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Via IZIS

Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re. Additional Submission- BZA Case No. 19747 of Deborah Van Buskirk- 445 15th Street, SE

Dear Members of the Board:

At the hearing on May 16, 2018, the Board requested that the Applicant submit additional information regarding the matter-of-right and special exception options for the garage. The Board also requested additional information regarding the cases cited in the Applicant's presentation.

Old Permit

Enclosed is an approved building permit for the garage from 1921. Subsequent to our BZA hearing, further research revealed that a building permit was initially issued for the garage nearly 100 years ago. It appears from discussions with neighbors that at some point the roof was removed, while the walls remained; or at least, those walls were in existence prior to the roof being constructed at some point several years ago. Between the initial roof removal and the Applicant's subsequent purchase, a new roof was constructed, apparently without another building permit, which is why the Applicant is still required to request BZA relief now.

Cost Estimate

Enclosed is a cost estimate for the garage demolition. Also enclosed are plans comparing the existing garage with other potential garage layouts (page 4). An accessory structure measuring 164 square feet would be permitted via special exception; however, a 240 square foot garage is the practical minimum—as it would provide enough room to open car doors. A car would likely not fit in the special exception option,[1] and opening car doors would be impossible. As the special exception option would render the garage useless, the only other option would be to demolish the garage. As the estimate shows, it would cost the Applicant $23,450 to demolish the garage. Accordingly, the Applicant will be faced with a practical difficulty if the zoning regulations are strictly enforced as she would be forced to pay for the demolition of an existing garage—a garage which she did not construct, and which was there when she purchased the property. Furthermore, it is a garage with some permitting history, as a garage in this exact space was lawfully permitted in 1921.

BZA Case Law Allowing Approvals of Existing Nonconformities in Limited Situations

The Board has previously granted variance relief for situations in which an applicant purchased a property without knowing that there was an existing illegal situation created by a previous owner. In those cases, the Board—and the Office of Planning—viewed the existing nonconforming situation as an exceptional condition and viewed the cost of resolving that existing nonconformity to be a practical difficulty.

[1] Existing length is 19.4 ft. so the width would have to be limited to 8.4 ft. in order to comply with the special exception option.

In these BZA Orders, we have not found what one might say is a "bright-line" test for such an approval, but there are consistent elements between these cases and the present case. Those elements include the following: (i) the nonconforming situation has existed for some time, typically perhaps ten (10) years or more. There is no test provided as to how much time, but it may depend on the type of nonconformity; (ii) an element of good faith that the purchaser did not know or would not have known of the nonconformity, and certainly that they had no part in the creation of the nonconformity; (iii) a clear element of cost to resolve the situation, whether it be removing an existing structure, or eliminating a third unit and combining two units into one; and (iv) nominal or limited potential impact to the community from the granting of the relief.

We believe that all of these elements show up concretely in the cases discussed below, and in the present case. In addition, there are several factors which argue that the present case, under the standards above, is a much more straightforward approval for the following reasons, at least: (i) the 3-unit conversion cases all involve an applicant that knew that they were entering a commercial enterprise in renting residential units, and this should require a higher level of expected due diligence in confirming the zoning compliance of those three units. In the present case, Ms. Van Buskirk is simply a single-family homeowner-resident, and it would be quite unusual for a person in that situation to question the lawful existence of the garage; and (ii) the 3-unit cases refer to a question of "use" whereas the present case is merely about lot occupancy. As the Board knows, "use" is generally considered to be a function of zoning which potentially impacts the larger community, whereas potential impact from "area" nonconformities is typically more limited. For these reasons, we assert that the present situation is an even more benign and acceptable situation for the Board to resolve, than were the 900-foot rule cases. In addition, the fact that the subject garage was originally permitted in 1921, provides another element that makes its reconstruction more understandable, and its approval now more acceptable.

Summary of Cases Discussed

In BZA Case No. 19517, the Board granted area variance relief from the 900-foot rule in order to allow the continued use of an illegal third unit in the RF-1 Zone at 943 S Street, NW. The Office of Planning recommended approval based on the fact that it was already configured as a three-unit building when the applicant purchased the property and converting the property back to two units would be a practical difficulty to the homeowner.

In BZA Case No. 19029, the applicant requested area variance relief from the 900-foot rule in order to keep the existing three unit configuration at 1338 Fairmont Street, NW. At first the Office of Planning did not recommend approval, because the applicant requested to add a fourth unit; however, OP testified at the hearing that it would not be opposed to the applicant keeping the status quo—even though it would still require an area variance. The Board granted relief as it would have been a practical difficulty to the applicant to convert the Property back to two units after 20+ years of a three-unit configuration.

In BZA Case No. 17991, the applicant requested relief from the 900-foot rule in order to maintain the existing three-unit configuration at 2034 North Capitol Street, NW. The property was 699 square feet short of the required 2,700 square feet. The applicant purchased the property without knowledge that it had been previously converted to three units without the proper zoning approval. The Office of Planning recommend approval, and the Board granted relief, based on the fact that the applicant had no knowledge that the existing configuration was not legal.

In at least one case, the applicant was permitted to expand an existing nonconforming residential building located at 200 5th Street, SE. In BZA Case No. 18515, the applicant requested relief from the 900-foot rule in order to convert a non-conforming four (4) unit apartment building/dental office into a six (6) unit

apartment building in the RF-1 Zone. The Office of Planning supported the relief, as no additions were being proposed and the building was already used for multi-family use.

Sincerely,

Martin P. Sullivan
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