

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17833 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

DECISION AND ORDER

This application was filed on May 25, 2008, by Mr. Timothy Lawrence ("Applicant"), the owner of the property that is the subject of the application ("subject property"). The self-certified application requested two variances in order to permit the construction of a garage on an alley lot located at the rear of the lot adjacent to the Applicant's lot.

The Board held a hearing on the application on October 28, 2008. The hearing was completed on October 28th and a date of December 2, 2008 was set for decision. The Board held the record open for certain further submissions which were duly received, and on December 2, 2008, the Board deliberated on the application and denied it by a vote of 4-1-0.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated May 30, 2008, the Office of Zoning ("OZ") sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation, Advisory Neighborhood Commission ("ANC") 1D, the ANC within which the subject property is located, the member for Single Member District 1D06, and the Councilmember for Ward 1. Pursuant to 11 DCMR § 3113.13, notice of the hearing was published in the *D.C. Register*, and such notice was sent to the Applicant, ANC 1D, and all owners of property within 200 feet of the subject property.

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Request for Party Status. The neighbor immediately to the west of the subject property was granted party status. The proposed garage would be behind this neighbor's dwelling, but located on a small, legally separate lot that abuts the rear alley and belongs to the Applicant. The garage would be approximately 17 feet from the rear wall of the neighbor's dwelling and the Board determined that he would be more significantly impacted by its presence than other members of the public.

Applicant's Case. The Applicant, his wife, and their architect testified in support of the application. The Applicant and his wife explained why they needed the two-vehicle garage proposed. The architect discussed the construction and addressed the variance test for both variances requested.

Government Reports. The Office of Planning filed a report with the Board on October 21, 2008, recommending approval of both requested variances. OP opined that the subject property is encumbered with a combination of exceptional factors, leading to practical difficulties in complying with the Zoning Regulations. OP also stated that the variance relief could be granted without detriment to the public good or impairment of the intent of the Zoning Regulations. OP further explained that a garage was a matter-of-right use for the property and that it was more practical to construct a two-vehicle, rather than a one-vehicle, garage.

ANC Report. ANC 1D filed two reports with the Board, both recommending denial of the application. The first recommendation of denial, filed on October 18, 2008, was based largely on the fact that the adjacent neighbor to the west, behind whose dwelling the proposed garage would be located, opposed the construction. The second recommendation of denial, filed on November 24, 2008, after the hearing, reiterated that the construction would have "adverse effects" on the neighbor, and elaborated that, in the ANC's opinion, it would also result in a "substantial detriment to the public good."

FINDINGS OF FACT

The subject property and its surroundings

1. The subject property is a small, roughly square-shaped lot of 557 square feet in area, with an average lot width of 22.1 feet, located in an R-4 zone district.
2. The subject lot, Lot number 827, is situated in the rear of larger lot number 826, which is not owned by the Applicant, but by the neighbor who is opposing this application.
3. Because Lot 827 is situated behind Lot 826, owned by the neighbor, the proposed garage would be constructed behind the neighbor's dwelling, and would appear to be in his rear yard.

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4. Lot 826 fronts onto Harvard Street, N.W., as does the lot on which the Applicant's own dwelling is situated, Lot 1028. Between these two lots, however, runs a public walkway of approximately 7.5 feet in width.
5. On its north side, lot number 827 abuts a 15-foot wide public alley which runs parallel to Harvard Street, N.W. The eastern side of Lot 827 abuts the public walkway and Lot 827's western and southern sides abut Lot 826.
6. Applicant's dwelling is the end unit of a line of row dwellings ending at the eastern edge of the public walkway and the neighbor's dwelling situated on Lot 826 is the end unit of a line of row dwellings ending at the western edge of the public walkway.
7. Because the public walkway runs between the Applicant's dwelling and Lots 826 and 827, he cannot combine Lot 827 with the lot on which his own dwelling is situated.
8. Lot 827 appears as a carve-out in the northeast corner of Lot 826, but, the 1925 Baist Map shows Lot 827 as existing in its current shape at that time, while Lot 826 did not yet exist.
9. In current computer records, Lot 827 shows up as a tax lot for which the Applicant pays separate property taxes, therefore it is recorded in the records of the Office of Tax and Revenue.
10. Lot 827 existed as a tax lot and was "recorded" on the Baist Map at least as of 1925, and therefore before November 1, 1957, making the proposed private garage a matter-of-right use, subject to the area provisions of the Zoning Regulations, and specifically subject to the provisions of Chapter 23 of the Regulations. *See*, 11 DCMR § 201.1(i). *See also*, 11 DCMR §§ 330.5(a), 320.3(a), and 300.3(a).

The proposed project

11. The Applicant proposes to construct a two-vehicle garage on Lot 827 in which to house his vehicles.
12. The proposed garage will be 10 feet, 6 inches in height, and the south side of the proposed garage, the side closest to the opponent's dwelling, will be approximately 17 feet from that dwelling's rear wall.
13. The proposed garage will occupy 100% of Lot 827, necessitating an area variance from § 403.2, which mandates a maximum lot occupancy of 40% for this type of structure. 11 DCMR § 403.2.
14. The proposed garage will have a length along the alley of 20 feet, leaving a length of 16 feet along the alley to Lot 826.

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15. The wall of the garage facing the alley will abut the southern edge of the alley and will therefore be set back from the centerline of the alley only 7 feet, 6 inches, less than the 12-foot setback required by 11 DCMR § 2300.2(b), necessitating a second area variance.

The variance test

Exceptional condition

16. Lot 827 is an exceptionally small alley lot.
17. Lot 827 sits in the rear of a larger lot with different ownership and there are no other similarly situated lots in the neighborhood.
18. The use proposed is a matter-of-right (*see*, Finding of Fact No. 9) and it appears that storage and/or parking are the only practicable uses for the subject lot. *See*, 11 DCMR §§ 2507.1, 2507.5, 2507.6, and 333.

Practical difficulty

19. The Applicant's dwelling is a contributing structure to the Mount Vernon Historic District and has no parking requirement. *See*, 11 DCMR § 2100.5.
20. Lot 827 is paved and currently used by the Applicant as a parking pad for two vehicles.
21. Until recently, Lot 827 was enclosed by a wooden fence, approximately six feet high, with a gate facing the alley, in order to secure the two vehicles stored there.
22. At some point in the recent past, the Applicant removed the gate side of the fence, leaving the parking pad area open to the alley.
23. The Applicant proposes to construct the garage in order to ensure the security of his vehicles, which have been vandalized in the past.
24. Although not clear from the record, it appears that the incidents of criminal activity against the Applicant's vehicles occurred after the removal of the gate along the alley.
25. Due to considerations of cost and aesthetics, the Applicant did not seriously consider alternatives to securing his vehicles other than the proposed garage.

Substantial detriment to the public good

26. On the lot line between the southern side of Lot 827 and the rear yard of Lot 826 is a six-foot high fence. The proposed garage will stand four and one-half feet over this fence and over the rear yard of the opponent's dwelling.

27. Due to the slope of the rear yard on Lot 826, the floor of the proposed garage will be 3 feet, 6 inches higher than the patio behind the opponent's dwelling, making the garage actually stand 13 feet, 6 inches above the patio.
28. The location of the proposed garage will block the view of the alley and could block light and air to the rear yard and rear windows of the dwelling on Lot 826.
29. The eastern wall of the proposed garage will abut the western edge of the public walkway, blocking the view of a person walking along the walkway, causing potential safety concerns.

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2.

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship," must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting area variances, therefore, it had to demonstrate an exceptional situation or condition of the property, that such exceptional condition *results in* "practical difficulties" to the owner, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations. All three showings must be made in order to obtain variance relief.

The subject property is beset with several exceptional conditions. It is very small – almost certainly too small to construct an artist's studio on. *See*, 11 DCMR § 2507.5. Other than this use, the only other uses permitted on this alley lot are storage and parking.¹ *See*, 11 DCMR § 2507.6. The subject lot is also exceptional in that it is located behind a dwelling with a different ownership and anything constructed on it would appear as if it were in the rear yard of this dwelling.

¹Although § 2507.1 permits a one-family dwelling on an alley lot, such lot must abut an alley at least 30 feet wide, therefore no one-family dwelling can be built on the Applicant's alley lot. *See*, § 2507.2.

The application meets the first prong of the variance test, but fails on the second prong. The Applicant's dwelling does not have a parking requirement, therefore there is no legal requirement that the Applicant provide off-street parking for his vehicles. The proposed garage use, therefore, although a matter-of-right, is not required by the Zoning Regulations, but is a matter of convenience to the Applicant. Inconvenience to an Applicant may be considered by the Board in a variance analysis, but is insufficient to rise to the level of "peculiar and exceptional practical difficulties." See, e.g., *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A.2d 326 (D.C. 1976).

The Applicant currently parks both his vehicles on the parking pad which is now on the subject lot, and there was no showing of practical difficulties in parking on the lot. The practical difficulty asserted by the Applicant was the need to provide greater security, but the Board is not convinced that this need rises to the level of "peculiar and exceptional practical difficulties." See, e.g., *Board Order No. 15695 of Jared Fuchs* (1992). Moreover, the claimed practical difficulty does not arise out of the exceptional condition of the small size of the lot or its location behind someone else's dwelling. There also may be ways of providing this security without necessitating variance relief.

There may also be some adverse effect on the neighbor's dwelling and rear yard if the proposed garage were constructed, as well as possibly some adverse effect on the public good in that the line of sight from the adjoining walkway would be impeded, but the Board need not discuss the third prong of the variance test at any length because the second prong has not been met.

The Board is sympathetic to the Applicant's situation, but the granting of a variance requires a high standard of proof which has not been met by the application with respect to the showing of practical difficulties. Therefore, the Board cannot grant the variance relief requested.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. ANC 1D recommended denial of the variances requested and the Board agrees with its recommendation. The Office of Planning recommended granting the variances. The Board agrees with OP's determination that the property is unique, but for the reasons stated above, disagrees with its determination as to the existence of a practical difficulty caused by this uniqueness.

For the reasons stated above, the Board concludes that the Applicant did not satisfy the burden of proof with regard to a variance from §403, for lot occupancy, and from § 2300.4, for minimum alley setback. Accordingly, it is hereby **ORDERED** that the application be **DENIED**.

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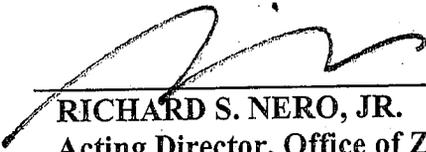
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VOTE: 4-1-0 (Shane L. Dettman, Marc D. Loud, Mary Oates Walker,
and Anthony J. Hood to deny; Ruthanne G. Miller to grant.)

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

Each concurring Board member approved the issuance of this order.

ATTESTED BY:



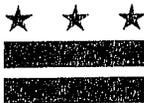
RICHARD S. NERO, JR.

Acting Director, Office of Zoning

FINAL DATE OF ORDER: MAY 04 2009

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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As Director of the Office of Zoning, I hereby certify and attest that on MAY 04 2009, 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:

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