

**Notes on Armando Lourenco's Testimony
In the Appeal of Zoning Administrator's Decision to Issue a Permit
To Erect a 2-story Garage at 5362 27th Street, NW
BZA Case No. 17414
Hearing Date: February 21, 2006**

Mr. Chairman, Members of the Board, Good Afternoon. Thank you for the opportunity to address this Board on the matter of the two-story accessory building at 5362 27th Street, NW.

The matter under appeal before the Board relates to Building Permit B456380, a permit to construct a one-family detached dwelling with accessory private garage – the “original permit” issued on 10/30/03 to 27th Street, LLC, a corporation controlled by the homebuilder Zuckerman Brothers – and Building Permit B476241 – the “revision permit” issued on 8/10/05 to the Trustees of the Michael Sears Trust, represented by its agent Matthew Epstein. The purpose of this revision permit was to amend the original permit to reflect a change of ownership from the Zuckerman Brothers corporation to the Trust represented by Mr. Epstein.

This project is located in a R-1-B zoning district. The Appeal invokes violations of the Zoning Regulations that tainted the approval of these two permits. It is my opinion that the Zoning reviewer erred not once but twice when the two permit applications were approved by the Zoning Division.

The Original Permit Error

When the original permit was issued, the Zoning reviewer, R. Joseph, approved a plat that shows a 25 ft rear yard restriction line – properly laid out by the project architect with the 25 ft depth measured from the rear lot line. The plat also shows a structure straddling the rear yard line and noted by the reviewer as a “2-story garage.” Subsequently, by letter of 10/21/05, DCRA justified this approval based on §2500.5 of 11 DCMR. That section allows an accessory private garage in R-1 to have a second story for a very specific and limited use.

Whether or not the declared intention of the owners meets the strict use limitations of §2500.5 is a rather elusive enforcement matter that the Zoning Administrator may have to face in due time. Fortunately, the next section, §2500.6 – one of the sections at the heart of this appeal – is much more clear cut. It imposes three (3) additional conditions on the two-story accessory building allowed by §2500.5:

1. It shall not exceed 20 ft in height.
2. It shall not be located within the required rear yard.
3. It shall be set back from the side lot lines as required for the main building.

At issue is whether the “2-story garage,” as approved, meets condition number 2. DCRA and the Zoning Administrator stand by their decision, thereby considering the garage is not in the required rear yard. The plat appears to show otherwise. And in my

opinion, this was the first the first erroneous decision made by the Zoning Administrator's office in this project.

The argument subjacent to this erroneous approval, the implicit reason behind the ZA's decision to approve the 2-story accessory building pursuant to §2500.5, is that the rear yard requirement in R-1 is driven only by the provision of adequate light and air. In that case, they argue, keeping 25 ft of open space between the main building and the nearest structure to the rear of it, would suffice to meet the light and air purpose of the rear yard in R-1. For light and ventilation purposes alone, this 25 ft open space – in fact an open court between the two structures – would be adequate. But it does not meet the rear yard requirement.

That the required depth of rear yards in residential districts is driven by considerations other than light and air is patent in §404.1. If, as stated in §101.1, the provisions of the Zoning Regulations “*shall be held to be the minimum requirements*” to, among other things, “*provide adequate light and air,*” one has to conclude that the 12 ft rear yard required for a 48 ft high residential building in zoning district R-5-E provides adequate light and air to its residents, even if the building has no side yards. Why then would a detached dwelling in zone R-1 – limited to a height of 40 ft and with two side yards – need a rear yard more than twice as deep?

Clearly, the regulators were not concerned with light and air when they required increasing depths of rear yard, from 12 ft to 15 ft, to 20 ft, to 25 ft as they moved from more dense residential districts to the least dense R-1 districts. It is unimaginable that the regulations would apply different criteria of “*promotion of public health*” – such as for light and air – to different residential zoning districts.

The reason why the minimum required depth of rear yards in R districts varies from 12 to 25 ft is because that requirement is driven by other concerns that, at least in the case of zones R-1 through R-5-D, trump the setbacks for light and air. Rear yards in R districts are dictated by concerns of density, stability of land values, and of privacy of use and enjoyment of neighboring properties, as prescribed in §101.1, §101.2 and §223.2.

§223 illustrates particularly well the type of concerns the regulators had in mind when they wrote §404 (Rear Yards). The Regulations establish, in §223, the conditions under which BZA may approve, in R-1 districts, additions that may not comply with, among others, §404. §223 focuses on the issue of substantial “*adverse effect on the enjoyment of abutting or adjoining dwelling or property.*” In particular, specific guidance includes not compromising “*the privacy of use and enjoyment of neighboring properties.*” (§223.2(b))

One of the specific criteria of §223.2(c) addresses the view “*from the street, alley and other public way*” which “*shall not substantially visually intrude upon the character,*

scale and pattern of houses along the street frontage.” Submission requirements in §223.2(d) require sufficient details *“to represent the relationship to adjacent buildings and view from public ways.”*

Although the case under appeal does not involve an addition requiring special BZA approval, §223 is relevant because it sheds light on the nature of rear yard requirements. As §223 addresses important factors to consider when contemplating relief for rear yard requirements, the factors enumerated clearly take into account the impact of the building on the surrounding properties and rights-of-way, as observed from the outside of the lot. If, as the ZA contends, the required rear yard could be tucked away behind a 2-story building, essentially hidden from the rear right-of-way and adjoining rear properties, the conditions of §223 would not make much sense.

Another aspect of the ZA’s decision that I wanted to address is the novel concept of a rear yard that does not reach the rear lot line. Although the definition of rear yard is ambiguous enough to elicit the creative interpretation that you now have before this Board, there are plenty of instances in the regulations that indirectly shed light on the concept of rear yard and strongly suggest that the intent of the regulators was to keep structures, not specifically allowed in a rear yard, away from the rear lot line.

Examples of these instances include the following:

- §774.7(b) clearly mandates that *“the depth of the rear yard shall be measured from the rear lot line to the rear wall.”*
- Several other sections (e.g., §404.2, §774.7(a), §774.9(a)) provide limited relief, where the lot abuts a street or an alley at the rear, allowing the depth of the rear yard to be *“measured from the center line of the street”* (or alley), instead of the rear lot line, to the rear wall of the building.

These examples point to a rear yard that starts at the rear of the lot and extends, for the entire width of the lot, to the rear building line. Even the exceptions that allow the rear yard to incorporate half the width of the abutting right-of-way reinforce this concept of maintaining an uninterrupted clear space separating the adjoining property or right-of-way to the rear of the property from the massing and visual impact of the rearmost structures in the lot.

To start the measurement of the “required rear yard” from the main building toward the rear of the lot is counter-intuitive and leads to absurd conclusions. If one establishes that the “required rear yard” in R-1 are the first 25 ft of open space immediately adjoining the rear wall of the building, it follows that no rear addition to the building would be allowed – since it would immediately encroach into the “required” rear yard – even if the total rear yard was 50 ft deep. This obviously wrong determination would be the absurd consequence of the erroneous concept of required rear yard.

The Second Permit Error

In my opinion, DCRA may have erred altogether when they issued revision permit B476241 amending a permit that had lapsed by virtue of the construction activities under the original permit having been discontinued for more than six months at the date permit B456380 was revised (8/10/05). This is, however, a matter for a different forum.

What is properly within the purview of this Board, however, is the fact that the Zoning Regulations, in §3202.4(b), require any amendment of the permit to *"comply with the provisions of (title 11 DCMR) in effect on the date the permit is amended."* In other words, on August 10, 2005, the Zoning Administrator's office had to make another decision on the overall project and failed, again, to apply the provisions of §2500.6 correctly.

Conclusion

In conclusion, the Zoning Regulations require a 25 ft rear yard for each structure in a R-1 district (§404.1). A private garage – by definition a building not more than 900 SF in area with specific very limited allowable uses (§2300) – is allowed as an accessory building (§204.1(a)) in residential districts. As a one-story building (§2500.4) the private garage is allowed to encroach in a rear yard (§2500.2), recognizing the limited visual and massing impact of a one-story building.

The accessory private garage is allowed to have a second story in a R-1 district, strictly "for sleeping or living quarters of domestic employees of the family occupying the main building" (§2500.5). From a regulatory point of view, the main difference between the one-story private garage and the two-story garage/living quarters building is the allowable location: the regulations recognize the substantially more adverse effect (massing and visual) of the two-story structure and require it not to be located in the required rear yard (§2500.6) to avoid compromising the privacy of use and enjoyment of abutting properties.

The approval of the 2-story accessory building located as shown on the approved plat, and the subsequent approval of the construction of the second floor on Lot 27 of Square 2292 are, in my opinion, erroneous decisions that do not meet the requirements of 11 DCMR and, as such, should be overturned by the Board.

Thank you for your attention.