

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Lisa V. Terry, Applicant for Party Status, BZA Case No. 18843A

RE: Office of Planning Recommendation Re: BZA Case No. 18843A

DATE: November 15, 2015

As set forth below, the Office of Planning (OP) Recommendation of November 15, 2015 regarding BZA Case No. 18843A, 5526 39th Street, N.W., contains multiple factual errors and erroneous conclusions and therefore should be disregarded by the Board of Zoning Adjustment (Board).

I. Discussion

First, the report incorrectly states that relief is requested for construction of a garage and cellar. In fact, by the applicants own description, a special exception is needed for “an addition and new accessory building (detached garage).” The report entirely misses the point that the applicant requires relief both for the new two-story addition and the new garage. This error consequently affects the OP’s analysis and conclusion.

Second, the report incorrectly states that “the proposed garage would increase lot occupancy 3.7% above 40% but would not require side or rear yard relief.” That premise is also incorrect. The proposed garage increases lot occupancy by 1.4% . It is the addition of the new two-story structure and the new garage that would result in a 3.7% increase in lot occupancy, which requires relief from the lot occupancy requirements. Although the side yard does not meet the applicable 5 foot setback, the applicant received relief from that requirement by the Board in October 2014. I did not object to that request given that the sole issue centered around one inch. The 2014 Order only approved an exception not meeting side yard requirements of section 405.

As background, the new application is based upon a misinterpretation of the lot percentage requirements by the Pashbys’ architect. The two-story addition with existing garage is 42.3%, which exceeds the 40% lot occupancy requirement because it must take into account the 5 foot set back. That was unknown to them at the time they filed their first application. Total lot occupancy is 43.7% with the addition and new garage structure.

The Office of Planning report, therefore, incorrectly focuses solely on the garage construction when in fact the two-story addition and new garage are at issue here. which trigger sections 403 regarding lot occupancy, 2001.3 regarding nonconforming structures, and 223.2 regarding adverse affects on adjacent property.

Third, the report concludes, without basis, that the proposed garage does not violate section 223.2 regarding light and air available to adjacent properties. It does this solely on the basis that it would be screened by a six foot fence, which is less than half the height of the proposed garage. It also

improperly says the garage will have a height of 12 feet, when in the preceding paragraph the report says it will be 14.5 feet (as is proposed). In either case, as is evident in the photographs I have provided, the new garage would create an imposing 14.5 foot high wall with direct views from my deck, patio area, dining room and kitchen. As such it would unduly impede light and air available to my home, as well as my use and enjoyment. The undue affect is particularly persuasive given that the height of the garage is *not needed to accommodate the width of a car*. This puts into question the actual intended use of this structure--which also curiously enough, includes plumbing and a window leading to the cellar.

The report also incorrectly relies upon the assertion that "the applicant has indicated that landscape would be installed along the perimeter, but has not provided any plans." The problem with reliance on that assertion is that the applicants' plans leave NO room along the perimeter of the garage to plant any screening trees. The plans include a new stairwell leading to a new cellar which they propose to build six inches from our property line. Six inches. Given that, landscaping for screening is obviously a non-issue.

Finally, the report relies upon such non-issues as the lack of any "outdoor activity that would be disruptive to neighbors" and the view of the garage from street frontage, in an attempt to address the issue of use and enjoyment of neighboring properties. The OP need only take a close look at the lot of the applicant and three adjacent/abutting lots, the proposed construction and the overall totality of the project to conclude that there would, indeed, be an adverse impact on use and enjoyment of the neighboring homes.

II. Conclusion

Now, here we are. A year after the first application was submitted, faced with a new application to exceed lot occupancy which was created by the applicants' plans to build a new garage with cellar, and the misinterpretation of the rules regarding setbacks. This is not insignificant. The issue boils down to much more than the one inch discrepancy created by the 4.95 foot setback, which was the issue in the first application. Rather, the issue concerns important property rights and values such as lot occupancy, light and air, privacy, and use and enjoyment of one's home. I encourage to Board to carefully consider my party status submission and hearing testimony in support of my position that the proposed two-story addition and new garage structure have a substantially adverse affect on the use and enjoyment of my home.

In sum, the Office of Planning Report gets it all wrong. The Board should therefore either disregard the report or request a new report based upon factually correct information and sound premises.