

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 16079 of Mr. and Mrs. Haskell Small, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now exceeds the lot occupancy requirements and does not meet the minimum rear and side yard requirements [Paragraph 2001.3(a) and (c)] for a second floor addition to an existing nonconforming single-family structure in an R-1-B District at the premises 3220 44th Street, N.W., (Square 1606, Lot 61).

HEARING DATE:           October 11, 1995  
DECISION DATE:         November 1, 1995

ORDER

SUMMARY OF EVIDENCE:

1. The subject property is located in an R-1-B District at the southwest corner of the intersection of 44th and Macomb Streets, N.W.

2. The lot has 50 feet of frontage on Macomb Street and 85.44 feet of frontage on 44th Street. It has a total area 4272 square feet.

3. The lot is improved with a two story detached single-family dwelling known as 3220 44th Street. Because the site fronts on two streets, the front of the lot may be on either street. For zoning purposes, the Macomb Street side has been designated as the front of the lot.

5. In May 1980 by Application No. 13226, the Board granted approval for the Applicants to construct an addition to the dwelling to connect it with an existing accessory building located at the rear of the dwelling. The approved connection between the dwelling and rear accessory building resulted in the creation of one building under the Zoning Regulations, which in turn gave rise to the nonconformity of the structure as to lot occupancy and side and rear yard requirements.

6. The Applicants now propose to repair a leaking roof over the first floor of the dwelling, by enclosing the parapet area over the first floor. The Applicants have tried unsuccessfully for years to repair the leaking roof by patching and tarring the leaking area. It appears that the only effective way to stop the leaking is to enclose the parapet. The Applicants presented several alternative plans to the Board, all of which would result in a de minimis amount of additional living area beyond that of an existing 70 square foot closet on the second floor. The Applicants

preferred alternative, known as Plan A, would create a net addition of approximately 98 square feet beyond the closet area referred to earlier.

7. The Applicants' proposed enclosure of the parapet could normally be constructed as a matter of right and not require Board approval. However, as confirmed by the Zoning Administrator in a letter to the Board dated October 26, 1995, the granting of the previous area variance in 1980 resulted in the creation of a nonconforming structure and consequently an area variance is required for any addition to the roof, whether habitable or not, pursuant to Section 2001.3(a) of the Zoning Regulations.

8. The D.C. Office of Planning by report dated October 4, 1995 and by testimony at the public hearing recommended denial of the application because the Applicants had not demonstrated that any practical difficulty existed sufficient to justify the granting of the requested relief. The Board does not concur with the Office of Planning and finds, as noted in Paragraph 7, that the granting of the previous area variances in 1980 created the practical difficulty from which the Applicants now seek relief.

9. Advisory Neighborhood Commission 3D, by letter dated September 13, 1995, indicated its unanimous support for the variance relief requested.

10. No one appeared in support of or opposition to the application.

**FINDINGS OF FACT:**

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

1. The Board's prior approval in 1980 of BZA Application No. 13226 created a nonconforming structure.

2. The Zoning Administrator has determined that the nonconformity of the structure requires a variance under Paragraph 2001.3(a) of the Zoning Regulations.

3. The proposed improvements to the structure cannot be made without variance relief.

4. The Board does not concur with the report of the Office of Planning and finds that a practical difficulty does exist as noted in Paragraph No. 7 of the Summary of Evidence.

5. The Board agrees with the recommendation of Advisory Neighborhood Commission 3D.

6. The Applicants have unsuccessfully attempted to repair the leaking roof since 1980.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the requested area variance requires the showing of some exceptional condition of the property which creates a practical difficulty for the owners. The Board concludes that the granting of the former area variances in 1980 created a nonconforming structure, which as the Zoning Administrator confirms, gives rise to the need for an area variance to enclose the roof. Other methods of repair by the Applicants over the years have not been successful and the enclosure appears to be the only effective way to stop the leaking. Therefore, the Board concludes that the Applicants have met their burden of proof with respect to the existence of a practical difficulty.

The Board further concludes that it has accorded to the Office of Planning and the Advisory Neighborhood Commission the "great weight" to which they are entitled. The Board concludes that a practical difficulty does indeed exist and that the enclosure can not be constructed as a matter of right as confirmed by the Zoning Administrator. The Board also concludes that the requested relief can be granted without 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 Maps. It is therefore ORDERED that the application is GRANTED.

VOTE: 4-1 (Maybelle Taylor Bennett, Laura M. Richards, and Susan Morgan Hinton to grant; Angel F. Clarens to grant by absentee vote, and; Craig Ellis opposed to the motion).

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

ATTESTED BY:



MADELIENE H. DOBBINS  
Director

FINAL DATE OF ORDER:

JAN 29 1996

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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.

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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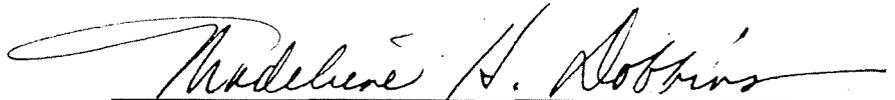
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As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JAN 29 1996 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Marion Guggenheim, Chairperson  
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Washington, D.C. 20016

  
MADELIENE H. DOBBINS  
Director

DATE: JAN 29 1996