

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16467 of Mr. and Mrs. Salter, pursuant to 11 D.C.M.R. § 3107.2, for a variance from Subsections 403.2 and 404.1 of the Zoning Regulations relating to percentage of lot occupancy and minimum depth of rear yard requirements, to allow the construction of a second story addition to a single-family dwelling in an R-4 District at premises 1011 Maryland Avenue, N.E. (Square N-962, Lot 3).

HEARING DATE: June 2, 1999
DECISION DATE: June 2, 1999

DECISION AND ORDER

PRELIMINARY MATTERS:

The applicants are Emma L. Salter and her husband. The Salters are represented in these proceedings by their agent, Keith D. Preddie, a permit facilitator. Pursuant to 11 D.C.M.R. § 3107.2 (1995),¹ the Salters filed an application on March 30, 1999, with the Board of Zoning Adjustment (Board) for a variance from 11 D.C.M.R. §§ 403.2 and 404.1 (1995), relating to percentage of lot occupancy and minimum depth of rear yard requirements. The Salters are seeking this variance to add a second story rear addition to their single-family row dwelling.

By memoranda dated April 8, 1999, the Office of Zoning advised the Deputy Zoning Administrator, the Office of Planning, and Advisory Neighborhood Commission (ANC) 6A, the ANC for the area within which the subject property is located, of the application.

The Board scheduled a public hearing on the application for June 2, 1999. Pursuant to 11 D.C.M.R. § 3317.3, the Office of Zoning mailed Mr. Preddie, the owners of all property within 200 feet of the Salters' property, and ANC 6A notice of the hearing. Notice was also published in 46 D.C. Reg. 3496 (Apr. 16, 1999). Mr. Preddie submitted an affidavit of posting, stating that on May 18, 1999, he placed zoning posters on the front of the property in plain view of the public.

¹ The Board's rules of practice and procedure were amended and renumbered effective October 31, 1999. The amendments do not affect this application. See 11 D.C.M.R. § 3102.2, 46 D.C. Reg. 7853 (Oct. 1, 1999). To conform to the citations used in the Salters' application, all citations to the Board's rules are to the rules as published in 11 D.C.M.R. ch. 31 and 33 (1995).

On June 2, 1999, the Board held a public hearing on the application. The Board heard testimony from Mrs. Salter and Mr. Preddie. There were no reports from the ANC 6A or from any government agency. No persons testified in support or opposition to the application. At the conclusion of the hearing, the Board, by a 4-0 vote, denied the application.

FINDINGS OF FACT:

1. The premises that are the subject of this application, 1011 Maryland Avenue, N.E., are in an R-4 zoning district. The applicants' dwelling is a single-family, two-story, row dwelling.
2. The applicants are seeking a variance from 11 D.C.M.R. §§ 403.2 and 404.1, for relief from the percentage of lot occupancy and the minimum depth of rear yard requirements for purposes of constructing a second story rear addition.
3. Under Subsection 403.2 of the Zoning Regulations, a row dwelling in an R-4 zoning district may not occupy more than 60 percent of its lot.
4. Under Subsection 404.1, a rear yard with a minimum depth of 20 feet must be provided for each structure located in an R-4 district.
5. Mrs. Salter resides at the subject premises. She intends to use the addition to provide space for equipment and a walk-in shower for use in caring for her elderly mother.
6. The proposed addition would be 20 feet wide by 8 feet long. It would extend almost all the way to the lot line. As a result, the dwelling would occupy nearly the entire lot and there would be no rear yard.
7. Mr. Preddie stated that the lot is small and that there is essentially no rear yard. The construction permit application for the proposed addition indicates that the dwelling occupies 93 percent of the lot. Mr. Preddie acknowledged, and the Board finds, that the existing dwelling is a nonconforming structure that does not meet the lot occupancy and rear yard minimum depth requirements.
8. The Board finds that the subject lot is not unique. It is surrounded by similar two-story row dwellings. The adjacent lots are similar in size, with similarly placed dwellings that exceed the lot occupancy requirements and extend into their rear yards.
9. The Board finds that there is no testimony or evidence in the record that would show that the strict application of Subsections 403.2 and 404.1 would result in "peculiar and exceptional practical difficulties" due to unique conditions of the property, as required by 11 D.C.M.R. § 3107.2.

10. The Board finds that there is no testimony or evidence in the record that would show that relief can be granted from Subsections 403.2 and 404.1 “without substantially impairing the intent, integrity, and purpose of the zone plan as embodied in the Zoning Regulations and Map,” as required by 11 D.C.M.R. § 3107.2.

CONCLUSIONS OF LAW AND OPINION:

The Board is authorized under the Zoning Act of 1938, 52 Stat. 797, as amended, D.C. Code § 5-424(g)(3) (1994 repl.), to grant variances. The Salters applied under 11 D.C.M.R. § 3107.2 for a variance from the lot occupancy and rear yard requirements of 11 D.C.M.R. §§ 403.2 and 404.1 to construct a second story addition on their single-family row dwelling. The notice requirements of 11 D.C.M.R. § 3317 for the public hearing on the Salters’ application have been met.

The application, which seeks relief from lot occupancy and rear yard requirements, requests an area variance. To meet their burden of proof under Subsection 3107.2 for an area variance, the Salters must demonstrate that, by reason of exceptional narrowness, shallowness or shape of their lot or by reason of exceptional topographical or other extraordinary or exceptional conditions of their lot, the strict application of Subsections 403.2 and 404.1 will result in peculiar and exceptional practical difficulties. *See Monaco v. District of Columbia Board of Zoning Adjustment*, 409 A.2d 1067, 1072 (D.C. 1979). Under Subsection 3107.2, the Salters must also show that a variance 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 Map.

The Board concludes that the Salters have not met their burden of proof under Subsection 3107.2 for the requested variance. First, the Salters have not demonstrated that their property is exceptional or unique. The adjacent properties are similar in size, with similarly situated structures that exceed the lot occupancy and rear yard requirements.

Second, the requested variance would allow the Salters to extend their dwelling close to the lot line and to occupy the entire rear yard. The variance would essentially eliminate the applicable lot occupancy and rear yard zoning restrictions, thereby impairing the intent, purpose, and integrity of the R-4 zone plan.

Moreover, as acknowledged in the hearing, the existing dwelling is an existing nonconforming structure in that it exceeds the lot occupancy and rear yard requirements. The Zoning Act of 1938, 52 Stat. 798, as amended, D.C. Code § 5-423 (1994 repl.), prohibits the enlargement of a nonconforming use, except upon such terms and conditions as the Zoning Commission may authorize in the Zoning Regulations. *See Monaco*, 409 A.2d at 1071.

The Zoning Regulations allow additions to a nonconforming structure pursuant to 11 D.C.M.R. § 2001.3 (1995) as follows:

Enlargements or additions may be made to the structure; Provided, that the following requirements shall be met:

- (a) The structure shall conform to the percentage of lot occupancy requirements;
- (b) The addition or enlargement itself shall conform to use and structure requirements; and
- (c) The addition or enlargement itself shall not increase or extend any existing, nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined.

The existing structure does not comply with the percentage of lot occupancy requirements, and the proposed addition would increase the existing, nonconforming aspects of the structure. The proposed addition does not meet the requirements of Subsection 2001.3 with respect to nonconforming structures, and would thus impair the intent, purpose, and integrity of the zone plan as expressed in the Zoning Regulations.²

The affected ANC did not submit a written report to the Board, as provided in Section 3307 of the Zoning Regulations. The Board is therefore unaware of any concerns that that ANC 6A may have had with respect to this application, and unable to afford ANC 6A the great weight to which it is entitled.

For the reasons stated above, the Board concludes that the applicants have not met their burden of proof. It is hereby **ORDERED** that the application be **DENIED**.

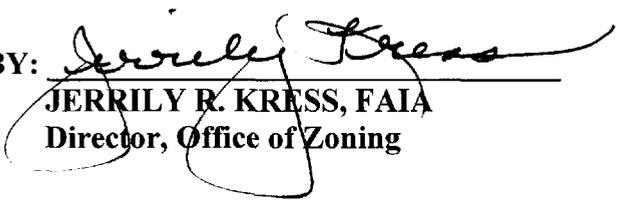
VOTE: 4:0 (Sheila Cross Reid, Betty King, Jerry H. Gilreath, and Anthony J. Hood to deny).

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

² The Board may grant a variance from Subsection 2001.3, provided the statutory criteria for a variance are met. *See Monaco*, 409 A.2d at 1071. The Salters did not request a variance from Subsection 2001.3, and therefore did not seek the complete zoning relief required for their proposed addition. If the Salters had applied for a variance from Subsection 2001.3, they would have had to demonstrate that the criteria for the variance were met. These are the same criteria as the criteria for the requested lot occupancy and rear yard variance. As explained in this Decision, the Board concluded that the Salters' property was not unique and that a variance would impair the intent, purpose, and integrity of the zone plan by completely removing the R-4 lot occupancy and rear yard zoning requirements. Thus, even if the Salters had requested relief from Subsection 2001.3, under the facts and circumstances of this case, the Board could not have granted a variance to allow the proposed addition.

Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR - 9 2000

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 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO SUBSECTION 3125.6".

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, 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



APPLICATION NO. 16467

As Director of the Office of Zoning, I hereby certify and attest that on MAR - 9 2000 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment 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:

Emma L. Salter
1011 Maryland Avenue, N.E.
Washington, DC 20002

Michael Johnson
941 North Capital St., N.E.
Washington, D.C. 20002

Keith D. Preddie
3925 Georgia Avenue, N.W.
Washington, DC 20011

Darryl L. Walker, Chairperson
Advisory Neighborhood Commission 6A
St. James Parish
1839 D Street, N.E., #2
Washington, DC 20002

ATTESTED BY:


A handwritten signature in cursive script, appearing to read "Jerrily R. Kress", is written over a horizontal line.

JERRILY R. KRESS, FAIA

Director