

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15921 of Mr. and Mrs. Per Nguyen, pursuant to 11 DCMR 3107.2, for a variance from the rear yard requirements (Subsection 404.1) to construct an addition and deck for a detached single-family dwelling in an R-1-B District at premises 4661 Kenmore Drive, N.W. (Square 1368, Lot 43).

HEARING DATES: March 16 and May 18, 1994
DECISION DATE: May 18, 1994 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

The property which is the subject of this application is located at 4661 Kenmore Drive, N.W. The lot is rectangular in shape and contains 5,438 square feet of land area. A 15-foot wide building restriction line is located at the front of the property. A private driveway and garage are also located at the front of the property. The property slopes significantly downward toward the rear. A 15-foot wide paper alley abuts the northern or rear portion of the property, providing no possibility of access to the site from the rear.

In 1985, the property was developed with a four-bedroom single-family dwelling with two stories at the front and three stories at the rear. There is also a basement level. A wooden deck is located at the rear of the dwelling on the first floor, below which there is a patio at the basement level.

The existing structure occupies 38 percent of the lot, while the rear yard measures 25 feet. The side yards measure eight feet and 10 feet wide, respectively.

The site is zoned R-1-B. The R-1-B District permits matter of right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, a minimum rear yard depth of 25 feet, and minimum side yard widths of eight feet each.

The applicants are seeking a variance from the minimum rear yard requirement to construct an addition and deck at the rear of the dwelling. The addition would be built where the existing deck is located and a new deck would be added onto the addition. The new construction would extend eight feet into the required rear yard, leaving a rear yard of 17 feet. Therefore, a rear yard variance of eight feet (or 32 percent) is needed.

ISSUES AND ARGUMENTS:

1. Whether there exists a unique or exceptional situation or condition related to the property that creates a practical difficulty for the owners in making reasonable use of the property?

The applicant stated that the proposed addition includes two additional bedrooms, a full bathroom and results in a substantial increase in the size of the living room.

The applicant stated that there currently are four family members living in the house. The addition is needed to accommodate two more family members who will come to live with the applicants. The applicants maintain that denial of the application and strict compliance with the Zoning Regulations will place a hardship on their family.

The applicant testified that there is a severe drainage problem at the rear of the site as a result of the topography. Consequently, it is unusable for any purpose except to support an addition to the building.

The Office of Planning (OP) filed a report dated March 9, 1994, recommending denial of the application. OP stated that there are conditions at the site that are different from the adjacent properties. For example, the property's lot size and dimensions are different from the properties that are located within the square. However, the shape of the lot, the existing on-site topographic conditions, and the lack of alley access are similar conditions to other properties that are located close-by. The Office of Planning does not find that the size and dimensions of the lot prohibit the property from being reasonably developed. OP finds that these characteristics do not create a practical difficulty for the applicants. The existing on-site conditions do not justify building into the required rear yard.

2. Whether allowing the addition would have an adverse impact on the public good?

The applicant testified that they discussed the proposal with their neighbors who live to the rear and on both sides of the property. These neighbors are on record as strongly supporting the proposed construction through the submission of correspondence.

The applicant also noted that ANC 2E initially opposed the application but later withdrew its opposition by letter dated May 3, 1994. The ANC did not provide a basis for its withdrawal.

With regard to area impacts, OP stated that the R-1-A and R-1-B Districts require a greater rear yard setback (25 feet) than the other residential districts. The rear yard is required open

space. In the R-1-A and R-1-B Districts, the rear yard zoning requirement is intended to assist in promoting a suitable environment for family life, and in protecting quiet residential areas that are developed with single-family detached dwellings. Additionally, the Zoning Regulations intend to provide minimum spacing between residential structures. If each residential structure that is located close to the site is permitted to build into the rear yard, the development of the area would be substantially different from the existing pattern. Thus, OP believes that this application would cause substantial detriment to the public good.

3. Whether granting the application will impair the zone plan?

With regard to the zone plan, OP stated that the site is not large enough to accommodate the addition that the applicants are proposing. A building restriction line that restricts development on approximately 795 square feet of the lot's land area is located at the front of the property. However, this on-site condition existed when the dwelling was constructed in 1985. The site, without the addition, meets the minimum rear yard zoning requirement. If the addition and deck are constructed as proposed, a conforming structure would become nonconforming. This proposal, therefore, would substantially impair the intent, purpose, and integrity of the Zoning Regulations and Map.

FINDINGS OF FACT:

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

1. There is nothing unique or exceptional about the property that would prevent the owners from making reasonable use of it.

2. The problems associated with drainage at the rear of the site do not interfere with reasonable use of the property.

3. The issues associated with family accommodations are personal and not related to the property in a manner contemplated by the Zoning Regulations.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and evidence of record, the Board concludes that the applicant is seeking an area variance to construct a rear addition and deck in an R-1-B 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 substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicants have not met this burden of proof. The Board concludes that the applicants have failed to demonstrate that they will suffer a practical difficulty in making reasonable use of their property as a result of some unique or exceptional condition arising out of the property itself. Because the application is unable to meet the burden of proof on the first "test for variance relief, the Board finds it unnecessary to address the remaining tests related to detriment to the public good and impairment to the zone plan.

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

VOTE: 5-0 (Craig Ellis, George Evans, Laura M. Richards, William B. Johnson and Angel F. Clarens to deny).

THIS ORDER WAS ISSUED AS A PROPOSED ORDER PURSUANT TO THE PROVISIONS OF D.C. CODE SECTION 1-1509(d). THE PROPOSED ORDER WAS SENT TO ALL PARTIES ON APRIL 21, 1997. THE FILING DEADLINE FOR EXCEPTIONS AND ARGUMENTS WAS MAY 19, 1997. NO PARTY TO THIS APPLICATION FILED EXCEPTIONS OR ARGUMENTS RELATING TO THE PROPOSED ORDER, THEREFORE, THE BOARD OF ZONING ADJUSTMENT ADOPTS AND ISSUES THIS ORDER AS ITS FINAL ORDER IN THIS CASE.

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

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: _____

MAY 29 1997

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



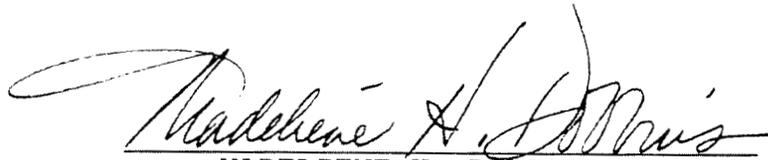
BZA APPLICATION NO. 15921

As Director of the Board of Zoning Adjustment, I certify and attest that on MAY 29 1997 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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MADELIENE H. DOBBINS
Director

DATE: MAY 29 1997