

ANC 2E STATEMENT

2. In 2001, when the Applicant applied for permission to construct a second story addition to her garage to be used as an apartment, the Board of Zoning Adjustment concluded, among other things, that the proposed project would "...drastically alter the character of the zone district" and denied her the relief she sought. (Case No. 16696, pg. 23) But for the addition of a covered, open-sided, walkway connecting the Applicant's garage to her house, which will not be visible from any of the surrounding streets, the addition the Applicant is proposing today is virtually identical to the project the Board turned down in 2001.

3. Over the course of the last 15 years, the Applicant has been trying, thus far unsuccessfully, to find a way to get permission to build her garage apartment. Today you are considering a proposal that would, if approved, create a device that homeowners all over the city could use to add second stories to their accessory buildings to accommodate rental apartments, notwithstanding the height limitations contained in §2500.4, and the very specific limits on accessory uses found in §202.10.

- Applicant has applied for a special exception, but ANC2E submits that plain language of §202.10 makes it clear that what she really needs is a use variance, and that her application should be subject to the burden of proof that applies to requests for variances.

- §202.10 says that a request to modify more than two of the requirements for permitted accessory use shall be deemed a request for a use variance (§202.10(i)(3)). A case cited by the Applicant (Case No. 18232) establishes that the two requirement limit applies to both the requirements listed in paragraphs (a) through (h) of §202.10 and the requirements contained in the introductory provision of the subsection.

- Applicant has explicitly requested a waiver of two requirements – the conditions of §202.10(d) that prohibit any increase in lot occupancy

and gross floor area, and the requirement that the one-family building be detached, because once the project is complete the newly connected structure would be larger, and it would be a Row Dwelling.

- But that is not the end of it. Applicant has also implicitly asked the Board to waive the requirement that the dwelling within which the accessory apartment is to be constructed be in existence at the time of the application. The introductory provision of §202.10 is unambiguous –“an accessory apartment may be added within an **existing** one-family **detached** dwelling ...” The proposed apartment will not be in an existing dwelling, nor will it be within a detached dwelling. Under the applicant’s proposal, the garage and house would be a row dwelling. This does not comply with the clear requirement that the accessory apartment be in an existing detached dwelling.

- Applicant proposes to convert her existing detached dwelling and semi-detached garage into a new row dwelling, apparently to take advantage of the more generous lot occupancy requirements applicable to row dwellings. The proposed accessory apartment would be added to a new row dwelling that would be created by expanding the footprint of the accessory garage and constructing a covered walkway to connect the garage to the existing detached dwelling.

- In summary, the Applicant is really requesting three waivers: (1) a waiver of the requirement that the proposed accessory apartment be added to an existing dwelling; (2) a waiver of the requirement that the proposed accessory apartment be added to a detached dwelling; and (3) a waiver of the conditions of §202.10(d) prohibiting increases in lot occupancy and gross floor area. That being the case, §202.10(i) tells us that the Applicant needs a use variance, and not a special exception.

- In addition to the basic legal point about which type of relief is required, a key fact is that the addition of a second story to the

Applicant's garage to accommodate an apartment would indisputably conflict with the intent of §202.10 to maintain a single-family residential appearance and character in the R-3 District. The new apartment would be accessed from 33rd Street or Potomac Street via the alley and it would have no visible connection to the single-family dwelling that fronts on O Street. In the view of ANC 2E, the construction of what would appear to be a free-standing alley accessed apartment would not be consistent with the single-family residential appearance and character of the neighborhood.

- The fact that there is a historic service building behind 3259 N Street, which is across the alley from the Applicant's property, does not change the analysis. To our knowledge that building has never been used for human habitation. In fact, we have been informed that the historic service building has neither heat nor air conditioning, and that the only plumbing in the building is for a utility sink on the ground level. The existence of the historic service building plainly does not provide a justification for approving the construction of an accessory apartment that would be accessed through the alley. [Also –if the proposed Goodman 2-story apartment structure would be taller than the service building– i.e., if the service building is only around 15 feet high or lower, then the two buildings are really not comparable in design as well as use, because 15 feet is too short to have a livable second story. If this is the case, we might make note of it.]

- It is important to note that if the project were allowed to proceed, the structure that would result would be almost identical to the structure that this Board concluded 15 years ago would drastically alter the character of the R-3 District.

✓ record

- Moreover, approval of this application would provide a precedent and a blueprint for homeowners in the R-1, R-2 and R-3 Districts who would like to expand their accessory buildings to include rental apartments. Such a result would unequivocally be inconsistent with the

regulatory intent to maintain a single-family residential appearance and character in those districts. *[This paragraph is under review]*

- ANC2E respectfully requests pursuant to §3121.5, that the record be kept open until April 19, 2016 to allow counsel, who is out of the country today, to file a brief on behalf of the ANC.