

In BZA application No. 18654, the applicants are requesting a special exception to replace an existing rear deck and add a second lower deck below the first floor joists of the main floor. The subject property has a steep grade sloping away from the house in the rear yard. The lower deck is not a structure for zoning purposes because it is constructed below the first floor joists.

The following BZA precedent and transcripts demonstrate the Board's long-standing understanding that the construction of a deck in the rear yard below the first floor joists is not a "structure" and does not count for lot occupancy or rear yard setback, as defined in section 11-199 (definition of building area excludes "portions of a building that do not extend above the level of the main floor of the main building, if placed so as to not obstruct light and ventilation of the main building or of buildings on adjoining property.")

At the public hearing on February 3, 2004, when application No. 17087A was considered, the BZA addressed structures below the first floor joists. Commissioner May, on page 23 lines 15-23, said that "In other words, it seemed to me that because of the slope, that this didn't fit the normal mold for extending the structure into the rear yard of the property, and because it was all below the first floor or the main floor of the building that a lot of the rules that would otherwise kick in don't, like the lot occupancy is not affected by a structure that is below the level of the main floor." See Exhibit A. In its decision the BZA specifically rejected the Zoning Administrator's conclusion that the subject property required a variance, finding that the special exception was available because the construction was below the first floor joists of the main floor and therefore did not count for lot occupancy. See Exhibit B.

At the public hearing on December 3, 2002, when application No. 16956 was considered, the BZA again addressed construction below the first floor joists. Helpfully, the BZA commissioners discussed the rule that construction below 4 feet does not count as a structure, as well as the fact that construction below the first floor joists does not count as a structure either. They concluded that construction below the first floor joists is an independent factor that removes a structure from lot occupancy considerations, separate and apart from the 4 foot rule. Specifically, on page 15 at lines 2-10, Commissioner Pruitt said that because the new deck is "also below the first floor level, on two counts it doesn't count as lot occupancy and therefore rear yard setback is not required or rather it doesn't impinge upon it." See Exhibit C. In fact, as Commission May observed on page 17-18, the structure was likely built below the first floor joists to avoid any zoning problems initially.

Also, the Board's 1994 decision in application No. 15955 makes the same point about construction below the first floor joists. In considering a deck addition to a single family row house, on page 2, the opinion states "The Zoning Administrator's approval was based upon his long-standing ruling in approving hundreds of similar decks, that such open unroofed sundecks could be constructed without regard to the twenty-foot rear yard requirements of section 3304.1 of the zoning regulations as long as the deck was open, unroofed, and below the level of the first floor joists." See Exhibit D.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18654
EXHIBIT NO. 27

Board of Zoning Adjustment
District of Columbia
CASE NO. 18654
EXHIBIT NO. 27

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY,

FEBRUARY 3, 2004

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Geoffrey Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
DAVID A. ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Acting Secretary
BEVERLY BAILEY	Office of Zoning
JOHN NYARKU	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

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OPENING REMARKS:

Geoffrey Griffis 4

MELVA AND IDRIYS ABDULLAH

APPLICATION NO. 17106:

Clifford Moy 5

COMMENTS: 9

VOTE: 10

33 PST LLC

APPLICATION NO. 17047:

Clifford Moy 10

COMMENTS: 14

VOTE: 17

WOODLAND-NORMANSTONE NEIGHBORHOOD ASSOCIATION

BZA APPEAL NOS. 15129 & 15136 - ANC-3C:

Clifford Moy 17

ACTION TAKEN:

Geoffrey Griffis 19

JEFFREY D. KWATERSKI

APPLICATION NO. 17087:

Clifford Moy 19

COMMENTS: 23

VOTE: 24

JESUS IS THE WAY CHURCH

APPLICATION NO. 17100:

Clifford Moy 25

COMMENTS: 26

VOTE: 40

LUJAN, LUJAN, LUJAN COLUMBIA ROAD, LLC

APPLICATION NO. 17094:

Clifford Moy 40

COMMENTS: 45

VOTE: 71

ROBERT & JENNIFER BEYLICKJIAN

APPLICATION NO. 17102:

Clifford Moy 73

COMMENTS: 77

VOTE: 78

MARK LEE PHILLIPS

APPLICATION NO. 17079:

Clifford Moy 78

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APPLICATION NO. 17079 CONTINUED:

<u>COMMENTS:</u>	82
<u>VOTE:</u>	102

HUMBERTO GONZALEZ

APPLICATION NO. 16823:

Clifford Moy	103
<u>COMMENTS:</u>	103
<u>VOTE:</u>	104

ADJOURN:

Geoffrey Griffis	105
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1 BOARD MEMBER ZAIDAIN: No objection.

2 VICE CHAIR MILLER: No objection.

3 CHAIR GRIFFIS: Very well. Then I'll take
4 it as a consensus. The Board will move this to the 2nd
5 of March, '04.

6 MR. MOY: Okay. The next case then is a
7 motion for reconsideration of Application No. 17087 of
8 Jeffrey D. Kwaterski, pursuant to 11 DCMR section
9 3103.2, for a variance from the lot occupancy
10 requirements under section 403, a variance from the
11 rear yard requirements under section 404, a variance
12 from the closed court area requirements under section
13 406, and a variance from the nonconforming structure
14 provisions under subsection 2001.3, to allow a rear
15 garage with roof deck addition to a single-family row
16 dwelling in the R-4 District at premises 1366 Quincy
17 Street, N.W., Square 2826, Lot 25.

18 The Board completed testimony on the
19 application and issued a Bench decision on December 9,
20 2003. On January 6, 2004, the Board on its own motion
21 or rather the final order was issued on December 10,
22 2003. Then on January 6, 2004, the Board on its
23 motion moved to reconsider Application No. 17087. And
24 then I'll leave it at that. That completes my
25 briefing, Mr. Chairman.

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1 CHAIR GRIFFIS: Excellent. Thank you very
2 much, Moy, and that is correct. On the 6th on our own
3 motion of which, of course, we needed to waive our
4 rules in order for time, because the order had already
5 been issued. And I think this is just for opening on
6 this, our own motion for reconsideration, I think it's
7 an excellent exercise that we, of course, don't want
8 to do very often, but is appropriate for the Board to
9 do when we look at an application and we have just
10 been through the Public Hearing and have, in fact,
11 decided and realized that it may not have been exactly
12 as it should have been.

13 And I will be specific with this case, but
14 to make the point and the larger point that I don't
15 think this Board is afraid of or should be afraid of
16 reanalyzing its recent or even past decisions or
17 actions. I think it shows some great strength that
18 the Board can do that.

19 Now, that being said, I don't think we
20 have made an error in this application at all. I
21 think the final outcome actually was appropriate.
22 However, in further really analysis of the application
23 on my own and I know with discussion with other Board
24 Members, the reason why we brought a motion for
25 reconsideration is the fact that we may have found,

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1 and I'll see if the Board agrees with me in the
2 deliberation that is about to follow, we may have
3 found that the requested relief was far and above what
4 was actually required of this applicant. And
5 therefore, on our own motion bringing it back,
6 hopefully, with no undue stress on those involved.

7 I believe that this will and should have
8 been formulated as a special exception under section
9 223. My point goes to if you look at the definition
10 of building area. Of course, as you all recall, this
11 was to allow a rear garage addition into a row
12 dwelling. One of the aspects of the variance case
13 that we found did meet the test and was approved was
14 the uniqueness of the property. One of the aspects of
15 the uniqueness was the dramatic site topography in the
16 rear, which allows the garage to be built and
17 constructed below the main level of the house.

18 If you look at the definition in section
19 199 of building area, the garage itself would not be
20 counted towards the building area and, therefore,
21 would not go into the lot occupancy, therefore, would
22 not need the amount of relief required of a variance
23 under section 403, but rather would come under special
24 exception under 223, which does cover, in fact, the
25 rear yard requirements, the closed court requirements

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1 and the issue of nonconforming structure provisions
2 under 2001.3.

3 So I would like to, under our motion for
4 reconsideration, to change the application in relief
5 requested and change it to, as I said, the special
6 exception or 223 and simultaneously, make a motion of
7 approval of the special exception in Application No.
8 17087, and ask for a second on this.

9 VICE CHAIR MILLER: Second.

10 CHAIR GRIFFIS: Thank you very much, Ms.
11 Miller. The other aspects in terms of not being
12 counted towards building, one of the critical pieces,
13 that it has to be found through the definition as laid
14 out, that it has to be found that it would not impair
15 the light and air to the adjacent properties. If you
16 recall the factual evidence in the case, is that there
17 is masonry walls on each side or some type of
18 structure, if I'm not remembering incorrectly, that
19 this would actually align with.

20 It would be near implausible for one to
21 say that this impacted the light and air when there is
22 already a solid structure on each of the adjacent
23 properties and on the property line itself. And
24 therefore, I think it comes completely and fully
25 underneath that analysis that I have laid out.

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1 But let me open it up to others for any
2 further discussion or deliberation on the motion for
3 special exception approval.

4 COMMISSIONER MAY: Well, let me say that I
5 agree, Mr. Chairman, with just about everything that
6 you said, except that I felt that the first time
7 around that the relief that had been granted was in
8 excess of what was merited. I didn't think that the
9 case qualified for a variance and had voted against
10 it.

11 But I was concerned about it, at the time,
12 in that it didn't seem to me that the -- and I didn't
13 really come to a conclusion in my mind that, in fact,
14 the relief that had been requested was the appropriate
15 relief. In other words, it seemed to me that because
16 of the slope, that this didn't fit the normal mold for
17 extending the structure into the rear yard of the
18 property, and because it was all below the first floor
19 or the main floor of the building that a lot of the
20 rules that would otherwise kick in don't, like the lot
21 occupancy is not affected by a structure that is below
22 the floor, the first floor or at or below the level of
23 the main floor. So I was concerned about that.

24 So I'm glad that it has now come back to
25 us for reconsideration, because I think it's

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1 thoroughly appropriate and I am much more comfortable
2 with the idea of granting a special exception for rear
3 yard in this circumstance, rather than a variance.
4 Where I did not believe that this would meet the test
5 for a variance, I do believe it meets the test for a
6 special exception with regard to the rear yard and the
7 closed court.

8 I'm not even sure that the closed court
9 necessarily even applies, and we'll look at that very
10 carefully, but in any case, if we're talking about a
11 section 223 type special exception, that I would
12 support it. Whereas, I did not support the variance.

13 CHAIR GRIFFIS: Good. Others? Very well.

14 I think we can rely on the record that was presented
15 before us and also on the past deliberation, which was
16 actually under the variance test, which is a higher
17 threshold to prove in consolidating our deliberation
18 on the special exception for this.

19 We have a motion then for approval of the
20 special exception and it has been seconded. If there
21 is any other deliberation, comments. If not, then I
22 would ask for all those in favor to signify by saying
23 aye.

24 ALL: Aye.

25 CHAIR GRIFFIS: And opposed? And I think

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1 we can issue a very quick summary order on that one
2 also.

3 MR MOY: The staff would record the vote
4 on the motion of the Chairman, seconded by Ms. Miller,
5 also in favor of the motion, Mr. Zaidain, Mr. May.
6 The vote is recorded as 4-0-1, Mr. Etherly not
7 participating on the case.

8 The next application is No. 17100 of Jesus
9 Is The Way Church, pursuant to 11 DCMR section 3104.1,
10 for a special exception for a change of nonconforming
11 use under subsection 2003.1, or in the alternative,
12 pursuant to 11 DCMR section 3103.2, a variance from
13 the use provisions, to allow a coffee/sandwich shop
14 under subsection 330.5, in the R-4 District at
15 premises 129 through 131 15th Street, N.E., (first
16 floor only), Square 1069, Lot 801.

17 Staff notes that the advertisement has
18 been amended. The application has been amended to
19 reflect the requested zoning relief only for the
20 property at 129 15th Street, which was noted for the
21 Board at the Public Hearing on January 13, 2004.

22 On that date, the Board completed
23 testimony on the application and scheduled its
24 Decision on February 3, 2004. The Board requested the
25 following posthearing documents. First is a

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 17087-A of Jeffrey D. Kwaterski, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear garage with roof deck addition to a single family row dwelling under section 223 in the R-4 District at premises 1366 Quincy Street, N.W. (Square 2826, Lot 25).

Note: The Board on its own motion and waving its rules pursuant to 11 DCMR § 3126.7, voted to reconsider this application. On February 3, 2004, the Board amended the application by changing the relief required from area variances to a special exception from section 223.

HEARING DATE: December 9, 2003
DECISION DATE: December 9, 2003, February 3, 2004

RECONSIDERATION SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief. The Board took issue with the variance relief identified in the Zoning Administrator's memorandum, finding instead that the Applicant was eligible for special exception relief under section 223.

The Board provided proper and timely notice of public hearing on this application, by publication in the D C. Register, and by mail to Advisory Neighborhood Commission (ANC) 4C, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 4C. ANC 4C submitted a letter in support of the application. OP did not participate in the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under § 223. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

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

Each concurring member approved the issuance of this order.

Reconsideration vote approving application under 11DCMR Section 223 taken on February 3, 2004:

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, David A. Zaidain, and Peter G. May to approve, Curtis L. Etherly, Jr. not participating, not voting).

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: FEB - 6 2004

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT "

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR

STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D C OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 3, 2002

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 2:30 p.m., Geoffrey H. Griffis, Chairperson, presiding.

PRESENT:

GEOFFREY H. GRIFFIS, Chairperson
ANNE MOHNKERN RENSHAW, Vice Chairperson
DAVID ZAIDAIN, Board Member
PETER MAY, Zoning Commission

STAFF PRESENT:

SHERI M. PRUITT, Secretary, BZA
BEVERLEY BAILEY, Office of Zoning
CLIFFORD MOY, Office of Zoning
JOHN NYARKU, Office of Zoning

JOHN MOORE, Office of Planning
STEPHEN MORDFIN, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL.

LORI MONROE, ESQ.

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P-R-O-C-E-E-D-I-N-G-S

2-30 P.M.

CHAIRMAN GRIFFIS: Good afternoon, ladies and gentlemen, will the meeting please come to order? This is the 3rd of December, 2002 public hearing of the Board of Zoning Adjustments of the District of Columbia. My name is Geoff Griffis. I am Chairperson. With me today is Ms. Anne Renshaw, Vice Chair. Representing the National Capital Planning Commission is Mr. Zaidain. On my left and representing the Zoning Commission this afternoon with us Mr. May.

Copies of today's hearing are available to you. They are located at the table as you enter into the hearing. Please let me know if there are not available copies and we'll make additional ones for your use.

A couple of quick things. These proceedings are being recorded, so we ask several things. First of all, when speaking to the Board, you'll come to the table and the microphone needs to be on. Also, anyone giving testimony from the Board needs to fill out two witness cards. Witness cards are available at the table in front of us and also at the table where you enter the hearing room. Those

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1 CHAIRMAN GRIFFIS: Okay, and that's the
2 affidavit of posting.

3 MS BAILEY: Of posting.

4 CHAIRMAN GRIFFIS: Very well. Why don't
5 we call the case and then we can address that issue,
6 if you think that's appropriate?

7 MS. BAILEY: Absolutely.

8 CHAIRMAN GRIFFIS: Okay.

9 MS. BAILEY: Application No. 16956 of Mr.
10 And Mrs. Marc Raphael, pursuant to 11 DCMR 3104.1, for
11 a special exception to allow the construction of an
12 addition to an existing single-family dwelling under
13 section 223, not meeting the side yard requirements,
14 section 405, and pursuant to 11 DCMR 3103.2, a
15 variance to allow the construction of an open deck
16 occupying the side yard under subsection 2503.2. The
17 property is located in the R-3 District at premises
18 2901 29th Street, N.W., Square 2106, Lot 16.

19 Please stand to take the oath Do you
20 solemnly swear or affirm that the testimony that you
21 are about to give in this proceeding will be the
22 truth, the whole truth and nothing but the truth?

23 Thank you. And please come forward and
24 have a seat at the table.

25 CHAIRMAN GRIFFIS. Good afternoon. I

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1 would have you turn on the mic and introduce
2 yourselves, please?

3 MS. RAPHAEL: I am Linda Raphael, the co-
4 owner of the property of 2901 29th Street, N W

5 CHAIRMAN GRIFFIS: Okay.

6 MR. DONOVAN: I am Peter Donovan, the
7 architect helping the Raphael's with this addition.

8 CHAIRMAN GRIFFIS: Mr. Donovan, just for
9 the record, we need an address.

10 MR. DONOVAN: 3749 McKinley Street, N.W.

11 CHAIRMAN GRIFFIS: Okay. Do you want to
12 just quickly address --

13 MR. DONOVAN: Yes, I can address that
14 because it's my fault. I was getting all the
15 paperwork for the Raphaels and I just didn't know that
16 we had to have that affidavit. Now I have talked to
17 John Moore and has a picture showing that we put that
18 up. I think it went up November 8th, but we do not
19 have an affidavit and that's really my fault.

20 MS. RAPHAEL: It actually went up before
21 the 8th, but Mr. Moore visited our home on the 8th and
22 took his photographs, so the photograph represented
23 here is of November 8th.

24 CHAIRMAN GRIFFIS: I see Okay. So it's
25 your statement that, in fact, it was posted for the

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1 correct amount of time, just the filing of the
2 affidavit, certified that it was posted, was not put
3 into the office.

4 MR. DONOVAN: That's right.

5 CHAIRMAN GRIFFIS: Okay. Board Members,
6 clearly, we'll have to waive our rules in posting to
7 continue with this case.

8 Do I hear any objections? If there are
9 any -- yes?

10 MEMBER ZAIDAIN: Again, if we get to the
11 case today would it be appropriate to ask for the
12 affidavit or is the waiving of the rule just --

13 CHAIRMAN GRIFFIS: No, that's not
14 inappropriate. The waiver has been -- do you have it?

15 MR. DONOVAN: I must have it. It's the
16 paperwork that came with the sign.

17 CHAIRMAN GRIFFIS: I see.

18 MR. DONOVAN: It's something we can
19 provide for the record.

20 CHAIRMAN GRIFFIS: Mr. May?

21 COMMISSIONER MAY: All we're waiving is
22 the -- all we're planning to do is leave open the
23 record to receive the affidavit later? Is that --

24 CHAIRMAN GRIFFIS: Right, waive the rule
25 to continue today.

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1
2 COMMISSIONER MAY: I think that's done as
3 a matter of course.

4 CHAIRMAN GRIFFIS: Indeed,

5 COMMISSIONER MAY: No problem.

6 CHAIRMAN GRIFFIS: Very well, then I'll
7 take as a consensus. We can proceed and we'll look
8 for the submission of the waiver form.

9 MR. DONOVAN: And we will submit it to the
10 Board's Office?

11 CHAIRMAN GRIFFIS: Indeed, to the Office
12 of Zoning. Okay, that being said, let's jump right
13 in. I think it is fairly clear in most of the filings
14 of what we have here, so what I'm going to turn over
15 to you is just to briefly summarize the case, the
16 context and the test for the variance, not a special
17 exception and we'll move on from there.

18 MR. DONOVAN: Sure. We are trying to put
19 a rear yard addition on this house. It's two rooms
20 deep. This house happens to sit on the corner at 29th
21 and so it has a pie shaped lot. There are three lots
22 there are very pinched toward the back alley.

23 By going out in a straight line with the
24 addition that's already there, in order to get a
25 decent space that forces us to encroach on that side

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1 yard which is on the north side of the property. We
2 are trying to hold the rear yard in compliance, but no
3 matter what we do along that left side, the north
4 side, we encroach on that setback on the side yard.

5 If we were to set back that addition, then
6 it falls in the driveway and the structure becomes
7 somewhat difficult. It is a one-story addition,
8 except for a small corner tucked against the two-story
9 addition of the neighbor on the south, but for the
10 most part it's a sloping roof, a hip roof that's very
11 low in scale and extends in the back.

12 CHAIRMAN GRIFFIS: Okay, so in terms of
13 the variance, clearly there's a unique shape of a lot,
14 actually as it is looked at with a triangular type
15 building, actually limits your ability to construct
16 the addition into the side yard and as you just stated
17 and also in the record it's stated that if you
18 accommodated the side yard, I believe it was a column
19 would drop in the driveway or some structure would be
20 impeding the driveway.

21 Very well, Board Members clear?
22 Questions. Okay.

23 Anything you want to add on the special
24 exception which is clearly in addition to an existing
25 building under Section 223?

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1 MR. DONOVAN: Explain that again?

2 CHAIRMAN GRIFFIS: Indeed. This
3 application is actually coming in for a special
4 exception which is frankly the first step that allows
5 you to do an addition. Clearly, this addition has
6 been gone to a requirement for a variance. You just
7 outlined the variance case. The special exception
8 under 223 lists certain items that need to be
9 addressed. For instance, the addition won't impact
10 the light and air to neighboring properties. The
11 privacy and use of adjoining neighbors won't be
12 impeded.

13 MR. DONOVAN: Right, these are the burden
14 of proof statements that we've submitted?

15 CHAIRMAN GRIFFIS: Yes.

16 MR. DONOVAN: And that discussion. I
17 think because it is a one-story addition and the use
18 is the same that there's not going to be any impact on
19 the change of the condition as it is now.

20 We are not projecting behind where it
21 would impact on someone else's rear yard addition and
22 these lots along there are full of rear yard
23 additions. In fact, that one corner is very overgrown
24 with bamboo.

25 Light is not an issue. The addition to

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1 the south side is two stories and so we are not
2 looming over their property. Parking remains the
3 same. I'm not sure what other --

4 CHAIRMAN GRIFFIS: Okay, there was
5 communication with adjoining neighbors and there
6 weren't any concerns or large issues that --

7 MR. DONOVAN: That's correct. They had
8 full notice of the ANC meetings and issued no
9 objection and Mr. Raphael has spoken with both of them
10 and they clearly have no problem with it and intend to
11 do their own addition as well.

12 CHAIRMAN GRIFFIS: Okay. Mr. May?

13 COMMISSIONER MAY: I have a couple of
14 questions about what you're planning with regard to
15 the deck. It's hard to tell from the plan information
16 that was presented, we don't have an awful lot of
17 information here, but do I understand correctly that
18 you're basically building to the property line with
19 the deck?

20 MR. DONOVAN: Yes. I think it's clear on
21 the plat.

22 COMMISSIONER MAY: That's what it seems to
23 show.

24 MR. DONOVAN: The deck now is quite old,
25 older than 10 years, older than when the Raphaels

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1 purchased the house which may be important. It's
2 unusual in that it does go all the way to the property
3 line on the north side. It is lower than 48 inches
4 off the grade at that point and in fact, all across
5 the back except at the drive.

6 COMMISSIONER MAY: It's lower than 48
7 inches as measured at the side of the house?

8 MR. DONOVAN: And the rear at grade.

9 CHAIRMAN GRIFFIS: Is it below the level
10 of the first floor of the residence?

11 MR. DONOVAN: Yes. It exists now, two
12 steps down or maybe three steps, I forget. It is
13 lower than the height of the floor level.

14 COMMISSIONER MAY: What I'm struggling
15 with is why this -- the provisions by which you need
16 to have a variance for the side yard I would think
17 would also mean that you would need a variance from
18 the rear yard requirement, but the fact that it's
19 below four feet means that it doesn't need a variance
20 at all?

21 CHAIRMAN GRIFFIS: It doesn't go to lot
22 occupancy.

23 COMMISSIONER MAY: If it were above four
24 feet it would go to lot occupancy?

25 CHAIRMAN GRIFFIS: Yes. If it goes above

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1 the first floor of the residential house.

2 SECRETARY PRUITT: I spoke with Mr. Bellow
3 in reference to that need. He confirmed that yes, you
4 can measure the four feet from anywhere along the
5 side. You don't even have to measure it from the back
6 of the deck which would be much higher. But also it's
7 below the first floor level, so on two counts it
8 doesn't count as lot occupancy and therefore rear yard
9 setback is not required or rather it doesn't impinge
10 upon it.

11 COMMISSIONER MAY: But it does so require
12 a variance with regard to the side yard?

13 SECRETARY PRUITT: I believe -- because
14 the side yard, if I have the calculations, are less
15 than five feet. Like a really small amount under five
16 feet.

17 CHAIRMAN GRIFFIS: But where is that
18 dimension from? What's the point that it gets to four
19 feet because --

20 COMMISSIONER MAY: Well, they're building
21 right on the property line, so there's no feet.

22 CHAIRMAN GRIFFIS: On one side. We're
23 only talking about this side which in the plan
24 drawings is north?

25 COMMISSIONER MAY: What I don't understand

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1 it -- it's been a little while since I've sat on a
2 case that got into this side yard thing. It's
3 probably been a year. So I just -- I'm not sure
4 whether -- I mean if this triggers a variance for the
5 side yard requirement, why doesn't it trigger a
6 variance for the rear yard requirement? Because if
7 it's not tall enough, you're saying if it's not tall
8 enough, why is it -- I mean it has to go up to a
9 certain height for it to exist.

10 MR. DONOVAN: To count as coverage.

11 COMMISSIONER MAY: To count as coverage.

12 MR. DONOVAN: That's right.

13 COMMISSIONER MAY: Or to count as even a
14 structure.

15 SECRETARY PRUITT: I see what you're
16 saying.

17 COMMISSIONER MAY: I'm glad you're seeing
18 what I'm saying because I'm having a hard time saying
19 it.

20 SECRETARY PRUITT: I understand what
21 you're saying.

22 MS. MONROE: Mr. May?

23 COMMISSIONER MAY: Yes.

24 MS. MONROE: 253.02 which is cited by OP.
25 It says a structure, not including a building, no

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1 part of which is more than four feet above the grade
2 at any point may occupy any yard required under the
3 provisions of this title. Any railing required by the
4 D.C. Building Code shall not be calculated in the
5 measurement of this height. I think that covers both
6 yards and I also think that the question of the rear
7 yard and side yard would both be subsumed under the
8 253 special exception

9 CHAIRMAN GRIFFIS: Right. So the other
10 thing we're really dealing with is the special
11 exception for the addition within the side yard.

12 MS. MONROE: Which I think would include
13 any question as to the side yard or the rear yard.

14 COMMISSIONER MAY: Right. So I don't see
15 a variance.

16 CHAIRMAN GRIFFIS: Nor did I. You're not
17 alone in questioning this.

18 COMMISSIONER MAY: When I first read it I
19 thought why are we asking for a rear yard variance at
20 all.

21 CHAIRMAN GRIFFIS: Right.

22 COMMISSIONER MAY: But it's that four foot
23 rule that always throws me.

24 Had it been over four foot then we would
25 be -- and I'm guessing the reason why the existing

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1 deck was built two steps down may have been to avoid
2 this problem previously.

3 CHAIRMAN GRIFFIS: That would make sense
4 Okay, well, there it is. Anything else you want to
5 add?

6 MR. DONOVAN: Now that you ask. This has
7 been a really long process. It's been at least a
8 couple of years, for design purposes, but also working
9 through the regulatory red tape and that sort of thing
10 and we finally come to this Board and we're trying to
11 figure out, we were trying to do an addition that
12 would pass, that we thought was not asking for too
13 much and now that we've sort of looked at this thing
14 so long, I'm wondering if there's not some mechanism
15 whereby if we wanted to go two more feet or four more
16 feet, we would like to do that unless we have to go
17 back and do it all and I think I know the answer.

18 MS. RAPHAEL: Not the side, but back,
19 because we were led to believe, initially, that this
20 was as far back as we could close in and now we think
21 that perhaps that's not the case.

22 CHAIRMAN GRIFFIS: First, what led you to
23 believe that that was as far back as you could go?

24 MS. RAPHAEL: Just information that Mr.
25 Donovan had gotten on percentage of lot, etcetera. So

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1 we thought we were going -- we wanted to go back the
2 maximum and we thought that this was the maximum. But
3 now we understand that it may not be, although we're
4 not -- and we're not asking here, obviously, for a
5 variance on that, but I wanted some clarification on
6 how far back we could possibly go.

7 COMMISSIONER MAY: Can I offer something
8 here? It looks like the addition at the point when it
9 is closest to the side yard, or to the side property
10 line there, looks like it's about five feet. Is that
11 right?

12 MR. DONOVAN: I think it's less. Of the
13 existing addition?

14 COMMISSIONER MAY: No, the new addition.

15 MR. DONOVAN: Four feet, I think.

16 COMMISSIONER MAY: It's four feet?
17 Because if it's four feet, then we're talking about a
18 variance for the side yard requirement, right?

19 (Pause.)

20 MR. DONOVAN: I think that's what we're
21 dealing with on the addition. It's the side yard
22 that's presenting us the problem.

23 COMMISSIONER MAY: Right, and as soon as
24 you start going straight back, you're impinging on the
25 side yard and that's where you get into special

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1 exception territory.

2 Now if you kept eight feet off that
3 property line, you could do anything you want as a
4 matter of right, up to eight feet off the side yard,
5 side property line and then 20 feet off the rear
6 property line.

7 MR. DONOVAN: As long as we didn't go over
8 the coverage.

9 COMMISSIONER MAY: Right, as long as you
10 don't go over the coverage. But if it's true that
11 it's only 35 percent, it's hard to believe that you
12 would do that.

13 MR. DONOVAN: Right.

14 COMMISSIONER MAY: When you go to -- when
15 you get less than five feet though, there's a
16 different standard, is that right?

17 MS. MONROE: Are you talking less than
18 five feet per yard or height?

19 COMMISSIONER MAY: For the side yard.

20 MS. MONROE: I think it's anything less
21 than five feet is included in lot occupancy It's
22 included in the building area.

23 COMMISSIONER MAY: Right.

24 MS. MONROE: So that would up the lot
25 occupancy.

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1 COMMISSIONER MAY: Right, but even within
2 the side yard requirements there's an eight foot
3 minimum unless there is an existing structure that
4 impinges on it at which point you can do anything, so
5 long as you maintain a minimum of five feet.

6 SECRETARY PRUITT: It becomes a
7 nonconforming structure because prior to 58, five feet
8 was a typical side yard requirement. So you can
9 extend that, but you can't -- you would need another
10 type of variance if you encroached on that.

11 COMMISSIONER MAY: Right, what I'm saying
12 is that -- because they've got this triangular shape,
13 they can extend back with that addition and as soon as
14 that addition goes more than five feet or cuts the
15 side yard by more than five feet, then we're talking
16 about a variance for the addition. Is that right?

17 CHAIRMAN GRIFFIS: Well, first of all, in
18 terms of changing the application, to change the
19 dimension at this point I think is problematic. Only
20 because what we have is certain things that are
21 submitted. Office of Planning would have to resubmit.

22 DHC should probably resubmit because their letter and
23 their standing would change. The entire application
24 would change.

25 What I propose is first of all we'll get

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1 to the bottom of whether the variance for the side
2 yard is actually required and properly before us.
3 Then we move ahead, if this comes into an approval by
4 the Board, there's nothing precluding you from coming
5 in for a modification and that probably is more
6 burdensome than having us change it right now, but
7 it's not as burdensome as putting the entire
8 application together.

9 So with that side yard variance, actually,
10 let's let you conclude and then we'll go to Office of
11 Planning because they're very articulate on these
12 issues.

13 MR. DONOVAN: Well, first of all, we
14 appreciate you all looking at this today. It is a
15 long process and I apologize for some of the lack of
16 clarity on the deck and the side yard, but I think the
17 crux of the problem is that once we extend back and
18 trying to keep that room in a regular shape, that's
19 when we encroach on that side yard and so that's why
20 we're asking for permission to be able to do that.

21 CHAIRMAN GRIFFIS: Very well, thank you.

22 MR. DONOVAN: Thank you.

23 CHAIRMAN GRIFFIS: Very well, let's go to
24 Office of Planning and welcome them this afternoon.

25 MR. MOORE: Good afternoon, Mr. Chairman

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1 and Members of the Board The extent of OP's
2 articulation in this case is to stand on the record.

3 CHAIRMAN GRIFFIS: That's swell.

4 (Laughter)

5 CHAIRMAN GRIFFIS: No, I think it's
6 absolutely appropriate. It's an excellent report.
7 However, do you want to just walk through because you
8 did, in fact, outline the various tests and it's your
9 understanding that it is properly before us for the
10 variance of the side yard.

11 Did you want to just articulate that? Is
12 it because -- actually as I'm looking at it, Mr. May,
13 the site plan is becoming clearer to me. We're at a
14 side yard with that addition of four feet.

15 Is that the number you're seeing?

16 (Pause.)

17 Okay, forgive us for a little bit of off-
18 the-record review of the application.

19 I think we just want to be absolutely
20 certain in what the easiest process is.

21 Frankly, well, it's interesting because
22 the variance test can be made, but I think the
23 consensus right now, the opinions that we're getting
24 is if you don't require a variance, then this all
25 comes under 223 which does deal with a side yard and

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1 the rear yard would not be an issue.

2 That being said, let us -- is there any
3 questions of the Board of Office of Planning's report,
4 an excellent report, again with great graphics that
5 help illuminate the case that's before us? Any
6 questions?

7 Any questions of Office of Planning?

8 MR. DONOVAN: No, I don't believe so.

9 CHAIRMAN GRIFFIS: Do you have the Office
10 of Planning report?

11 MR. DONOVAN: We saw it before the
12 hearing.

13 CHAIRMAN GRIFFIS: Okay. Very well, let's
14 move on then. And we do have ANC letter dated
15 November 4. Ms. Renshaw, do you have that?

16 VICE CHAIRPERSON RENSHAW: The letter from
17 ANC 3C is signed by Nancy MacWood, Chair, and she
18 advises the Board that the Commission met in October.
19 The date is not stated. A quorum was present. They
20 considered the application and the ANC Commissioners
21 have no objection to the proposed project and they
22 were unanimous in the vote.

23 CHAIRMAN GRIFFIS: Thank you very much.
24 Any questions from the Board?

25 Did you see the letter from the ANC?

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1 MR. DONOVAN: I do not think we saw that.

2 CHAIRMAN GRIFFIS: Do you understand what
3 they said though?

4 MR. DONOVAN: Yes, we do. And that was
5 our understanding of what they would send along.

6 CHAIRMAN GRIFFIS: Okay. I don't have any
7 other notes on submission attendant to this. Is there
8 anyone here today to give testimony on this
9 application which is Application 16956, either in
10 support or in opposition?

11 Very well, not seeing any indication of
12 it, I can go to you for last comments, closing
13 remarks, any jokes?

14 MR. DONOVAN: It's been too long a process
15 for jokes. No, we appreciate your help in reviewing
16 this and hopefully passing it. We appreciate it.

17 CHAIRMAN GRIFFIS: Okay, good Are you
18 clear, and do you have any problem or comment on the
19 fact that if we take this up as just a special
20 exception under Section 223?

21 MR. DONOVAN: No, I believe I understand
22 that change.

23 CHAIRMAN GRIFFIS: Okay. What I'm going
24 to do, Board Members, is everyone under the same
25 understanding and consensus on this?

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1 Then we would modify the application to
2 reflect a special exception which would allow the
3 construction of this addition and what I'll ask for is
4 -- I guess we do need a motion for that. So I would
5 move and ask for a second.

6 MEMBER ZAIDAIN: I'll second.

7 CHAIRMAN GRIFFIS: Thank you very much.
8 All in favor, signify by saying aye.

9 (Ayes.)

10 Any opposed?

11 (No response.)

12 I will have submitted into the record a
13 memo from the Board that will outline the reasoning
14 why we've reached that conclusion and I'll ask that
15 our Compliance Officer and Corporation Counsel work
16 together to do that, so it will be in the record and
17 you should pick up a copy just by reviewing that.
18 Actually, when you drop off the waiver, you can pick
19 up that memo.

20 MR. DONOVAN: And that deals with the deck
21 construction along the property line?

22 CHAIRMAN GRIFFIS: That's correct.
23 Actually, it's the addition and the deck.

24 MR. DONOVAN: Okay, right.

25 MS. RAPHAEL: And in terms of how far back

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1 we're going, what does this say now?

2 CHAIRMAN GRIFFIS: Six feet, I believe, in
3 other words, what we're showing you.

4 MS. RAPHAEL: So if we want to go back
5 further than six feet, then we should go for this
6 modification?

7 CHAIRMAN GRIFFIS: Right, then you're
8 coming back to talk to us.

9 MS. RAPHAEL: All right.

10 CHAIRMAN GRIFFIS: And it will also be as
11 enjoyable as it is today.

12 (Laughter.)

13 MS. RAPHAEL: This was fun. It's the
14 length of time. I was just wondering, do you first
15 get a building permit for this and then you could
16 start and then you get modification or do you have to
17 wait until all that is --

18 CHAIRMAN GRIFFIS: I'm not sure I can
19 adequately give you the information that you need in
20 terms of strategy of how to do that. I think it might
21 be advantageous if, perhaps before you leave, you went
22 and talked to staff in the Office of Zoning and get
23 some quick questions on what that might do, what it
24 might impact in the application and get a feel for
25 timing and how that might be brought back, if that is,

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1 in fact, what you're anticipating doing.

2 MS. RAPHAEL: Thank you.

3 CHAIRMAN GRIFFIS Okay. Anything else
4 then, Board Members? Any other questions,
5 clarifications?

6 If not, I would move approval of
7 Application 16956 for special exception to allow the
8 construction of existing single family dwelling under
9 Section 223 which has not met the side yard
10 requirements listed under Section 405 and this is for
11 the premises of 2901 29th Street, N.W.

12 I'd ask for a second.

13 VICE CHAIRPERSON RENSHAW: Second.

14 CHAIRMAN GRIFFIS: Thank you very much,
15 Ms. Renshaw.

16 I think in fact, adoption of the
17 submission from the Applicant and also the Office of
18 Planning report does justice to the special exception
19 case. The Applicant today has given us indication of
20 the no impact in terms of light and air and also in
21 the record and written submission and I think it is
22 very clear cut. So that being said, I'd ask for
23 anyone else to speak to the motion? If not, then all
24 those in favor say signify by saying aye?

25 (Ayes.)

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D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15955 of Susan Elizabeth Spence, pursuant to 11 DCMR 3107.2, for a variance from the lot occupancy requirements (Subsection 403.2) for a deck addition to a single-family row house in an R-3 District at premises 4421 17th Street, N.W. (Square 2650, Lot 25).

HEARING DATE: June 15, 1994

DECISION DATES: July 6, September 7 and 28, 1994

ORDER

SUMMARY OF EVIDENCE:

The property which is the subject of this application is located at 4421 17th Street, N.W. It is zoned R-3. The site is 22 feet wide and 99 feet deep. It contains 2,178 square feet of land area. The property is developed with a single-family row house with two stories and a basement. It was constructed in 1921 and contains 3,057 square feet of living space. A 15-foot wide public alley abuts the rear, or eastern portion of the site.

The R-3 District in which the property is located permits matter of right development of single-family residential uses including detached, semi-detached, and row dwellings with a minimum lot area of 2,000 square feet, a minimum lot width of 20 feet, a maximum lot occupancy of 60 percent, and a maximum height of 3 stories/40 feet. The applicant is requesting a variance from the lot occupancy provisions to allow the construction of a deck at the rear of the dwelling. The deck would be located one-story above grade. It would measure 10 feet wide by 10 feet deep above the existing garage opening on the southern portion of the house and 12 feet wide by 4 feet deep above the existing alcove. The existing rear door and window on the first floor would be replaced and this portion of the structure would be reconfigured. New stairs would be constructed to provide access to the deck.

The maximum lot occupancy permitted on the subject lot is 60 percent or 1,306.8 square feet. Currently, the dwelling unit occupies approximately 59 percent of the land area. The dwelling and the proposed addition would occupy 1,424 square feet. Therefore, the applicant is seeking an area variance for 117.2 square feet.

Issues and Arguments:

1. Whether the deck is located at the same level as the main floor of the house?

The plans submitted into the record indicate that the deck will be located one inch lower than the main floor of the house. The applicant's architect pointed out that the proposed deck should not be included in the building area of the structure because the definition of "building area" in the Zoning Regulations does not "include portions of a building that do not extend above the level of the main floor of the main building, if placed so as not to obstruct light and ventilation of the main building or buildings on adjoining property." The architect maintains that the deck is to be below the main level of the house and it will not block light or ventilation to the applicant's structure or her neighbors' homes.

To determine the Zoning Administrator's interpretation of the building area provision as it relates to the subject property, the Board requested that the Zoning Administrator (ZA) submit a memorandum to clarify his handling of this application.

In a memorandum dated September 13, 1994, the ZA stated:

The definition of "Building Area" was used in computations for the proposed deck due to the fact the deck is to be constructed at the same level as the main floor. It has been our continued practice, in the Zoning Division, that a deck below the level of the main floor will not be included in the "building area". Also, it has been our practice that if a deck is to be constructed at or above the level of the main floor, it will be charged in "building area".

The applicant submitted a letter dated September 22, 1994 in response to the ZA's memorandum. In this letter, the applicant maintained that the law is being interpreted narrowly and that the deck cannot be built below the main level of her house because of the location of her garage and basement. She urged the Board to interpret the laws more leniently because they were not written to govern her deck. Her deck should not be treated like an addition to the house.

2. Whether the owner is faced with a unique or exceptional situation or condition related to the property that would create a practical difficulty for her in complying with the Zoning Regulations?

The applicant argued that while a matter of right deck would be allowed if built no more than four feet above grade, she cannot construct a deck below the main level of her house because it would block the entrance to her garage. It would also block the light and ventilation to her basement located in the alcove area at the rear of her house.

She testified that many of her neighbors have decks and her house is unique because she does not. She stated that she can access the rear yard through a door at the rear of her house.

By memorandum dated June 3, 1994, the Office of Planning (OP) recommended denial of the application. On the issue of uniqueness and practical difficulty, OP stated that most of the lots that front on 17th Street, between Allison and Webster Streets, are similar in size and configuration. Generally, the lots are rectangular in shape, 99 feet deep by 22 feet wide, and each has a lot size of 2,178 square feet. Additionally, the layouts of most of the dwelling units are similar. OP stated that it has been unable to find any unique or exceptional conditions related to the property that would prevent its reasonable use.

3. Whether approval of the deck would be of substantial detriment to the public good?

The applicant stated that the proposed deck would not obstruct anyone's view or air. She also noted that her neighbors submitted letters in support of the application.

The Office of Planning was of the opinion that there would be minimal adverse impacts resulting from the construction of the proposed deck. OP stated that one deck is located on the adjacent property to the south. OP noted that many decks have been constructed in Square 2650 generally, and in the 4400 block of 17th Street, N.W. OP stated that, while some of the decks may have been constructed as a matter of right, it is apparent that many of the decks would have required variance relief. Yet, based on information contained in the files of the Office of Zoning, the Board has not approved variance relief for any property that is located in Square 2650.

Advisory Neighborhood Commission (ANC) 4A submitted a letter dated June 13, 1994, expressing support for the application. However, no basis was provided for that support.

No one from the community appeared at the hearing to testified about the application.

4. Whether approval of the variance would impair the intent, purpose and integrity of the zone plan?

The Office of Planning stated that currently the property meets all of the zoning requirements except for lot occupancy. The lot area, lot width and rear yard provisions are all met.

If the proposed deck is constructed, this conforming structure would become nonconforming. If each property owner residing in the R-3 District of the Crestwood neighborhood were permitted to occupy

more than 60 percent of his or her land, development of the area would be more dense than is currently permitted. Thus, the intent, purpose, and integrity of the Zoning Regulations and Map would be impaired.

FINDINGS OF FACT:

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

1. The ZA's view is that the deck would be built at the same level as the main floor of the applicant's house. Therefore, it was included as part of the building area for determining lot occupancy. Consequently, this application is properly before this Board for variance relief.

2. The applicant's property is similar in configuration to other nearby properties. The applicant's garage is not unique because other houses have garages at the rear of the house. The fact that others have decks and the applicant does not, is not an exceptional condition inherent in the applicant's property because the neighbors' decks were not originally part of their structures and could be illegally constructed.

3. The applicant's rear yard is accessible from the rear of her house. Therefore, she does not suffer a practical difficulty by not being able to construct a deck.

4. The proposed deck would not obstruct light or ventilation of the subject structure or other nearby properties.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing, findings of fact and evidence of record, the Board concludes that the applicant is seeking an area variance to allow the construction of a rear deck addition at property located in an R-3 District. Granting such a variance 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 condition. The Board further must find that 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 not met this burden of proof. The Board concludes that there is nothing unique or exceptional inherent in the applicant's property which creates a practical difficulty for her in making reasonable use of her property.

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The Board concludes that while the proposed deck would not be of substantial detriment to the public good, granting the application would impair the intent, purpose and integrity of the zone plan.

In light of the foregoing, the Board concludes that the application is hereby DENIED.

VOTE: 3-0 (Angel F. Clarens, Craig Ellis and Laura M. Richards to deny; William J. Ensign not present, not voting; Susan Morgan Hinton not voting, not having heard the case).

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

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: DEC 27 1995

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."

ord15955/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15955

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on DEC 27 1965 a copy of the order entered on that date in this matter was mailed certified, postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

Susan Elizabeth Spence
4421 17th Street, N.W.
Washington, D.C. 20011

Donald Trageser
1730 Bonifant Road
Silver Spring, Maryland 20906

Mr. Joseph H. Hairston, Chairperson
Advisory Neighborhood Commission 4A
7600 Georgia Avenue, Suite 405
Washington, D.C. 20012

Ms. Audrey J. Hendricks, Chairperson
Advisory Neighborhood Commission, 4C
4020 8th Street, N.W.
Washington, D.C. 20011


MADELIENE H. DOBBINS
Director

Date: DEC 27 1965