BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W., Room 210S
Washington, D.C. 20002

2003 DEC 10 PM 12:16
GOVERNMENT OF THE DISTRICT OF COLUMBIA

Appeal of Judy and Clark Brinckerhoff, *et al.* From the administrative decision of the Zoning Administrator in the issuance of Building Permit No. B452591, dated June 26, 2003, to John Walsh and Linda Jewell, for the construction of a rear addition to an existing single-family detached dwelling at 4624 Brandywine Street, N.W. as non-compliant with the side yard (§ 405) and nonconforming structure (§ 2001.3) provisions in the R-1-B District.	**BZA Appeal No. 17066** Hearing Date: December 16, 2003

MOTION FOR SUMMARY JUDGMENT
TO DENY THE APPEAL

I.
INTRODUCTION

Intervenors John Walsh and Linda Jewell (collectively, the "Intervenors" or "Walshes"), through undersigned counsel, hereby move the Board of Zoning Adjustment (the "Board" or "BZA") for summary judgment to deny the appeal in the above-captioned case. Summary judgment is a mechanism to resolve disputes without the need for lengthy and costly hearings where there are no facts in dispute and only issues of law to be decided. Contrary to the allegations of Judy and Clarke Brinckerhoff, *et al.* (the "Appellants" or "Brinckerhoffs"), the Zoning Administrator was correct as a matter of law in approving the issuance of Building Permit No. B452591 for a rear addition to the Walshes' house. Based on the plain language of the Zoning Regulations and section 405.8, in particular, and the legislative intent of the Zoning Commission in enacting section 405.8 in 1976-77, there is no basis in law or in fact that the

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Walshes' addition violates the side yard requirement by providing a width of 5.1 feet instead of eight feet as purportedly required by section 405.9 of the Zoning Regulations.

The Walshes do not dispute the one material fact germane to this appeal: the addition only provides a side yard of approximately five feet. However, because the Walshes' detached single family dwelling was constructed prior to 1958 with a side yard of 5.1 feet, the Walshes were lawfully permitted to extend the non-conforming side yard pursuant to section 405.8 of the Zoning Regulations. That section provides:

> In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, however, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).

11 DCMR § 405.8 (2003).

Accordingly, the Walshes are entitled to summary judgment as a matter of law and the appeal should be denied.

II.
STATEMENT OF FACTS

On June 26, 2003, the District of Columbia Building and Land Regulation Administration ("BLRA") issued Building Permit No. B452591 to John Walsh to construct a rear addition to his and his wife's house at 2624 Brandywine Street, N.W., at Lot 21 in Square 1548. The single-family detached dwelling was constructed prior to1958 and is located in the R-1-B District. As originally constructed, the house provided side yards with widths of 5.1 feet each. In issuing the building permit for the addition, BLRA found that the Zoning Review Branch had approved the addition as compliant with the provisions of the Zoning Regulations, including section 405.8 pertaining to additions to buildings with nonconforming side yards. Compliance with this provision was further confirmed through e-mail correspondence between the Appellants and

Faye Ogunneye of the Zoning Review Branch. Dissatisfied with the response they received, the Appellants filed this appeal.

III.
ARGUMENT

A. Standard of Review

Summary judgment is appropriate when there are no facts in dispute or to be decided by the reviewing agency and only a question of law is at issue. *See Holland v. Hannan*, 456 A.2d 807, 814-15 (D.C. 1983); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Diamond v. Atwood*, 43 F.3d 1538, 1540 (D.C. Cir. 1995). The non-moving party cannot merely rest upon the allegations included in the appeal, and instead must identify the specific facts which demonstrate that there is a genuine issue for the Board to resolve. *Anderson*, 477 U.S. at 248. The burden is on the non-moving party to demonstrate that there are material facts in dispute. *Celotex v. Catrett,* 477 U.S. 317, 322-23 (1986). Material facts are in dispute if they are capable of affecting the outcome of the suit under governing law. *See Anderson,* 477 U.S. at 248. In considering a motion for summary judgment, all evidence and inferences drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

However, "the nonmoving party 'must do more that simply show that there is some metaphysical doubt as to the material facts.'" *Colbert v. Chao*, No. 99-0625, 2001 WL 710114, at *6 (D.D.C. Jun. 19, 2001) (quoting *Matsushita*, 475 U.S. at 586). Rather, the nonmoving party must come forward with specific facts showing that there is a genuine issue which necessitates a hearing. *See Matsushita*, 475 U.S. at 587. Otherwise, summary judgment is appropriate.

Neither the Brinckerhoffs nor the Walshes dispute the one material fact in this case: the addition was built with a side yard of approximately five feet. The only question to be decided by the Board, then, is whether the Walshes were entitled to construct the addition with a side yard of only five feet pursuant to section 405.8. Because such a question is a legal one and not a factual one, the Board should dispense with the costly and timely hearing procedure, decide the case on the pleadings, and issue an oral decision in favor of the Zoning Administrator and the Walshes on the scheduled hearing date of December 16, 2003. The Walshes are entitled to summary judgment because it is undisputed as a matter of law that section 405.8 of the Zoning Regulations allowed them to construct an addition to extend the non-conforming five-foot side yard. Appellants' argument that section 2001.3(b)(3) does not allow an extension of non-conforming structures fails under canons of statutory construction and thus the Zoning Administrator's decision must stand.

B. Section 405.8 of the Zoning Regulations Specifically Contemplated the Very Type of Addition Constructed by the Walshes.

1. Legislative History

In 1976, the Zoning Commission amended the Zoning Regulations to add section 405. 8 in order to allow homeowners to build, without the need for special exception or variance relief, the very type of addition constructed by the Walshes. In its December 15, 1976, letter to the National Capital Planning Commission ("NCPC") forwarding the text amendments for approval, the Zoning Commission attached the report of the Municipal Planning Office (the equivalent of today's Office of Planning), which described the purpose and need of the proposed amendment:

> This amendment is designed to remove certain requests for side yard variances from the jurisdiction of the BZA, and make approval of some proposed building additions a matter-of-right to be administered by the Zoning Administrator.

> These side yard cases would be those where an addition is to be made to a building which predates the present Zoning Regulations and which have existing side yards which are non-conforming under the present Regulations.
>
> * * *
>
> The proposed amendment to the Zoning Regulations related to side yards would apply only to buildings existing on or before May 12, 1958, the effective date of the existing Zoning Regulations. Prior to that date, under the Zoning Regulations then in effect, the minimum required side yard in most area districts was five feet. Therefore, a large number of buildings constructed prior to May 12, 1958 have a side yard which is only five feet wide. Since the present Regulations require a minimum side yard of eight feet, there are many structures which are non-conforming as to side yards.
>
> The purpose of the amendment would allow an extension or addition to be made to pre-1958 buildings in residential districts provided two conditions are satisfied, as follows:
>
> 1. The width of existing yard is not decreased;
>
> 2. The width of the existing side yard is at least five feet.
>
> Attached Figures 1 and 2 show situations where the proposed regulation would apply, and no BZA review would be required. Attached Figure 3 shows a situation where the proposed regulations would not be applicable, and a variance from the Regulations would still be required.

See Letter from District of Columbia Zoning Commission to National Capital Planning Commission, December 15, 1976, and Memorandum from the Municipal Planning Office to the Zoning Commission, July 6, 1976, attached hereto as Exhibit A; referenced figures are also attached separately as Exhibit B.

It is abundantly clear from the legislative history and the illustrations attached thereto that section 405.8 was designed to allow the precise type of addition constructed by the Walshes. Figure 2 in the 1976 Zoning Commission Report, which illustrates a permissible addition to the rear of a house that continues the non-conforming five-foot side yard, is exactly what the Walshes constructed and is exactly what the amended regulations were designed to permit. Yet, despite the clear language of the regulation and the legislative intent, Appellants now try to argue just the opposite.

2. Appellants Misinterpret the Meaning of Section 405.8

Appellants urge that section 405.8 should be interpreted as only setting conditions on the size of a side yard for an *existing* structure and not an *addition* to an existing structure. Such an interpretation misconstrues the meaning of a side yard. Once an addition is built, it becomes part of the structure from which the side yard is measured. It does not have its own side yard that is measured differently from the existing structure. Thus, for example, if a rear addition is constructed to an existing house with a five-foot side yard, and the rear addition is set back eight feet from the side property line, the width of the side yard for the entire structure – both the existing house and addition – is still five feet. The three-foot area remaining along the addition constitutes a "court" under the Zoning Regulations. Appellants' argument, then, that section 405.8 does not address an addition's side yard is meaningless because the width of the side yard has already been established by the existing structure. The only way that section 405.8 has meaning – and to make it consistent with its legislative history – is if it's construed to allow an addition to extend along the nonconforming 5.1 foot side yard.

Nevertheless, Appellants continue to argue the limiting nature of section 405.8 by comparing it to section 404.4, a counterpart provision concerning rear yards. There, Appellants argue, the Zoning Commission explicitly stated that a building could extend into the required rear yard. In contrast, they urge, the Zoning Commission could have used similar language in section 405.8 to allow an addition to extend into the required side yard but chose not to so. Therefore, the Appellants conclude that section 405.8 cannot be read to allow an extension into the required eight-foot side yard.

This argument again fails to consider the explicit intent of the Zoning Commission in adopting sections 404.4 and 405.8, which were enacted at the same time in 1976-77. The

illustrations accompanying the text amendments clearly show what perhaps the words did not convey as clearly to the Appellants: that an addition can project into the required eight-foot side yard and extend along the five-foot side yard line established by the existing structure.

Appellants' reliance on the Board's decision in the *Pritchard* case is also misplaced. *See* BZA Order in Appeal No. 16811, October 15, 2002. There, the Board was interpreting the applicability of section 405.3 of the Zoning Regulations pertaining to the number of required side yards for one family semi-detached dwellings, which is not at issue in this case. Significantly, the Board overturned the *Pritchard* decision by Order dated September 8, 2003 in Appeal No. 16935, thereby undermining any precedential effect this case might have had for the Appellants.

3. Appellants Misinterpret the Meaning of Section 2001.3

Finally, Appellants suggest that section 2001.3(b)(2) precludes an extension of the nonconforming side yard. That section provides that an addition may be made to a nonconforming structure devoted to a conforming use provided that the addition shall:

> Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.

11 DCMR § 2001.3(b)(2) (2003).

At first glance, this provision would appear to be at odds with section 405.8. Section 2001.3 would preclude an extension of a nonconformity, *i.e.*, prevent the construction of an addition that would continue the nonconforming 5.1 foot side yard, while section 405.8 would allow an extension to a building as long as the width of the existing side yard is not decreased. The Appellants have attempted to resolve this apparent discrepancy by claiming that section 2001.3 must control, thereby rendering section 405.8 meaningless.

Rules of statutory construction, however, dictate otherwise. Courts and agencies are required to provide meaning to all statutes and regulations so that no parts are rendered superfluous. *See Matter of T.L.J.* 413 A.2d 154 (D.C. 1980); *see also McDaniels v. Dep't of Employment Servs.,* 512 A.2d 990 (D.C. 1986). Even when statutes appear to be in conflict, courts and agencies are to harmonize the provisions of each so that neither one is rendered meaningless. *Citizens to Save Spencer County v. U.S. Environmental Protection Agency*, 600 F.2d 844, 870 (D.C. Cir. 1979) (rule that maximum possible effect should be afforded to all statutory provisions so as to render no provision null or void applies with equal strength when statutory provisions are in certain respects inconsistent); *Lumpkin v. Dep't of Social Servs.*, 400 NYS2d 220, 222 (1977), *citing Markam v. Cabell*, 326 U.S. 404 (1945) ("When two statutory or regulatory provisions are potentially in conflict, they should be construed in such a manner that the overriding purposes of both can be preserved."); *see, also, Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission,* 325 F.2d 230 (D.C. Cir. 1963); *Maiatico v. U.S.*, 302 F.2d 880 (D.C. Cir. 1962).

Here, section 405.8 was adopted with the intent to conform with the existing provisions of section 2001.3. If section 2001.3 is given greater weight than the side yard provisions, then section 405.8 is rendered meaningless. The only logical way to interpret both provisions so that each one has meaning is with the same intent found in the legislative history and associated illustrations: that rear additions may be made that extend along existing nonconforming side yards.

C. <u>Appellants' Supplemental Statement Fails to Support the Standard of Review for Its Appeal</u>.

By letter submitted to the Board December 2, 2003, the Appellants attempt to further support their appeal by offering irrelevant information to the record. The Appellants describe

construction issues that fall within the purview of BLRA, not the BZA. The Appellants also argue that the Walshes addition invades their privacy, destroys serene vistas from their backyard and obstructs natural light to their houses, presumably in contravention of the Zoning Regulations. What the Appellants fail to grasp is that the provisions of the Zoning Regulations protect an individual's own property and do not necessarily exist for the benefit of adjacent property owners. Absent a requirement for BZA review or other specific provision of the regulations, each individual property must provide its own adequate light and air through its own yards and set backs; the adjacent property is not required to provide privacy, serene vistas or natural vistas for the benefit of someone else. If a property owner's proposed addition meets the minimum requirements of the Zoning Regulations, the owner is free to construct an addition regardless of any perceived benefit or consequence to adjacent properties.

The Board's jurisdiction is limited to whether a project complies with the specific, not just the general, provisions of the regulations, or "quality of life" issues. Here, the Walshes' addition is consistent with the provisions of the Zoning Regulations and section 405.8, in particular. Thus, any perceived impacts on light, vistas and privacy fall beyond the scope of the Board's jurisdiction.

IV.
CONCLUSION

It is crystal clear from the legislative history on section 405.8 and its accompanying Figure 2 that the Walshes' addition is exactly the type of addition that the Zoning Commission determined to remove from BZA jurisdiction and allow as a matter of right. Thus, there are no material facts in dispute which would necessitate a full hearing on this matter. Accordingly, the Board should consider this appeal on the pleadings as a matter of law and deny the appeal at the

hearing date scheduled for December 16, 2003. To the extent that the Board requires oral argument, the Walshes respectfully request a time limit for each party.

WHEREFORE, the Walshes respectfully request the Board to grant summary judgment in its favor and deny the appeal.

Respectfully submitted,



Mary Carolyn Brown
HOLLAND & KNIGHT LLP
2099 Pennsylvania Ave, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

Counsel for John Walsh and Linda Jewell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for Summary Judgment was served this 10th day of December, 2003, by first-class mail upon the following:

Judy Brinckerhoff, *et al.*
4626 Brandywine Street, N.W.
Washington, D.C. 20016

and by hand-delivery to:

Lori Monroe
Assistant Corporation Counsel
Office of Corporation Counsel for
441 4th Street, N.W.
Washington, D.C. 20001

Faye Ogunneye
Zoning Review Branch
Building and Land Regulation Administration
D.C. Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., 2nd Floor
Washington, D.C. 20002

Mary Carolyn Brown

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A

Government of the District of Columbia
ZONING COMMISSION

December 15, 1976

Charles Conrad
Executive Director
National Capital Planning
Commission
1325 "G" Street, N.W.
Washington, D.C. 20576

RE: Z.C. case No. 76-10

Dear Mr. Conrad:

On December 9, 1976, the District of Columbia Zoning Commission took action on the attached proposal to amend the Zoning Regulations partaining to "Side and Rear Yards". This amendment transfers the primary responsibility for the review of structural additions in side and rear yards from the Board of Zoning Adjustment to the Zoning Administrator.

This proposed amendment is being transmitted to you for comment and review by the National Capital Planning Commission pursuant to Section 492(b) (2) of the District of Columbia Self-Government and Governmental Re-organization Act.

To assist in your review we are transmitting herewith the reports of the Municipal Planning Office relevant to the case.

Sincerely,

Arthur B. Hatton
Executive Secretary

Government of the District of Columbia

ZONING COMMISSION

Zoning Commission Case No. 76-10

Proposed Zoning Regulation Amendment
December 9, 1976

At its meeting of December 9, 1976, the District of Columbia Zoning Commission approved the following proposed amendment to the D.C. Zoning Regulations:

1. Add a new Sub-section 3305.9 to read a follows:

3305.9 In the case of a building existing on or before May 12, 1958 with a side yard less than eight feet wide an extension or addition may be made to such building, provided that the width of the existing side yard is not decreased, and further provided that the width of the existing side yard is a minimum of five feet.

2. Add a new Sub-section 3304.4 to readv as follows:

3304.4 In the case of a building existing on or before May 12, 1958, an extension or addition may be made to such a building into the required rear yard, provided that such extension or addtion shall be limited to that portion of the rear yard included in the building area on May 12, 1958.

BY: Arthur B. Hatton

Arthur B. Hatton
Executive Secretary

D.C.-44
May 1967

Memorandum • Government of the District of Columbia

TO: D.C. Zoning Commission

Department, Agency, Office: Zoning Division, MPO

FROM: Ben W. Gilbert, Director
Municipal Planning Office

Date: July 6, 1976

SUBJECT: Zoning Commission Case No. 76-10

Description of the Case

The text amendments proposed in this case were originally presented to the Zoning Commission by the Municipal Planning Office. These amendments were derived out of the continuing zoning revision process which the Municipal Planning Office has been embarked upon, and were discussed at the joint retreat held by the Zoning Commission and Board of Zoning Adjustment in February 1976.

There are three different amendments, as follows:

1. This amendment is designed to remove certain requests for side yard variances from the jurisdiction of the BZA, and make approval of some proposed building additions a matter-of-right to be administered by the Zoning Administrator. These side yard cases would be those where an addition is to be made to a building which predates the present Zoning Regulations and which have existing side yards which are non-conforming under the present Regulations.

2. This amendment is designed to remove certain requests for rear yard variances from the jurisdiction of the BZA, and make approval of some building additions a matter-of-right to be administered by the Zoning Administrator. These rear yard cases would be those where an addition or modification is proposed to a portion of a building which already is within the required rear yard and is thus non-conforming.

3. This amendment is designed to remove the review and approval of structures extending above the height limits established by the Zoning Regulations and the Act of 1910 from the jurisdiction of the BZA and allow such structures to be reviewed and approved by the Zoning Administrator as a matter-of-right.

Summary Recommendation

The Municipal Planning Office finds that the proposed amendments would expedite the BZA process without adverse effects, and recommends that the Zoning Commission approve the proposed amendments.

General Background

The Zoning Act of 1938 created a Board of Zoning Adjustment for the District of Columbia, and gave it the authority to grant variances from the strict application of the Zoning Regulations, to hear and decide appeals where it is alleged there is error in the administration or enforcement of the Zoning Regulations, and to hear and decide requests for special exceptions and other matters as may be provided by the Zoning Commission in the Zoning Regulations. The Board is composed of five members, including a member of the Zoning Commission or its staff, a member of the National Capital Planning Commission or its staff, and three other members, all of whom must be residents of the District of Columbia for at least three years preceeding appointment to the Board and at least one of whom shall be a homeowner.

Since its creation in 1938, the BZA has heard and decided over 12,000 cases. In the 3 1/2 years, from January 1, 1973 to the present, over 930 cases have been filed with the Board for hearing and decision, an average of approximately 265 cases per year. These cases vary in complexity from side yard variances of less than one foot to university campus plans; from review of roof structures to review of multi-unit development proposals in R-5-A Districts; from changes in non-conforming uses to complicated and lengthy appeal cases.

The Board is required to hold a public hearing on all cases filed before it. These hearings are conducted in accordance with rules of procedure which follow the D.C. Administrative Procedures Act, and which provide for notice, conduct of hearing, and post-hearing processes. The notice provided has also been set at a minimum of 30 days to provide adequate notice to Advisory Neighborhood Commissions.

Due to the number of cases involved, the requirements and safeguards for due process contained in the rules and the part time nature of the Board, the Board has developed a constant backlog of cases to be heard and decided. This backlog, which varies in size and duration, results in the Board being unable to devote sufficient time to complex and detailed issues, and also creates a delay of several months for all cases, whether complex or not.

The proposed amendments to the Regulations are thus designed to accomplish two purposes:

1. Reduce the total number of cases which the Board must process, to remove cases which are relatively routine, uncontroversial and in about all cases, are approved by the Board. This would leave the Board more time to deal with the more complex cases.

2. Eliminate the delay for a person desiring to take certain actions which are relatively uncontroversial and which, in the large majority of cases, are routinely approved by the Board.

These purposes are designed to relieve some of the difficulties in the zoning process. The Government Operation Committee of the District of Columbia Council has been investigating the functioning of that process, but has held off any action to give the Zoning Commission the opportunity to study the problems and take appropriate action.

Detailed Description and Analysis - Side Yards

The proposed amendment to the Zoning Regulations related to side yards would apply only to buildings existing on or before May 12, 1958, the effective date of the existing Zoning Regulations. Prior to that date, under the Zoning Regulations then in effect, the minimum required side yard in most area districts was five feet. Therefore, a large number of buildings constructed prior to May 12, 1958 have a side yard which is only five feet wide. Since the present Regulations require a minimum side yard of eight feet, there are many structures which are non-conforming as to side yards.

The proposed amendment would allow an extension or addition to be made to pre-1958 buildings in residential districts provided two conditions are satisfied, as follows:

1. The width of the existing yard is not decreased.

2. The width of the existing side yard is at least five feet.

Attached Figures 1 and 2 show situations where the proposed regulation would apply, and no BZA review would be required. Attached Figure 3 shows a situation where the proposed regulation would not be applicable, and a variance from the Regulations would still be required.

During the period from January 1, 1973 through June 30, 1976, there have been 103 cases filed before the BZA requesting a side yard variance in a residential district. Of these, 80 (or 77.7%) have been approved by the Board, 15 (or 14.6%) have been denied, and 8 (7.8%) have been withdrawn or dismissed. Of the 95 cases in which the Board made a determination on the merits of the case, 26 would have been permitted as a matter-of-right had the proposed regulation been in effect. Of these 26 cases, the Board approved 25 (96.2%) and denied only 1 (3.8%). Copies of the order of the Board in Cases No. 12092 and 12117, two applicable cases which were approved by the Board, are attached.

Of the 69 cases which would not have been permitted as a matter-of-right, 55 (or 79.7%) were approved and 14 (20.3%) were denied. These cases would still have required Board approval either because they involved new construction, a side yard less than 5 feet wide, a decrease in the width of the yard or another associated variance, such as lot occupancy or rear yard. There is a substantial difference in the percentage of applications approved for those cases which would have qualified under the proposed regulation (96.2%) as opposed to those which would not have so qualified (72.6%).

Detailed Description and Analysis - Rear Yards

The proposed amendment to the Zoning Regulations related to rear yards would also apply only to buildings existing on or before May 12, 1958. This proposed amendment would allow the expansion of such buildings in residential districts into a required rear yard if the expansion is limited to that portion of the rear yard which was included in the building area in 1958. Building area is defined as "the maximum horizontal projected area of a building and its accessory buildings", with certain exceptions. Essentially, this would include any portion of a theoretically required rear yard which was under roof or contained a structure above the level of the main floor of the building. It would allow the enclosure of an open porch, or the expansion of a second floor over an existing first floor. Attached Figure 4 shows a schematic plan and elevation of a situation where the proposed regulation would be applicable. Attached Figure 5 shows a schematic plan and elevation of a situation where the proposed regulation would not be applicable.

During the period from January 1, 1973 through June 30, 1976, there have been 53 cases filed before the BZA requesting a rear yard variance in a residential district. Of these, 34 (or 64.2%) have been approved by the Board, 14 (or 26.4%) have been denied and 5 (or 9.4%) have been dismissed or withdrawn. Of the 48 cases in which the Board made a determination on the merits of the case, only two would have been permitted as a matter-of-right had the proposed regulation been in effect. Both of these cases were approved by the Board. A copy of the Board's order in Case No. 11638 is attached.

Of the 46 cases which would not have been permitted as a matter-of-right, 32 (or 69.6%) were approved and 14 (or 30.4%) were denied. These cases would still have required BZA approval because they involved new construction, extension into areas which were not part of the "building area" in 1958 or another associated variance, such as lot occupancy. The proposed regulation will have substantially less of an impact than the proposed side yard regulation, but would still be applicable to a small number of cases.

Detailed Description and Analysis - Roof Structures

The Zoning Regulations in effect prior to 1958, allowed roof structures above the normal height limit if consistent with the Act of 1910. The Lewis Plan made no allowance for roof structures above the normal limit, except for a "church spire, dome or pinnacle serving as an architectural embellishment" and a chimney or smokestack. However, the Zoning Regulations adopted by the Zoning Commission in 1958 did allow for elevator or stairway penthouses to exceed the height limit. However, no BZA review was required, nor was there an FAR credit. The Regulations were amended in 1960 to establish BZA review and provide for the credit of up to .37 FAR. Section 3308 has remained essentially unchanged since 1960, the only addition being an allowance for roof structures for fixed right-of-way mass transit systems.

The primary purpose of the 1960 amendment was to obtain some degree of control over the exterior appearance of roof structures. It was estimated in 1960 that only 10% of all roof structures would require BZA approval. The Zoning Administrator estimates that in practice more than half of all roof structures are reviewed by the Board of Zoning Adjustment.

This proposed amendment to the Zoning Regulations would apply in all zone districts to those structures located on the roof of buildings which extend above the normal maximum height limit for the height of buildings. These regulations in large part are applicable in the same manner as the existing regulation contained in Section 3308. There are some changes, as follows:

1. The present Regulations allow an FAR credit of .12 and another of .25. These have been almost universally applied as a total FAR of .37. The proposed regulation allows for a total FAR for roof structures of .37.

2. The present regulations limit coverage of the roof to 1/3 of the roof area in certain districts only. The proposed regulation would apply the 1/3 maximum to all districts.

3. The proposed regulation clarify the status of roof structures less than four feet tall, and clarify other ambiguities as to uses permitted, size and location.

4. In order to maintain some level of design review and protection, the proposed regulation requires that the Zoning Administrator refer all roof structure plans to the Municipal Planning Office. This maintains a review process which has evolved under the current regulation, and which appears to work well.

The other changes are re-codification of the existing language. It is to be noted that the Board may still grant variances from the strict application of these standards. In fact, revised Sub-section 3308.2 specifically authorizes the Board, and not the Zoning Administrator, to vary the location of roof structures in certain situations.

During the period from January 1, 1973 to June 30, 1976, there have been 50 cases filed before the BZA requesting approval of roof structures. Four cases were withdrawn, and all 46 of the other cases were approved. Of these 46 cases, 23 (or 50%) would have been approved by the Zoning Administrator as a matter-of-right. Most of the remaining half would not have specifically required BZA approval, but the building would have been before the Board on another matter, such as a special exception for an office in an SP District. Some of the 46 cases before the Board did request variance from the location of roof structures.

Recommendation

The Municipal Planning Office recommends that the Zoning Commission adopt the three proposed text amendments, relating to side yards, rear yards, and roof structures, for the following reasons:

1. The caseload for the Board of Zoning Adjustment would be significantly reduced, enabling the Board to devote more of its limited time and resources to other cases which are more complex and critical.

2. The delay suffered by the applicant in the three types of cases would be significantly reduced, in a process which now takes many months to complete.

3. Both of the above listed goals can be achieved with little or no negative impact by removing these cases from the jurisdiction of the BZA. The Board has routinely granted such cases in the past, after determining that there would be no adverse impact.

The Municipal Planning Office believes that these proposed amendments represent a relatively modest step which can be taken toward resolving some of the difficulties of the BZA process, and consequently believes that they should be adopted.

Report Prepared by:
Zoning Division, MPO
SES:ss

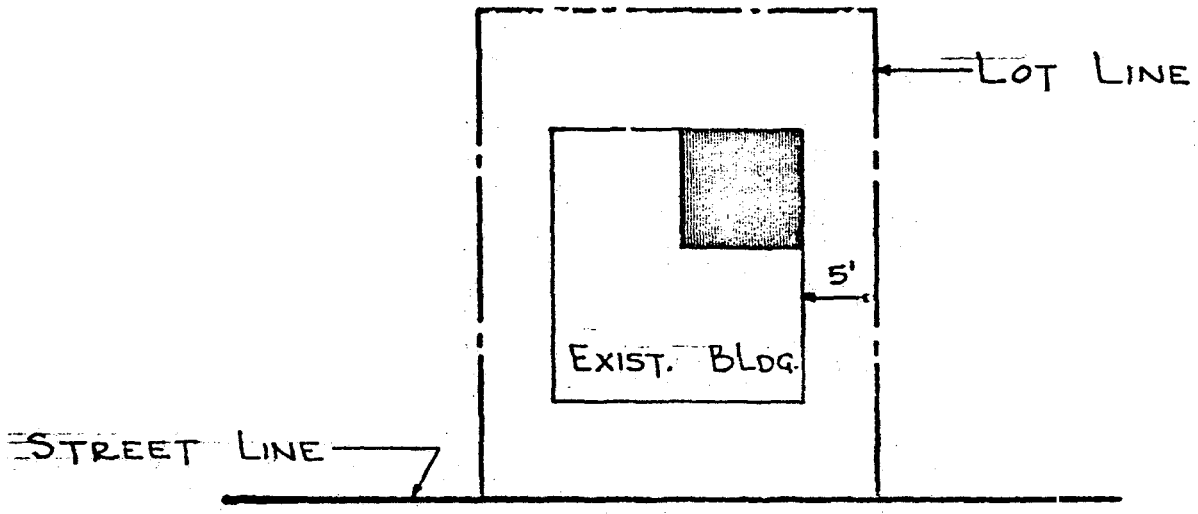


FIGURE 1 ~ PERMITTED

SCALE: N.T.S.

E:

PROPOSED ADDITION

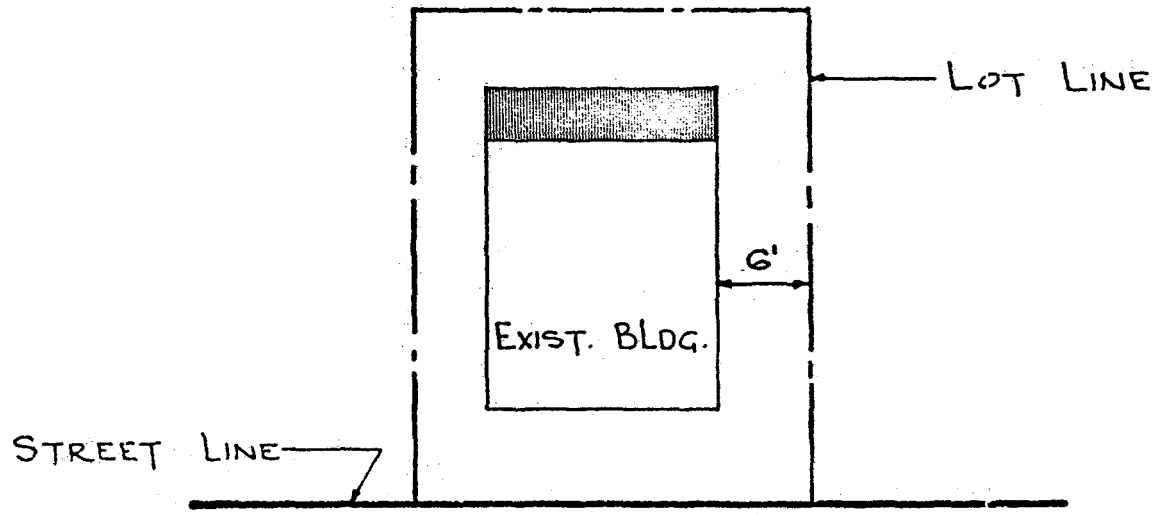


FIGURE 2 ~ PERMITTED

SCALE: N.T.S.

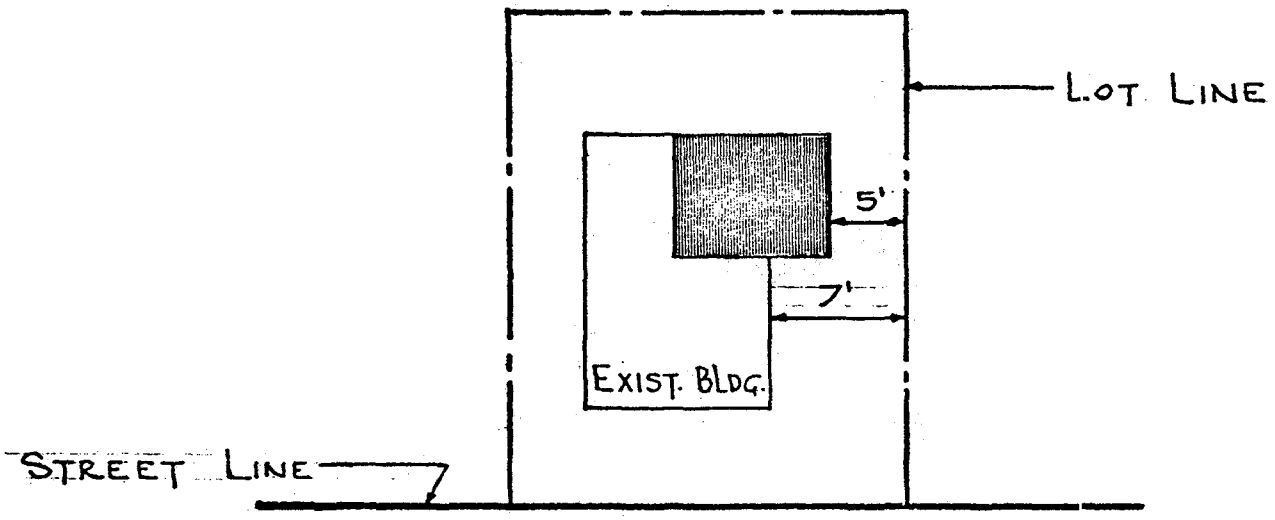


FIGURE 3 ~ NOT PERMITTED

SCALE: N.T.S.

)TE:

PROPOSED ADDITION

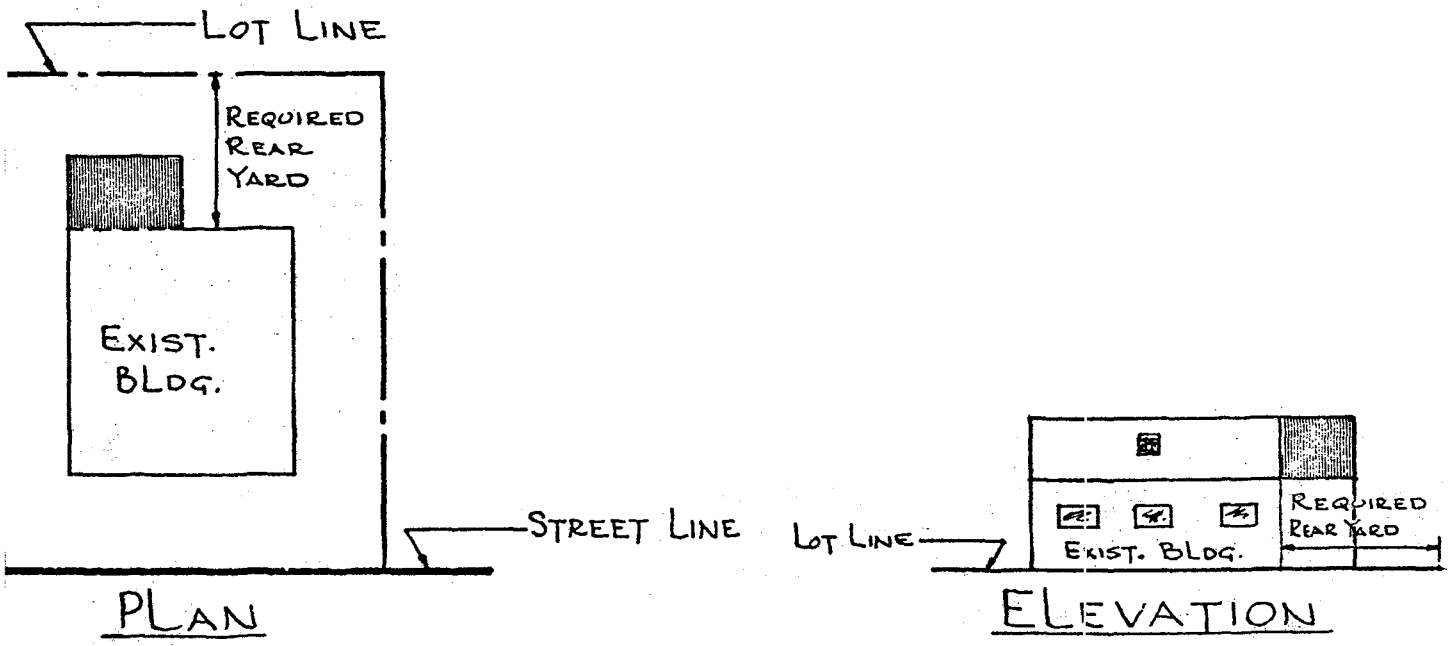
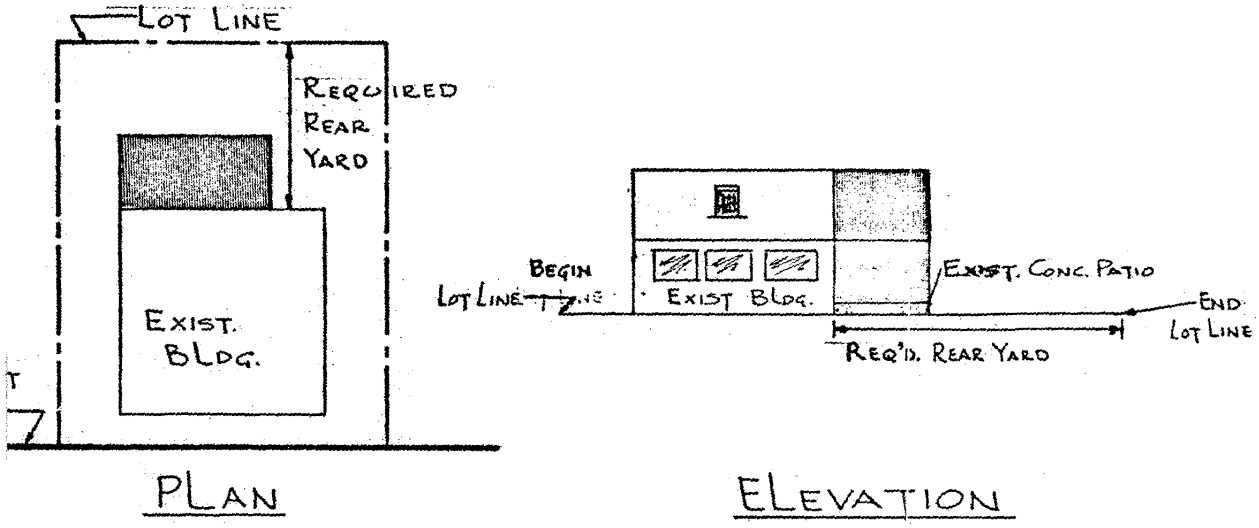


FIGURE 4 ~ PERMITTED

SCALE: N.T.S.

)TE:



PLAN

ELEVATION

FIGURE 5 ~ NOT PERMITTED

SCALE: N.T.S.

TE:

PROPOSED ADDITION

Before the Board of Zoning Adjustment, D. C.

Application No. 12092 of John and Nancy Cavanaugh, pursuant to Sub-section 8207.1 of the Zoning Regulations, for a variance from the side yard requirements (Sub-section 3305.1 and paragraph 7107.22) to permit a rear addition to a dwelling which is a non-conforming structure in the R-1-B district at the premises 3225 McKinley Street, N. W. (Square 2022, Lot 8).

HEARING DATE: April 21, 1976
DECISION DATE: April 21, 1976 (from the Bench)

FINDINGS OF FACT:

1. The property is located in an R-1-B District.

2. The property is presently improved with a detached single-family dwelling. The lot slopes in such a manner that the south side of the dwelling, facing the street, is two stories out of grade, while the north side of the dwelling, facing the rear, is three stories out of grade.

3. The applicant proposes to construct a rear addition in the form of an open deck. The deck would be twelve feet wide and extend ten feet toward the rear of the lot from the existing structure. The level of the deck would be at the same level as the first floor joists, but would be one story out of grade.

4. The existing structure has a non-conforming side yard on the east side of 5 feet. The Zoning Regulations require a side yard of 8 feet.

5. The proposed deck would also have a side yard of 5 feet, requiring a variance of 3 feet. The east side of the proposed deck will be on the same line as the east side of the existing structure.

6. If the deck were located 8 feet from the property line, the support posts would be in the driveway which serves the garage located in the structure.

7. There was no opposition to the application.

CONCLUSION OF LAW AND OPINION

The Board concludes that the requested variance is an area variance, the granting of which requires the slowing of a practical difficulty. The Board concludes that the shape of the lot and the placement of the supports for the deck relative to the location of the driveway do create such a difficulty. The Board further concludes that the degree of non-conformity will not be increased by the proposed addition. The Board concludes that there will be no adverse impact on surrounding or neighboring property. It is therefore ordered that the application be GRANTED.

VOTE: 4-0 (Leonard L. McCants, Ruby B. McZier, William S. Harps and William S. McIntosh to grant, Lilla Burt Cummings, Esq. not present, not voting).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Secretary to the Board

FINAL DATE OF THE ORDER: APR 30 1976

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

BEFORE THE BOARD OF ZONING ADJUSTMENT, D. C.

Application No. 12117 of Mr. and Mrs. Edgar Ulsamer, pursuant to Sub-section 8207.1 of the Zoning Regulations, for a variance from the side yard requirements (Sub-section 3305.1 and paragraph 7107.22) to permit an addition to a dwelling which is a non-conforming structure in the R-1-B district at the premises 4841 Hutchins Place, N.W. (Square 1387, Lot 35).

HEARING DATE: March 31, 1976
DECISION DATE: May 3, 1976

FINDINGS OF FACT:

1. The property is located in an R-1-B District.

2. The property is improved with a two story brick detached single family dwelling. The subject property is 25 feet wide, and varies in depth from 124 to 139 feet.

3. The applicant proposes to erect a one story addition at the rear of the existing structure. The addition would be as wide as the existing dwelling, and would extend approximately 22 feet toward the rear of the property. There would still be a 67 foot rear yard. The addition would house a studio and a bath.

4. The existing structure presently has side yards of 5 feet and 5.195 feet. The side walls of the addition would be on the same line as the side walls of the existing structure. Variances of 3 feet and 2.805 feet are thus required.

5. There was opposition to the application by letter. No opposition appeared at the hearing.

CONCLUSIONS OF LAW AND OPINION

The Board concludes that the requested variance is an area variance, the granting of which requires the showing of a practical difficulty. The Board concludes that the applicant would suffer a practical difficulty were the 8 foot yard requirement strictly enforced, leaving only nine feet left for the addition. The Board concludes that the addition will

not have an adverse effect on adjoining property and will not have a negative impact on the area. It is therefore ORDERED that the application be GRANTED.

VOTE: 3-0 (Martin Klauber, Leonard McCants and William F. McIntosh to grant, Lilla B. Cummings and William Harps not voting, not having heard the case).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Acting Secretary to the Board

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY, UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

FINAL DATE OF THIS ORDER: MAY 12 1976

Before the Board of Zoning Adjustment, D. C.

Application No. 11638, of Lillian K. Robbin, pursuant to Section 8207.11 of the Zoning Regulations for a variance from the rear yard provisions of Section 3304.1 of the regulations to permit the enclosure of a porch over an existing garage in the R-1-B District located at 2946 Legation Street, N. W., Lot 28, Square 2298.

HEARING DATE: April 17, 1974

EXECUTIVE SESSION: April 23, 1974

FINDINGS OF FACT

1. The applicant requests permission to enclose an existing porch which is located on top of an existing garage attached to the rear of a single family dwelling on the subject property.

2. The applicant testified that the porch enclosure is necessary in order to provide a bathroom and bedroom on the first floor of their house for the use of husband who suffers from angina pectoris.

3. The record contains a letter from Dr. Allen M. Mondzac, advising the Board that Mr. Robbin needs this proposed addition to prevent the necessity of Mr. Robbin Climbing stairs.

4. The proposed enclosure will not extend the main structure of the single family dwelling beyond its existing building line.

5. The rear yard requirement for the R-1-B zone is 25 feet.

6. The applicant's existing rear yard is 5 feet, which will not be altered by the proposed porch enclosure.

7. No opposition was registered.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Board is of the opinion that applicant has proved the existence of a practical difficulty within the meaning of Section 8207.11 of the Zoning

Regulations, and that the granting of this variance will not have an adverse affect on the neighborhood, or substantially impair the meaning and intent of the zoning regulations and map.

ORDERED: That the above application be GRANTED.

VOTE: 5-0

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

ATTESTED By: James E. Miller
JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: MAY 22 1974

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

B

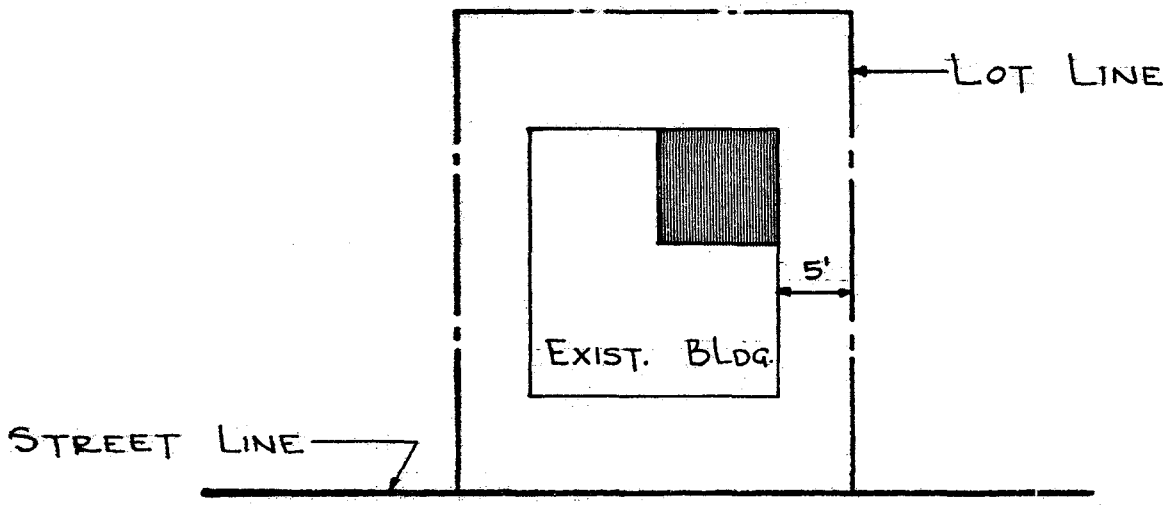


FIGURE 1 ~ PERMITTED

SCALE: N.T.S.

NOTE:

PROPOSED ADDITION

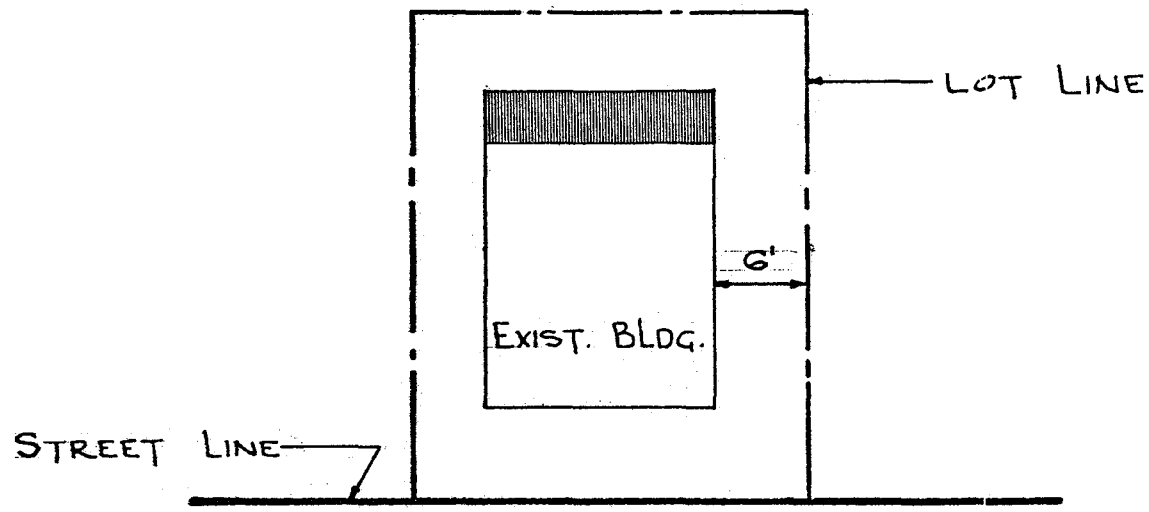


FIGURE 2 ~ PERMITTED

SCALE: N.T.S.

NOTE:

PROPOSED ADDITION

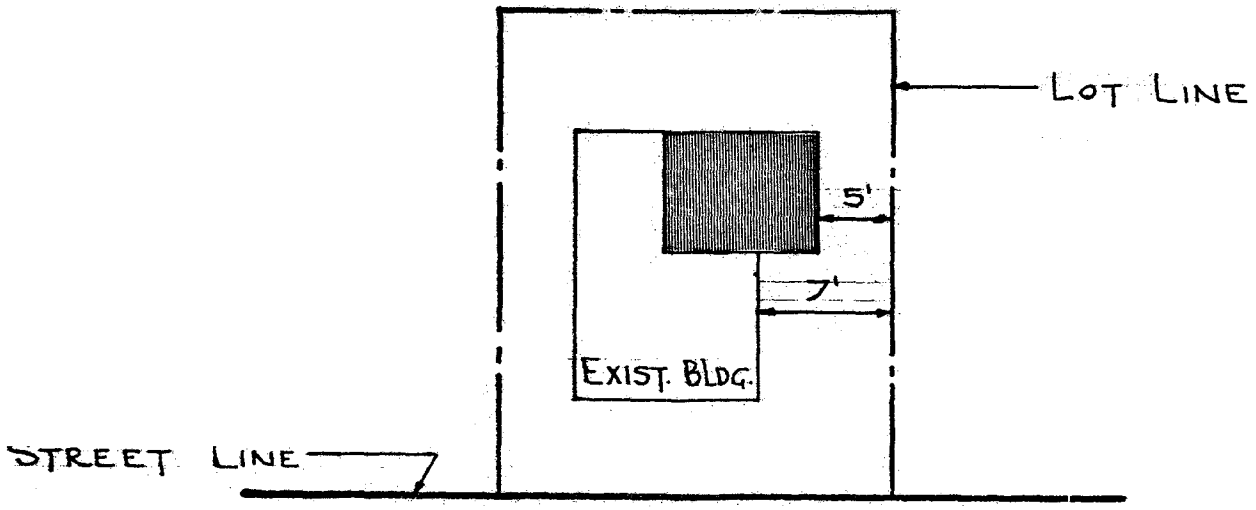


FIGURE 3 ~ NOT PERMITTED

SCALE: N.T.S.

NOTE:

PROPOSED ADDITION

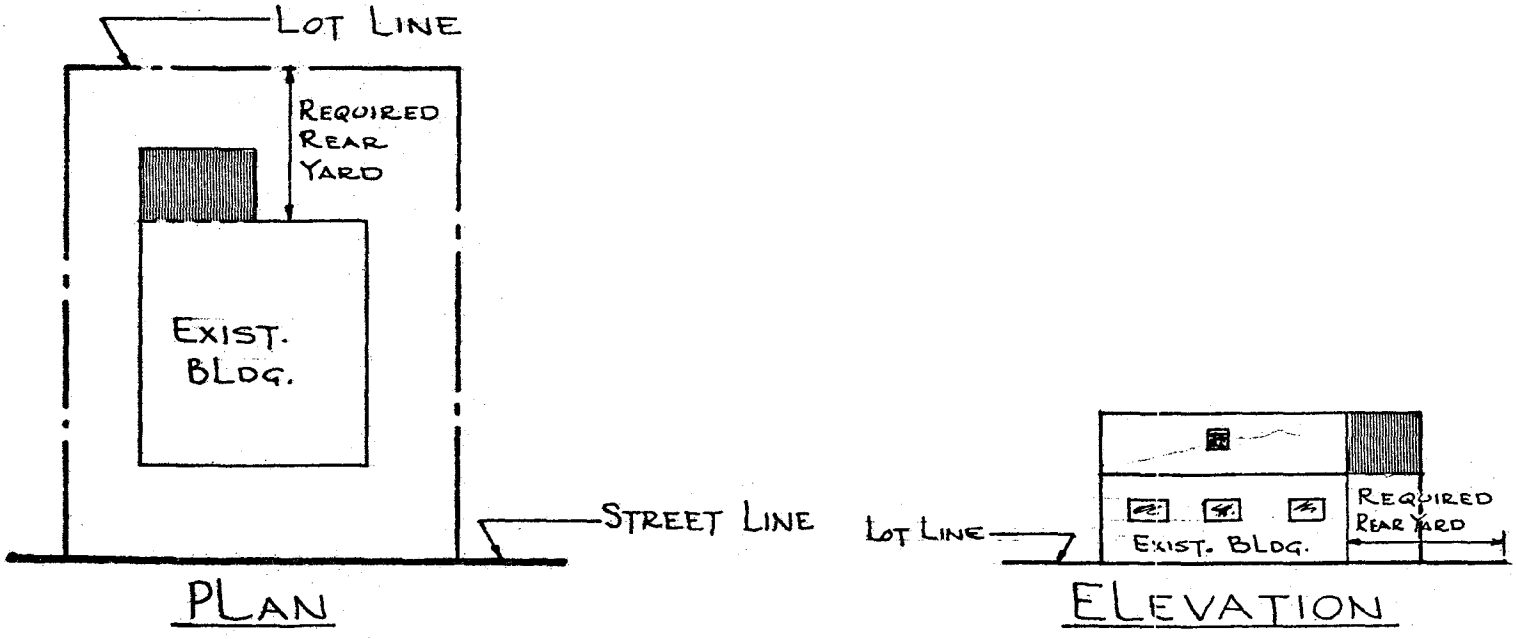


FIGURE 4 ~ PERMITTED

SCALE: N.T.S.

NOTE:

PROPOSED SECOND STORY ADDITION