

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

Appeal of Patricia A. Schaub

BZA Appeal No. 19092

ANC 6A03

Public Hearing: November 10, 2015

APPELLANT'S PRE-HEARING STATEMENT

The Appellant, Patricia A. Schaub, by and through undersigned counsel, respectfully submits this Pre-Hearing Statement in support of her Appeal pursuant to 11 DCMR §3100 and §3101, **from the decision of the Department of Consumer and Regulatory Affairs on May 20, 2015 to issue Garage Permit No. G1500009 for “construction of new garage with roof deck and railing with roll-up door including interior and exterior lighting”** (“Garage Permit”) Exhibit A, in the R-4 Zone District at premises 1120 Park Street, N.E. (Square 987, Lot 8) which does not comply with the Zoning Regulations and BZA Order No. 18514 (October 15, 2013), Exhibit B, including the approved plans. ¹

The Garage Permit was erroneously issued in violation of the Zoning Regulations and BZA Order No. 18514 for the numerous reasons set forth below and must be **REVOKED**.

¹ The Office of Zoning hearing notice and caption incorrectly states “Appeal of Patricia Schaub, pursuant to 11 DCMR §§ 3100 and 3101, **from an October 8, 2013 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs**, to issue Building Permit No. G1500009, to allow the construction of a new garage with roof deck in the R-4 District at premises 1120 Park Street N.E. (Square 987, Lot 8).” Emphasis added. October 8, 2013 was the Decision Date in BZA Case No. 18514. The Garage Permit was issued by DCRA on May 20, 2015. Exhibit A. Appellant’s counsel provided the correct notice and caption for this Appeal by letter dated July 31, 2015 as noted above. BZA 19092 Exhibit Log, Exhibit 4.

I. SUMMARY OF APPEAL

A. Garage Permit is Invalid on Its Face.

1. Garage Permit Incorrectly includes the Roof deck.
2. Roof Deck Not Properly Approved by DCRA (and Historic Preservation).

B. Garage Permit Plans Do Not Match BZA Approved Plans.

1. No Approval for the Required Roof Deck.
2. Height of the Garage and Roof Deck Exceeds BZA Approval.
3. The Garage Will Not Comply with the Required Parking Dimensions.

II. BACKGROUND

A. Schaub Property.

The Appellant, Patricia A. Schaub, is the owner of 1118 Park Street, N.E. (Square 987, Lot 9) ("Schaub Property"), which she purchased in 2007. The Schaub Property is improved with a two-story row dwelling constructed in 1880 and a detached one-story garage with a height of approximately eight (8) feet constructed prior to 1989 ("Schaub Garage"). The Schaub Garage was constructed encroaching (1.18 to 1.76 feet) on to the adjoining property to the east currently owned by Andrew Daly and Patty Jordan. Exhibit C (July 6, 2015 Garage Location Survey and August 8, 1989 House Location Survey for Schaub Property).

B. Daly/Jordan Property.

Andrew Daly and Patty Jordan purchased 1120 Park Street, N.E. (Square 987, Lot 8) ("Daly/Jordan Property") in 1998. The Daly/Jordan Property is improved with a two-story row dwelling constructed in 1922. In 1998, the encroachment of the Schaub Garage onto the Daly/

Jordan Property was clearly identified on their house location survey. Exhibit D (March 25, 1998 House Location Survey for Daly/Jordan Property and front and rear photographs).

Both the Schaub and Daly/Jordan Properties are zoned R-4 and located within the Capitol Hill Historic District.

C. BZA Application No. 18514.

On December 20, 2012, Andrew Daly and Patty Jordan filed BZA Application No. 18514 requesting zoning relief to permit construction of a one-story detached garage with roof deck at the Daly/Jordan Property. Specifically, the following zoning relief was requested: 1) Special exception from § 223.1 to allow the proposed one-story detached garage addition to an existing single family residence that does not comply with the maximum lot occupancy requirement as required by § 403.2; 2) Variance pursuant to § 2115.1 to allow a private garage that is not in compliance with the minimum required dimensions for a required parking space; and 3) Variance pursuant to § 2300.2 (b) to allow a private garage that does not comply with the minimum required setback from the adjacent alley centerline.

Although the Daly/Jordan Property is located in the Capitol Hill Historic District and this project is also clearly subject to the jurisdiction of the Historic Preservation Review Board (“HPRB”), the BZA case was completed without first seeking HPRB review or making any contact with the Historic Preservation Office staff.

The prosecution of the BZA application for a typically straightforward Section 223 case was tortured, eventually requiring the scheduling of four (4) hearing dates and several revisions of the plans. Exhibit E (BZA 18514 Exhibit Log). The original hearing date of March 12, 2013 was rescheduled at the Applicants request because they were not ready to proceed. Exhibit F

(February 13, 2013 letter requesting postponement). The May 21, 2013 hearing was again postponed because more time was required to amend the original application. Exhibit G (May 2, 2013 letter requesting another postponement). The July 23 hearing was again continued because the plans had been revised (on June 14 as BZA Exhibit 27), but the Applicant had not met with ANC 6A on the revised plans, so ANC 6A requested a postponement. Without explanation, the Applicants did not show up for the September 24 hearing date although informed of that date at the prior hearing. Finally, on October 8, the Board approved the application by Bench Decision and issued the Summary Order on October 15, 2013. BZA Order No. 18514 clearly stated that the “application is hereby **GRANTED, SUBJECT TO THE REVISED PLANS AT EXHIBIT AT EXHIBIT 27**” (“BZA Approved Plans”). Exhibit B (Emphasis in the original); Exhibit H (Revised Plans at Exhibit 27 in BZA Exhibit Log).

D. Garage Permit.

On December 5, 2014, more than a year after the BZA approval, the Garage Permit application was finally filed with DCRA. Exhibit I (DCRA Permit Tracking Report). On January 7, 2015, Zoning Review approved the Garage Permit application reporting, “approved construction of a new garage with roof deck and roll up door the rear of an existing sfd in the r-4 zone district.(bza order 18514).” Id. On April 7, 2015, Sarah VanLandingham at the Historic Preservation Office approved the Garage Permit application only for the garage, but not the roof deck. Id. Ms. VanLandingham had informed Daly/Jordan that she had approved only the garage, but the roof deck required an application to and review by HPRB, Exhibit J (VanLandingham E-Mails). On May 20, 2015, DCRA issued the Garage Permit subject to approved Permit Plans (“Approved Permit Plans”). Exhibit A; Exhibit K (Approved Permit Plans for Garage Permit). Although Daly/Jordan continue to maintain that the Garage Permit

authorizes construction of the roof deck, it is clear that the Approved Permit Plans were never approved by the Historic Preservation Office. Even a cursory review of the Approved Plans clearly demonstrates that the Historic Preservation Office did not approve the roof deck. Only those sheets in the Approved Permit Plans which do not include the roof deck are stamped in RED with the following limited approval, **“Historic Preservation Clearance for Exterior Work. Scope of approved exterior work is restricted only to drawings with this stamp.”** (Emphasis added). Exhibit K.

E. Daly/Jordan Construction Violations.

In June 2015, Daly/Jordan began construction at the site. This work was initiated without providing Ms. Schaub the required notification or copy of the plans. The Letter of Notification submitted was never received by Ms. Schaub and does not contain her signature. Exhibit L (May 15, 2015 Letter of Notification not signed by Ms. Schaub). On June 30, 2015, DCRA issued a Stop Work Order to Daly/Jordan for “work performed without permits” in violation of the Construction Codes and in an unsafe and dangerous manner. Exhibit M (June 30, 2015 Stop Work Order). In response to the Stop Work Order, Daly/Jordan filed an Appeal alleging that the east wall of the Schaub Garage was substandard and built without a foundation. Exhibit N (July 1, 2015 Appeal of Daly/Jordan). Further investigations and a site inspections by a licensed professional engineer (Robert Wixson, P.E., APAC Engineering, Inc.) and Mr. Vincent Ford (retired DCRA Chief Building Inspector) retained by Ms. Schaub determined that: 1) the use and incorporation of the east wall of Schaub Garage in the proposed Daly/Jordan Garage is improper and will damage the Schaub Garage; 2) the footers for the Daly/Jordan Garage are not in compliance with the Building Code; 3) no required underpinning of the existing Schaub Garage foundation was undertaken by Daly/Jordan; 4) the Daly/Jordan foundation as currently

shown on the Approved Permit Plans and constructed does not provide adequate structural protection for the existing Schaub Garage; and 5) the Approved Permit Plans do not provide the required snow drift calculations under the Building Code to demonstrate that the proposed Daly/Jordan Garage will not create a hazard to the Schaub Garage. Exhibit O (July 13, 2015 APAC Engineering, Inc. Report); Exhibit N (Construction Photographs).

At no time has Ms. Schaub authorized Daly/Jordan to use or in any way incorporate her existing garage structure in the proposed Daly/Jordan Garage. Daly/Jordan never provided Ms. Schaub with any plans showing the use of the existing garage wall for her review and approval.

III. ARGUMENT

A. BZA and Zoning Requirements.

There is no ambiguity in the Board's decision and Order No. 18514 that approved the proposed detached garage with a roof deck as a single structure. BZA Order No. 18514 clearly stated that the "application is hereby **GRANTED, SUBJECT TO THE REVISED PLANS AT EXHIBIT AT EXHIBIT 27**" ("BZA Approved Plans"). Exhibit B (Emphasis in the original); Exhibit H (Revised Plans at Exhibit 27 in BZA Exhibit Log). 11 DCMR §3125.7.

The Zoning Regulations are equally clear on the Daly/Jordan obligation to fully comply with the approved plans. Section 3125.8 provides that "[a]n applicant shall be required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise." Emphasis added. Any request for modification of the approved plans requires an application to the Board, notice to all the parties and approval by the Board. 11 DCMR 3128. Daly/Jordan have made no application for a modification of the

approved plans, but attempted to act unilaterally, without notice, and Board review and authorization.

B. Garage Permit Invalid on Its Face.

1. Garage Permit Incorrectly Included the Roof Deck.

The Garage Permit which Daly/Jordan claim authorizes the garage and roof deck, incorrectly reads “construction of new garage with roof deck and railing with roll-up door including interior and exterior lighting”. Exhibit A. In reality, the Approved Permit Plans do not match or support the language of the Garage Permit. While this substantial discrepancy should have been corrected by DCRA during the final quality assurance/quality control review of the permit application before issuance, it cannot be disputed that there was no approval of the roof deck and the Garage Permit is incorrect and invalid on its face.

2. Roof Deck Not Properly Approved by DCRA (and Historic Preservation).

It is clear that the Historic Preservation Office approved only the detached garage, but not the roof deck shown on the Approved Permit Plans. The Zoning Review approval of the Garage Permit application with roof deck occurred on January 7, 2015. Three months later on April 7, 2015, the Historic Preservation Office approved the garage, but required HPRB review and approval of the roof deck. No further or subsequent Zoning Review occurred after the denial of the roof deck by Historic Preservation. As a result, DCRA had no authorization to issue the Garage Permit in its current form and there is no proper or effective approval of the roof deck.

C. Garage Permit Plans Do Not Match BZA Approved Plans.

1. No Approval for the Roof Deck.

The BZA Approved Plans include approval for construction of a detached garage with a roof deck with combined height of 12 feet 11 inches as viewed from the alley. The BZA review and approval was for the complete project, including both the garage and directly associated roof deck, not a separate garage independent of the roof deck. Daly/Jordan can not unilaterally decide to construct the project in a piecemeal fashion, especially when there is no HPRB approval for the roof deck and likelihood that substantial changes may be required to obtain such approval. Clearly, without the associated roof deck, the Garage Permit does not comply with the BZA Order and approved plans.

2. Height of the Garage and Roof Deck Exceeds BZA Approval

The BZA Approved Plans include approval for construction of a detached garage with a roof deck with combined height of 12 feet 11 inches as viewed from the alley. The height of the garage alone was 9 feet 4 inches. In sharp contrast, the Approved Permit Plans show a combined height of the garage with roof deck of 13 feet 11 inches. Similarly, the height of the garage alone is 10 feet 5 inches on the Approved Permit Plans. For both the garage alone and the garage and roof deck combined, the height shown on the Approved Permit Plans exceeds the scope of the BZA approval by approximately one foot as shown on the BZA Approved Plans. Without the required modification request and authorization, the garage and/or the roof deck do not comply with the BZA Order and the Zoning Regulations.

3. The Garage Will Not Comply with the Required Parking Dimensions

The BZA approved a variance from the applicable parking space dimensions of 9' x 19' to allow the garage with a dimension of 8.33' x 14.33'. The approved width of the approved garage was based on the unauthorized incorporation and use of the east wall of the Schaub Garage. The exterior of the east wall of the Schaub Garage would become the interior wall of the Daly/Jordan Garage allowing the approved 8.33 width of the garage parking space. Ms. Schaub never authorized and will not permit the wall of her garage to be used by Daly/Jordan. As a result, Daly/Jordan will be required to construct a separate garage wall directly abutting the existing east wall of the Schaub Garage. The new wall required, but not shown on the BZA Approved Plans or the Approved Permit Plans will be at least 8 inches wide and reduce the required width of the parking space to not more than 7.66 inches, or less. This will not comply with the specific BZA variance approved and result in an extraordinarily narrow and short parking space of approximately 7.66' x 14.33'. By comparison, a compact parking space is 8' x 16' in the limited circumstances it would be permitted which do not apply in this situation. As a result, the parking provided in the Daly/Jordan Garage has been so reduced as to no longer provide a useable or meaningful parking space and does not comply with the parking variance approved.

IV. WITNESSES

In support of this Appeal, the Appellant will introduce at least the following witnesses:

1. Patricia Schaub
2. Robert Wixson, P.E., APAC Engineering, Inc. Exhibit Q (Resume).
3. Vincent Ford, DCRA Permit Expert Witness. Exhibit R (Resume).

4. Mr. Olutoye Bello, Zoning Expert Witness. Exhibit S (Resume).

V. EXHIBITS

Exhibit A: Garage Permit G1500009 (May 20, 2015)

Exhibit B: BZA Order No. 18514 (October 15, 2013)

Exhibit C: July 6, 2015 Garage Location Survey and August 8, 1989 House Location Survey for Schaub Property.

Exhibit D: March 5, 1998 House Location Survey for Daly/Jordan Property and front and rear site photographs.

Exhibit E: BZA 18514 Exhibit Log.

Exhibit F: February 13, 2013 letter requesting postponement.

Exhibit G: May 2, 2013 letter requesting another postponement.

Exhibit H: BZA Approved Plans (Revised Plans at Exhibit 27 in BZA Exhibit Log).

Exhibit I: DCRA Permit Tracking Report.

Exhibit J: VanLandingham E-Mails.

Exhibit K: Approved Permit Plans for Garage Permit.

Exhibit L: May 15, 2015 Letter of Notification not signed by Ms. Schaub.

Exhibit M: June 30, 2015 Stop Work Order.

Exhibit N: July 1, 2015 Stop Work Order Appeal of Daly/Schaub.

Exhibit O: July 15, 2015 APAC Engineering Report.

Exhibit P: Construction Photographs.

Exhibit Q: Resume of Robert A. Wixson, P.E.

Exhibit R: Resume of Vincent L. Ford.

Exhibit S: Resume of Olutoye Bello.

VI. CONCLUSION

For the foregoing reasons, Garage Permit No. G1500009 was issued in violation of the Zoning Regulations and BZA Order No. 18514 and this Appeal must be **GRANTED** and the Garage Permit **REVOKED** by DCRA.

Date: October 27, 2015

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellant's Pre-Hearing Statement Appeal was filed electronically with the Office of Zoning and was served by electronic mail as indicated, this 27th day of October, 2015, upon the following:

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