GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16684 of Lucia Edmonds, as amended, pursuant to 11 DCMR § 3103.2 for a variance under § 2001.3(a), (b) and (c) to allow enlargement and enclosure of an existing rear deck of a non-conforming three-unit apartment building in a DCOD/R-5-B District at premises 1610 15th Street, N.W. (Square 193, Lot 120). [1]

HEARING DATES: **February 27 and April 3, 2001**
DECISION DATE: **May 1, 2001**

DECISION AND ORDER

SUMMARY OF EVIDENCE:

The applicant, Lucia Edmonds, is seeking a variance from the Zoning Regulations to permit the construction of an addition to a nonconforming three-story apartment building in the Dupont Circle Overlay District. The underlying zoning for the property is R-5-B. The Board of Zoning Adjustment determined that the project, as initially presented, had significant deficiencies. By memorandum dated October 25, 2000, the Zoning Administrator referred the application to the Board (Exhibit No. 6). The request was for variance relief from § 2001.3(a), (b), and (c) to allow enlargement to a one-family dwelling; and special exception relief under § 223.1 to allow extensions to a nonconforming rear yard [§404.1] and open court [§406.1]. In addition, the building permit application contained erroneous information, and the plat was not drawn to correctly identify what would be constructed. The Board requested that the applicant file a revised plat with the corrected information (Exhibit No. 36).

The site is located in Square 193 on Lot 120 at premises 1610 15th Street, N.W. Lot 120 has a depth of 85 feet and a width of 19 feet, for a total lot size of 1, 615 square feet. A three-story, plus English basement, building is located on the property. The 2,868 square foot building was constructed in 1895, with 65 percent lot occupancy.

The building was constructed as a one-family dwelling; however, it was converted to a three-unit apartment house prior to the applicant purchasing the building in 1978. The building is terraced at the rear, that is the basement, first and second floors have a 61-foot rear yard depth; the third floor has a 32-foot depth. A wooden deck is located on the second level, at the rear. Wooden stairs connect the first and second floors. Directly below the second-story deck is the landing. The rear yard can accommodate one parking space.

[1] **The application was initially advertised as a one-family dwelling and with other inaccuracies. The Board ascertained that the premises consist of a three-unit apartment house. The public notice for the project was amended and the project re-advertised.**

BZA
Case No. 16684
Exhibit No. 41

Board of Zoning Adjustment
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CASE NO.16684
EXHIBIT NO.41

The applicant resides on the second and third floors in one of the three apartment units. The first floor and the basement each have a rental apartment unit. The applicant indicated that the requested relief would allow her to enclose an existing rear deck on the second level and extend the deck, thus creating a sunroom. The existing deck measures 6 feet by 14 feet and contains 84 square feet. The proposed sunroom would measure 8.7 feet by 12 feet and contain 104 square feet. The applicant would increase the size of the deck by 20 square feet. Secondly, the applicant requested to construct a closet on the building's third floor. The proposed closet would have a measurement of 10.6 feet by 6.5 feet and contain 69 square feet.

Zoning Computation[2]

Zoning Requirement	Required Minimum or Maximum Allowed	Provided	Variance
Lot Area	None Prescribed	1,615 sq. ft.	None required
Lot Occupancy	60 percent 969 sq. ft.	71 percent 1,148 sq. ft.	11 percent 159 sq. ft.
Gross Floor Area (1.8 FAR)	2,907 sq. ft.	2,868 sq. ft.	None required[3]
Rear Yard	15 ft.	15.1 ft.	None required
Open Court	6 ft.	6 ft.	None required

Based on revised calculations submitted by the applicant's architect (Exhibit No. 34, pages A-1 through A-3), the existing building has 70 percent lot coverage; the maximum required by the Zoning Regulations is 60 percent. The proposed sunroom, which would consist of enclosing and extending the existing deck, would increase the lot coverage from 70 to 71 percent. The project exceeds the maximum permitted lot coverage; therefore, a variance of 11 percent would be required from the lot occupancy requirement of the Zoning Regulations.

Since the building exceeds the maximum permitted lot occupancy, it is a nonconforming structure. Prior to 1958, the building occupied 65 percent lot of the lot area (1,044 sq. ft.). The deck was added, thereby increasing the lot occupancy to 70 percent (1,128 sq. ft.) Zoning relief from § 2001.3 of the Zoning Regulations is required.

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[2] The revised computations, dated March 26, 2001, were provided by the applicant's architect, Exhibit 34, page A-2.

[3] The Board held extensive discussions concerning whether the basement apartment unit should be included in the FAR calculation. Based on measurements provided by the applicant's architect, it was determined that the below grade space would not count toward the building's gross floor area.

The building's gross floor area cannot exceed 2,907 square feet or 1.8 floor area ratio (FAR). The applicant's proposed gross floor area would be 2,868 square feet. The existing building, enclosed deck and proposed closet would be within the allowable FAR. Thus, the Board determined that no relief would be required from the FAR requirement of the Zoning Regulations.

The applicant indicated that the practical difficulty of the case is associated with personal safety concerns. The applicant stated that trespassers and vagrants have wandered onto her property; that enclosing the deck would provide a heightened level of safety because the building is adjacent to an alleyway on two sides, which people who do not reside in the neighborhood regularly traverse; that her building is the only one with stairs without a barrier leading to an upper level; and, that the property is not fenced in at the rear because it would inhibit on-site parking. The applicant stated that prior to the public hearings, she had not discussed with her architect alternative ways of securing the stairs. The applicant also stated that the building does not have sufficient storage space and that she would have year-round use of the deck space if it were enclosed.

The building is located in the Dupont Circle Overlay District (DCOD). The applicant must comply with the requirements of Chapter 15 of the Zoning Regulations, as well as the requirements of the R-5-B District. Of particular importance to this project are § 1501.4 (a) and (e) of the Zoning Regulations which identify the purpose of the DCOD as follows:

(a) To require a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk; and to ensure a general compatibility in the scale of [buildings] by restricting the maximum permitted height and floor area ratio …

(e) To preserve areas planned as open gardens and backyards and to protect the light, air, and the privacy that they provide.

The Board received two letters in support of the application from Advisory Neighborhood Commission (ANC) 2B. The ANC's March 8, 2001 letter indicated that six of the ANC's seven commissioners attended a meeting on February 14, 2001 and voted, unanimously, to support the application (Exhibit No. 32).

The Board also received a letter from the Single Member District Commissioner (2B04) for the district within which the site is located (Exhibit No. 24). The commissioner conducted a site visit with the applicant, and indicated that he supported the application because:

- The deck has existed for many years;
- The enclosure will be on the third floor of the residence;
- The closet will extend over a small area of the existing roof;
- The design, as proposed, will extend the existing walls and roofline exactly as they currently are;
- There will be no change in the existing footprint of the house; and

- There will be little, if any, change in appearance from the alley when looking up at the house.

The applicant submitted petitions in support of the application that were signed by seven neighborhood residents, including the adjacent property owners (Exhibit No. 34). The petitioners indicated that they supported the application because "neither the deck nor the closet will create any change to the current footprint of the house and, as described, the improvements will not have any adverse effect on the use of our property or our enjoyment of the surrounding area."

FINDINGS OF FACT:

1. The building was nonconforming with respect to maximum percentage of lot occupancy on May 12, 1958 when the existing Zoning Regulations became effective. The date when the renovation occurred extending the nonconformity at the site is unavailable. The Board found the applicant's request to extend the existing nonconformity unwarranted, since it is based the applicant's personal preference for additional storage space, when the applicant has chosen to maintain two apartment units in the building, rather than use the space available for storage use.

2. If the applicant were to enclose the entranceway to the stairs, by providing a gate or fence, the property would have an increased measure of security without compromising the Zoning Regulations. The applicant is not limited by a condition that is inherent in the property in providing increased security for the property.

3. The ANC did not articulate its position concerning whether the application would have an impact on the Dupont Circle Overlay District; whether it would affect the light and air of adjacent properties; or whether the proposal would have an impact on the Zoning Regulations and Map. In addition, the Board did not agree with the assessment of the Single Member District Commissioner for 2B04 that, if the application were approved, there would be little change in appearance from the alley when looking up at the building.

4. The applicant's proposal to increase the site's lot occupancy does not rise to the level of "peculiar and exceptional practical difficulties" as required for a variance from the Zoning Regulations. The existing building occupies 70 percent of the lot area and enlarging the deck (even by a small percentage) would be excessive when there is no justifiable zoning reason for doing so. The applicant failed to show how the alternative methods of securing her property would not be sufficient to address her safety concerns.

5. Based on the applicant's revised submission, the project does not require relief from the floor area ratio (§ 402) and rear yard (§ 404) requirements of the Zoning Regulations.

6. The Dupont Circle Overlay District was created to control the height and bulk of buildings in the Dupont Circle neighborhood, among other reasons. The overlay is mapped in combination with the underlying zone district to put controls in place to protect the neighborhood from excessive development. In determining if a lot is overly

developed, the lot occupancy and floor area ratio are two key components. The existing lot occupancy of the site exceeds the maximum percentage allowed by 10 percent.

7. The applicant's proposal would only marginally increase the density of the site. In the R-5-B District, moderate height and density are permitted.

CONCLUSIONS OF LAW AND OPINION:

The Board is authorized under Section 8 of the Zoning Act of June 20, 1938 (52 Stat. 799, as amended; D.C. Code § 6-641.07(g)(3) (2001)), to grant variances from the strict application of the Zoning Regulations. Lucia Edmonds sought a variance pursuant to 11 DCMR § 3103.2, under § 2001.3(a), (b) and (c) to permit the enlargement and enclosure of an existing rear deck of a nonconforming three-unit apartment house. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met, as the Office of Zoning provided timely written notice to the applicant, the owners of all property within 200 feet of the subject property, and ANC 2B, and by publishing the notice in the D.C. Register. In addition, the applicant timely posted notice on the property.

The application must meet the three-prong test for an area variance as set out in § 3103.2 of the Zoning Regulations. The applicant must demonstrate that: (1) the property is unique because of its size, shape, or topography or other extraordinary or exceptional situation or condition connected with the property; (2) the applicant would encounter practical difficulty if the Zoning Regulations were strictly applied; and (3) granting the variance will not result in substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Based upon the findings of fact, the Board concludes that the proposed project does not meet the requirements for approval of the application to enlarge the deck.

The Board finds reasonable the applicant's proposal to enclose the porch because the structure exists on the site and the enclosure would not extend the existing nonconformity of the building, nor create a new nonconformity. However, the Board does not find any extraordinary situation existing at the site, which would give good reason for the applicant to enlarge the deck and which would extend the existing nonconformity and create a new nonconformity of structure and addition combined.

The Board finds that the requested relief would be for the convenience of the applicant, rather than to correct a deficiency that exists at the site. The Board finds that the applicant chose to have two rental units in the building, rather than to use the space available to accommodate her living quarters. The Board did not find the applicant's argument persuasive that the practical difficulty of the case is associated with safety concerns and therefore the deck should be enlarged. The practical difficulty to enlarge the deck is one of the applicant's own choosing, and not created or controlled by an existing condition of the property or the structure. Moreover, the applicant has available alternative methods, which would not require variance relief, for securing the property.

The Board finds misleading the petition circulated by the applicant to her neighbors that neither the deck nor the closet would create any change to the current footprint of the house. If the addition were approved, the footprint of the building would be increased. As such, the Board is not convinced that enlarging the deck would not have an adverse impact on the light, air and privacy of the nearby property owners. Equally important, the Board is not convinced that approving the expansion of the deck would not impair the intent, purpose and integrity of the Dupont Circle Overlay District and the Zoning Regulations and Map, since the purpose of the overlay is to restrict the scale of development within the Dupont Circle area and to preserve open space.

The Board considered the views of Advisory Neighborhood Commission 2B and gave the ANC the "great weight" to which it is entitled. However, for the reasons stated in this decision, the Board did not agree with the ANC's recommendation that the project should be approved in its entirety.

For the above stated reasons, the Board concludes that the applicant has met the burden of proof to enclose the existing rear deck, but not to enlarge the deck. The Board determined that the closet on the third floor could be constructed as a matter-of-right.

IT IS HEREBY ORDERED THAT THE APPLICATION BE APPROVED FOR ADDITIONS TO A NONCONFORMING STRUCTURE; NAMELY, TO ENCLOSE THE EXISTING REAR DECK AND TO CONSTRUCT A CLOSET ON THE THIRD FLOOR OF THE STRUCTURE, AS LONG AS THE PROJECT DOES NOT EXCEED THE ALLOWABLE GROSS FLOOR AREA. THE REQUEST TO ENLARGE THE REAR DECK IS DENIED.

VOTE: 3-1-1 (Sheila Cross Reid, Carol J. Mitten, Anne Mohnkern Renshaw to approve; Susan Morgan Hinton opposed to the motion; the third mayoral appointee not present, not voting.)

BY ORDER OF THE DC BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this Order.

JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF ORDER: SEP 10 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OF THE D.C. CODE. *SEE* D.C. CODE § 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

BAB/8.16.01

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BZA APPLICATION NO. 16684

As Director of the Office of Zoning, I hereby certify and attest that on SEP 10 2001 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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