

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15532, as amended, of John D. Macomber, pursuant to 11 DCMR 3107.2, for a variance from the use provisions [Paragraph 201.1(h)] to allow a private garage as a principal use that exceeds 450 square feet in area, a variance from the lot occupancy requirements (Sub-section 403.2), a variance from the rear yard requirements (Sub-section 404.1), a variance from the side yard requirements (Sub-section 405.9), and a variance to allow a private garage as a principal use that does not open directly onto an alley and that is located within 50 feet of a building line (Sub-section 2300.5) for construction of a two-story garage as the principal use in an R-3 District at premises 1240 28th Street, N.W., [Square 1213, Lot 177 (814)].

HEARING DATE: July 17, 1991
DECISION DATE: September 25, 1991

FINDINGS OF FACT:

1. The application was originally advertised to include a variance to allow an accessory structure which exceeds the 15-foot height limitation (Sub-section 2500.4). However, upon further clarification from the office of the Zoning Administrator, it was determined that this relief would be unnecessary. This height variance request was, therefore, eliminated from the application.

2. The subject site is located on the west the side of 28th Street, N.W. between N Street and Oliver Avenue, N.W. It is zoned R-3. The site is a rectangular lot measuring 973.5 square feet in land area. It is 30 feet wide and 32.4 feet deep.

3. The lot is improved with a one-story garage which was built prior to 1958. It contains 499 square feet in area. There is a 5-foot, 2 inch side yard to the north of the site. No side yard is provided to the south. The existing rear yard measures 12 feet, 4 inches in length. The structure is located on the front property line on 28th Street. Other properties are immediately adjacent to the side and rear property lines of the lot.

4. The subject lot and garage were transferred by the previous owner to the applicant along with the premises located at 2806 N Street, N.E., where the applicant resides. These two lots are not contiguous to one another.

5. The property is located in the Georgetown Historic District. The area surrounding the site is primarily residential in character, developed with rowhouses.

6. The applicant testified that the garage, as it currently exists, is too small for modern cars. Furthermore, there is a need for space to store household and automotive items. The applicant proposes to raze the existing garage and replace it with a slightly enlarged two-level structure. The primary use will be the two-car garage on the first floor. Access to the garage will be through a curb cut on 28th Street. The second floor will be used for storage. This storage area will be provided with a separate entrance from the outside. A hose bib will be located on the ground level to be used for washing the cars. Electricity will be provided to allow for operation of the garage door and for lighting. No other utilities will be provided. The applicant has agreed to preserve the trees and vegetation at the rear of the lot as requested by neighbors.

7. As proposed, the structure will measure 612 square feet in area. It will cover 62 percent of the lot. The rear of the structure will extend an additional 3 feet, 9 1/2 inches to the rear, leaving a rear yard of 8 feet, 5 1/2 inches. The structure will also extend an extra 8 inches into the side yard to the north, leaving a side yard of 4 feet, 6 inches.

8. The property is nonconforming in several respects, and any proposed modification would require variance relief from the Zoning Regulations.

Sub-section 201.1(h) permits; as a matter-of-right, a "private garage designed to house no more than two (2) motor vehicles and not exceeding four hundred fifty (450) square feet in area, subject to the special provisions of chapter 23 of this title". The structure currently contains 499 square feet, thus exceeding the maximum area by 49 square feet. The proposal of 612 square feet will provide an additional 113 square feet to the structure. The applicant is therefore requesting a variance to allow a garage structure that exceeds the 450 square-foot area limitation.

Sub-section 403.2 provides that the lot occupancy shall not exceed 40 percent. Under the proposal, 62 percent of the lot will be occupied. A lot occupancy variance in the amount of 22 percent is therefore being requested.

Sub-section 404.1 requires a minimum rear yard of 20 feet. The proposed rear yard will measure 8 feet, 5 1/2 inches, requiring a rear yard variance in the amount of 11 1/2 feet or 57.5 percent.

Sub-section 405.9 requires two side yards measuring at least 8 feet each. The applicant's proposal will provide no side yard on the southern side of the structure and a 4-foot, 6-inch side yard on the northern side. Therefore, variances of 8 feet and 3 feet 6 inches, respectively are needed.

Finally, Sub-section 2300.6 provides as follows:

"a private garage permitted in a Residence district as a principal use on a lot other than an alley lot shall open directly onto an alley, and shall not be located within fifty feet (50') of any building line or within twelve feet (12') of the center line of the alley upon which it opens."

This garage opens on the main right of way and is located within 50 feet of the building lines. Therefore, a variance from Sub-section 2300.6 is needed.

9. The applicant maintained that the property is unique because there are no other lots with a garage as the principal structure located within a four-block radius of the site. The lot is also small, comprised of only 973.5 square feet where a minimum lot size of 2,000 square feet is required. The applicant also noted that the location of the lot on a public street, rather than an alley creates a hardship in the reasonable use of the property. Also the nonconforming nature of the property makes it difficult, if not impossible, to renovate the garage in compliance with the Zoning Regulations.

10. The applicant noted that the garage is currently in a badly deteriorated condition and that a new structure will be designed to compliment and enhance the structures located nearby. The change in footprint cannot be perceived from the public space. The new structure will not be used as living space. It will not, therefore, increase the number of dwelling units or the amount of traffic in the area. The applicant maintains that granting the variances will not be of substantial detriment to the public good nor will it substantially impair the intent purpose or integrity of the zone plan.

11. The Office of Planning (OP), by memorandum dated July 10, 1991, recommended denial of the application. OP described the site, the general area and the applicant's proposal. OP noted that this garage is a principal structure, rather than an accessory structure, and that the regulation limiting the height of accessory structures to 15 feet is inapplicable. The Board notes that the application has been amended to eliminate the height variance request. OP noted that the structure is nonconforming and predates enactment of the Zoning Regulations in 1958. This would enable the applicant to renovate and repair the garage without action of the Board. However, a new structure is proposed.

OP stated that it is not convinced that the size of the existing garage is inadequate to park two cars. Moreover, the need for additional storage space has not been fully established by the applicant. In OP's view, the storage space is a principal, rather than incidental use, and would require a use variance. OP believes

that the applicant has failed to meet the burden of proof for such a variance since undue hardship has not been established.

OP noted that the new structure would be provided with electricity and water and sewer connections. The proposed height of the structure would approximately match the height of the two-story residential structures on adjoining properties. OP also noted that the existing garage creates deficiencies in the side yards and rear yard as well as the lot occupancy. Because these deficiencies exist, they may be continued. OP is of the view that because of the condition of the property, there is a substantial case for maintaining the existing structure with its present parking use. OP would not be opposed to the repair or renovation of the existing structure. However, OP does not believe that a case for a use variance, including the proposed second-story storage space, has been established. OP is of the opinion that the proposed two-story structure will impair the intent, purpose and integrity of the zone plan for the city. OP therefore recommended denial.

12. The Board notes that in making the report, OP assumed that the relief sought under Sub-section 201.1(h) is a use variance. By memorandum dated August 1, 1991, the Board requested that the Zoning Administrator clarify what relief was intended by including this provision in his letter denying the applicant's proposal. By memorandum dated August 22, 1991, Edgar T. Nunley, Chief of the Zoning Review Branch responded that the intended relief is an area variance, not a use variance. The Board finds, therefore, that the applicant need not demonstrate that the structure cannot be used in accordance with the Zoning Regulations, the stricter use variance test.

13. In the memorandum, the Zoning Administrator's office cleared up two other matters about which the Board had requested clarification. The variance from the 15-foot height limitation for accessory structures was cited in error because this garage is a principal, not an accessory use. This clarification is consistent with what OP concluded on the height variance request. In regard to whether the storage area can be "incidental" when it will have the same gross floor area as the first floor garage, the Zoning Administrator stated that:

There is no statutory limitation on the amount of gross floor area that may be allocated to an acceptable accessory use in the R-3 zone, so long as such use is "customarily incidental and subordinate" to the principal use to which it is accessory.

The Board finds, therefore, that the storage area will be incidental to the garage irrespective of the amount of floor area.

14. By letter dated June 18, 1991, the Metropolitan Police Department indicated that it does not oppose the application because it does not appear that the proposal will affect the public safety in the immediate area or generate an increase in the level of police service now being provided.

15. By memorandum dated July 3, 1991, the Department of Public Works stated that it has no objections to the proposed use provided that it serves as a two-car garage and as a principal use for 2806 N Street, N.W.

16. Advisory Neighborhood Commission (ANC) 2E, by report dated July 10, 1991 and through testimony at the hearing, expressed its opposition to the proposal to enlarge the structure. The ANC stated that the property is not unique. The lot, which measures 30 feet wide and 32.6 feet deep, is not unusual for a lot whose principal structure is a garage. Further, neither the shape nor topography of the lot is unique to the area.

The ANC stated that the present garage is a nonconforming structure that could be renovated or replaced with a structure of the same size and scale to meet the owner's needs. The width of the present structure is suitable for a two-car garage, and the depth of the present structure is suitable for a family car. Therefore, the ANC determined that strict application of the Zoning Regulations would not result in exceptional practical difficulty or undue hardship on the owner.

The ANC also expressed the neighbors' concern that the proposed second story area could be used as a living unit. ANC 2E is of the view that the 15-foot height limit on an accessory structure is sufficient to provide the owner storage space above the garage, thus no exceptional practical difficulty or undue hardship on the owner would exist if the height regulations were strictly enforced.

Finally, the ANC determined that relief cannot be granted without substantial detriment to the public good and substantial impairment of the intent, purpose and integrity of the zone plan. Since the existing structure is nonconforming, the intent, purpose and integrity of the zone plan would be substantially impaired if an even larger nonconforming structure were approved for this lot.

17. Responding to the report of ANC 2E, the Board finds that although the shape and size of the subject lot are not unique for a lot whose principal structure is a garage, the size is unique for the area. No such lots exist within a four-block radius of the site.

The Board finds that the structure will not have adequate utilities for the applicants to use the upper level for living

space. Therefore, this should not be a concern. The applicant will be obligated to use the property only in a manner consistent with what is allowed in the certificate of occupancy.

18. One neighbor, residing at 2802 N Street, N.E., testified in opposition to the application. He stated that the objectives for a two-car garage can be met within the existing Zoning Regulations and that there is no need for a large two-story structure.

19. No one residing in proximity to the site testified in support of the application.

20. Responding to the issue of uniqueness, the applicant stated that most garages in Georgetown are either incorporated into the bottom or first floor level of the residence, to the side of the residence in a wing, or in the case of most garage structures that are of a similar scale to his, located on an alley. Having traversed the area he found that within a four-block radius there did not exist a similar lot with a garage use fronting on a principal street. He stated that the only building that he saw that somewhat resembled what he planned to do was the McGhee carriage house which was noted as an accessory structure in 1928. Based on his survey of the area, the applicant maintained that his property is unique.

21. One letter of opposition and five letters in support were submitted into the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking variances to allow the construction of a two-story private garage as a principal use in an R-3 District. The granting of a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some extraordinary or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board must also find that the requested relief can be granted without substantial detriment to the public good and without substantial impairment to the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met this burden of proof. The Board concludes that the small size and nonconforming aspect of the lot are unique for the area. Also, location of this garage structure on the principal street, rather than on an alley, is a unique condition. These factors create a practical difficulty for the owner in his efforts to make reasonable use of the property

as a two-car garage and storage area.

The Board is of the opinion that the 8 inch extension into the side yard will not be noticeable and the 3-foot, 9 1/2-inch extension to the rear will not be readily visible by those who pass by the property. Furthermore, the proposed structure will be designed in a manner that is sympathetic to the adjacent streetscape. For these reasons, the Board concludes that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, or integrity of the zone plan.

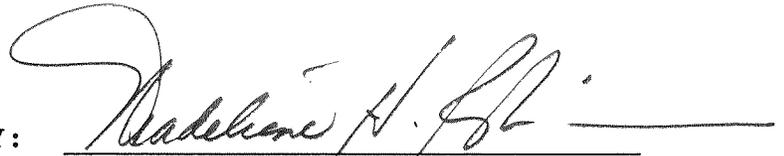
The Board concludes that it has afforded ANC 2E the "great weight" to which it is entitled.

In accord with the above, it is ORDERED that the application is hereby GRANTED.

VOTE: 3-0 (Sheri M. Pruitt, Carrie L. Thornhill, and Paula L. Jewell to grant; Charles R. Norris and William L. Ensign not present, not voting).

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

ATTESTED BY:



MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: _____

NOV 27 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15532Order/TWR/bhs

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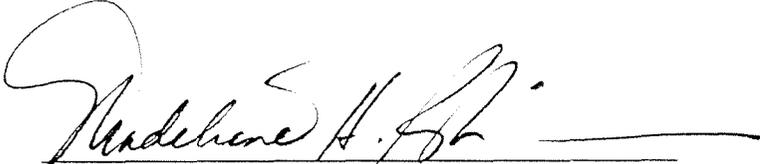
As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 27 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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John D. Macomber
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MADELIENE H. ROBINSON
Acting Director

DATE: NOV 27 1991

15532/bhs