



Chevy Chase

Advisory Neighborhood Commission 3/4G

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December 19, 2005

Mr. Geoffrey Griffis
Chairman
Board of Zoning Adjustment
One Judiciary Square #210S
441 Fourth Street, NW
Washington, DC 20004

2005 DEC 21 PM 4:08
DC OFFICE OF ZONING

Minority Report of Vice Chair Jerry Levine, ANC 3/4G, re: BZA Appeal No. 17414

Dear Mr. Griffis:

I am filing this Minority Report with the BZA in order to express my strong disagreement with the vote of Advisory Neighborhood Commission 3/4G (the "Commission") taken on Monday, December 12, 2005 in which the Commission determined to take "no action" in support of or in opposition to the appeal of Mr. Jeffrey Schonberger of 5341 28th Street, NW, Washington, DC 20015 (the "Appellant"), which appeal was filed by Mr. Schonberger to oppose the allowance of construction of a second story apartment unit over a garage at premises located at 5362 27th Street, NW (Lot 27, Square 2292) (the "Appeal"). For the reasons stated herein, I believe that the homeowners (Matthew Epstein and Amy Cohen Epstein) have the full legal right to construct the second story garage as a permitted use in the R-1-B zone in the manner in which it is being constructed and that the Appellants are incorrectly interpreting the applicable DC regulations. I therefore believe that the Commission should have voted to support the homeowners and oppose the instant Appeal.

My disagreement with the Commission centers upon my strong opinion that the homeowners have satisfied all legal requirements of the District of Columbia for the construction of the second story garage at issue in this case, and that the use of the second story garage as an apartment for a household employee is a permitted use in the zone.

As set forth in the attached letter to the Commission from Mr. Neil A. Stanley, Director of DCRA, dated October 21, 2005, a valid building permit was issued for the garage that included permission to construct a second story apartment unit. The work was inspected on four dates in 2004 and fully approved by DCRA. The building permit that was issued by the District for this site recognized that a change of ownership of the property had occurred. Any possible claims or issues regarding an earlier unenforceable oral

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 17414
EXHIBIT NO. 18

agreement on the part of a prior owner to not construct a second story apartment unit on top of the garage, any failure to obtain a building permit prior to the start of construction, or the issuance of stop work orders that have now been resolved, are all, in my view, moot and no longer outstanding issues that require any further consideration in this case.

The homeowners and their counsel have certified and represented to the Commission that the intended use of the apartment unit in question is solely for the living quarters of a domestic employee of the family occupying the main building, as required by and fully in accordance with DCMR, Title 11, Section 2500.5. The District governmental authorities and Commission are entitled to rely upon such certifications as prima facie evidence of compliance with Section 2500.5 at this time.

As indicated by the homeowners and their counsel at the December 12, 2005 Commission meeting in which this matter was heard, the garage contains 572 square feet and is thus within the 900 square foot requirement set forth in Section 2500.5 for an "accessory private garage", in this case, the "part of a building or structure" portion of the definition. Moreover, I agree with counsel for the homeowners that the 25-foot rear yard requirement under Section 404.1 is inapplicable to a portion of a garage building structure that is permitted within the rear yard itself (the Appellant, in my view, misconstrues the DC regulations in this regard). Finally, there is no substantial or credible evidence of any violation in this case of the Section 2500.9 requirement that an accessory building not obstruct the light and ventilation or privacy of any neighboring properties.

The simple truth is that while a few neighbors may not like this apartment unit structure and second story garage, it is a permitted use in the R-1-B zone and the construction of this garage meets all the legal requirements of the District Code and Regulations. In my view, therefore, the instant Appeal should clearly be dismissed.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jerry Levine /as".

Jerry Levine
Vice Chair
ANC 3/4G

Enclosure: Letter from DCRA Director Neil A. Stanley, October 21, 2005.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



Office of the Director

October 21, 2005

Mr. Robert Gordon
Chairman ANC 3/4G
P.O. BOX 6252 – Northwest Station
Washington, DC 20015-6252

Subject: 5362 27th Street, NW

Dear Commissioner Gordon:

This letter is written in response to your letter to Mr. Lennox Douglas, in which you asked DCRA to provide clarification of a permit matter regarding the above-referenced location.

Specifically, you stated that a “building permit was issued for construction of the garage prior to June 2004. Although the permit apparently included the option of building a second-story for an apartment unit above the garage, you had been told, but have not verified, that the original builder of the house on the property (Zuckerman Brothers) may have had a verbal understanding with adjoining neighbors that such a second-story would not be constructed on top of the garage. The one-story garage was built in June 2004. After final approval following inspection, the property was apparently sold to the Epsteins. Sometime thereafter, which may have been as long as one year, after, we are advised that the Epstein’s notified their neighbors that they intended to construct a second-story apartment unit on top of the completed one-story garage.”

Below please find our responses to your questions. Additionally, we have forwarded a copy of your request for a written legal opinion to the Office of the Attorney General for review and response.

Question A: *Can you verify any or all the above facts? What is the applicable zoning on the property?*

Response A: Verification of the above information is as follows:

A search of the Permit Service Center records reflect that a building permit was issued October 3, 2003, for the construction of a new single family two-story; detached garage and site retaining wall as per plat and plans.

DCRA has no information regarding any verbal agreement that may have taken place between the former property owners or the neighbors and the current property owners.

Pursuant to the District of Columbia Building Code Supplement 2003, Section 109.3.10 Final Inspection, DCRA does not conduct *final inspections* on single family dwellings. However, DCRA conducts periodic inspections to ensure that all work is performed in strict accordance with permit conditions, approved plans and the Construction Codes. The inspections are conducted in phases. The ground work was inspected and approved January 20, 2004; the plumbing work was inspected and approved March 12, 2004; the electrical work was inspected and approved June 9, 2004 and the close-in/framing inspection was conducted and approved September 9, 2004.

DCRA does not maintain records of property sales in the District of Columbia. This information can be obtained from the Office of Tax and Revenue, located at 941 North Capitol Street, NE.

The property is located in a Residential High Density (R-1-B) District.

Question B: *What was the date of the final inspection of the house when owned by the Zuckerman Brothers? Was the garage included in such inspection?*

Response B: Please see response to *Question A* on final inspection. DCRA has no record of when the Zuckerman Brothers transferred ownership. However, the last inspection conducted in 2004 was a close-in/framing inspection on September 9, 2004. The garage was included in this inspection.

Question C: *Was a valid building permit issued for the garage and did it include permission to construct a second story apartment unit? If it include the second-story unit what are the permitted uses for such an apartment? Is the permitted use of such a second-story apartment above a garage limited to occupancy by domestic employees of the house owner? Are any other uses permitted? How is such intended use to be verified and are there any written assurances of such intended uses required?*

Response C: Yes, a valid building permit was issued for the garage that included permission to construct a second story apartment unit.

The permitted uses for such an apartment can be found in the District of Columbia Municipal Regulations (DCMR), Title 11, Section 2500.5, which states 'In an R-

1A or R-1-B District only, an accessory private garage may have a second story used for sleeping or living quarters or domestic employees of the family occupying the main building.

The DCMR Title 11, Chapter 2 – R-1 Residence District Use Regulations does allow for other uses that are permitted as a matter of right and accessory use in R-1 Districts. This chapter can be accessed on line through the DC Government website at www.dc.gov, then search municipal regulations.

The intended use is stated at the time the property owner submits the application for the building permit. The applicant or his/her agent signs the application verifying that if the permit is issued, the construction will conform to the DC Construction Codes, the Zoning Regulations and other applicable laws and regulations of the District of Columbia.

Additionally, if a neighbor or other concerned citizen files a complaint with DCRA that a building is not being used as its intended use, DCRA will visit and conduct an inspection of the property to ensure compliance with all relevant codes and regulations.

Question D: *If the building permit was issued to the Zuckerman Brothers entity that built the house and garage was the permit validly assignable to the Epsteins upon a sale? Do you have any record of such an assignment? Do you have any record of any application for further construction or reconstruction of this property subsequent to the sale to the Epsteins? Would a totally new and separate application for a building permit to construct the second-story apartment unit above the garage have been required of the Epsteins? If so, was any such application filed with your office?*

Response D: No, a new property owner is required to apply for and obtain a new building permit to continue any construction activity at the property that requires a permit.

DCRA does not have any further records of applications filed and/or permits issued for this property address.

The agent for the property owner, Matthew Epstein, applied for and was issued a revised permit for a *change in ownership* on August 10, 2005 for the property in question.

Question E: *Was a demolition permit required for the roof of the one-story garage before the second-story unit is built? Was any such demolition permit application filed? Were there any other required permits necessary to be received before the second story unit is built? Were any such permits received? If so, could you please give us the dates and copies of such permits?*

Response E: No, a demolition permit was not required for the roof of the one-story garage before the second story unit was built.

The property owner applied for and was issued a supplemental plumbing permit on July 25, 2005 and a supplemental electrical permit on August 1, 2005.

You may obtain copies of the permits at the Permit Service Center Office of Records Management located at 941 North Capitol Street, NE Room 2100, Monday-Friday between the hours of 8:30 a.m. and 4:15 p.m. You may also obtain copies through a FOIA request.

Question F: *Has your office received any objections to the construction of this second-story apartments unit and if so, what action has been taken with respect to such objections? Have any stop work order been issued for this property and if so, what is the basis and disposition of such orders? Are any such orders still outstanding?*

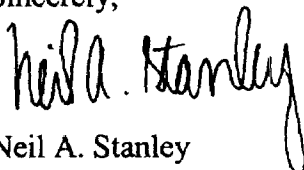
Response F: No, DCRA has not received any objections to the construction of this structure. Yes, a stop work order was issued on August 9, 2005 due to the property owner performing construction without a valid permit. The property owner's agent applied for and was issued a revised permit to reflect new ownership and permission to complete construction in accordance with approved plans. No, no stop work or other violations are outstanding at this property address.

Question G: *If a stop work order was issued and subsequently removed for this property, were any conditions placed on the property as a result?*

Response G: When a stop work order is issued and the property owner abates the violation, the property owner is authorized to proceed with the construction activity in accordance with the approved plans, issued permit and the relevant Codes.

Thank you for bringing this matter to our attention. If you have additional questions concerning this matter, please contact me at (202) 442-8947.

Sincerely,



Neil A. Stanley
Deputy Director for Licensing and Permitting

IQ# 195660