

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18032-A of John Graham and Lorri Kerr, pursuant to 11 DCMR § 3103.2, for variances from the height and story requirements under § 2500.4 of the Zoning Regulations, to expand the existing two-car detached garage and add a second floor to be used as an artist studio, in the R-4 District at premises 647 C Street, N.E. (Square 865, Lot 79).¹

HEARING DATES: February 9, 2010 and February 16, 2010

DECISION DATES: March 2, 2010, March 16, 2010, and March 30, 2010

DECISION AND ORDER

John Graham and Lorri Kerr (collectively “the Applicant”), filed this application on November 17, 2009 for area variances under § 2500.4 (height and story requirements for accessory buildings) of the Zoning Regulations, DCMR Title 11. Following a full public hearing, the Board of Zoning Adjustment (“the Board”) voted to deny the requested relief. A full explanation of the factual and legal basis for this decision follows.

PRELIMINARY MATTERS

Self-Certification

The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 4).² The application was self-certified by the Applicant’s architect, Dennis E. Connors.

¹ The original application sought both special exception relief and variance relief. However, the application was bifurcated and the Board took separate votes on the requests for the two types of relief. On March 16, 2010, the Board voted to approve a request for special exception relief under § 223 to construct a rear sunroom addition. On March 30, 2010, the Board voted to deny the request for variance relief to add a second floor to the existing garage in order to construct an artist studio. The grant of the special exception relief is addressed in BZA Order 18032, which was published in the October 22, 2011 edition of the *D.C. Register* at page 10045. This Order solely addresses the denial of the variance relief.

² The Applicant initially sought relief under §§ 2500.4 and 2500.7, but removed the relief under § 2500.7.

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Mr. Connors also appeared at the public hearing on the Applicant's behalf.

Notice of Public Hearing

Notice. Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent by the Office of Zoning to the Applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission ("ANC") 6C, and the District of Columbia Office of Planning ("OP").

Posting. The Applicant posted placards at the property regarding the application and public hearing in accordance with 11 DCMR §§ 3113.14 through 3113.20. It also submitted an affidavit to this effect in accordance with 11 DCMR §§ 3113.19 and 3113.20. (Exhibit 20.)

ANC Reports

The subject site is located within the jurisdiction of ANC 6C, which is automatically a party to this application. In its report dated January 19, 2010, ANC 6C indicated that at a regularly scheduled and legally noticed meeting on January 13, 2010, with a quorum present, the ANC voted to support the application. (Exhibit 21.) The report stated its support was subject to future plans to convert the art studio to a rental property being reviewed for ANC approval.

In addition, the Board received a report from ANC 6C06, the Single Member District ("SMD") of ANC 6C. In its report dated February 19, 2010, the SMD indicated its support for the variance application. The SMD noted the opposition by the Capitol Hill Restoration Society, remarking that it did "not see why the burden of proof" criteria applied in a case like this, where there were no "historic concerns" and the "neighbors were [not] upset". (Exhibit 30.)³

Requests for Party Status There were no requests for party status.

Persons in Support/Opposition No persons testified in support of or opposition to the application. However, the Board received seven letters in support of the application from several neighboring property owners. (Exhibits 20 and 24.)

Government Reports

OP Report. OP reviewed the variance application and prepared a report recommending denial of the variance request. (Exhibit 25.) OP stated that there was an exceptional situation created by a change in grade which resulted in a partially sunken rear yard and drainage issues at the

³ At a decision meeting on March 16, 2010, the Board waived its rules to allow Exhibit 30 into the record after the public hearing record had closed."

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property. However, according to OP, these exceptional conditions did not give rise to a need for the garage to be improved with a second floor. While OP found that the proposed garage addition would not result in a substantial detriment to the public good, it found that its height would impact the zone plan in that it would not be compatible with a low and moderate density zone. OP's representative, Arlova Jackson, testified: "the request to create a second story space over the existing garage is not directly related to the issues of the sunken rear yard or the drainage issue found in the adjacent easement, but [is] largely a result of the owner's desire to create an appropriate art studio, work space." (Transcript of February 16, 2010, p. 131.) OP noted in its report that the Capitol Hill Restoration Society did not support the variance.

Applicant's Case

The Applicant's architect, Dennis Connors, testified during the public hearing. The Applicant maintained that he wished to construct an artist studio by adding a second floor to an existing accessory building outside of the residence. He claimed, among other things, that an artist studio within the residence (which could be constructed as a matter-of-right) could result in toxic chemicals seeping into the residence. The Applicant was also given the opportunity to make post-hearing submissions to buttress his position. The Applicant submitted a letter from a realtor stating that an artist studio in an accessory building would add value to the property, whereas an artist studio inside the home would decrease value to the property. (Exhibit 31.) Mr. Connors submitted a written analysis attempting to show that matter-of-right development of an artist studio (either in the home or behind the home in place of the existing garage) would be more expensive than the Applicant's proposal to build a second level on top of the existing garage. (Exhibit 32.)

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 647 C Street, N.E., Square 865, Lot 79.
2. The property is improved with a three-story row dwelling with a cellar and a two-car detached rear garage.
3. The property is located in the R-4 Zone and within the Capitol Hill Historic District.
4. To the north and west of the property are two- and three-story row dwellings. To the east of the property is a two-story detached garage for a three-story row dwelling facing 7th Street N.E. To the south of the property is a five-story multi-family residential building.

The Proposed Project

5. The Applicant proposes to expand the existing two-car detached garage and add a second floor.

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6. The upper level would accommodate an artist studio.

The Zoning Relief

7. The construction of the artist studio level would increase the number of stories from one to two, and would increase the height of the garage from 14 feet to 19 feet.
8. In most circumstances, § 2500.4 limits the height of accessory buildings to one story and 15 feet.
9. A detached garage is considered an accessory building under the Zoning Regulations. The definition of “building, accessory” stated at 11 DCMR § 199.1 is “a subordinate building located on the same lot as the main building, the use of which is incidental to the use of the main building.”
10. Since there will be two stories instead of one, and the height will exceed 15 feet, the Applicant requires variance relief from compliance with § 2500.4.

Exceptional Topography and Condition

11. A private easement, which abuts the east property line, contains a storm drain to accommodate runoff from adjacent row dwellings. To address the alley elevation, both the private easement and the subject property slope downward from southwest to northeast.
12. The property, therefore, is exceptional in that it has a sunken rear yard due to a significant change in grade at the rear of the property.

Practical Difficulty

13. The exceptional condition at the property – the grade change at the rear – does not result in a practical difficulty for the owners to comply with the height limitation applicable to the garage.
14. The grade change at the rear of the property would not result in substantially higher costs to create an artist studio by the alternative matter-of-right methods of development outlined by the Applicant in Exhibit 32.

The Impact of the Proposed Project

15. Due to the change in grade on the property, the requested increase in garage height, as viewed from the rear alley, would only be three feet two inches. This proposed increase in height would not have a substantial impact on the five-story multi-family residential building to the south.

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16. Because the proposed garage addition would only have windows on the north side which faces the rear yard, it should not negatively impact the privacy of neighboring property owners.
17. Since most of the detached accessory buildings in the Square are one-story, a two-story accessory building would be out of character.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799), as amended; D.C. Official Code § 6-641.07(g)(3) (2001), to grant variances from the strict application of the Zoning Regulations. As stated above, the Applicant here seeks relief from the height and story requirements for accessory buildings.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property has an exceptional size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant/owner will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove “practical difficulties,” an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* at 1170.

As to the first prong, the Board finds that the grade change and sunken rear yard is an exceptional condition at the property.

However, as to practical difficulty, the Applicant has not met its burden of proof. As noted in the findings of fact, while there is a significant grade change at the property, this factor has no connection with any practical difficulty relating to the height of the garage. Simply put, while the subject property exhibits exceptional conditions, they do not give rise to practical difficulties to the Applicant in complying with the Zoning Regulations. This application is virtually identical to the variance denied in *Application No. 17893 of Antonio Seleme*, 56 DCR 9118 (2009). There too, an owner of property with an unusual slope sought to add a second story to a garage for the purpose of constructing an artist’s studio. Although the Board found that an exceptional condition existed:

The Board was not persuaded that the changes in elevation present on the property created the need for a second story on the accessory building. Although the Zoning Regulations do not guarantee that any particular matter of right use may be established, in this instance a one-story accessory building could have accommodated an artist’s studio had the ground floor not been devoted to parking spaces.

Id. at 9121.

In this case, the Applicant desires an artist studio which is separate from the residence, claiming that an artist studio within the residence could result in toxic chemicals seeping into the residence walls, creating a “hazardous health situation” for his family. The Applicant did not substantiate this claim before the Board.⁴ However, even had he done so, the Board would not consider this claim because it stems from the Applicant’s personal preference for a separate artist studio, and does not stem from any exceptional condition at the property. *See also, Application No. 17977 of Frederic and Laure-Anne Badey*, 57 DCR 2793, 2797 (2009). (Variance to construct second story on garage “cannot be granted merely for personal preference, such as the Applicant’s wish to have a bedroom to accommodate visiting relatives”.)

The Applicant argues that even were he to pursue matter-of-right options (such as locating an artist studio within the residence or demolishing the garage and building an artist studio off the basement), the grade change would increase the cost of the project, presenting a practical difficulty. However, the Applicant failed to prove that the \$50,000.00 cost alleged for excavation work is attributable to the grade change, or merely represents costs for excavating a basement.

The Applicant also failed to prove that granting the variance would not result in substantial detriment to the zone plan. In fact, the proposed two-story accessory building would be out of character with most of the detached accessory buildings in the Square, which are one-story. The Board also concurs with OP that the height of the proposed addition would not be compatible with a low and moderate density zone.

ANC and OP Issues and Concerns

Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)) requires that the Board’s written orders give “great weight” to the issues and concerns raised in the recommendations of the affected ANC.

The ANC voted to support the variance so long as the ANC retained authority to review plans for any future conversion of the studio to a rental unit. Since the Board did not grant the application, the role of the ANC in any future modification did not arise. However, as a general matter, the Board notes that any modification of this magnitude requires the Board’s approval, and that before the Board can act on such an application, the affected ANC must be given notice and an opportunity for comment.

⁴ The Applicant submitted an email from a drywall manufacturer (Attachment to Exhibit 32) who stated that drywall alone would not necessarily prevent the spread of chemical fumes. While this general statement may be probative, it does not conclusively establish the Applicant’s claim that an artist studio within the residence would be hazardous.

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The Board is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) to give great weight to OP recommendations. The Board agrees with OP that the Applicant failed to prove practical difficulties in complying with the Zoning Regulations and that the proposed addition's height would impact the zone plan in that it would not be compatible with a low and moderate density zone. It is unclear why OP mentioned the position of the Capitol Hill Restoration Society, since it is not a government agency. The Board did not give great weight to the opposition of that group, but decided the case based solely upon the record before it. Therefore, the concerns raised in the report by the affected Single Member District have been ameliorated.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **DENIED**.

March 16, 2010

VOTE: **2-2-1** (Marc D. Loud and Nicole C. Sorg in support of the motion to approve; Shane L. Dettman and Meridith H. Moldenhauer against the motion to approve; No Zoning Commission member participating)

The motion failed for lack of a majority. *See, Application No. 16710-B of Vinay Pande, October 28, 2002.*

March 30, 2010

The Board, with a fifth member, Michael G. Turnbull, reconsidered the application on its own motion and rescinded the vote taken on March 16, 2010. Following deliberations, and Commissioner Turnbull's statement that he had reviewed the entire record of the case, a new vote was taken.

VOTE: **3-2-0** (Shane L. Dettman, Meredith H. Moldenhauer, and Michael G. Turnbull to Deny; Marc D. Loud and Nicole C. Sorg in opposition to the motion to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board Members approved the issuance of this order.

ATTESTED BY: 
JAMISION L. WEINBAUM
Director, Office of Zoning

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FINAL DATE OF ORDER: March 24, 2011

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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As Director of the Office of Zoning, I hereby certify and attest that on MAR 24 2011,
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 who appeared and participated in the public
hearing concerning the matter and to each public agency listed below:

John Graham and Lorri Kerr
647 C Street, N.E.
Washington, D.C. 20002

Dennis Connors, AIA
Synergy Design
708 5th Street, S.E.
Washington, D.C. 20003

Chairperson
Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, D.C. 20013-7787

Single Member District Commissioner 6C06
Advisory Neighborhood Commission 6C
415 6th Street, N.E.
Washington, D.C. 20002

Tommy Wells, Councilmember
Ward Six
1350 Pennsylvania Avenue, N.W., Suite 408
Washington, D.C. 20004

Melinda Bolling, Esq.
General Counsel
Office of General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov