

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



September 8, 2015

Meridith H. Moldenhauer
Griffin, Murphy, Moldenhauer & Wiggins, LLP
1912 Sunderland Place, NW
Washington DC, 20036

Re: 1812 35th Street NW- Square 1296, Lot 802 (the "Property")

Dear Ms. Moldenhauer,

This letter is in reference to a discussion I had with you on May 5, 2015, regarding your client, the prospective owner of property at 1812 35th Street NW. We communicated via email on May 7th and 8th, and I confirmed the below findings. *See*, attached email communication. However, pursuant to your request I am memorializing the discussion regarding the status of the Property as a nonconforming structure in writing herein.

The Property is located in the R-3 District. Square 1926, lot 802 consists of 2,400 square feet. The Property was the subject of three Board of Zoning Adjustment appeals and one Office of Administrative Hearings appeal. In summary, I find the following:

Description of Existing Property

As represented in the accompanying preliminary Site Plan, the existing structure is a three-story semi-detached residential dwelling. It occupies 44% of the lot.

Property History

On November 5, 2004, the Department of Consumer and Regulatory Affairs (DCRA) issued building permit B467431 to allow 1812 35th Street Associates, LLC (hereinafter, "1812 35th Street Associates") the current owner of the Property, to add a three story rear addition and trellis to the Property. By a memorandum dated March 2, 2005, DCRA informed 1812 35th Street Associates that the addition was subject to Board of Zoning Adjustment (BZA) special exception approval.

On September 2, 2005, DCRA issued building permit B477090, a revision to building permit B467431, to allow 1812 35th Street Associates to extend a roof overhang on one wall to the Property's side property line. At the time, DCRA found that the roof overhang combined with the previously approved additions, converted the Property from a semi-detached dwelling to a row dwelling.

By BZA Order #17327 dated September 13, 2005, the BZA denied the special exception request to retain the three story rear addition. The Board found that the addition did not satisfy the special exception criteria under §223.1(a) or (c). Specifically, the Board found that contrary to §223.1(a), the addition unduly affected the light and air available to neighboring properties, and contrary to §223.1(c), the addition was out of character and scale with existing properties fronting along 35th Street.

By an Order dated June 13, 2006, the BZA, in application #17310, determined that DCRA issued permit B477090 and permit B467431 in error, because the permits authorized construction in violation of the lot occupancy limitation for a semi-detached dwelling. The Board recognized that a semi-detached dwelling could be converted to a row dwelling with an addition that extends to the lot line; however, in light of the substantial neighborhood opposition, the Board found that at this property, a small roof overhang that provides no living space or functional purpose does not sufficiently transform a semi-detached structure into a row dwelling.

On March 9, 2006, DCRA approved plans and an application to construct an addition that would convert the semi-detached dwelling into a row house, and issued permit B89770. The BZA, by an order dated October 25, 2007, found the DCRA issued permit B89770 in error. The Board concluded that the permit authorized construction in violation of lot occupancy requirements for semi-detached dwellings under §403 and in violation of the prohibition against decreasing a nonconforming side yard under §405.8.

Office of Administrative Hearing Appeal

DCRA, by a letter dated February 2, 2010 and again by a letter dated April 30, 2010, notified 1812 35th Street Associates that the Property was in violation of the 40% lot occupancy requirements for semi-detached dwellings in the R-3. DCRA asked 1812 35th Street Associates to comply with BZA orders to bring the Property into compliance. On December 14, 2011, DCRA fined 1812 35th Street Associates for failing to comply with the lot occupancy requirements. 1812 35th Street Associates appealed the fine and a hearing before an Administrative Law Judge (ALJ) was held on February 23, 2012. The ALJ, by an order dated October 15, 2012, found that DCRA properly cited 1812 35th Street Associates for violating the lot occupancy requirement of 11 DCMR §403 and ordered 1812 35th Street Associates to pay the fine. 1812 35th Street Associates paid the fine with a check dated September 17, 2013.

Conclusion

As a result of the Final Order from the District of Columbia Administrative Hearing ALJ and 1812 35th Street Associates' payment of the fine, the Property as represented in the accompanying site plan, is now deemed an existing nonconforming structure. 11 DCMR §2001, permits ordinary repairs, alterations, and modernizations to nonconforming structures, including structural alterations are permitted. However, enlargements and additions that exceed lot occupancy requirements, increase the nonconforming aspect of the structure, or create a new nonconformity may not be made. Thus, any future owner of 1812 35th Street, including your

client, would be able to perform ordinary repairs and expand the structure within the confine of 11 DCMR §2001. Please let me know if you have any further questions.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Attachments:

1) May 7, 2015 and May 8, 2015 Email Communications