the approval of the Board, to prevent adverse impacts on public health and safety in the immediate area.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking variances to allow an addition to an existing nonconforming structure. 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 can be granted without substantial detriment to the public good and that it 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 relief. The Board concludes that the small size of the lot is a unique condition which creates a practical difficulty for the applicant in restoring the property in compliance with the Zoning Regulations.

The Board is of the opinion that the proposed renovation will greatly improve the appearance and safety of the site and contribute to the housing stock of the neighborhood. The Board therefore concludes that the variances can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan.

Accordingly, it is hereby **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The footprint of the proposed building shall be modified to reflect the dimensions of the existing foundation.
2. The construction of the project shall be completed within six months of the Board's Order to prevent adverse impacts on the public health and safety in the area which may result from delays in construction.

VOTE: 4-0 (Paula L. Jewell, Charles R. Norris and Carrie L. Thornhill to grant; Tersh Boasberg to grant by proxy; Sheri M. Pruitt not voting, not having heard the case).

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

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ATTESTED BY:



EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

SEP 23 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT 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.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION/APPEAL NO. 15507

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order in this application/appeal dated 23 1991 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Virginia L. Major
3301 5th Street, S.E.
Wash, D.C. 20032

Annie B. White
401 Savannah Street, S.E.
Wash, D.C. 20032

Dorothy M. Weaver
3306 5th Street, S.E.
Wash, D.C. 20032

A handwritten signature in black ink, appearing to read "E. L. Curry", written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: SEP 23 1991