GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16780 of Lenard Woods, pursuant to 11 DCMR § 3104.1 for a special exception under section 223 to allow an addition to a one-family dwelling not meeting the requirements governing an addition to a nonconforming structure (section 2001.3) in an R-4 District at premises 1360 East Capitol Street, N.E. (Square 1035, Lot 82).

HEARING DATE: October 30, 2001
DECISION DATE: December 4, 2001

DECISION AND ORDER

Lenard Woods, the owner of Lot 82 in Square 1035, filed an application with the Board of Zoning Adjustment on April 20, 2001, pursuant to 11 DCMR § 3103.2 for a variance from the lot occupancy requirements under section 403, a variance from the open court width requirements under section 406, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow a rear deck addition to a single family dwelling in an R-4 District at premises 1360 East Capitol Street, N.E. (Square 1035, Lot 82). At the hearing, it was instead determined that the applicant only needed a special exception, pursuant to 11 DCMR §§ 223 and 3104.1 to construct the addition. The applicant and the parties agreed to the change in relief sought and proceeded with the hearing accordingly. After the public hearing, the Board denied the application on the grounds it did not meet the special exception criteria in section 223.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 15, 16 and September 20, 2001, the Office of Zoning advised the Zoning Administrator; D.C. Office of Planning; Advisory Neighborhood Commission (ANC) 6B, the ANC for the area within which the property that is the subject of the application is located; the ANC Commissioner for the affected single-member district; and the Ward 6 Councilmember of the application.

The Board scheduled a public hearing on the application for October 30, 2001. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on September 20, 2001, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 6B notice of the hearing. The applicant submitted no affidavit of posting.

Applicant's Case. The applicant presented his case at the hearing, stating that he had a building permit that from DCRA, that he would accommodate the concerns of the neighbors, and that relief should therefore be granted.

BZA
Case No. 16780
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO.16780
EXHIBIT NO.31

Public Agency Reports and Memoranda. The Zoning Administrator submitted a memorandum, dated August 9, 2001, stating that the applicant needed a variance from § 2001.3(a), (b), and (c).

The Office of Planning ("OP") submitted a report on December 3, 2001, recommending denial of the application. In its report, OP stated that the applicant's deck structure impacted the light and privacy of the neighboring property and therefore does not meet its burden of proof with respect to a special exception pursuant to § 223.2.

ANC Report. In its report dated November 19, 2001, ANC 6B indicates that on October 9, 2001, at a regularly scheduled and duly-noticed public hearing with a quorum present, ANC 6B unanimously opposed the application. The Board waives its requirement that the ANC report be submitted 7 days prior to the public hearing. Included in the ANC's reasons for opposing the project is the fact that "the construction seriously infringes on the air, light and privacy of the adjoining neighbor". On October 31, 2001, the ANC also submitted a copy of a letter, dated October 4, 2001, notifying the applicant of the ANC's intent to vote on the application at its next scheduled meeting. Because this letter was submitted after the close of the record, it was not considered.

Request for party status. Christopher and Cheryl Corson, residing at 1362 East Capitol Street, N.E., immediately adjacent to the applicant's subject property, submitted a request for party status dated October 1, 2001. The Board granted their request.

Persons in Support of the Application. Two neighbors submitted letters in support of the application.

Persons in Opposition to the Application. Two neighbors submitted letters in opposition to the application. Christopher and Cheryl Corson also testified at the hearing.

Closing of the Record. The record closed at the conclusion of the public hearing on October 30, 2001, but was left open to accept photographs of the rear of the subject property and any response thereto. A response by Christopher and Cheryl Corson was received on November 19, 2001. Because the response was not directed at the photographs submitted by the applicant, it was not considered.

Decision Meeting. At its decision meeting on December 4, 2001, the Board, by a vote of 4 – 0 – 1, denied the application.

FINDINGS OF FACT

1. The subject property is Lot 82 in Square 1035, at 1360 East Capitol Street, N.E. It is located in an R-4 District.

2. The applicant seeks approval for an existing 8' x 11' two story deck structure in the rear of the property.

3. The applicant initially obtained a building permit for the deck construction without Board approval because he failed to include his garage on his plat.

4. The lot is 2,203 square feet in size. The lot occupancy without the deck is 1,401.5 square feet. With the deck included, the lot occupancy is 1493.5 square feet.

5. The existing lot occupancy exceeds the 60% requirement, set forth in 11 DCMR § 403, for an R-4 district.

6. The width of the existing open court is 4.75 feet.

7. An open court must be at least 6 feet wide, pursuant to 11 DCMR § 406, in an R-4 district.

8. The deck extends the length of the existing open court, while maintaining approximately the same width.

9. The existing dwelling is a "nonconforming structure", as defined in 11 DCMR § 199.1.

10. Additions to non-conforming structures shall "conform to percentage of lot occupancy requirements. . . and [t]he addition itself shall not increase or extend any existing nonconforming aspect of the structure. . ." 11 DCMR § 2001.3.

12. Section 223, title 11, provides, in relevant part, that an addition to a one-family dwelling or flat that does not comply with all of the applicable area requirements of §§ 403, 406, and 2001.3 shall be permitted as a special exception, provided that the addition shall not have a substantially adverse effect 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; (b) the privacy of use and enjoyment of neighboring properties shall not be unduly compromised. . ." 11 DCMR § 223.2(a) and (b).

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799, as amended; D.C. Official Code § 6-641.07(g)(2) (2001 Ed.)), to grant special exceptions. Lenard Woods is seeking a special exception under 11 DCMR § 3104.1 to construct an addition to a one-family dwelling pursuant to 11 DCMR § 223.

The Zoning Regulations define the term "nonconforming structure" as:

> a structure, lawfully existing at the time this title or any amendment to this title became effective, which does not conform to all provisions of this title or the amendment, other than use, parking, loading, and roof structures requirements. Regulatory standards that create nonconformity of structures include, but are not limited to, height of building, lot area,

> width of lot, floor area ratio, *lot* occupancy, yard, *court*, and residential recreation space requirements.

11 DCMR § 199.1 (emphasis added). Under 11 DCMR § 403, each open court in an R-4 District must be at least 6 feet wide. Under 11 DCMR § 406, the lot occupancy shall not exceed 60%. The existing structure, with a court measuring 4.75 feet wide and a lot occupancy exceeding 60%, is therefore a nonconforming structure.

Under 11 DCMR § 2001.3, an addition may be made to a nonconforming structure devoted to a conforming use provided:

> (a) The structure shall conform to 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 proposed addition does not comply with § 2001.3(a) and (c) because the existing structure does not comply with lot occupancy requirements and the addition itself extends the existing nonconforming court.

Section 223, title 11, provides, in relevant part, that an addition to a one-family dwelling or flat that does not comply with all of the applicable area requirements of §§ 403, 406, or 2001.3 shall be permitted as a special exception, provided that the addition shall not have a substantially adverse effect 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; (b) the privacy of use and enjoyment of neighboring properties shall not be unduly compromised. . ." 11 DCMR § 223.2(a) and (b).

The Board finds, after consideration of the adjacent neighbor's submissions and testimony and the reports by the Office of Planning and ANC 6B, that the applicant has not met its burden of proof. The light and air of the adjacent properties have been substantially adversely affected by the addition. The addition intrudes well into the rear of the lot, such that the neighbors at 1362 now have much of their view from their rear bedroom and deck restricted. In addition, this new addition casts a significant shadow over the lower portions of the adjacent property and restricts circulation of air on the neighbors' smaller, adjacent rear deck. Also, the configuration of the new deck structure unduly compromises the privacy of use and enjoyment of the neighboring property. As stated at the hearing, the new addition enables a person to look directly into the rear bedroom window of the neighbor's property (1462 East Capitol, N.E.) and is large enough to accommodate groups of up to 15 persons.

For the reasons stated above, the Board concludes the applicant has not met his burden of proof. It is hereby **ORDERED** that the application is **DENIED.**

VOTE: 4 - 0 - 1 (David M. Levy, Anne Mohnkern Renshaw, Geoffrey H. Griffis, and James H. Hannaham to deny; the third mayoral appointee not sitting on the Board, not voting.)

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

Each concurring member approved the issuance of this Decision And Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 15 2002

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.

CB/3.1.02

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16780

As Director of the Office of Zoning, I hereby certify and attest that on MAR 15 2002 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Leonard Woods
3745 Jay Street, N.E., #6
Washington, DC 20019

Christopher and Cheryl Corson
1362 East Capitol Street, N.E.
Washington, DC 20003

Kenan P. Jarboe, Chairperson
Advisory Neighborhoood Commission 6B
921 Pennsylvania Avenue, S.E.
Washington, DC 20003

Charles C. White, Commissioner
Advisory Neighborhood Commission 6B07
1225 Constitution Avenue, N.E.
Washington, DC 20002

Councilmember Sharon Ambrose
Ward Six
1350 Pennsylvania Avenue, N.W., Suite 102
Washington, DC 20004

Toye Bello, Acting Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

Attestation Sheet – BZA Order No. 16780

Alan Bergstein
Office of the Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, DC 20001

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director