

Memo

From: Kevin Latner
21 Quincy Place, NW
Application No. 18865

To: District of Columbia Board of Zoning Adjustment

Date: February 3, 2015

The Board of Zoning Adjustment (BZA) heard my request for an area variance for 21 Quincy Place, NW on December 16, 2014. At that time the BZA had some question about the uniqueness of my property. The Board graciously offered me an opportunity to review the facts and law, procure a second opinion and return better prepared.

I would like to thank the Board of Zoning Adjustment for the opportunity to elaborate the unique circumstances and practical difficulty justifying area variance relief for 21 Quincy Place, NW.

Elements of area variance relief: The legal requirements to support an area variance are the demonstration (meeting the burden of proof) of three elements:

- unique physical aspect or other extraordinary or exceptional situation or condition of the property;
- resulting in practical difficulty in complying with a strict application of the Zoning Regulations; and
- no substantial detriment to the public good or the integrity of the Zoning Regulations.

I would like to provide a summary of how this Application satisfies those elements. A more detailed legal analysis of the current facts follows in a supplemental argument document.

A confluence of factors makes the subject property unique: The first element is whether there is a unique physical aspect or exceptional situation or condition of the property which makes strict compliance with the Zoning Regulations unnecessarily burdensome, *i.e.*, a practical difficulty, to the owner. That is, are there some unique characteristics of the property not shared by other properties in the neighborhood. In fact, there are. Properties can be unique not only because of their physical characteristics, such as the size or shape of a lot, but also based on the building structures and zoning or permitting history. The uniqueness of a property may arise from a “confluence of factors” that makes the property stand apart.

This property stands apart based on the lot, structures, and zoning/permitting history: There is a confluence of factors that makes 21 Quincy Place NW unique. The most pronounced of these conditions is the present entitlement to rebuild the nonconforming carriage house. The currently-valid building permit for the carriage

house, a copy of which is attached, is part of the zoning and permitting history of the subject property, and is in fact a very unique condition of the property. The fact that the property had a nonconforming carriage house, *and*, now has a vested right to rebuild that nonconforming carriage house, is a unique condition, not only on this block but most likely in the District overall. The right to rebuild the carriage house (very unique), when combined with the narrow width of the lot, establishes two alternatives for the owner, both of which are unnecessarily burdensome.

Practical difficulty/unnecessarily burdensome area limitation: The second element of the variance test is whether the confluence of unique conditions results in strict compliance with the Zoning Regulations being unnecessarily burdensome, or a practical difficulty, to the owner. Increased expense and inconvenience are among the factors that the BZA may consider as it balances the severity of the variance requested, the burden of strict compliance, and the effect the proposed variance would have on the overall zoning plan. To demonstrate practical difficulty, an applicant must show that strict compliance with the regulation is unnecessarily burdensome; not impossible. It's important to note the low degree of relief being requested, especially when compared to the entitled carriage house. It amounts to a few feet of unusable space being incorporated into a larger garage. It is close to, if not, a *de minimus*, request, which I understand the Board may consider in its practical difficulty analysis.

Strict compliance with area limitations result in inconvenience and loss of value: In the case of 21 Quincy Place NW, strict compliance with the area zoning requirements would be burdensome. There is a unique condition as a result of the entitlement to rebuild a nonconforming carriage house. As a direct result of that unique condition, I have two matter-of-right options, each of which present a practical difficulty. The property has value because of the presence and convenience of two off-street parking spaces. The property also has value because of the right to build a carriage house and the convenience this provides. Thus, I can choose to build a carriage house and lose one parking space. Alternatively, I can choose not to build the entitled carriage house and lose the right to the carriage house. On the horns of this dilemma I can either lose the value and convenience of the two off street parking spaces or the value and convenience of the right to build the entitled nonconforming carriage house.

No substantial detriment to the public good: The question of harm to the public good has not come into question; in fact, the construction of a carriage house appears to benefit the public good and is consistent with the current zone plan, as long as the burden of proof on the other two elements are met. The considerable support received for this application from my neighbors and community is evidence of the satisfaction of this element of the variance test.

No substantial detriment to the integrity of the Zoning Regulations. The entitlement to construct the nonconforming carriage house is an extremely unique condition, and along with the narrow lot width, directly presents a practical difficulty to the owner in complying with either matter-of-right option available, as discussed above. Because the

situation is so unique, granting the requested relief does not impair the integrity of the Zoning Regulations.

Granting area variance relief would relieve the unnecessary burdens: The facts of this case meet the burden of proof for the specific elements of uniqueness, practical difficulty, and no substantial detriment to the public good or to the Zone Plan. In short, the property is unique, and that unique condition directly results in a practical difficulty to the owner. That there is no harm is undisputed. The alternative for relief from both of these practical difficulties is to slightly expand the entitled nonconforming carriage house, thus allowing both the construction of the accessory structure as well as the provision of sufficient parking space. Granting the requested relief addresses both of the alternative practical difficulties at once.

SUPPLEMENTAL ARGUMENT FOR
BZA APPLICATION NO. 18865

I. Unique Condition.

The burden of proof for an area variance is well established. The Applicant must demonstrate three elements: (1) unique physical aspect or other extraordinary or exceptional situation or condition of the property; (2) resulting in practical difficulty in complying with a strict application of the Zoning Regulations; and (3) no harm to the public good or the zone plan. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested area variance.

A. The Property is Subject to Exceptional Conditions and Situations.

In order to prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.25 1091, 1096 (D.C. 1979). A property's uniqueness is not limited to physical aspects of the land and may be determined by "some difficulty not shared by the entire neighborhood." *Id.* at 1098.

The Court of Appeals held in *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land; and that "...property generally includes the permanent structures existing on the land." *Id.* at 293-94. The Court held that the exceptional situation standard of the variance test

may be met where the required hardship is inherent in the improvements on the land (*i.e.*, the building or structure) and not just the land itself.

Furthermore, the Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition of the property. Rather, it may arise from a “confluence of factors.”

In *Monaco v. D.C. Board of Zoning Adjustment*, the Court of Appeals held that the zoning history of a property could be considered in making the determination of uniqueness.

The unique condition present in this case involves elements of *Monaco*, *Gilmartin*, and *Clerics*, and it involves the Applicant’s entitled right to rebuild the nonconforming carriage house, for which the Applicant holds a valid building permit, a copy of which is attached hereto as Exhibit A.

Monaco provides that the zoning history of a property can be a unique condition. In this case, the fact that the property had a nonconforming carriage house, *and*, more importantly, that the Applicant now holds a vested right to rebuild that nonconforming carriage house, is a unique condition on this block and most likely in the District overall.

II. Practical Difficulty.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. In reviewing the standard for practical difficulty, the Court of Appeals stated in *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area

restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992) (citing *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990)).

It is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ ... Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A.2d at 1711. Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

As such law applies to the facts in this Application, the Applicant has a significant practical difficulty resulting from the unique condition of the entitled right to rebuild the nonconforming carriage house. The Applicant has two matter-of-right choices, both of which are unnecessarily burdensome to the Applicant; enough to make this Application worthy of the relief requested.

The Applicant’s first choice is to build the entitled carriage house, which will leave him with the practical difficulty of limited parking and a portion of the rear yard being not fully utilized. The Applicant’s only other matter-of-right option is to ***not*** build the entitled nonconforming carriage house, in which case he will have more parking area, but he will also be

foregoing a valuable entitled right to build the carriage house. The right to build such a structure is of considerable value to the Applicant's Property, and forgoing such a right is certainly a practical difficulty to the Applicant.

The alternative for relief from both of these practical difficulties is to slightly expand the entitled nonconforming carriage house, thus allowing both the construction of the accessory structure as well as the provision of sufficient parking space. Granting the requested relief addresses both of the alternative practical difficulties at once.

III. No Substantial Detriment to the Public Good.

Granting the request would effectively turn a nine (9) foot wide carriage house into a 16.67 foot wide garage. There is no negative impact from such a change, as evidenced by the support of both adjacent neighbors and the unanimous support of ANC 5E.

IV. No Substantial Impairment of The Zone Plan.

As discussed above, the situations which the Board may consider in its Prong One analysis is the zoning and permitting history of a property, as well as the structures on a property. The situation of uniqueness is not limited to the land only. The Applicant has articulated a reasonable argument that the subject property is very unique, based on the existing right to rebuild a nonconforming carriage house on a narrow lot. It is highly unlikely that this situation is frequently repeated, so there is no danger of setting any precedent that would harm the integrity of the Zoning Regulations.

V. Summary.

The Applicant in this case has two matter-of-right alternatives. Each alternative brings an unnecessary burden to the Applicant. Option 1, to build the carriage house, leaves a small portion of the rear yard without function and without the ability to park a car. Option 2, to forego building the carriage house, involves losing an entitlement right to build that carriage house. Complying with the Zoning Regulations results in an unnecessary burden under either alternative. The situation is certainly unique. It is uniquely unique, and unlikely to ever be repeated again, leaving the integrity of the Zoning Regulations safely intact.

Therefore the Applicant respectfully requests that the Board grant the requested relief.

Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862

G

GARAGE PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK
UNTIL WORK IS COMPLETED AND APPROVED

PERMIT NO. **G1400019**

Date: 01/14/2014

Address of Project: 21 QUINCY PL NW		Suite No:	Zipcode: 20001	Zone:	Ward: 5	Square: 3101	Suffix:	Lot: 0104
Description of Work: Construct replacement in kind 1-level w/ attic as storage 15' high max. garage at rear yard, in proximate location w/ overhang max. 4' on its side. Also construct footings and foundation, walls, and roof. Install doors and windows, convenience power receptacles and lighting, and automatic overhead garage door. Permission is Hereby Granted To: Latner								
Owner Address: 21 QUINCY PLACE NW 20001		Contractors Name:			License Number:		Contractors Address:	
PERMIT FEE: \$618.75								
BZA No:		Type of Work:			No. Garages: 1			
Material Roof: shingles		Material Sides: lap siding and brick veneer			Color: beige-brown			
Length: 18	FT	Width: 9	FT	Area: 162	SQFT			
Conditions/ Restrictions: This permit expires if no construction is started within 1 year or if the last inspection is over 1 All construction done according to the current construction codes and zoning regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.								
Director: Nicholas A. Majett		Permit Clerk: Keith Hawkins			Expiration Date: 01/14/2015			
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-4460 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557								

Map for Building Permit of: SQUARE 3101 LOTS 103 - 105

Scale: 1 inch = 20 feet

Recorded in Book Co.19 Page 2

Receipt No. 14-01283

Furnished to: JEFFREY WAY

[Signature]
Surveyor, D.C.

By: A.S. *[Signature]*

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

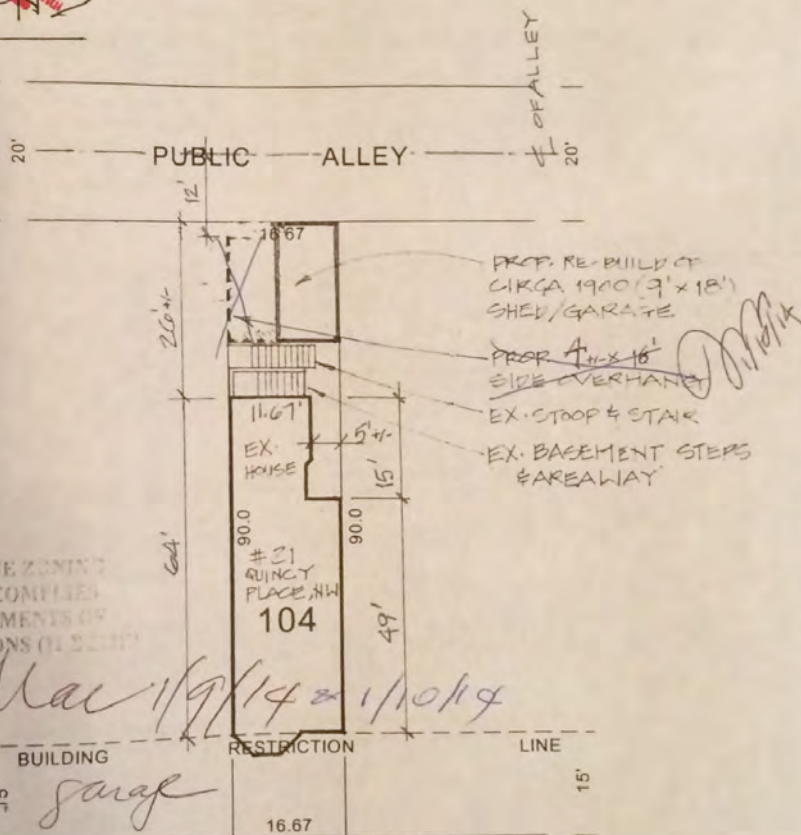
Date: 1/9/2014
[Signature]
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

OFFICIAL
GOVERNMENT OF THE DISTRICT OF COLUMBIA
PERMITTING OPERATION DIVISION
All work must be done strictly in accordance with the approved plans and must be done on the site and in the presence of the Permitting Operation Division. No inspection will be made unless Approved Plans are on job site.

LOT CALCULATIONS

LOT SIZE: (1028) 1,500 ϕ
HOUSE: (492) 735 ϕ
GARAGE-SHED: 165 ϕ
BALANCE: (1126) 600 ϕ
(OPEN SPACE)



DCRA/OFFICE OF THE ZONING ADMINISTRATION/COMPLIES WITH THE REQUIREMENTS OF THE ZONING REGULATIONS (11-2017)

Xoan Mac 1/9/14 & 1/10/14

Re-build exist garage in the rear yard area
Max. 15' High - 1 level

QUINCY PLACE, N.W.

