

BZA APPEAL NO. 18664

**OPPOSITION TO APPELLANT'S MOTION FOR STAY OF THE
BUILDING PERMIT AND CONSENT TO APPELLANT'S MOTION FOR
AN EXPEDITED HEARING DATE**

Jack and Stephanie Lester (“**Lesters**”), the owners of the property at issue in Appeal No. 18664 (“**Appeal**”), hereby oppose Appellant’s Motion for Stay of Building Permit No. 1210100 (“**Permit**”). Appellant seeks to stay the Permit, which was duly issued pursuant to the Board’s approval in Application No. 18263, as affirmed by the Board on reconsideration in Application No. 18263-A and on remand in Application No. 18263-B. The Permit authorizes the construction of additions to the Lesters’ family house at 117 C Street S.E. (“**Property**”) that include a two-story carriage house connected to the existing rowhouse by a trellis such that the two structures are a single building for zoning purposes under the Zoning Regulations. The Lesters, as the owners of the property involved in the administrative decision that is challenged, are automatically a party to the Appeal pursuant to Section 3199 of the Zoning Regulations.

For the reasons set forth below, Appellant has not met the standard for a stay of the Permit. Briefly, in order to prevail on a motion for preliminary injunctive relief, the party seeking such relief must demonstrate (1) that the party is likely to succeed on the merits; (2) that irreparable injury will result if the preliminary injunctive relief is denied; (3) that the opposing parties will not be harmed by the preliminary injunctive relief; and (4) that the public interest favors the granting of preliminary injunctive relief.

I. THE APPELLANT HAS FAILED TO MEET ITS BURDEN OF PROOF FOR INJUNCTIVE RELIEF

A. THE APPELLANT IS NOT LIKELY TO SUCCEED ON THE MERITS

The Board should deny Appellant's Motion for Stay because the request fails the first prong of the standard for injunctive relief – that the Appellant is likely to succeed on the merits. Appellant complains that the Zoning Administrator erred in issuing the Permit because the proposed trellis connection between the existing rowhouse and proposed rear alley addition was located below the “main floor” of the Property and was otherwise not structurally sufficient to constitute a legal building connection. However, the Board has already specifically explained, in detail, that the proposed trellis is a valid building connection under the Zoning Regulations. On July 25, 2013, the Board issued Application No. 18263-B, a full 15-page administrative order affirming that the proposed work being undertaken pursuant to the Permit was permitted under the Zoning Regulations (“Order”). The Board specifically concluded with regard to the trellis connection that “a plausible basis exists for the Zoning Administrator to conclude that the Board’s grant of this application suffices to clear a building permit application for zoning compliance.” Order at 11-12. Therefore, given that the Board just affirmed, in detail, the justification for the trellis connection, the Appellant is unlikely to succeed on the merits by relitigating the same issue again.

B. DENIAL OF THE STAY WILL NOT RESULT IN IRREPARABLE INJURY

The Board should also deny the Appellant's Motion for Stay because the request fails the second prong of the standard for injunctive relief – that irreparable injury will result if the stay is denied. Here, there is no harm to Appellant.

For the reasons set forth above, the Lesters are likely to prevail on the merits. If, however, the Board were to reverse its reasoning, then DCRA would be empowered to take action to revoke the Permit and remove any improvements not in compliance with the Regulations. In the interim, the presence of a two-story addition on the rear of the Property will barely be noticed given the surrounding context on the alley (which is known as Rumsey Court). That context includes a larger two-story alley structure immediately to the west of the Property, a five-story apartment building immediately to the south of the Property across Rumsey Court, and multiple two-story alley dwellings southeast of the Property along Rumsey Court. The Board should also note that Appellant himself recently received Board approval to create an apartment on the second floor of a two-story carriage house at rear 124 D Street SE, across the alley from Appellant's own property at 129 C Street SE. See BZA Application No. 17943. Given that Appellant himself has contributed to the two-plus story residential character of Rumsey Court, he is particularly hard-pressed to argue that the Lesters' addition would cause him "irreparable" harm.

C. THE STAY WOULD SIGNIFICANTLY HARM THE LESTERS

Finally, the Board should also deny the Appellant's Motion for Stay because the request fails the third prong of the standard for injunctive relief – that the opposing parties will not be harmed by a stay. In reliance on the Permit, which was issued nearly a year ago, the Lesters and their three children moved out of their house for the duration of construction and engaged a contractor to complete the work. Construction began in July 2013 and is now well underway. Much of the rear of the existing rowhouse has been removed to accommodate the second and third floor additions, and much of the rear yard has been excavated to support the rear alley addition. If the stay were granted, the Lesters would be significantly harmed in multiple ways.

Their property would remain in a state of partial construction, with portions of the existing house and partially-excavated rear yard exposed to the elements as the cold weather season approaches. The stay would impose significant financial harm, through the costs associated with demobilizing and remobilizing the construction team (to say nothing of contractual penalties for the work stoppage). And perhaps most importantly, the stay would cause significant harm to the Lester family, which is currently living in and paying for temporary accommodations during construction. A stay would extend the duration of construction and require that the Lesters continue to these temporary accommodations until the Appellant's challenge is resolved and construction can be completed.

II. THE LESTERS SUPPORT THE REQUEST FOR AN EXPEDITED HEARING DATE

The Lesters support the Appellant's request for an expedited hearing date. Such an expedited hearing would obviate the need for a stay and bring some closure to a zoning issue that was already extensively discussed and resolved before the Board in Fall 2011 – two years ago.

For the reasons set forth above, the Lesters respectfully request that the Board deny the motion for a stay but grant the motion for an expedited hearing.



David M. Avitabile

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2013, a copy of this Motion was delivered by electronic mail to the following:

For DCRA/ Zoning Administrator:

Melinda Bolling, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street SW, 5th Floor
Washington, DC 20024

For the Appellant:

Martin Sullivan
Sullivan & Barros, LLP
1990 M Street NW, Suite 200
Washington, DC 20036

For ANC 6B:

ANC 6B
921 Pennsylvania Avenue SE
Washington, DC 20003



David M. Avitabile