

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17535-A of Mary Goodman, as amended¹, pursuant to 11 DCMR § 3104.1², for a special exception from the accessory apartment requirements under § 202.10, and a special exception under § 223, not meeting the rear yard requirements under § 404.1, to construct a building connection and second-story addition to an existing accessory garage and establish an accessory apartment in the R-3 District at premises 3254 O Street, N.W. (Square 1230, Lots 125 and 825).

HEARING DATES: April 5 and May 17, 2016
DECISION DATE: June 21, 2016

DECISION AND ORDER

Mary Goodman, the property owner of the subject premises (the “Owner” or the “Applicant”), filed an application with the Board of Zoning Adjustment (the “Board”) on January 28, 2016, for a special exception from the accessory apartment requirements under § 202.10, and a special exception under § 223 of the Zoning Regulations (Title 11 DCMR), to establish an accessory apartment above an existing garage, wherein the completed project will not conform to the rear yard requirements under § 404.1 of the Zoning Regulations. For the reasons explained below, the Board voted to approve the application.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 7 (original) and 32 (revised).) In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the

¹ The Applicant amended the application for special exception under § 202.10 by adding a request for a special exception under § 223, not meeting the rear yard requirements under § 404.1. (Exhibit 32.)

² This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was heard and decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (“the 2016 Regulations”). The repeal of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order. Pursuant to Subtitle A § 104 of the 2016 Regulations, the construction authorized by this Order is vested as to the area requirements contained in 1958 Regulations as of September 5, 2016.

BZA APPLICATION NO. 17535-A
PAGE NO. 2

Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent to the Applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (“ANC”) 2E, and the District of Columbia Office of Planning (“OP”). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibit 29.)

ANC Report. In its report dated March 2, 2016, ANC 2E indicated that, at a regularly scheduled monthly meeting on February 29, 2016, with a quorum present, the ANC voted 8-0-0 to request that the Board “defer consideration of Application No. 17535A until a pending dispute between the District of Columbia and Mr. Kebreab Zere concerning, among other things, whether homeowners whose properties abut the alley behind 3254 O Street have the right to access and traverse that alley” and in the alternative, to deny the Applicant’s request to allow the issuance of a special exception “that would allow the applicant to construct a ‘trellised walkway’ to connect her existing single-family dwelling to her existing free-standing garage and to expand the garage to include an accessory apartment.” The ANC noted its concern that the waiver of § 202.10(d) would conflict with the intent of the R-3 District to maintain a single-family residential appearance and character. The ANC also raised concerns that the proposed trellis-covered walkway does not meet the definition of “meaningful connection” and that the project does not meet the definition of “row dwelling.” (Exhibit 27.)

ANC 2E Commissioner Jeff Jones testified on behalf of the ANC in opposition to the application at the hearing on April 5, 2016 and submitted his testimony to the record. (Exhibit 37.)

The ANC filed a response to the Applicant’s Supplemental Submission, dated May 13, 2016, which further argued that the waiver of the preamble of § 202.10, as requested by the Applicant, is not authorized by the regulations. In addition, the ANC’s response raised concerns about the letters of support submitted by the Applicant, requesting that the Board not admit the 27 form letters to the record, or in the alternative, noting that the letters do not represent the opinions of the neighbors most affected by the project. (Exhibit 47.)

Requests for Party Status. ANC 2E was automatically a party to this proceeding. No other requests for party status were submitted in this case.

Persons in Opposition. The Board received a petition signed by nine neighbors in opposition to the application (Exhibit 24) as well as a letter from one of these neighbors requesting that the Board defer action on the application until an issue regarding ownership and access to an alley, access to which the Applicant and the other neighbors that abut the alley share, is resolved. (Exhibit 25.) Mr. Kebreab Zere, the owner of five vacant lots designated as Square 1230, Lots 0804, 0814, 0818, 0820, and 0822, submitted a letter (Exhibit 35) and testified in opposition to the application.

BZA APPLICATION NO. 17535-A
PAGE NO. 3

(Exhibit 43.) In addition to Mr. Zere, Robert Jones, Mary Carter, Florence Ald, and Gerald Turner also testified in opposition to the application.

Persons in Support. The Applicant submitted 27 letters of support from neighbors within 0.1 miles of the Property. (Exhibit 46A.)

OP Report. OP submitted a report, dated March 29, 2016, recommending approval of the application for special exceptions from §§ 202.10 (Accessory Apartments) and 223 (20-foot rear yard required, 2 feet, 9.5 inches proposed) subject to two conditions:

1. The design reflect [sic] other accessory buildings along the private alley and the alley to the west, west of 33rd Street, including matching the brick, roofing colors and materials, windows and doors. Windows and doors should be painted in colors consistent with those on surrounding and nearby garage buildings; and
2. The Applicant revises the drawings to indicate that the trellis connects completely with the rear door of the principal dwelling, including the stairs leading up to the rear door of the house.

(Exhibit 30, p. 1.)

At the public hearing on April 5, 2016, OP testified that the Applicant had made the requested revisions and therefore the conditions no longer were needed.

DDOT Report. The District Department of Transportation (“DDOT”) submitted a report stating that it had no objection to the application. (Exhibit 31.)

FINDINGS OF FACT

The Site and Surrounding Area

1. The Property is located at 3254 O Street, N.W. (Square 1230, Lots 125 and 825) (the “Property”) in the R-3 District.
2. The Property consists of two lots comprising approximately 5,533 square feet of land area.
3. The Property is improved with a two-story, one-family detached dwelling that occupies approximately 22% of the lot and a one-story detached garage, which occupies approximately 19% of the lot.
4. Lot 125, the primary lot, contains approximately 5,400 square feet of lot area, and is improved with the dwelling and garage described herein. Lot 825 is adjacent to the southwestern portion

BZA APPLICATION NO. 17535-A
PAGE NO. 4

of Lot 125 and contains approximately 133 square feet of land. Lot 125 is partially improved with an addition to the garage that permits pedestrian access to the rear of the Property.

5. The Property abuts a 22-foot private alley to the south. The alley runs east to west between Potomac Street and 33rd Street, paralleling N Street to the south and O Street to the north.
6. The Property is located within the Georgetown Historic District³ and is in the jurisdiction of the Commission of Fine Arts.
7. Square 1230 is occupied primarily by row dwellings, one-family detached and semi-detached dwellings, a few flats and one condominium. In close proximity, approximately three blocks west of the Subject Property, is the undergraduate campus of Georgetown University. Approximately three blocks south of the Subject Property is M Street, N.W.

The Proposed Project

8. The Applicant proposes to construct a trellis-covered walkway between the existing one-family dwelling and the existing accessory garage and to construct a second-story addition to the existing garage to be used as an accessory apartment. The Property would continue to be used for residential purposes.
9. The covered walkway will be located at grade level beginning at the rear entrance of the main house to the entrance at the rear of the detached garage. (Exhibit 34.)
10. The connection will extend from the exterior stairs at the rear of the one-family detached dwelling to an existing back door of the existing detached garage. (Exhibit 34.)
11. The trellis will have a roof that will provide at least 51% coverage over the walkway. (Transcript of BZA Public Hearing on April 5, 2016, pg. 77-78.)
12. The trellis will serve as a meaningful connection between the existing principal structure and existing accessory structure, thereby creating a single structure. (Exhibit 34.)
13. The structure will extend lot line to lot line and therefore will eliminate the side yards.
14. Based on the elimination of the side yards, the structure would therefore be a row dwelling, as defined in the Zoning Regulations at 11 DCMR § 199.1.
15. The Property will have a lot occupancy of 43.5%, which is under the maximum of 60% for a row dwelling in the R-3 District. (Exhibit 32.)
16. The gross floor area of the dwelling is at least 2,000 square feet. (Exhibit 5.)

³ The Applicant elected to seek the Board's approval before going to the Historic Preservation Review Board.

BZA APPLICATION NO. 17535-A
PAGE NO. 5

17. The accessory apartment would consist of 22.1 % of the gross floor area of the dwelling. (Exhibit 5.)
18. Additional entrances are proposed to the garage portion of the structure, but none would have street frontage on O Street, N.W. (Exhibit 5.)
19. The Applicant will occupy the principal dwelling. (Exhibit 5.)
20. The accessory apartment contains one bedroom and is intended for no more than two inhabitants. No more than six persons will occupy the principal dwelling and accessory apartment combined. (Exhibit 5.)
21. No home occupation is currently located on the Subject Property. (Exhibit 5.)

Zoning Relief

22. The Applicant requests special exception relief under § 202.10 of the Zoning Regulations in order to add an accessory apartment.
23. Pursuant to § 202.10(i), the Applicant requests that the Board waive two of the requirements of the subsection, the preamble and § 202.10(d).
24. Additionally, the Applicant requests special exception relief under § 223 from the rear yard requirements of § 404.1. A 20-foot rear yard is required under § 404.1, and the proposed project would provide no rear yard.

The Impact of the Addition

25. From the street frontage on O Street, N.W., the Subject Property would continue to appear as a one-family detached dwelling, as neither the trellis nor the second-floor addition on the garage would be visible.
26. The second-story above the existing garage would be visible from the private alley, 33rd Street, and Potomac Street, but would not differ significantly from the alley structures within the neighborhood, including the two-story garage building directly across the private alley from the subject property, maintaining the character of the neighborhood.
27. The accessory apartment would be located at the rear of the Subject Property and substantially set back from adjacent properties.
28. The Applicant submitted a shadow study depicting the impacts of the project. (Exhibit 46B.) The shadow study demonstrates that the addition does have some minor impact on adjacent

BZA APPLICATION NO. 17535-A
PAGE NO. 6

properties, but that the additional shadows created do not amount to a substantial impact.

29. The east and west façades of the Project's addition will not have any windows. The south façade, facing the alley and rear properties, will have four small windows.
30. The north façade, facing the rear of the existing main house, will have about ten windows.
31. The windows on the proposed additional will not have an undue adverse impact on the privacy of adjacent properties, as the majority of the windows provided will face the principal dwelling on the Subject Property.
32. The properties that abut the alley are barricaded by rear garages, blocking views into those properties. Adjacent properties to the east and west are all separated from the Property by fences. (Exhibit 49.)

CONCLUSIONS OF LAW

The Applicant seeks a special exception under § 223 to construct a building connection and second-story addition to an existing accessory garage that eliminate the rear yard required by § 404.1 and a special exception under § 202.10 establish an accessory apartment in the R-3 District at 3254 O Street N.W. (Square 1230, Lots 125 and 825). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR § 3104.1.)

Special Exception Under § 223

Pursuant to § 223, an addition to a one-family dwelling may be permitted as a special exception, despite not meeting certain zoning requirements, subject to the enumerated conditions. Specifically, the light and air available to neighboring properties must not be unduly affected (§ 223.2(a)), the privacy of use and enjoyment of neighboring properties must not be unduly compromised (§ 223.2(b)), and the addition, together with the original building, must not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage (§ 223.2(c)).

- (a) The light and air available to neighboring properties shall not be unduly affected;**

Based on the Findings of Fact, and the shadow study submitted by the Applicant under Exhibit 46B, the Board concludes that the light and air available to neighboring properties shall not be unduly affected by the proposed addition. The Board finds that the adjacent properties to the east

BZA APPLICATION NO. 17535-A
PAGE NO. 7

and west are currently well-shaded by trees and, accordingly, the proposed addition to the existing rear garage will not create an undue impact on light and air available to those properties.

- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;**

Based on the Findings of Fact, the Board finds that the addition will not unduly compromise the privacy of use and enjoyment of neighboring properties. The Project's addition will not have windows on the east or west side, thereby not compromising the privacy of either adjacent neighbor. The south façade will be modestly fenestrated, with several windows, and is facing the alley. The structures that abut the alley are one or two-story garages, and the Project will not impact the use and enjoyment of those properties.

- (c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; and**

The Board finds that the proposed addition will not visually intrude upon the character, scale, and pattern of houses along the subject street frontage, O Street, N.W. The addition has been designed to reflect the character of the two-story alley structures in the neighborhood and thus complements the view of houses as viewed from the alley. The Board finds that relief can be granted without substantial detrimental impact on adjoining properties in the neighborhood.

Pursuant to the requirement in § 223.3, the structure shall not exceed a lot occupancy of 70% in the R-3 District. The Board finds that the proposed structure will have a lot occupancy of 43.5% and will comply with § 223.3.

For the reasons discussed above, and as required by § 3104.1, the Board also finds that the proposed addition will not adversely affect the use of neighboring properties. The proposed accessory apartment addition will not be visible from O Street; no windows or doors will face the adjoining properties to the east or west, thus maintaining the privacy and use of neighboring properties; and there is a detached, unchanged view of the property. Further, the Board finds that the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Board concludes that the Applicant meets the requirements of § 3104.1.

Special Exception Under § 202.10

Pursuant to § 202.10, "an accessory apartment may be added within an existing one-family detached dwelling if approved by the Board of Zoning Adjustment as a special exception under § 3104," subject to certain requirements. As set forth in paragraphs (a) through (h), the requirements for approval in the R-3 Zone include: (a) the lot must have an area of at least 4,000 square feet; (b) the house must have at least 2,000 square feet of gross floor area, exclusive of garage space; (c)

BZA APPLICATION NO. 17535-A
PAGE NO. 8

the accessory apartment may not occupy more than 25% of the gross floor area of the house; (d) the accessory apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area, and garage space may not be converted; (e) any additional entrance created to the house must not be located on the wall of the house that faces a street; (f) either the principal dwelling or the accessory apartment must be owner-occupied; (g) the aggregate number of persons who may occupy the house, both the principal dwelling and the accessory apartment, must not exceed six; and (h) an accessory apartment may not be added where a home occupation is already located at the premises.

Request for Waivers

Pursuant to § 202.10(i), the Board may modify or waive up to two of the requirements listed in paragraphs (a) through (h), provided that:

- (1) The owner-occupancy requirement of paragraph (f) shall not be waived;
- (2) Any modification(s) approved shall not conflict with the intent of this section to maintain a single-family residential appearance and character in the R-1, R-2, and R-3 Districts; and
- (3) Any request to modify *more than two (2) of the requirements of this subsection* shall be deemed a request for a use variance.
(Emphasis added.)

The Applicant seeks two waivers from the requirements of § 202.10. First, the Applicant seeks a waiver from the preamble of § 202.10 (“the Preamble”), which requires the apartment to be located within an existing one-family detached dwelling. Although the existing dwelling is currently a one-family detached dwelling, the Applicant proposes to convert the structure into a one-family row dwelling through the construction of a trellis prior to the addition of the accessory apartment. As such, the property would no longer meet the “detached dwelling” requirement. Second, the Applicant requests to waive the requirement in § 202.10(d) that the “new apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area; garage space may not be converted.” For the following reasons, the Board finds that these two requests meet the requirements of § 202.10(i), and therefore grants the waivers from both applicable provisions.

Waiver from the Preamble of § 202.10

With regard to the first waiver request, the reference to “one-family detached dwelling” occurs in the introductory provision of § 202.10, not as a requirement listed in paragraphs (a) through (h). However, the Applicant argued and the Board accepted that it may consider, as a special exception, a request for a waiver of any requirement of § 202.10, not only those requirements listed in paragraphs (a) through (h).

BZA APPLICATION NO. 17535-A
PAGE NO. 9

The ANC argues, first, that the Board is not authorized to waive the requirements of the Preamble, as it is not a requirement listed in paragraphs (a) through (h). Second, the ANC argues that the Preamble contains not one, but three, discrete requirements. Namely, that the proposed accessory apartment be added: (1) within (2) an existing (3) detached dwelling. The ANC argued that, even if the Board finds the Preamble waivable, it must consider each of these three elements as a separate requirement, resulting in the Applicant's need to waive three requirements and seek use variance relief.

The Board is not persuaded by the ANC's arguments and finds that its decision to treat the Preamble as a waivable requirement is consistent with its precedent. The Board held in *Order No. 18232 of Herbert J. Sanborn, Jr.* that the Preamble can be waived. In making that determination, the Board in *Sanborn* noted that § 202.10(i)(3) specifies that "[a]ny request to modify more than two (2) of the requirements of this subsection shall be deemed a request for a use variance" (emphasis added), which implies that the Board may consider, as a special exception, a request for a waiver of any requirement of § 202.10, not only those requirements listed in paragraphs (a) through (h). The Board has continued to follow this precedent. (See *BZA Application No. 18649 of Rosalyn G. Millman* (2013) (The Board granted a special exception to allow an accessory apartment in an existing one-family semi-detached dwelling under § 202.10); *BZA Application No. 19036 of Jeanette M. Corley* (2015) (The Board granted a special exception from § 202.10 to allow an accessory apartment in a row dwelling). As noted by the Court of Appeals, "agencies, like courts, must and do favor a policy of *stare decisis* unless unusual circumstances intervene." *Reichley v. District of Columbia Dep't of Employment Services*, 531 A.2d 244, 247 (D.C.1987); accord, *Washington Metropolitan Area Transit Authority v. District of Columbia Dep't of Employment Services*, 683 A.2d 470, 476 (D.C.1996). The Board finds no such exceptional standard exists to justify a departure from this precedent.

The Board also disagrees with the ANC that the preamble contains three separate requirements. The requirement that the apartment be within an existing detached dwelling means that the section does not allow an accessory apartment in a new detached dwelling. Here there is an existing detached dwelling that will be converted to a row dwelling. The fact that the conversion will occur through an addition requires a separate waiver of § 202.10(d) and therefore is not relevant to the Preamble. Therefore, the only conflict between the preamble and what is proposed is a difference in the type of principal use – a detached dwelling instead of a row dwelling – within which an accessory apartment may be established.

As to the compliance with the waiver conditions, the Board finds that the waiver of the Preamble shall not conflict with the intent of the regulations to maintain a residential appearance and character of the R-3 District. As discussed in the special exception criteria of § 223, the Subject Property would continue to appear as a one-family detached dwelling from O Street, N.W., as the addition of the trellis or second-story of the accessory structure would not be visible. The addition would be visible from the alley, 33rd Street N.W., and Potomac Street N.W., but was designed to

BZA APPLICATION NO. 17535-A
PAGE NO. 10

fit in with the character of other alley structures within the neighborhood. The waiver of the Preamble would not affect the appearance and character of the R-3 District in this case.

Waiver from § 202.10(d)

The second waiver requested by the Applicant applies to the requirement in § 202.10(d) that the “new apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area; garage space may not be converted.”

The Board finds that the waiver of § 202.10(d) will also not conflict with the intent of the regulations to maintain a single-family residential appearance and character of the R-3 District. The Board finds that the design proposed creates an appearance that is similar to other two-story garages located in the alley and other garages around the neighborhood. Further, the Board gives credit to OP’s finding that the design maintains the appearance and character in the neighborhood.

The ANC argues that converting the one-family detached unit to a one-family row house is not consistent with the appearance and character of the R-3 District. The Board is not persuaded by the ANC’s argument because, although the addition will be visible from the alley, 33rd Street N.W., and Potomac Street N.W., the accessory structure addition was designed to be in keeping with other accessory structures in the alley and would not alter the character of the area. Therefore, the Board grants the Applicant’s request to waive the requirements of the Preamble and § 202.10, pursuant to § 202.10(i).

Special Exception Criteria of § 202.10

As set forth in paragraphs (a) through (h), the requirements for approval of a special exception to allow an accessory apartment in the R-3 Zone include:

(a) The lot shall have a minimum lot area for the following zone Districts:

(3) Four thousand square feet (4,000 ft.²) for R-2 and R-3;

The Board finds that this requirement is met, as the Subject Property has a lot area of 5,533 square feet.

(b) The house shall have at least two thousand square feet (2,000 ft.²) of gross floor area, exclusive of garage space;

The Board finds that this requirement is met, as the existing dwelling has at least 2,000 square feet of gross floor area.

(c) The accessory apartment unit may not occupy more than twenty-five percent (25%) of the gross floor area of the house;

BZA APPLICATION NO. 17535-A
PAGE NO. 11

The Board finds that this requirement is met, as the proposed accessory apartment will occupy 1,018 square feet of gross floor area, which is approximately 22% of the gross floor area of the principal structure.

- (d) The new apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area; garage space may not be converted;**

The Board has granted a waiver of this requirement.

- (e) If an additional entrance to the house is created, it shall not be located on a wall of the house that faces a street;**

The Board finds that the proposal will create no new entrances to the dwelling from O Street N.W., therefore this requirement is met.

- (f) Either the principal dwelling or accessory apartment unit must be owner-occupied;**

The Applicant has stated for the record that she will occupy the principal dwelling, therefore the Board finds that this requirement is met.

- (g) The aggregate number of persons that may occupy the house, including the principal dwelling and the accessory apartment combined, shall not exceed six (6);**

The Applicant has stated for the record that she will limit the aggregate number of persons occupying the principal dwelling and accessory apartment to six occupants. The Applicant further indicates that the proposed accessory apartment will have one bedroom and the intended maximum occupancy would be two persons. The Board finds that the maximum occupancy requirement is met.

- (h) An accessory apartment may not be added where a home occupation is already located on the premises;**

The Applicant has asserted that no home occupation is located on the premises, therefore the Board finds that this requirements is met.

General Special Exception Criteria

The Board also finds that the proposed accessory apartment will not adversely affect the use of neighboring properties as required by § 3104.1. The Board finds that the criteria in the regulations adequately address potential impacts of the accessory apartment and that the project proposed is

BZA APPLICATION NO. 17535-A
PAGE NO. 12

designed in a way to prevent negative impacts on the neighborhood by limiting the number of inhabitants and ensuring that the property remains owner-occupied. The Board also finds that the accessory apartment will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

Accordingly, the Board finds that the application meets the special exception criteria of § 202.10 and the general special exception criteria of § 3104.1.

Great Weight

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)). In this case, for the reasons discussed, the Board concurs with OP’s recommendation to approve the application, as reflected in its report under Exhibit 30.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)).) The ANC submitted a written report and a supplemental filing to the record, both raising various issues and concerns.

In its report dated March 2, 2016, ANC 2E indicated that, at a regularly scheduled monthly meeting on February 29, 2016, with a quorum present, the ANC voted 8-0-0 to request that the Board defer consideration of the application until a pending dispute between the District of Columbia and Mr. Kebreab Zere concerning the alley, or in the alternative that the Board deny the request for special exception relief. (Exhibit 27.) In its report, the ANC further detailed the following concerns: (1) the requested waiver from § 202.10(d) would conflict with the intent of the R-3 District to maintain a single-family residential appearance and character; (2) the proposed trellis-covered walkway does not meet the definition of “meaningful connection;” and (3) the project does not meet the definition of “row dwelling.” (Exhibit 27.)

In addition, ANC 2E filed a response to the Applicant’s Supplemental Submission, dated May 13, 2016, which raised the following additional issues and concerns: First, the ANC argued that the waiver of the preamble of § 202.10, as requested by the Applicant, is not authorized by the regulations. Second, the ANC raised concerns about the letter of support submitted by the Applicant, requesting that the Board not admit the 27 form letters, or in the alternative, noting that the letters do not represent the opinions of the neighbors most affected by the project. (Exhibit 47.)

Request to Defer Proceedings

The Board determined to continue with the hearing proceedings on the requests for special exception relief because the pending dispute is outside the Board’s jurisdiction and because neither

BZA APPLICATION NO. 17535-A
PAGE NO. 13

party to the dispute could offer a likely timeframe for its resolution. For these reasons, the Board was not persuaded to defer the proceedings.

Waivers Pursuant to § 202.10(i)

The Board has addressed the ANC's objections to the Applicant's request for waivers pursuant to § 202.10(i) in its discussion granting those waivers above. In summary, the Board was not persuaded by the ANC to depart from its established precedent of treating the Preamble as a single, waivable provision. In addition, the Board found that waiver of the requirement in § 202.10(d) would not conflict with the intent to maintain a single-family residential appearance and character in the R-3 District, based on the determination that the addition would not be visible from the street frontage and was designed to be in keeping with other nearby alley structures.

Trellised Walkway Addition

The ANC raised several concerns related to the proposed trellised walkway addition: first, that it does not constitute a "meaningful connection," and second, that the walkway does not serve to convert the structure into a "row dwelling," as defined in the Zoning Regulations.

The definition of "building" under § 199.1 permits separate portions of a structure to be considered as a single building for zoning purposes provided that a communication exists between those separate portions at or above the main floor. For purposes of this definition, "communication" typically means access between the separate portions of the structure. (*See BZA Appeal No. 16646 of Daniel Serwer and James W. McBride* (2001).) The definition of "building" has been interpreted to mean that a single building can be created when there is a "communication between separate portions of the structure" at or above the main floor of the building. (*See BZA Appeal No. 18664 of Charles C. Parsons* (2013).) The Zoning Commission has used the term "meaningful connection" to describe a communication sufficient to create a single building. (*See Z.C. Order No. 08-34, Center Place Holdings, LLC* (2011).)

The Board has previously determined that a trellised walkway meets the definition of "meaningful connection" when it has a roof that provides at least 51% coverage, is supported by columns, and is used for the shelter, enclosure or support of persons. (*See Application No. 17331 of JPI Apartment Development LP* (2005).) The Board finds that, based on the plans provided by the Applicant, the proposed walkway would meet this definition and would serve as a meaningful connection, in keeping with the Board's precedent on this matter. Accordingly, the addition would create a single building on the property for zoning purposes.

The definition of a one-family detached dwelling under § 199.1 is a "one-family dwelling, completely separated from all other buildings and having two side yards." The definition of a row dwelling under § 199.1 is a "one-family dwelling having no side yards." Under § 199.1, a side yard is "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." Because the structure will expand from

BZA APPLICATION NO. 17535-A
PAGE NO. 14

the eastern lot line and to the western lot line, the proposed project eliminates both side yards. Accordingly, the proposed structure meets the regulatory definition for “row dwelling,” and the Board is not persuaded by the ANC’s argument.

Request to Not Admit Letters in Support

The letters in support contested by the ANC were submitted by the Applicant as a part of its supplemental submission on May 6, 2016. The letters were properly filed and accepted into the record, pursuant to the Board’s procedural regulations, and therefore, the Board will not remove that filing from the record. Nonetheless, when considering whether to grant special exception relief in this case, the Board considered the concerns of the residents who expressed their opposition to the project, in addition to noting the receipt of letters in support. The Board also considered the reports of OP and DDOT, as well as the shadow study provided by the Applicant, in evaluating the potential impact of the proposed project on adjacent property owners.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception under §§ 210.10 and 223 to allow the construction of a building connection and second-story addition to an existing accessory garage and the establishment of an accessory apartment.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 34.**

VOTE: **4-1-0** (Marnique Y. Heath, Peter G. May, Anita Butani D’Souza, and Jeffrey L. Hinkle to APPROVE; Frederick L. Hill to DENY.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: 
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: August 11, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

BZA APPLICATION NO. 17535-A
PAGE NO. 15

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.