

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 15676 of Robert Bell, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Edgar T. Nunley, Chief, Zoning Review Branch, Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs made on February 4, 1992, to the effect that construction was stopped and variance relief was required for an addition to a single-family dwelling in an R-1-A District at premises 3100 Ellicott Street, N.W. (Square 2267, Lot 1).

HEARING DATE: June 17, 1992
DECISION DATE: July 1, 1992

ORDER

1. The property which is the subject of this application is known as premises 3100 Ellicott Street, N.W. (Square 2267, Lot 1). It is located on the south side of the street and is zoned R-1-A.

2. The property is improved with a single-family dwelling and a garage built in or about 1925. The property is rectangular in shape and contains a total area of 23,500 square feet. The property has a frontage of 100 feet, a lot occupancy of 10.84 percent, a rear yard of 107 feet, a western side yard of 13 feet and an eastern side yard of less than eight feet.

3. The property is owned by Joseph and Ruth Bell. According to the testimony of Joseph Bottner, the Zoning Administrator, in August 1991, Mr. Bell applied for a building permit to construct a second story addition on the garage. On August 16, 1991 a building permit application was approved by the Zoning Division and on September 13, 1991 Building Permit No. B-352424 was issued to Joseph Bell authorizing the following work:

"Add (1) story to existing garage. Enclose existing breezeway porch from garage to existing main house. . . ."

The plats and plans indicated that there was an existing garage which had an existing connection to the house, and the connection was to be enclosed. The existing side yard adjacent to the garage was shown to be five feet. Since the zoning technician understood the plats and the plans to mean that the existing connection was enclosed, the garage was found to be in compliance with provisions of Section 405.8, which reads as follows: In the case of a building, existing on or before May 12, 1958, with a side yard less than eight feet wide, an extension or addition may be made to the building provided that the width of the existing side yard shall not be decreased and provided further that the width of the existing side yard shall be a minimum of five feet."

The Zoning Administrator stated that he received a letter dated October 14, 1991 from Barry Schochet. Photographs were sent along with the letter questioning whether the subject building permit complies with zoning. In response to this letter the Zoning Administrator testified that he requested a review of the file and sent a zoning inspector to verify conditions at the site. After the inspection and after a discussion with Robert Bell, the architect, it was determined that there was no covered connection between the house and the garage. There was only a wall which did not constitute a covered connection. The Zoning Administrator testified that, although construction had not yet begun, a stop-work order was placed on the job.

In describing the basis for the decision to stop construction, Mr. Bottner cited 11 DCMR 2500.2(a) which reads as follows:

2500.2 An accessory building shall be located only in a rear yard, except as follows:

(a) An accessory private garage may be located in a side yard under the special regulations set forth in Section 2300; . . .

Subsection 2300.2 reads, in part, as follows:

2300.2 A private garage that is an accessory building in a Residence district shall be subject to the following special regulations in regard to its location:

(a) It may be located either within a rear yard or beside the main building; Provided, that if the garage is located beside the main building, it shall be removed from the side lot line a distance equal to the required side yard and from all building lines a distance of not less than ten feet (10'); . . .

The Zoning Administrator maintains that these provisions apply to the subject garage. He stated that the garage is located in the side yard on the property. He also stated that a survey was conducted and it was determined that the distance between the garage and the side lot line is less than five feet. Consequently, the Zoning Administrator revoked the building permit and determined that a variance from the eight-foot side yard requirement would be necessary.

On February 27, 1992, the subject appeal was filed by the architect with the authority to represent the owner of the property.

The appellant argued that the Zoning Administrator's determination is in error. He maintains that the garage structure meets the definition of a building under 11 DCMR Section 199 which states: **Building** - a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

The appellant maintains that Subsection 405.8 applies to the garage. Subsection 405.8 provides:

105.8 In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8') wide, an extension or addition may be made to the building; Provided, that the width of the existing side yard shall not be decreased; and Provided further, that the width of the existing side yard shall be a minimum of five feet (5').

In the appellant's view, the garage is a "building" constructed prior to 1958, therefore this subsection allows a side yard of five feet.

Responding to this argument, the Zoning Administrator testified that it has been the practice of the Zoning Division to view Subsection 405.8 as applying only to principle buildings, not to detached garages located within side yards.

With regard to the measurements, the appellant testified that his survey indicated a five-foot side yard, while the D.C. Surveyors measurement totalled 4 feet 11 3/4 inches.

The neighbors residing at 3060 Ellicott Street, N.W. appeared at the hearing through counsel to oppose the appeal. Counsel for the opponents argued that the original issue of whether the garage meets the side yard requirements is no longer at issue because the garage is only 4.9 feet from the side lot line. Since the side yard is less than five feet, the provisions of 405.8 could not apply. A side yard variance would be needed for any construction on the garage.

Counsel for the opposition argued that the appellant's interpretation of the Zoning Regulations' definition of "building" is flawed. The term "building" does not encompass a garage because the term "accessory building" is also defined in the regulations. This latter term more accurately describes a garage and if

Subsection 405.8 was intended to apply to garages, the term "accessory building" would have also been used in that provision. Failure to use the term means that the grandfathering provision only applies to main structures.

Issues:

The issues raised in this appeal are as follows:

1. Whether the garage is connected to the main structure.
2. Whether the garage is a building for purposes of 11 DCMR 405.8.
3. Whether the garage is located less than five feet from the side lot line.

Findings of Fact:

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

1. The garage is not attached to the principal structure. There is only a wall, not a covered passageway.
2. The garage is an "accessory structure" rather than simply a "building".
3. The garage is located less than five feet from the side yard property line.

CONCLUSION OF LAW AND OPINION:

Based on the evidence of record the Board concludes that the appellant is appealing the decision of the Chief of the Zoning Review Branch to stop construction of an addition to a single-family dwelling and to require a variance for the same at property located in an R-1-A District.

The Board concludes that the appellant has failed to demonstrate error by the government official. With regard to the garage structure on the site, the Board disagrees with the argument of the appellant that the garage is a "building" within the meaning of Section 199. The Board concludes that the "accessory structure" definition is more specific and applies to the garage. The Board concludes that where there are two regulations-one general, one specific - both of which apply, the more specific regulation governs. Here, the garage is a structure, with a roof, supported by columns or walls used to enclose persons or chattel. However, it is also a "subordinate building located on the same lot as the

"main building" and the use is, "incidental to the use of the main building." Therefore this is an accessory structure, not just a building.

The Board also concludes that Section 405.8 is not applicable to the garage. For this subsection to apply, the garage would have to be connected to the main house. Based on the plat and plans, there is no covered connection between the two structures, only a wall. Therefore, because the garage stands alone, it must be located eight feet from the side lot line.

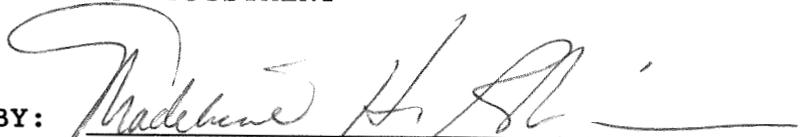
The Board concludes that the garage is subject to the provisions of 11 DCMR 2500 governing accessory structures. It must meet the eight-foot side yard requirement. Because the side yard is not eight feet, but is less than five feet, a variance is required.

Accordingly, the Board **ORDERS** that the appeal is hereby **DENIED** and the decision of the Chief of the Zoning Review Branch is upheld.

VOTE: 3-0 (Carrie L. Thornhill and Paula L. Jewell to deny; Lloyd D. Smith to deny by absentee vote; Angel F. Clarens not voting, not having heard the case; Sheri M. Pruitt not present, not voting, not having heard the case).

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

ATTESTED BY:



MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: APR 15 1994

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. 15676

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 15 1994 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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MADELIENE H. ROBINSON
Director

DATE: APR 15 1994

15676Att/bhs