

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of Tiblez Adal

BZA No. 18979

**APPLICANT’S SUPPLEMENTAL STATEMENT
November 3, 2015**

This supplemental statement responds to the further brief of specified matters for which the Board took leave to leave the subject case records open and for further hearing, as outlined in the first public hearing of the instant case on September 22, 2015.

Those outstanding matters are broadly as follows:

1. Provide documentary evidence in support of the assertion that a roof existed on the carriage house prior to and as of 2009 when the applicant when the applicant first received a building permit to construct the third floor addition to the main building and that the issued building permit was predicated on the condition that there be no roof on the carriage house;
2. Provide further brief of the concept of “parking credit” including whether additional relief from parking is required for the instant application under the circumstances;
3. Brief Office of Planning’s (OP) contention that additional relief for the existing condition of the carriage house pertaining to setback from the centerline of the abutting public alley and from the number of story and height may be required;
4. The removal of the concrete paving in public space in from of the carriage house and conversion to a green area, and;

5. Removal of the bathroom tub or shower on the second floor as a basis for determination that the carriage house is not intended for purposes of human habitation.

Applicant's Responses

1. Roof on Carriage House

The applicant submits the following Exhibits in support of the assertion that a roof, regardless of its state of dilapidation, existed as of 2009 when the applicant was granted a building permit to construct a third floor addition unto the existing main building on the premise that that the carriage house shall remain or be made roofless.

- a. Exhibit # 59 which is a picture date 03/21/2008 which clearly shows oxidized corrugated roof sheets which was obviously a part of what remained of the dilapidated roof above the carriage house;
- b. Exhibit # 61 DCRA on-line tracking record of the review of the third floor addition with the annotation that "rear structure to stay open with no roof" (see zoning division entry of 8/19/2009 which is also the project approval date for zoning;
- c. Exhibit # 60 The DC Surveyor's plat approved in conjunction with the third floor addition with annotation consistent with the condition of the approval of the third floor building permit.

What should be indisputable is that the carriage house was constructed with a roof and that it is not out of the ordinary for a roof to suffer progressive structural degradation over a protracted period of abandonment, and significantly become dilapidation due to prolonged exposure to weather elements.

Further, Exhibit # 61 under item b, DCRA official permit Tracking records attest and confirm that Zoning predicated its approval of the third floor addition on the carriage house having no roof, notwithstanding that it probably was based on the representation of the project architect, who also happened to serve in the capacity of the applicant's agent for the permitting process.

The applicant not being present or privy to the substance of such representation, cannot testify to whether discussions touched on the degree of dilapidation of the roof, that is whether the carriage house roof was partially open to the sky or wholly open to the sky due to degradation.

In the hearing of September 22, the applicant provided witness testimony that the carriage house had a roof at the time of the issuance of the permit which authorized the construction of the third floor on the main building, notwithstanding that the roof exhibited signs of significant degradation.

The applicant notes for the record that as a matter of established administrative practice, the Zoning Administrator allows the preservation of nonconforming structures or a specific nonconformity of structure provided that the walls of such a structure are not demolished below a height of four feet above adjacent grade.

The implication as it relates to the instant application is that absent the matter of the constructed third floor on the main house, the nonconformity of structure with respect to percentage of lot occupancy could still be preserved and reconstructed if the applicant demolished the perimeter wall of the structure, including the roof, provided that the perimeter walls up to a height of four feet (4 ft.) above adjacent grade are retained.

Further since an artist studio is a permitted use in an accessory structure in a Residence District as a matter of right, the applicant would not have required seeking relief before the Board.

2. Parking Credit

11 DCMR, § 2100.4 of the DC Zoning Regulations is the provision which addresses this subject matter. Notwithstanding that the text of the provision does not expressly use the term of reference, parking credit, its historical administration and interpretation operates to extend parking credit to the use existing immediately prior to a proposed change of use in that building because additional parking is only required when the proposed use requires more parking spaces than the previous use, and only in the additional number of parking spaces based on the current parking schedule in Chapter 21.

The existing improvements, including the two-story carriage house was constructed in 1890, and historically has been used and occupied as a single family dwelling. At the time of its construction the parking requirement for such a structure could have conceivably been zero, as in none required. Regardless, the fact of the non provision of an automobile parking space or garage was grandfathered as of the May 12, adoption of the current Zoning Regulations, including any amendments thereafter.

In the context of the applicability of § 2100.4, the change of use from a single family dwelling to a two-family flat did not require more parking than the previous use as a single family dwelling, given that under the current schedule, both uses are required to provide only one parking space. Therefore no additional requirement exists that would require the parking credit earned, except as it applies to the artist studio use the applicant proposes to establish in the carriage house

Notwithstanding that the architect refers to the existing carriage house as a garage, no public record evidence supports the fact that the carriage house was ever converted from its horse and buggy use for purposes of an automobile parking garage. The carriage house can therefore not be deemed a parking garage as that term is defined and set forth under § 199.1 because the carriage house was not constructed for the use of parking **motor vehicles**. The location of the carriage house opening or door on 4th Street without a driveway access for a motor vehicle is further testament to the fact that it has never been used as a garage since an automobile must necessarily drive over a sidewalk, a prohibited outcome, to access the carriage house. There is likewise no

evidence that the carriage house opened unto the public alley. The property has been vacant since the 1969 MLK riots and it remained in a dilapidated condition through the time the applicant first purchased the property in 1989.

As aforementioned the artist studio is intended to be leased to a single artist and in no event shall there be more than three (3) occupants in the studio. Therefore only one (1) parking space is required as set forth under § 2300.3 (e).

The parking credit earned by virtue of grandfathered condition is usable towards compliance with the one (1) additional parking space required. Whereas the zoning administrator concedes that a parking credit is earned, and that the conversion to a two-family flat does not require any additional parking, his interpretation fails to address the use of the parking credit earned.

The applicant respectfully disagrees with the interpretation of the Zoning Administrator (ZA) as outlined in Exhibit # and respectfully requests that the Board exercise its discretion as the final interpreter of the zoning regulation, notwithstanding that the application is self-certified

The Board has final administrative responsibility to interpret the zoning regulations, not the Zoning Administrator (see *Murray v. District of Columbia Bd. Of Zoning Adjustment*, APP. D.C. 572 A.2d 1055 (1990))

In the event the BZA upholds or agrees with the ZA's interpretation, applicant respectfully amends the relief sought to include variance relief from the provision of one parking space.

DDOT has no objection to the application and states in their submitted report that although the projected impact of the use on street parking is slight or minimal and therefore does not rise to the level of a substantial adverse impact on adjoining neighbors. This outcome is not inconsistent with the third prong of the burden of proof for the granting of this requested variance.

3. Additional Relief for Carriage House

The applicant refers the Board to Exhibit # 58, the ZA's response to this matter, which in effect concludes that addition relief under §§ 2500.4 and 2300.2(b) pertaining the carriage house height and setback from the centerline of the alley.

4. Concrete Paving

The applicant refers Board members to Exhibit #s 50, 56, and 59 to the extent that the matter of the concrete paving is not rendered moot by virtue of a BZA approval conditioned on the currently paved area of public space being converted to a green area.

Exhibit # ... is the site plan or plat which was submitted in conjunction with the DDOT permit which authorized the scope of work proposed, notwithstanding that the DDOT permit references lead walk replacement only.

Exhibit # 59 attests to the fact that this area was previously a paved area and the work performed by the applicant was simply in replacement, and improvement upon the existing condition of that area of public space, as ANC 6C's supplemental resolution confirms.

The performed work as described above is not subject the Public Space Committee hearing as erroneously asserted since the applicant has not and does not intent to request of that committee the use of the said paved area for purposes of parking of an automobile, or motor vehicle.

Also misinformed and misleading is the allegation that the applicant performed this work illegally. This allegation is simply not supported by the documentary evidence provided by the applicant.

Notwithstanding, the applicant does not object to a condition of approval which mandates the conversion of the paved area into a green area should the Board decide that it is imperative to a consideration of approval.

The applicant has embarked on engaging DDOT to forge the modality for obtaining the necessary DDOT permit to remove the paved concrete area.

5. Removal of Birth tub on Second floor of Carriage House

The applicant believes and contends that the absence of this amenity is likely to make it difficult to find an appropriate artist tenant for the studio.

The applicant contends that the existence of this amenity does not constitute the structure intended for purposes of human habitation. An alley building located in an alley lot in a commercial zone district can be converted for purposes of an office building, with shower facilities, without such amenity constituting the building for purposes of human habitation.

A shower amenity is customarily incidental to the use of the subject premises as an artist studio, given that artist are wont to spend prolonged periods in their studios. To deem the presence of a shower amenity as constituting the carriage house for the purpose of human habitation amounts to speculative enforcement of a violation of the zoning regulations that has yet to occur.

In any event, the speculated intent can be mitigated by a condition of approval which mandates the proposed purpose of the application before the Board to the exclusion of human habitation of the premises.

Any such use subsequently constitutes a violation of not only the zoning regulations, but also a specific condition of approval of a BZA Order.

The applicant respectfully requests that the Board exercise its discretion as the final interpreter of the zoning regulation, notwithstanding that the application is self-certified

The Board has final administrative responsibility to interpret the zoning regulations, not the Zoning Administrator (see *Murray v. District of Columbia Bd. Of Zoning Adjustment*, APP. D.C. 572 A.2d 1055 (1990))

Conclusion

The applicant believes that there is general consensus that an extraordinary situation or condition of property relating the construction of the two-story carriage house in conjunction with the main building in 1890 exists and that it is impractical to either leave the roof on the structure perpetually open to the sky or in the alternative demolish the structure in entirety.

The foregoing, the applicant contends, satisfy the first of the two tests of the burden of proof for the granting of the variance sought, which invariably is really to maintain the existing percentage of lot occupancy that has been the condition of property in existence long before and prior to the May 12, 1958 adoption of the Zoning Regulations.`

The third prong of the test of burden of proof for the granting of an area variance pertains to whether in the Board's judgment, the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The proposed use is permitted as a matter of right in the carriage house as a matter of right. Hence it is the intent of the Zoning Regulations to collocate artist studios with primary use in Residence Zone Districts.

There is no substantial detriment to the public good, since DDOT avers that impact of street parking demand will not slight or minimal, and thereby does not object to the relief sought.

At least forty of adjoining neighbors do not object to the proposed use of the carriage house, rather are in support of the application.

The basis of the objection of ANC 6C can be mitigated by conditions of approval the Board can formulate as its discretion.

The applicant's renovation has eliminated what was a source of blight on the neighborhood for a very long time and will put into productive use, property that has been vacant and abandoned since 1969.

For all the foregoing reasons, the applicant respectfully contends that the instant application complies with all conditions for the granting of the requested area variances as outlined above and as shall be further documented, and respectfully requests that the application be granted.