

8. Burden of Proof for Variance

This application concerns the property located at 3566 Alton Place NW, Square/Lot 1970 0081 in Ward 3. The property is currently being used as a single-family dwelling and has been as such since our purchase approximately three years ago.

No physical changes or alterations to the property are being proposed in association with this variance. This variance application is being submitted solely to address an administrative discrepancy discovered by the Department of Buildings nearly three years after our purchase of the property.

We are seeking an area variance from D – 203.2 and X – 1000.1 which specifies building height. The Department of Buildings has determined that our property does not conform with this requirement, despite no changes being made to the property since our purchase.

Relevant Code Sections

The following sections of the Zoning Regulations of the District of Columbia apply to this variance request:

- D – 203.2
- X – 1000.1

In short, Title 11, Subtitle D, [Chapter 12 rule 1203.2](#) states that “In R-19 and R-20 zones, a building may have a maximum height of no more than forty feet (40 ft.) only if a property adjacent on either side has a building height of forty feet (40 ft.) or greater.”

Further, Title 11 Subtitle X, [Chapter 10-1 rule 1002.1](#) states “The standard for granting a variance, as stated in Subtitle X § 1000.1 differs with respect to use and area variances as follows: (a) An applicant for an area variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property; and (b) An applicant for a use variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property.”

Area Variance Criteria

As required by Subtitle X § 1002.1(a), we must prove that "as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property."

We demonstrate compliance with this standard as follows:

1. Attributes of the Specific Property (§ 1000.1):

- The property was developed with a height of 42 feet, which exceeds the permitted maximum of 40 feet by 2 feet.
- This height discrepancy resulted from measurements taken from the side of the house, instead of the center, by the developer during the original construction and approval process.
- This measurement discrepancy was not discovered during the city's review/approval process nor our purchasing process and was only identified by the Department of Buildings approximately three years after our acquisition of the property.
- These attributes are specific to this property.

2. **Peculiar and Exceptional Practical Difficulties:**

- Strict application of the height regulation would create peculiar and exceptional practical difficulties for us as property owners because:
 - We purchased the property in good faith, believing it to be compliant with all zoning regulations.
 - The technical non-compliance was only discovered three years after purchase through no fault of our own.
 - Compliance with the strict letter of the regulation would require either: a) Removing an entire story of the house, which would substantially reduce the living space and value of the property, require extensive reconstruction, and necessitate temporary relocation during construction; or b) Adding fill dirt to at least half of the garage to artificially raise the grade, which would render a significant portion of the garage unusable, potentially create drainage issues, and negatively impact the property's functionality.
 - Both compliance options would impose significant financial burdens not anticipated at the time of purchase.
- The COVID-19 pandemic likely contributed to communication challenges between the developer and District officials during the original approval process, resulting in this measurement oversight, creating a unique circumstance beyond our control.

Additional Considerations

The following additional considerations support our application:

1. **No Substantial Detriment to the Public Good:**

- The property has existed in its current form for at least three years without incident or complaint from neighbors regarding its height.
- The 2-foot height discrepancy is minor and not readily apparent to casual observation.
- The remediation options (removing a story or filling the garage) would potentially cause more neighborhood disruption than maintaining the status quo.
- The existing structure is architecturally consistent with neighboring properties and the character of the area.

2. No Substantial Harm to the Zoning Regulations:

- The requested variance addresses a technical non-compliance rather than a substantive deviation from the zone plan.
- The 2-foot height difference does not materially impact the intent of the height restriction, which is to maintain neighborhood scale and character.
- The property's appearance and impact on the streetscape are consistent with the general purpose and intent of the approved structure.
- Granting this variance would maintain the status quo rather than introducing any new or incompatible elements to the area.
- The alternatives to granting this variance (removing a story or filling part of the garage) would potentially create more practical problems than they would solve, contradicting the overall purpose of zoning regulations to promote practical and functional land use.

Conclusion

Based on the foregoing, we respectfully submit that we have met the burden of proof required for the approval of this variance request. The exceptional situation resulting from administrative oversight prior to our ownership, combined with the lack of any detrimental impact on the public good or the zone plan, satisfies the criteria set forth in Subtitle X § 1002.1.

We therefore request that the Board of Zoning Adjustment grant the variance requested herein to allow the continued operation of the property as it currently exists.

Respectfully submitted,

Anthony and Audrey Barresi

Owners
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