

Conversion of Detached One-Family Dwelling and Non-Conforming Garage at 2709 31st St., NW, Into Semi-Detached Dwelling with One-Bedroom Apartment Directly on Side Lot Line in R-1-A District

This is an appeal from April 7 and 17, 2009 decisions by Matthew LeGrant, the District of Columbia's Zoning Administrator, that the enlargement of a non-conforming garage at 2709 31st St., NW and conversion of it into a one-bedroom apartment that will be situated directly on a side lot line in an R-1-A Residence District does not violate any zoning regulation, including DCMR 11-200 and 201, 11-202.10, 11-404 and 405 and 11-2000 and 2001. I respectfully submit that the Zoning Administrator is mistakenly interpreting the regulations.

My wife and I live in the adjacent property at 2701 31st St., NW, and have lived there since September 1997. Since we moved in, we have had four next-door neighbors at 2709 31st St., NW. The most recent, Maryam Mashayekhi acquired the property at the end of January 2008. According to the District's property records, the property was transferred to the "Maryam Mashayekhi Trust" in March 2008.

The Residence District in which 2709 31st St., NW is located is zoned R-1-A. This zoning requires a minimum lot area of 7,500 square feet and only allows "detached one-family dwellings" with side yards of at least 8 feet on both sides and a minimum of 25 feet for the rear yard. DCMR 11-201, 401, 404, 405. The one-family dwelling at 2709 31st St., NW is situated on an undersized lot for the R-1-A District of only 5,001 square feet. The dwelling has four bedrooms, two on the second floor, a third on the third floor and a fourth in the basement. There is a two-car garage on the side of the house. An exterior door from the kitchen opens to the area immediately in front of the garage. The garage is set back from the front of the house by approximately 18 feet and it extends farther back than the principal dwelling by about 10 feet. Except for about 10 feet of wall that abuts the wall of the dwelling, the garage is an entirely separate structure with a separate roof. The western-facing side of the garage is located on the side lot line with our property at 2701 31st St. NW. Like many houses and garages in this immediate vicinity, both the dwelling and the garage were constructed in 1941 so the nonconformities with the current zoning regulations are grandfathered.

On or about February 26, 2009, a construction company from Bethesda, MD (the "Easta" company) began to convert the nonconforming two-car garage at 2709 31st St. into a one-bedroom apartment. I went next door on the morning of February 27, 2009 and saw 12-inch floor joists being set up over the concrete floor of the garage and a worker

BOARD OF ZONING ADJUSTMENT
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CASE NO. 17966
EXHIBIT NO. 2

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EXHIBIT NO. 2

jack-hammering the concrete floor to install plumbing lines. The building permit (B0903245) said that the garage was being converted to one bedroom. The pre-printed language on the permit stated this all work will be in compliance with the "current" building and zoning codes. The building permit represented that the work was being done in an "R-3" Residence District. Significantly, in an "R-3" Residence District, the zoning rules allow both "semi-detached" dwellings with one side yard and "row" dwellings with no side yards. By contrast, in an R-1 Residence District, only "detached" one-family dwellings with side yards on both sides of the dwelling are permitted.

On that same day, I called and lodged a complaint with the DCRA zoning inspectors about this construction. That Sunday, I went next door to speak with Ms. Mashayekhi about the conversion of the garage. When I told her that this Residence District was zoned for detached one-family housing and showed her how the one-bedroom addition would be located on the lot line with no side yard, she said that the construction was "all legal."

I later saw that the front wall of the garage where the garage door had been located was being moved forward by approximately 5 feet toward 31st Street to encompass the exterior door leading out from the kitchen of the dwelling and that the front beams that previously supported the front roof of the garage had been removed. The attached photographs show the dwelling and the garage as they existed when we moved in next door in 1997 and the house and converted garage as they appear today with the construction still going on. Exhibit 1.¹

My information is that this garage is being converted into a one-bedroom apartment, at least initially, to provide housing for health aides to care for Ms. Mashayekhi's elderly father. Her father presently does not live at this location. The one-bedroom apartment would have its own bath and kitchen facilities with two new exterior entrances on the front wall facing the street (a regular door and a double french door). An existing fenced-in and gated area that had been used for parking in front of the garage would provide a small court in front of the apartment. Parking for the health aides or other tenants would evidently be moved to the remaining driveway in front of the gated area or on the street.

¹ Under DCMR 11-199.1, structural alterations include "any change in the permanent, physical members of a building or other structure, such as bearing walls or partitions, columns, joists, rafters, beams, or girders."

Alan James from Zoning inspection came out sometime after I lodged a complaint and inspected the construction. After I followed up, he told me on March 11, 2009 that he had found that Pamela Thornton Carr in the Zoning section had approved the plans. Given that approval, Mr. James said he could not go farther. He told me that Mr. Matt LeGrant was Ms. Carr's supervisor and that I could contact Mr. LeGrant myself.

That same day, I spoke with Jan Evans Houser, our neighbor at 3033 Woodland Dr. who grew up in this neighborhood and whose property adjoins our property and 2709 31st St., at the back. Mrs. Houser had noticed the construction, too. Space for a picture window and a bathroom window had been knocked out of the back brick wall of the garage which is only located approximately 12 feet from her lot line. Those windows will look at her backyard and patio and into the bedrooms at the back of her house. She said that the change is not acceptable to her.

I transmitted a letter to Mr. LeGrant by email that day stating that I did not understand how this conversion could be approved. Exhibit 2. The nonconformities with the existing garage had been grandfathered, but the zoning regulations are clear that nonconformities "may not be enlarged upon, expanded or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same district." DCMR 11-2000.3. Thus, a garage that is directly on the side lot line, and approximately 12 feet from the rear lot line, cannot be converted for use as a bedroom/apartment that will be part of the dwelling. In addition, this conversion was extending the front wall and front supporting beams for this garage by approximately 5 feet which enlarged the nonconforming structure.

Mr. LeGrant responded that same day that he was "referring this matter to my enforcement staff for another inspection and will also review the plans with my plans reviewer to see what exactly was approved." Exhibit 3. After several follow ups, I received an email on March 27, 2009 from Reuben Pemberton, III, the Zoning Enforcement Officer, which stated that "[t]his property was inspected by illegal construction and by zoning, and they found NO violations." Exhibit 4.

When I complained that this did not address the zoning violations, Mr. Pemberton visited the property on Sunday, March 29, 2009. He told me the plans did not show the exterior front doors that were being installed and he later told me the plans showed a small sink in addition to a full bath with its own basin. On seeing how the front of the garage had been moved forward and the extensive structures at the rear of the property, Mr. Pemberton was also concerned that the 40% lot occupancy percentage was exceeded.

On April 7, 2009, however, I received an email from Mr. Pemberton on behalf of

Mr. LeGrant stating that Mr. LeGrant still takes the position that “there are no issues with the project plan. In his opinion, the garage is part of the house and is therefore not a change in use.” In his opinion, “the moving of the front wall of the garage does not change the footprint of the house or of the nonconforming portion and therefore is not considered an addition or an enlargement.” While “there may be some additional lot coverage” beyond the 40% limit, in his opinion “there is no enlargement or addition to the non conforming portion of the house.” Exhibit 5.

With respect to the regulation of “accessory apartments,” Mr. Pemberton stated on April 17, 2009 that an “inspector went inside and found nothing indicating that it was going to become a full apartment. No staircase, etc.” Exhibit 6.

DCMR 11-200 and 11-201: R-1 Districts Are Only Zoned for One-Family Detached Dwellings; They Are Not Zoned for Semi-Detached or Row Dwellings.

DCMR 11-200.1 provides that “The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings.” DCMR 11-200.2 states that “[t]he provisions [on the R-1 District] are intended to stabilize the residential areas and to promote a suitable environment for family life. For that reason, only a few additional and compatible uses shall be permitted.” The permitted uses in other Residence Districts are less restrictive. The R-2 Districts consist of those areas that have been developed with “one-family, semi-detached dwellings.” DCMR 11-300.1. The R-3 Districts encompass not only “one-family, semi-detached dwellings” but also “row dwellings.” DCMR 11-320.3.

DCMR 11-201.1 specifies the uses that are permitted as a matter of right in an R-1 District. DCMR 11-201.1(a) provides that a “one-family detached dwelling” is a use that is permitted as a matter of right. By contrast, in R-2 Residence Districts, “one-family, semi-detached dwellings” are a use that is permitted as a matter of right and in R-3 Districts, “row dwellings” are permitted as a matter of right. DCMR 11-300.3 and 320.3. A “dwelling” is defined as “a building designed or used for human habitation.” DCMR 11-199.1. A “one-family detached dwelling” is “a one-family dwelling, completely separated from all other buildings and having two (2) side yards.” *Id.* By contrast, a one-family, semi-detached dwelling is a “one-family dwelling, the wall on one (1) side of which is either a party wall, or lot line wall, having one (1) side yard.” *Id.* A lot line wall is defined as “an enclosing wall constructed immediately adjacent to a side lot line, but not a party wall.” *Id.* A “row dwelling” is “a one-family dwelling having no side yards.” DCMR 11-199.1.

By virtue of how “dwelling” is defined, a garage is not part of the dwelling

because it is not “designed or used for human habitation.” DCMR 11-199.1. However, DCMR 11-201.1(h) separately allows a “private garage” as a permitted use as a matter of right in an R-1 District, provided that the garage is designed to house no more than two motor vehicles and does not exceed 450 square feet. A private garage is defined as “a building or other structure, or part of a building or other structure, ... used for the parking of one (1) or more motor vehicles.” DCMR 11-199.1 (emph. added). DCMR 11-2300.2 provides that a private garage in a Residence District may be located beside the main building, provided that it “shall be removed from the side lot line a distance equal to the required side yard and from all building lines a distance of not less than ten feet.”

Thus, the only relevant uses permitted as a matter of right in an R-1-A Residence District are one-family detached dwellings and private garages. Here, the result of the Zoning Administrator’s interpretation would be to allow a one-family detached dwelling with a private garage to be converted into a one-family semi-detached dwelling in an R-1-A District where such uses are not allowed. By allowing the permitted use as a private garage to be converted into part of a semi-detached dwelling, the Zoning Administrator interprets the regulations in a manner that modifies the R-1-A District zoning requirements without any variance by the BZA.

DCMR 11-202.10: “Garage Space May Not Be Converted” Into an Accessory Apartment.

DCMR 11-202.10 governs the addition of an “accessory apartment” within an existing one-family detached dwelling. An “accessory apartment” is defined as “a complete apartment unit contained within a one-family detached dwelling. It has kitchen and bath facilities separate from the principal dwelling and may have a separate entrance.” DCMR 11-199.1. Under DCMR 11-202.10, an accessory apartment can only be added to a one-family detached dwelling if it is approved by the BZA as a special exception subject to certain conditions. In pertinent part, those conditions require a minimum lot area of 7,500 square feet in an R-1-A District and they unequivocally provide that “garage space may not be converted” into an apartment. The rules further provide that “If an additional entrance to the house is created, it shall not be located on a wall of the house that faces a street.” The BZA is authorized to modify or waive no more than two of these conditions, but then, only if the approved modifications or waivers do “not conflict with the intent ... to maintain a single-family residential appearance and character in the R-1, R-2 and R-3 Districts.”

In this instance, the two-car garage at 2709 31st St., NW is clearly being converted into a bedroom with bath and kitchen facilities separate from the principal dwelling and with two separate outside entrances. Even if an application for approval of the addition

had properly been submitted to the BZA, the BZA is only authorized to waive two of the conditions set forth in 11-202.10. This apartment violates at least three conditions because it is being added to a dwelling on a lot that is less than 7,500 square feet, it converts “garage space” into an apartment, and it adds two separate entrances on the wall of the house facing the street.

The Zoning Administrator’s interpretation would effectively authorize him to grant a special exception that the Zoning regulations reserve for the BZA irrespective of the conditions established in DCMR 11-202.10. The Zoning Administrator’s contention that this addition should not require approval because the apartment lacks a “staircase, etc.” is frivolous. There is obviously no requirement that an accessory apartment have a “staircase.”

DCMR 11-404 and 405: Even If a Building that Does Not Conform with the Side Yard Requirements Is Grandfathered, an Addition or Extension Is Only Permitted With a Side Yard of 5 Feet.

DCMR 11-404 and 405 establishes side and rear yard requirements for each structure located in a Residence District. Under DCMR 11-404, the minimum depth of the rear yard must be 25 feet in an R-1-A District. DCMR 11-405 also requires that side yards be provided for detached one-family dwellings. In an R-1-A District, side yards must be provided on both sides of the detached dwelling, the minimum width of which must be 8 feet. DCMR 11-405.8 provides that in the case of a building existing on May 12, 1958, with a side yard less than 8 feet, an extension or addition may be made to the building, but only if the width of the existing side yard is a minimum of 5 feet.

The side and rear yard requirements are clearly violated here. There is no side yard at all adjacent to our property and the rear yard adjacent to Mrs. Evans Houser’s property is only 12 feet. In addition, the extension or addition to the front of the garage space is not permissible because it does not conform with the 5 foot minimum for extensions or additions to buildings with nonconforming side yards.

DCMR 11-2000 and 2001: Changes to Nonconforming Structures May Not Increase Any Aspect of the Nonconformity or Add Uses Prohibited in the Zoning District.

DCMR 11-2000.2 states that “It is the intent of this title that nonconformities may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same district.” DCMR 11-2000.3 further states that “It is necessary and consistent with the establishment of the separate districts under this title that all uses and structures incompatible with permitted uses or

structures shall be regulated strictly and permitted only under rigid controls.”

DCMR 11-2001 governs nonconforming structures devoted to conforming uses. A “nonconforming structure” is defined as a structure that does not conform with the “lot area,” “lot occupancy,” or side or rear “yard” requirements. DCMR 11-199.1. Under DCMR 11-2001.3, enlargements or additions to a nonconforming structure can only be made if:

- (1) The structure conforms to the “percentage of lot occupancy requirements,”
- (2) The addition or enlargement “conforms to use and structure requirements,” and
- (3) It does not “increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.”

In this instance, the two-car garage is clearly a nonconforming structure because it does not conform with the minimum side or rear yard requirements. In addition, it is on a lot that does not have the required square footage of 7,500 square feet and combined with the other structures it exceeds the percentage of lot occupancy requirements. In these circumstances, an enlargement or addition to the nonconforming structure violates 11-2001.3 for three reasons:

First, DCMR 11-2001.3 is violated because the lot occupancy requirements are exceeded. Under DCMR 11-2001.3 and 11-403.2, the percentage of lot occupancy must not exceed 40% of the lot. For this purpose, structure is defined as “anything constructed, including a building, the use of which requires permanent location on the ground.” DCMR 11-199.1. Thus, garages, balconies, covered porticos, and decks are structures that are counted under the lot occupancy rules. After performing the calculations, the Zoning Administrator recognized that the structures at 2709 31st St., NW, exceed the maximum percentage of lot occupancy. Part of that excess is from the extension of the front wall of the garage forward by approximately 5 feet, which added approximately 100 square feet to the lot occupancy. The Zoning Administrator’s contention that all of the excess must be attributable to the addition is not found in the Zoning regulations. DCMR 11-2001.3 specifically provides that the lot occupancy percentage must be satisfied independently of whether the violation is attributable to the enlargement or addition.

Second, the addition or enlargement of the nonconforming garage violates 11-2001.3 because the extension of the front wall and the removal of the front beams and bearing walls “increases or extends an existing, nonconforming aspect of the structure.”

Finally, but most importantly, the addition/conversion of the garage space into a bedroom on the lot line is prohibited because it converts a conforming use as a private garage to a non-conforming use as a semi-detached dwelling in a Residence District where semi-detached dwellings are not a permissible use as a matter of right. This creates a “new nonconformity of structure and addition combined.” DCMR 11-2000.2 also specifically provides that nonconforming structures may not “be used as a basis for adding other ... uses prohibited elsewhere in the same district.” DCMR 11-2000.3 further provides that “all uses ... incompatible with permitted uses ... shall be regulated strictly and permitted only under rigid controls.” The Zoning Administrator’s interpretation undercuts the purposes and permitted uses in the R-1 Residence District by allowing a nonconforming structure to serve as a platform for adding uses that are clearly prohibited in the R-1 Districts.

Conclusion

The Zoning Administrator’s decision to overlook these zoning violations substantially diminishes the enjoyment and value of my wife and I’s home. The conversion of this garage into a one-bedroom apartment situated directly on the lot line changes the quiet residential character and appearance of this district. Effectively, the Zoning Administrator is modifying the zoning in this area without any variance by the BZA to allow a semi-detached dwelling with a one-bedroom/accessory apartment to be placed directly on the side lot line. The bedroom located directly adjacent to our side lot will overlook our backyard, with no view of its own, and will be directly beside the side yard and patio onto which our kitchen opens. The occupancy of the garage by one or more individuals will significantly affect our privacy and the quiet enjoyment of this entire side of our house (and it may introduce additional hazards such as fire by placing a bedroom, kitchen and potentially combustible medical equipment closer to the lot line without the buffer of a side yard). The change in the detached single family character and appearance of the residence next to us will also be reflected in the value of our house. Rather than being located beside a detached single-family residence as expected in an R-1-A District, our house will be located beside an occupied apartment with a separate entrance immediately adjacent to our side yard.

There are, moreover, no extraordinary circumstances that would justify these zoning variances even if a special exception had been properly sought from the BZA. The central criteria in DCMR 11-223.2 that “[t]he addition shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling” could not be satisfied because of 223.2(b) (privacy of use and enjoyment of neighboring properties) and 223.2(c) (visual intrusion upon the character, scale and pattern along the subject street frontage). The authority to grant special exceptions is, moreover, limited by the

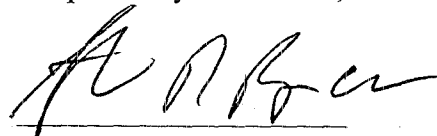
condition that special exceptions “may not be used to permit the introduction or expansion of a nonconforming use.” DCMR 11-223.5.

Finally, if the issue that led to this construction was the inaccessibility of the existing bedrooms at 2709 31st St. without climbing stairs, an elevator could have been installed to make the upper or lower level bedrooms more accessible. This would have been less expensive because it makes use of existing bedrooms and bathrooms and it would not violate the zoning regulations. The fact that this construction is being carried out in this manner shows that the intent is specifically to add an accessory apartment separate from the principal dwelling with its own bath and kitchen facilities and entrances. The zoning regulations make clear that this is permissible only with BZA approval. Moreover, if this addition had been properly submitted to the BZA as an accessory apartment, the approval could not have obtained it because the BZA is not authorized to waive more than two of the conditions for an accessory apartment, and this addition violates three conditions, including the condition that “garage space may not be converted.”

For these reasons, I respectfully ask the BZA to overrule the Zoning Administrator’s interpretations of the zoning regulations described above and to instruct him to fully enforce the regulations on “detached” one-family dwellings, “accessory apartments,” “side yards,” and “nonconforming structures” in conformance with the strict intent and rigid controls described in DCMR 11-2000.3. At the hearing, I intend to prove my case based on this statement, the attached exhibits, the plans, permits and other documents obtained from the Zoning Administrator, information from affected persons, and oral testimony.

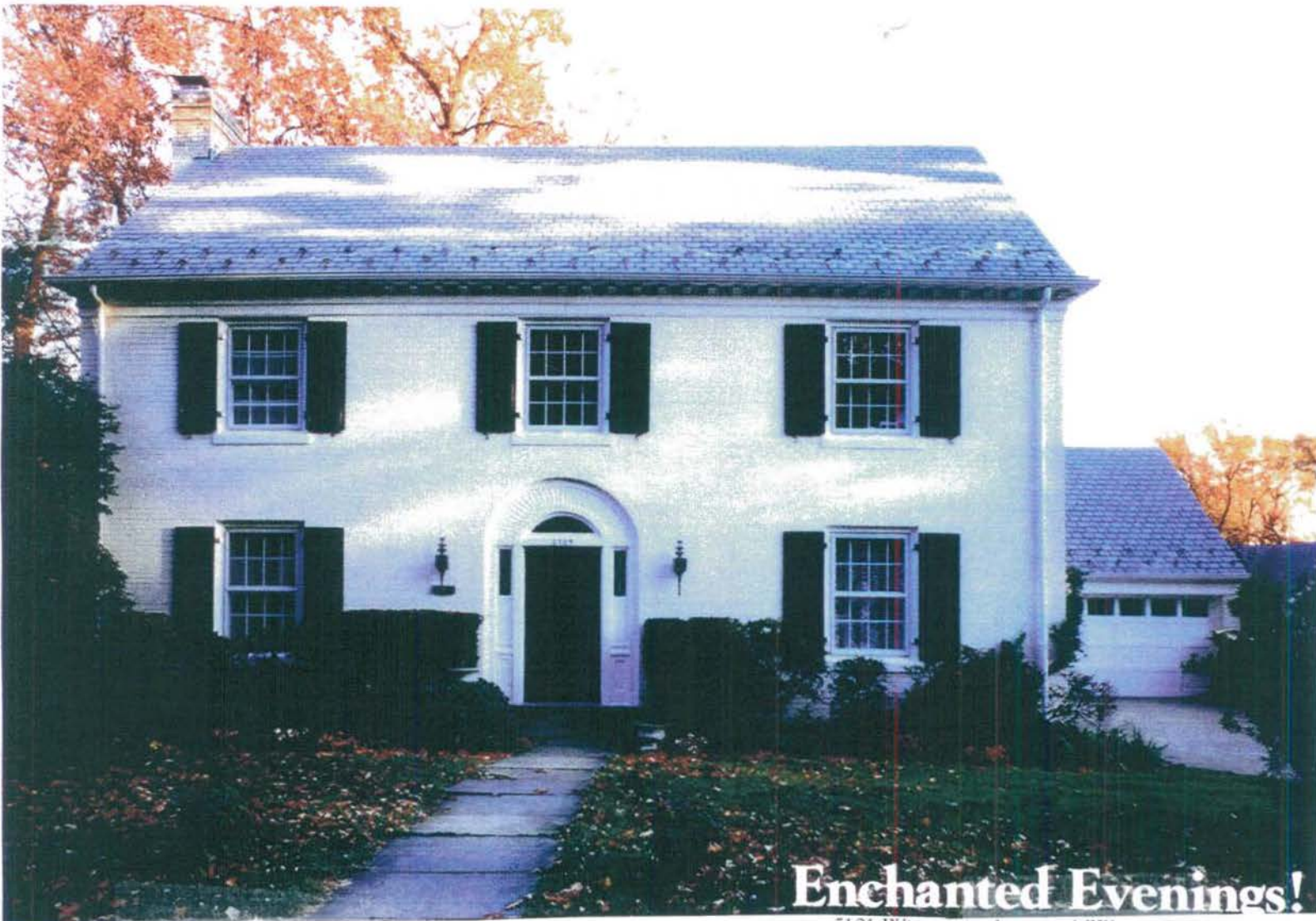
Dated: April 27, 2009

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Stephen Bruce', written over a horizontal line.

Stephen Bruce
2701 31st St., NW
Washington, DC 20008

Enclosures: Exhibits 1-6



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Exhibit 1

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2008 FEB 28 PM 9:16

Subject: Bedroom construction on Property Line at 2709 31st St. and Zoning Regulations
From: "Stephen R. Bruce" <stephen.bruce@prodigy.net>
Date: Wed, 11 Mar 2009 14:32:20 -0400
To: matt.legrant@dc.gov

Exhibit 2

Dear Mr. Grant:

I live at 2701 31st St., NW. We have a zoning issue with a next door neighbor at 2709 31st St. who is having a construction company ("Easta" from Maryland) convert a garage which is directly on the property line with our property into a bedroom. I called and left you a message about this this morning. This area is zoned R-1-A which is detached one-family housing requiring 8 feet for side yards and 25 feet on the back. I called DCRA on Friday, February 27, as soon as this construction began, and Allen James (481-3389) came out last week and inspected the construction, but he found that Pamela Thornton Carr (442-4587) in the zoning section had signed off on it. Given that approval, Mr. James did not think he could do anything further. He did not tell me about this until this morning. He said that you are Ms. Carr's supervisor.

I do not understand how this can possibly be approved. Under the zoning regulations, a garage is an "accessory building" which is not regulated the same way as the residence. Thus, a garage can be closer to the property line than the residence. In addition, like most houses in our vicinity this garage was built in 1941 so any nonconformities with the zoning rules may be grandfathered. However, the zoning rules are clear that nonconformities "may not be enlarged upon, expanded or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same district." Thus, a garage that is on the property on the side yard side and less than 25 feet from the property line at the back cannot be converted for use as a bedroom. In addition, this construction is extending the front wall and front supporting beam for this garage out by approximately 5 feet in order to create more space.

I talked this morning with Jan Evans Houser, the neighbor at 3033 Woodland Dr., whose property adjoins 2709 31st St., on the backyard side, and she agrees that this construction is unacceptable to her. A picture window and a bathroom window have already been knocked out of the wall at the back of the garage which is less approximately 12 feet from her property line and which will look directly out at her patio and into the bedrooms at the back of her house.

The neighbor who having the construction done, Maryann Mashayekhi who moved in last year says that it is "legal" and they're going forward--evidently as quickly as possible so the changes will be more difficult to remove.

Please let me know as soon as possible what you can do about this. Thank you very much.

Sincerely,

Stephen Bruce

3/11/2009 2:32 PM

Subject: RE: Bedroom construction on Property Line at 2709 31st St. and Zoning Regulations
From: "LeGrant, Matt (DCRA)" <matthew.legrant@dc.gov>
Date: Wed, 11 Mar 2009 15:12:06 -0400
To: <stephen.bruce@prodigy.net>
CC: "Pemberton, Reuben (DCRA)" <reuben.pemberton2@dc.gov>

Exhibit 3

Mr Bruce - Thank you for bringing this matter to my attention. I am referring this matter to my enforcement staff for another inspection and will also review the plans with my plans reviewer to see what exactly was approved. I plan to have an update to you by cob Monday.

Sent from my GoodLink synchronized handheld (www.good.com)

-----Original Message-----

From: Stephen R. Bruce [<mailto:stephen.bruce@prodigy.net>]
Sent: Wednesday, March 11, 2009 02:32 PM Eastern Standard Time
To: LeGrant, Matt (DCRA)
Subject: Bedroom construction on Property Line at 2709 31st St. and Zoning Regulations

Dear Mr. Grant:

I live at 2701 31st St., NW. We have a zoning issue with a next door neighbor at 2709 31st St. who is having a construction company ("Easta" from Maryland) convert a garage which is directly on the property line with our property into a bedroom. I called and left you a message about this this morning. This area is zoned R-1-A which is detached one-family housing requiring 8 feet for side yards and 25 feet on the back. I called DCRA on Friday, February 27, as soon as this construction began, and Allen James (481-3389) came out last week and inspected the construction, but he found that Pamela Thornton Carr (442-4587) in the zoning section had signed off on it. Given that approval, Mr. James did not think he could do anything further. He did not tell me about this until this morning. He said that you are Ms. Carr's supervisor.

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Please let me know as soon as possible what you can do about this. Thank you very much.

Sincerely,

Stephen Bruce

[<mailto:Nancy.Nord@kodak.com>](mailto:Nancy.Nord@kodak.com)

3/11/2009 3:25 PM

Subject: 2709 31st, St, NW -

From: "Pemberton, Reuben (DCRA)" <reuben.pemberton2@dc.gov>

Date: Fri, 27 Mar 2009 11:56:36 -0400

To: <stephen.bruce@prodigy.net>

CC: "Hooks, Helen (DCRA)" <helen.hooks@dc.gov>

Exhibit 4

Mr. Bruce,

This property was inspected by illegal construction and by zoning, and they found NO violations. All work is being done according to plan. Furthermore there was never a stop work order on the property. We have no such record of one on file.

Should you have any other questions pertaining to this construction, please do not hesitate to contact me.

Regards,

Reuben Pemberton

Reuben Pemberton, III

Zoning Enforcement Officer
Office of the Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
941 North Capitol St NE Suite 2000
Washington, DC 20002

Phone: 202 442-4648

Mobile: 202 834-6880

FAX: 202 442-4871

Email: reuben.pemberton2@dc.gov

Web: <http://dcra.dc.gov/dcra/>

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2009 MAR 27 11:56:16
MAIL ROOM
FBI/DOJ

Subject: 2709 31st St, NW

From: "Pemberton, Reuben (DCRA)" <reuben.pemberton2@dc.gov>

Date: Tue, 7 Apr 2009 16:31:40 -0400

To: <stephen.bruce@prodigy.net>

Exhibit 5

Mr. Bruce,

The Zoning Administrator and I have met about this project a couple of times today and he is still taking the stance that there are no issues with the project plan.

In his opinion the garage is a part of the house and therefore it is not a change in use. If the garage were detached it might be a different situation.

Also, the moving of the front wall of the garage does not change the footprint of the house or of the nonconforming portion and therefore is not considered an addition or enlargement.

That being said, there may be some additional lot coverage with the consideration of the raised patio and wood deck, but since there is no enlargement or addition to the non conforming portion of the house, it would not change the outcome.

Please feel free to contact me regarding this issue.

Regards,

Reuben Pemberton

Reuben Pemberton, III

Zoning Enforcement Officer
Office of the Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
941 North Capitol St NE Suite 2000
Washington, DC 20002

Phone: 202 442-4648

Mobile: 202 834-6880

FAX: 202 442-4871

Email: reuben.pemberton2@dc.gov

Web: <http://dcra.dc.gov/dcra/>

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Subject: RE: 2709 31st St, NW
From: "Pemberton, Reuben (DCRA)" <reuben.pemberton2@dc.gov>
Date: Fri, 17 Apr 2009 13:43:22 -0400
To: <stephen.bruce@prodigy.net>

Exhibit 6

Sure.

The inspector went inside and found nothing indicating that it was going to become a full apartment. No staircase, etc.

Reuben Pemberton, III
Zoning Enforcement Officer, OZA
DCRA

From: Stephen R. Bruce [mailto:stephen.bruce@prodigy.net]
Sent: Friday, April 17, 2009 12:52 PM
To: Pemberton, Reuben (DCRA)
Subject: Re: 2709 31st St, NW

Mr. Pemberton:

Could you also tell me what happened with the inspection to see if this is an accessory apartment?

Pemberton, Reuben (DCRA) wrote:

Mr. Bruce

I'm not aware of any appeal forms for building permits. Probably because it is a very rare occurrence.

If you feel that a mistake has been made in permitting some aspect of the construction, you may appeal the issued building permit. Construction Code issues should be appealed to the Chief of Permit Operations, Lennox Douglas. Specify the particular construction issue and write a letter explaining why you feel that the particular aspect should not have been permitted, according to DCMR Title 12A, the building codes. Please include the address of the subject property (2709 31st St, NW) as well as the building permit number (# B0903245). Address the letter to Mr. Douglas at:

941 North Capitol St, NE
Washington DC 20001

Zoning issues should be appealed to the Board of Zoning Adjustment. Specify the particular zoning issue where you feel the Zoning Administrator has made a mistake in his interpretation of DCMR Title 11, the zoning regulations. You will need to visit the Office of Zoning and file your appeal according to their guidelines.

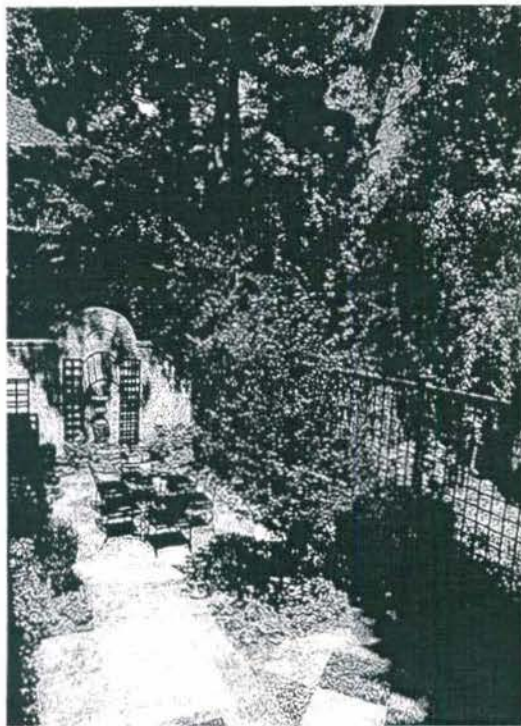
District of Columbia Office of Zoning
441 4th Street, NW
Suite 210 South
Washington, DC 20001
Telephone: (202) 727-6311

If you have any questions about submitting an appeal, please feel free to contact me at 202.442.4648.

Regards,
Reuben Pemberton

Reuben Pemberton, III
Zoning Enforcement Officer, OZA

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WASHINGTON
FINE PROPERTIES, LLC

EXCLUSIVE AFFILIATE OF

Sotheby's
INTERNATIONAL REALTY

Subject: Bedroom construction on Property Line at 2709 31st St. and Zoning Regulations
From: "Stephen R. Bruce" <stephen.bruce@prodigy.net>
Date: Wed, 11 Mar 2009 14:32:20 -0400
To: matt.legrant@dc.gov

Exhibit 2

Dear Mr. Grant:

I live at 2701 31st St., NW. We have a zoning issue with a next door neighbor at 2709 31st St. who is having a construction company ("Easta" from Maryland) convert a garage which is directly on the property line with our property into a bedroom. I called and left you a message about this this morning. This area is zoned R-1-A which is detached one-family housing requiring 8 feet for side yards and 25 feet on the back. I called DCRA on Friday, February 27, as soon as this construction began, and Allen James (481-3389) came out last week and inspected the construction, but he found that Pamela Thornton Carr (442-4587) in the zoning section had signed off on it. Given that approval, Mr. James did not think he could do anything further. He did not tell me about this until this morning. He said that you are Ms. Carr's supervisor.

I do not understand how this can possibly be approved. Under the zoning regulations, a garage is an "accessory building" which is not regulated the same way as the residence. Thus, a garage can be closer to the property line than the residence. In addition, like most houses in our vicinity this garage was built in 1941 so any nonconformities with the zoning rules may be grandfathered. However, the zoning rules are clear that nonconformities "may not be enlarged upon, expanded or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same district." Thus, a garage that is on the property on the side yard side and less than 25 feet from the property line at the back cannot be converted for use as a bedroom. In addition, this construction is extending the front wall and front supporting beam for this garage out by approximately 5 feet in order to create more space.

I talked this morning with Jan Evans Houser, the neighbor at 3033 Woodland Dr., whose property adjoins 2709 31st St., on the backyard side, and she agrees that this construction is unacceptable to her. A picture window and a bathroom window have already been knocked out of the wall at the back of the garage which is less approximately 12 feet from her property line and which will look directly out at her patio and into the bedrooms at the back of her house.

The neighbor who having the construction done, Maryann Mashayekhi who moved in last year says that it is "legal" and they're going forward--evidently as quickly as possible so the changes will be more difficult to remove.

Please let me know as soon as possible what you can do about this. Thank you very much.

Sincerely,

Stephen Bruce

Subject: RE: Bedroom construction on Property Line at 2709 31st St. and Zoning Regulations
From: "LeGrant, Matt (DCRA)" <matthew.legrant@dc.gov>
Date: Wed, 11 Mar 2009 15:12:06 -0400
To: <stephen.bruce@prodigy.net>
CC: "Pemberton, Reuben (DCRA)" <reuben.pemberton2@dc.gov>

Exhibit 3

Mr Bruce - Thank you for bringing this matter to my attention. I am referring this matter to my enforcement staff for another inspection and will also review the plans with my plans reviewer to see what exactly was approved. I plan to have an update to you by cob Monday.

Sent from my GoodLink synchronized handheld (www.good.com)

-----Original Message-----

From: Stephen R. Bruce [mailto:stephen.bruce@prodigy.net]
Sent: Wednesday, March 11, 2009 02:32 PM Eastern Standard Time
To: LeGrant, Matt (DCRA)
Subject: Bedroom construction on Property Line at 2709 31st St. and Zoning Regulations

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Stephen Bruce

[<mailto:Nancy.Nord@kodak.com>](mailto:Nancy.Nord@kodak.com)

The image is a very low-contrast scan of a document. It appears to be a ledger or a form with several columns and rows. In the center, there is a circular stamp or seal, but the details are too faded to discern. The text is mostly illegible due to the poor quality of the scan.

Subject: 2709 31st, St, NW -

From: "Pemberton, Reuben (DCRA)" <reuben.pemberton2@dc.gov>

Date: Fri, 27 Mar 2009 11:56:36 -0400

To: <stephen.bruce@prodigy.net>

CC: "Hooks, Helen (DCRA)" <helen.hooks@dc.gov>

Exhibit 4

Mr. Bruce,

This property was inspected by illegal construction and by zoning, and they found NO violations. All work is being done according to plan. Furthermore there was never a stop work order on the property. We have no such record of one on file.

Should you have any other questions pertaining to this construction, please do not hesitate to contact me.

Regards,

Reuben Pemberton

Reuben Pemberton, III

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