

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17833-A of Timothy Lawrence, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, and a variance from the alley setback requirements under subsection 2300.4, to construct a private garage on an alley lot in the R-4 District at premises 1665 Harvard Street, N.W. (Square 2588, Lot 827).

HEARING DATE: October 28, 2008
DECISION DATE: December 2, 2008
DATE OF DECISION
ON RECONSIDERATION: June 9, 2009

ORDER ON RECONSIDERATION

Procedural Background

This application was filed on May 25, 2008 by Mr. Timothy Lawrence (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The application requested variances in order to permit the construction of a garage on an alley lot belonging to the Applicant. The alley lot is not adjacent to the lot on which the Applicant’s dwelling is located, but to that of his next door neighbor.

The Board held a hearing on the application and decided, at a December 2, 2008 public decision meeting, to deny it. Board Order No. 17833 (“Order”) denying the application was issued on May 4, 2009 (Exhibit No. 43), and on May 14, 2009, the Applicant filed a motion requesting reconsideration of the Board’s decision (“motion”), Exhibit No. 36, and did so within the time period set forth in 11 DCMR § 3126.2. In his motion, the Applicant sets forth seven specific grounds for the reconsideration request. The party who opposed the application filed a response to the motion in which it briefly addressed each of the specific grounds alleged. Exhibit No. 42.

At its public decision meeting on June 9, 2009, the Board took up the Applicant’s request for reconsideration. The Board addressed the grounds alleged as support for the reconsideration and deliberated on them, but was un-persuaded that any change in the decision was necessary. The Board therefore denied the reconsideration by a vote of 3-0-2. An explanation for the Board’s decision follows.

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Discussion

The Applicant first claims that the Board's decision deprives him of the only "improved use permitted by right" on the subject property. Even if true, the Board is not required to grant a variance. The issue is not one of use, but of the structure that houses the use. The Zoning Regulations require that a private garage constructed on an alley lot must be set back at least twelve feet (12 ft.) from the center line of the alley on which the lot abuts. For the purposes of this motion, the Board accepts the Applicant's contention that the alley lot is too small both to construct a usable garage and meet this requirement. This does not deprive the Applicant of all uses of the lot. He may continue to use the space for parking. Nor does it mean that he may not be able to construct an Artist's Studio if approved by the Board per 11 DCMR § 2507.6, since no similar alley set back applies. The Board has therefore not deprived the Applicant of all uses to which the lot may be put, including uses for which improvements are associated.

The Applicant next argues that the Board applied the incorrect standard of relief. He claims that the Board applied the higher use variance standard of "undue hardship" rather than the lower area variance standard of "practical difficulties." It appears from his motion that he thinks the Board erroneously viewed this application as a use change from parking to "secured parking." Exhibit No. 36, at 3. There is, however, no indication in the Order or during its deliberations that the Board viewed the application as requesting a use change or that it applied the more stringent standard of proof applicable to a use variance request. At page 5, the Order states clearly that the Applicant "is requesting area variances." The Order addresses the practical difficulty standard both in the Findings of Fact (Nos. 19-25) and in the Conclusions of Law (at 6), and never discusses the undue hardship standard necessary for a use variance.

The Applicant's next point is that he never had an opportunity to address statements made during deliberations which, according to the Applicant, implied "that the variance request could be granted if unspecified design concerns were met." Exhibit No. 36, at 3, and *see* Transcript of December 2, 2008 decision meeting, at 29-30. The Board disagrees that any such implication was made or intended by the referenced statements. Although there is nothing to preclude a Board member from speculating that a different design approach might have met matter-of-right standards, such a statement is irrelevant to the Board's decision on the merits. And, even if it were, no party may address the Board members during their deliberations. The process for a party to dispute a conclusion reached by the Board is through a motion for reconsideration, which may only seek to refute those facts and conclusions as are stated in the Board's order.

The Applicant next claims that the Order is incorrect in asserting that the Board agreed with the recommendation of denial of Advisory Neighborhood Commission ("ANC") 1D. Apparently the Applicant believes that the Board cannot say it agreed with the ANC's ultimate recommendation of denial because the Order's basis for reaching that conclusion (failure to prove the second prong of the variance test) differed from that relied upon by the ANC (failure to prove the third prong). Despite these differing bases, the ultimate conclusion reached was the same; that the application should be denied. It is not erroneous for an order denying an application to indicate

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agreement with an ANC recommendation that it do so, even if the reasons that led each to the conclusion of denial differed.

The Applicant's fifth ground for reconsideration is that the Board overstated the severity of the variances. The Applicant, however, instead of supplying evidence of such alleged "overstatement," attempts to explain how lot occupancy relief would not be necessary "if this were a minimum size lot" or "if the two lots were combined" or the alley closed. Exhibit No. 36, at 4. The Board fails to see how speculating about various scenarios shows that the Board overstated the severity of the variance relief. The fact of the matter is that this is a small lot of 557 square feet, the proposed garage is limited to a 40% lot occupancy, and it would have had a 100% lot occupancy. These are not overstatements, but facts. *See*, Exhibit No. 43, Findings of Fact Nos. 1 and 13.

The Applicant alleges that he is being denied a "right allowed all other lots in the square without variance" relief. Exhibit No. 36, at 4. He claims that all other lots abutting the alley would be able to construct a garage by right because each of these lots has a row dwelling on it and so, would be allowed a 60% lot coverage, whereas a 40% lot coverage applies for all other structures, including his proposed garage. 11 DCMR § 403.2. It is impossible to know whether each of the other lots abutting the alley could construct a by-right garage, unless the dimensions of each lot, dwelling, and proposed garage were known.¹ Further, the Applicant has the same rights as all other homeowners on his block with respect to construction of a garage at the rear of his dwelling on his own, larger lot. He is being denied no rights granted to others.

The Applicant's last argument is that the Board "in effect approved" the alley setback variance by mentioning during deliberations that a rear fence with a gate may provide security for the Applicant. Exhibit No. 36, at 5 and *see* Transcript of December 2, 2008 decision meeting at 31. The Applicant implies that, with regard to maneuverability of vehicles, there is really no difference between having a fence at the edge of the alley or a garage wall, and that, therefore, by referring to the fence, the Board somehow "approved" the garage wall at that location.

The mentioning of the fence during the Board's deliberations does not imply the granting of any relief. No amount of discussion during deliberations constitutes the granting of relief -- the Board can only approve relief by a motion passed by a majority of its members. 11 DCMR § 3125.2. It cannot *de facto* approve something, nor can it approve something -- the fence -- that is not before it in an application.

For all the reasons stated above, the Board concludes that the Applicant failed to demonstrate an error by the Board in its decision and Order No. 17833. Accordingly, the motion requesting reconsideration is hereby **DENIED**.

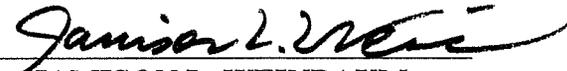
VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman, and Anthony J. Hood, to DENY. Two Mayoral appointees (vacant) not participating or voting)

¹In any event, it is likely that a special exception would be required. *See*, 11 DCMR §223.

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

A majority of Board members approved the issuance of this order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

OCT 30 2009

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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OCT 30 2009

As Director of the Office of Zoning, I hereby certify and attest that on _____, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Timothy Lawrence
1665 Harvard Street, N.W.
Washington, D.C. 20009

Chairperson
Advisory Neighborhood Commission 1D
P.O. Box 43529
Washington, D.C. 20010

Single Member District Commissioner 1D06
Advisory Neighborhood Commission 1D
P.O. Box 43529
Washington, D.C. 20010

Jim Graham, Councilmember
Ward One
1350 Pennsylvania Avenue, N.W., Suite 105
Washington, D.C. 20004

Bennett Rushkoff, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov