RECEIVED
D.C. OFFICE OF ZONING
2004 FEB 10 P 12: 52

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF HENRY SAILER, et al **BZA APPEAL NO. 17054**

INTERVENOR'S RESPONSE TO DECLARATION OF EDGAR T. NUNLEY

During the hearing held on February 3, 2004, Appellants submitted a Declaration of Edgar T. Nunley. On behalf of Brian Logan, the Intervenor in this appeal, we hereby respond to the Declaration.

Mr. Nunley's Declaration fails to provide any relevant or substantive information about the issues in this appeal. He fails to cite any Zoning Regulation that contradicts the decision of the Department of Consumer and Regulatory Affairs ("DCRA") or demonstrate that DCRA erred in issuing the Permits. Indeed, the only assertions Mr. Nunley makes are: (1) the reasoning of Mr. Leon Paul, who reviewed the plans on behalf of DCRA, "make[s] no sense"; (2) Mr. Nunley has never seen the issuance of a permit for a "pervious" driveway; and (3) Mr. Paul is not qualified to ensure compliance with the Zoning Regulations.

Mr. Paul's reasoning "makes sense" because it complies with the Zoning Regulations. As set forth in the Intervenor's Statement in Opposition to the Appeal, filed on January 22, 2004, and the testimony of Armando Lourenco, the accessory garage is permitted under Sections 2500.5, 2115.1, 2117.4, and 2117.8 of the Zoning Regulations.

The accessory private garage meets the use and access requirements of the Zoning Regulations. Under § 2500.5, an accessory private garage in an R-1-A Zone District may have a second story used for sleeping or living quarters of domestic employees of the home owner. 11 DCMR § 2500.5. Section 2115.1 requires a parking space to be nine feet wide and nineteen feet

BZA
Case No. 17054
Exhibit No. 49

Board of Zoning Adjustment
District of Columbia
CASE NO. 17054
EXHIBIT NO. 49

long. 11 DCMR § 2115.1. As Mr. Paul stated, the garage at 3101 Chain Bridge Road features a ten-foot door leading to an area that exceeds the size requirement of § 2115.1. Under Section 2117.4, each "required" parking space must be accessible by an impervious driveway. 11 DCMR § 2117.4. However, in this case, as Mr. Paul pointed out, the "required" parking space is not located in the accessory garage but elsewhere on the lot. The plat Mr. Paul approved shows an impervious driveway leading from Chain Bridge Road to the required parking space, satisfying the requirements of § 2117.4. Section 2117.8 requires a driveway providing access to a "required" parking space to have a maximum grade of less than 12% and be seven feet in width. 11 DCMR § 2117.8. The driveway from Chain Bridge Road to the required parking space meets those requirements. Finally, Mr. Paul explained that the Zoning Regulations do not require driveway access to an accessory garage. Neither Mr. Nunley nor Appellants have cited any authority for such a requirement.

Mr. Nunley also argues that he has never seen the issuance of a permit for a "pervious driveway." As Mr. Paul explained, the Zoning Regulations do not require an accessory garage to have a driveway, whether pervious or impervious, unless it houses a required parking space. Mr. Logan's accessory garage does not house a required parking space. As Mr. Paul indicated, "the parking in the accessory garage is extra, not required ...." Mr. Paul stated in his e-mail and through testimony at the hearing that Mr. Logan's architect had agreed to add a driveway to appease the neighbors – even though it was not required. Mr. Paul listed the driveway as "pervious" on the permit to indicate to the neighbors that the revision was reviewed for compliance with the impervious surface restriction of the CB/UT Overlay set forth in § 1567.2. As Mr. Paul testified during the hearing, because the driveway was pervious, it did not change his calculations of the impervious surface coverage on the lot.

Mr. Nunley's argument that Mr. Paul is not qualified to review permit applications for compliance with the Zoning Regulations is completely baseless. Mr. Nunley has not worked at DCRA for several years.

Finally, in support of Mr. Nunley's Declaration, Appellant Dr. Wolf claimed during the hearing that he had reviewed "hundreds" of BZA Orders and that they all required access to accessory parking spaces to be constructed of an impervious surface. In support of his argument, Dr. Wolf cited only one case – BZA Order No. 11956. That case is entirely distinguishable from the facts of the present appeal. In Order No. 11956, the BZA addressed the application of the National Trust for Historic Preservation for a special exception to operate a museum parking lot in the R-1-B Zone District. The National Trust also requested a variance to permit the lot to be paved with a brownstone surface instead of an all-weather impervious surface. The BZA denied the application because it found the museum use to be objectionable. The BZA did not address the surfacing requirement.

Dr. Wolf failed to cite any other case in support of his argument. We also have reviewed hundreds of BZA Orders and have been unable to identify any instance in which the BZA required extra parking spaces serving a single family home in a residential zone district to be accessible by an impervious driveway. We found that BZA Orders containing a condition requiring impervious surfacing for accessory parking fall into one of the following categories: (1) applications for accessory parking lots as the principal use; (2) applications requesting approval of institutional uses in residential zone districts; or (3) requests to use alternative

materials for commercial parking lots.[1] None of these situations is applicable to the facts of this appeal.

As Mr. Paul explained in detail, the accessory garage meets both the use and access requirements of the Zoning Regulations. Mr. Nunley's assertions provide no insight into the issues of this appeal. Although he states that he visited the site and reviewed the entire record on file, Mr. Nunley fails to provide any substantive argument that DCRA erred in issuing the permit or to identify any Zoning Regulation that contradicts Mr. Paul's explanation. Indeed, Mr. Nunley does not cite any Zoning Regulation at all.

Respectfully submitted,

John T. Epting, Esq.
Ashleigh Dale Horne, Esq.
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037

Date: February 10, 2004

[1] *See, e.g.,* BZA Order No. 12714 (granting a special exception for the use of a parking lot accessory to a plumbing business in the R-1-B District); BZA Order No. 12253 (granting a special exception for the use of a parking lot accessory to an adjacent commercial building in the R-1-B District); BZA Order No. 13687 (granting a special exception for the use of a parking lot accessory to a Burger King restaurant in the R-1-B District); BZA Order No. 11814 (allowing the construction of a parking lot in the SP District under the condition that it utilize impervious surface in driveways, access lanes, and parking areas); BZA Order No. 11832 (granting a special exception for the use of a parking lot in a parking garage in the R-5-D District); BZA Order No. 11943 (granting a special exception to permit a parking lot accessory to the Brookings Institute in the R-5-D District); BZA Order No. 12567 (granting a special exception for the use of an existing parking lot by students and faculty of American University in the R-5-A District); BZA Order No. 13880 (granting a special exception for the use of a parking lot for employees of the Folger Shakespeare Library in the R-4 District); BZA Order No. 11780 (granting the use of accessory parking on a lot other than where a main structure was located in a C-M-1 District); BZA Order No. 11799 (granting a special exception to permit the establishment of a commercial parking lot in the R-5-C District).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing was sent via hand delivery this 10th day of February, 2004 to:

Benjamin G. Chew
Patton Boggs, LLP
2550 M Street, N.W.
Washington, DC 20037

Alma Gates
ANC 3D-05
4911 Ashby Street, N.W.
Washington, DC 20007

David A. Clark, Director
Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.E.
Washington, DC 20002

Laura Gisolfi Gilbert
Office of Compliance
Department of Consumer and Regulatory
Affairs
941 N. Capitol Street, N.E., Suite 9400
Washington, DC 20002

Robert Spagnoletti
Acting Corporation Counsel
Office of the Corporation Counsel
of the District of Columbia
441 4th Street N.W.
Suite 1060 N
Washington, DC 20001



Ashleigh Dale Horne

Document #: 1378626 v.1