

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 18588 of Alexi Stavropoulos, pursuant to 11 DCMR §§ 3100 and 3101, from a March 5, 2013 decision by the Department of Consumer and Regulatory Affairs not to permit an addition to an accessory garage that exceeds the height limit in the WH/R-1-B District at premises 3215 45th Street, N.W. (Square 1606, Lot 819).¹

HEARING DATE: July 16, 2013

DECISION DATE: July 16, 2013

ORDER DENYING APPEAL

This appeal was submitted on April 9, 2013 by Alexi Stavropoulos on behalf of Arthur Harding, the owner of the property that is the subject of the appeal (“Appellant”). The appeal challenges a decision by the Department of Consumer and Regulatory Affairs (“DCRA”) not to issue a building permit for an addition to an accessory garage that exceeded the applicable height limit in the WH/R-1-B zone at 3215 45th Street, N.W. (Square 1606, Lot 819). Following a public hearing, the Board voted to deny the appeal.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated April 25, 2013, the Office of Zoning provided notice of the appeal to the Zoning Administrator, at the DCRA, with a copy to the Appellant; the Office of Planning; the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3D, the ANC in which the subject property is located; and Single Member District/ANC 3D01. Pursuant to 11 DCMR § 3112.14, on May 9, 2013 the Office of Zoning mailed letters providing notice of the hearing to the Appellant (both the owner of the subject property and his agent); the Zoning Administrator; and ANC 3D. Notice was also published in the *D.C. Register* on May 10, 2013 (60 DCR 6641).

Party Status. Parties in this proceeding are the Appellant, DCRA, and ANC 3D. There were no requests for party status.

¹ This caption has been revised from the caption used in the public notice of this appeal, which erroneously stated that the decision challenged in the appeal was made February 5, 2013.

BZA APPEAL NO. 18588
PAGE NO. 2

Appellant's Case. The Appellant challenged a decision by DCRA not to issue a building permit to allow an addition to an accessory garage after DCRA determined that the existing garage was a nonconforming structure since its height (16.5 feet) exceeded the maximum permitted height of 15 feet. According to the Appellant, the existing garage is "in very good shape" but the owner "would like to add a 10 foot addition in order to ... gain more useable space in the garage." The planned addition would match the height of the existing garage at 16.5 feet in order to maintain a consistent look. The Appellant asserted that the garage was constructed before the 15-foot height limit was put in place, and that the owner should not be required to remove an existing structure due to the height restriction.

DCRA. The Department of Consumer and Regulatory Affairs urged denial of the appeal on the ground that the Appellant had not identified a zoning error with respect to the denial of a building permit for the planned garage addition. DCRA asserted that, under § 2001.3(b)(2), an addition to the nonconforming garage would be limited to 15 feet in height, rather than the 16.5 feet planned by the property owner. According to DCRA, the "Appellant's desire to keep a consistent look for the garage is not a basis for the Board to find error in DCRA's application of § 2500.4 [the zoning provision that limits the height of an accessory building to 15 feet]." DCRA also stated that the Appellant had mistakenly concluded that demolition of the existing garage was required; in fact, the "regulations prohibit the expansion of nonconformities, but they do not require nonconforming structures be demolished." (Exhibit 19.)

ANC Report. By letter dated July 11, 2013, ANC 3D indicated that, at a properly noticed public meeting on July 10, 2013, with a quorum present, the ANC voted 9-0-0 "to support BZA Application #18588 to permit an addition (10 feet) to an accessory garage that exceeds the height limit in the WH/R-1-B District at 3215 45th Street, N.W. (Square 1606, Lot 819)." ANC 3D concluded that "the proposed addition, while exceeding the present height limits for accessory structures, would not have a negative aesthetic or other negative impact on the neighborhood." (Exhibit 20.)

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at 3215 45th Street, N.W. (Square 1606, Lot 819). The property is zoned WH/R-1-B, and is improved with a one-family detached dwelling and a one-story accessory private garage.
2. Pursuant to § 2500.4, an accessory building may not exceed one story or 15 feet in height. The garage at the subject property, at 16.5 feet in height, is nonconforming with respect to height.
3. The owner of the subject property planned an addition to enlarge the accessory garage. As proposed, the addition would also be 16.5 feet in height, consistent with the existing garage.

4. The owner sought a building permit for the addition, but the permit application was denied based on a determination by DCRA that the accessory garage was a nonconforming structure due to its height in excess of 15 feet. The determination, a “Plan Correction List” issued by DCRA on March 5, 2013, also indicated that the “proposed addition to the existing non-conforming structure is subject to relief and approval of the Board of Zoning Adjustment (BZA) pursuant to section 2001.3(b)(2) of the Zoning Regulations.” (Exhibit 3.)
5. Pursuant to § 2001.3(b)(2), an enlargement or addition may be made to a nonconforming structure provided that the enlargement or addition will “[n]either increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.”

CONCLUSIONS OF LAW AND OPINION

The Board is authorized by § 8 of the Zoning Act to “hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal” made by any administrative officer in the administration or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1) (2008 Repl.)) (*See also* 11 DCMR § 3100.2.) Appeals to the Board of Zoning Adjustment “may be taken by any person aggrieved, or organization authorized to represent that person,...affected by any decision of an administrative officer...granting or withholding a certificate of occupancy...based in whole or part upon any zoning regulations or map” adopted pursuant to the Zoning Act. (D.C. Official Code § 6-641.07(f) (2008 Repl.)) (*See also* 11 DCMR § 3200.2.) In an appeal, the Board may “reverse or affirm, wholly or partly; or may modify the order, requirement, decision, determination, or refusal appealed from; or may make any order that may be necessary to carry out its decision or authorization; and to that end shall have all the powers of the officer or body from whom the appeal is taken.” (11 DCMR § 3100.4.)

In this case, the Appellant challenges a decision by DCRA not to issue a building permit to allow an addition to an accessory garage that is nonconforming with respect to height, where the planned addition would be built to the same height, in excess of the maximum permitted as a matter of right for an accessory structure. The Appellant has not identified any zoning error by DCRA in denying the Appellant’s application for a building permit for the proposed addition. As noted by DCRA in its “Plan Correction List,” the addition proposed by the Appellant would require zoning relief approved by the Board as an addition to a nonconforming structure. (*See* 11 DCMR § 2001.3, enlargement of or addition to a nonconforming structure devoted to a conforming use.) The Board finds no error in DCRA’s assertion that the “Appellant’s desire to keep a consistent look for the garage” did not negate the applicability of § 2500.4, the provision limiting to 15 feet the maximum height permitted as a matter of right for accessory structures. The Board also concurs with DCRA that the Appellant mistakenly concluded that DCRA’s decision not to issue a building permit for the planned addition required the demolition of the

BZA APPEAL NO. 18588
PAGE NO. 4

existing garage; DCRA's decision did not affect the existing garage but indicated a need for zoning relief for its enlargement in the manner proposed by the Appellant.

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (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).) In this case, ANC 3D voted "to support BZA Application #18588" and the Appellant's proposed enlargement of the existing nonconforming garage. However, this proceeding concerns an appeal of DCRA's decision not to issue a building permit for construction that could not be undertaken as a matter of right, and did not address the merits of the Appellant's proposed addition. The ANC did not indicate any issues or concerns relative to the DCRA decision challenged by the Appellant, and thus there was no statement of issues or concerns to which the Board can give great weight in this proceeding.

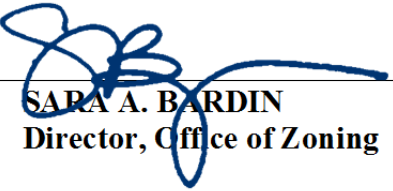
Based on the findings of fact and conclusion of law, the Board concludes that the Appellant has not satisfied the burden of proof with respect to the claim of error in the decision by the Department of Consumer and Regulatory Affairs not to issue a building permit for an addition to an accessory garage that exceeded the applicable height limit in the WH/R-1-B zone at 3215 45th Street, N.W. (Square 1606, Lot 819). Accordingly, it is therefore **ORDERED** that the decision of the Zoning Administrator is **AFFIRMED**.

VOTE: **4-0-1** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Anthony J. Hood voting to Affirm the decision of the Zoning Administrator; one Board seat vacant.)

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

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

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 20, 2013

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.