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Appeal No. 17971

Board of Zoning Adjustment
District of Columbia
CASE NO. 17971
EXHIBIT NO. 27

- (2) No. The deck is not an impermissible “addition” pursuant to 11 DCMR § 2001.3 because it was constructed on an existing roof, is not enclosed, and does not extend the lot occupancy of the existing nonconforming structure.

STATEMENT OF THE FACTS

The structure at issue is a row house located at 3046 N Street, N.W. (S 1209 L 0854), in an R-3 zoned district. The maximum lot occupancy for a row house in an R-3 district is 60%. See 11 DCMR § 403.2. Prior to the renovations at issue, the lot occupancy of the structure on the Property was calculated at 69.8% by a zoning technician in the Office of the Zoning Administrator. However, there is no dispute that the Property existed prior to the enactment of the Zoning Regulations and therefore constitutes a nonconforming structure.

On December 19, 2008, the owner of the Property, Michael Rankin, submitted an Application for Construction Permits on Private Property. The description of the work was “Exterior work on rear of building, landing and stair (replace existing stair). New roof, roof deck, doors, windows and wood panels as noted on set. New material for roof deck.” As a result, the District issued Building Permit No. B0902028. The description of the work listed on the Permit No. B0902028 was “Exterior work on rear of building. New landing and Stair. New roof, roof deck, doors, windows, and wood panels as noted on set.”

After work began at the Property, the District received a complaint regarding the construction being performed there. In response, the Zoning Administrator met with Mr. Rankin to discuss the project. As a result of the meeting, the owner of the Property applied for, and the District issued a revised permit, Building Permit No. B0905289. The

description of work on the revised permit, Building Permit No. B0905289, states to “Permit revision to remove part of stair landing at the rear of building.”

On May 15, 2009, Georgina and Outerbridge Horsey, the owners of property located at 1249 31st NW, filed an appeal with this Board alleging that the Zoning Administrator erred in issuing Building Permit Nos. B0902028 and B0905289. Moreover, the Appellants contend that (1) the stairs and landing are an addition that increases the lot occupancy of the nonconforming structure, and (2) the rooftop deck also increases the lot occupancy of the nonconforming structure.

On October 27, 2009 the Board began the hearing to address the present appeal of the Zoning Administrator’s decision to approve the issuance of Building Permit Nos. B0902028 and B0905289. After the Appellants concluded their case in chief, the Board requested that the parties prepare Memoranda of Law to address the two outstanding legal issues regarding this appeal.

ARGUMENT

I. PURSUANT TO THE ZONING REGULATIONS, A STAIRWAY LANDING NEED NOT BE LIMITED IN SIZE TO 36 INCHES

11 DCMR § 2503.4 states:

“Stairs leading to the ground from a door located on the story in which the principal entrance of a building is located may occupy any yard required under provisions of this title. The stairs shall include any railing required by the provisions of the D.C. Building Code.”

Previous decisions by this Board interpreted this provision to mean that a landing, as a component of a stairway, connects the main entry access door to the exterior stairs that lead to grade level. See BZA Appeal No. 17476 of Amy and Peter Pastan (2006). At issue in this

case is whether the landing must by regulation or code measure only 36 inches in size. For the reasons that follow the answer is: no.

First, the Board recognized landings that were larger in size than 36 inches in numerous decisions. See Application No. 17321 of Darcy E. Flynn (“landing 4 by 8 feet”), Application No. 17476 of Amy and Peter Pastan (“rear landing, measuring approximately 9 feet by 6 feet”), and Application No. 13486 of Ruth L. Borden (former landing and stairway measured approximately 5 feet x 4.3 feet). Moreover, even though the maximum dimensions of a landing are not specified in the Zoning Regulations, the Board nevertheless deemed structures ranging in size from 5 feet x 4 feet to 9 feet x 6 feet to be landings. Therefore, the landing at issue in this case, which also measures more than 36 inches, is not barred by the fact that it exceeds 36 inches in width or depth.

Second, although no measurements are specified in the Zoning Regulations for landings, during the October 27, 2009 hearing before this Board, the Appellant relied upon the International Residential Code (2006) (the “IRC”), as adopted by 12A DCMR § 102.4, in testifying that any landing serving a stairway under 11 DCMR § 2503.4 should be no larger than 36 inches. The Board is not charged with interpreting the DC Building Code or the IRC, however, these sections may be helpful in determining if the Zoning Administrator’s decisions to grant the permits at issue were reasonable.

The IRC establishes guidelines for landings at doors (IRC R311.4.3), landings for stairways (IRC R311.5.4) and landings required for ramps (IRC 311.6.2). Accordingly, landings are required at each side of an exterior door and the top and bottom of each stairway. See IRC R311.4.3. “The width of each landing shall *not be less than* the door served.” See *Id.* (*emphasis added*). For a stairway, the “width of each landing shall *not be less than* the

width of the stairway served.” See IRC R311.5.4 (*emphasis added*). Both the landing and stairway provisions of the IRC indicate that the landings “shall have a *minimum* dimension of 36 inches (914mm) measured in the direction of travel.” See IRC R311.5.1 and R311.5.4. Therefore, while the IRC requires that landings be provided for exterior doors and stairways, the language of each section is clearly only establishing minimum dimensions and may not be relied upon to preclude landings with larger dimensions.

Additionally, the plats and plans in the present case demonstrate that the landing meets the requirements of the IRC as the landing serves both the exterior door and stairway and meets the minimum guidelines for a landing serving an exterior door or stairway. More specifically, after the revised permit was issued, the landing measured 4’x13’-1”. The width of the stairs is 3’ wide and the landing is 4’ wide. The width of double exterior French doors is 3’ wide each. Therefore, the landing meets the IRC requirements that it be located at the top of the stairway, not be less in width than the door it serves, and not be less in width than the stairway served.

Third, none of the previous decisions of this Board cited by the Appellant support the proposition that the landing at issue may only be 3’ in the direction of travel. For example, BZA Appeal No. of Celia Berg and Jack Benson 16921 (2002) dealt with an application for a special exception to add a one-story addition to the rear of a single-family detached dwelling intended to increase the living space by creating a new family room. The present case deals only with a landing connecting a stairway to exterior doors at the first floor of a row house. Given the size of the landing at issue, no additional uses can be made of it without interfering with egress between the doorway and stairs leading to the ground. The case that is most distinct is BZA Appeal No. 17321 of Darcy E. Flynn (2005). In this case, this Board denied

an application for a variance to allow construction of a new single-family dwelling on a shallow lot. Again, the present case deals with a stairway and landing on an existing non-conforming structure. Finally, BZA Appeal No. 13486 of Ruth L. Borden (1981) dealt with the construction of a deck measuring 18' wide and 10.3' deep without a building permit and BZA Appeal No. 14093 of Hugh J. Beins, (1990) dealt with a deck that was 8' high and an extension from the kitchen. Neither case is similar in facts to the case currently at issue before this Board.

Fourth, the sole purpose for the landing at issue is to serve stairs that lead from the ground to a door located on the story where the principal entrance of the house is located, consistent with 11 DCMR § 2503.4. Although the Appellant's drawings erroneously label the level to which the stairs lead as the second story, the plats and plans submitted by the owner of the Property and reviewed by the Office of the Zoning Administrator during the permit review process reveal that the stairs at issue lead up to the first floor (entrance level), not the second story. Also, it is clear from the plats and plans that the landing serves no other purpose than to connect the stairway to the rear doorway of the first floor level. After the revised permit was applied for, a smaller landing was approved to extend from the top of the stairway directly to the doorway, with no excess space. Accordingly, no extraneous space is provided for such things as patio furniture or even a small barbeque as these items would interfere with the egress between the doorway and the stairs that lead to the ground below. Accordingly, the landing measures no more than what is needed to make the stairs functional, and as such, the landing is a permissible component of the stairway.

Fifth, the Zoning Administrator based his decision to grant the permit to allow for the stairway and landing on current District laws and regulations. See also Bernstein v.

District of Columbia Board of Zoning Adjustment, 376 A.2d 816, 819 (D.C. App. 1977), see also Kalorama Citizens Association v. District of Columbia Board of Zoning Adjustment, 640 A.2d 179 (D.C. App.1994)(an agency's interpretation of its administrative regulations must be given great deference and that such an interpretation is to be upheld unless clearly erroneous or inconsistent with the Zoning Regulations). Accordingly, the Board defers to an agency's interpretation of statutes, which the agency administers, unless that interpretation is unreasonable in light of the prevailing law, inconsistent with the statute, or plainly erroneous. See, Public Defender Service. v. Saint-Preux, 691 A.2d 1160 (DC 1997). Here, the Zoning Administrator reasonably determined that the landing was permissibly constructed as a component of the replacement stairway. His determination was: (1) reasonable in view of the use of a landing to serve access stairs as previously adopted by this Board¹, (2) consistent with the definition that controls under 11 DCMR § 2503.4, and (3) correct pursuant to the standard of review established by the D.C. Court of Appeals. Therefore, the Board must follow precedent and uphold the Zoning Administrator's decision as a reasonable interpretation of the Zoning Regulations.

II. THE ROOFTOP DECK CONSTRUCTED AT THE REAR OF THE PROPERTY IS NOT AN "ADDITION".

Although, the term "addition" is not expressly defined in the Zoning Regulations, pursuant to 11 DCMR. § 199(g), "words not defined *shall* have the meanings given in Webster's. (*emphasis added*). See 11 DCMR. § 199(g). Accordingly, Webster's Unabridged Dictionary (3rd Edition) defines the term "addition" as "anything added: INCREASE". Therefore, in the absence of a statutory or regulatory definition, the Webster's definition

¹ See, Application No. 17476 of Amy and Peter Pastan which states that "the landing area, which connects the access door and the exterior stairs leading to grade level, is a component of a stairway, pursuant to § 2503.4."

controls when determining what structures are properly categorized as an “addition”.

However, the broad definition provided therein does not adequately address the issue before the Board, which is whether the roof top deck at the rear of the Property, impermissibly constitutes an “addition” to a nonconforming structure. The answer to this question is no, it does not.

The deck at issue is situated on the second floor level of the row house and was constructed on top of an existing first floor roof at the rear of the Property. According to the plans submitted with the building permit application, the deck and deck railing are not higher than the existing structure. However, the Appellants contend that the deck is an impermissible addition that “increases the nonconforming aspect of the structure as it extends to within 19ft. approx of the rear property line, thus exceeding the 60% lot occupancy limit by 10% (or 6ft.).” See Appellants’ Appeal. This position is not, however, supported by the Zoning Regulations.

Pursuant to 11 DCMR § 2001.13 additions may be made to a structure provided that: (1) the structure conforms to percentage of lot occupancy requirements, and (2) the addition conforms to use and structure requirements without increasing any existing nonconforming aspect of the structure or creating any new nonconformity.

Here, the Zoning Administrator determined from a review of the plans that the unenclosed deck does not add any additional floor area to the Property or otherwise increase the floor area ratio. As, the deck is open, there is likewise no new enclosed area. Therefore, the construction of the new roof deck does not increase the percentage of lot occupancy or the gross floor area of the property. See e.g. BZA Order No. 13207 (1980) and BZA Order No. 13021 (1979). The new roof deck also does not violate

DCMR § 2001.2 by enlarging, expanding or extending the nonconforming use of the Property. Therefore, the roof top deck is not an impermissible addition to the structure.

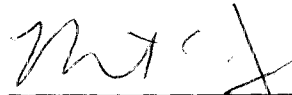
For the foregoing reasons, the Zoning Administrator reasonably determined that the roof top deck was not an impermissible addition under the Zoning Regulations. His determination was reasonable because the deck was neither enclosed nor did it extend the structure beyond the previously constructed roof. Therefore, the Board must follow precedent and uphold the agency's decision as a reasonable interpretation of the regulations it is charged to interpret and enforce.

Respectfully Submitted,

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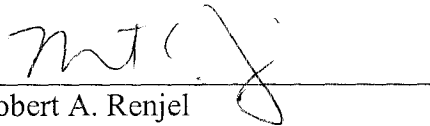
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CERTIFICATE OF SERVICE

I certify that on November 2, 2009, a copy of the District's Memorandum of Law was caused to be delivered to the Appellant by placing a copy in the mail addressed to:

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