

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 17526 of ANC 6A pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Building Permit No. 89703, for property located at 1411 Ames Place, N.E. (Lot 39, Square 1056).

HEARING DATE: November 14, 2006

DECISION DATE: November 14, 2006 (Bench Decision)

DECISION AND ORDER

This appeal was filed on June 6, 2006 with the Board of Zoning Adjustment (the Board). The appeal challenged DCRA's decision to issue a building permit that authorized the conversion of a one-family dwelling to a two-family dwelling (flat). The one-family dwelling was constructed prior to the promulgation of the current regulations that require an on-site parking space for this use. The Appellant claims that DCRA erred in issuing the building permit despite the lack of a parking space required for a flat. DCRA did not require the space because it had credited the property with already providing the parking space required of one-family dwellings constructed on or after May 12, 1958. After allowing the parties an opportunity to be heard, the Board found that the permit had been properly issued and that the appeal should be denied. A full discussion of the facts and law supporting this conclusion follows.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on November 14, 2006. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, ANC 6A (the ANC in which the subject property is located), the property owner, and DCRA.

Parties

The Appellant in this case is the Advisory Neighborhood Commission 6A (the ANC or the Appellant). ANC Commissioner Nicholas Alberti spoke for the ANC during the proceedings.

DCRA appeared during the proceedings and was represented by Matthew Green, Esq.

Persons in Support/Opposition

The Capitol Hill Restoration Society filed a letter supporting the appeal (Exhibit 20).

FINDINGS OF FACT

1. The subject property is a one-family dwelling located at 1411 Ames Place, NE, (Lot 39, Square 1056), in the R-4 zone district.
2. The building, owned by Charles Moore¹ (Owner), was constructed prior to May 12, 1958 without parking spaces. No such spaces existed on the date that the Owner applied for the building permit that is the subject of this appeal.
3. The application requested permission to convert the building from a one-family to a two-family dwelling, which is also defined by 11 DCMR § 199.1 as a “flat”. (Exhibit 5).
4. DCRA issued a building permit dated April 7, 2006, allowing for “complete interior alteration” at the premises, including a basement excavation and a height increase (Exhibit 3). The permit approval was consistent with the application for a conversion to two units and an interior renovation (Exhibit 5).
5. At the time it issued the permit, DCRA was aware that no parking spaces were shown on the proposed plans, and that the owner indicated he did not intend to provide a parking space at the property.
6. DCRA also reviewed the plat for the property. The plat showed no parking spaces on the property.
7. At a regularly scheduled and properly noticed meeting on June 8, 2006, the ANC (“Appellant”) voted unanimously to appeal DCRA’s decision to “approve the zoning discipline” and issue the building permit (Exhibit 14). The appeal was timely filed on June 6, 2006 (Exhibits 1 and 2).
8. The basis of the appeal is that the permit was issued in violation of 11 DCMR §2100. Specifically, the Appellant alleges that at least one parking spot was required.
9. Pursuant to § 2100.1, a one-family dwelling must provide one parking space for each dwelling unit and a flat is required to have one parking space for each two dwelling units.
10. The parties agree that, as of the date that the building permit was applied for, the one-family dwelling use on the subject property was not required to provide a parking space.
11. The ANC contends that since the current parking requirement is zero and the use is being changed to a flat for which one parking space is required, DCRA erred in issuing a building permit that did not require that space.

¹ Mr. Moore did not appear during the proceedings. However, he is listed as the owner on the renovation contract which is part of the administrative record in this case (Exhibit 4).

12. The Zoning Administrator contends that because of the grandfathering provision of 11 DCMR § 2100.1, the property should be deemed to already have satisfied the requirement of providing the single parking space required for a one-family dwelling, and since a flat also requires a single space, no additional parking is required.

CONCLUSIONS OF LAW

Pursuant to the Zoning Act, the Board has jurisdiction to hear appeals alleging "error in any order, requirement, decision, determination, or refusal made by ... any [District] administrative officer or body in the carrying out or enforcement of the Zoning Regulations. D.C. Official Code 6-641.07(g) (1) (2001). In this case, the Appellant alleges that DCRA erred in issuing the subject building permits because the parking requirements set forth in 11 DCMR § 2101 were not met.

Subject to certain exceptions not applicable here, all buildings or structures erected on or after May 12, 1958 must be provided with parking spaces to the extent specified in 11 DCMR § 2101.1. 11 DCMR §§2100.1, 2101. 1; § 2101. 1 provides that a single parking space is required for a single family dwelling or a flat.²

There is no disagreement that because this one-family dwelling was constructed prior to May 12, 1958, it does not have to provide the one-parking space required by § 2101.1 for one-family dwellings constructed on or after that date. The parties differ over whether the addition of another dwelling unit triggers a parking requirement. The Appellant offers two theories in support of the appeal.

First, Appellant claims that the proposed addition of the dwelling unit would result in a change of the building's use from a one-family dwelling to a flat. One-family dwellings and flats are identified as permitted uses within Residence districts and a one-family dwelling can be lawfully converted to a flat in the R-4 district as a matter of right.

Subsection § 2100.4, governs the circumstances when a change in use subjects the property to a different and more stringent parking schedule. It provides that, except for historic landmarks and buildings that contribute to a historic district:

when the use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change ... parking spaces shall be provided for the additional requirement in the amount necessary to conform to § 2101.1.

Appellant contends that this provision should apply to this one-family dwelling because the current parking requirement is zero in light of the grandfathering set forth in § 2101.1. It argues that since a flat requires the provision of one space, the proposed conversion to that use "requires more parking spaces than required for the use existing immediately prior to the change".

² Two parking spaces are required in the R-5-A District. In all other Residential Districts, only one is required.

BZA APPLICATION NO. 17526

PAGE NO. 4

A similar argument was made before the District of Columbia Court of Appeals in *Gladden v. BZA*, 659 A.2d 249 (D.C. 1995). In that case, the BZA agreed with the Zoning Administrator that one, rather than two parking spaces, was required in order to convert a home built prior to May 12, 1958 to a youth rehabilitation home. Like the Appellant here:

The Petitioner's argument fail[ed] to take into account the "grandfathering" procedure established by 11 DCMR §§ 2100.1 and 2100.4. "The regulations exempt buildings built before May 12, 1958 -- the effective date of the parking regulations -- from [specific parking] requirements." *Woodley Park Comm. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 490 A.2d 628, 639 (D.C. 1985); see also *Page Associates v. District of Columbia Bd. of Zoning Adjustment*, 463 A.2d 649, 651 (D.C. 1983) (noting that buildings built before the regulations that are converted to another use must provide additional parking spaces in the amount not grandfathered).

...In sum, we conclude that of the two spaces required for a youth rehabilitation home under 11 DCMR § 2101.1 one space is supplied by the grandfathered credit for the pre-1958 structure and the applicant provided the other space with a standard nine by nineteen-foot space on the premises.

Id. at 253-254.

Based upon this precedent, the Board finds that the Zoning Administrator properly deemed the property as having already furnished the one space required for a one-family dwelling. After crediting this space against the one space required for a flat, the Zoning Administrator correctly found that no additional parking was required.

For its second theory, the Appellant claims that the addition of a dwelling unit will double the intensity of the use and therefore additional parking is required under 11 DCMR § 2100.6. That subsection requires additional parking "when the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition of ... dwelling units" Subsection 2100.7 provides that such additional parking is not required "unless the addition increases the intensity of use of the building or structure by more than twenty-five percent (25%) of the aggregate."

The Board agrees with the Zoning Administrator that § 2100.6 should be read together with the general grandfathering provision of § 2100.1. Whether calculating the parking requirement resulting from a change of use (as was the circumstance in the *Gladden* case) or from an intensification of a use, a grandfathered building should be credited with the number of parking spaces that would have been required were it subject to the parking schedule of § 2100.1. The Zoning Administrator properly determined that the addition of the dwelling unit required no additional parking on the subject property.

THE ANC

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. This opinion fully addresses why the Board does not find the ANC's views to be persuasive.

For reasons discussed above, it is hereby **ORDERED** that the appeal is **DENIED**.
Vote taken on November 14, 2006

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II, and Anthony J. Hood in support of the motion to deny the appeal, Curtis L. Etherly, Jr. not voting, being necessarily absent)

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: **AUG 23 2007**

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.

SG

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPEAL NO. 17526

As Director of the Office of Zoning, I hereby certify and attest that on **AUGUST 23, 2007**, 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 and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Nicolas Alberti
ANC 6A04
1330 North Carolina Avenue, N.E.
Washington, D.C. 20002

Matthew J. Green, Jr., Esq.
Dept. of Consumer and Regulatory Affairs
Office of the General Counsel
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, D.C. 20013

Single Member District Commissioner 6A04
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, D.C. 20013

Matthew LeGrant, Acting Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

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

BZA APPEAL NO. 17526

PAGE NO. 2

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002

Jill Stern, Esquire
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR