

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16058 of Oliver and Lucinda Wilkins, pursuant to 11 DCMR 3107.2 for a variance to allow an addition to an existing nonconforming structure [Paragraph 2001.3 (b) and (c)] and a variance from the side yard requirements (Subsection 405.9) for the construction of an addition as a carport to a semi-detached single-family dwelling in an R-2 District at premises 3922 R Street, SE (Square E-5519, Lot 3).

HEARING DATE: JULY 19, 1995

DECISION DATE: JULY 19, 1995 (BENCH DECISION)

ORDER

SUMMARY OF EVIDENCE:

1. The property that is the subject of this application is located on the north side of R Street SE, between Alabama Avenue and 40th Street SE. The site is rectangular in shape and measures approximately 2,180 square feet in lot area, with a width of 27 feet and a depth of 80 feet. The existing lot is nonconforming with respect to the lot area and lot width. The site is developed with a semi-detached dwelling which constitutes an end unit of a triplex (three units in a row), a matter of right use in an R-2 district if constructed prior to 1958. The side yard of this semi-detached dwelling is paved with concrete and is currently being used for parking. The applicants are proposing to construct a carport in this location.

2. The property abuts an alley in the rear; however, topographical conditions inhibit vehicular access to the property from the alley. There is also a difference in grade along R Street SE, between the site and the adjoining property to the west. The side yard of the adjoining property is three feet higher than the side yard at the site and is secured by a stone retaining wall. The adjoining property is developed with a semi-detached dwelling with a side yard which appears to be approximately eight feet in width.

3. The character of the area surrounding the site is primarily residential with a mix of detached, semi-detached and triplex dwellings. However, the triplexes are predominant. Commercial development serving the neighborhood is located approximately three blocks to the southwest of the site at the intersection of Alabama Avenue and Pennsylvania Avenue SE.

4. The site is located in an R-2 zone district. This zone permits matter-of-right development of single-family detached and semi-detached dwelling units with a minimum lot area of 3,000 square feet, a minimum lot width of 30 feet, a maximum lot occupancy of 40 percent, and a maximum height of 3 stories/40 feet.

5. The applicants are proposing to construct a carport addition to a nonconforming, semi-detached, single-family dwelling located in an R-2 District. The proposed carport would measure approximately 29.5 feet in length, 8.7 feet in width, and 9 feet in height. It would be constructed with an aluminum frame and roof. The carport would eliminate the existing side yard. The applicants stated that the carport would serve a dual purpose: to provide protection to a handicapped person during inclement weather conditions, and to accommodate the social needs of the applicants' family. However, the need for protection from the elements is somewhat lessened due to the fact that the handicapped person is no longer wheelchair bound, as she was when this application was first submitted.

6. The applicants contend that a practical difficulty exists because of the topography of the rear yard, the fact that the dwelling is the only one that is level with the street (thereby demonstrating uniqueness), and that any alternative solutions to accommodate the needs stated in number four above would create an economic hardship on the applicants.

7. The applicants further contend that the proposed relief would not serve to create a substantial detriment to the public good, as their driveway is three feet lower than that of the neighbor who would be most affected, and therefore, there would be no interference with the neighbor's light and air. Further, the integrity and purpose of the zone plan would not be affected.

8. The D.C. Office of Planning (OP) offered evidence to support its recommendation that the variances be denied, as it found that the property was neither unique, nor was it affected by a practical difficulty. While OP sympathizes with the plight of the handicapped individual for whom the carport was being constructed, the plans, as submitted, would not successfully address the needs of the applicants as indicated due to the narrowness of the existing side yard. The OP further concluded that the proposed construction would adversely impact the area by restricting light and air due to the elimination of the entire side yard at the premises, and further, that the intent, purpose, and integrity of the zone plan would be impaired because the construction would eliminate the required side yard and increase the nonconformity of the existing structure.

9. ANC 7B did not submit its report on time, but the applicants testified that the ANC indicated that they held a vote and unanimously agreed to support the proposal.

10. The neighbor of the applicants who would be most affected testified that she is in favor of the construction.

FINDINGS OF FACT:

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

1. The subject property is located on a nonconforming lot.

2. The property is unique in that it is the only one which contains a driveway. However, this aspect of uniqueness does not create a practical difficulty which would justify the building of a carport.
3. The essential purpose of the carport is for family functions.
4. Other alternatives are available to the applicants in order to achieve their purported goals (some of which may or may not create an economic hardship) beyond the proposed structure.
5. The nature of the neighborhood in which the applicants live should lead them to expect not to have a carport at all.

CONCLUSIONS OF LAW:

Based on the foregoing findings of fact and evidence of record, the Board concludes that Oliver and Lucinda Wilkins, by their application, are seeking an area variance pursuant to 11 DCMR 3107.2 to allow an addition to an existing nonconforming structure [Paragraph 2001.3(b) and (c)] and an area variance from the side yard requirements (Subsection 405.9) for the construction of an addition as a carport to a semi-detached single-family dwelling in an R-2 District at premises 3922 R Street, SE (Square E-5519, Lot 3).

The granting of such variances require a showing through substantial evidence that the application can be granted when by reason of an exceptional situation, the strict application of the regulation would result in a practical difficulty upon the owner of the property, and that the relief can be granted without a substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board finds that despite the uniqueness of the property, no practical difficulty results from the uniqueness. The Board further finds that while the public good would not be substantially affected, there exists the possibility that the intent of the zone plan would be substantially affected by the proposed relief.

Economic hardship is not a proper basis for the approval of an area variance.

The Board concludes that the applicants have not met the burden of proof for both variances.

The Board concludes that it has accorded ANC 7B the "great weight" to which it is entitled.

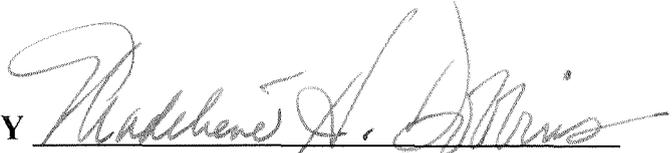
Based on the foregoing, the Board **ORDERS** that this application is **DENIED**.

VOTE: 3-1 (Craig Ellis, Angel F. Clarens and Susan Morgan Hinton to deny; Laura M. Richards opposed to the motion).

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."

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