

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING -- February 17, 1965

Appeal No. 8069 Paul V. Terek and Dorothy F. Terek, appellants.

Zoning Administrator District of Columbia, appellee.

On motion duly made and unanimously carried, the following order was authorized February 17, 1965:

ORDERED:

That the appeal of Paul V. Terek and Dorothy F. Terek for a variance from the provisions of Section 7502.3 of Zoning Regulations to permit erection of a private garage in the R-3 District to a height of approximately 22 feet at 3257 N Street, N.W., lot 817, square 1230 (Section 8207.11), be denied:

From the record and evidence adduced at the hearing, the Board finds the following facts:

(1) Construction of the garage was commenced pursuant to a building permit issued by the District of Columbia Government on November 5, 1964. While the garage was under construction, neighbors questioned its height. Resulting inquiries uncovered the fact that the permit was issued in error for construction to a height of 21½ feet. Such structures are limited to a height of 15 feet by Subsection 7502.3.

(2) The application for the building permit was accompanied by construction plans prepared by a local architect experienced in architectural practice in the Washington area. These plans located the garage at the rear of the lot and plotted the structure 24 feet in depth and 27 feet in width.

(3) At the time of the hearing, construction on the garage had been stopped pending the outcome of this appeal. However, construction had already progressed to a point near completion with the roof rafters and sheathing in place.

(4) The appellants do not dispute the fact that their permit was issued in error and have instituted this appeal to determine whether the

situation can be remedied by approval of a variance to permit completion of the garage as planned.

(5) Lot 817 is relatively level and more than adequate in size and shape to meet minimum width and area requirements of regulations governing the R-3 District, being 128 feet deep, 28 feet wide and containing about 3,540 square feet. In addition to the garage in question, the lot has for some years been occupied by a conforming row type single family residence.

(6) The record contains testimony and a number of written statements pro and con on the merits of this appeal. The record also contains photographs of other accessory buildings in this block of N Street, some of which are in excess of 15 feet in height.

(7) One basis urged by appellant for relief under variation procedure is to invoke the doctrine of estoppel. The case of District of Columbia, et al. v. Cahill at 60 Appeals, D. C. 342 and arguments involving estoppel are admitted for this record.

OPINION:

The Board concludes that estoppel may not be used as a proper ground for relief under the variance clause of the Zoning Act.

As we interpret the law, the only ground for the granting of relief under variation must be a clear finding of exceptional and undue hardship based upon some extraordinary or exceptional situation or condition of the specific piece of property. This property is not exceptionally narrow, shallow, nor of unusual shape, nor has it exceptional topographical difficulties. The only practical difficulty or hardship to which the appellants have been subjected is due to the fact that they will be damaged to the extent of some \$3,000 if they are

required to conform to applicable regulations. This is a hardship completely unrelated to any unusual or exceptional situation or condition of the property and is not the type of hardship envisioned by the statute. The fact that error was made in processing the construction permit is regrettable, but nonetheless, is a mistake which cannot legally be corrected by the use of variation.

The Board notes that both the architect and builder, and in fact the appellants, are charged with knowledge of all regulations pertaining to the use of the subject property. In the light of all of the facts and circumstances, we have no alternative but to deny the appeal.