

**Statement in Support of the Appeal No. 18664 of Charles C. Parsons of
the Zoning Administrator's Decision to Grant Zoning Approval for
Building Permit No. B1210100 for 117 C Street, SE (Square 733, Lot 23)**

I. Introduction.

Charles C. Parsons ("Appellant") alleges error by the Zoning Administrator in approving Building Permit No. B1210100 (the "Building Permit"), issued on November 23, 2012. The Building Permit approved construction of "A New 2-floor rear addition to the existing SFD row structure with a new covered walkway connecting to a new 2-floor addition which [sic] 1st floor as garage at all the way to rear of property line...per BZA #18263". The Building Permit was issued for an addition to an existing dwelling located at 117 C Street, SE (the "Existing Dwelling") and for construction of another 2-story structure at the rear of the Property (the "Rear Structure").

Proposed construction includes construction of a trellis (the "Trellis") between the basement level of the Existing Dwelling and the Rear Structure. In granting zoning approval for the Building Permit, the Zoning Administrator would have had to make the following findings:

(i) The Trellis between the Existing Dwelling and the Rear Structure constitutes a legally sufficient connection such that the Existing Dwelling and the Rear Structure can be considered a single building under the Zoning Regulations;

(ii) As a result of Finding (i) above, the Rear Structure was merely an addition to the Existing Dwelling; and not a separate, accessory structure;

(iii) Because the Existing Dwelling and the Rear Structure were considered to be a single building, the Rear Structure was not subject to the one-story and 15-foot height limits for accessory structures under 11 DCMR § 2500.4;

(iv) The self-certified § 223 special exception relief granted in BZA Application No. 18263 was the correct relief necessary to allow construction of the 2-story Rear Structure, and no variance relief from § 2500.4 is necessary.¹

¹ The Board, in Order No. 18263, did not rule directly on the Trellis connection issue. Instead, it refused to dismiss the self-certified special exception application based on the theory that it was "plausible" that the Zoning Administrator could find the Trellis to be a legally sufficient connection. The Board noted that its "grant of this or any other self-certified application does not prevent the Zoning Administrator from denying a building permit because more relief is needed, or the Board from affirming that denial." By the same logic, the Board's decision in Order No. 18263 did not mandate the Zoning Administrator's

All of the above findings were made in error, according to the plain language of the Zoning Regulations, including the definitions for “Building” and for “Main Floor” in 11 DCMR § 199.1. The proposed construction of the Rear Structure constitutes a violation of the story and height requirements for accessory structures under 11 DCMR § 2500.4. The Appellant respectfully requests that the Board of Zoning Adjustment instruct DCRA to revoke the Building Permit and require the Rear Structure to comply with the requirements of § 2500.4 regarding accessory structures.

II. The Trellis is Not a Meaningful Communication Sufficient to Make the Two Structures One Building for Zoning Purposes.

1) In order for the Trellis to serve as a legally sufficient connection to allow the Existing Dwelling and Rear Structure to be considered one building, the Trellis would have to connect from the main floor of the Existing Dwelling to the Rear Structure. Clearly, it does not. A plain reading of the definitions of “Building” and “Main Floor” in the Zoning Regulations, together with a review of elevation plans of the Existing Dwelling (attached as Exhibit A), reveal the obvious—that the Trellis actually connects to the basement level of the Existing Dwelling and that the Existing Dwelling and the Rear Structure are simply two separate structures.

The definitions of “Building” and “Main Floor” in the Zoning Regulations are plain and unambiguous and should be considered as such. (“If the statutory language is unambiguous, in the absence of a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.” *Bannum, Inc. v. DCBZA*, 894 A.2d 423, 433 (D.C. 2006) (quoting *Reves v. Ernst & Young*, 507 U.S. 170, 177 (1993))). The definition of the term “Building” in the Zoning Regulations specifically mandates that “[t]he existence of a communication^[2] between separate portions of a structure below the main floor *shall not* be construed as making

approval of the Trellis connection, nor does it prevent this Board from determining that the Zoning Administrator was incorrect in approving the Trellis.

2 “Communication” “appears to be used as an equivalent term for ‘access.’” *Goto v. DCBZA*, 423 A.2d 917, 927 n. 1 (D.C. 1980) (Kelly, A.J., concurring in part and dissenting in part); *see also* Webster’s Third New International Dictionary, Unabridged 460 (1976) (“communication” definition “**5a** : access between persons or places : opportunity of communicating”). In *Goto*, the Board opined that gas pipes running from the main building to a kiln constituted such “communication” between them as to make them one building. Judge Kelly correctly noted that “the Board’s interpretation of the terms ‘building’ and ‘communication’ are not only contrary to common sense but also plainly erroneous and inconsistent with the Zoning Regulations.” 423 A.2d at 927 n. 1.

the structure (1) building.” 11 DCMR § 199.1 (definition of “**Building**”) (emphasis added); *see* 11 DCMR § 199.2(d) (“The word 'shall' is mandatory and not discretionary.”). The “Main Floor” of a building is specifically defined as meaning “the floor of the story in which the *principal entrance* of a building is located.” 11 DCMR § 199.1 (definition of “**Main Floor**”) (emphasis added). Because the term “principal” is not specifically defined in the Zoning Regulations, “[t]he BZA is required to refer to 'Webster's Unabridged Dictionary' for any term not specifically defined in the Zoning Regulations.” *Wallick v. DCBZA*, 486 A.2d 1183, 1185 (D.C. 1985); *see* 11 DCMR § 199.2(g).³ Webster's defines the term “principal” as meaning “*most important, consequential, or influential: relegating comparable matters, items, or individuals to secondary rank.*” Webster's Third New International Dictionary, Unabridged 1802 (1976) (emphasis added). Given the existence of this clear dictionary definition, which is “incorporated into the zoning regulations pursuant to 11 DCMR § 199.2(g),” *Kalorama Citizens Ass'n v. DCBZA*, 934 A.2d 393, 405 (D.C. 2007), there is no need to resort to legislative history or principles of statutory construction to give meaning to the phrase “principal entrance.” *Cf. Keefe Co. v. DCBZA*, 409 A.2d 624, 626 (D.C. 1979) (where drafters of zoning regulations provided no definition of “similar professional person”, and no definition could be found in any other section of the regulations, “the BZA had to resort to legislative history and fundamental principles of statutory construction, to give meaning to the phrase”).

The definitions of “Building” and “Main Floor” clearly contemplate that a building can have only one main floor. Thus, the definition of “Building” refers to the existence of a “communication . . . below *the* main floor.” 11 DCMR § 199.1 (definition of **Building**) (emphasis added); *see* Black's Law Dictionary 1647 (4th ed. 1968) (stating that “the” is “[a]n article which particularizes the subject spoken of” and gives as an example, “‘The’ house means only one house.”). If the D.C. Council had wanted to indicate that there could be more than one main floor in a building, it would have used the language “*a* main floor.” *See* Black's Law Dictionary 3 (4th ed. 1968) (“The article 'a' is not necessarily a singular term; it is often used in the sense of 'any' and is then applied to more than one individual object.”). That there can be

3 11 DCMR 199.2(g) provides that “Words not defined in this section shall have the meanings given in Webster's Unabridged Dictionary.” “The only unabridged edition of a Webster's dictionary is WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED, published in successive printing by the G. & C. Merriam Company.” *Wallick v. DCBZA*, 486 A.2d at 1185 n. 5.

only one “main floor” is further reinforced by the definition of “main floor” as “*the* floor of the story in which *the principal entrance of a building* is located.” 11 DCMR § 199.1 (emphasis added). As there can be only one “principal” or “most important” entrance to a building (all others being relegated to secondary rank), there can be only one main floor in a building.

Furthermore, “[i]t is a well-established principle of statutory construction that different provisions within the same statute should be construed together, . . . and a particular term should be assumed to have a consistent definition throughout a statute.” *Dupont Circle Citizens Ass’n v. DCBZA*, 749 A.2d 1258, 1263 n. 12 (D.C. 2000) (citations omitted). The term “principal entrance” is consistently used throughout the zoning regulations to identify and pinpoint one particular entrance to, or part of a building, such as the particular entrance to an apartment building from which a measurement should be taken, *see* 11 DCMR § 354.6 (“The center of *the principal entrance* of the apartment building shall be more than one-fourth (¼) mile walking distance from the nearest principal business street frontage of any business district previously established and operating in a Commercial or Industrial District.”), or the side of the building that should be considered its front, 11 DCMR § 2516.5(a) (“The front of the building shall be the side upon which *the principal entrance* is located[.]”) (emphasis added); 11 DCMR § 2517.3(a) (same), or the particular story of a building from which any stairs leading from a door to the ground may occupy a required yard area, 11 DCMR § 2503.4 (“Stairs leading to the ground from a door on the story in which *the principal entrance* of a building is located may occupy any yard required under this title.”) (emphasis added), or, as in this case, the story of a building that is considered its main floor. 11 DCMR § 199.1 (definition of **Main Floor**). Similarly, the term “Main Floor” has consistently been used to refer to a single floor of a building. *See* 11 DCMR § 199.1 (defining **Garage, mechanical parking** as “a building or other structure without repair or service facilities in which parking is accomplished entirely by means of elevators and in such a manner that there is no human occupancy other than by the elevator operators anywhere *except on the main floor*”) (emphasis added); 11 DCMR § 354.2 (“The adjuncts [to an apartment house] authorized under this section [i.e., convenience stores,] *shall be limited to the main floor of the building* or below”); 11 DCMR § 764.2 (“The [enclosed pedestrian] space shall be directly accessible to the public and shall be located to provide direct or indirect access to the public space of *the main floor of the building*.”) (emphasis added); 11 DCMR § 767.5 (“A closed court

for which a bonus incentive award is sought shall be directly accessible to the public and connected to the public space of *the main floor of the building.*") (emphasis added).

Based on the foregoing definition of "principal entrance," the principal, or most important, entrance to the Existing Dwelling is the entrance at the front of the Existing Dwelling facing C Street on the second level of the Existing Structure, which means that the second level is, in fact, the main floor of the Existing Dwelling. Because the principal entrance to a house or other building is ordinarily located at the front of the building facing the street,⁴ the door at the rear of the basement⁵ level of the Existing Dwelling, which opens out to a yard, is clearly not the principal entrance to the Existing Dwelling. Thus, under the plain language of the Zoning Regulations' definitions of "Building" and "Main Floor", the construction of the Trellis cannot be construed as making the Existing Dwelling and the two-story Rear Structure one building, as the Trellis is one full level "below the main floor". Exhibit A is a drawing that depicts the rear elevation of the Existing Dwelling and the existing deck and staircase that lead from the main floor of the Existing Dwelling to the yard below. As clearly shown in Exhibit A, the Trellis physically cannot be connected with the main floor because it is horizontally aligned with the basement level, making it impossible for the Existing Dwelling and the Rear Structure to be considered one building. The Trellis is not a meaningful communication and, as a result, the Existing Dwelling and the Rear Structure are two separate structures. The Zoning Administrator's finding to the contrary constituted error.

2) In addition to the Trellis not serving as a legally sufficient connection between the Existing Structure and the Rear Dwelling, the Trellis in this case is also not structurally sufficient to be considered a communication between the two structures, as required by the Zoning Regulations. The proposed, 23 and 1/2 foot long Trellis does not provide sufficient "communication" between the main house and the Existing Structure to create a single building.

4 See, e.g., *Young Men's Shop v. Odend'Hal*, 121 F.2d 857 (D.C. Cir. 1941) (defendant's shop faced south on F Street, "where the principal entrance is, the one used by customers"); *Clawson v. City of Oxford*, 1987 Ohio App. LEXIS 10361, *15 n. 1 (Ohio Ct. App. Dec. 31, 1987) (No. CA87-05-063) (city ordinance required "[e]very building erected, converted, enlarged, reconstructed or structurally altered . . . shall have its principal entrance upon a street . . ."); *Karasik v. Highland Park*, 130 Ill. App.3d 566, 568, 264 N.E.2d 215 (1970) (principal entrance of house on corner lot faced Lincolnwood Road, which was also the residence address).

5 "Basement" is defined as "that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade." 11 DCMR § 199.1 (definition of **Basement**).

Using such a lengthy covered walkway or breezeway, such as the Trellis, to connect a garage/apartment building or other outbuilding to the main house does not make the two structures one building, especially where, as here, construction of the covered walkway is designed to circumvent the restrictions of the zoning ordinance. *See, e.g., Kamp v. Stebens*, 517 N.W.2d 227, 229 (Iowa App. 1994) (16-foot breezeway connecting house to garage a “subterfuge” to avoid height restriction on accessory buildings); *Evans v. ZHB of Borough of Spring City*, 732 A.2d 686, 690 (Pa. Cmwlth Ct. 1999) (50-foot breezeway connecting main dwelling and apartment above accessory building); *see also Daughters of St. Paul, Inc. v. ZBA*, 17 Conn.App. 53, 67, 549 A.2d 1076, 1083 (1988) (18 and 1/2 foot glass-enclosed, covered walkway between garage and main building did not make garage part of main building, as opposed to “accessory building”). Furthermore, the proposed Trellis is not a “Building” because it does not have a roof. *See* 11 DCR 199.1 (defining “Building” as “a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel”) (emphasis added). A “Roof” is defined as “the external upper covering of a house or other building.” *Fourth Street Place, LLC v. the Travelers Indemnity Company*, 127 Nev. Adv. Op. 86, 270 P.3d 1235, 1240 (Nev. 2011) (quoting *Webster's New Universal Unabridged Dictionary* 1670 (1996)). A more functional definition provides that “a roof should be sufficiently durable to meet its intended purpose: to cover and protect a building against weather-related risks that reasonably may be anticipated.” *Id.* at 1240-41 (quoting *Dewsnup v. Farmers Insurance Co.*, 349 Or. 33, 239 P.3d 493, 499 (2010)). Because the Trellis does not have a roof that is intended to cover and protect a building against weather-related risks, it does not meet the Zoning Regulation's definition of a “Building”.

III. This Appeal is Timely Filed.

Pursuant to § 2112.2 (a): “An appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier.”

Although the Building Permit was issued on November 23, 2012, the Appellant did not know of the issuance of this Building Permit, nor the Zoning Administrator's decisions underlying that issuance, until the evening of August 29, 2013, when the Appellant's land use

attorney, hired that day, searched the PIVS system and discovered that the Building Permit had been issued.

The earliest date on which the Appellant could have reasonably been in a position to suspect that a building permit had been issued would be on or about July 27, 2013, when the Appellant noticed that a dumpster had been placed on the Property. Prior to that date, the Appellant had no reasonable way of knowing that a building permit had been issued. The Appellant had no knowledge of the PIVS on-line system, construction had not begun, and no notice of the Building Permit was observed or received by the Appellant. When the Appellant noticed the dumpster, he began an investigation which led him to hire counsel.

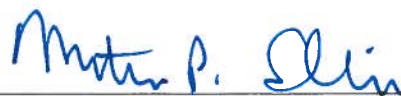
So the Appellant first knew of the Zoning Administrator's decision on August 29, 2013, although it is arguable that the Appellant reasonably should have known of the Zoning Administrator's decision some time shortly after July 27, 2013. As this Appeal is being filed well within sixty (60) days of both of these two dates, it is timely filed.⁶

IV. Conclusion.

Based on the foregoing, the Existing Dwelling and Rear Structure are two separate structures, and the Zoning Administrator erred in assuming that the Trellis was a legally sufficient connection such that the Existing Dwelling and Rear Structure could be considered one building. The Rear Structure should have been subject to the one-story height limitations for accessory structures and should have been subject to the one-story and 15-foot height limits for accessory structures pursuant to 11 DCMR § 2500.4. In addition, the proper relief should have been variance relief pursuant to 11 DCMR § 2500.4 and not relief pursuant to § 223. Accordingly, the Appellant respectfully requests that the Board of Zoning Adjustment instruct DCRA to revoke the Building Permit and require the Rear Structure to comply with the requirements of § 2500.4 regarding accessory structures.

⁶ § 3112.2 (c) provides a minimum (not maximum) of sixty (60) days from the date of the administrative decision complained of in which to file an appeal. Further, as the challenged construction has not even commenced as of September 3, 2013, it is not "under roof" and therefore Section 3112.2 (b) does not apply.

Appeal of Charles C. Parsons
117 C Street, SE

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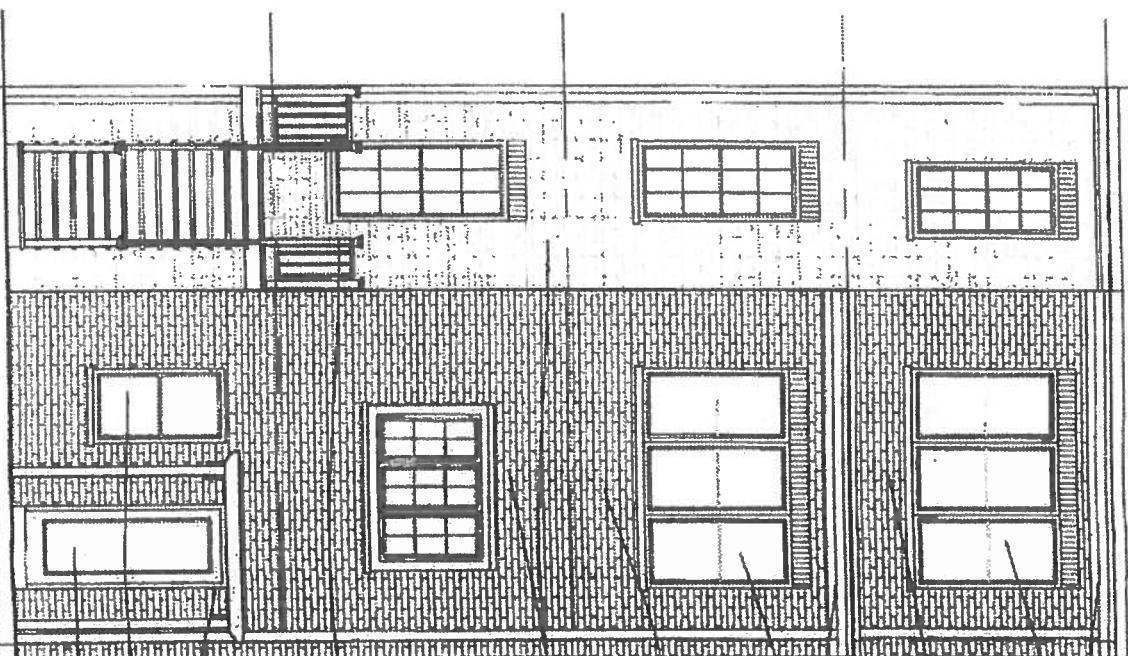
Martin P. Sullivan, Esq.

Sullivan & Barros, LLP

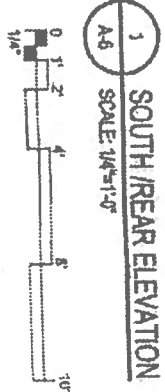
EXHIBIT A

ELEVATION
 ROOF
 THIRD FLOOR
 SECOND FLOOR
 FIRST FLOOR
 EXISTING GRADE

9'-0"
 9'-0"
 10'-0"
 9'-1"



ALUM CLAD GLASS DOOR



LESTER RESIDENCE
117 C STREET SE Washington, DC 20003

A-6

VERSION	B2A
DATE	10-18-11
SCALE	1/4"=1'-0"
EXTERIOR ELEVATION	

EXHIBIT B

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., January 20, 2011

Plat for Building Permit of: SQUARE 733 LOT 23

Scale: 1 inch = 20 feet Recorded in REC. Book 3 Page 733

Receipt No. 11-01598

Furnished to: TASHARIA OUTLAW

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted, that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application, that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or lots or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

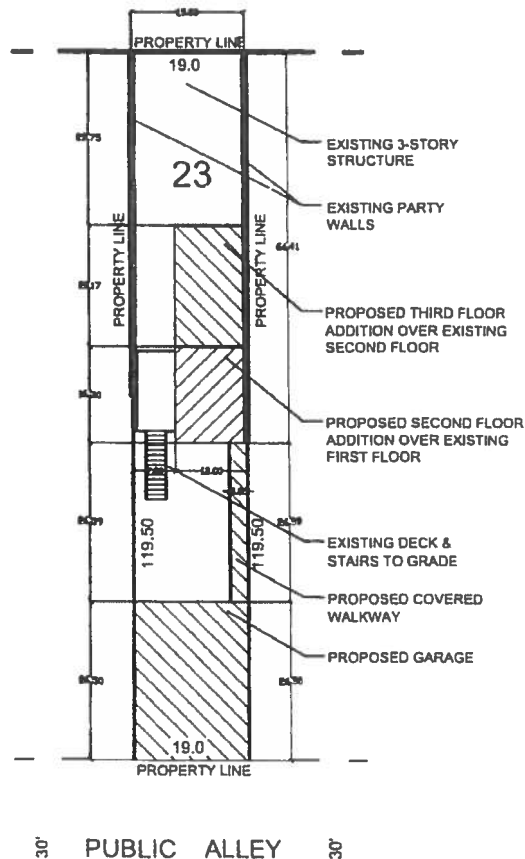
Surveyor, D.C.

By: A.S.

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

C STREET, S.E.



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CERTIFICATE OF SERVICE

I, Martin P. Sullivan, HEREBY CERTIFY that on November 19, 2013, a copy of the foregoing document was delivered via e-mail to the following:

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Martin P. Sullivan