

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 17893 of Antonio Seleme**, pursuant to 11 DCMR § 3103.2, for a variance from the height limitations under § 2500.4 to allow the construction of a three-car accessory garage with second-floor artist studio in the R-2 district at premises 3830 Legation Street, N.W. (Square 1857, Lot 62).<sup>1</sup>

**HEARING DATES:** March 24 and June 16, 2009  
**DECISION DATE:** June 16, 2009

**DECISION AND ORDER**

This application was submitted September 30, 2008 by Antonio Seleme (“Applicant”), the owner of the property that is the subject of the application. The application, as finally amended, requested an area variance from the limitations on height under § 2500.4 to allow construction of a three-car accessory garage with second-floor artist studio in the R-2 district at 3830 Legation Street, N.W. (Square 1857, Lot 62). Following a public hearing, the Board voted 3-0-2 on June 16, 2009 to deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Public Hearing. By memoranda dated October 16, 2008, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3/4G, the ANC for the area within which the subject property is located; and the single-member district ANC 3G06.

A public hearing was scheduled for March 24, 2009. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on January 9, 2009 mailed notice of the hearing to the Applicant, the owners of

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<sup>1</sup> This case was advertised as an application for an area variance from the height limitations under § 2500.4 and a use variance from § 2500.5 to allow the construction of the planned three-car accessory garage with second-floor artist studio. The advertisement was consistent with a letter to the Applicant from the Office of the Zoning Administrator, dated July 2, 2008, which gave the Applicant notice that the construction of a two-story garage at the subject property was in violation of §§ 2500.4 and 2500.5. The Applicant was permitted to amend the application so as to seek only an area variance to allow the additional height of the planned garage following a determination by the Board at the public hearing that no use variance was required because, pursuant to § 2300.3, an artist studio may be located in an accessory garage as a matter of right in the R-2 zone.

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property within 200 feet of the subject property, and ANC 3/4G. Notice was published in the D.C. Register on January 9, 2009 (56 DCR 264). The Applicant requested a postponement, and the hearing was continued to and completed on June 16, 2009.

Requests for Party Status. In addition to the Applicant, ANC 3/4G was automatically a party in this proceeding. The Board granted an application for party status in opposition to the application from Bernard Ries and Barbara Ries, who live next-door to the subject property.

Government Reports. By report dated June 9, 2009 and through testimony at the public hearing, the Office of Planning recommended denial of the application.<sup>2</sup> According to OP, the application did not demonstrate that the proposal met the required tests for variance relief and could be granted without causing substantial detriment to the public good or substantially impairing the intent, purpose, and integrity of the zone plan. The Office of Planning noted that the “lot may present some uniqueness as a result of its topography and the location of the two drains,” but concluded that “the uniqueness of the property does not result in a peculiar or exceptional practical difficulty” because the Applicant had not indicated how the topography or the outdoor drains required the proposed additional height on the garage, or why the Applicant could not build an addition on to the residence to use as a dance studio.

ANC Report. By letter dated February 18, 2009, ANC 3/4G indicated that the ANC had agreed to oppose the application by a vote of 6-0 at a public meeting on February 9, 2009 with a quorum present. The ANC’s opposition was based on findings including that the Applicant had begun construction of the garage before obtaining a building permit; construction of a two-story garage, 16 feet in height, was not consistent with the plans that had been submitted to DCRA, which depicted a one-story garage, 13 feet in height; and neighbors spoke unanimously in opposition to the variances at the ANC meeting, citing interference with sight lines and reduced light to their properties.

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<sup>2</sup> In its report, the Office of Planning noted that the Zoning Administrator had “determined that relief is required from § 2500.5 to permit the use of the second floor of the detached garage for other than living quarters for domestic employees,” but indicated its belief that a use variance from § 300.3, and not § 2500.5, might be appropriate because the Applicant’s proposed use of the second floor, a dance studio, was not listed among the permitted uses in the R-2 zone. With regard to a contention by the Applicant that the second floor of the garage could be used as a dance studio pursuant to the home occupation provisions of the Zoning Regulations, OP noted that those provisions, set forth in § 203, do not permit home occupations in accessory buildings. OP also noted that an “artist studio” could be located in an accessory building, but concluded that “a commercial dance studio would not appear to meet the criteria.” Based on the Applicant’s testimony at the public hearing, the Board determined that the Applicant’s proposed use of the second floor of the garage would not constitute a “commercial dance studio” but an “artist studio” as defined in the Zoning Regulations. As previously noted, an artist studio may be located in an accessory garage as a matter of right in the R-2 zone, and therefore no variance from § 300.3 was required.

## **FINDINGS OF FACT**

### **The Subject Property and Surrounding Area**

1. The subject property is a rectangular parcel located on the south side of Legation Street, NW (Square 1857, Lot 62). The lot is approximately 37.5 feet wide and 150 feet deep, with an area of 5,625 square feet.
2. The lot is somewhat bowl-shaped, with a depression in the center of the property. The rear yard dips in the middle of the lot at more than four feet lower than the height of the house or the alley at either end of the property. The depressed sections are prone to flooding, despite the presence of two drains in the rear yard.
3. A public alley, 15 feet wide, abuts the property along the rear lot line.
4. The subject property is improved with a two-story, one-family detached house built in 1950. A one-story accessory garage, previously located in the rear yard and accessible from the alley, was accidentally destroyed some years ago.
5. Properties in the vicinity of the subject property are improved with one-family detached or semi-detached dwellings. Some of the residences have one-story detached garages or sheds within their rear yards.

### **The Applicant's Project**

6. On September 27, 2007, the Department of Consumer and Regulatory Affairs ("DCRA") issued Building Permit No. 111705 to the Applicant for the construction of a detached one-story garage. A stop-work order was posted on the property on October 17, 2007 after a DCRA inspector found that the Applicant had nearly completed construction of a two-story garage on the lot. Another stop-work order was posted on April 25, 2008 because the Applicant continued to construct a two-story garage beyond the scope of the building permit.
7. By letter to the Applicant dated July 2, 2008, the Office of the Zoning Administrator at DCRA gave notice that "construction of a two story garage in the rear of 3830 Legation Pl, NW violates the Zoning Regulations, specifically 11 DCMR §§ 2500.4 and 2500.5."<sup>3</sup> The Zoning Administrator recommended that the Applicant remove the garage, show a proposal to bring the structure into compliance with the Zoning Regulations, or obtain a variance from the Board.

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<sup>3</sup> Those sections state that "An accessory building in any zone district shall not exceed one (1) story or fifteen feet (15 ft.) in height, except as provided in § 2500.5," 11 DCMR § 2500.4; and "In an R-l-A or R-l-B District only, an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building." 11 DCMR § 2500.5.

**Zone Plan**

8. The subject property is located in the R-2 zone district, which “consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. It shall be expected that these areas will continue to contain some small one-family detached dwellings.” 11 DCMR § 300.1.
9. An accessory building in the R-2 zone may not exceed one story or 15 feet in height. 11 DCMR § 2500.4.
10. An artist studio is a permitted use in a private garage that is an accessory building in the R-2 zone, subject to certain requirements. 11 DCMR § 2300.3. The definition of “artist studio” for zoning purposes encompasses “a place of work of one or more persons who are engaged actively, and either gainfully or as a vocation in ... the performing and visual arts, including but not limited to, dance [and] choreography....” 11 DCMR § 199.

**CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks an area variance from the height limits of 15 feet and one story applicable to accessory buildings under § 2500.4 to allow the construction of an accessory garage 16.5 feet and two stories in height in the R-2 district at premises 3830 Legation Street, NW (Square 1857, Lot 62). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted 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. 11 DCMR § 3103.2.

Normally a variance request comes before the Board in the form of proposed plans to build a structure. In this instance, the structure has been constructed in a manner different from the matter of right plans submitted to DCRA. The Board must therefore view the as-built structure as representing a proposed set of plans, but will adjudge the impact of the proposal based upon the appearance and effect of the structure as built.

The Board concludes that the subject property faces an exceptional situation or condition related to its bowl-shaped topography. The sloping nature of the rear yard creates drainage issues and limits the area of the lot that is level. However, the Board does not find that the strict application of the Zoning Regulations to the subject property would result in practical difficulties to the owner. Although the topography of the lot is unusual, the property can be developed – and in the

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past, has been developed – in a manner permitted as a matter of right in the R-2 zone district, with a house fronting the street and a one-story accessory building located in the rear yard. The Board was not persuaded that the changes in elevation present on the property created the need for a second story on the accessory building. Although the Zoning Regulations do not guarantee that any particular matter of right use may be established, in this instance a one-story accessory building could have accommodated an artist’s studio had the entire ground floor not been devoted to parking spaces.

The Board also concludes that the requested variance cannot be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Accessory buildings with heights in excess of 15 feet or one story are disfavored by the Zoning Regulations, which impose those height limits in all zones with one narrow exception applicable only in the R-1-A and R-1-B districts.<sup>4</sup>

Relief cannot be granted in this case without substantial detriment to the public good. The Board agrees with the testimony from the Office of Planning, ANC 3/4G, the party in opposition, and persons in opposition that the requested variance could not be granted without substantial detriment to the public good in light of the large size of the Applicant’s accessory building, which was not consistent with the character of the neighborhood, blocked views from other residences, created potential adverse impacts on light and air to neighboring properties, and is out of proportion to other accessory buildings in the vicinity.

The Board is required to give “great weight” to any issues and concerns raised by ANC 3/4G in this proceeding. The ANC opposed the application, citing objections to the project from neighborhood residents as well as concerns related to the building permit process. Although issues and concerns related to the building permit process are not within the Board’s jurisdiction, the Board has found the ANC’s expressed concerns over the adverse impacts of the structure to be persuasive.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and consideration to the issues and concerns raised by ANC 3/4G, the Board concludes that the Applicant has not satisfied the requirements for an area variance from the height limits of 15 feet and one story applicable to accessory buildings under § 2500.4 to allow the construction of an accessory garage 16.5 feet and two stories in height in the R-2 district at premises 3830 Legation Street, N.W. (Square 1857, Lot 62). Accordingly, it is hereby **ORDERED** that the application is **DENIED**.

**VOTE: 3-0-2** (Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull to **DENY**;  
two Board members (vacant) not participating)

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<sup>4</sup> In an R-1-A or R-1-B district only, an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building. *See* 11 DCMR § 2500.5.

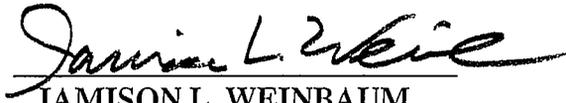
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**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

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

ATTESTED BY:



JAMISON L. WEINBAUM

Director, Office of Zoning

FINAL DATE OF ORDER: NOV 20 2009

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on NOV 20 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:

Antonio Seleme  
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ATTESTED BY:

A handwritten signature in black ink that reads "Jamison L. Weinbaum".

**JAMISON L. WEINBAUM**  
Director, Office of Zoning

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