

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15502 of Albert H. Kramer, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing non-conforming structure [Paragraph 2001.3 (a), (b) and (c)], a variance from the allowable percentage of lot occupancy requirements (Subsection 403.2), and a variance from the rear yard requirements (Subsection 404.1) for a garage addition to a nonconforming structure in an R-5-B District at premises 2508 Cliffbourne Place, N.W. (Square 2546, Lot 806).

HEARING DATE: May 8, 1991

DECISION DATES: June 5, July 10 and 24, 1991

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located at 2508 Cliffbourne Place, N.W. It is located on the west side of the street between Calvert and Biltmore Streets, N.W. The property is zoned R-5-B.

2. The subject lot consists of 1,875 square feet in land area. It is improved with a three-story plus basement, brick, semi-detached structure that was built in the early 1900s. The structure occupies 1,051.7 square feet of land area (56 percent of the lot). A 366.7 square-foot concrete parking slab is located directly to the rear of the structure, abutting both the rear of the structure and the public alley. A small rear yard and walkway accessing the alley are also located adjacent to the parking slab. The subject structure shares a common party wall with the dwelling to the north. A six-foot wide side yard is located along the property's southern lot line and separates the subject structure from the neighboring residential structure to the south.

3. The area surrounding the subject site is developed primarily with large, single-family, row dwellings, many of which have been converted to apartment buildings, flats, and rooming houses. Larger apartment buildings are also interspersed throughout the neighborhood. Calvert Street, N.W. is located one-half block to the north of the property, and the intersection of Columbia Road and 18th Street, N.W. is situated approximately one block to the east.

4. The subject site is located in an R-5-B District. The R-5-B District permits matter-of-right development of general residential uses including single-family dwellings, flats, and

apartments to a maximum lot occupancy of 60 percent, a maximum floor area ratio (FAR) of 1.8, a maximum height of 60 feet, and, relative to this application, a minimum rear yard depth of 15 feet.

5. The applicant is currently using the property as his residence. He has done extensive renovations to the property in preparation for renting it as a three-unit apartment house. The applicant proposes to re-construct a garage over the concrete slab at the rear of the property. Previously, there existed a garage structure on the property. This garage was razed in 1987 by the previous owners because the condition of the structure had deteriorated.

6. The proposed garage would occupy 366.7 square feet of the land area of the lot. With the garage, the total lot occupancy would be 1,418.4 square feet or 75.65 percent. The applicant is requesting a variance from the allowable lot occupancy requirements in the amount of 293.4 square feet or 26.08 percent.

The garage will occupy most of the rear yard. The garage structure will extend from the dwelling to the alley on the northern most portion of the rear yard. Part of the rear yard to the south will not be occupied by the garage. The applicant is requesting a rear yard variance of 15 feet to allow the garage to be constructed.

7. The applicant stated that the garage will provide parking for two vehicles. He stated that the structure is needed to prevent those who drive through the alley from backing into his car when they turn around in the alley. The garage will help to secure the property from criminal activity. Also, the garage will provide space needed for the storage of tools and yard equipment.

8. With regard to uniqueness the applicant stated that his property is more or less the same as all of the properties that are at a 90 degree angle from his own. It is also similar to a couple of the properties between his property and the corner. He stated that the lots on the corner are different because of the way the buildings are configured. Those lots are also wider and situated closer to the street than his own property.

In comparing the applicant's property to others in the 1900 block of Calvert Street, counsel for the applicant stated that the subject lot is similar in size to two or three other lots to the north of the subject lot. However, all of the other lots on the street are larger than the applicant's lot. He stated that about three or four lots are larger and have more depth, but the widths are comparable.

The applicant stated that the properties located to his immediate right (2510 and 2512 Cliffbourne Place) do not have garages. They only have slabs of concrete at the rear. These slabs are small because the houses are built further back on the lot than other houses.

9. In a memorandum to the Board, dated May 30, 1991, the applicant pointed out the inconsistency between the Office of Planning's (OP) initial report and its supplemental report. The initial report stated that uniqueness had not been established. However, in the supplemental report, OP stated that "a certain uniqueness to the property would appear to exist." Relying on the most recent report of OP, the applicant maintains that uniqueness has been established.

10. In his memorandum the applicant stated that even if the uniqueness test is not met, the Board should grant the variance under the "exceptional situation or condition" test. The exceptional conditions are as follows:

- (A) The parking area is not safe for cars. Because the parking area is located at the point where the alley makes a 90 degree right turn after entering the alley, cars entering the area frequently turn around there and bump cars parked in the spaces.
- (B) On occasion, someone will park in the space illegally, leaving the applicant with the responsibility of having the car ticketed and towed. Often the owner of the car returns and moves the car before it is either ticketed or towed. When this occurs, the applicant is confronted with an angry police officer or a tow-truck operator who wishes to be paid for coming to the site.
- (C) The area at the rear of the property, referred to by OP as a "dog leg", is shielded. Sometimes this area becomes a haven for "homeless people" or even passers-by who urinate there or otherwise dirty the area. On at least one occasion, some homeless people were building a fire there.
- (D) The parking area is not as safe as a garage.
- (E) There is inadequate storage space in the portion of the house where the applicant lives. This is because there is already an apartment in the basement, and a first-floor apartment unit has been added. The lack of storage space is an inconvenience for the applicant who has had to keep

the tools in a room in the house that he desires to use as a study. Keeping the tools in the rear yard without a garage makes them vulnerable to theft. This has been a problem in the past.

The applicant believes that these circumstances create an exceptional situation or condition and that to deny the variances in light of these circumstances would deprive him of reasonable use of his property.

The applicant stated that the proposed garage will not be of substantial detriment to the public good. He relied on the statement in the supplemental OP report that the proposed garage would improve the property and neighborhood.

The applicant stated that there is no dispute that the application will not impair the intent, purpose or integrity of the zone plan.

11. The Office of Planning (OP), by report dated April 29, 1991 and through testimony at the hearing, recommended denial of the application. OP stated that the neighborhood surrounding the subject property is developed primarily with residential uses which are similar to the subject site with respect to lot area, lot occupancy, lot shape, structural density and configuration. Many properties in the area also have rear yard accessory garages and parking areas which have access to abutting public alleys. In addition, many small apartment buildings and rooming houses abound in the area. Accordingly, there are no discernable characteristics inherent in the subject property which would make it unique to the immediate neighborhood. OP is therefore of the opinion that the applicant has not established a uniqueness inherent in the subject property.

OP pointed out that the R-5-B District regulations do not allow the construction of the proposed garage on the subject property. OP also noted that the applicant can continue to use the existing concrete slab for parking. OP believes that because the applicant would not be deprived of reasonable use of his property without the garage, he would suffer no practical difficulty if the application is denied.

OP stated that although the proposed garage would definitely improve the subject property with respect to appearance and overall urban design for the immediate neighborhood, it would occupy a considerable amount of the property's rear yard and would seriously diminish the property's overall open space. For the above stated reasons, OP recommended denial of the application.

In its supplemental report to the Board dated May 16, 1991, the Office of Planning noted that there are peculiarities inherent in the subject property which are unparalleled within the immediate neighborhood. First, the subject residential structure is situated on the lot so that a six-foot wide side yard (breezeway) exists along the south side of the building, giving direct access from the rear yard to the street (Cliffbourne Place, N.W.). In addition, the subject structure was originally built in 1900 with a small "dog-leg" wing on the rear north side of the building which projects into the rear yard at that point. Lastly, the subject lot's rear lot line is situated adjacent to the juncture of two public alleys where they intersect at a 90-degree angle. OP stated that because of these features, a certain uniqueness to the property would appear to exist. However, this feature alone is not sufficient justification for variance relief.

OP then reiterated the view expressed in its April 29, 1991 memorandum that because the applicant will not be deprived of reasonable use of the property, no practical difficulty exists and the application should be denied.

12. By memorandum dated April 3, 1991, the Department of Public Works (DPW) stated that the proposed garage would be accessed from a 16-foot wide public alley. DPW concluded that this alley provides ample room for automobiles to enter and exit the garage. Therefore, DPW expressed no objection to the application.

13. By letter dated April 3, 1991, the Metropolitan Police Department stated that the property is located in the Third District and is patrolled by Scout Car 88. The department stated that it does not appear that the change proposed by this application will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Accordingly, the department does not oppose this application.

14. By memorandum dated April 22, 1991, the D.C. Fire Department stated that it has evaluated the zoning request to determine its impact on emergency operations. Based on its review of the application, the Fire Department has no objection to the request.

15. Advisory Neighborhood Commission (ANC) 1C, by report dated May 6, 1991, stated that it does not oppose the application for variance relief.

16. No one appeared at the hearing to testify in support of or in opposition to the application.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. The applicant needs the garage for storage space.
2. Two alleys intersect at the rear of the subject property.
3. The house and former garage were constructed before enactment of the Zoning Regulations in 1958.
4. The garage structure was destroyed after the Zoning Regulations were enacted.
5. The subject property is similar to other properties in the area.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking area variances to allow the construction of a garage addition to an existing nonconforming residential structure in an R-5-B District. Granting such variances requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. Further, the Board must find that the application will not be of substantial detriment to the public good, and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met this burden of proof. The Board concludes that the location of the property at a point where two alleys intersect does not make the property unique. There are other properties that abut alleys at the point of intersection.

The Board concludes that there are other properties nearby that are similar to the subject property in terms of size, shape, width, and depth.

The Board acknowledges the existence of the "dog-leg" area but is of the opinion that this feature does not create a practical difficulty for the owner in using the property in compliance with the Zoning Regulations. The Board concludes that the applicant is able to park his car on the concrete slab at the rear. Therefore, he is not deprived of reasonable use of his property.

The Board notes that the Zoning Regulations do not allow the proposed garage in the R-5-B District. Since the previous garage structure was completely destroyed, any proposed construction should comply with existing regulations. It is the intent of the Zoning Regulations to have nonconforming aspects of property diminish over time. To allow the proposed construction would create, rather than eliminate, a nonconformity. It is the opinion of the Board that to allow construction under these circumstances, where the tests for variance relief have not been met, would substantially impair the intent, purpose and integrity of the zone plan.

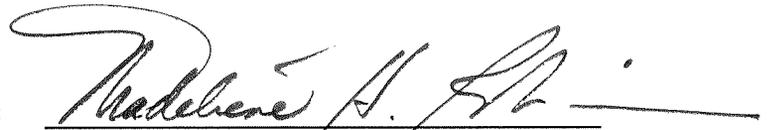
The Board concludes that ANC 1C failed to present issues and concerns to which "great weight" could be accorded.

In light of the foregoing, the Board concludes that the application is hereby DENIED.

VOTE: 3-2 (Maybelle Taylor Bennett, Paula L. Jewell, Sheri M. Pruitt to deny; Charles R. Norris and Carrie L. Thornhill opposed to the motion).

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

ATTESTED BY:

  
MADELIENE H. ROBINSON  
Acting Director

FINAL DATE OF ORDER: FEB 10 1993

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15502

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on FEB 10 1993 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Andrew M. Steinberg, Esquire  
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Albert H. Kramer  
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Chairperson  
Advisory Neighborhood Commission 1C  
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MADELIENE H. ROBINSON  
Acting Director

DATE: FEB 10 1993

15502Att/bhs