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D.C. BOARD OF ZONING ADJUSTMENT
2000 MAY -8 AM 8:41

May 8, 2000

District of Columbia Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: BZA Appeal No. 16533
4512 28th Street, N.W.
Request for Further Hearing

Dear Members of the Board:

On behalf of Forest Hills LLC, the owner of the above referenced property and Intervenor in the subject appeal, this is a request for the Board to reopen the record and require further hearing on designated issues, as provided in 11 DCMR §3124.2. The instant appeal challenges the issuance of building permits for the construction of a single family dwelling on the property. The appeal was heard on February 2 and 23, 2000, and the Board voted to grant the appeal at a special public meeting held on April 18, 2000. No order has been issued.

As grounds for the further hearing, Intervenor states as follows:

1. We have carefully reviewed the record in this case, including transcripts of the public hearing and the public meeting at which the case was decided. The record reflects that the Board and the parties erroneously (1) focused on a repealed section of the Building Code (12 DCMR §105.2, repealed November 19, 1999); (2) overlooked 11 DCMR §401.1 which specifically permits enlargement or replacement of a building on a lot having less than the prescribed minimum area; (3) ignored the legislative history and intent of 11 DCMR 405.8; and (4) did not consider the consistent interpretation for over forty years of "finished grade" and the fact the such interpretation cannot be changed without a rulemaking process. See District of Columbia Administrative Procedure Act, D.C. Code Ann. § 1-1506 (1999).

2. The following briefly summarizes the inherent errors in the hearing and decision-making process:

BZA
Case No. 16533
Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
CASE NO.16533
EXHIBIT NO.43

A. Repealed §105.2 of the Building Code (12 DCMR): The appellants' arguments as to the nature of finished grade turned heavily on the cited section. In the first place, that section is not part of the Zoning Regulations adopted pursuant to D.C. Code § 5-412 et seq. and the Board therefore cannot consider an appeal based on regulations outside the scope of its jurisdiction. Secondly, §105.2 of the Building Code was repealed by the adoption of a new Building Code, effective November 19, 1999, prior to the hearing and decision on the subject case. Accordingly, any reliance by the appellants or the Board on that section would be without adequate legal foundation. See *Speyer v. Barry*, 588 A.2d 1147 (D.C. App. 1991) and *United States v. The Schooner Peggy*, 1 Cranch (5 U.S.) 103, 2 L.Ed. 49 (1801). The provisions of the new Building Code make it clear that restoration of "established grade" is a safety concern that applies to total demolition only, not to partial demolition as occurred for the subject house. See Exhibit 1, attached hereto.

B. Whether the subject lot is a nonconforming lot because it has an area less than 7,500 square feet: The record reflects that the Board did not consider the provisions of §401.1, which read as follows:

> Except as provided in chapter 20 through 25 of this title, in the case of a building located, on May 12, 1958, on a lot area or width of lot, or both, less than is prescribed in §401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title.

The original house on the subject property was constructed prior to 1958. The plain reading of §401.1, and the manner in which it has been consistently interpreted and applied over the years, indicates that in such a circumstance, the subject lot is a buildable lot, even to the extent of full replacement of the house, if the lot meets all the *other* requirements of the Regulations, that is, requirements other than lot width and lot area. Accordingly, the subject lot as developed is a conforming lot and not a nonconforming lot.

C. Whether the existing building is nonconforming as to its side yards: There is no disagreement that the side yards on the house existing at the time construction began on the property were less than eight feet wide. However, §405.8, which was discussed during the appeal, provides that:

> In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; Provided, that the width of the existing side yard shall not be decreased; and Provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).

During the hearing, the appellants argued that this provision would only apply to the footprint of the existing dwelling; that is, presumably, an addition could be made above and limited to the existing footprint but not in front of or behind the existing footprint. There is nothing in the record before the Board providing the background to the Zoning Commission's adoption of the subject section in 1977. That legislative history establishes that the whole purpose behind §405.8 was to allow additions to the rear of a building so long as the addition comes no closer to the side lot line, exactly what was proposed and approved in the subject case. Read in the context of the entire set of Zoning Regulations, the existing building was not nonconforming as to side yard; i.e., it complied with the requirements of the Regulations. See partial legislative history, Exhibit 2, attached hereto.

D. The impact of changing the interpretation of the Zoning Regulations on existing buildings throughout the District of Columbia: The Board must be cognizant of the effect of its ruling on the application of the Zoning Regulations across the city. Many parts of the city are built in areas where there are significant slopes, particularly where the land slopes down toward the Potomac and Anacostia Rivers or one of the numerous stream valleys which feed those rivers. Hundreds, perhaps thousands of buildings, have the front higher or lower than the rear,

depending upon whether the property is on the uphill or downhill side of the street. Aside from other houses on the same side of the street as the subject property, there are numerous other examples in the Forest Hills area. Additionally, there are many apartment houses which have substantial changes in grade from one side to the other. Before entering an order which would change how the Zoning Regulations regarding finished grade have been applied over a forty year period, the Board should consider the impact of its decision on a broader scale. At a public hearing, examples of the application of "finished grade" can be presented.

3. A further hearing on designated issues is appropriate before the issuance of an order for reasons of administrative and judicial efficiency. In other words, it makes little sense to issue an order based upon a repealed code section or where basic provisions and applications of the Zoning Regulations have been overlooked.

We therefore hereby request that the BZA, on its own motion, schedule a further hearing on the application, prior to issuing a final order, pursuant to §3124.2 of 11 DCMR. We believe that the following four issues are areas where the Board should take further testimony from the parties:

1. The relevance of repealed §105.2 of the Building Code (12 DCMR);

2. Whether the subject lot, in view of §401.1, is a nonconforming lot because it has an area less than 7,500 square feet;

3. Whether, in view of the legislative history and intent of §405.8, the existing building is nonconforming as to its side yards; and

4. The impact of changing the interpretation of the Zoning Regulations on existing buildings throughout the District of Columbia and whether the consistent interpretation can be changed without compliance with the Administrative Procedure Act, D.C. Code Ann., § 1-1506 (1999).

At such hearing, all parties can respond to and address these issues in order for the Board to assess whether its present decision should stand.

Sincerely,

Whayne S. Quin

Steven E. Sher
Director of Zoning Services

Attachments

Wilkes Artis
Chartered

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Opposition was served upon the parties to BZA Appeal No. 16533 by providing a copy by hand, this ___ day of May, 2000, to:

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Michael D. Johnson
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Marie Sansone
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Government of the District of Columbia
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Washington, D.C. 20001

Steven E. Sher
Director of Zoning Services

in a building or structure, or which were required by a previous statute in a building or structure, when erected, altered or repaired, shall be maintained in good working order.

104.3 Owner responsibility: The owner or the owner's designated agent shall be responsible for the safe and sanitary maintenance of the building or structure and its means of egress facilities at all time.

SECTION 105.0 DEMOLITION OF STRUCTURES

105.1 General: Before a structure can be demolished or removed, the owner or agent shall apply for and obtain a permit to raze or remove the structure. Once the raze permit application is filed with the Department, the code official shall notify all utilities having service connections within the structure such as water, electric, gas, sewer, telephone and other connections. A permit to demolish or remove a structure shall not be issued until a release is obtained from the utilities, stating that their respective service connections and appurtenant equipment such as meters and regulators, have been removed or sealed and plugged in an approved manner.

105.1.1 Service connections to mechanical equipment: Fuel-fired or electrically-supplied heating appliances or equipment shall not be removed from any building or structure to be demolished or removed, until a permit to demolish or remove the building or structure has been issued in accordance with this Section.

105.2 Lot regulation: Whenever a structure is demolished or removed, the premises shall be maintained free from all unsafe or hazardous conditions by the proper regulation of the lot, restoration of established grades and the erection of the necessary retaining walls and fences in accordance with the provisions of Article 30 of the Building Code.

SECTION 106.0 MOVED STRUCTURES

106.1 Compliance: Buildings and structures moved into or within the jurisdiction shall comply with the provisions of this code for new buildings and structures and shall not be used or occupied in whole or in part until the certificate of use and occupancy, as required by Section 119.0, shall have been issued by the code official. Before any building or structure which has been moved into or within the District of Columbia is occupied, all equipment and devices shall be inspected and tested for safe operation and for compliance with the requirements of this code.

EXHIBIT 1 - REPEALED

adjacent property owner to provide underpinning for the adjoining structure.

Add Subsection 3007.4 through 3007.6.1 to read as follows:

3007.4 Water in excavations: All excavations shall be kept substantially free of standing water.

3007.5 Sheeting and shoring: All excavations shall be protected by sheet piling or adequate shores of approved design in order to prevent excavation wall collapse and to protect adjoining building and property from damage.

3007.6 Underpinning: Underpinning shall be installed to transmit the foundation loads of an existing building to such lower level as is necessary to secure the existing structure and to relieve and adjacent ground and new construction from undue lateral pressures.

3007.6.1 Underpinning design: Underpinning shall be designed for both horizontal and vertical loads according to accepted engineering principles. Methods and materials used in underpinning, including foundation soils, shall not exceed those allowed in Article 12. Care shall be exercised in the design of the underpinning, especially with regard to large concentrated loads such as columns, piers, and pilasters. Adequate shoring and needling shall be provided as necessary during the installation of the underpinning.

Add Subsections 3007.7 through 3007.7.2 to read as follows:

3007.7 Demolition of Buildings: Signed and sealed drawings and calculations, and a structural certification form permit, shall be submitted before proceeding. Demolition shall begin at the top of the structure and proceed downward. No wall, beam, column, or other load-bearing member supporting any load shall be disturbed or weekened until such load is entirely removed. All loosened material and debris shall be removed so as not to accumulate in such quantity or in such weight as to overload any floor, platform, or scaffold. Not withstanding the above provisions of this section, plain or reinforced concrete and masonry structures shall be demolished in such sections and manner as approved by the code official.

3007.7.1 Required safeguards: Props, posts, braces, stages, platforms and scaffolding necessary to provide sufficient strength and regidity to the portions of the structure being demolished or removed shall be provided.

3007.7.2 Special approval: No structure or portion thereof being demolished shall be pulled or blasted, unless specific approval is given by the code official.

Add Subsection 3007.8 to read as follows:

3007.8 Barricades: The owner shall provide safe pedestrian barricades around the building site.

Add Subsections 3008.1.1 through 3008.1.5 to read as follows:

3008.1.1 Grade level of walls: All walls being demolished, including foundation and interior basement walls (but not including party walls on property lines), shall be reduced to a level below that of final grade.

3008.1.2 Fill: Excavations, holes, and depressions shall be filled and leveled to a final grade which will provide good drainage.

3008.1.3 Fill materials: No materials other than clean earth, broken masonry, tile, plaster, or concrete shall be used in filling depressions and grading the site. All excess earth, brick, lumber, other building materials, and debris, shall be removed from the site and the premises shall be left in a safe, clean and sanitary condition.

3008.1.4 Vaults: All vaults projecting into public space, including walls, shall be removed in their entirety and the depression filled in accordance with the requirements of the Department of Public Works.

3008.1.5 Driveways: All driveways in public space shall be removed in their entirety and new curbs and pavement constructed in accordance with the specifications of the Department of Public Works. The cost of the removal and replacement of the driveway shall be the responsibility of the person executing the demolition.

Add Subsection 3008.3 to read as follows:

3008.3 Timing: Deferral, for a period of not more than six (6) months, of the provisions for site treatment after removal of an existing building, shall be permitted if a new building is to be constructed thereon and the new construction is started at the site within six (6) months of completion of demolition. If site treatment is deferred, the site shall be completely fenced and maintained so as to exclude the public from access to the site during the period between demolition and new construction.

VOL . 46 · NO. 47 FRIDAY, NOVEMBER 19, 1999

District of Columbia

REGISTER

HIGHLIGHTS

* DEPT. OF CONSUMER AND REGULATORY AFFAI
TITLE 12 DCMR, D.C. CONSTRUCTION CODES SUPPI
1999; ADOPTS THE 1996 EDITION OF THE BOCA
BUILDING CODE, THE 1995 EDITION OF THE INTERI
PLUMBING CODE, THE 1996 EDITION OF THE INTERN
MECHANICAL CODE, THE 1996 EDITION OF TH
NATIONAL FIRE PREVENTION CODE, THE 1995 EDITIOI
CABO ONE-AND-TWO-FAMILY DWELLING CODE, TI
EDITION OF THE BOCA NATIONAL PROPERTY MAINTE
CODE, AND THE 1996 EDITION OF THE NFPA NAT
ELECTRICAL CODE

Part 2

EXHIBIT 1 - CURRENT

NOV 1 9 1999

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director, Department of Consumer and Regulatory Affairs, pursuant to Section 10 of the Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Code, sec. 5-1309), and Mayor's Order 87-259, dated November 13, 1987, hereby gives notice of the adoption of the 1996 edition of the BOCA National Building Code, the 1995 edition of the International Plumbing Code, the 1996 edition of the International Mechanical Code, the 1996 edition of the BOCA National Fire Prevention Code, the 1995 edition of the CABO One- and Two-Family Dwelling Code, the 1996 edition of the BOCA National Property Maintenance Code, the1996 edition of the NFPA National Electrical Code, and the 1999 District of Columbia Amendments, and a new Title 12 of the DCMR, the Construction Codes Supplement of 1999.

Notice is also hereby given of the repeal of the 1990 editions of the BOCA National Building, Plumbing, Mechanical, Fire Prevention and Energy Codes, the 1989 edition of the CABO One- and Two-Family Dwelling Code, and the 1990 edition of the National Fire Protection Association National Electrical Code, and the 1992 edition of Title 12 DCMR, the District of Columbia Construction Codes Supplement.

Pursuant to Section 10 of the Act, the Mayor submitted PR13-443, the District of Columbia Construction Codes Supplement of 1999 to the Council of the District of Columbia for the 45-day period of review. PR13-443 was introduced on September 10, 1999 and was approved on September 30, 1999 by the Committee on Consumer and Regulatory Affairs.

No changes have been made to the text of the proposed rules as published with the Notice of Proposed Rulemaking in the D.C. Register on September 10, 1999 at 37 DCR 7211, except where typographical errors were found, editorial corrections and coordination of cross-references between sections were necessary for clarity and for consistency with BOCA's format.

Final action to adopt these rules was taken by the Council of the District of Columbia October 5, 1999. These rules will be effective on the date of publication of this notice in the D.C. Register.

104.6.3 Liability for Acts or Omissions: Any official or employee of the Department, acting in good faith and without malice, shall be free from liability for acts performed under the provisions of the Construction Codes or by reason of any act or omission while performing official duties in connection with the Construction Codes.

104.7 Public Access to Records: Official records of the Department shall be available for public inspection at all appropriate times, under procedures established by the code official and approved by the Corporation Counsel for legal sufficiency.

SECTION 105.0 DUTIES AND POWERS OF THE CODE OFFICIAL

105.1 General: The code official shall enforce the provisions of this code and shall act on any question relative to the mode or manner of construction and the materials to be used in the erection, addition to, alteration, repair, removal, demolition, installation of service equipment and the location, use, occupancy and maintenance of buildings and structures, except as otherwise specifically provided for by statutory requirements or as provided for in Sections 105.2 through 105.7.

105.2 Applications and Permits: The code official shall receive applications and shall approve all permits and certificates issued for the erection, razing, demolition, alteration, and use of buildings and structures, and shall inspect the premises for which such permits and certificates have been issued, to enforce compliance with the provisions of the Construction Codes.

105.3 Building Notices and Orders: The code official shall issue the necessary notices or orders to remove illegal or unsafe conditions, to require the necessary safeguards during construction, to require adequate means of egress facilities in existing buildings and structures, to ensure compliance with the applicable code requirements for the safety, health and welfare of the public, and shall institute administrative and legal actions to correct violations or infractions.

105.4 Inspections: The code official shall make or cause to be made the required inspections for which a permit has been issued, except special inspections done under Sections 114.2 or 1705.0 of the Building Code. The code official is authorized to accept reports of inspection by approved agencies or individuals or to inspect work subject to special inspection done under Sections 114.2 or 1705.0 of the Building Code. All reports of such inspections shall be in writing and certified by a responsible officer of the approved agency or by the responsible individual. The Code official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that may arise.

105.5 Credentials: Authorized representatives of the code official shall carry proper credentials of their respective office for inspecting any buildings or premises while performing duties under the Construction Codes.

105.6 Legal Authority: The code official shall have power, in the interest of public safety, health and welfare, to promulgate administrative rules to interpret and implement the provisions of the Construction Codes to secure the intent thereof, and to designate requirements applicable because of local climatic or other conditions. Such rules shall not have the effect of waiving structural, architectural, plumbing, mechanical, electrical or fire performance requirements specifically provided for in the Construction Codes or of violating accepted engineering practice involving public safety.

105.7 Department Records: The code official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records so long as the building or structure to which they relate remains in existence, unless otherwise provided for by statute, rule or regulation.

SECTION 106.0 APPROVAL

106.1 Approved Materials, Equipment and Devices: All materials, equipment and devices approved for use by the code official shall be constructed and installed in accordance with such approval.

106.1.1 Unlabeled Products: Where materials, assemblies or products are required by this code to be labeled, materials, assemblies or products which are not labeled, listed or classified by an approved testing agency and which are proposed to be installed in the District of Columbia, shall be tested

occupied areas or not, subject to the provisions of Chapter 33 of the Building Code and Section F-315.0 of the fire prevention code listed in Chapter 35.

107.2.3 Partial Demolition Permits: A partial demolition permit is required for the following activities:

1. Removal or demolition of a part of a building or structure that is of greater scope than that allowed under an interior demolition permit pursuant to Section 107.2.2, but of a lesser scope than the raze of the entire building or structure down to the ground, as provided for in Section 107.2.4.

2. Interior demolition within a building or structure, that would otherwise be allowed under an interior demolition permit issued pursuant to section 107.2.2, where any interior space of that building or structure has been specifically designated as a historic landmark.

107.2.4 Raze Permits: A raze permit is required to secure the right to remove a building or structure down to the ground.

107.2.5 Sign Permits: A sign permit is required to install or alter a sign or other advertising device subject to the provisions of Section 3102.0 of the Building Code.

107.2.6 Projection Permits: A projection permit is required to construct, enlarge, alter or remove a projection beyond the building line. This includes projections above ground and vaults in public space.

107.2.7 Public Space Permits: A public space permit is required for the following actions entailing the temporary occupation of public space:

- To install, alter or remove enclosed or unenclosed sidewalk cafes;

- To store building materials;

- To install temporary fences, sidewalk protection or construction trailers in public space;

- To install cranes or similar hoisting devices;

- To place a dumpster for construction debris.

- To otherwise occupy public space, to the extent deemed necessary by the Director of Public Works in the public interest.

107.2.8 Specialty Permits: A specialty permit, as indicated hereafter, is required for the following activities:

1. **Excavation Permit**, to excavate and other earth disturbing actions affecting an area larger than 50 square feet.

2. **Sheeting and Shoring Permit**, to install excavation and slope stabilization systems.

3. **Grading Permit**, for grading, regrading or landfilling operations.

4. **Capacity Placard Permit**, to obtain approval of the posted maximum occupant load for the placards required by Section 1003.3.

5. **Capacity Increase Permit**, to secure approval of an increase in allowable occupant load for a building or premises.

6. **After-Hours Permit**, to engage in construction, installation, maintenance, alteration, repair, demolition, or razing activities outside normal working hours. For the purposes of this permit, normal working hours shall be from seven (7) a.m. to seven (7) p.m., Monday through Saturday.

107.2.8.1 Limitations on After-Hours Work in Residential Areas: No after-hours permit shall be issued for work in an area zoned "residential" under the Zoning Regulations then in effect, or in an area within 500 feet (152.4m) of such residential zone, unless the code official determines that not issuing such permit would

pose a threat to public safety, health and welfare.

107.2.9 Miscellaneous Permits: A miscellaneous building permit is required for the following activities:

1. Installing stationary scaffolding;
2. Cleaning exteriors of buildings or structures, in private or public space, using steam or sandblasting;
3. Blasting operations;
4. Waterproofing and dampproofing;
5. Erect observation stands;
6. Renewal Permit, to obtain an extension of a valid unused building permit, as authorized by Section 112.8.1.
7. Revision Permit, to revise or amend a valid current permit, as authorized by Section 107.5.

107.2.10 Supplemental Permits: A supplemental permit, as indicated hereafter, is required in addition to the applicable permits described in Sections 107.2.1, 107.2.2, 107.2.3 and 107.2.4.

1. Supplemental plumbing installation permit, for installation of plumbing systems and fixtures, as specified in Section 107.7.
2. Supplemental gasfitting installation permit, for installation of gas-fueled appliances and equipment, as specified in Section 107.8.
3. Supplemental mechanical installation permit, for installation of refrigerating and cooling systems and mechanical equipment, as specified in Section 107.9.
4. Supplemental electrical installation permit, for installation of electrical systems and fixtures, as specified in Section 107.10.
5. Supplemental razing or demolition operations permit, for license to proceed with demolition operations in connection with a raze permit or a partial demolition permit, as specified in Section 110.1 and to use specially regulated demolishing equipment.
6. Supplemental air quality permit, to obtain license to install and/or operate stationary pollution source equipment or an air pollution control device on a stationary source, as specified in Sections 200.1 and 200.2 of DCMR Title 20.

107.3 Work Exempted from Permit: The types of work listed in this section, in the amounts indicated hereafter, shall not require a permit, except as provided for in Section 107.3.2. Work exempted from permit shall not include work in any piping system involving brazed, soldered or welded joints. The code official is authorized to determine whether a limited scope of work, other than those listed hereafter, is exempted from permit requirement.

1. Brick pointing.
2. Caulking, patching and plaster repair.
3. Installation of cabinets and architectural millwork.
4. Installation of window screens and storm windows.
5. Repair in kind of existing fences.
6. Retaining walls, 18 inches (0.46m) or less in height.
7. Garden storage sheds complying with Section 107.3.3.
8. Painting, other than application of fire-retardant paint.
9. Replacement *in kind* of one of the items listed hereafter. For the purpose of this section, "replacement in kind," when applied to architectural features, means replacement with a feature of like material that replicates the existing feature in proportion, appearance, texture, design, detail and dimensions.

108.14 Appeals: An appeal of a hearing under this section shall be heard by the District of Columbia Board of Appeals and Review pursuant to Chapter 5, Title 1, DCMR.

108.15 Presidential Security Restrictions: As required by D.C. Code, Section 5-1303 (d), no permit required under the Construction Codes shall be issued if it is determined by the code official that:

1. The permit affects an area in close proximity to the official residences of the President or the Vice President of the United States; and

2. The United States Secret Service has established that the issuance of the permit would adversely impact the safety and security President or the Vice President of the United States.

SECTION 109.0 TEMPORARY STRUCTURES

109.1 General: Pursuant to a variance granted by the board of appeals under the provisions of Section 122.0, the code official shall issue a permit for temporary construction as approved by the bard of appeals. Such permits shall be limited as to time of service, but such temporary construction shall not be permitted for more than one year.

109.2 Special Approval: All temporary construction shall conform to the structural strength, fire safety, means of egress, light, ventilation and sanitary requirements of this code as necessary to ensure the public health, safety and general welfare.

109.3 Termination of Approval: The code official is hereby authorized to terminate such special approval and to order the demolition of any such construction at his discretion, or as directed by a decision of the board of appeals.

SECTION 110.0 DEMOLITION OF STRUCTURES

110.1 General: Before a structure can be demolished or removed, the owner or agent shall apply for and obtain a permit to raze or remove the structure. Once the raze permit application is filed with the Department, the code official shall notify all utilities having service connections within the structure such as water, electric, gas, sewer, telephone and other connections. A permit to demolish or remove a structure shall not be issued until a release is obtained from the utilities, stating that their respective service connections and appurtenant equipment such as meters and regulators, have been removed or sealed and plugged in an approved manner.

110.1.1 Service Connections to Mechanical Equipment: Fuel-fired or electrically-supplied heating appliances or equipment shall not be removed from any building or structure to be demolished or removed, until a permit to demolish or remove the building or structure has been issued in accordance with this Section.

110.2 Lot Regulation: Whenever a structure is demolished or removed, the premises shall be maintained free from unsafe or hazardous conditions by the proper regulation of the lot, restoration of established grades and the erection of the necessary retaining walls and fences in accordance with the provisions of Chapter 33 of the Building Code.

SECTION 111.0 CONDITIONS OF PERMIT

111.1 Payment of Fees: A permit shall not be issued until the fees prescribed in Section 112.0 have been paid.

111.2 Compliance with Code: The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of the Construction Codes, except as specifically stipulated by modification granted in accordance with Sections 106.2 and 106.2.1.

111.3 Compliance with Permit: All work shall conform to the approved application and plans for which the permit has been issued and any approved amendments to them. Any changes made during construction which deviate substantively from with the approved plans shall be resubmitted for approval, in accordance with Section 107.10.

111.3.1 Approved Plans at Worksite: Plans bearing the original signature and stamp of approval of the code official shall be available at the worksite during the entire construction period.

111.4 Compliance with Plat: All new work shall be located strictly according to the approved plat.

expense, so that the wall is and remains as is and useful as the party wall was before the work was commenced. During any construction operation, the party wall shall be maintained weatherproof and structurally safe by adequate bracing until such time as the permanent structural supports have been provided.

Add new subsections 3309.3.1.1 through 3309.3.1.3 to read as follows:

3309.3.1.1 Temporary Protection: If the party wall is to remain exposed for less than sixty (60) days, the exposed portions of the wall shall be protected from weather damage by tarpaulins, water proof paper, or other temporary means approved for use by the code official. Such temporary protection shall be maintained in a weatherproof condition.

3309.3.1.2 Intermediate Protection: If the party wall is to remain exposed for no more than sixty (60) days, but less than eighteen (18) months, the exposed wall shall be restored and weatherproofed in accordance with the requirements for the particular type of construction involved. All plaster and other material not commonly used for exterior construction shall be removed; all holes shall be properly filled; and masonry party walls shall be repointed.

3309.3.1.3 Permanent Protection: If the party wall is to remain exposed for eighteen (18) months or longer, the party walls shall be permanently restored and weatherproofed in accordance with the requirements for the particular type of construction involved. Party walls shall be faced with material commonly used for exterior finish, identical to or resembling as closely as practicable the facing material and construction of the other exterior walls of the building left standing, and shall be painted or otherwise finished in a manner similar to other parts of the building.

Add subsection 3309.3.4 to read as follows:

3309.3.4 Unsafe Party Walls: If any party wall or portion thereof which is left standing and exposed after a building is demolished or partially removed is deemed unsafe or dangerous by the code official, then the owner of the building that is being removed or demolished shall either remove and reconstruct, or anchor, brace, or buttress all of those portions of the party wall deemed unsafe or dangerous, and shall do all other work necessary to enclose properly the building or structure left standing.

Change subsection 3309.4 to read as follows:

3309.4 Adjoining Roofs and Flashing: The owner shall repair and restore all flashing on any adjoining property which has been broken or damaged during any construction operations. The owner shall also install such new flashing as may be required to protect any vertical joints exposed by such operations. Where a new building or demolition of an existing building is being conducted at a greater height, the roof, roof outlets and roof structures of adjoining buildings shall be protected against damage with adequate safeguards by the person doing the work.

SECTION 3310.0 DEMOLITION AND EXCAVATION

Change subsection 3310.2 to read as follows:

3310.2 Protection of Adjoining Property: If afforded the necessary written permission to enter the adjoining lot, building or structure, the person causing the demolition or excavation to be made shall at all times and at his or her own expense preserve and protect the lot, building or structure from damage or injury. If the necessary written permission is not afforded, it shall be the duty of the owner of the adjoining lot, building or structure to make safe his or her own property, for the prosecution of which said owner shall be granted the necessary written permission to enter the premises of the demolition or excavation. In the case of existing adjoining or party walls which require underpinning, proper underpinning shall be provided in accordance with 3309.3 whether or not written permission to enter the adjoining lot is granted, provided adjoining owner has been given 30 days written notice by registered mail.

Add subsection 3310.2.2 to read as follows:

3310.2.2 Party Walls: In case of party walls erected in the original city of Washington, or party walls

erected with written consent of the adjoining owners, or both, the person causing such excavation need not obtain the written permission from the adjacent property owner to provide underpinning for the adjoining structure.

Add subsection 3310.4.1 through 3310.4.5 to read as follows:

3310.4.1 Grade Level of Walls: All walls being demolished, including foundation and interior basement walls (but not including party walls on property lines), shall be reduced to a level below that of final grade.

3310.4.2 Fill: Excavations, holes, and depressions shall be filled and leveled to a final grade which will provide good drainage.

3310.4.3 Fill Materials: No materials other than clean earth, broken masonry, tile, plaster, or concrete shall be used in filling depressions and grading the site. All excess earth, brick, lumber, other building materials, and debris, shall be removed from the site and the premises shall be left in a safe, clean and sanitary condition.

3310.4.4 Vaults: All vaults projecting into public space, including walls, shall be removed in their entirety and the depression filled in accordance with the requirements of the Department of Public Works.

3310.4.5 Driveways: All driveways in public space shall be removed in their entirety and new curbs and pavement constructed in accordance with the specifications of the Department of Public Works. The cost of the removal of the driveways and replacement of the curbs and pavement shall be the responsibility of the person executing the demolition.

Add subsection 3310.6 through 3310.12 to read as follows:

3310.6 Water in Excavations: All excavations shall be kept substantially free of standing water.

3310.7 Sheeting and Shoring: All excavations shall be protected by sheet piling or adequate shores of approved design in order to prevent excavation wall collapse and to protect adjoining building and property from damage.

3310.8 Underpinning: Underpinning shall be installed to transmit the foundation loads of an existing building to such lower level as is necessary to secure the existing structure and to relieve the adjacent ground and new construction from undue lateral pressures.

3310.8.1 Underpinning Design: Underpinning shall be designed for both horizontal and vertical loads according to accepted engineering principles. Methods and materials used in underpinning, including foundation soils, shall not exceed those allowed in Chapter 18. Care shall be exercised in the design of the underpinning, especially with regard to large concentrated loads such as columns, piers, and pilasters. Adequate shoring and needling shall be provided as necessary during the installation of the underpinning.

3310.9 Demolition of Buildings: Signed and sealed drawings and calculations, and a structural certification form permit, shall be submitted before proceeding. Demolition shall begin at the top of the structure and proceed downward. No wall, beam, column, or other load-bearing member supporting any load shall be disturbed or weakened until such load is entirely removed. All loosened material and debris shall be removed so as not to accumulate in such quantity or in such weight as to overload any floor, platform, or scaffold. Not withstanding the above provisions of this section, plain or reinforced concrete and masonry structures shall be demolished in such sections and manner as approved by the code official.

3310.9.1 Required Safeguards: Props, posts, braces, stages, platforms and scaffolding necessary to provide sufficient strength and rigidity to the portions of the structure being demolished or removed shall be provided.

3310.9.2 Special Approval: No structure, or portion thereof, being demolished shall be pulled or blasted, unless specific approval is given by the code official.

3310.10 Barricades: The owner shall provide safe pedestrian barricades around the building site.

3310.11 Timing: Deferral, for a period of not more than six (6) months, of the provisions for site treatment after removal of an existing building, shall be permitted if a new building is to be constructed thereon and the new construction started at the site within six (6) months of completion of demolition. If site treatment is deferred, the site shall be completely fenced and maintained so as to exclude the public from access to the site during the period between demolition and new construction.

3310.12 Other Regulations: Demolition and excavation operations are regulated by the U.S. Department of Labor, OSHA 29 CFR 1926, subparts P, T, and U.

SECTION 3313.0 REMOVAL OF WASTE MATERIAL

Change subsection 3313.1 to read as follows:

3313.1 General: Materials shall not be dropped by gravity or thrown outside the exterior walls of a building during demolition or erection unless the area is effectively protected. If the area is not effectively protected, wood or metal chutes shall be provided for the removal of such materials. Where the removal of any material will cause an excessive amount of dust, such material shall be wet down to prevent the creation of a nuisance. Chutes are regulated by the U.S. Department of Labor, OSHA 29 CFR 1926, subpart T.

SECTION 3314.0 STAIRWAYS

Change subsection 3314.0 to read as follows:

3314.0 Temporary Stairways, Floor and Wall Openings:

Change subsection 3314.1 to read as follows:

3314.1 Temporary Stairways, Floor and Wall Openings: When a building has been constructed to a height greater than 50 feet (15240 mm) or four stories, or where an existing building exceeding 50 feet (15240 mm) in height is altered, at least one temporary lighted stairway shall be provided unless one or more of the permanent stairways are erected as the construction progresses. Temporary stairways, floor and wall openings, during demolition or construction, are regulated by the U.S. Department of Labor, OSHA 29 CFR 1926, subparts M and X.

SECTION 3315.0 LIGHTING

Change subsection 3315.1 to read as follows:

3315.1 General: All stairways and parts of buildings under demolition, erection or repair shall be adequately lighted while persons are engaged at work, in accordance with the provisions of Section 1024.0. Lighting levels during demolition or construction are regulated by the U.S. Department of Labor, OSHA 29 CFR 1926, subparts C and D.

D.C.-44
May 1967

Memorandum • Government of the District of Columbia

TO: D.C. Zoning Commission

Department, Agency, Office: Zoning Division, MPO

FROM: Ben W. Gilbert, Director
Municipal Planning Office

Date: July 6, 1976

SUBJECT: Zoning Commission Case No. 76-10

Description of the Case

The text amendments proposed in this case were originally presented to the Zoning Commission by the Municipal Planning Office. These amendments were derived out of the continuing zoning revision process which the Municipal Planning Office has been embarked upon, and were discussed at the joint retreat held by the Zoning Commission and Board of Zoning Adjustment in February 1976.

There are three different amendments, as follows:

1. This amendment is designed to remove certain requests for side yard variances from the jurisdiction of the BZA, and make approval of some proposed building additions a matter-of-right to be administered by the Zoning Administrator. These side yard cases would be those where an addition is to be made to a building which predates the present Zoning Regulations and which have existing side yards which are non-conforming under the present Regulations.

2. This amendment is designed to remove certain requests for rear yard variances from the jurisdiction of the BZA, and make approval of some building additions a matter-of-right to be administered by the Zoning Administrator. These rear yard cases would be those where an addition or modification is proposed to a portion of a building which already is within the required rear yard and is thus non-conforming.

3. This amendment is designed to remove the review and approval of structures extending above the height limits established by the Zoning Regulations and the Act of 1910 from the jurisdiction of the BZA and allow such structures to be reviewed and approved by the Zoning Administrator as a matter-of-right.

Zoning Office, D.C.

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EXHIBIT 2

Summary Recommendation

The Municipal Planning Office finds that the proposed amendments would expedite the BZA process without adverse effects, and recommends that the Zoning Commission approve the proposed amendments.

General Background

The Zoning Act of 1938 created a Board of Zoning Adjustment for the District of Columbia, and gave it the authority to grant variances from the strict application of the Zoning Regulations, to hear and decide appeals where it is alleged there is error in the administration or enforcement of the Zoning Regulations, and to hear and decide requests for special exceptions and other matters as may be provided by the Zoning Commission in the Zoning Regulations. The Board is composed of five members, including a member of the Zoning Commission or its staff, a member of the National Capital Planning Commission or its staff, and three other members, all of whom must be residents of the District of Columbia for at least three years preceeding appointment to the Board and at least one of whom shall be a homeowner.

Since its creation in 1938, the BZA has heard and decided over 12,000 cases. In the 3 1/2 years, from January 1, 1973 to the present, over 930 cases have been filed with the Board for hearing and decision, an average of approximately 265 cases per year. These cases vary in complexity from side yard variances of less than one foot to university campus plans; from review of roof structures to review of multi-unit development proposals in R-5-A Districts; from changes in non-conforming uses to complicated and lengthy appeal cases.

The Board is required to hold a public hearing on all cases filed before it. These hearings are conducted in accordance with rules of procedure which follow the D.C. Administrative Procedures Act, and which provide for notice, conduct of hearing, and post-hearing processes. The notice provided has also been set at a minimum of 30 days to provide adequate notice to Advisory Neighborhood Commissions.

Due to the number of cases involved, the requirements and safeguards for due process contained in the rules and the part time nature of the Board, the Board has developed a constant backlog of cases to be heard and decided. This backlog, which varies in size and duration, results in the Board being unable to devote sufficient time to complex and detailed issues, and also creates a delay of several months for all cases, whether complex or not.

The proposed amendments to the Regulations are thus designed to accomplish two purposes:

1. Reduce the total number of cases which the Board must process, to remove cases which are relatively routine, uncontroversial and in about all cases, are approved by the Board. This would leave the Board more time to deal with the more complex cases.

2. Eliminate the delay for a person desiring to take certain actions which are relatively uncontroversial and which, in the large majority of cases, are routinely approved by the Board.

These purposes are designed to relieve some of the difficulties in the zoning process. The Government Operation Committee of the District of Columbia Council has been investigating the functioning of that process, but has held off any action to give the Zoning Commission the opportunity to study the problems and take appropriate action.

Detailed Description and Analysis - Side Yards

The proposed amendment to the Zoning Regulations related to side yards would apply only to buildings existing on or before May 12, 1958, the effective date of the existing Zoning Regulations. Prior to that date, under the Zoning Regulations then in effect, the minimum required side yard in most area districts was five feet. Therefore, a large number of buildings constructed prior to May 12, 1958 have a side yard which is only five feet wide. Since the present Regulations require a minimum side yard of eight feet, there are many structures which are non-conforming as to side yards.

The proposed amendment would allow an extension or addition to be made to pre-1958 buildings in residential districts provided two conditions are satisfied, as follows:

1. The width of the existing yard is not decreased.

2. The width of the existing side yard is at least five feet.

Attached Figures 1 and 2 show situations where the proposed regulation would apply, and no BZA review would be required. Attached Figure 3 shows a situation where the proposed regulation would not be applicable, and a variance from the Regulations would still be required.

During the period from January 1, 1973 through June 30, 1976, there have been 103 cases filed before the BZA requesting a side yard variance in a residential district. Of these, 80 (or 77.7%) have been approved by the Board, 15 (or 14.6%) have been denied, and 8 (7.8%) have been withdrawn or dismissed. Of the 95 cases in which the Board made a determination on the merits of the case, 26 would have been permitted as a matter-of-right had the proposed regulation been in effect. Of these 26 cases, the Board approved 25 (96.2%) and denied only 1 (3.8%). Copies of the order of the Board in Cases No. 12092 and 12117, two applicable cases which were approved by the Board, are attached.

Of the 69 cases which would not have been permitted as a matter-of-right, 55 (or 79.7%) were approved and 14 (20.3%) were denied. These cases would still have required Board approval either because they involved new construction, a side yard less than 5 feet wide, a decrease in the width of the yard or another associated variance, such as lot occupancy or rear yard. There is a substantial difference in the percentage of applications approved for those cases which would have qualified under the proposed regulation (96.2%) as opposed to those which would not have so qualified (72.6%).

Recommendation

The Municipal Planning Office recommends that the Zoning Commission adopt the three proposed text amendments, relating to side yards, rear yards, and roof structures, for the following reasons:

1. The caseload for the Board of Zoning Adjustment would be significantly reduced, enabling the Board to devote more of its limited time and resources to other cases which are more complex and critical.

2. The delay suffered by the applicant in the three types of cases would be significantly reduced, in a process which now takes many months to complete.

3. Both of the above listed goals can be achieved with little or no negative impact by removing these cases from the jurisdiction of the BZA. The Board has routinely granted such cases in the past, after determining that there would be no adverse impact.

The Municipal Planning Office believes that these proposed amendments represent a relatively modest step which can be taken toward resolving some of the difficulties of the BZA process, and consequently believes that they should be adopted.

Report Prepared by:
Zoning Division, MPO
SES:ss

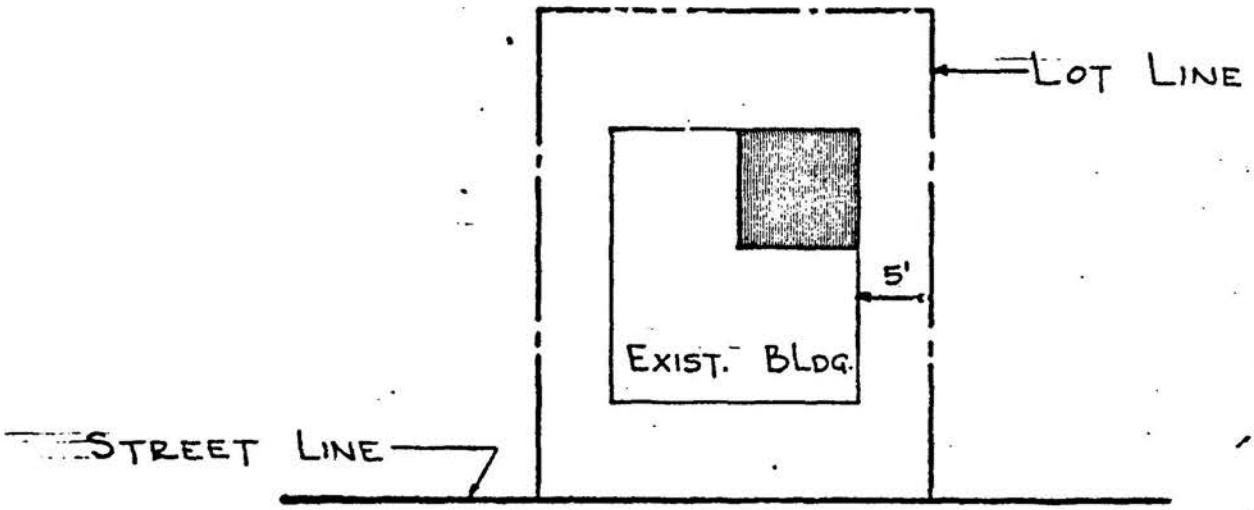


FIGURE 1 ~ PERMITTED

SCALE: N.T.S.

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PROPOSED ADDITION

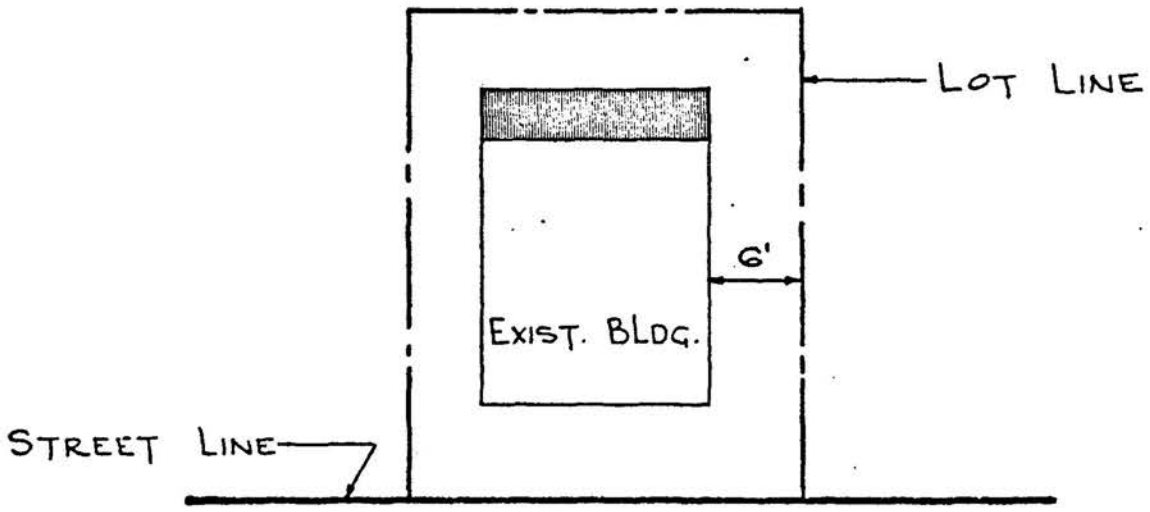


FIGURE 2 ~ PERMITTED

SCALE: N.T.S.

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