

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16084 of Mira N. Marshall, as amended, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now exceeds the allowable lot occupancy requirements and will increase the nonconformity [Paragraph 2001.3(a) and (b)] a variance from the lot occupancy requirements (Subsection 403.2), a variance from the minimum rear yard requirement (Subsection 404.1), and a variance from the minimum width of the open court requirements (Subsection 406.1) for an addition to a nonconforming single-family row structure in an R-4 District at premises 2041 Rosemount Avenue, N.W. (Square 2618, Lot 128).

HEARING DATES: January 1, 1996 and March 20, 1996
DECISION DATE: March 20, 1996 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

1. The subject site is located in Square 268 in the Mount Pleasant Historic District, in the northern most section of Ward 1 and close to the Rock Creek Park. Square 2618 is bounded on the north and west by Rock Creek Park, on the east by Pierce Mill Road and on the south by Klinge Road.

2. The site contains 1,536 square feet of land area. Its width is 20 feet and its depth, on average, is 77 feet. The subject lot slopes downward from front to rear. The dwelling was built similar to the other dwellings in the block to take advantage of the contour of the land. A 20-foot wide public alley is located at the rear of the site.

3. The site contains a two-story plus basement structure that was built in 1923. The building's gross floor area is 1,926 of space.

4. The site and the structure are both nonconforming. Accordingly, area variance relief is required to permit an addition to an existing structure that now exceeds the allowable lot occupancy requirements and will increase the nonconformity [Subsection 2001.3(a) and (b)], a variance from the lot occupancy requirement (Subsection 403.2), a variance from the minimum rear yard requirement (Subsection 404.1), and a variance from the minimum width of open court requirement (Subsection 406.1) of the Zoning Regulations. These variances are required to permit the construction of a new 10-foot high wooden deck off the rear of the house.

5. The applicant is proposing to convert the existing porch on the first floor of the house into a new sunroom. The applicant also proposes to construct a new 10-foot high wooden deck at the rear of the house adjacent to the sunroom on the first floor.

6. The proposed project does not meet the minimum rear yard requirement of the Zoning Regulations. A minimum rear yard depth of 20-feet is required. The applicant is proposing to provide a rear yard depth of 6.17 feet, a variance of 13.83 feet (69.2 percent) is required.

6. The existing lot contains 1,536 square feet of land area, whereas 1,800 square feet is required by the Zoning Regulations. The nonconforming lot is deficient by 264 square feet.

7. Maximum lot occupancy for the site is 60 percent or 922 square feet. The building's existing footprint is 974 square feet. The proposed deck would add 146 square feet to the existing footprint, making the lot's total occupancy 1,120 square feet. The project would therefore exceed the lot occupancy requirement by 198 square feet or approximately 13 percent. The applicant's proposal will cover 79 percent of the property.

8. One neighbor who lives at 2025 Rosemont Avenue offered support for the applicant.

9. Advisory Neighborhood Commission (ANC) 1E, in its letter of January 4, 1996, supported the application, stating the following findings:

- * The proposed changes are consistent with the historic character of the neighborhood and have been approved by the local historic review committee.
- * That, although the proposed changes exceed the minimum open-court requirements of the District, there are many similar variances nearby and the proposed construction, a deck, does not unduly intrude on neighboring space as might a more elaborate structure.
- * ANC-1E is aware of no objections to the proposed construction and finds it consistent with what others have done in similar situations in the neighborhood.

10. The Office of Planning (OP), in its memorandum dated March 13, 1996, recommended denial of the application. OP concludes that the site is too small to accommodate the proposed

deck. Furthermore, OP finds that: 1) there is no practical difficulty existing at the site to support the excessive relief that is being requested; 2) the property is too small to accommodate the proposed project; 3) the addition would increase the structure's nonconformity; 4) negative impacts would be created if this application is approved because of its excessive lot occupancy, and; 5) the proposal would substantially impair the intent, purpose and integrity of the Zoning Regulations.

FINDINGS OF FACT:

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

1. There are several exceptional conditions associated with the property. Three of the four variances the applicant is seeking arise from the unusually small size of the lot. If the lot were as large as the average lot size in the square, there would be no need for a variance relief in order to construct the deck. The average size of the 47 lots in the square is 2,263 square feet. The subject lot is 1,536 square feet. This is significantly smaller than the average size. In addition, the rear of the lot drops off toward the public alley, resulting in little usable area in the yard. As a result of the topography, the deck must be more than 4 feet off the ground to align with the main level of the house. If the height of the deck were less than 4 feet, three out of four requested variances would no longer be required. The court width variance is needed only because the deck is not constructed from lot line to lot line. A wider deck would not require a court variance.
2. The size, shape and topography of the lot are different from the majority of neighboring properties. The townhouse is part of a row of thirteen houses that were all built at the same time. The subject lot is the third smallest of all the lots in the row. Furthermore, the lot is not rectangular due to the angle of the rear lot line. If the rear yard were deeper or the lot were of a more regular configuration, variance relief would not be required. In addition, since the house is nonconforming as to lot occupancy, variance relief would be required for any enlargement or addition to the house regardless of its size.

3. Many of the properties in the immediate vicinity of the site have rear decks, including decks on each of the properties that abuts the subject site.
4. There is no opposition of record to the application from any affected neighbors.
5. The size, shape and topography of the applicant's lot is unique with regard to the vast majority of the neighboring properties. The house is part of a row of 13 houses that were all built at the same time. The applicant's lot is the third smallest of all the lots in the row. There would be no need for variance relief if the applicant's rear yard were deeper and the lot were of a more regular configuration. In addition, since the house is nonconforming as lot occupancy, the applicant would require a variance relief for any enlargement or addition to the house, regardless of its size.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record and the findings of fact, the Board concludes that the applicant is seeking area variances, the granting of which 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 size, shape or topographical conditions. The Board, further, must find that the relief requested could be granted without substantial detriment to the public good and that it will not substantially impair the intent, purpose and integrity of the zone plan. The applicant demonstrated numerous extraordinary and exceptional conditions associated with the properties. Three of the four requested variances arise from the unusually small size of the lot. In addition, the topography of the lot gives rise to the need for three of the four requested variances. Furthermore, the existing nonconformity of the house as to lot occupancy would create a need for variance relief for any enlargement or addition to the house regardless of the its size. For these reasons, the Board finds that the size, shape and topography of the lot, combined with the property's existing nonconformity as to lot occupancy, creates an exceptional condition that results in practical difficulties in the strict application of the Zoning Regulations.

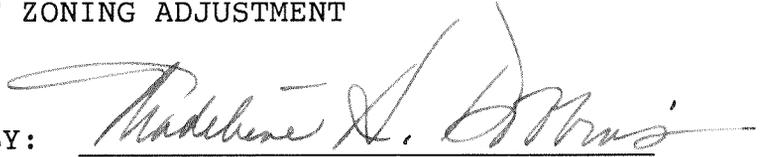
The Board, therefore, concludes that the applicant has met the burden of proof that there exists an exceptional or extraordinary condition related to the property which creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent

and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board, therefore, ORDERS the APPROVAL of the application.

VOTE: 3-1 (Jerrily R. Kress, Sheila Cross Reid and Angel F. Clarens, to grant; Susan Morgan Hinton opposed to the motion; Laura M. Richards not present, not voting).

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

ATTESTED BY:



MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: MAR 28 1997

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 TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16084

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAR 28 1997 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

Allison C. Prince, Esquire
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Chairperson
Advisory Neighborhood Commission 1E
P.O. Box 43529
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A handwritten signature in cursive script, reading "Madeliene H. Dobbins".

MADELIENE H. DOBBINS
Director

Date: MAR 28 1997