

Timeliness

I have been fighting against a parking lot in the alley behind my house since 2013. In August 2013 testified in front of the Historic Preservation Review Board in opposition to a raze permit for the large seven-bay garage on alley lot at square 1035 lot 810. The HPRB denied the concept, raze permit and construct 11-space pad parking, and the building was deemed a 'contributing structure' to the historic district by the HPRB vote¹.

In June 2014 a building permit was issued to renovate the garage and put permeable pavers and a gate on the open area behind the garage. No parking was referenced on the building plans and no current or proposed use were on the building permit. There were other errors on the building permit as well². I contacted Richard Nero to begin an appeal process, but was counselled that discussing the issues with the Zoning Administrator's office might resolve the issue more easily. At his recommendation I wrote to Kathleen Beeton, Deputy Zoning Administrator and outlined the problems with the building permit³. She forwarded my email to staff in the ZA office who investigated the issue and responded **"that the proper zoning classification was parking garage(s) on an alley lot"** and that the ZA office **will work with the applicant to revise the zoning approval language and at the same time update the lot number"**. That because there was no parking referenced on the permit or plans, the owner would need to receive a special exception from the BZA before parking could occur on the open space. If parking did occur on the open space, I should be back in touch so that a zoning enforcement action could be initiated⁴⁵.

On March 10, 2015 a Certificate of Occupancy was issued.

On April 3, 2015 parking began on the open space and I reported that day to Ms Beeton and Mr. Reid and requested zoning enforcement action⁶. On April 10 I discovered that a C-of-O had been issued and reported that this to Ms. Beeton. I began a series of interactions to try to find out the process through which it was issued and reasoning behind the C-of-O⁷. On April 28, 2015 I (finally) received a response from Mr Reid with notice from the ZA that this was not considered a mistakenly issued C-of-O and providing grounds for appeal.

"The Zoning Administrator is familiar with CO1501450 and has determined that the private garage and private parking on the open space of the alley lot is a matter of right use. I understand that this information is different than what I communicated to you last year regarding parking on the open space of the lot. I originally stated that parking on the open space would require BZA relief; however, in reviewing the matter more closely, the Zoning Administrator determined that the use is not for a commercial parking lot, which would require BZA relief, and is instead for private parking. As such, he further determined that the certificate of occupancy application was approved correctly and complies with the zoning regulations.

¹ The video may be viewed at this link: <http://planning.dc.gov/node/905322> Select 2013 and August for this hearing. Select August 1 – it is the fourth and final hearing of the day. Intention to appeal a matter of right parking pad is at 2:49:30 of the video.

² Exhibit 13, Building permit B1406901. Building permit referenced wrong Lot (99, the house, not 810, the alley lot), and identified the garages as residential accessory garages. No proposed use listed (required as per 3202).

³ Exhibit 2, Letter to Kathleen Beeton, June 12, 2014

⁴ Exhibit 3, Letter from Rohan Reid. Specific language: "The documents do not show or reference parking on the open space and was not approved for parking lot use on the open space. A parking lot use in the R-4 zone would require relief from the Board of Zoning Adjustment."

⁵ Exhibit 4, Letter to Rohan Reid, detailing Appellant's understanding of the prior letter, "And as you have pointed out, any attempt to use the open space for parking would be treated as a new use, "parking lot on and alley lot" and is not a grandfathered use. If the open space is used for parking I will notify your office for enforcement proceedings."

⁶ Exhibit 5, Letter to Ms Beeton, Mr Reid requesting zoning enforcement action.

⁷ Exhibits 6, 7, 8, 9, 10 – Correspondence with ZA staff. Exhibit 8 is a list of questions and evidence sent to ZA office at their request.

At this time our office does not find cause to take enforcement action. Thanks again for contacting our office and bringing your concerns of the property to our attention.”⁸

I hope that my appeal is timely based on the earliest date (the issuance of the C-of-O) but would respectfully request that should there be issues with filing this timely to that date the later date when conflicting statements were reviewed and communicated be the effective date of notice. It is only on the later date, April 28, 2015, when the ZA finally provided notice that his decision was to override previous opinion of the staff and the Deputy ZA.

Grievance

I am a neighbor and the open space behind the alley garage is 40 feet from my property line and in clear view of my rear porches (top and bottom). I do not want to look out from my porch onto a parking lot. I do not wish to see four parked cars where before I saw greenery. I do not wish to have greater foot traffic through the alley to get to the cars parked on rental parking spaces. I do not want additional parked cars on open space to be an attraction for people who might break into cars to steal items left in cars.

Issues On Appeal

1 Errors with the C-of-O issuance

The C-of-O was improperly awarded as it fails to meet requirements of 3203.

The CofO application type is ‘Ownership Change’.⁹ It should be based on a building permit with the required work to permit parking on the open space.

This is the only CofO the alley lot has ever received¹⁰. There should have been a chain of C-of-O’s reflecting changed ownership and load changes. The load was decreased twice since 1958, once when the 4-bay garage was removed and once when the lot was subdivided in 1980. Subdivision required a new C-of-O as a two-car garage was removed from the former lot, 809, and any new C-of-O would have been for a reduced load. There have been 5 ownership changes since the lot was subdivided in 1980¹¹. Only this last ownership change has a CofO been sought and issued. Lacking a chain of occupancy permits, the latest C-of-O should be considered under current zoning regulations. Any “grandfathered” use C-of-O should be considered “lapsed” and 3203.10 should control issuance of the C-of-O.

No building permit is listed on the C-of-O. There should be a building permit ID since Construction was required to convert the garden space to the new use of parking on open space/parking lot/pad parking. The CofO was issued only after the final inspection¹² of the construction, it should therefore, not be an ‘Ownership Change’ since the new CofO is based on a change in loading based on construction of permeable paved surface on the open space.

Errors with C-of-O include failure to meet requirements of 3203 and 3202 of zoning regulations. This should be sufficient to revoke the C-of-O. No parking shown on building plans¹³. No current and proposed use on building

⁸ Exhibit 11, April 28 Letter from Rohan Reid with ZA’s determination that parking on the open lot is not a Commercial Parking Lot, and is a Matter-of-Right use.

⁹ Exhibit 14, CofO CO1501450, Occupant Load is now 11 (parking spaces) and increase by 4 over pre-construction occupant load.

¹⁰ Exhibit 28, 28A, 28B, 28C – Search results of Permit Database, and 29 CofO issue to the RESIDENCE, (not alley lot) at 20 14th St NE.

¹¹ Exhibit 16, Assessment and Tax Plat, Subdivision of Lot 809 into 810 and 811 (1980/1981)

¹² Exhibit 31, PIVS screenshots showing final electrical inspection 2015/03/03 and CofO issuance 2015/03/10.

¹³ Exhibit 12, Building plans, No parking spaces shown.

permit, thus leading ZA staff to report in 2014 that a BZA special exception is required before parking can proceed on the open space of the lot.

2 Errors in interpretation / Definitions

The C-of-O improperly characterizes the structure as a ‘private garage’ and ‘7-private garages’. The sole structure on the lot is one 7-bay garage of over 1600 square feet, with bays rented out on monthly lease. Until the renovation it had seven sliding doors on a shared track. One structure, multiple doors, one set of electric service, construction standards not valid for 7-individual-private garages – all features distinguish this structure from what is generally understood as a ‘private garage’. The structure is not a “private garage”. It should be classified as “parking garage” based on definition. The sole structure on this alley lot is a garage which is over 1600 square feet, in 7 bays, until the renovation it had seven sliding doors on a shared track.

Open space that is used for parking on an alley lot whose principal use is parking, is by definition a parking lot¹⁴.

The "garage, parking" and "garage, private" are distinguished by square footage (see definitions¹⁵). These garages have always been a multi-user garage structure, owned by a single owner, (analogous to a multi-family dwelling -- see structure definition) and have always been rental garage bays¹⁶. This garage(s) are not accessory garage(s) as they have never been tied to other properties or uses. They have always had a principal use of "garage, parking".

The principal use of the lot is parking, specifically "parking garage(s) on an alley lot". Language used by ZA staff in correspondence when discussing building permit and plan data deficiencies in June 2014, nine months prior to the issuance of the C-of-O.

The "lot, parking" definition is clear and makes no distinctions regarding public, commercial, etc. The only use of this lot is parking. Thus the ‘parking on open space’ is parking on a ‘parking lot on an alley lot’ which as a new use requires a special exception.

Discontinuance¹⁷. In 1957-1958 the entire lot covered with 2 structures – a 7-bay garage and a 4-bay garage. After 1960 the 4-bay garage which covered the rear of the lot was torn down (or possibly destroyed in an accident). The lot transitioned to zoning regulation under a grandfathered as “parking garage(s) on an alley lot”. The open area

¹⁴ **Parking lot** – (lot, parking) a tract of land **used for the temporary parking of motor vehicles** when the use is not accessory to any other use.

¹⁵ **Parking garage** – (garage, parking) a building or other structure, or part of a building or structure, over nine hundred square feet (900 ft.²) in area, **used for the parking of motor vehicles** without repair or service facilities. The term parking garage may include a parking garage accessory to the principal use, but shall not include a mechanical parking garage.

Private garage – (garage, private) a building or other structure, or part of a building or structure, not exceeding nine hundred square feet (900 ft.²) in area, **used for the parking of one (1) or more motor vehicles** and having no repair or service facilities.

¹⁶ (The actual terminology in use when the structure was new as recorded in the Baist maps, 1927 edition is "Auto Stalls")

¹⁷ **2005.1** - Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for any period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

2003.4 - When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.

created by the removal of this original, pre-zoning structure was fenced and remained enclosed and gated until around 2009. For over 20 years, until 2012 or 2013, the gated area was used as a garden plot.

The removal of the garage and transition to garden triggers either Discontinuance (2005) or Destruction of Structure Devoted to Nonconforming Use (2004). For over 32 years there has been no parking on the open space. Because the use as parking was abandoned (multiple owners previously) this use cannot be a matter of right, but instead must comply with current zoning rules – which require a special exception.

Additional Facts in response to Respondent and Owner's pre-hearing statements.

1. Accessory Use

The Respondent, DCRA on behalf of the Zoning Administrator asserts that the parking on the open space is accessory parking to the private garage(s). No supporting evidence or interpretation is provided.

Accessory use is a subordinate and associated use of a property. It is not an extension or slight modification of the principal use.

The zoning definitions clearly define the uses for garages and parking spaces, namely, 'the parking of motor vehicles'. (199)

- **Parking space** - an off-street area accessible and of appropriate dimensions to be used exclusively for the temporary parking of a motor vehicle. (31 DCR 6585)
- **Car-sharing space** – a parking space that is designated for the parking of a car-sharing vehicle.
- **Garage, parking** ... used for the parking of motor vehicles ...
- **Garage, private** ... used for the parking of one (1) or more motor vehicles...

The principal use of garage parking is to store one or more motor vehicles. These parking spaces on the open pad cannot be accessory parking to a parking garage or even to a private garage since the use is the same – “parking of a motor vehicle”.

These parking spaces are not accessory parking spaces because they do not serve an accessory use. They are used for the principal use. The differentiating feature is that they are not in a structure, but rather on open land. This open space is a tract of land used for the temporary parking of motor vehicles, and the parking spaces on it are not accessory to any other use. They thus match the definition of Parking Lot (199)

2. ZipCar / Car-Sharing

The Owner has leased the 4 parking spaces on the open lot to a car sharing service, ZipCar. Car sharing services have their own section in the zoning regulations. These are the spaces that the ZA asserts are “accessory parking spaces”.

The purpose of an accessory parking space is provided in the zoning regulations concerning location of parking spaces, “The accessory parking spaces shall be located so as to furnish reasonable and convenient parking facilities for the occupants or guests of the building or structures that they are designed to serve.” (2116.8)

A Car Sharing parking space cannot be an accessory parking space – car sharing users come to a car sharing space to take a car from the parking space. They do not arrive by car expecting to park in the parking space occupied by the car sharing car they are coming to pick up. This is probably why there is now a separate section in the zoning regulations specifically dealing with Car Sharing.

Car sharing regulations recognize that the car sharing is a benefit to the community but also can have negative effects as well. The regulations therefore impose conditions to mitigate negative effects by limiting the number of

cars that are parked in plain view. Different requirements exist to regulate different intensity of use. The regulations differentiate between 2 and more instances.

301.1 (b) **Car-sharing spaces; provided that any car-sharing space beyond the first two (2) spaces shall be located within or under a principal structure** and may not be a required parking space for any use on site

Parking 4 car sharing cars on the open space is excessive under car sharing regulations.

3. Ownership

The owners response references Appellant's long history of opposition to parking on the open space going back to 2013. Owner assert that that the appeal now after Owner has expended considerable time and financial resources in completing the work and securing lease agreements, Appellant's action threatens to seriously prejudice Owner's interests" and "would be to undercut the very notion of fundamental fairness that filing deadlines and statutes of limitations are designed to protect."

On April 8, 2011 The owner Ms. Mohnet sold the alley lot to the an entity known as LEO MCMLXIX HOLDINGS LLC, whose mailing address was given as 154 Venetian Bay Cir, Sanford Florida. The purchase price was 98,000.

On March 21, 2014, the entity, LEO MCMLXIX HOLDINGS LLC of 154 Venetian Bay Cir, Sanford FL sold the alley lot to R&R HOLDINGS, LLC, whose mailing address is also, 154 Venetian Bay Cir, Sanford FL. For a purchase price of \$115,000.

Given that the mailing address for **both parties to this sale share same mailing address** it is difficult to determine the exact nature of the ownership change.

Appellant's objection to the converting prior green space /garden space to pad parking has not changed between 2011 when the HPRB denied the concept to raze the garage and put in 11 parking spaces on the open area. In the HPRB hearing in 2013, the then owner or his representative asserted that the owner (LEO, LLC) had met with Matt Le Grant and been told that the pad parking would be allowed as a matter of right per the ZA's interpretation. Appellant asserted that this would prompt a BZA appeal.

Appellant does not know if the omissions on building permit and building plans are inadvertent or intentional, but the opposition to parking on the open space should have been known to the current owner, R&R Holdings, LLC.

The owner should have known that the garage had been designated a 'contributing structure to the historic district' and that such a designation required plans to alter the garage to be subject to heightened review appropriate to its designation as a contributing structure. The desk review by HPO did not meet HPO's mandated level of review for a contributing structure but was instead evaluated under the less stringent rules governing the Capitol Hill Historic District. Historically appropriate garage doors were required under the strict review. Neither the first set of doors nor the second set of rollup doors are would have passed the strict review.

HPO does not track contributing structures in a way that highlights them for appropriate scrutiny. HPO admits that the building plans were approved in error, but the plans, once issued, could not be revoked.