

BZA CASE NO. 19747 OF DEBORAH VAN BUSKIRK

MAY 16, 2018

445 15TH STREET, SE

Background

- Applicant purchased the Property in early 2016, without the knowledge that there was no record of a building permit on file for existing garage
- Neighbors have informed the Applicant that the garage has existed for at least 15 years
- Garage sits at the rear of the lot, directly abutting the alley, and the footprint of the garage causes the Property to exceed the permitted lot occupancy for the RF-1 Zone, as well as other nonconforming situations
- Applicant is in the process of obtaining permission for a curb cut, in order to access the garage from the street side
- During this process, Applicant was told to present a building permit for the garage
- DCRA staff informed her that she would need zoning relief in order to get a building permit for the existing garage

Half

6996

Surveyor's Office
DISTRICT OF COLUMBIA

PERMIT NO.

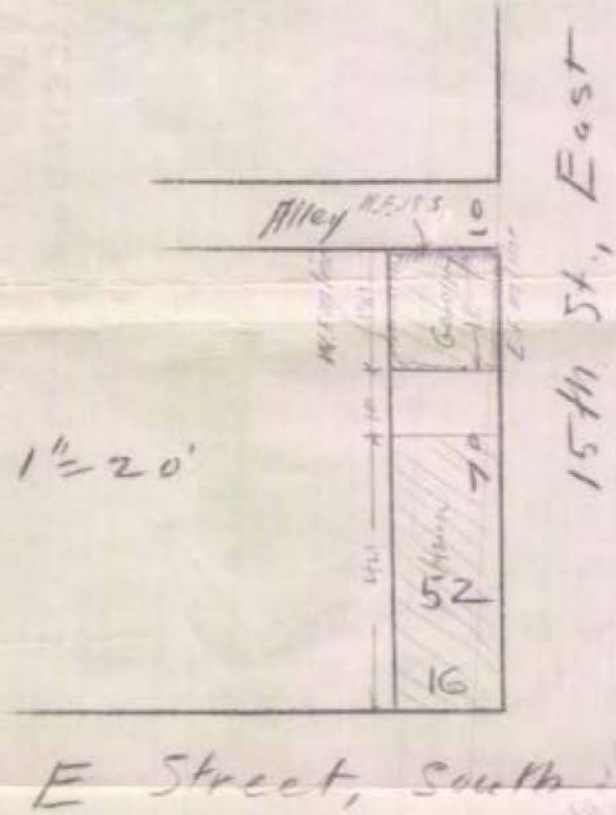
Washington, *April 15 1921*

Plat, for Building Permit of *10+52 Sq. 1062*

Recorded in Book *25* page *85*

S.O. 6117

Every plat or application shall show upon such plat or survey, drawn to some scale as the plat or survey, all buildings or additions, located and to be located, and the buildings or additions must be located and erected as shown on said plat or survey. Building Regulations, paragraph No. 27



78/0

J. E. Smith

Surveyor

Historic Plat

Overview

- Special Exception Relief pursuant to E § 5201
 - Size of Accessory Structure in the Required Rear yard setback (11-E DCMR § 5004.2(b))
 - Accessory building center line alley setback requirements (11-E DCMR § 5004.1)

- Area Variance relief from the lot occupancy limitations of the RF-1 Zone
 - Limited to 60% as MOR
 - Limited to 70% via special exception
 - Lot occupancy is 85%



Existing Garage

General Special Exception Requirements of X-901.2

The granting of a special exception in this case “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps ...” (11-X DCMR § 901.2).

- Will not adversely affect the adjacent properties— the Applicant is not proposing to change the status quo
- Several other properties in the area have existing garages in rear yards that are larger than 100 sq. ft. and that do not meet the setback requirements



Special Exception Relief pursuant to E § 5201

- Rear yard requirements of 11-E DCMR § 5004.2(b)
 - Accessory structures in required rear yards must be less than 10 ft. in height and less than 100 sq. ft.
 - Garage is less than 10 ft. but is 288 sq. ft.
- Accessory building center line alley setback requirements of 11-E DCMR § 5004.1
 - Accessory building must be setback 12 ft. from the centerline of the alley
 - Alley is 10 ft. and garage directly abuts the alley
 - Accordingly it is only setback 5 ft. from the centerline of the alley

Requirements of E-5201.3

- 5201.3(a): *The light and air available to neighboring properties shall not be unduly affected;*
- 5201.3(b): *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*
- 5201.3(c): *The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage;*
- The garage is only 9 ft. 9 in. in height and has existed for at least 15 years according to surrounding residents and included some other “un-roofed” structure for many years before that, reportedly used as a mechanic’s shop
- The garage has no west-facing windows; properties to the south, east, and north are separated by E Street, 15th Street, and an improved public alley, respectively
- Several other buildings on this square have garages or accessory structures abutting public alley

Requirements of D-5201.3

5201.3(d): In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways

5201.3 (e): The Board of Zoning adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%)

- The applicant has provided plans, photographs, and maps to demonstrate the relationship of the accessory structure to adjacent buildings and views from public ways
- Accessory structure and principal structure have a total lot occupancy of 85%; Applicant is requesting relief from this provision

D § 5201.4 - 5201.6

- *Section 5201.4 “The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.”*
- The Applicant will comply with Board directives for protection of adjacent and nearby properties.
- *Section 5201.5 “This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.”*
- The Applicant is not requesting to introduce or expand a nonconforming use.
- *Section 5201.5 “This section may not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.”*
- The Applicant is not requesting to introduce or expand nonconforming height or number of stories.

Requested Relief: Variance from Lot Occupancy Requirements

- The Applicant is requesting variance relief from the lot occupancy requirements of 11-E DCMR § 304.1 (total lot occupancy of 85%)
- The Applicant must demonstrate three elements:
 - (1) Unique physical aspect or other extraordinary or exceptional situation or condition of the property;
 - (2) Practical difficulty from strict application of the Zoning Regulations; and
 - (3) No harm to the public good or the zone plan.

Applicant Meets the Variance Test:

Exceptional Situation/Condition

Monaco v. D.C. Board of Zoning Adj.: Court affirmed the BZA's broad interpretation of the uniqueness test and the Board's ability to consider the history of the Applicant, its traditions, as well as the existing structure on the property

• Location

- Orientation of the Property makes it so that the rear of the Property is at the entrance to where people turn into the alley
- No other properties on this square—or even the adjacent squares—are similarly located
- Entrance to the parking area exits onto 15th Street, not the alley, giving the public direct access to the Applicant's property

• History of the Applicant and the Property is unique

- Applicant purchased the Property as it exists now—with a garage at the rear of the Property
- No indication that the garage was not permitted
- Applicant had no reason to believe the garage was not legally constructed
- Not until 1.5 years after she purchased the property she learned the contractor never obtained a building permit for the garage
- Applicant does not know when the garage was constructed and whether or not it was constructed with approval by DCRA, but the lack of any permitting history on file requires that this relief be obtained in order to get a building permit

Applicant Meets the Variance Test:

Practical Difficulty

- Most obvious and harmful result is that the Applicant would be forced to demolish a garage that she did not construct
- Garage was already constructed when she purchased the Property, and it had been there for at least 15 years, and the Applicant in good faith had no idea this was a nonconforming situation
- The garage provides protection for vehicles, as the rear of the Property is located at the entrance to the alley, which is very narrow

Applicant Meets the Variance Test:

No Substantial Detriment to the Public Good

- Garage is already constructed and does not impact the only adjoining property to the north
- Adjacent neighbors are in support of maintaining the status quo
- Many properties on this square have accessory structures directly abutting the alley, most are over permitted lot occupancy
- This structure will not create any additional impact– as it already exists without any impact
- Property is unique for the square and surrounding area—no other Property in the square has a rear yard that is on the corner of an intersecting alley and street

Applicant Meets the Variance Test:

No Impairment to the Integrity of the Zoning Regulations:

- Property is unique for the square and surrounding area—no other Property in the square has a rear yard that is on the corner of an intersecting alley and street
- The Office of Planning and the Board have found in unique situations like this that the existence of a noncompliant condition over a period of time combined with a subsequent purchaser's good faith ignorance of the condition can be a condition which qualifies for variance relief

Similar BZA Approvals

BZA Case No. 19517- 943 S Street, NW

- Recent case where the Board granted relief from the 900 ft. rule to permit the use of an existing 3-unit building in the RF-1 Zone
- OP recommended approval based on the fact that it was an existing 3-unit building when the applicant's purchased the property, converting the property back to 2 units would be a practical difficulty to the current homeowner
- The report also noted there would be no detriment to the public good or harm to the zoning regulations because the 3-unit configuration had existed for many years and there would be no new impact on neighbors

BZA Case No. 17991

- Applicant was requesting relief from the 900-ft. rule; was 699 sf. short
- Applicant purchased the property without knowledge that it had been converted to 3 units without proper zoning approval
- OP recommended approval

Similar BZA Approvals

BZA Case No. 19029

- Applicant requested relief to keep the existing 3 unit configuration
- Applicant originally requested to add another unit but later amended the request to simply maintaining the status quo (3-units)
- At first the Office of Planning did not recommend approval because the Applicant proposed to add a 4th unit, but at the hearing OP testified that it would not oppose the Applicant's alternative proposal for 3-units
- Board granted relief as it would have been expensive to convert to 2-units after 20+ years of 3-unit configuration

BZA Case No. 18515

- Applicant requested relief from the lot area requirements in order to convert a NC 4-unit apartment building/dental office into a 6-unit apartment building
- OP supported the relief, as no additions were proposed, the building was already used for multi-family use, and the existing configuration was problematic

Similar BZA Approvals

- This case is analogous to the previously-referenced cases
- In this case, as in the other cases, a noncompliant situation was considered to be a unique condition and the correction of that condition was considered to be a practical difficulty to a subsequent good faith homeowner
- OP has agreed with that position as recently as September 2017

Conclusion

- ANC supports
- Adjacent neighbors support
- Not proposing to change the status quo