DISTRICT OF COLUMBIA COURT OF APPEALS

FILED
DEC 31 2003
DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 02-AA-149

CRAIG and ANN GOODMAN,
PETITIONERS,

v. BZA-16696

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT,
RESPONDENT.

On Petition for Review of a Decision of the District of Columbia Board of Zoning Adjustment

(Argued October 28, 2003 Decided December 31, 2003)

Before WAGNER, *Chief Judge*, and STEADMAN and REID, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

Petitioners wished to add a second story to their existing detached garage to provide living quarters for a domestic employee. This addition would raise the structure to twenty feet in height. They sought an area variance from the height limit of fifteen feet on accessory buildings imposed by 11 DCMR § 2500.4. After a hearing, the Board of Zoning Adjustment (BZA) denied the application in a detailed twenty-eight page order. We affirm the BZA.[1]

To qualify for a variance, the property owner must meet what the BZA terms the three-prong test of D.C. Code § 6-641.07(g)(3) (2001) (reprinted in 11 DCMR § 3103.2), which reads:

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[1]Although petitioners only sought an area variance from the height limit of § 2500.4, the BZA ruled that area variances would also be required from the one-story limit of that section as well as from several other applicable sections and that a use variance would also be required. The BZA order denied these additional variances. Since the denial of the sought area variance from § 2500.4 in itself prevents the effectuation of petitioners' planned addition, we see no occasion to address the denial of the other variances. Likewise, we do not address petitioners' argument to us that no variance of any type was needed, since that issue was not presented to or ruled upon by the BZA in the matter now before us. *See Rafferty v. District of Columbia Zoning Commission*, 583 A.2d 169, 178 (D.C. 1990).

BZA
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EXHIBIT NO.103

> Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under [the Zoning Act] would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

The BZA determined that petitioners had not shown an "extraordinary or exceptional situation or condition" of their property or "peculiar and exceptional practical difficulties" imposed upon them, thus failing to meet both of the first two prongs of the statutory test.[2] We will review an agency decision regarding a variance to determine if it is "legally consistent with the regulations and whether the decision is arbitrary and capricious" or unsupported by substantial evidence in the record. *Citizens Coalition v. District of Columbia Bd. of Zoning Adjustment,* 619 A.2d 940, 946-47 (D.C. 1993) (finding a special exception rather than a variance to be the necessary relief). We can find no such fault in the BZA decision here.

With respect to the first prong, petitioners argued that their property is exceptional by virtue of its large lot size in an R-3 district, the existence of a single-family detached dwelling on that lot, the historical character of the house and its grounds, and the shortage of habitable space within the dwelling to provide living space for a domestic employee. The BZA permissibly rejected each of these arguments. With respect to lot size and dwelling type, it noted that the lot size and detached dwelling did not render the property unique given the regulations' specific contemplation of the existence of detached homes on larger lots among row dwellings. *See* 11 DCMR §§ 320.1, 400-405. The BZA also noted that the large lot size provided flexibility to petitioners to construct a conforming addition on their home. The BZA also rejected the historic character of the home and grounds as an exceptional condition because historic homes are not unique or exceptional in the Georgetown

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[2] "[T]he higher 'undue hardship' standard applies to requests for use variances while the lower 'practical difficulty' standard applies to area variances." *Gilmartin v. District of Columbia Bd. of Zoning Adjustment,* 579 A.2d 1164, 1170 (D.C. 1990).

Historic District. With respect to petitioners' proffer that limited habitable space rendered the property exceptional, the BZA found that petitioners had not shown that interior space, including 2300 square feet of above ground space, a finished basement, and four bedrooms for a three person family, could not "be rearranged to accommodate a domestic employee or family member." Finally, the BZA noted that "[t]he fact that an expansion requiring a variance is personally preferable to other methods not requiring variances does not constitute a unique property situation." *Barbour v. District of Columbia Bd. of Zoning Adjustment,* 358 A.2d 326, 327 n.4 (D.C. 1976). Therefore, the BZA permissibly determined that the petitioners failed to demonstrate the exceptional character of their particular property.

With respect to the second prong, petitioners also argued that the inability to provide living quarters above the garage for a domestic employee imposed "peculiar and exceptional practical difficulties" because expansion of their main dwelling would be burdensome if not impossible. They noted (i) the existence of historic structures and gardens behind the house; (ii) the previous denial by the Commission of Fine Arts of a proposed expansion to the home; (iii) an expansion's effect upon the architectural integrity of the home by diminishing light and air to the rear rooms, altering the view through the house, and requiring the removal of historic windows; and (iv) construction difficulties that would arise due to the small side lots and historic character of the house. Again, the BZA permissibly rejected these arguments. With respect to the historic gardens and backyard structures, the BZA noted that neither the structures nor the gardens behind the home had legally protected historic status, and the petitioners could preserve such features through an expansion design. The BZA also rejected petitioners' claim that the Commission on Fine Arts' prior disapproval of a particular proposal to expand upon their historic home by a former owner in 1983 would prevent them from expanding. The Commission had not indicated that it would reject any proposed expansion to the home, and the BZA found that the petitioners did not demonstrate that a proposed expansion which was respectful of the historic character of the house had been or would be denied by the Commission. As to the architectural impacts upon the property, the BZA noted that the petitioners did not provide designs demonstrating the potential effects or that such effects could not be avoided. Finally, the BZA found that the construction difficulties cited by the petitioners are problems inherent to renovations undertaken in historic districts and are neither peculiar nor exceptional.

Petitioners thus failed to meet the burden of proof imposed upon them in order to qualify for area variance relief.[3] See *Citizens Coalition, supra,* 619 A.2d at 948 (stating "[t]o obtain a variance, the applicant must demonstrate that an undue hardship

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[3]Petitioners also raise objections to certain procedural aspects of the BZA proceedings. We are not persuaded that petitioners have shown that they were in any material way prejudiced by any such claimed irregularities.

or an extraordinary situation would result if the Zoning Regulations were applied").

Accordingly, it is hereby ORDERED and ADJUDGED that the decision on review is affirmed.

For the Court:

Garland Pinkston, Jr., Clerk

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A true Copy
Test:
GARLAND PINKSTON JR.
Clerk of the District of Columbia Court
of Appeals
BY
DEPUTY CLERK

District of Columbia
Court of Appeals

May 11, 2004

Nos. 02-AA-149: Craig and Ann Goodman v. District of Columbia Board of Zoning Adjustment.

D.C. Board of Zoning Adjustment
Jerrily R. Kress, Director
District Building
441 4th Street, NW, Suite 210
Washington, DC 20001

Dear Ms. Kress:

Pursuant to Rule 41(a) of this Court, the decision in the above-entitled case is attached.

Please acknowledge receipt of the decision by signing the copy of this letter and returning it to this office as soon as possible.

Garland Pinkston, Jr.
Clerk

I hereby acknowledge receipt of the original of this letter with attachments.

Jerrily Kress
Signed

May 13, 2004
Date