

John and Stephanie Lester
117 C Street, S.E.
Washington, D.C. 20003

November 4, 2011

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: BZA Case No. 18263 – John and Stephanie Lester
117 C Street, S.E. (Square 733, Lot 23)

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D.C. OFFICE OF ZONING
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Dear Board Members:

At the conclusion of the hearing on October 25, 2011, in the above-referenced case, the Board of Zoning Adjustment left the record open for the receipt of the following additional information: (i) the trellis issue; (ii) the position taken by Mr. Joseph Wall, an neighbor on Rumsey Court; (iii) compliance with the special exception standard; and (iv) any additional support letters from the applicant. This letter responds to those issues.

1. The Trellis Issue

We note for the record that the Board addressed this issue in BZA Case No. 17331. There, the applicant proposed a two-story addition to a single-family house at 1229 E Street, S.E. The house and addition would be connected by a trellis. The Board questioned whether a trellis could be deemed a “building” for purposes of establishing a meaningful connection and requested the applicant and the Office of Planning to brief the issue. The Board ultimately 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 No. 17331, effective July 6, 2005, at 2. A copy of the order is attached.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18263
EXHIBIT NO. 40

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This decision reconfirmed the decades-long interpretation of the Zoning Regulations on this matter. Consequently, this issue has not come before the Board since 2005. This long-standing interpretation continues to inform current rulings of the Zoning Administrator.

2. Position Taken by Mr. Wall

On Tuesday, November 1, my wife and I met with Mr. Wall and his sister Brigid Hollinger, who together own three of the five alley dwellings. They confirmed for us that they support our project.

3. Compliance with the Special Exception Standards

The test for special exception relief, as requested in our application, encompasses both the standards enumerated in section 223 of the regulations as well as the provisions of section 3104.1. Section 3104.1 provides that the Board is authorized to grant special exceptions where, in its judgment, the special exceptions “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 the neighboring property....” The general purpose and intent of the Zoning Regulations and Maps are to provide adequate light and air, prevent undue concentration of population and the overcrowding of land; and provide distribution of population, business and industry and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services. This standard is very similar to section 223, which provides that any proposed addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, that light and air available to neighboring properties shall not be unduly affected, and that the privacy of use and enjoyment of neighboring properties shall not be unduly compromised. As set forth in the materials we previously submitted and the testimony at the hearing, we have met these tests.

The R-4 District in which our property is located is designed for two-family dwellings. Our proposed addition along the alley will allow two families to reside on our property. Consequently, it is in harmony with the distribution of population intended for the R-4 District. The addition abuts a 30-foot wide named alley across which is a five story apartment building, thereby not impacting its light and air. The light and air of the alley dwellings farther east, abutting the five story apartment building, and again across the 30-foot wide alley are similarly not impacted. To the east and west, the alley addition will abut garage structures and thus will not block the light and air of neighboring properties. Our abutting neighbors agree in this assessment, as evidenced by their letters of support and as discussed below.

The addition on the top of the rear of the house does not unduly affect or compromise light, air, or privacy of use or enjoyment of the adjacent properties. Our architect noted in her testimony that the courtyard is 7' wide, which is unusually wide, and is entirely on our property. The relief we are seeking to avoid the 2' setback and allow for a straight, load-bearing wall will have no discernible effect on the neighbor's light and air.

4. Additional Support Letters

In addition to the support letters previously submitted to the record from owners of 115 C Street, S.E., 119 C Street, S.E., and 127 C Street S.E., we have obtained additional support letters from Ms. Heather Podesta, owner of 131 C Street, S.E., and Rev. Louis Sheldon, owner of 139 C Street, S.E. Copies of those letters are attached.

In total, we have received five support letters from immediate neighbors (including our two adjacent neighbors), three unanimous votes in support from the ANC and its subcommittees, the endorsement of the Historic Preservation Office and the L'Enfant Trust, which holds a preservation easement on our house, and a recommendation for approval from the Office of Planning.

While we recognize that our neighbor Mr. Parsons objects to our two-story addition along Rumsey Court, we note that the concerns he raised at the hearing related to the activities generated by the "commercial" uses in the alley and the fear that the addition would aggravate an already crowded alley. Yet, the addition of a flat in the R-4 District, which is expressly permitted by the Zoning Regulations, will not contribute to commercial activities or otherwise aggravate conditions in the alley. Rather, the new flat will enhance and reinforce the residential quality of the named alley. Further, as was noted at the hearing, Mr. Parsons recently sought and received a Variance, over the objection of the Office of Planning, to allow a rental unit on the second floor of his garage structure on Rumsey Court. Similarly, we note that the Capitol Hill Restoration Society's objections stemmed from the trellis connection, which is a question that has already been resolved by this Board and the long-standing interpretations of the Zoning Regulations. CHRS also objected on the grounds that the relief requested would undermine the general purposes and intent of the zoning regulations and maps by allowing this addition within the Capitol Hill Historic District. We note that the purposes and intent of the zoning regulations, cited above, do not address additions within the historic districts. The District's historic preservation law and regulations do, however, and the staff responsible for interpreting those regulations and law supports the addition as consistent with the character of the historic district.

Lastly, we request the Board grant the flexibility to modify the design of the building to address any comments from the D.C. Historic Preservation Review Board during final review of the project so long as the modifications do not require any additional areas of zoning relief.

Based on the foregoing, we respectfully request the Board to grant our application.

Very truly yours,



John Lester

November 3, 2011

**Board of Zoning Adjustment
Government of the District of Columbia
Suite 210 South
441 4th Street, NW
Washington DC 20001**

Re: BZA Application of Jack and Stephanie Lester - 117 C St. SE

Dear Board of Zoning Adjustment:

I am a nearby property owner at 131 C Street SE. Our neighbors, Jack and Stephanie Lester of 117 C Street, SE are seeking a special exception of the District of Columbia zoning laws to build an addition above their existing first and second floor house. Additionally, they are seeking a variance to build a 2-story garage in the rear of their property. I understand the addition and garage will increase the lot occupancy to 69.6%. They have shared the drawings of the proposed construction that have been submitted with their application to the BZA. I have reviewed the materials and support the proposed addition and garage. I recommend that BZA grant the requests they are seeking.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Podesta", with a long horizontal line extending to the right.

Heather Podesta, owner
131 C Street SE
Washington, DC 20003

November 3, 2011

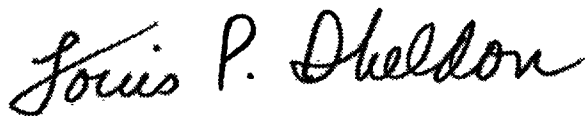
Board of Zoning Adjustment
Government of the District of Columbia
Suite 210 South
441 4th Street, NW
Washington DC 20001

Re: BZA Application of Jack and Stephanie Lester - 117 C St. SE

Dear Board of Zoning Adjustment:

We are nearby property owners at 139 C Street SE. Our neighbors, Jack and Stephanie Lester of 117 C Street, SE are seeking a special exception of the District of Columbia zoning laws to build an addition above their existing first and second floor house. Additionally, they are seeking a variance to build a 2-story garage in the rear of their property. We understand the addition and garage will increase the lot occupancy to 69.6%. They have shared the drawings of the proposed construction that have been submitted with their application to the BZA. We have reviewed the materials and support the proposed addition and garage. We recommend that BZA grant the requests they are seeking.

Sincerely,

A handwritten signature in black ink that reads "Louis P. Sheldon". The signature is written in a cursive, flowing style.

Rev. Louis Sheldon, owner
139 C Street SE
Washington, DC 20003

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

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Application No. 17331 of JPI Apartment Development LP, on behalf of Larry D. and Carol K. Quillian, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing single-family dwelling under section 223 not meeting the side yard (section 405), court (section 406) and nonconforming structure (subsection 2001.3) requirements to establish a flat (two-family dwelling in the R-4 District at premises 1229 E Street, S.E. (Square 1019, Lot 816).

HEARING DATE: June 14, 2005
DECISION DATE: July 5, 2005

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a report in support of the application. The Office of Planning (OP) also submitted a report on the application. OP's recommendation is summarized below.

PROCEDURAL ISSUE

In its report dated May 25, 2005, the Office of Planning ("OP") expressed concern about the Applicant's use of a trellis to connect the existing single-family dwelling with an addition at the rear of the property containing one residential unit (thus establishing a flat), in order to apply for relief under section 223. OP asserted that such an application does not meet the intent of section 233 and "will open the door for multiple buildings on a lot that should either not be approved, or when applicable should be considered under section 2516 as an exception to building lot control." Accordingly, OP recommended that the design be amended to remove the trellis and either (i) directly connect the two dwellings as one structure; or (ii)

attach the two dwellings with a connection that meets the definition of building under section 199.1.

The Applicant argued that the Board had already determined that a trellis meets the definition of "building" under section 199.1 of the Zoning Regulations in BZA Application No. 16863-A, and that use of a trellis to connect two structures in the instant case is sufficient to establish one building for zoning purposes based on this and other past precedent.

The Board requested the Applicant and OP to brief this issue. The Applicant submitted its post-hearing submission and proposed order on June 27, 2005. The Board considered this issue at its July 5, 2005, and 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.

DECISION

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to section 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and the OP report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3104.1 and 223, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

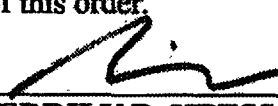
VOTE: **4-1-0** (Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II, Geoffrey H. Griffis to approve; and Kevin

Hildebrand to deny).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JUL 06 2005

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, 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 PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT.

**MEMORANDUM**

TO: District of Columbia Board of Zoning Adjustment

FROM: Arlova Y. Jackson, Case Manager
Joel Lawson, Associate Director Development Review

DATE: October 6, 2011

SUBJECT: BZA Case 18250 - request for special exception relief under § 223 to construct an addition to an existing single-family dwelling at 509 Q Street NW.

I. BACKGROUND

At the September 27, 2011 public hearing, the BZA directed OP staff to obtain additional information regarding the zoning relief appropriate for this request. Specifically, the BZA wanted guidance on the following:

1. Should the proposal be evaluated as a row dwelling or a semi-detached structure?
2. Does the proposed walkway would constitute a “meaningful connection” between the two structures, such that the entirety is considered as a single building?

II. ANALYSIS**Semi-detached vs. row dwellings**

Preliminary research of past BZA cases and a review of the Definitions section of the existing Zoning Regulations seems to indicate that the addition proposed here, which would eliminate the remaining side yard, would result in a conversion from a semi-detached dwelling to a row dwelling. However, in past appeals the BZA has ruled that while row dwellings are permitted as a matter of right in the R-4 zone, conversions of this type would still require approval by the BZA, particularly when the proposed construction is unable to attach to another structure (see BZA Appeal Order #16811). In an appeal of a Zoning Administrator’s decision to allow a similar conversion as a matter of right, the BZA found that the **elimination** of a side yard **constitutes a reduction** of a side yard and therefore would still require zoning relief (see BZA Appeal Orders 16811 and 17519).

In this case, the proposed construction would not share a common division wall with the property to the west since this building is set back approximately 3’ from the property line. Section 405.3 states that where there is no common division wall, each resulting free standing side must have a side yard. Therefore, the “free standing wall” would be along the west property line, which would seem to require the provision of a side yard and be consistent with the relief requested from the side yard requirements.

In any event, the request would continue to require open court relief, which is achievable through a § 223 special exception review. It would seem however, that the conversion to a row dwelling would eliminate the need for lot occupancy relief.

Meaningful Connections

With regard to the “meaningful connection” standard, I conducted similar research efforts to find guidance on how this determination is made. The applicant has also submitted documentation that provides some insight as to how the BZA may assess this proposal. Based on my review of past

cases, structures of the type being proposed here have been found to be acceptable “communications” by the BZA and the Zoning Administrator, based on the definition of a building, listed below.

Building - 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.

In his testimony to the BZA as part of an appeal case (BZA Appeal No. 17667), the Zoning Administrator discussed his interpretation of the “communication” standard found within the definition of a building. He indicated that a “communication”, which has come to be called a “meaningful connection” over time, was initially equated with the term “access”. Subsequent interpretations required that a “communication” between structures needed to have a functional purpose. An example of a functional purpose could be to provide shelter between a dwelling and a garage or addition.

Lastly, in BZA case # 17331, a trellis was found to meet the definition of “building” under Section 199.1 and therefore constitute a meaningful connection between two structures if it had a roof that provided at least 51% coverage and was supported by columns “for the shelter, enclosure, or support of persons.”

Given the BZA’s past rulings and the proposed characteristics of the walkway (a roofed structure providing access from the existing house to the addition), it would seem reasonable that it would be considered a “communication” (or meaningful connection) in this case.

Carports

Finally, I also wanted to supplement the record with some additional information regarding the need for zoning relief from the location requirements for carports, as suggested by the property owner to the east. I have provided an excerpt from two sections of the Zoning Regulations for your reference in an attachment. They include the general regulations for the location of parking spaces (§ 2116) as well as specific limitations on carports (§ 2300).

The regulations found in § 2116 relate to the location of parking spaces, however the structure/area in question is not the proposed location for an off-street parking space. The proposed 2nd-story addition that the adjacent owner believes would require relief from the carport regulations is an expansion of the principal structure. According to the applicant’s site plan (sheet A1.1), this area (at the first floor) would consist of a driveway leading to an open parking space located further back on the lot. Therefore, it does not appear as though the requirements of § 2300 would apply.

Attachments:

1. Location map
2. Excerpts from the Zoning Regulations (including Sections 199, 405, 2116, and 2300)
3. BZA Order 16811
4. BZA Order 17519
5. BZA Order 17331