

BEFORE THE
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

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APPEAL OF STEPHEN R. BRUCE

Case No. 17966

SUPPLEMENTAL MEMORANDUM OF MARYAM MASHAYEKHI TRUST
IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

The Maryam MASHAYEKHI Trust (the "Trust"), as the owner of the property at issue in this appeal at 2709 31st Street, NW, hereby submits this supplemental memorandum in further support of the Trust's application for leave to intervene in support of the issuance of Building Permit No. B0903245 (the "Permit"). Reference in this document is made to the Appeal (dated 27 April 2009) (the "Appeal") and to appellant's supplemental memorandum dated 23 June 2009 ("Supp. Memo").

At issue here is the conversion of a garage that is attached to the house on this property into a bedroom to be occupied by the elderly father of Maryam Mashayekhi, who lives in the house and is trustee of the Maryam Mashayekhi Trust. The Permit was issued on 11 February 2009, and the appeal was not filed until 27 April 2009. If intervention is granted, the Trust will make the following points, which we offer in summary form, at the hearing on 20 October 2009.

1. Accessory apartment claim.

Appellant first argues that the permit allowed the conversion of garage space into an illegal accessory apartment in violation of section 202.10 of the Zoning Regulations. In order to be an "accessory apartment" under section 199 of the Zoning Regulations, the unit must also be an "apartment," and the bedroom meets neither

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definition. An “accessory apartment” is a “complete apartment unit contained within a one-family detached dwelling” with “kitchen and bath facilities separate from the principal dwelling” and possibly a “separate entrance.” An “apartment” is “one (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms.”

The bedroom approved under the Permit does not meet these definitions for several reasons. First, there is no kitchen, as is made clear by Site Plan 4 (attached to the Supp. Memo.). There is a bathroom, but no kitchen, only a “bar sink.” Second, the occupant of the bedroom does not have “exclusive” control of the bedroom, which is connected to the kitchen of the house by a glass door.¹

In response to appellant’s repeated complaints on this subject, DCRA sent inspectors to the property on several occasions. In March 2009 DCRA advised appellant in writing that the “property was inspected by illegal construction and by zoning, and they found NO violations. All work is being done according to plan” (emphasis in original). Appeal Ex. 4. DCRA again dispatched an inspector to the premises in April 2009, and appellant was again advised in writing that the “inspector went inside and found nothing indicating that it was going to become a full apartment.” Appeal Ex. 6.

¹ The Appeal also states erroneously that the “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,” and 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.” Appeal at 2. These statements have no basis in fact.

Unable to meet the definition of either “apartment” or “accessory” apartment, appellant argues that the house and garage constitute a semi-detached dwelling because there is only one side yard. This is inaccurate. There are two side yards, and while the garage extends towards the property line, it clearly lies on a side yard, which has been in existence for a number of years. Thus, the alternative argument must fail as well.

2. Rear yard, side yard and extension of non-conformity claims.

Appellant next argues that even if the garage is grandfathered because it existed prior to adoption of the Zoning Regulations, the new construction violates the side yard and rear yard requirements in sections 404 and 405 of the Zoning Regulations. He further argues that the Permit violates sections 2000 and 2001 of the Zoning Regulations by increasing the non-conforming aspect of the garage/bedroom’s proximity to appellant’s property in violation of lot occupancy requirements.

With respect to the rear yard objection, the Trust did not request or receive a permit affecting the rear yard. Thus the issue is not part of this case.

As for the side yard objection, and while we dispute the lot occupancy claim, the Permit did not authorize construction that would increase the lot occupancy of the existing garage. The Permit merely authorized moving the front wall of the garage forward several feet; even with that change, the front wall of the garage (now bedroom) remains under the garage roof, with the garage doors converted to a wall with French doors.

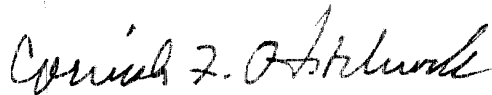
The roof and the garage wall closest to appellant’s property are not changed.

Site Plan 4 shows the pre-existing footprint of the garage and states that the "west elevation remains the same – no change to this side" (emphasis omitted). It also shows that the owner voluntarily chose to close an existing window in the garage, thus affording appellant more privacy once the construction was finished.

The Zoning Administrator correctly ruled on these points and explained this to appellant in writing. See Appeal Ex. 5 (DCRA e-mail stating that "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.")

Thus the appeal is not properly taken and should be denied. We reserve the right to make additional arguments, depending on other claims that may arise.

Respectfully submitted,



Cornish F. Hitchcock
Hitchcock Law Firm PLLC
1200 G Street, N.W., Suite 800
Washington, D.C. 20005
(202) 489-4813
conh@hitchlaw.com
Attorney for Maryam Mashayekhi Trust

CERTIFICATE OF SERVICE

I hereby certify that copies of this memorandum were served by first-class mail, postage prepaid, this 6th day of October, 2009 upon Stephen R. Bruce, 2701 31st Street, N.W., Washington, D.C. 20008; Matthew LeGrant, Zoning Administrator, 941 North Capitol Street, N.E., Suite 2000, Washington, D.C. 20002; and ANC 3C, 4025 Brandywine Street, N.W., Washington, D.C. 20016.

