GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17341 of Simon Bell and John Roegner, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, a variance from the court requirements under section 406, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow a rear addition to a single-family row dwelling in the R-4 District at premises 919 Westminster Street, N.W. (Square 362, Lot 199).

HEARING DATE: June 28, 2005
DECISION DATE: June 28, 2005 (Bench Decision)

DISMISSAL ORDER

SELF-CERTIFIED
The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1B and to owners of property within 200 feet of the site.

The property which is the subject of this application is located at 919 Westminster Street, N.W. The lot is currently developed with a three story row dwelling with a one-story addition and a one-story enclosed porch attached at the rear of the structure. The applicants proposed to demolish the enclosed porch at the rear, renovate the one story addition and construct a roof deck over the second floor rear portion of the house.

When the application was initially filed, the applicants were uncertain about whether they needed variances, special exception relief, or no relief at all. The application was ultimately filed as a request for four area variances from the following provisions: § 403 (lot occupancy), § 404 (rear yard), § 406 (court requirements), and § 2001.3 (nonconforming structure provisions).[1]

[1]The applicants also addressed the special exception relief under § 223; however because of the Board's decision to dismiss this application, the issues related to the special exception will not be addressed in the order.

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As an alternative to variance relief, the applicants posited that no relief was needed from the Zoning Regulations. This is based on the view that the proposal could be treated as a **matter-of-right alteration or modernization** under Section 2001.2. In Section 2001 "Nonconforming Structures Devoted to Conforming Uses," § 2001.2 states in pertinent part "...ordinary repairs, alterations, and modernizations to the structure, including structural alterations, shall be permitted." The applicants are of the view that the proposed modification, which reduces the lot occupancy, increases the rear yard, and brings the structure more into conformity with what is required or allowed in the R-4 zone, should not require the applicants to meet a test for variance relief. Therefore, the applicants requested that the Board consider dismissing the application for variances and allowing the modification as a matter-of-right.

The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B submitted a report in support of this application. The Office of Planning (OP) also submitted a report in support of the application for variance relief.

At the public hearing, the Board addressed what type of relief, if any, would be required. After reviewing the record and hearing the statements of the applicants' representative and the Office of Planning, the Board concluded that the proposal indeed falls within the meaning of § 2001.2, therefore the roof deck is a modernization to the property and can be built as a matter-of-right.

This decision should not be construed as the Board making a binding declaratory ruling that no relief is required, which cannot be done in a contested case proceeding. D.C. Official Code § 2-508 (2001).

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **DISMISSED.**

VOTE: **5-0-0** (Ruthanne G. Miller, Geoffrey H. Griffis, Carol J. Mitten, Curtis L. Etherly, Jr. and John A. Mann II, to dismiss).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

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

FINAL DATE OF ORDER: JUL 0 6 2005

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 17341

As Director of the Office of Zoning, I hereby certify and attest that on JUL 0 6 2005 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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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning