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Real Estate | Zoning | Business Law

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By E-Mail Submission

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

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Re: **Opposition to Application No. 18651; 319 A Street, NE**

Dear Chairman Jordan and Members of the Board,

I am writing on behalf of Brian Stansberry, owner of the property located at 308-312 Millers Court, N.E. (the "Stansberry Property") The Stansberry Property includes three small one-family row dwellings. These dwellings were originally constructed as residences over 150 years ago The easternmost dwelling, 312 Millers Court, is fifteen feet from the property which is the subject of Application No. 18651 (the "Application")¹ The granting of relief in this case will cause a substantial detriment to the Stansberry Property Furthermore, the Application does not satisfy the variance test for the requested relief, as discussed herein

The Variance Test

The Application requests relief from five sections of the Zoning Regulations, including relief:

- (i) to subdivide Lot 827 and convert the rear of that conventional lot into an alley lot. create a new alley lot where one did not exist before (from Lot 827);
- (ii) to create a new lot that does not comply with the minimum lot area requirements;
- (iii) to build a structure that occupies 100% of that substandard sized lot and provides no rear yard or any yard of any kind; and
- (iv) to construct a large, 3 bedroom one-family dwelling in place of accessory garages, requiring parking relief

No Exceptional Condition

The Applicant lists nine supposed unique conditions which it claims make compliance with the Zoning Regulations a practical difficulty to the Applicant But an evaluation of those nine claimed unique

¹ Mr Stansberry previously submitted his party status request, Form 140

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18651
EXHIBIT NO. 41

conditions finds that none of these conditions (some of which are duplicates) are particularly unique, and none of them are the source of any practical difficulty in complying with the Zoning Regulations

The Applicant principally relies on the fact that the two existing garages are in poor condition. But such a condition for old accessory garages in the District is not particularly unique, and the Applicant does not explain exactly why having a garage in need of repair or replacement automatically entitles it to create a nonconforming lot and replace those garages with a one-family dwelling at 100% lot occupancy. No doubt there are plenty of accessory garages in the City in need of repair or replacement, or simply removal. Granting relief for this reason would run afoul of the uniqueness requirement and may entitle anybody with a garage in poor condition to receive similar relief to create a residence in place of the garage.

Beside the claim about the poor condition of the existing garages, the eight other claimed conditions just simply state the existing situation for which the Applicant wants relief. For instance, item #2 (duplicated by items #4 and #5) just recites the fact that the proposal does not comply with the alley-width restrictions of § 2507.2. It is not enough for variance relief to just state that the property doesn't comply, and therefore deserves relief. The other items, similarly, relate to existing nonconformities (or future nonconformities created by this proposal), none of which entitle the conversion of permitted accessory garages to such a large one-family dwelling on a non-compliant alley lot without the required width of access.

No Exceptional Practical Difficulty

The fact that the existing garages are in poor condition does not create an exceptional practical difficulty to the owner. The owner could repair or replace the garages. The owner could also simply remove the garages and use the land for parking spaces, which in this neighborhood has significant rental income value. At any rate, in contrast to what the Applicant states, there is no presumption that accessory garages, or the land on which they sit, are entitled to a separate income stream, such that *not* having that stream is a practical difficulty to the owner (particularly when the structures have always been used as accessory garages; *i.e.*, no existing income stream is being taken away). If this were true, then every property owner with an accessory garage can claim that they can convert their garage to a one-family dwelling simply because the accessory garage currently produces no independent income.

Substantial Detriment to the Party Opponent (applicant) Stansberry

The construction of the proposed two-story 100% lot occupancy dwelling fifteen (15) feet away from Mr. Stansberry's property would have a substantial negative impact on the light and air and privacy of Mr. Stansberry's tenants, and consequently the value of the Stansberry Property. The Stansberry Property – which has existed as a residential use since original construction in the 19th century – has windows facing the proposed development. The proposed development has windows which would look into the Stansberry property's windows (in addition to the north-facing windows noted in the OP report). For this reason, Mr. Stansberry's property is distinctively and uniquely impacted by this proposal. Please refer to the Party Status Request filed by Mr. Stansberry for additional instances of negative impact.

Substantial Detriment to the Integrity of the Zone Plan

As the Office of Planning notes in its report, the alleged justifications for relief relate mostly to the existing and future nonconformities of the Applicant's proposal. To allow so many significant areas of relief, on multiple lots, under this set of facts, damages the integrity of the Zone Plan for several reasons. Because the property and the garages are not particularly unique, granting relief here could lead to many others seeking the same relief. Also, granting relief encourages others to hasten the deterioration of their accessory garages, knowing that once their old garages are in poor shape, they may be able to convert them to residential use. The Applicant claims that the garages can no longer be used for any purposes, but it ignores the fact that the garages may continue to be used as they always have, especially after repair or replacement. Even without the garages, the property underneath the garages can be used for valuable parking spaces.

One overlooked aspect of this Application is the effect that the proposed subdivision will have on the remaining portion of Lot 827, which fronts on A Street and has three (3) living units. This proposal extends the existing nonconformity on Lot 827, by reducing the lot area below what is already a nonconforming lot size. Effectively, this proposal is for § 401.3 relief under the 900-foot rule, which the Board has been very reluctant to grant, since the Applicant gets a fourth unit on the current Lot 827, even though Lot 827 has a land area of only 2,200 square feet. As a result, it appears that the Applicant has failed to include several areas of relief, including § 401.3 for the remainder portion of Lot 827, and § 2001.3, for an expansion of an existing nonconformity on the remainder of Lot 827.

Summary

The Applicant's proposal creates a multitude of non-compliant situations, causing a significant negative impact on surrounding properties, with no real justification under the variance test. For the reasons stated above, Mr. Stansberry respectfully requests that the Board deny the Application.

Sincerely,



Martin P. Sullivan

cc J. Patrick Brown, Esq.
Matt Jesick, Office of Planning