GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

DATE: November 20, 2001

TO: District of Columbia
Board of Zoning Adjustment

THROUGH: Andrew Altman, Director OP
Ellen McCarthy, Deputy Director OP

FROM: David J. McGettigan, AICP

SUBJECT: BZA Case No. 16780
Lenard Woods – 1360 East Capitol Street, NE
Square 1035 Lot 82

Summary

The applicant, Lenard Woods, the owner of 1360 East Capitol Street, NE, seeks approval of a variance to permit a two-story deck addition that has been recently constructed and subsequently determined by the Zoning Administrator not to be in compliance with the zoning regulations.

Recommendation

The Office of Planning recommends denial of the application.

Analysis

Additions to non-conforming structures are regulated by §2001.3, which states:

> Enlargements or additions may be made to the structure; provided, that the following requirements shall be met:
>
> (a) The structure shall conform to percentage of lot occupancy requirements; and
>
> (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.

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CASE NO.16780
EXHIBIT NO.30

According to the Zoning Administrator's referral none of these requirements have been met and a variance is required from each one. Based on the zoning computations included with the application:

(a) The structure increases the lot occupancy by 12.98% beyond the matter-or-right 60%.
(b) The structure does not meet the open court structure requirements.
(c) The structure increases the existing non-conforming lot occupancy and creates a new nonconformity with respect to open court requirements.

Variance Tests

Extraordinary or Exceptional Situation

The applicant must establish that, by reason of some extraordinary or exceptional situation or condition of this property the strict application of zoning regulations would result in peculiar and exceptional practical difficulties. There are two existing exceptional situations of this property: 1) the existing non-conformity due to an excess of lot occupancy (79.6 square feet or 3.6% over allowable lot occupancy), 2) the existing and original narrow width of the lot (16'3" as opposed to the required 18'). The non-conformity due to lot occupancy prohibits development of an addition under §223, which permits such development by special exception provided the non-conformity is not increased.

Result in Peculiar and Exceptional Practical Difficulty

As explained above the strict application of the zoning regulations prohibits an addition to a one-family dwelling to be permitted with a special exception. Under the criteria established in §223 a lot occupancy of up to 70% would be permitted if the other conditions were met (the applicant proposes a lot occupancy of 68%). Therefore a variance to §2001.3 is need if an addition pursuant to §223, is to be permitted.

Adversely Affect Use of Neighboring Property

The Board should determine if the variance could be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan. The determination is guided by whether or not granting the variance would adversely affect the use of neighboring property. The conditions of §223 also require this determination and specifically require consideration of light and air, privacy and visual intrusion.

Special Exception Relief

223 ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS (R-l)

223.1 An addition to a one-family dwelling or flat, in those districts where a flat is permitted, that does not comply with all of the requirements of §§401, 403, 404, 405 or 406 of this title shall be permitted if approved by the Board of Zoning Adjustment in accordance with the conditions

specified in §3108 of Chapter 31 of this title, subject to the provisions of this section.

The applicant has applied for such relief.

223.2 The addition shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property; in particular;
(a) The light and air available to neighboring properties shall not be unduly affected;

OP does not believe the application meets this condition. The neighbor has provided significant testimony regarding the negative and adverse effect that the deck and addition have caused on the available afternoon light to their yard and rear property. OP has visited the site and concurs that the proposed deck as constructed does cast a shadow over the adjacent yard.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

OP does not believe the application meets this condition. The subject property and the adjacent property were originally constructed as identical paired units. Both homes had a rear two-story deck. The applicant replaced the original deck with a two-story addition and has since constructed the subject two-story deck that extends beyond the rear wall of the adjacent property. The extension of the new subject deck provides direct visibility into the neighbor's deck and residence.

The neighbor has provided significant testimony regarding the negative and adverse effect that the subject deck has caused on the privacy of their yard, deck and rear rooms of their home. The subject deck is situated so that it does indeed provide direct visibility into the adjacent structure.

(c)The addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the street frontage; and

The rear of the subject property is partially blocked form view by the existing detached garage that extends the full width of the lot. The subject deck does alter the original "paired" character and scale of the two houses as viewed from the rear alley but it does not "substantially visually intrude upon the character" of the houses along the street frontage.

(d) In demonstrating compliance with ¶¶(a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs or elevation and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and view from public ways.

Drawings and photographs have been submitted.

23.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-l and R-2 districts or seventy percent (70%) in the R-3, R-4 and R-5 Districts.

The lot occupancy would total 68%, if the deck is approved.

223.4 The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials or other features for the protection of adjacent and nearby properties.

OP has no suggestion for special treatment that would provide both visual privacy and light for the adjacent property.

Recommendation

As stated in the testimony of the neighbor at 1362 East Capitol Street, NE, affirmed by the report of ANC6B and evidenced by the photographs submitted to the record, the addition adversely affects the use of the neighboring property, particularly in regard to light, privacy and visual intrusion and does not meet the conditions of §223 for special exception relief.

Based on the above analysis the Office of Planning recommends **denial** of BZA application 16780.