

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

APPEAL NO. 19092 – 1120 PARK STREET, N.E.

PROPERTY OWNERS' AMENDED RESPONSE TO APPEAL

I. Background

Appellees Andrew Daly and Patricia Jordan, the owners of 1120 Park Street, N.E., submit this statement, by and through their undersigned counsel, in opposition to the Appeal referenced above, filed by their next-door neighbor Patricia Schaub, who resides at 1118 Park Street, N.E. This dispute involves the Appellees' construction of a detached garage behind their home, for which they have received approval from DCRA and the Board of Zoning Adjustment.

In addition to filing her Appeal, Ms. Schaub has also filed a lawsuit against Mr. Daly in the Superior Court for the District of Columbia, which involves issues beyond the scope of this proceeding. Ms. Schaub's Appeal application and Pre-Hearing Brief refer to several of those issues—particularly at Section II.E. However, her Appeal must be limited to those properly before the Board, which include only whether the Permit was properly issued given the Zoning variances granted to Appellees.

Appellees began planning to build the subject garage in 2012, after retaining Eric Peterson of Avenue Design to serve as their licensed architect. In seeking the necessary variances from the Board of Zoning Adjustment, Appellees were careful to obtain the necessary permission from their neighbors, including Ms. Schaub. Appellees' initial application included plans for a garage and roof deck with a pergola, which would reach 17-feet high. Ms. Schaub visited the Daly home to view the plans and discuss the garage project. Subsequently, on February 3, 2013, Ms. Schaub wrote Appellees a letter stating that she is "fully comfortable with and supportive of [Appellee's] efforts to add a garage behind their house." At that time, the only

plans created or submitted by Appellees included the 17-foot-tall pergola, so there was no question Ms. Schaub was approving those plans. In June 2013, Appellees amended the garage plans to be set further back from the alley, to replace the sliding doors with a mechanical roll-up door, and to remove the pergola (Exhibit 27 in Case No. 18514, the “Zoning Plans”). Shortly thereafter, Ms. Schaub wrote a letter expressing her support of Appellees’ plan to build the garage with a roof deck (Exhibit 26 in this case), pursuant to a request by Appellees’ ANC for express statements from adjacent neighbors supporting the roof deck.

On October 8, 2013, the Board of Zoning Adjustment issued a Summary Order, concerning Appellees’ Application No. 18514, granting Appellees special exception relief pursuant to 11 DCMR § 3104.2, 223, and 403 (Exhibit 35 in Case No. 18514). That Summary Order also noted that Appellees had obtained proper approval for their plans from their neighbors.

On May 20, 2015, DCRA issued a Garage Permit, No. G1500009 (the “Permit,” Exhibit 6) for Appellees’ garage project. That Permit was issued based on a revised set of plans dated September 2014 (the “Permit Plans,” Exhibit 32 in this case), which were virtually identical to the Zoning Plans, other than being in brick rather than CMU block and having a different style of roof deck. The Permit plans were submitted to DCRA with drawings showing the garage both without a roof deck and with a roof deck. Both drawings were included because the Historic Preservation Office had approved the plans without a roof deck at the staff level, but requested a future hearing at the committee level in order to review the proposed roof deck materials. DCRA understood that the roof deck was indeed part of Appellees’ ultimate plans, for which they sought the Permit, because the Permit itself states that the proposed garage would have a roof deck.

In the course of issuing the Permit, DCRA conducted a Zoning Review on January 7, 2015. DCRA Reviewer Ramon Washington made the following review comment: “approved construction of a new garage with a roof deck and roll up door at the rear of an existing sfd in the r-4 zone district. (bza order #18514),” as shown on the DCRA website. Additionally, on that same date, the Permit Plans were stamped, “DCRA/OFFICE OF THE ZONING ADMINISTRATION/COMPLIES WITH THE REQUIREMENTS OF DC ZONING REGULATIONS (11 DCMR) ... (BZA ORDER # 18514)” (Exhibit 32 in this case).

The only differences between the Zoning Plans and the Permit Plans are immaterial and do not warrant the relief sought by Appellant. The Zoning Plans indicated that the roof of the garage would be 10 feet 5^{1/2} inches tall, with a roof deck whose railing extended 2 feet 5 inches above the roof, for a total height of 12 feet 11 inches. The footprint of the garage in the Zoning Plans was 15 feet 4^{1/2} inches long and 9 feet wide. The Permit Plans indicated that the garage roof would be 9 feet 5 inches tall, with a roof deck that extends 3 feet 6^{3/8} inches above the roof, for a total height of 13 feet 11^{3/8} inches. The footprint of the garage in the Permit Plans was 15 feet 5^{1/2} inches long and 9 feet and one-half inch wide. The Zoning Plans also indicated the garage exterior would be painted CMU blocks, where as the Permit Plans indicated a brick face.

II. The Plans Submitted to DC for Permitting Complied with the Summary Order.

On July 20, 2015, Ms. Schaub requested an appeal of the “Variances and Special Exception relief granted” for Appellees’ garage. In her letter, Ms. Schaub seeks review of the Permit, based on the Board of Zoning Adjustment’s Summary Order. Ms. Schaub alleges that the Zoning Plans differ from the Permit Plans. However, she does not identify a specific reason why the Permit Plans violate the special exceptions granted in the Summary Order. Her appeal should be denied because DCRA verified that the Permit Plans complied with the Summary Order, and even if DCRA was somehow incorrect in doing so, those differences between the

Permit Plans and the Zoning Plans are not material, particularly given the applicable requirements for the zoning variances in question.

First, DCRA specifically reviewed the Permit Plans for Zoning compliance, as the Permit Reviewer assigned to Appellees' application noted that Board of Zoning Adjustment Order 18514 had approved the plans submitted to DCRA for permitting. The Permit Plans were stamped on January 7, 2015 as complying with that Summary Order (Exhibit 32 in this case, at 2).

Second, the differences between the Zoning and Permit plans are immaterial for the purposes of this Appeal, and would not have changed the outcome of Application No. 15814.

As noted by the Office of Planning (Exhibit 30 in Case No. 18514) and Zoning Administrator Matthew LeGrant (Exhibit 4 in Case No. 18514), the maximum height for a building like the garage in question is 15 feet. Neither the Zoning Plans nor the Permit plans would be more than 15 feet tall, even including the railing atop the roof deck. As noted in the OP Report, a detached garage that is less than 15 feet tall requires no relief from the Zoning regulations.

The garage footprint increased by one half inch in width and one inch in length in the Permit Plans—neither of which constitutes a material change that could obviate the Summary Order or require further compliance review. The Permit Plans would have been approved just as the Zoning Plans were—because they are virtually identical in all material aspects.

Ms. Schaub is also incorrect that the Permit Plans materially change the parking space size as to no longer comply with the Summary Order. First, the Permit Plans do show a new 8" CMU wall abutting Ms. Schaub's garage. (Permit Plans, Exhibit 32, at A1). However, that wall would not reduce the actual size of the parking space represented by the garage, because the

Permit Plans show the garage door begins 8 inches from the edge of the garage—just as it would after the addition of the CMU wall along the Schaub property line. The garage door opening is no more narrow in the Permit Plans than it was in the Zoning Plans. Practically speaking, a “parking space” can be no wider than its opening, because that opening limits the size vehicle that can fit inside. In both the Zoning Plans and the Permit plans, that opening is 7 feet 8 inches or 7.66 ft. Therefore, the Permit Plans present no material change to the parking space was the Summary order granted approval for. Ms. Schaub might choose to characterize this as an “extraordinarily narrow and short parking space” but it is practically identical to that already approved by the Board. Again, Ms. Schaub has raised a distinction without a difference.

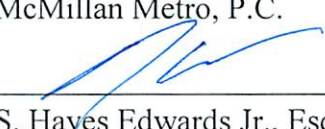
As with all issues raised here, equity must be considered in reviewing the parking space size. As noted in the OP Report, the subject property is “exceptionally narrow (13.55 ft.), making adherence to the required parking space dimensions (9 x 19 ft.) difficult. In addition, the neighbor’s [Ms. Schaub’s] garage encroaches on the Subject Property.” (Exhibit 30 to case no. 18514 at 4). When considering the equity between the parties, it is also important to note that Ms. Schaub has performed extensive improvements to her own property, resulting in a lot that is almost entirely improved. Included amongst these improvements is a garage far larger than the one at issue here, which has no footing and not structural drawings or plans of any kind. Further, Ms. Schaub or her predecessors in interest made certain or all of those improvements without a licensed contractor or required building permits. In contrast, Mr. Daly and his professionals have taken great strides to comply with necessary law and regulations in building the garage.

Ms. Schaub has not carried her burden of showing how the Permit was issued in error, and accordingly her Appeal lacks merit on the issues relevant to this Proceeding.

Conclusion

For the reasons set forth above, the Appeal should be denied in full.

McMillan Metro, P.C.

By: 

S. Hayes Edwards Jr., Esq.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Amended Response to Appeal
Appeal was filed electronically with the Office of Zoning and was served by electronic mail as
indicated, this 3rd day of November, 2015, upon the following:

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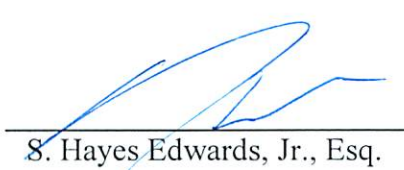
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