

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15951 of Dr. Joshua Holloway and Major Mary Lowe, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now does not meet the minimum rear yard requirement [Paragraph 2001.3(b) and (c)], and a variance from the rear yard requirements (Subsection 404.1) for an addition to a nonconforming structure in an R-4 District at premises 1300 Fairmont Street, N.W. (Square 2861, Lot 55).

HEARING DATE: May 18, 1994
DECISION DATES: June 1 and July 6, 1994

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is located on the southwest corner of Fairmont and 13th Streets, N.W. The site is known as 1300 Fairmont Street, N.W. (Square 2861, Lot 55).

2. The subject lot is rectangular in shape. It is approximately 4,217.5 square feet in land area, 42 feet in width, and 100.4 feet deep. It is developed with a four story plus basement rowhouse type structure.

3. The property is located in an R-4 District which requires a minimum lot area of 1,800 square feet and a rear yard of at least 20 feet. While the subject property exceeds the minimum lot area requirement, the rear yard is only eight feet deep, therefore the structure is nonconforming as to rear yard.

4. The subject structure had been used as an eight-unit apartment house until it was purchased by the applicants. The regulations for the R-4 District do not permit this multiple unit use. Therefore, the property is also nonconforming as to the use.

5. The applicants propose to make extensive alterations and additions to the existing corner structure to convert it from an eight-unit apartment house (two units per floor) to a flat (a single-family residence with a basement apartment for a live-in maid or nanny). The R-4 District allows flats as a matter of right. The applicants are also proposing to install an elevator in the existing structure to provide easy floor-to-floor access.

6. With regard to the subject application, the applicants seek to enlarge the kitchen by creating an addition to the rear of the structure. Such an addition requires a variance to allow an addition to a nonconforming structure and a rear yard variance.

7. Advisory Neighborhood Commission (ANC) 1B did not submit a report on this application.

ISSUES AND ARGUMENTS

1. Whether the property is unique or faces an exceptional situation or condition?

The applicant maintains that the property is unique because it is a corner lot with building restriction lines on the Fairmont Street and the 13th Street frontages.

The Office of Planning (OP), by report dated May 11, 1994, recommended approval of the application. OP stated that the way that the property is developed and the characteristics imposed on this lot because it is a corner lot give rise to an exceptional condition for this site.

2. Whether there is a unique or exceptional situation or condition which creates a practical difficulty in complying with the Zoning Regulations?

The applicant testified that the kitchen at issue is part of what was an efficiency apartment and it is too small to serve as the main kitchen for a single-family. The applicant noted that the kitchen is at the rearmost portion of the house and that the dining room is in front of and adjacent to the kitchen. The applicant testified that the kitchen cannot be expanded toward the front without reducing the size of the dining room. The applicant expressed the desire to keep the size of the dining room as it is.

The applicants' plans indicate that on the side of the kitchen to the west is the party wall of the structure. The applicant's neighbor resides in the adjacent structure. Therefore, the applicants cannot expand to the west.

The plans also indicate that a bathroom is adjacent to the kitchen on the east side, therefore the kitchen cannot be expanded in that direction.

The applicants maintain that the only reasonable solution is to enlarge the kitchen by adding to the rear of the house.

The Office of Planning stated that to expand the kitchen into the dining room area would create other problems in terms of circulation and distribution of functions within the structure.

OP stated that while the lot area exceeds the minimum required for the R-4 District, the configuration of the house and the building restriction lines create a practical difficulty for the owner in expanding the kitchen without the need for zoning relief.

The adjacent neighbor who resides at 1302 Fairmont Street N.W. testified in opposition to the application. She is of the view that the applicants do not face a practical difficulty arising out of the uniqueness of their property. She testified that the kitchen in her home is the same size as the applicants' kitchen and she has entertained from 30 to 200 people in her home on occasions. The size of her kitchen did not present a problem.

3. Whether allowing the addition will be of substantial detriment to the public good?

The opposing neighbor testified that the addition will isolate her property, obstruct her view and block her air and sunlight. She testified that there is a cinderblock wall between her property and the applicants' property. There is a stockade fence on top of this wall. This wall/fence structure rises to 13 feet in height from the rear yard surface. The neighbor pointed out that the fence blocks her property off and the proposed addition will be on the first floor level and will rise above the fence another five or six feet.

The opposing neighbor testified that she has a deck at the rear of her house and since the fences were constructed, people of questionable character have used the area behind the houses for improper purposes. They have used her yard for dumping and people have stolen objects off of her porch. These people are able to carry on in this fashion because no one can see what they are doing. Finally, the opposing neighbor questioned the legality of the fences because of their height.

The applicants testified that while the wall/fence is 13 feet tall at the rear, it is not so tall when measured from the grade of the lot at the front of the site. The applicants noted that the rear yard is below grade and is used for parking. The applicants testified that the cinderblock wall was built with a permit, but the stockade fence was not. The applicant expressed a willingness to remove the fence to alleviate its impact on the adjacent neighbor. However, the neighbor stated that removing the fence would not help because the addition would be taller than the fence.

The Board requested that the applicants and the neighbor meet after the hearing and try to agree on a resolution to the issues. The Board also requested that the parties submit revised plans and statement of the issues resolved, if any.

With regard to adverse impact, OP noted that there is an apartment building across the foot alley behind the subject property and the adjacent structures. OP stated that neighbor's rear patio at 1302 Fairmont Street faces south. This is where the brightest, more intense sunlight shines in. With the addition, there would be some blockage when the sun first rises on the east,

but at about 9:00 or 10:00 in the morning, that impact would be gone because the sun is moving in an east-west arch and the shadow from the apartment building would take over at that point. He stated that because of the shadow created by the apartment building, the neighbor's patio would only have sun in the middle of the summer when the sun is really high on the horizon. In September or October, when the sun starts to drop, there will be very little light on that patio or any other patio that faces in the south direction because of the proximity of the apartment building.

Further, with regard to area impacts, OP stated that the addition would be partially shielded from the view of the residents on the adjoining property to the south by the existing brick wall and the stockade fence located at the property line. The impact on the privacy to the south would be minimal. The proposed addition would be in line with the facades of other structures facing 13th Street, N.W. in the same block. Thus, the architectural integrity of the block would not be impacted adversely.

4. Whether granting the relief will impair the intent, purpose or integrity of the Zoning Regulations?

The applicants pointed out that there are other houses in the neighborhood that have rear additions. They stated that the proposed addition is not incongruous or inconsistent with any other rear additions in the neighborhood.

The applicants' architect testified that the structure had nine units. By converting the structure to a two-unit flat, the applicant is reducing the density of this use in the neighborhood.

The Office of Planning noted that the proposed alterations and additions to the existing structure are designed to allow its use as a flat which is a matter of right use in an R-4 District. This proposal will bring the use of the structure into compliance with the Zoning Regulations.

In addition, OP noted that with the proposed addition, the structure would not exceed the maximum allowable lot occupancy for the R-4 District. Therefore, OP believes that to approve the proposal would not impair the intent, purpose and integrity of the Zoning Regulations. Accordingly, OP recommended approval of the application.

A letter dated June 22, 1994 was submitted into the record by Columbia View Neighbors on behalf of 12 residents of Fairmont, 13th and Girard Streets. The association expressed support for the application and expressed the following views:

It does not appear from these plans that the addition will significantly obstruct any adjacent properties in any fashion

that is out of the ordinary for 1300 Fairmont block residents. Residential usages are mixed in this area and some of us have single family row houses adjacent to large apartment buildings which do significantly alter the environment. The changes proposed for 1300 Fairmont are modest in impact, by comparison, and will in fact contribute to the rehabilitation of a residence that does much to herald the rebirth of this vigorous urban residential community.

FINDINGS OF FACT:

Based on the evidence of record, the Board makes the following factual findings:

1. The location of the subject structure on a corner lot is a unique condition.
2. The structure is set back from the street frontages in compliance with building restriction lines imposed on 13th Street and Fairmont Street.
3. Because of the building restriction lines, the addition can only be placed at the rear of the structure.
4. The dining room would have to be reduced to expand the kitchen without an addition.
5. The kitchen is currently too small for single-family use.
6. The light and air flowing to the adjoining neighbor's property is blocked to some degree by the applicants' fencing and the apartment located across the alley.
7. The proposed addition will not substantially detract from the flow of light and air to the adjacent neighbor.
8. The applicants will reduce the height of the addition by one foot six inches.
9. The legality of the applicants' wall/fence structures is not a matter properly before this Board.
10. The applicants' proposal to convert the structure from a multiple unit structure to a flat will reduce the intensity of the use at the site.
11. The Board could not consider issues and concerns of the ANC.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicants are seeking area variance relief to allow the construction of an addition at the rear of their property.

The granting of such variances 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 granting 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.

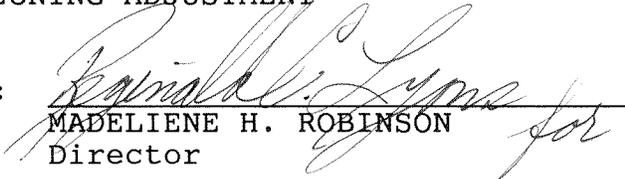
The Board concludes that the applicant has met this burden of proof. The Board concludes that the property is unique and that the applicants face a practical difficulty which arises out of the uniqueness of the property itself. The Board is of the opinion that the variance relief can be granted without substantial detriment to the public good and without impairing the intent, purpose or integrity of the zone plan.

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

VOTE: 3-2 (Craig Ellis, William B. Johnson and George Evans to grant; Angel F. Clarens and Laura M. Richards opposed to the motion).

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

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: _____

FEB 22 1995

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

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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, 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



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As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on FEB 22 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:

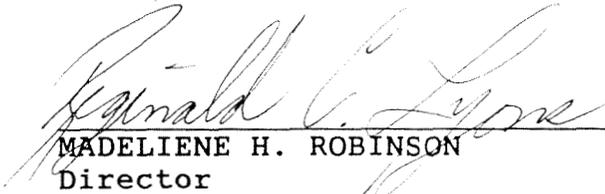
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MADELIENE H. ROBINSON
Director

DATE: FEB 22 1995