GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15772 of Edith R. Miller, pursuant to 11 DCMR 3107.2, for a variance from the rear yard requirement (Subsection 404.1) for a deck addition to a single-family dwelling in an R-1-A District at premises 4230 Fordham Road, N.W. (Square 1481, Lot 4).

HEARDING DATE: January 13, 1993
DECISION DATE: February 3, 1993

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located on the west side of Fordham Road between Van Ness Street and 50th Street, N.W. It is known as premises 4230 Fordham Road, N.W. and it is zoned R-1-A.

2. The subject lot consists of 6,338 square feet in land area. It is improved with a two-story, single-family, detached dwelling with an attached one-car garage. The footprint of the existing dwelling totals 1,340.98 square feet, or 21.15 percent in lot occupancy. The lot has an average width of 80 feet and an average rear yard depth of 31 feet. Both side yards of the property exceed the eight-foot wide minimum side yard requirement of the R-1-A zone district. The site does not abut a public alley.

3. The applicant proposes to construct a deck addition at the rear of the site. The proposed addition would be 38 feet wide (the width of the house) and would extend 18 feet from the rear of the house for a total area of 684 square feet. The applicant proposes to surround the visible sides of the deck with a six-foot high sapling fence and with evergreen plantings.

The required rear yard setback for a single-family house in a R-1-A District is 25 feet. The current rear yard setback of the property ranges from 31 feet to 33 feet. With the proposed deck, a rear yard of 13 feet would be provided. Therefore, the applicant is seeking a rear yard variance of about 11 feet or 44 percent.

4. The applicant maintains that the requirements for an area variance are met. The applicant's architect testified that the topography is a unique condition for this lot. He stated that the lot slopes about ten feet from the southern to the northern portion of the lot. There is a paved concrete patio in the lower rear corner, making up approximately one-third of the rear yard. The middle third slopes very steeply and is covered with ivy and pachysandra. The final third of the yard is the upper portion which is fairly level and covered with grass.

The architect testified that to gain access to the upper portion of the back yard, the applicant must take a narrow path through the kitchen then through a door in the back of the garage. Access to the lower level of the rear yard is through a door at the basement level. The dining room and sitting room on the back of the house have windows but there is no access to the rear from this area because the ground is more than a story below the first floor level. The architect testified that these conditions create a practical difficulty for the owner in making reasonable use of the property. The applicant stated that locating the deck at the first floor level with access through doors off from the dining room is the best proposal. He stated that other options are not feasible because they entail constructing the deck on more than one level. This would require the applicants to use stairs, an inconvienience for them in their later years of life.

5. The applicant maintains that the location of the house on the lot creates a practical difficulty. He maintains that if the house was designed or situated differently on the lot, he could construct a deck that is not more than four feet above grade (in compliance with 11 DCMR 2503.2). Section 2503.2 of the Zoning Regulations provides that a deck would not be included in the setback measurement if it is not more than four feet above the grade at any point. The applicant pointed out that approximately one-half of the proposed deck (384 square feet) is within the 25-foot rear yard setback area, and is more than four feet above grade. Therefore, variance relief is needed for this portion of the deck.

6. The applicant stated that no portion of the proposed deck would be visible from the street and the fence and evergreen plantings would make the deck invisible to neighboring property owners. The applicant noted that his neighbors support the project. Therefore, the applicant maintains that the proposed deck will not be of substantial detriment to the public good.

7. By memorandum dated January 6, 1993 and through testimony at the hearing, the Office of Planning (OP) recommended denial of the application. OP state that while there is a slope in the topography of the site, there is no practical difficulty for the owner in making reasonable use of the property because of this condition. OP stated that, the existing dwelling was built to take advantage of the slope and to maximize the benefits associated with the rear yard's topography. In fact, the yard has been regraded to provide a connected upper and lower portion, the lower part (existing patio) having access to the dwelling's lower floor. OP stated that the applicant could build a six-foot wide rear deck along the back of the dwelling opposite and above the lower rear yard as a matter of right. In addition, a deck considerably wider than six feet could be built in the upper rear yard as a matter of right because it would be less than four feet above grade. The

Office of Planning does not agree with the applicant that the full use and enjoyment of the rear yard is not possible with the existing configuration. Furthermore, the Office of Planning does not find that a true practical difficulty exists for the applicant which deprives the applicant of reasonable use of the property.

OP stated that the proposed deck would occupy a substantial portion of the rear yard, resulting in a rear yard depth which would be 12 feet less than the required 25 feet. Because of the proposed deck's mass and excessive intrusion into the existing rear yard, the Office of Planning believes that this situation would cause substantial adverse impacts on surrounding properties and would severely impair the intent, purpose, and integrity of the R-1-A zone district regulations. The rear yard's topography does not in itself justify such an excessive depletion of the yard's existing open space.

8. Responding to statements made by the Office of Planning, the applicant stated that, to his knowledge, the property was not regraded to create the existing topography. He stated that the lower yard was a rough unusable area with large roots protruding from the ground. He stated that he does not know how the former owners used this area but that the house could not have been designed around the existing patio because he and his wife put in the patio. He also testified that the basement was not finished, that he finished and furnished the basement to make use of the patio.

9. Advisory Neighborhood Commission (ANC) 3D submitted a report dated November 12, 1992. The ANC voted to support the application based on the support expressed by nearby neighbors.

10. No other persons or parties appeared at the hearing to testify in the application.

FINDINGS OF FACT:

Based on the evidence of record the Board finds that the following:

1. The applicant can construct a smaller deck on the site that allows for reasonable use of the rear yard but does not require zoning relief.

2. The Advisory Neighborhood Commission does not base its report one issues and concerns relevant to the criteria upon which the Board must decide the application.

3. The subject site does not suffer from topographic conditions that would preclude reasonable use of the rear yard in conformance with the zoning regulations.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing evidence of record, the Board concludes that the applicant is seeking an area variance to allow the construction of a deck addition to a single-family dwelling in an R-1-A 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 condition. 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 failed to meet this burden of proof. The Board is of the opinion that the topographical condition of the property does not create a practical difficulty for the owners in making reasonable use of the property. The Board concludes that a deck addition that will allow for use of the rear yard can be constructed as a matter of right.

The Board concludes that the amount of the variance is excessive and the size of the deck as proposed is of a size that to grant the application would substantially impair the intent, purpose and integrity of the zone plan for the R-1-A District which requires a rear yard set back of 25 feet.

The Board concludes that it has accorded "great weight" to the written report of ANC 3D.

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

VOTE: 5-0 **(Sheri M. Pruitt, Maybelle Taylor Bennett, Paula L. Jewell, Angel F. Clarens and Carrie L. Thornhill to deny).**

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

ATTESTED BY: Reginald C. Lyons for
MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: JUL 19 1994

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."

15772Order/TWR/bhs