Statement of Murray Drabkin
BZA #17241
November 23, 2004

My name is Murray Drabkin and I live at 1814 24th Street, NW, about 40' and a couple of doors away from the subject property.

The house for which these multiple variances are sought is part of a row of townhouses. The special quality of these townhouses is their unity. The front sides of these houses are all four stories high. The rear, three stories.

Applicants have determined that they would like to add a 350 square foot room and 74 square foot deck on top of the third floor portion of the house. This would raise the roof line almost 10 feet higher than the other houses in the row, and result in a substantial protruding structure on top of the third floor.

The reason we are here is that the zoning law of the District of Columbia simply does not permit such an expansion. Applicants freely admit this. They argue that three variances should be granted solely because they would like to have a bigger house.

In that regard, I would point out that the existing structure is already substantially larger than would be permitted under the zoning law. Under existing law the owner would be allowed 40% lot occupancy; the existing structure occupies over 53% of the lot. Existing law would allow a height of only 40 feet; the existing structure is over 44 feet and the additional construction would make it even higher.

In its review of this application, the Office of Planning, in a well-reasoned statement which has been submitted to the Board, concluded that the application should be denied because it does not meet the burden of proof required to grant the requested variances. I believe the Office of Planning is absolutely correct.

The provisions of section 3103.2 require the applicant to establish

(1) the uniqueness of the situation;
(2) that practical difficulties result to the owner from the application of the zoning law;
(3) the variances would not impair the purposes of the zoning plan and would not adversely affect others.

As to the uniqueness, as the Office of Planning points out, the variance uniqueness test requires something exceptional about the nature of the property, not just that it is already nonconforming, as applicants argue. For example, is there a special and peculiar shape or topography to this lot? There is nothing unique about this property justifying a zoning variance. If there is, every other house in this row is entitled to such a variance, and that I submit is a matter for amending the zoning law, not for variances.

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Furthermore, as the Office of Planning points out, applicants' argument comes down to: since the house is already nonconforming because of its size, they ought to be allowed to make it even bigger. The fallacy of this argument is apparent when one considers what would happen if the house were smaller and conforming. That house would not be allowed to expand under the zoning law. It would seem highly incongruous to allow a bigger nonconforming house to argue uniqueness and become even bigger.

As for practical difficulty, applicants argue that they would suffer practical difficulties absent a variance. As the Planning Office notes the only difficulty they would suffer is that they could not expand their house by building a new study as a fourth floor. Zoning laws have that kind of effect every day.

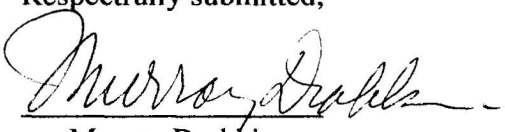
As for the substantial detriment test, I would supplement the Office of Planning's statement in one factual respect. At the time Planning prepared its statement it was not aware of my opposition as a neighboring property owner and they cite the position of another neighbor voicing no objection.

We are opposed to altering the unity of these houses, to the blocking of skyline visible from our garden, and to the precedent which would be established. That precedent would allow others to raise the height of their houses by adding rooms. If this is done by the houses adjoining ours, we would find ourselves looking out into a confined space between two walls. This would certainly have a significant impact upon us and others.

But apart from that, as the Office of Planning notes, the variances sought would have a substantial impact on the intent and integrity of the Zoning Regulations and particularly the intent of section 2000.1 which specifically prohibits the expansion of nonconforming structures like the subject property.

The burden of proof for obtaining a variance is on the applicant. We submit that the applicant has not met the burden in that it has failed to satisfy the tests required for a variance. Accordingly, we would request the Board to deny the application.

Respectfully submitted,



Murray Drabkin

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