

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17658 of Michael D. Parry, pursuant to 11 DCMR § 3103.2, for a variance from the story limitations under subsection 2500.4, and a variance from the use provisions to allow the second floor of an accessory structure to be used as an exercise room under subsection 2500.5, in the R-5-B District at premises 1529 S Street, N.W. (Square 191, Lot 15).

HEARING DATE: September 18, 2007
DECISION DATE: September 18, 2007 (Bench Decision)

DISMISSAL ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

BACKGROUND

The subject Zoning Administrator reviewed application was filed with the Board of Zoning Adjustment (Board) on April 24, 2007. Pursuant to 11 DCMR 3113.3, notice of the September 18, 2007 public hearing was sent to the Applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (ANC) 2B and the District of Columbia Office of Planning (OP). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. The Office of Planning submitted a report in support of the application. Advisory Neighborhood Commission 2B submitted a report in support of the application. No parties appeared at the public hearing in opposition to this application.

The application is a request under 11 DCMR § 3103.2, for two variances. The first variance is from the story limitations under subsection 2500.4, and the second variance is from the use provisions to allow the second floor of an existing accessory structure (carriage house) to be used as an exercise room (second floor) and automobile garage (first floor) under subsection 2500.5.

The Board, after careful consideration of the historical facts and evidence presented in the record of this case, concludes that the above-cited relief is not needed to allow the stated use of the accessory building. First, as to § 2500.5, the provision does not apply in this R-5-B zone, but only in R-1-A and R-1-B zones. Second, there was some confusion as to the extent of the floor creating the second story of the accessory building. It was originally represented to the Board that this floor constituted a “mezzanine,” as defined in the Zoning Regulations, which, according to the Regulations, would not constitute a story. If this were the case, the accessory building would be one story in height and the Applicant would need variance relief to change it to two stories. As was demonstrated to the Board’s satisfaction at the hearing, however, the second floor is not a mezzanine, but a full second floor, creating, for the purposes of the Zoning Regulations, a second story. This accessory building, having been constructed, apparently with two stories, in the late 1800’s, is nonconforming as to height/number of stories. Therefore, no relief is needed by the Applicant to merely modernize it, as no structural alterations are being undertaken. See, 11 DCMR § 2001.2.

The Board found the following with respect to the relief being sought in this application:

1. The accessory structure, as constructed today, constitutes a legal nonconforming structure under subsection 2001.2. This subsection allows ordinary repairs, alterations, and modernizations.
2. No evidence was presented that would suggest the Applicant’s intention to expand or increase the degree of nonconformity. Such an increase would include, for example, the addition of new bath or kitchen facilities. Any such modifications would indeed require variance relief.
3. A use variance is not required. The exercise room and automobile garage use of the accessory structure are clearly subordinate and customarily associated with a modern day dwelling unit.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **DISMISSED** and as such authorizes the Department of Consumer and Regulatory Affairs to issue a building permit to the Applicant pursuant to Exhibit 9 – Plans.

Board’s Motion to Dismiss the Application:

VOTE: **4-0-1** (Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud and

BZA APPLICATION NOS. 17658
PAGE NO. 3

Anthony J. Hood to approve the motion, and the NCPC representative not present, not voting).

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

Each concurring member approved the issuance of this order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: SEP 19 2007

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT. rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17658 – DISMISSAL ORDER

As Director of the Office of Zoning, I hereby certify and attest that on September 19, 2007, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Daniel Blum, Agent
Landis Construction Company
7059 Blair Road, N.W., Suite 300
Washington, D.C. 20012

Michael D. Parry
1529 S Street, N.W.
Washington, D.C. 20009

Chairperson
Advisory Neighborhood Commission 2B
9 Dupont Circle, N.W.
Washington, D.C. 20036

Commissioner 2B09
Advisory Neighborhood Commission 2B
9 Dupont Circle, N.W.
Washington, D.C. 20036

Jack Evans, City Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W.
Suite 106
Washington, D.C. 20004

BZA APPLICATION NO. 17658

PAGE NO. 2

Matthew LeGrant, Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E., Room 2000
Washington, D.C. 20002

Harriett Tregoning, Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Jill Stern, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

rsn

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning