

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - February 9, 1972

Appeal No. 11064 Anthony Adams, appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and unanimously carried, the following Order of the Board was entered at the meeting of February 15, 1972.

ORDERED:

That the appeal for a variance from the provisions of Section 7502.3 to permit garage with attic space not to exceed 17 feet in height at 518 Oglethorpe Street, NE., Lot 197, Square 3733, be DENIED.

FINDINGS OF FACT:

1. The subject property is located in a R-2 District.
2. The property is presently used as a single family residential structure.
3. The appellant received a permit to build a 15 foot high garage pursuant to plans drawn by an architect.
4. After receiving a permit to build a 15 foot high garage, the owner requested the contractor to add additional height to the garage which the contractor did without getting a new permit or getting permission from the Board of Zoning Adjustment to do so.
5. The permit granted to the appellant was for a 15 foot high construction. The existing construction is now in excess 16.4 feet.
6. As a result of the additional construction, the appellant now request a variance to allow the garage with a loft not to exceed the 17 foot height.

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7. At the public hearing there was opposition to the granting of this appeal. The neighbors object to the appeal based upon the following reasons:

- "(a) The construction is an eyesore and will certainly adversely affect the surrounding properties and the neighborhood overall.
- (b) If this type of construction is allowed to remain, it will most definitely be extremely difficult to deny similar construction on other properties, thus causing a rapid deterioration of the neighborhood and loss of property value, this we do not want."

OPINION:

The Board feels that the request for a variance not to exceed the 17 foot height requirements should be denied. Our action is, in part, based upon the appellant's knowledge prior to construction that any construction beyond the 15 feet permitted by the Department of Licenses and Inspection Branch would need a new permit or permission from the Board of Zoning Adjustment. The appellant proceeded with the additional height construction knowing that they did not conform to the plans as previously approved and as a result, the additional construction was done with the knowledge that the additional height would need approval and could possibly not be granted.

The Board is of the opinion that appellant has not proven a hardship within the meaning of the variance clause of the Zoning Regulations and that a denial of the requested relief will not result in peculiar and exceptional practical difficulties and undue hardship upon the owner.

Further, we hold that the requested relief cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

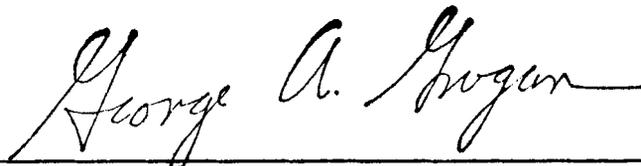
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It is therefore our opinion that the garage should not exceed the 15 foot height limit and that appellant's hardship was of his own making. For he who claims equity must have clean hands.

The Board is cognizant that its rules of procedure at the time of the hearing on this matter did not specifically provide for cross-examination but that there was no specific request for an opportunity to cross-examine made or denied. If any person participating in this proceeding believes that he has been prejudiced by the lack of an opportunity to cross-examine, the Board is disposed to entertain a motion to re-open this case to permit corss-examination. Such a motion should be made within fifteen (15) days from the date of this final decision. The motion should identify the witnesses to be cross-examined, as well as that portion of his testimony to be subjected to cross-examination. Specific reference to the transcript of proceedings will be helpful. Copies of the transcript are available for inspection by the public in the Offices of the Zoning Commission, District Building, Room 11A, 14th and E Streets, NW. between 8:15 a.m. and 4:45 p.m. The motion should be forwarded to the Board in care of this address. The motion should also be served upon all other persons appearing in proceedings. Opposition to the motion should be filed and served on all other persons to the proceedings no later than five (5) calendar days after receipt of the motion.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED:

By: 

GEORGE A. GROGAN
Secretary of the Board