

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15843, of Donald P. Tuttle and Judith A. Kennedy, as amended, pursuant to 11 DCMR 3107.2, a variance from the rear yard requirements (Subsection 404.1) for a deck addition to a detached single-family dwelling in an R-1-B District at premises 3038 Newark Street, N.W. (Square 2082, Lot 37).

HEARING DATES: July 28, 1993; February 9 and April 13, 1994  
DECISION DATES: October 6 and 14, December 1, 1993 and May 4, 1994

DISPOSITION: The Board DENIED the application by a vote of 3-1 (Craig Ellis, George Evans and Laura M. Richards to deny; Angel F. Clarens opposed to the motion)

FINAL DATE OF ORDER: May 25, 1995

RECONSIDERATION ORDER

The Board DENIED the application by its final order dated May 25, 1995. On June 9, 1995, the Board received from the applicant a motion for reconsideration of the decision in the application. The Board considered the motion at the public meeting of September 6, 1995. Three of the Board members who heard the application, Mr. Ellis, Mrs. Richards and Mr. Clarens were present to consider the motion. Mrs. Hinton did not hear the application, however, she read the record and participated in the consideration of the motion.

Title 11 DCMR 3332.4 provides that: "A motion for reconsideration shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion and the relief sought." The applicants maintain that there are four areas in which the Board's decision is erroneous.

On the issue of uniqueness, the applicant maintains that the Board did not receive from opponents graphic evidence to support their contention that the property is not unique. While the opponents' evidence was lacking, the Office of Planning (OP) submitted a map and the applicant submitted maps, plats, photographs, drawings and tables to support the position that the subject property is unique in terms of lot depth, lot width and topography. The applicants testimony supported the position that the subject lot is the only one without a deck. The applicants argued that by finding no uniqueness, the Board overlooks the crucial confluence of factors in the case.

By letter dated June 15, 1995, counsel for opponents to the application who reside at 3314 Ross Place, N.W., filed a statement in opposition to the motion. With regard to uniqueness, they argued that sufficient evidence was introduced to demonstrate that the property is similar to other residential properties in terms of its size, the terrain and placement of improvements. This evidence included Baist real estate maps. The opponents also stated that the applicants' residence is not the only property without a deck. There are other residences like the applicants' residence that have porches as part of the original construction.

The applicants argued that the Board erred on the issue of practical difficulty because if they were to construct a matter of right deck four feet above ground, they would lose use of that part of their yard beneath the deck. Further, there would be limitations on the amount of usable deck space after considering landings and stairs and the need to address the 50 percent rear yard restriction.

The opponents maintain that the applicants have not adequately explained their practical difficulty, given the size of the lot and their proposed needs. They argued, inter alia, that the applicants could build a deck as a matter of right that is larger than the existing deck. Therefore, they face no practical difficulty as a result of the strict application of the Zoning Regulations.

The applicants stated that in deciding the issues of detriment to the public good and impairment to the zone plan, the Board appears to have been persuaded by neighborhood opposition rather than applying any clear standards to the tests. In the applicants' view, the Board's conclusion raises the question as to why the proposed deck fails the test where a four-foot matter of right deck could be built even though it could protrude into 50 percent of the rear yard and would be closer to the London and Stern property. The applicants pointed out that there was evidence showing that there are no structures directly behind the subject premises, other than trees, for 150 feet.

Finally, the applicants cited procedural problems. The applicants stated that the Advisory Neighborhood Commission (ANC) raised matters at the hearings in an untimely fashion resulting in a serious and time-consuming disruption of the hearing process. The applicants argued that this was a disorderly, sometimes chaotic manipulation of administrative procedures which was a major intervention that distracted the Board from its objective to decide if the variance tests had been met. Further, the history of the case with its multiple hearings and voting deadlocks, does not lend itself to easy concentration on the actual issues.

Responding to the applicants' final argument, the opponents stated that notwithstanding the applicants' characterization of the Board's responsibilities and its manner of conducting the proceedings, it is clear from the Board's decision that it acted responsibly and rendered a thoughtful and accurate decision. Therefore, they believe that the applicants have presented no cognizable basis for the Board to reconsider its decision.

Other parties in opposition, who reside at 3042 Newark Street, N.W., submitted a letter dated June 20, 1995 in opposition to the motion. They expressed agreement with the views expressed by the other opposing parties related to this motion. They stated that they attended all the hearings held on this case and believe that the Board acted responsibly and fairly at all times. In fact the Board made a special effort to consider the case as though the existing deck had not been built. These opposing parties believe that the decision of the Board in denying the application was the correct one.

Upon consideration of the record in the application, the final order, the motion for reconsideration and the responses, the Board concludes that it did not err in deciding to deny the application. The applicants' motion restates their view of the evidence, but does not provide a basis for reconsideration. Therefore, the Board concludes that the motion for reconsideration is hereby **DENIED**.

VOTE: 4-0 (Laura M. Richards, Susan Morgan Hinton, Angel F. Clarens and Craig Ellis to deny).

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

ATTESTED BY:

  
MADELIENE H. ROBINSON  
Director

FINAL DATE OF ORDER: OCT 6 1995

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."

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15843

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on OCT 6 1995 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:

Donald P. Tuttle  
Judith A. Kennedy  
3038 Newark Street, N.W.  
Washington, D.C. 20008

Harry and Ruth Montague  
3042 Newark Street, N.W.  
Washington, D.C. 20008

Richard Nettler, Esquire  
Robins, Kaplan, Miller & Ceresi  
1801 K Street, N.W., Suite 1200  
Washington, D.C. 20006-1301

Peter and Susan Hornbostel  
3030 Newark Street, N.W.  
Washington, D.C. 20008

Albert and Jennifer Hamilton  
3034 Newark Street, N.W.  
Washington, D.C. 20008

Peter Espenschied  
3414 Lowell Street, N.W.  
Washington, D.C. 20016

Jeremy Bates  
3419 Lowell Street, N.W.  
Washington, D.C. 20016

J.R. Evans  
3046 Newark Street, N.W.  
Washington, D.C. 20008

Jeremy C. Bates, Chairperson  
Advisory Neighborhood Commission 3C  
2737 Devonshire Place, N.W.  
Washington, D.C. 20008

Paul London  
Paula Stern  
3314 Ross Place, N.W.  
Washington, D.C. 20008

A handwritten signature in cursive script, reading "Madeliene H. Robinson".

MADELIENE H. ROBINSON  
Director

DATE: OCT 6 1995