

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

APPEAL OF:

Advisory Neighborhood Commission 2E from	)	
the Administrative Decision of the Zoning	)	
Administrator, DCRA, to issue Building Permit	)	BZA Appeal No. 17513
No. 88614, allowing additions to an existing	)	
single-family dwelling allegedly in violation of	)	Hearing: October 10, 2006
of the lot occupancy (§403) and nonconforming	)	
structures provisions (§2001.3) for the property	)	
at 1242 Potomac St., N.W., in the R-3 District	)	

OPPOSITION OF PROPERTY OWNER TO APPEAL

**I.
INTRODUCTION**

Harry L. and Anne Gutman ("the Gutmans"), as the owners of the property for which the appeal is filed and as an automatic party to the proceeding pursuant to 11 DCMR § 3199.1 (2003), through undersigned counsel, hereby oppose the appeal of Advisory Neighborhood Commission 2E ("ANC" or "Appellant") in the above-referenced case. The Zoning Administrator did not commit error in finding that the proposed addition complied with section 403 of the Zoning Regulations which permits a maximum lot occupancy of 60% in the R-3 District because the scope of construction rendered the building a conforming structure. Additionally, the Zoning Administrator, in relying on past decisions of the Board of Zoning Adjustment ("BZA" or "Board") and the Office of the Zoning Administrator, did not exceed his authority when he approved the issuance of Building Permit No. 88614 ("Permit"). The project authorized under the lawfully issued Permit is in full compliance with the provisions of the R-3 District. In fact, in response to directions from the Old Georgetown Board ("OGB") of the

Commission of Fine Arts ("CFA"), and to objections by the ANC and two neighbors, the size of

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the addition was significantly reduced and intentionally designed to be well below the permitted 60% lot occupancy for row dwellings in deference to the character and open space qualities of the Georgetown Historic District and the adjacent properties. Importantly, the addition respects the previously existing construction to the south property line. Because the appeal is meritless, it should be denied.

II. FACTS

A. Description of the Property

The property that is the subject of this appeal is located in the Georgetown Historic District on Lot 45 in Square 1219, premises address 1242 Potomac Street, N.W., Washington, D.C. It is presently improved with a two-story clapboard house that faces east on Potomac Street, that occupied 48% of the lot prior to the new construction. The north wall of the house is located on its property line, while a pergola and shed have connected the south side of the house to the property line. Upon completion of the construction authorized under Building Permit No. 88614, the building will be a one-family dwelling having no side yards by virtue of a covered garden pergola and utility shed attached to the main house that extends to the south property line. The term used in the Zoning Regulations for a one-family dwelling having no side yards is row dwelling by definition. 11 DCMR §199.1. Accordingly, the building could occupy as much as 60% of the lot, whereas the property, upon completion of the authorized construction, will have a lot coverage of only 54%.

B. Proposed Renovations

The Gutmans initiated plans for an addition to their house in early 2005. The first concept contemplated a significantly larger addition at the rear of the house that would be connected by an enclosed passageway to the existing free-standing carriage house at the rear of the property.

Because the addition would exceed 60% lot occupancy, the plans would have required zoning relief from the Board under section 223 of the Zoning Regulations.

The Gutmans shared these plans with their neighbors and received several letters in support, while others objected to the plans. The ANC considered the proposal at its March 1st meeting and recommended denial of the addition as too large for the site. The Old Georgetown Board ("OGB") shared the same concerns as the ANC recommended at its March 3, 2005, meeting that the addition be reduced in size.

In response, the Gutmans substantially revised their plans and returned to their neighbors and the ANC to solicit comments and support for the project. This second scheme reduced the size of the addition by 60%, eliminated the connector between the main house and carriage house, and called for a new covered garden pergola (also referred to as the "trellis") with re-use of the existing utility shed to extend from the side of the main house to the south property line.

The OGB found the revised scheme to be generally acceptable at its June meeting, but requested that the width of the addition be reduced and the height of the roof minimized as much as possible. The ANC and two abutting neighbors, however, continued to object to the proposal. The Gutmans returned to the OGB on July 7, 2005, at which time the project was approved in concept. Immediately thereafter, they obtained an informal ruling that the plans would comply with the Zoning Regulations and only then undertook to prepare construction drawings.

The OGB and CFA reviewed and recommended approval of the final permit application in November 2005. The following month, the Zoning Review Branch reviewed the documents for final zoning compliance and specifically discussed the pergola connection with the Gutmans' architect. In response to questions from the zoning technician, the architect provided dimensions of the modified pergola and shed that would remain on site and provide the necessary building

area and connection to eliminate the south yard area. The zoning reviewer then computed the dimensions for the various structure requirements under the regulations, noted them on the building plat, and determined that the project complied with all zoning requirements on December 23, 2006. Approximately one month later, on January 20, 2006, the building permit was issued.

III. ARGUMENTS

A. The Zoning Administrator Did Not Err in Determining that the Residence Qualifies as a Row Dwelling Entitled to 60% Lot Occupancy.

The Zoning Administrator did not commit any error in finding that the proposed addition and covered pergola with connecting utility shed constitute a dwelling with no side yards, thus entitling the project to a maximum lot occupancy of 60% in the R-3 District. A row dwelling is, by definition, "a one-family dwelling having no side yards." Importantly, no side yard is required in the R-3 District. By the shed and pergola extension from the main building to the south lot line, no side yard exists and the resulting open courts comply with the Zoning Regulations. Thus, the Zoning Administrator found that the property constituted a row dwelling. Once classified as such, the property is entitled to a maximum lot occupancy of 60%.

1. The Gutman Property Does Not Have Any Side Yards.

Upon completion of the construction, there will be no side yards at the Gutman property to classify their house as a "one-family semi-detached dwelling." The Zoning Regulations define a semi-detached dwelling as

A one-family dwelling, the wall on one (1) side of which is either a party wall, or lot line wall, having (1) side yard.

11 DCMR § 199.1 ("dwelling, one-family semi-detached").

The regulations further define a side yard as "a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure." (Emphasis added). Finally, a yard is defined as

An exterior space, other than a court, on the same lot with a building or other structure. A yard required by the provisions of this title shall be open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title. No building or structure shall occupy in excess of fifty percent (50%) of a yard required by this title.

11 DCMR § 199.1 ("yard") (emphasis added).

Together, these definitions make it clear that the reconstruction of the Gutmans' shed and pergola from the main house to the south lot line confirms a row dwelling for purposes of the Zoning Regulations. First, a side yard is not required in the R-3 District and thus the Gutmans are free to eliminate the only existing one they currently have. Second, the pergola and shed will bisect the area along the south wall of the house into two portions, front and back, so that there is no longer any area open to the sky (a "yard") that extends the full depth of the house. Thus, there is no side yard that could qualify this building a semi-detached one-family dwelling.

Instead, the pergola and shed create an open court fronting on Potomac Street and a second open court facing the rear yard. The Zoning Regulations define a court as

an unoccupied space, not a court niche, open to the sky, on the same lot with a building, which is bounded on two or more sides by the exterior walls of the building or by two or more exterior walls, lot lines, or yards.

11 DCMR § 199.1 ("court").

This area is bounded by the exterior south wall of the building, the pergola and shed extending to the south property line to the west, and the south lot line and front property line

which constitutes an open court.¹ As such, there is no side yard to create a semi-detached dwelling and the house can only be classified as a row dwelling.

2. The Covered Pergola and Shed Meet the Definition of Building Under the Zoning Regulations.

The house must also be classified as a row dwelling because the shed and pergola are connected to the main house and thus are an extension of the main building area. The shed and pergola will have a roof that provides 100% coverage and will be supported by columns for the shelter of the Gutmans in their yard and for the enclosure of their personal property. As such, the connected structure meets the definition of "building" under the Zoning Regulations. That term is defined as

a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

11 DCMR § 199.1 ("building").

The pergola and shed are and have been connected to the house above ground and are an integral part of the Gutmans' dwelling, serving as a sheltered entrance to the garden with an enclosed shelter for garden tools and similar equipment. Access is from both the front and rear of the house. These structures are collectively construed to be one building for zoning purposes. As one building that extends from lot line to lot line, the structure must be classified as a row dwelling.

This interpretation is consistent with past decisions of the Board and the Zoning Administrator. For example, in BZA Application No. 17331 (JPI Apartment Development LP),

¹Because the court is not bounded by on all sides by exterior walls of the building, or by exterior walls of the building and side or rear lot lines, it does not constitute a "closed court" as defined in the Zoning Regulations.

the Board determined that a trellis connecting two buildings on a single lot counted toward the building area, thus creating one building for zoning purposes. The Board concluded that

based on past precedent, the trellis proposed by the Applicant meets the definition of building under section 199.1 because the trellis will have a roof that provides at least 51 percent coverage and is supported by columns for the shelter, enclosure or support of persons. As such, the trellis provides an adequate connection between the existing single-family house and the addition to the rear to constitute one building under the Zoning Regulations.

BZA Order in Application No. 17331, at 2.

Because the two structures constituted one building, the two residential units on the property were deemed to be a flat. Therefore, the owner only needed to meet the standard for special exception relief from the side yard and court provisions under section 223 of the regulations, rather than the more burdensome variance relief standard.

Consistent with this decision, the shed and pergola at the Gutman residence meet the definition of "building" under section 199.1 because the pergola and shed have a roof that provides 100% coverage and are supported by columns for the shelter or enclosure of persons or personal property. Like the trellis in BZA Case No. 17331, the pergola and shed here provide an adequate connection between the existing semi-detached single-family house and the south lot line to constitute one building under the Zoning Regulations. Because the single building has no side yards, the proposed construction meets the zoning definition of a "row dwelling," a one-family dwelling with no side yards, which may then achieve a maximum lot occupancy of 60%; although the actual lot coverage is 54%.

In reliance on the decision in BZA Case No. 17331 and other past precedent, the Gutmans' Third-Party Inspector met with the D.C. Zoning Review Branch in August, 2005 to confirm that the pergola connection in this proposal would meet the lot occupancy requirements

of 60%. The architect received the necessary confirmation of that interpretation, and the Gutmans then instructed their architect to proceed with final construction drawings for the property. Had the Gutmans received a contrary ruling, they would not have undertaken the very costly and time-consuming exercise of producing working drawings.

B. Appellant Argues That Board Should Apply Standards to This Appeal That Are Not Found Anywhere in Zoning Regulations.

In support of its appeal, the ANC urges the Board to apply standards of that are not found anywhere in the Zoning Regulations. The ANC claims that (i) a semi-detached dwelling can never be converted to a rowhouse, (ii) expansions to an existing non-conforming structure always require zoning relief; and (iii) the pergola is too insubstantial and meaningless to serve any purpose, let alone a reclassification of the semi-detached house to a row dwelling. As discussed below, because these assertions have no basis in either law or fact, the appeal should be dismissed.

1. Nothing in the Zoning Regulations Prohibits a Semi-Detached Dwelling from Being Expanded to a Row Dwelling as a Matter-of-Right.

The Appellant erroneously argues that the Gutmans' single-family dwelling can never be converted to a row dwelling unless a special exception or variance is sought.² There is no provision in the Zoning Regulations, nor does the Appellant cite any, that prohibits conversion of a semi-detached dwelling to a row dwelling. In fact, the Board has specifically recognized that "it is possible to convert a semi-detached dwelling into a row home with an addition that extends to the side lot line." See BZA Order in Appeal No. 17310, at 7. Moreover, the essential connection to the south property line has existed for many years – prior to the Gutmans' acquisition.

²In fact, the house may have already constituted a row dwelling by virtue of the existing shed and trellis.

Significantly, as discussed above, the R-3 District does not require side yards. Only where side yards are provided will other provisions of the Zoning Regulations apply, such as minimum width requirements for the side yard or the stricter 40% limitation on lot occupancy for detached and semi-detached dwellings.

2. The Addition to the Gutmans' House is Permitted as a Matter of Right.

The Appellant further alleges that the current house is non-conforming with respect to lot occupancy, and because so, any addition to a non-conforming structure would require zoning relief. Appellant is wrong.

First, the current house conforms to the provision of the Zoning Regulations for the R-3 District. Second, even if the house were non-conforming with respect to lot occupancy, section 2001.3 cited by the Appellant clearly states that enlargements or additions may be made to the structure, provided the structure conforms to the lot occupancy requirements, and that the addition or enlargement itself conforms to use and structure requirements, and does not increase or extend any existing nonconformity, or create any new one. Here, because the house has no side yards and constitutes a row dwelling, the structures on the Gutman property occupy only 54.4% of the lot, and thus fall within the 60% lot occupancy permitted for row dwellings in the R-3 District. Thus, the first prong of the permissible nonconforming additions test is met. Second, the addition, pergola and shed all conform to the use and structure requirements. The property continues to be used for single-family residential purposes, and the additions themselves do not violate any height or area requirements for structures. Finally, there is no increase or extension in any existing nonconformity. In fact, any asserted nonconformity with respect to lot occupancy has been eliminated by the row dwelling's compliance

Inexplicably, the Appellant also cites section 2002.5 as prohibiting enlargements to nonconforming structures. Clearly the Appellant has misread that provision. Section 2002.5 only prohibits enlargements to structures devoted to nonconforming uses, and specifically allows additions to structures devoted to nonconforming uses if the enlargement itself is devoted to a conforming use. Here, the Gutman property is clearly devoted to a permitted single family residential use.

3. The Pergola and Shed Are Sufficient Buildings to Reclassify the Property as a Row Dwelling.

The Appellant also contends that even if a semi-detached dwelling could be converted to a rowhouse, a trellis or pergola could not accomplish that reclassification. Without citing any provision in the Zoning Regulations, the Appellant claims that a pergola connection must be "substantial," or "create lot lines" or "party walls." No such standard exists anywhere in the Zoning Regulations or in any decision or order of the Board of Zoning Adjustment or Zoning Commission, or from any long-standing interpretation from the Zoning Administrator's Office. To the contrary, the Board has expressly held that a trellis providing overhead coverage of at least 51% is sufficient to create a meaningful connection and does, in fact, meet the definition of "building," as discussed above. Here, the Gutmans pergola provides shelter from the rain and sun in an area of their garden, and affords protection when accessing personal property from the shed. The fact that it is also well-designed and may allow vegetation to grow over it is surely an added benefit for the property, the abutting neighbors and the Georgetown Historic District as a whole.

The shed and pergola proposed by the Gutmans are significantly different from the "eave" proposed by a property owner in BZA Appeal No. 17310 (Stancioff Appeal) and

ultimately rejected by the Board. There, a neighbor appealed the issuance of a permit allowing the adjoining property owner to construct an addition to a semi-detached dwelling with a 2.5-foot nonconforming side yard. The owner proposed to convert the semi-detached house to a row dwelling by extending the eave of the roof over the entire width of the side yard, thereby entitling the property to a 60% lot occupancy. The Board concluded that the eave was insufficient to reclassify the house as a row dwelling because eaves are not allowed to project more than two feet into any required side yard. The Board found that a roof overhang that is a mere continuation of the roof beyond the permitted projections in the Regulations and provides no living space or functional purpose is not part of the dwelling structure and therefore it would be unreasonable to conclude that the eave alters the zoning classification of the residence. See BZA Order in Appeal No. 17310.

Here, unlike the roof overhang, a pergola and shed provide meaningful space useable by the Gutmans, as described above. Consistent with the Board's ruling in BZA Case No. 17331, the pergola and shed meet the definition of "building" and thus are sufficient to meet the requirements for a row dwelling. Similar pergolas, trellises and covered walkways have been used to connect two building into one structure for zoning purposes, such as the covered walkway between the MacDonald's restaurant and the WUSA office building at 4000 Wisconsin Avenue, N.W., resulting in one building for zoning purposes. The areas to the east and west of the covered walkway are considered courts under the regulations. A similar covered walkway connects the National City Christian Church at Thomas Circle to the apartment building to the west, also creating one building for zoning purposes. In the instant case, the Gutman's shed and pergola, providing 100 % coverage, is no different from these well-established examples and thus is sufficient to reclassify the dwelling as a rowhouse.

**IV.
CONCLUSION**

For the reasons stated above, Harry L. and Anne Gutman respectfully request the Board to deny the appeal and affirm the ruling of the Zoning Administrator did not commit any error in approving Building Permit No. 88614.

Respectfully submitted,

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