

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington D.C. 20001

Appeal of Charles Parsons

Appeal No. 18664

DCRA'S STATEMENT IN OPPOSITION TO THE APPEAL

Appellant Charles Parsons challenges the issuance of a permit to construct an addition with a covered trellis. As will be explained below, his challenge is without merit.

FACTS

In July 2011, the property owners, the Lesters, filed an application seeking zoning relief to construct an addition to the existing dwelling at 117 C Street SE. 117 C Street SE is a 3 story one family row house with a basement. The basement is at grade at the rear of the house. The proposal was to enlarge the existing building and to construct a two story addition at the rear of the lot. The existing building and the 2 story addition would be connected with a covered trellis that would run from the rear basement of the existing building to the first floor of the addition. The two story addition would contain a garage on the first floor and living space on the second floor.

The Lesters sought a special exception to the lot occupancy, rear yard, and court width requirements. The Board approved the special exception by summary order on November 17, 2011. However, Parsons, who had opposed the application, petitioned the DC Court of Appeals for review. The Court vacated the Board's order and directed

preparation of a full order with findings of fact and conclusions of law. On July 25, 2013, the Board issued the full order approving the special exception. Exhibit 1, July 25 Order.

While the special exception case was pending at the Court of Appeals, the Lesters applied for and were issued a building permit to construct the addition and trellis. The permit was issued on November 23, 2012. Exhibit 2, Permit. On July 27, 2013, Parsons alleges that he witnessed a dumpster on the property which he says was his first tip off that a permit had been issued. He filed this appeal on 9/5/2013 challenging the building permit.

In this case, Parsons alleges that the permit should not have been issued. He argues that the trellis is below the main floor of the dwelling and, therefore, does not make the entire structure one building. He also claims that the trellis is not a sufficient connection between the dwelling and the addition. His position is that the addition is actually a separate building subject to the height and story limits for accessory uses.

ARGUMENT

1. Prior Board decisions indicate that Parsons' appeal is without merit.

There a number of glaring errors with Parsons' arguments. The most obvious of which is that the Board has already rejected the exact same arguments, most notably in the prior special exception case involving Parsons and the Lesters. In that case, it was also argued that the addition was improper because the trellis was below the main floor of the existing dwelling and the trellis is not a sufficient connection between the addition and existing building. Exhibit 1, p 9. In granting the Lesters a special exception to construct the addition, the Board rejected those arguments. It stated "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." *Id.* at 11-12.

It is clear from the Board's decision in the special exception case that it has already decided that there is a valid legal basis for concluding that the trellis is at the main floor of the existing building and is a sufficient connection between the addition and existing building. The Board essentially left it up to the Zoning Administrator to decide whether he agreed. By approving the permit, the ZA clearly indicated that he found the project to comply with the Zoning Code. Therefore, there is no reason for the Board to now backtrack from what it has already decided.

Furthermore, the Board's decision in the prior Lesters/Parsons case is not the only instance where it has rejected arguments similar to those advanced by Parsons. In *Appeal No. 16646 of Daniel Serwer and James W. McBride* (2001),¹ the Appellants alleged that the Zoning Administrator erred in approving building permits for a two story garage addition and a covered walk connection. The connection was to run from the basement of the dwelling to the first floor of the garage. As in this case, the Appellants contended that the addition was an improper accessory building. The Board did not agree. It specifically held that the "walkway thus constitutes a 'communication' between the dwelling and the garage addition, such that the dwelling and the addition are considered one building for purposes of zoning."

¹ Attached as Exhibit 3.

The Board's decision in Appeal No. 16646 should be controlling in this case due to the nearly identical facts involved. In both cases, the property owner proposed building a 2 story garage addition at the rear of their lot. The addition would be connected to the existing dwelling via a covered walkway that ran from the basement at the rear of the dwelling to the first floor of the garage addition. In Appeal No. 16646, the Board approved this proposal. The Board should reach the same decision here.² See Exhibit 6, *Application No. 17810-A of Michael Reitz*, p 10 (2010)(Board will follow its past precedents unless there is a reason to depart).

2. Parsons' arguments are inconsistent with the plain language of the Zoning Code.

The Board's prior decisions clearly indicate that there is no legal merit to Parsons' arguments. There is no reason for the Board to reevaluate those principles in this case. But even if it wanted to, it should still reach the same result.

Parsons' argument is that the addition is actually a separate building subject to the height and story limits for accessory uses. According to Parsons' this is so because (1) the trellis does not not make the structure into one building because it is above the main floor of the existing building and (2) the trellis is not a structurally sufficient communication. Both of Parsons' arguments are based on a cramped and incorrect interpretation of the term "Building," which is defined as

A structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separate from the ground up or from the lower floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. *The existence*

² The Board also made a similar decision in *Application No. 17331 of JPI Apartment Development LP* (2005) which is attached as Exhibit 4.

of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building. [11 DCMR § 199 (emphasis added).]

Turning first to Parsons' argument that the trellis will be below the "main floor" of the row house, he argues that there can only be one main floor and the main floor of 117 C Street is the first floor. He is wrong. As the Board reasoned in the prior special exception case:

On a sloping site such as the property in this case, the site may have multiple "main floors" that correspond to the changes in grade - one main floor that corresponds with the grade at street level at the front of the row dwelling, and another main floor that corresponds with the grade at the rear of the structure, which is one level below the grade at street level.

This understanding is consistent with other treatments of the term "main floor" under the Regulations. The definition of "building area," for example, excludes portions of a building that do not extend above the level of the main floor of the building. Here, the trellis is treated as part of the building area and is counted against the building's lot occupancy based on an understanding that the basement level constitutes a "main floor" because it is located at the level of the existing grade at the rear of the row dwelling. If the trellis is at the main floor for purposes of calculating lot occupancy, then it must also be at the main floor for purposes of determining whether it is a sufficient building connection.

[Exhibit 1, p 11.]

But even if Parsons' is right that a house can only have one main floor, he cannot establish that the 1st Floor is the main floor of 117 C Street. The Zoning Code defines "main floor" as the "floor on the story in which the principal entrance of a building is located." 11 DCMR § 199.1. There are various definitions of the word "principal." Among them are "most important" and "main." Exhibit 5, Excerpt from Webster's Third New International Dictionary, Unabridged (2002). Based on these definitions, it seems

obvious that for Parsons to establish that the 1st Floor of 117 C Street is the main floor, he must establish that the 1st Floor contains the most commonly used entrance.

In this case, the existing building is a single family residence with parking in the back. The basement is at grade in the rear of the house. As a result, the occupants regularly enter and exit through the back basement entrance. Therefore, Parsons' cannot establish that the first floor entrance is the "principal entrance." As a result, Parsons' cannot establish that the trellis will not be on the "main floor" of 117 C Street SE. ³

Moving on to Parsons' second argument, he claims the trellis is not a structurally significant connection between the addition and existing building. This argument does not seem to have any basis in District of Columbia law. Rather, Parsons' position is based on cases from Iowa, Connecticut, and other states. These cases are meaningless in interpreting the DC Zoning Code because as indicated above, there are District cases on point which reject Parsons' argument and there is no indication that the non-District cases cited by Petitioner involved the interpretation of similar Code provisions.

Contrary to what Parsons would have the Board believe, there is no structural sufficiency element in deciding whether a connection creates one building. Rather, as the Board stated in the prior case in rejecting Parsons' arguments:

[T]he 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 at 9.) 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

³ It is worth pointing out that Parsons has the burden of proof. 11 DCMR 3119.2.

(2011); Z.C. Order No. 05-36, First Stage Consolidated PUD & Related Map Amendment-200 K Street, N.E. (2006). The Board has previously found that a trellis may constitute such a connection between separate portions of a structure that creates one building under the Zoning Regulations.

The trellis proposed by the Applicant will provide cover over a walkway that will connect to doors in the row dwelling and the Alley Addition. (See Tr. Oct. 25 at 64 ("[W]e've basically created doorways on either side of the trellis connection, so that it [will] be a meaningful connection between the house and the rear yard. ") Therefore a basis exists upon which the Zoning Administrator could reasonably conclude that the trellis will provide a meaningful communication (that is, access) between separate portions of the structure.

[Exhibit 1, p 11.]

CONCLUSION

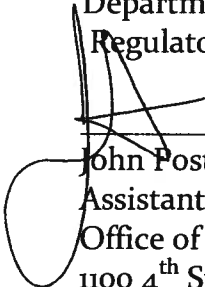
Parsons arguments are inconsistent with prior Board decisions and the plain language of the Zoning Code. Therefore, his appeal should be denied.

Respectfully Submitted,

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Date: 11/25/13


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CERTIFICATE OF SERVICE

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

For the Lesters:

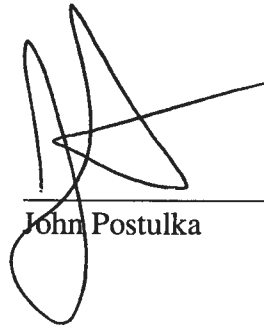
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A handwritten signature in black ink, consisting of a large, stylized 'J' and 'P' that are interconnected, with a horizontal line extending to the right from the end of the signature.

John Postulka

Exhibit 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18263-B of Stephanie and John Lester, pursuant to 11 DCMR §§ 1202.1 and 3104.1, for a special exception under § 223 to allow a rear addition to an existing one-family row dwelling not meeting requirements for lot occupancy (§ 403), rear yard (§ 404), or open court width (§ 406) in the CAP/R-4 District at premises 117 C Street, S.E. (Square 733, Lot 23).¹

HEARING DATE: October 25, 2011
DECISION DATE: November 8, 2011

DECISION AND ORDER ON REMAND

This self-certified application was submitted on July 7, 2011 by Stephanie and John Lester (collectively, the "Applicant"), the owners of the property that is the subject of the application. The application, as finally amended, requests a special exception under § 223 of the Zoning Regulations to allow construction of a rear addition to a one-family row dwelling not meeting zoning requirements related to lot occupancy, rear yard, or width of open court in the Capitol Interest (CAP) Overlay/R-4 District at 117 C Street, S.E. (Square 733, Lot 23). Following a public hearing, the Board voted to approve the application.

This application was originally approved by summary order issued November 17, 2011. Charles Parsons,² who appeared at the public hearing as a person in opposition to the application, petitioned the D.C. Court of Appeals for review of the Board's decision, and the Court vacated the summary order and directed the Board to prepare a full order with findings of fact and conclusions of law to facilitate judicial review of its decision. *Parsons v. D.C. Bd. of Zoning Adjustment*, D.C. Court of Appeals No. 11-AA-1606, decided February 28, 2013. Pursuant to the Court's directive, the Board now issues this order.³

¹ This caption has been revised to reflect the zoning relief ultimately requested by the Applicant. A full discussion of the original application and its amendment is contained in the findings of facts.

² Following the issuance of the original summary order in November 2011, Mr. Parsons filed a motion for reconsideration as well as a request to waive the Board's rules and permit filing of a motion for reconsideration by a person who was not a party in the original proceeding. For the reasons set forth in BZA Order No. 18263-A, the Board denied Mr. Parson's request for a waiver and dismissed the related motion for reconsideration.

³ Mr. Parsons filed a "Motion for Resolution on Merits" on May 23, 2013. In addition to requesting that the Board prepare this order, Mr. Parsons also requested a hearing on his motion for reconsideration and that he be made a party. The Board did not consider the remand instructions as encompassing any other action than the issuance of this order, and therefore instructed the Office of Zoning staff to return the motion to Mr. Parsons.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO.

18263-B

EXHIBIT NO.

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Board of Zoning Adjustment
District of Columbia
CASE NO. 18263
EXHIBIT NO. 58

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 8, 2011, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the State Historic Preservation Officer; the District Department of Transportation; the Councilmember for Ward 6; Advisory Neighborhood Commission ("ANC") 6B, the ANC in which the subject property is located; Single Member District/ANC 6B01; and the Architect of the Capitol. Pursuant to 11 DCMR § 3112.14, on July 28, 2011 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on July 29, 2011 (58 DCR 6406).

Party Status. The Applicant and ANC 6B were automatically parties in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant provided testimony and evidence from Jack Lester, the property owner, and Jennifer Fowler, an expert in architecture. The Applicant and its expert witness described the project, explained the need for the various forms of zoning relief requested, and addressed issues regarding potential adverse impact. The Applicant plans to construct a rear addition to the row dwelling at the subject property comprising a portion attached to the existing dwelling, a two-story portion abutting the rear property line, which will provide an enclosed parking space and additional living space on the upper floor, and a covered walkway (referred to throughout the hearing as a "trellis") to connect both portions into one enlarged building.

OP Report. By memorandum dated October 18, 2011, OP recommended approval of the application subject to two conditions: (i) the lattice roof over the walkway must provide at least 51% coverage; and (ii) the covered walkway must provide a communication between the two portions of the building, rather than terminate at the blank rear wall of the existing house. According to OP, "[p]ast precedent dictates that a trellised structure, though not enclosed, can be considered a meaningful connection if the lattice provides at least 51% coverage and if the covered walkway provides communication between the different parts of the building." (Exhibit 31.)

ANC Report. By letter dated October 12, 2011, ANC 6B indicated that, at a regular monthly public meeting, held October 11, 2011 with a quorum present, the ANC voted 8-0-0 "to support the applicant's request as presented."⁴ According to ANC 6B, "the project's impact on air, light and privacy will be negligible." (Exhibit 30.)

⁴ The ANC described the necessary relief as a special exception from the open court requirement to construct a two-story addition on the rear of a row dwelling not meeting the required open court width, a special exception from lot occupancy requirements and a special exception from the rear yard setback restriction to construct a two-story addition with a garage at the rear of the property with a second-floor apartment. This essentially restates the relief requested in the application as amended; i.e. a special exception under § 223 to allow construction of a rear addition to a one-family row dwelling not meeting zoning requirements related to lot occupancy, rear yard, or width of open court.

Architect of the Capitol. By memorandum dated August 25, 2011, the Architect of the Capitol submitted its report on the requested special exception in the Capitol Interest Overlay District. The Architect of the Capitol found that the proposed relief for additions to a three-story row dwelling and second floor addition to a proposed garage, not meeting lot occupancy requirements under § 403 and lot control restrictions under § 2516.1, was not inconsistent with the intent of the CAP/R-4 District and would not adversely affect the health, safety, and general welfare of the U.S. Capitol precinct and adjacent area, and was not inconsistent with the goals and mandates of the United States Congress as stated in 11 DCMR § 1200.1. (Exhibit 26.) The Architect of the Capitol suggested that the Applicant should provide shadow diagrams for both equinoxes and solstices reflecting the impact of the additions and the garage on the adjacent neighbors, and that the amount of storage needed at the garage should be questioned as it affected the size of the proposed structure.

Persons in support. The Board received a letter in support of the application from the owners of a nearby property, 127 C Street, S.E. The letter stated the owners' preference for a new livable space, which would be maintained and inhabited, unlike the existing parking slab, as a way to make the alley a safer, more livable place that would improve the look and community of the neighborhood. (Exhibit 27.) The Applicant also submitted a letter in support of the application written by the owner and resident of 119 C Street, S.E., which abuts the subject property.

Persons in opposition. The Board received a letter, dated August 12, 2011, from the Trustee of the Carl O. Winberg 1992 Trust, which owns several lots in the vicinity of the subject property, including two abutting lots (Lots 22 and 832). The letter stated "no objection to the applicant placing a similar structure [i.e. an accessory building] consisting of two stories but there is some deep concern about any additional height added to the existing structure." According to the Trustee, "[a]ny addition to the existing structure at that location would impact sunlight and create a substantial shade problem with the rear yard of 115 C Street." (Exhibit 25.)

The Board heard testimony and received letters in opposition to the application from the zoning committee of the Capitol Hill Restoration Society ("CHRS"), which objected that the planned trellis would not provide a legitimate connection between the Applicant's house and garage, that the Applicant had not demonstrated a need for additional space, and that approval of the project would have a serious impact on the Capitol Hill historic district. The Board also heard testimony in opposition to the application from Charles Parsons, who owns and resides in a neighboring row dwelling on C Street. Mr. Parsons expressed concerns including that the Applicant's project would "aggravate an already overcrowded situation" in the alley and would encourage construction of other residential buildings there.

Post-hearing submissions. At the close of the hearing, the Board requested additional information regarding the position of Mr. Joseph Wall, an adjacent neighbor, on the proposed application. The Board also left the record open for supporting documentation from the Applicant on the second prong of the Section 223 test, and for material from the Applicant, CHRS, and Mr. Parsons regarding the third prong of the Section 223 test. The Board also left the record open for the Applicant to provide additional material and precedent supporting the use

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of a trellis as a communication between two structures to create a single building. The record was closed for all other matters. (Exhibit 37.)

Following the close of the public hearing, CHRS and Mr. Parsons submitted lengthy responses that exceeded the limited issues permitted by the Board. (Exhibits 38 and 39.) The Applicant submitted the materials requested by the Board and included replies to the responses of CHRS and Mr. Parsons. (Exhibits 40-42.)

At a public meeting on November 8, 2011, the Board declined to accept or review the post-hearing responses because they addressed issues that went beyond the limited extent to which the record had been left open and were not accompanied by a request to reopen the record. (Public Meeting Transcript of November 8, 2011 (Tr. Nov. 8) at 34-35.) The Board then proceeded to deliberate based on the evidence and testimony that was properly submitted into the record, including specific consideration of the concerns and issues raised by Mr. Parsons and CHRS at the hearing. (Tr. Nov. 8 at 36-37.)

FINDINGS OF FACT

The Application and its Amendment

1. The application was filed with the Office of Zoning on July 7, 2011 and was self-certified pursuant to 11 DCMR § 3113.2.
2. The Applicant originally sought zoning relief to construct an addition to the existing row dwelling and also to construct an accessory structure on the subject property.
3. Because the two structures would exceed the maximum lot occupancy permitted by § 403, the Applicant sought relief from that provision. Although normally lot occupancy relief requires a variance, § 223.1 of the Zoning Regulations permits relief from this and certain other provisions by special exception for an "addition to a one-family dwelling or flat, in those Residence Districts where a flat is permitted, or a new or enlarged accessory structure on the same lot."
4. The proposed accessory building would have exceeded the one-story limitation for such structures imposed by 11 DCMR § 2500.4. Because § 2500.4 is not one of the provisions included within § 223, variance relief was sought.
5. The Applicant sought relief from 11 DCMR § 2516, which provides an exception to the building lot control regulations to permit two or more principal structures on a single subdivided lot in residence zones by special exception. There is no dispute that as originally proposed the new structure would be an accessory building. Since there would

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not be two principal buildings on the subject lot, it is unclear why § 2516 relief was sought, but in any event relief from that provision was available as a special exception.⁵

6. Thus, prior to its amendment, the only variance needed by the application was from the height limit applicable to the proposed accessory building.
7. The application was amended on October 11, 2011 to eliminate the request for variance relief from the accessory structure height limit and the special exception authorized by § 2516 based on modifications to the plans that reflected a connection between the row dwelling and the rear garage portion of the addition. (Exhibit 29.)
8. The application was also amended to expand the required special exception under § 223 to also include relief from the rear yard requirement of § 404.2 and the court width requirement of § 406. (Id.) The amended relief was also self-certified pursuant to 11 DCMR § 3113.2. (Id.) The Applicant included revised plans and elevations.

The Subject Property

9. The subject property is located at 117 C Street, S.E., an interior lot on the south side of the street (Square 733, Lot 23) and is mapped within the CAP/R-4 District.
10. The subject property is a rectangular parcel 19 feet wide and 119.5 feet deep, with an area of 2,270.5 square feet. The lot exceeds minimum zoning requirements for lot area and lot width (1,800 square feet and 18 feet, respectively).
11. The subject property is improved with a one-family row dwelling three stories in height, with a basement. Due to a change in grade from north (i.e. the front of the house to the south), the basement level of the Applicant's row dwelling is located at the existing grade at the rear of the house.
12. The subject property currently has a lot occupancy of 44.4%, where a maximum of 60% is permitted as a matter of right. The existing rear yard is almost 53 feet deep, where a minimum depth of 20 feet is required.
13. A public alley, known as Rumsey Court, abuts the subject property at the rear. The alley is 30 feet wide for much of its length, including the portion at the rear of the Applicant's property. Rumsey Court is accessible from D Street by two narrower alleys; one is located approximately mid-block and is 15 feet wide, while the other, located in the western portion of the square between two large buildings, is 25 feet wide (although its public

⁵ The notice of public hearing published in the *D.C. Register* at 58 DCR 6406 erroneously stated that the application sought a "special exception from the accessory building one-story height limitation under subsection 2500.4, and a variance from the building lot control restrictions." As noted the exact reverse was true. Unfortunately this error was carried through to footnote 1 of the Summary Order, which stated that the Applicant amended the application "to withdraw special exception relief from 2500.4 and variance relief from 2516.1."

portion is 10 feet wide). Ramsey Court also provides access to 1st Street via a public alley 10 feet wide.

14. The Applicant's dwelling is attached to similar dwellings on both sides. Both of the adjoining properties have accessory buildings in their rear yards, accessible by the alley. The carriage house at 115 C Street, the lot abutting the subject property to the west, has two stories and contains an apartment on the upper floor. The accessory building at the rear of 119 C Street, the lot abutting the subject property to the east, is a one-story garage. Neither of the accessory buildings on the adjoining lots has any windows directly facing the subject property.
15. The majority of lots in the same square as the subject property are developed with attached dwellings similar in size to the Applicant's residence. Although many of the buildings are devoted to residential use, few other properties in the immediate vicinity of the subject property along C Street are used as one-family dwellings. Several of the properties are used by political and lobbying groups in light of the proximity of the U.S. Capitol. At its western edge, the square contains large buildings used by the National Republican Club and the Republican National Committee, as well as a six-story apartment building located on D Street and directly across the alley to the south of the subject property.
16. Several alley lots improved with row dwellings are located to the east of the apartment building. The alley also provides access to numerous accessory buildings, primarily one-story garages but also several two-story carriage houses as well as garages with living space above a ground-floor parking area. There are approximately nine two-story dwellings in the alley near the subject property.

The Applicant's Project

17. The Applicant proposes to construct a rear addition to the row dwelling. While the main part of the house, fronting on C Street, has three floors, parts of the house at the rear have one or two stories. The planned addition will enlarge the entire existing house to three stories by building second and third stories above the existing one-story portion and a third story above the existing two-story portion. Another component of the new construction will comprise a two-story addition located at the rear of the lot, which will contain an enclosed parking space with living space on the upper floor (the "Alley Addition").
18. There will be a walkway between the existing row dwelling and the Alley Addition that will be covered with a trellised structure. The trellis will provide a minimum of 51% coverage over the walkway and in doing so will physically connect the basement level of the existing row dwelling with the first floor of the Alley Addition. (Exhibits 32-33; Public Hearing Transcript of October 25, 2011 (Tr. Oct. 25 at 63-64.).
19. The trellis and covered walkway will be located at grade level at the rear of the subject property. The connection will extend from a door at the basement level of the main portion

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of the dwelling to a door providing access to the Alley Addition. The trellis was included in the Applicant's calculations of lot occupancy. (Exhibits 32-33.)

20. The Applicant and OP testified that the Board and the Zoning Administrator had previously accepted trellises as meaningful communications between structures that create one building for zoning purposes. (Tr. Oct. 25 at 89-90, 93-94, 100; see also Exhibit 35 (ruling from the Zoning Administrator that a trellis constitutes a valid roofed connection between structures); *Application No. 17331 of JPI Apartment Development LP* (2005).)
21. The Alley Addition will be built to the rear lot line so as to provide an enclosed parking space accessible via the public alley. The garage portion of the addition will extend the width of the lot, abutting the neighboring accessory garages, and will provide one parking space and storage on the first floor, along with a stairway giving access to the second floor. The second floor will contain approximately 475 square feet of space (19 feet by 25 feet), with a kitchen, living room, and bathroom. The second floor may be used as a separate dwelling, since a two-family dwelling (also known as a flat") is permitted as a matter of right in the R-4 District. (11 DCMR § 330.5.)

Zoning Relief

22. The CAP/R-4 Zone District permits a lot occupancy of 60%. The Alley Addition component of the Applicant's project will increase the lot occupancy from 44.2% to 69.9%. (Exhibit 29.)
23. The CAP/R-4 Zone District requires a 20-foot rear yard. The Alley Addition component of the Applicant's project will be located in and eliminate the existing rear yard. (Exhibit 29.)
24. The CAP/R-4 Zone District requires courts to have a minimum width of four inches per foot of height. The existing property features a seven-foot wide court. The third-story addition will extend the height of the building to 37 feet, which would require a 12-foot wide court, and the second-story addition will extend the height of the building to 28 feet, which would require a nine-foot wide open court. (Exhibit 29.)

The Impact of the Addition

25. As noted, both neighboring properties are improved with similar row dwellings and have similar garages located at the rear of those lots.
26. The Alley Addition will be located across the 30-foot-wide public alley from the buildings on the south side of the square, and at least 48 feet from the closest alley dwellings located to the east of the apartment building.

27. The Alley Addition has been designed in the same style as other garages in the alley and in the neighborhood and to a similar scale. The Alley Addition will be made of brick similar to existing alley structures, and it will feature detailing similar to the existing alley structures such as arched brick detailing above the windows, two-over-two double-hung wood windows, and a wide brick arch above the garage door. (Exhibit 29.)
28. The project will not block any windows because the existing main structure and carriage house at 115 C Street have no windows on the east façade. The project will have a minimal impact on light and air to other portions of 115 C Street.
29. The subject property will retain a significant area of open space between the rear of the main portion of the house and the Alley Addition.
30. The Alley Addition will be located at a sufficient distance from all adjoining residences to avoid creating any undue effect on the light and air available to those residences.
31. Providing the additional setback to conform to the court requirements would not make an appreciable difference on the impact to 115 C Street, S.E. and would require the Applicant to introduce an otherwise unnecessary and detrimental variation in the side wall of the addition. (Tr. Oct. 25 at 70-72.)
32. The entire addition will not significantly increase traffic or noise in the square. (Exhibit 29.) The project had been designed to permit trash cans to be enclosed and stored within the Alley Addition rather than left out along the alley. (Tr. Oct. 25 at 68-69.)
33. The subject property is a contributing building in the Capitol Hill historic district. The Applicant testified that the project was favorably reviewed by the Historic Preservation Office and the Historic Preservation Review Board.

Harmony with Zoning

34. The subject property is located within the Capitol Interest (CAP) Overlay and is zoned R-4. The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. Its primary purpose is the stabilization of remaining one-family dwellings. (11 DCMR §§ 330.1, 330.2.)
35. The addition will promote the residential use of the property, consistent with the focus on one- and two-family dwellings of the R-4 zoning
36. The Capitol Interest Overlay was established to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the adjacent area. (11 DCMR § 1200.1.)

37. By report dated August 25, 2011, the Architect of the Capitol submitted a memorandum finding that the application was not inconsistent with the intent of the CAP/R-4 Zone District and would not adversely impact the health, safety and general welfare of the U.S. Capitol Precinct or be inconsistent with the goals and mandates of the U.S. Congress. (Exhibit 26.)

CONCLUSIONS OF LAW AND OPINION

Preliminary Matter – The Trellis Issue

In its letter to the Board and during its testimony the CHRS zoning committee asserted that the use of the trellis to connect the existing dwelling and the Alley Addition would not result in the creation of a single enlarged building. If that is correct, then the Applicant's proposal would result in a principal building and an accessory building on the lot. The only meaningful difference in the zoning relief required under that scenario would be that the Applicant would need a variance from height limit applicable to accessory buildings.

As will be explained, the Board has consistently held that arguments asserting the need for additional zoning relief are irrelevant to its consideration of an application for special exception relief. Nevertheless, the Board will also explain why a basis exists to conclude that the Applicant's planned trellis will create a single building.

This Application was self-certified pursuant to 11 DCMR § 3113.2. That provision allows an architect or attorney to certify that zoning relief is needed and the type of relief required. Prior to the adoption of § 3113.2, an application needed to be accompanied by a Zoning Administrator referral, which could not be obtained unless a building permit application was filed and rejected. Self-certification therefore allows property owners who know what zoning relief is needed to seek that relief prior to applying for a building permit.

However, because there is always the chance that the Zoning Administrator might later disagree as to the type of relief needed, each self-certification form, including the one made here, requires the applicant, and where applicable its agent, to acknowledge that:

[T]hey are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment (BZA) does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

Thus the Board's 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 the denial.

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It is for this reason the Board has consistently held that assertions of an erroneous certification are irrelevant to its review of applications. For example, in *Application No. 16974 of Tudor Place Foundation* (2004), the Board responded to such an assertion by stating:

Assuming that the opposition is correct . . . the most that can be said is that the applicant will need variance relief. That fact alone does not require the Board to deny a special exception. . . . Our inquiry is limited to the narrow question of whether the Applicant met its burden under the general and specific special exception criteria.

Accord *Application No. 18250 of Raymundo B. Madrid* (2011); *Application No. 17537 of Victor Tabb* (2007) (“The question of whether an applicant should be requesting variance relief is not germane to the question of whether a special exception should be granted.”)

These holdings are consistent with the Court of Appeal’s admonition that “[i]n evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought.” *Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment*, 802 A.2d 359, 363 (D.C., 2002). It would defeat the entire purpose of the self-certification process if one of the “requirements of the exception sought” is to prove the exception alone will suffice. The sufficiency of the self-certified relief must be proven in the first instance to the Zoning Administrator and not the Board.

This is not to say that the Board may not, on its own motion, dismiss an application when there is no plausible basis to conclude that the relief requested is sufficient. The Board has the right not to waste its time. For example, if an applicant’s own undisputed computation showed that a proposed building would exceed the maximum height permitted, the Board could dismiss the application if the applicant refused to add the needed variance. But where, as here, the issue is not one of computation, but interpretation, the Board should at this stage allow the Zoning Administrator to carry out the function of “administratively interpreting . . . the Zoning Regulations” vested in him by Part 3 (F) of Reorganization Order No. 55 (1953).

Nevertheless, since the Board allowed testimony and submissions on the trellis issue, it will explain why dismissal of the Application was not warranted.⁶

Subsection 199.1 of the Zoning Regulations defines a “building” as a structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, or chattel. The Board has previously concluded that a trellis meets the definition of “building” 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) at 2.

⁶ The record was not reopened as part of the remand and therefore the Board has no knowledge as to whether a building permit was applied for or issued. This order is written based upon the facts known to the Board at the time of its original decision.

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Here, as set forth in the Findings of Fact, the proposed trellis will be designed to contain sufficient coverage to constitute a "roof," it will be supported by columns, and it will provide shelter and support for the Applicant. Accordingly, the Board concludes that the trellis meets the definition of "building" under 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* at 9.) 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); *Z.C. Order No. 05-36, First Stage & Consolidated PUD & Related Map Amendment-200 K Street, N.E.* (2006). The Board has previously found that a trellis may constitute such a connection between separate portions of a structure that creates one building under the Zoning Regulations. (*BZA Application No. 17331* at 2.)

The trellis proposed by the Applicant will provide cover over a walkway that will connect to doors in the row dwelling and the Alley Addition. (See Tr. Oct. 25 at 64 ("[W]e've basically created doorways on either side of the trellis connection, so that it [will] be a meaningful connection between the house and the rear structure.") Therefore a basis exists upon which the Zoning Administrator could reasonably conclude that the trellis will provide a meaningful communication (that is, access) between separate portions of the structure.

Similarly, the Zoning Administrator could reasonably conclude that the trellis will be located at the main floor. The Regulations define "main floor" as the floor of the story in which the principal entrance of a building is located. This definition presumes, however, that the site is located on relatively even grade. On a sloping site such as the property in this case, the site may have multiple "main floors" that correspond to the changes in grade – one main floor that corresponds with the grade at street level at the front of the row dwelling, and another main floor that corresponds with the grade at the rear of the structure, which is one level below the grade at street level.

This understanding is consistent with other treatments of the term "main floor" under the Regulations. The definition of "building area," for example, excludes portions of a building that do not extend above the level of the main floor of the main building. Here, the trellis is treated as part of the building area and is counted against the building's lot occupancy based on an understanding that the basement level constitutes a "main floor" because it is located at the level of the existing grade at the rear of the row dwelling. If the trellis is at the main floor for purposes of calculating lot occupancy, then it must also be at the main floor for purposes of determining whether it is a sufficient building connection.

Accordingly, the Board concludes 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

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for zoning compliance; there is no basis for the Board to dismiss the application in order to avoid an exercise in futility.

The Merits

The Applicant requests special exception relief under § 223 of the Zoning Regulations to allow construction of a rear addition to a one-family row dwelling not meeting zoning requirements related to lot occupancy, rear yard, or width of open court in the Capitol Interest (CAP) Overlay/R-4 District at 117 C Street, S.E. (Square 733, Lot 23). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) 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.)

Pursuant to § 223, an addition to a one-family dwelling or flat may be permitted as a special exception, even when the addition does not meet certain zoning requirements including lot occupancy, rear yard, or width of open court, subject to certain conditions. These conditions include that the addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular the light and air available to neighboring properties must not be unduly affected, the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and the addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

Based on the findings of fact, the Board concludes that the requested special exception satisfies the requirements of §§ 223 and 3104.1. The Board credits the testimony of the Applicant and OP that the proposed rear addition will not unduly affect light or air available to neighboring properties, especially since both neighboring properties are improved with similar row buildings and have similar garages located at the rear of those lots. Given the depths of the lots and the width of the abutting alley, and given that the subject property will retain a significant area of open space between the rear of the main portion of the house and the Alley Addition, the Applicant's Alley Addition will be located at a sufficient distance from all adjoining residences to avoid creating any undue effect on the light and air of those residences. The other portion of the rear addition, built on the same footprint and to the same height as the existing house, as well as the one-story connecting walkway, will not create any undue impact on light or air available to neighboring properties due to their location and relatively small scale.

Similarly, the Applicant's new construction will not unduly compromise the privacy of use and enjoyment of neighboring properties. The addition will not allow views from windows significantly different from the existing house, except for the Alley Addition, which will contain a residence on its second floor. The Board does not find that views from the rear of the subject property, looking out over an open area to the north or over an alley 30 feet wide to the south, will compromise the privacy of use or enjoyment of any neighboring property.

The Applicant's new construction will not be visible from C Street and thus will not visually intrude on the character, scale, or pattern of houses along the street frontage. The addition will be visible from the rear alley, and its appearance will be similar to the numerous existing garages and two-story carriage houses along the alley. The new construction will maintain the residential appearance of the property, and will not alter its scale or character.

The Board notes that the project is also subject to review by the Historic Preservation Review Board for compatibility with the surrounding buildings, among other elements, and, according to the Applicant, has been received favorably. The Board does not credit a statement, made without elaboration in a letter submitted by the zoning committee of the Capitol Hill Restoration Society, that approval of the Applicant's project would have a serious impact on the Capitol Hill historic district. This alleged impact was not explained and thus the Board was unable to discern its import for purposes of a zoning review of a request for special exception approval under §§ 223 and 3104.

The Board concludes that the planned rear addition satisfies the requirements of § 223 and pursuant to § 3104.1, the Board finds that the addition is unlikely to result in a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, or affect light and air available to neighboring properties. The Board also concludes that the rear addition satisfies the requirement of § 3104.1 that it be in harmony with the general purpose and intent of the Zoning Regulations by promoting the residential use of the property, consistent with the focus on one- and two-family dwellings of the R-4 zoning designation of the subject property, and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations.

With regard to harmony with the CAP Overlay District, the Board notes that the Architect of the Capitol found that the Applicant's proposal was not inconsistent with the intent of the CAP/R-4 District and would not adversely affect the health, safety, and general welfare of the U.S. Capitol precinct and adjacent area. In light of its conclusion that the proposed new construction will not adversely affect neighboring properties, the Board finds no need for the shadow diagrams suggested by the Architect of the Capitol. Similarly, since the Board does not find that the size of the proposed garage portion will be inconsistent with the requirements for special exception approval, the Board declined to question the Applicant's need for storage or its impact on the size of the planned garage.

The Board finds no merit in the assertions by Mr. Parsons that the rear addition would contribute to commercialism, overcrowding, increased traffic, and trash accumulation in the alley, or speculation that approval of the requested zoning relief would cause additional applications for similar relief. The Applicant's project will create one enclosed parking space in an area that now provides a parking pad large enough for two vehicles, with new living space located on the second floor of the garage portion of the addition. The garage will also provide storage space, including an area to store trash containers inside. The addition will not result in additional traffic or noise. Especially in light of the prevalence of residential uses along the alley at present, as well as larger commercial or institutional uses located on the western portion of the square, the

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Board does not find that the Applicant's addition will greatly alter existing conditions in the alley.

With regard to the concern that approval of this application might set a precedent, the Board notes that each application is considered on its own merits. An application by Charles and Susan Parsons, for a variance from alley width requirements to allow conversion of the second floor of an alley structure on Rumsey Court into an apartment, was previously approved. (Application No. 17943; order issued July 16, 2009.) Zoning relief was approved for another building on the alley, an accessory garage at 139 C Street, S.E., to allow a new second floor for use as an artist studio (Application No. 11289; order effective June 26, 1973); the Board also granted relief to allow an addition to a row dwelling on the southern portion of Square 733 at 138 D Street, S.E. (Application No. 17879; order issued February 11, 2009). Other applications have been denied, including a request for relief to convert the building at 111 C Street, S.E. into three apartments (Application No. 10750, August 9, 1971) and a request for area variances to allow a second-story addition and conversion of an accessory building into a dwelling at 127 C Street, S.E. (Application No. 12332; order issued September 20, 1977).

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (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) (2001)).) In this case, ANC 6B voted to support the application; the ANC did not raise any issues or concerns but concluded that the project's impact on air, light, and privacy would be negligible. The Board concurs with the ANC's conclusion.

The Board is also required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be approved. As finally revised, the Applicant's plans satisfy the two conditions recommended by the Office of Planning: that the lattice roof over the walkway must provide at least 51% coverage, and that the covered walkway must provide a communication between the two portions of the building and not terminate at a blank rear wall of the existing house. Since the Board's approval includes approval of the revised plans, 11 DCMR § 3125.7, and the Applicant may only carry out its construction in accordance with these plans, 11 DCMR § 3125.8, there is no need to expressly state the conditions in this order.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under § 223 to allow construction of a rear addition to a one-family row dwelling not meeting zoning requirements for lot occupancy (§ 403.2), rear yard (§ 404.1), or width of open court (§ 406.1) in the Capitol Interest (CAP) Overlay/R-4 District at 117 C Street, S.E. (Square 733, Lot 23). Accordingly, it is **ORDERED** that the application, subject to Exhibit No. 33 (Plans), is hereby **GRANTED**.

VOTE: **5-0-0** (Meredith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle, and Anthony J. Hood to Approve.)

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Vote taken on November 8, 2011.

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



for

SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 25, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. 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

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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.

Exhibit 2



Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF
WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 11/23/2012

PERMIT NO. B1210100

Expiration Date: 11/23/2013

Address of Project: 117 C ST SE		Zone: CAP/R-4	Ward: 6	Square: 0733	Suffix:	Lot: 0023
Description Of Work: 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 1st floor as garage at all the way to rear of property line, with a landscaped wall per BZA # 18263 - Special Exception for Lot Occupancy, Rear Yard Setback & Court on 11/17/2011. Interior to be renovated, includes new kitchen, and master bath. Includes MEP. Conversion from a SFD to 2-family flat, unit one - main house, unit two - on 2nd floor of the attached garage's apartment.						
Permission Is Hereby Granted To: Jack Lester		Owner Address: 117 C STREET SE 20003			PERMIT FEE: \$5,336.50	
Permit Type: Addition Alteration Repair	Existing Use: Single Family		Proposed Use: Flat (Two Family)		Plans: Yes	
Agent Name: Outlaw	Agent Address: 20017	Existing Dwell Units: 1	Proposed Dwell Units: 2	No. of Stories: 3	Floor(s) Involved: All	
Conditions/ Restrictions: DOES NOT INCLUDE APPROVAL FOR REPLACEMENT OF WINDOWS OR DOORS ON FRONT ELEVATION, WHICH MUST BE PERMITTED SEPARATELY. This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to http://ddoe.dc.gov , Lead and Healthy Housing.						
Director: Nicholas A. Majett		Permit Clerk Patrice Derricott				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

Board of Zoning Adjustment
District of Columbia
CASE NO. 18664
EXHIBIT NO. 11

Exhibit 3

48 DCR 4802

48 D.C.Reg. 4802

DISTRICT OF COLUMBIA REGISTER

Volume 48, No. 21

May 25, 2001

Actions of the Executive Branch and Independent Agencies

Notices, Opinions, and Orders

Boards, Commissions, and Agencies

Board of Zoning Adjustments - Orders - Appl. No. 16646 (Daniel Serwer and James W. McBride)

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

Appeal No. 16646 of Daniel Serwer and James W. McBride, pursuant to 11 DCMR § § 3100 and 3101, from the administrative decision of Michael D. Johnson, Zoning Administrator, **Building** and Land Regulation Administration, Department of Consumer and Regulatory Affairs, made approximately April 18, 2000 (**Building** Permit No. B426044), to approve a two-story garage addition and on August 8, 2000 (**Building** Permit No. B428648), to approve a covered walk connection. Appellants allege that the construction of the garage addition and covered walk connection and the unauthorized commercial use of the addition do not conform to the Zoning Regulations in an R-1-A District at premises 5655 Moreland Street, N.W. (Square 2307, Lots 801 and 802).

HEARING DATE: December 19, 2000

DECISION DATES: February 6, 2001; February 20, 2001

DECISION AND ORDER

Daniel Serwer and James W. McBride filed an appeal with the Board of Zoning Adjustment on September 14, 2000, from the decision of the Zoning Administrator to approve **building** permits for a two-story garage addition and a covered walk connection in an R-1-A Zone District at 5655 Moreland Street, N.W., property owned by Thomas and Linda Shiner. Mr. McBride represented himself and Mr. Serwer in these proceedings. Toye Bello, from the Department of Consumer and Regulatory Affairs, Zoning Review Branch, appeared on behalf of the Zoning Administrator. The Shiners are represented by Arnold & Porter. After a public hearing, the Board granted the appeal in part as to the necessity for Department of Public Works review and clearance prior to the issuance of the **building** permits. The Board denied the appeal in part as to whether the garage addition constitutes an accessory **building**.

Preliminary and Procedural Matters

Notice of Appeal and Notice of Public Hearing. By memoranda and letters dated September 28 and 29, 2000, the Office of

Zoning advised Messrs. Serwer and McBride, the appellants; the Zoning Administrator; the Shiners, owners of the subject property; D.C. Office of Planning; Advisory Neighborhood Commission (ANC) 3G, the ANC for the area within which the subject property is located; the affected single-member district ANC commissioners; and the Ward 3 councilmember of the filing of the appeal.

The Board scheduled a public hearing on the appeal for December 19, 2000. Pursuant to 11 DCMR § 3112.14, the Office of Zoning, on November 9, 2000, mailed the appellants, the Zoning Administrator, the property owners, and ANC 3G notice of the hearing. Notice of hearing was also published in 47 DCR 9019 (Nov. 10, 2000).

Appellants' Case. The appellants focused on three arguments: first, they argued that since the subject property is not a record lot, the Zoning Administrator erred in approving the **building** permit applications; second, that the garage addition is actually an accessory **building** that is constructed in the front yard, that it is too tall, and that it will be used for commercial purposes, in violation of the Zoning Regulations; and third, that the property is encumbered by the District of Columbia highway plan. The appellants complained that the Zoning Administrator should have referred the application to the Department of Public Works (DPW) for review and clearance before approving construction on assessment and taxation lots encumbered by the highway plan.

Zoning Administrator's Case. Mr. Bello responded to Board questions concerning the permits. He described the Zoning Administrator's practices regarding assessment and taxation lots and the distinction between an addition and an accessory **building**.

Property Owners' Case. Mr. Shiner discussed the design and construction of the garage addition and covered walkway, and gave an account of the permitting process. The Shiners, through counsel, objected to testimony and argument regarding the highway plan and the necessity of DPW approval as outside the jurisdiction of the Board. The Board declined a request to recognize Mr. Shiner as an expert witness as any opinion testimony on the ultimate issues of this case would have been self-serving.

Public Agency Reports. There are no public agency reports in this case.

ANC Report. There is no ANC report in this case.

Closing of the Record. The record closed at the conclusion of the December 19, 2000, hearing, with the exception of documentation from the appellants to substantiate their contention that prior DPW approval is required and the Shiners' response.

After the appellants submitted their Record Supplement dated January 16, 2001, the Shiners filed a response on January 24, 2001, that contained additional arguments related to the glass-covered walkway. The appellants then moved to strike this material as unrelated to the DPW referral issue. The Board agrees that the arguments contained on page 3 of the Shiners' response relating to the walkway are beyond the scope of the information requested by the Board and orders them stricken from the record. *See* 11 DCMR §§ 3121.5, 3121.9.

Decision Meeting. On February 6, 2001, the Board continued its decision meeting to February 20, 2001, to allow additional time for Board Member Anne M. Renshaw to review the transcript, since she had been absent for part of the public hearing. Board Member Susan Morgan Hinton, who was not present for the public hearing, also reviewed the transcript and record in order to participate in the decision meeting. *See* 11 DCMR §§ 3105.15.

At the February 20, 2001, decision meeting, the Shiners objected to Mrs. Renshaw's participation in the decision due to her knowledge of the facts of the case derived from earlier ANC meetings. The Board's decision must be based upon the exclusive record of the proceedings before the Board, 11 DCMR § 3127.2, and there was no practical means of affording the parties the opportunity to cross-examine or respond to matters discussed at the ANC meetings. After Mrs. Renshaw declined to recuse herself, the Board voted 4:1:0 to recuse her from participating in the decision meeting.

The Board then voted 3:1:1 to grant the appeal in part as to the necessity of prior DPW review and clearance and 4:0:1 to deny the appeal in part as to whether the garage addition constitutes an accessory **building**.

FINDINGS OF FACT

The Subject Property

1. The property that is the subject of this appeal is located at 5655 Moreland Street, N.W. (Square 2307, Lots 801 and 802), in an R-1-A District.
2. The property is developed with a one-family dwelling and a two-story structure identified as a “garage addition.” The dwelling and the garage addition front on Moreland Street. A wall and a covered walkway connect the dwelling to the garage addition.
3. Lots 801 and 802 are “assessment and taxation” lots.
4. Lot 801 is encumbered by the District of Columbia highway plan.
5. Lot 801 protrudes into Northampton Street, with a portion of the lot under paved roadway.

The 1992 Building Permit

6. When the Shiners purchased the property in 1992, it was vacant. Mr. Shiner is an architect, and he designed the dwelling as well as the structures in question.
7. To accommodate a large tree near the center of the lot, Mr. Shiner sited the garage away from the dwelling and connected it to the dwelling with a wall, a walkway, and a gate.
8. In October 1992, Mr. Shiner completed the design work and applied to the Office of the Surveyor to combine Lots 801 and 802 into a record lot. The record lot application did not proceed because Lot 801 is encumbered by the highway plan.
9. Mr. Shiner next met with Zoning Administrator Joseph Bodner and his assistant, Gladys Hicks. They advised Mr. Shiner that even though he could not combine the two lots, he would be able to build on them. Mr. Bodner and Ms. Hicks advised Mr. Shiner that the walkway connecting the garage and the dwelling would have to be covered in order to constitute a connection or “communication” between the dwelling and the garage. Otherwise, the garage would be considered an “accessory building” and not an addition to the dwelling. [FN1] While Ms. Hicks believed that a trellis incorporating columns would suffice as a connection, Mr. Bodner and Ms. Hicks also discussed a glass-covered walkway.
10. On October 13, 1992, Mr. Shiner filed a building permit application with DCRA to construct a one-family dwelling on the subject property. The Zoning Administrator signed off on the permit application and the surveyor's plat. The DPW Permits and Records Division and the Consumer Engineer also signed off on the application.
11. The Shiners completed the dwelling and connecting wall in June 1993. However, they were unable to build the one-story garage addition as planned due to financial constraints. Permission to construct the garage addition pursuant to the 1992 permit thus lapsed by 2000 when the Shiners were ready to proceed with construction.

The 2000 Building Permits

12. On March 22, 2000, Mr. Shiner applied for a building permit to construct a two-story garage addition. The application was not referred to DPW for review. The Zoning Administrator provided zoning approval of the application and plans on April 18, 2000. Permit No. B426044 issued on the same day.
13. Construction began in May 2000. On July 17, 2000, Mr. Serwer complained to the Shiners about the construction and threatened legal action.
14. The DCRA Building Inspector issued a stop work order on July 27, 2000. The Shiners subsequently hired land use

counsel and met with Edgar Nunley of the Zoning Administrator's Office to review the stop work order. Mr. Nunley requested a drawing showing a detail of the connection.

15. On August 8, 2000, the Shiners met with Mr. Nunley and their attorney and reviewed the requested construction detail on site. They provided Mr. Nunley with the 1992 plat that had received zoning approval. The Shiners submitted the requested detail and a revised permit application to DCRA on the same day, applying to connect the dwelling and the garage addition with a glass-covered walkway connection. The application was not referred to DPW for review. The Zoning Administrator approved the application and plans on August 8, 2000. DCRA issued Permit No. B428648 on the same day to add the detail of the glass-covered walk connection and lifted the stop work order. As of the time of the hearing, the glass installation was under contract.

16. Mr. Bello testified that for “**communication**” to exist, there must be a functional purpose for the connection; for example, to provide shelter between the nearest doors of the dwelling and the garage addition.

17. Mr. Bello also stated that once a **trellis** connection is covered, depending on the sturdiness and structural integrity of the connection, the Zoning Administrator would not consider an addition to be an accessory **building**.

18. The subject dwelling and the garage addition are approximately 19 feet apart. The walkway leads from the first floor of the garage to a basement entrance of the dwelling. The only way to access the second floor of the garage is from an outside staircase.

19. The glass-covered walkway connection is held up by walls and columns and by the garage wall.

20. The roofed connection physically touches the dwelling and the garage addition.

21. The garage addition is over 20 feet high.

22. Mr. Shiner intends to use the second story of the garage addition for his architecture and furniture design business.

23. There are discrepancies between the permit applications as to gross floor area of the **building**, with the 1992 application showing the gross floor area as 3,200 square feet; the March 22, 2000, application showing the present gross floor area as 4,200 square feet and the proposed gross floor area as 5,200 square feet, and the August 8, 2000, application showing the present gross floor area as 247.72 square feet and the proposed gross floor area as 2304.73 square feet.

24. The appellants also allege that the permit applications show the dwelling and garage addition six feet deeper into the property than is in fact the case.

The Highway Plan

25. Ordinarily, the DCRA intake engineer determines whether an application should be referred to another department or agency for review.

26. The Office of the Surveyor confirms whether a lot is encumbered by a highway plan.

27. The highway plan designation on the base map of the District of Columbia indicates a long-standing proposal to complete the highway system. The current need to implement or construct these designations or plans varies by location.

28. According to DPW, the case-by-case process for making the determination whether to implement or construct a particular designation or plan involves review and clearance by the DPW Division of Transportation (DOT) through the **building** permit process.

29. According to DPW, the District of Columbia began condemnation proceedings in 1965 to acquire the portion of the subject property encumbered by the highway plan, but DPW has not yet determined whether the proceedings were completed or, if not, what prevented the transfer of land.

30. DPW, DOT states that prior notification of the proposed addition and covered walk connection would have alerted DOT of the need to complete condemnation proceedings or to acquire the land by purchase or dedication pursuant to D.C. Code § 7-422.

31. In a letter to Mr. McBride dated January 12, 2001, DPW, DOT states that:

The land under the paved roadway is needed for roadway purposes and being used for the public good to provide access. Dedication of the paved area, plus additional land for a sidewalk, needs to be accomplished immediately. The owner of the land under the paved area retains liability until the land is transferred and is responsible for maintenance and care of the land. It would be in the best interest of the property owner to work with the District toward expedited transfer. DPW, DOT does not need all of the land within the highway plan designation area for the roadway purposes, but the established **building** restriction line that has been created on all adjacent parcels due to pre-existing right-of-way designation may present other reasons for the need for a set-back.

Ex. 33.

32. Mr. Serwer testified that two separate zoning officials, Mr. Bello and Edgar Nunley, had advised him that no **building** permit could be issued for construction for property encumbered by the highway plan unless DPW signed off on the construction.

33. Mr. Bello testified that he and Zoning Administrator Michael D. Johnson may have advised Mr. Serwer that a DPW signature was necessary on the application.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code § 5-424(g)(1) (1994)), to hear and decide appeals where it is alleged by an appellant that an administrative officer erred in carrying out or enforcing the Zoning Regulations. This appeal is properly before the Board pursuant to 11 DCMR §§ 3100.2, 3101.5, and 3200.2. The notice requirements of 11 DCMR § 3112 for the public hearing on the appeal have been met.

The Board is required under D.C. Code § 1-261(d) (1999) to give the affected ANC's recommendation great weight. ANC 3G determined not to make a recommendation in this case. The Board is therefore unaware of any specific issues or concerns that ANC 3G may have had with respect to this appeal and unable to afford ANC 3G the great weight to which it is entitled.

The Highway Plan and DPW Review Issues

Under the Zoning Regulations, DCRA may not issue a **building** permit for the proposed construction of a principal structure or an addition to a principal structure unless the structure will be located on a record lot. Subsection 3202.3 provides:

Except as provided in § 2516 [relating to the construction of two or more **buildings** on a single lot in a Residence District] and the Act of Congress of June 28, 1898 (30 Stat. 520, chapter 519, § 5) [relating to construction on lots encumbered by the highway plan], a **building** permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; except **buildings** and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure. The full citation for the cross-reference to the 1898 Act is § 5 of An Act To amend an Act of Congress approved March 2, 1893, entitled "An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," and for other purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Code § 7-114 (1995)). D.C. Code § 7-114 provides in pertinent part that:

The owner or owners of land over or upon which any highway or reservation shall be projected upon any map filed under §§ 7-107 to 7-111 [the permanent highway plan] shall have the free right to the use and enjoyment of the same for the **building**

or any other lawful purpose, and the free right to transfer the title thereof, until proceedings looking to the condemnation of such land shall have been authorized and actually begun.

Section 3202.2 of the Zoning Regulations thus provides an exception to the record lot requirement for land encumbered by a highway plan “until proceedings looking to the condemnation of such land shall have been authorized and actually begun.” D.C. Code § 7-114. The other two exceptions provided in § 3202.2 relating to the construction of two or more **buildings** on a single lot and mass transit system facilities are not applicable in the instant case.

Since the Zoning Regulations provide an exception to the record lot requirement for land encumbered by a highway plan, the Board concludes that it has jurisdiction over the highway plan and DPW referral issues presented in this appeal. When the Zoning Administrator invokes the highway plan exception to approve a **building** permit application involving an assessment and taxation lot, the Zoning Administrator must, in the absence of reliable information provided by the applicant, [FN2] refer the application to DPW to determine whether condemnation proceedings have been authorized and actually begun. In the instant case, only DPW could have provided the information necessary to make a proper determination of the status of the property. Any condemnation proceedings or other measures to acquire the property through purchase or dedication would affect the lot lines. Without accurate information as to the location of the lot lines, a proper zoning review cannot take place. *See, e.g., Parr Warehouse Co. v. Peebles*, 108 A.2d 161 (D.C. 1954), a case involving a tract of land in Maryland where a requested zoning was approved on the condition that the property owner agree to dedicate a strip of property that was encumbered by a highway plan.

The Zoning Administrator's decision to approve the issuance of the two **building** permits in question is therefore reversed. Following the issuance of this decision and order, the Zoning Administrator is to refer the permit applications to DPW, DOT for review and clearance. Upon clearance by DPW, DOT, the Zoning Administrator is to review the applications for compliance with the area restrictions of the Zoning Regulations, taking into account whether changes in the lot lines or the establishment of a **building** restriction line, if any, would affect zoning compliance. The Zoning Administrator's review should also address the discrepancies that came to light during the hearing involving the gross floor area of the **building** and its siting on the lot.

The Accessory Building Issues

The Zoning Regulations define the term **building** as:

[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**.

11 DCMR § 199.1. An “accessory **building**” is defined as “a subordinate **building** located on the same lot as the main **building**, the use of which is incidental to the use of the main **building**.” *Id.*

The glass-covered walkway connection, constructed above grade and supported by walls and columns, provides sheltered access from a basement entry of the dwelling to the first floor of the garage addition. The walkway thus constitutes a “**communication**” between the dwelling and the garage addition, such that the dwelling and the addition are considered one **building** for purposes of zoning. As observed in *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 927 n.1 (D.C. 1980), the word “**communication**” is typically used as an equivalent term for the word “access.” The Board thus concludes that the garage addition is not an accessory **building**. Since the garage addition is not an accessory **building**, it is not necessary to reach the appellants' remaining arguments regarding accessory **building** area and use restrictions.

For the reasons stated above, it is hereby **ORDERED** that the appeal is **GRANTED IN PART** as to the necessity of prior referral to DPW for review and clearance and **DENIED IN PART** as to whether the garage addition constitutes an accessory **building**. Pursuant to D.C. Code § 5-424(g)(4), the Zoning Administrator's decision to approve **Building** Permits B426044 and

B428648 is **REVERSED** for failure to refer the applications to DPW for review and clearance.

VOTE: 3 - 1 - 1

(Carol J. Mitten, Susan Morgan Hinton, Robert N. Sockwell, to grant the appeal as to the necessity of prior DPW review and clearance; Sheila Cross Reid, to deny; and Anne M. Renshaw, not voting, having been recused).

VOTE: 4 - 0 - 1

(Carol J. Mitten, Robert N. Sockwell, Sheila Cross Reid, and Susan Morgan Hinton, to deny the appeal as to whether the garage addition constitutes an accessory **building**; Anne M. Renshaw, not voting, having been recused).

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

Each concurring member has approved the issuance of this Decision and Order.

FINAL DATE OF ORDER: March 28, 2001

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

FN1. As an accessory **building**, the garage could not be located in the front yard. 11 DCMR § 2500.2. It would be limited in height to 20 feet, *id.* § 2500.6; and the second-story could not be used for a home occupation. *Id.* § 2500.5. As an addition to the main **building**, it would not be subject to these restrictions. *See id.* § 203.2 and 400.1.

FN2. Under 11 DCMR § 3202.2(b)(3), in addition to an official **building** plat prepared by the Surveyor of the District of Columbia marked to show all existing and proposed structures and parking and loading spaces and facilities, the applicant must submit “[o]ther information necessary to determine compliance with the provisions of this title.”

48 DCR 4802

48 D.C.Reg. 4802

END OF DOCUMENT

Exhibit 4

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



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 100.1.

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

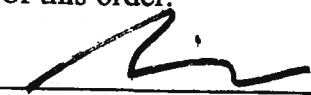
(Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II, Geoffrey H. Griffis to approve; and Kevin

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 17331

As Director of the Office of Zoning, I hereby certify and attest that on JUL 06 2005 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Carolyn Brown, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, Suite 100
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Chairperson
Advisory Neighborhood Commission 6B
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BZA APPLICATION NO. 17331

PAGE NO. 2

Washington, D.C. 20002

Alan Bergstein, Esq.
Office of Attorney the General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

Exhibit 5



A GENUINE MERRIAM-WEBSTER

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MADE IN THE UNITED STATES OF AMERICA

535455QKY0504

state of being prim
[L, fr. *primus* first — more at
IST (in danger, ~, of setting
ful to the reader — Lawrence]

primo first, fr. L *primus*: the
st or trio)
rimo + cane: a new cane on
or raspberry) that will flower

se *n*, pl, cap [NL, fr. L
classifications: a subclass of
ms with the axis usu. proto-
developed, terminal or sub-
types and including the order
s other forms of somewhat

-adj [modif. (influenced by
of L *primigenius* primigenial
gnere to beget) — E -al]
1: first formed or generated
OGENTARY
LL *primigenialis*, fr. *primo-*
L, firstborn, fr. *primus* first
re to beget) + L -alis -al]

ij [LL *primogenitus* state of
slating to, or based on primo-
n)
r) *n* [LL, fr. L *primus* first
ENTOR]: first ancestor (this
latter — Time); broadly: AN-
T (~s)

chu(r), -*da*, -*nacho*(r) *n*
is first + *gentura* birth, fr.
geet) + *sur* -ure more at
rthborn of the children of the
ight of inheritance; *speci*: a
w to the eldest son or failing
le in the next degree of con-
ate of which an ancestor dis-
ion of all female and younger

n: PRIMOGENITURE 2
adj [ME, fr. LL *primordialis*,
ign (fr. neut. of *primordius*
ri to begin, begin a web)
1: existing at or from the be-
eloped: EARLIEST, PRIMEVAL
, and their satellites had all
—S.F. Mason) (the child's ~
—gan) 2: earliest formed in
rgan: PRIMITIVE 3: CRUDE,
of the hellfire and brimstone
2: constituting a basis or
idently: ELEMENTARY, FUN-
ility is spirit —H.O. Taylor)
iv
; original or fundamental: a

Y MERISTEM
; large cells in the germinal
is or egg tubes derived from
h sexes but more abundantly
: true eggs are believed to be

smic lining of the cell wall in

n, pl *primor-dia* \-dē-
BEGINNING, ORIGIN (regards
evolution from a ~ —H.S.
enement of a part or organ

nork or *primorks* *usu* *cap*
; the region of the Sikhote
g Ussuri-Amur lowlands of
nok people

Norw, fr. *prim* whey + *ost*

erh. alter. of *2prim* *vi*: to
ful or finicky manner (she
seems afraid to trust the
with cute comment —Time)
t: to behave in a prim or
groom oneself carefully
the mirror) (~s for hours
things up: arrange things
asket as she ~s for callers

rimrose, fr. MF, fr. OF,
prime) + *rose*, fr. L *rosa* —
it of the genus *Primula* (as
Y esp any of the numerous
European origin that are
ried flowers — see CHINESE
2: the best or fairest part
was pleased to work upon
el Clarke) 3: PRIMROSE

to, or resembling the prim-
primroses: FLOWERY, GAY

ok for or gather primroses
or —Edmund Blunden)
oses

yellow that is very slightly

n rambling Chinese shrub
flowers with a darker eye

se or pleasure (had made
th of Epicurean wisdom
h of sensual pleasure (the
—Shak.) 2: a path of
to disaster (leading them
—Newark)
eerless narcissus *n*: a
carissus biflorus that is
ental and has grasslike
ish white flowers
ennial herb of the genus
rincipal leaves resembling
er *primrose*
moderate greenish yellow
ose + -y): PRIMROSE

distributed chiefly in the northern hemisphere — *prim-*
u-la-ceous \-'lāshəs\ *adj*
prim-u-la-les \-'lā(ə)lēz\ *n*, pl, cap [NL, fr. *Primula* + -ales]
: an order of gamopetalous pentamerous dicotyledonous
herbs, shrubs, or trees that includes the families Primulaceae,
Theophrastaceae, and Myrsinaceae and is distinguished by
the one-celled ovary with free-central placentation — see
PLUMBAGINALES

prim-u-lav-er-in \-'primy-ə-lavər-ən\ *n* -s [alter. (influenced by
NL *Primula*) of ISV *primverin*]: a crystalline glycoside
C₂₀H₂₄O₁₁ that is isomeric with primverin and occurs with it
and that on hydrolysis yields primverose and a derivative of
genistic acid

prim-u-line \-'primy-ā, -lēn\ *n* -s [ISV *primul-* (fr. NL
Primula) + -ine]: a fugitive yellow dye made by heating para-
toluidine and sulfur together and sulfonating the product
that can be diazotized on the fiber and coupled with a phenol
or amine to yield various developed dyes (as red colors of
good fastness to washing but not to light) — see DYE table I
(under Direct Yellow 59)

primuline yellow *n*: YOLK YELLOW

prim-u-li-nus \-'primy-ā-līnəs\ *n* -es [NL *primulinus* (specific
epithet of *Glaudiolus primulinus*), fr. L *primula* (stem of
primulus first) + -inus -ine] 1: a *Glaudiolus* (*Glaudiolus* *prim-*
ulinus) of southeastern tropical Africa having clear primrose
yellow flowers with the uppermost perianth segment much
curved in a hood 2 or *primulinus* hybrid: any of numerous
cultivated *Glaudiolus* produced by hybridizing from the species
primulinus and possessing its characteristic hood

prim-mob-i-le \-'priməm-mōb(ə)lē\ *n*, pl *primum*
mobiles [ME, fr. ML lit., first moving thing] 1: a: the ninth
or in later numbering the tenth and outermost concentric
sphere added in the middle ages to the system of Ptolemaic
astronomy and conceived as carrying the spheres of the fixed
stars and the planets in its daily revolution — compare
CRYSTALLINE HEAVEN *b* Aristotelianism: the highest physical
sphere that derives its circular motion directly from God the
unmoved mover 2: something that is a first source of motion
or activity: PRIME MOVER (regarded self-interest as the *primum*
mobile of all human activity)

prim-us \-'prīməs\ *n* -es often *cap* [ML, one who is first,
marque, fr. L, first — more at PRIME]: the first in dignity of
the bishops of the Episcopal Church in Scotland who has var-
ious privileges but no metropolitan authority

Primus \-'trādemark\ — used for a portable oil-burning
stove

primus inter pares \-'jīntər-pār-ēz\ *n*, pl *primi inter*
pares \-'prīm-ē\ [L]: the first among equals (the prime
minister's place among his colleagues as *primus inter pares* —
F.A. Ogg & Harold Zink)

prim-wort \-'prīm-wōrt\ *n* [prob. fr. *prim* + *wort*]: PRIVET 1a(1)
prim \-'prīm\ chiefly Scot var of *PREEN*

prim *abbr* 1: principal; principally 2: principle
prim *abbr* 1: principal 2: principle

prince \-'prīns\ *n* [ME, fr. OF, fr. L *princeps*, *princeps*
first person, chief, prince lit., one who takes the first part, fr.
prin- (fr. *primus* first) + *cap-* (fr. *capere* to take) —
more at HEAVE] 1: a sovereign ruler: MONARCH (noblemen
passed from court to court, seeking service with one ~ or
another —W.M. Thackeray) 2: the ruler of a principality or
state (New Delhi has promised the ~ the right to be
called Your Highness —Time) (the Prince of Monaco) 3: a
male member of a royal family; esp: a son or a grandson in
the male line of the British king or queen 3: a nobleman
whose rank and status vary from one part of the world to
another (Polynesian ~s) (a Chinese ~ of the first degree)
4: an ecclesiastical title; *speci*: a CARDINAL 5: a
person at the head of a class or profession: one very out-
standing in a specified respect (a ~ among men) (that ~ of
hosts who left nothing undone for the comfort of his guests)
(a very ~ of poets) — compare MERCHANT PRINCE *b*: a
jolly good fellow: an open-handed and genial friend (he's a
real ~)

2prince \-'vī-ED-/ING-/ES\ *obs*: to play or act the part of a
prince — often used with *it* (showed a disposition to ~ it)
prince al-bert \-'albə(r)t, usu -j-d + V\ *n*, pl *prince alberts* *usu*
cap P & A [after Prince Albert Edward
(later Edward VII king of England) 1910
who set the fashion of wearing it] 1:
or *prince albert coat*: a long double-breasted
frock coat for men 2: a man's house slipper
with a low counter and goring on each
side

prince albert fir *also* *prince albert's fir*
or *prince albert spruce* *n*, *usu* *cap* P & A
: WESTERN HEMLOCK

prince albert's yew *also* *prince albert yew*
n, *usu* *cap* P & A: a small evergreen tree
(*Saxa-gotha conopsea*) of the family
Taxaceae that resembles the common yew,
is native to mountainous southern Chile,
and is sometimes cultivated as an orna-
mental

prince-bishop \-'(r)īns\ *n*: a bishop of
princely rank; esp: one with a see con-
stituting a feudal principality of the Holy
Roman Empire

prince charles spaniel *n*, *usu* *cap* P & C
[alter. of *King Charles spaniel*]: an English toy spaniel having
a black, tan, and white coat

prince charming *n*, sometimes *cap* P & C [after *Prince Charming*,
hero of the fair tale *Cinderella* (1729) translation, by Robert
Samber // 1729 Eng. writer, of *Cendrillon* (1697) by Charles
Perrault // 1703 Fr. writer]: a suitor who fulfills the dreams of
his beloved; *also*: a man of often specious affability and
charm toward women

prince consort *n*, pl *princes consort*: the husband of a
reigning female sovereign

prince-dom \-'prīn(t)s-dəm, -stəm\ *n* -s [prince + -dom] 1: the
jurisdiction, sovereignty, rank, or estate of a prince 2: PRIN-
CIPALITY

prince ed-ward island \-'edwə(r)d\ *adj*, *usu* *cap* P & E & I [fr.
Prince Edward Island, maritime province in the Gulf of St.
Lawrence in southeastern Canada] 1: of or from the province
of Prince Edward Island: of the kind or style prevalent in
Prince Edward Island

prince elector *n*: ELECTOR 4
prince gray *n*, often *cap* P: CRANE 4

prince-kin \-'prīn(t)skən\ *n* -s [prince + -kin]: a diminutive
prince

prince-less \-'sləs\ *adj*: having no prince
prince-let \-'slət\ *n* -s [prince + -let] 1: a petty prince
prince-ly \-'slē-slē\ *adj*, *often* -ER/-EST [prince + -ly (adj.
suffix)] 1: of, relating to, or descended from a prince: ROYAL,
KINGLY: of high rank or authority (~ birth) (~ power)
2: resembling, befitting, or having the characteristics of a
prince: STATELY, NOBLE: MAGNIFICENT, MUNIFICENT (a
message of thanks for this ~ gift —Thomas Cadett) (those ~

chief officials (as the headman of a tribe) among the ancient
Teutons and Anglo-Saxons *c*: a first edition of a work; *also*
: a copy of this edition

prince regent *n*, pl *prince regents*: a prince who rules a
country during the minority, absence, or disability of the
nominal sovereign

prince royal *n*, pl *princes royal*: the eldest son of a sovereign
prince ru-pert *drop* *also* *prince ru-pert's drop* *n*, *usu* *cap* P & R
[after Prince Rupert of Germany 1682 who first brought it to
England]: RUPERT'S DROP

prince ru-pert's metal \-'rūpə(r)t-s\ *n*, *usu* *cap* P & R [after
Prince Rupert 1682, its inventor]: PRINCE'S METAL

princes *pl* of PRINCE, pres 3d sing of PRINCE

prince's-leather \-'prīns-ē\ *n*, pl *prince's-leathers* 1: a showy
annual plant (*Amaranthus hybridus hypochondriacus*) often
cultivated for its dense usu. red spikes of bloom 2: a
plant (*Polygonum orientale*) with broadly ovate leaves and
slender drooping crimson spikes — called *also* *gentleman's-*
cane, *prince's-plume* 3: LILAC 1 a 4: LONDON PRIDE 1

prince-ship \-'prīn(t)s,shīp, -n,sh- \ *n* [prince + -ship] 1: the
dignity or position of a prince 2: the period during which a
prince (as an heir apparent) is such

prince's length *n*, pl, often *cap* P [after Prince George
Augustus Frederick (later George IV king of England) 1830
who prescribed them]: the standard of counting hits in archery
on the target as gold 9, red 7, blue 5, black 3, white 1

1prin-cess \-'prīn(t)səs\ (before a voiced consonant sometimes
-səs), 'prīns, 'prīns-əs\ *n* -es [ME *princesse*, fr. MF, fr. OF
prince + -esse -ess — more at PRINCE] 1: *archaic*: a female
prince: a woman having sovereign power or the rank of a prince
(so excellent a ~, as the present queen —Jonathan Swift)
2: a female member of a royal family; esp: a daughter or a
granddaughter of a sovereign (the Duchess of Kent was
safely delivered ~ of a ~ —London Times) 3: the consort
of a prince 4: a woman outstanding in some usu. specified
respect (that ~ of seamstresses) 5: a somewhat personified (as
female and outstanding of its kind (a winding ~ of a river)
6: an attractive young woman selected to represent a com-
mercial product, special group, or other interest publicly or to
preside (as at a fair or college homecoming celebration)
(the new potato ~) — compare QUEEN

2princess \-'vī-ED-/ING-/ES\ *to* act or play the princess
— often used with *it*

princess \-'vī-ED-/ING-/ES\ *adj* [princess fr.
F. *princesse*] 1: close-fitting and usu. with gores from neck to
flaring hemline — used esp. of women's full-length garments
2: *usu* *princess*: served with a garnish of asparagus usu. with
artichoke hearts or truffles

princess feather *n*: PRINCE'S-FEATHER 2

princess flower *n*: TIBOUCHINA 2

prin-cess-ly *adj*: like, befitting, or having the characteristics
of a princess

princess pine *n*: PRINCE'S PINE

princess post *n*: a post in a roofing truss that is framed in a
position intermediate between the queen post and tie beam

princess regent *n*, pl *princess regents* 1: a princess who
rules a country during the minority, absence, or disability of
the nominal sovereign 2: the wife of a prince regent

princess ring *n*: a finger ring with three to five stones along
the band often surrounded by smaller stones

princess royal *n*, pl *princesses royal*: the
eldest daughter of a British or Prussian
sovereign — a designation granted for life
and used only after the title has been specif-
ically conferred by the sovereign

princess tree *n*: a Chinese tree (*Paulownia*
tomentosa) that has soft pubescent leaves
and terminal clusters of large purple irregu-
lar flowers and is introduced and naturalized
esp. in eastern No. America — called *also* *karr-tree*

prince-ton orange \-'prīntən-, -in(t)stən\ *n*, often *cap* P [fr.
Princeton University, N.J.]: a strong orange that is yellow-
stronger, and slightly lighter than pumpkin and redder, darker,
and slightly less strong than cadmium orange

princewood \-'prīns-ē\ *n* 1: either of two tropical American
timber trees (*Cordia gerascanthus* and *C. alliodora*) *b*: the
hard heavy smooth elastic dark-streaked brown wood of either
tree 2: a tropical American shrub (*Exostema caribaeum*)
with a bark used in the preparation of bitters

princing *pres* part of PRINCE

prin-di-pal \-'prīn(t)səpəl-, -səbəl *also* -in-zp- or -in(t)s\ *adj*
[ME, fr. OF, fr. L *principalis* first, principal, fr. *princeps*]
1: most important, consequential, or influential: relegating
comparable matters, items, or individuals to secondary rank
: CONTROLLING, PRECEDING, SALIENT (his chief friend and ally
—Anthony Trollope) (a chicken stew of which the ~ ingre-
dient was not chicken but sea cucumber —John Steinbeck)
2: *obs*: of or relating to a prince: PRINCELY 3: of, relating to,
or constituting principal or a principal, as *a*: CAPITAL (~
costs) (invested a ~ sum) *b*: being the person chiefly con-
cerned in or legal proceeding *c*: MAIN *d* syn see CHIEF

2principal \-'vī-ED-/ING-/ES\ *n* [ME, fr. MF, fr. L *principalis*, fr. L *adj.*,
principal] 1: a person who has controlling authority or is in a
position to act independently: one who has a leading position
or takes the lead: as *a*: a chief or head man or woman: one
presiding as ruler, leader, superior, or lord *b*: the chief
executive officer of various educational institutions (the ~ of
our grade school) (the vice-chancellor of some British univer-
sities is known as the ~) *c*: one who employs another to act
for him subject to his general control and instruction: the per-
son from whom an agent's responsibility derives *d*: the chief
actor or an actual participant in a crime including anyone
present and actively abetting or assisting therein as distin-
guished from an accessory either before or after the fact
e: the person primarily liable on a legal obligation or the one
who will ultimately bear the burden because of a duty to in-
demnify another as distinguished from one secondarily liable
(as an endorser, surety, or guarantor) *f*: one fighting or
pledged to fight a duel — compare SECOND *g*: a leading per-
former (as in a drama, opera, orchestra, or ballet): a person
taking a chief part in a theatrical performance: STAR *h*: OFFI-
CIAL 1 2: a matter or thing of primary importance: a main
or most important element: as *a* (1): a capital sum placed
at interest, due as a debt, or used as a fund (2): the corpus or
main body of an estate, portion, devise, or bequest — distin-
guished from *income* *b*: the construction that gives shape
and strength to a roof and that is generally one of several
trusses of timber or iron; *also*: the most important member of
a piece of framing *c* *archaic*: a fundamental point: PRINCIPLE
d: one of the taper-bearing pillars formerly used to decorate a



Prince Albert 1



princess ring

Exhibit 6

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17810-A of Michael Reitz, pursuant to 11 DCMR § 3104.1, for a special exception to allow a garage addition to an existing one-family dwelling under section 223, not meeting the lot occupancy (§ 403) and nonconforming structure (§ 2001.3)¹ requirements in the D/R-5-B District at premises 1505 Harvard Street, N.W. (Square 2577, Lot 42).

HEARING DATE: September 16, 2008

DECISION DATE: October 21, 2008

**DATE OF REMAND
FROM D.C. COURT
OF APPEALS:** October 19, 2009

**DATE OF BOARD
CONSIDERATION
AFTER REMAND:** May 11, 2010

**DATE OF POST-REMAND
LIMITED HEARING:** June 15, 2010

**DATE OF DECISION
AFTER POST-REMAND
LIMITED HEARING:** July 20, 2010

DECISION AND ORDER AFTER REMAND²

On April 8, 2008, this application was filed by Michael Reitz ("Applicant"), the owner of the property that is the subject of this application ("subject property"). The Applicant requested a special exception pursuant to 11 DCMR § 223 to permit construction of a garage addition to his

¹The caption was changed from the original, which stated that rear yard relief was necessary pursuant to § 404, to reflect the correct relief – pursuant to § 2001.3. The rear yard involved in the application is nonconforming, but this nonconformity is not being increased and the proposed addition is not encroaching on the rear yard. Therefore, the proper relief is pursuant to § 2001.3 to permit the enlargement of a structure nonconforming for rear yard and lot occupancy. In any event, both the lot occupancy and the nonconforming structure relief are subsumed under § 223.

²Although this order is being issued after a remand from the District of Columbia Court of Appeals, the original order, which was appealed, was a Summary Order, with no Findings of Fact or separate Conclusions of Law. Therefore, this order will contain Findings of Fact and Conclusions of Law in the first instance.

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one-family dwelling on the subject property. The special exception was necessary because the dwelling is nonconforming for rear yard, and with the addition, would exceed the maximum lot occupancy of 60% permitted in this R-5-B zone district. According to the calculations of the Zoning Administrator ("ZA"), the lot occupancy of the dwelling, with the garage addition, would be approximately 69%, just one percent less than the 70% maximum permitted by § 223.

The Board of Zoning Adjustment ("Board") held a properly-noticed public hearing on the application on September 16, 2008 and set a decision date of October 21, 2008. At the hearing, Mr. John Moore, a neighbor, brought up the question of whether an easement ran along the subject property's rear lot line, and within its rear yard (as well as those of adjacent properties) and if so, what effect it would have on the lot area, and correlatively, on the lot occupancy of the subject one-family dwelling. The issue was important because, depending on its resolution, the final lot occupancy could have ended up being more than 70%, eliminating § 223 as an avenue of relief, and necessitating that the Applicant file for area variance relief.

At the close of the hearing, the Board kept the record open for more information on the existence of the easement, but no conclusive evidence as to its existence was presented to the Board prior to its October 21, 2008 decision date. On the evidence in the record at the time, the Board declined to make a determination one way or the other as to the easement's existence, and instead, decided to rely on the referral by the ZA to the effect that the lot occupancy was less than 70%. During its deliberations, the Board mentioned, and partially relied on, Board precedent in *Appeal No. 17631 of ANC 3E and Todd Boley*, 55 DCR 3136 (2007), wherein the Board decided that the land area within a known easement was included in the calculation of lot area. In *Boley*, therefore, the existence of the easement did not reduce the lot area, and, accordingly did not increase the lot occupancy of the building(s) at issue in that case. The Board went on to deliberate on the merits of the § 223 application. The Board concluded that the general requirements of 11 DCMR § 3104 and the specific conditions of § 223 were met, and therefore granted the application. Because the decision was not adverse to a party, the Board's written decision contained no findings of facts or conclusions of law, as is permitted by §10 of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-509 (e).

Mr. Moore appealed the Board's order (Exhibit 45) to the District of Columbia Court of Appeals ("Court of Appeals" or "Court"). (Exhibit 49.) Prior to any appeal proceedings, however, the Board moved the Court to remand the case to the Board for further administrative proceedings, to enable the Board to make a more conclusive determination as to the existence of the easement and its effect, if any, on the calculation of the lot area/lot occupancy. (Exhibit 50, Second Attachment.) The Court remanded the case to the Board "for actions consistent with [the Board's] motion" requesting remand.³ (Exhibit 50.)

³In its motion, the Board stated that it wished to "reexamine its position that it could not rule upon the factual issue presented and either explain the basis for that determination or alternatively make findings of fact regarding the existence of a right of way and determine the legal consequence of any such easement on its ability to consider the special exception." (Exhibit 50, Second Attachment, at 2.)

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After the Court remanded the case to the Board, the Board set a date to consider the proper course of action to take with respect to the application and the outstanding easement issues. At a special public meeting on May 11, 2010, the Board allowed testimony from the Applicant and Mr. Moore. Mr. Moore was not present at the special public meeting, but the attorney who had represented him at the Court of Appeals was present. The Board decided that a further, limited hearing was necessary, which was set for June 15, 2010. At the limited hearing on that date, Mr. Moore appeared and was granted party status, and he and the Applicant presented cases concerning the existence and effect of, the easement.

After the limited hearing, the Board set a decision date of July 20, 2010, at which time, the Board, at a properly-noticed public meeting, concluded that the easement exists, and that its land area is included in the calculation of lot area. Consequently, the lot occupancy of the Applicant's dwelling remained below 70%, retaining his eligibility for special exception relief pursuant to § 223. The Board, therefore, decided to affirm its earlier grant of relief pursuant to § 223 by a vote of 3-0-2.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 9, 2008, the Office of Zoning ("OZ") sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the subject property is located, Single Member District 1B07, and the Councilmember for Ward 1. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register*, and on June 9, 2008, sent such notice to the Applicant, ANC 1B,⁴ and all owners of property within 200 feet of the subject property.

After the application was remanded from the Court of Appeals, it was scheduled to be deliberated at the Board's special public meeting on May 11, 2010. OZ provided notice of the planned May 11th deliberation, via courtesy calls, to the Applicant, Mr. John Moore, the neighbor who had appealed, and the attorney who had represented Mr. Moore at the Court of Appeals. The Applicant and Mr. Moore's attorney attended the May 11th special public meeting, at which they were informed by the Board that a limited public hearing would be held on June 15, 2010. Therefore, pursuant to 11 DCMR § 3105.13, proper notice of the date of the limited hearing was afforded to the interested parties.

Request for Party Status. ANC 1B was automatically a party to this application and filed a letter of support with the Board dated September 9, 2009. (Exhibit 24.) The ANC did not participate in the case after it was remanded to the Board.

⁴The letter dated June 9, 2008 notifying ANC 1B of the hearing was apparently addressed with the wrong zip code, and was followed up by a second notice letter to the ANC dated June 24, 2008, which was addressed correctly.

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There were three party status requests made prior to the first hearing on the application. Three neighbors, Ms. Kathleen Clark, and Mr. and Mrs. Ziv, filed requests for opposition party status, but none of them appeared at the hearing on September 16, 2008. The Board denied their party status requests. Mr. John Moore, whose rear lot line abuts that of the subject property, also requested opposition party status, but withdrew that request at the first hearing. He, however, appealed the Board's decision to the Court of Appeals, and re-requested party status after the case was remanded. The Board granted his request during the limited hearing held on June 15, 2010, and post-remand, he participated as a party-opponent.

The Applicant's Case. At the September 16, 2008 hearing on the application, the Applicant presented his case and testified as to the proposed construction and how it met the special exception tests. At the post-remand limited hearing held on June 15, 2010, the Applicant again presented his own case. He did not make a case for or against the existence of the easement, but appeared to argue that if it did exist, it would be a private easement, and that it was gated and locked, and already encroached upon by structures and trees.

Government Reports. OP submitted three reports to the Board, all recommending approval of the special exception relief. In its first report, dated September 9, 2008, OP addressed the provisions of § 223, but did not discuss the possibility of the existence of the easement. (Exhibit 26.) In its second, or Supplemental, Report, dated October 10, 2008, and therefore written after the hearing, OP stated that there was no indication of an easement in the records of the Office of the Recorder of Deeds. (Exhibit 36.) Attached to the second report is a memorandum from the D.C. Department of Fire and Emergency Services ("FEMS") which states that, after reviewing documentation submitted by OP, FEMS concludes that "[t]he [A]pplicant's private driveway is not a part of public way or public alley, and the D.C. Fire Department has sufficient alternate access on 15th St. and Columbia Rd., N.W." (Exhibit 36, Attachment.)

OP's third report, entitled "Addendum to Supplemental Report," dated October 17, 2008, states that OP had received documentation of the existence of the easement from the neighbor, Mr. Moore. The OP report discussed the fact that some past maps showed the easement and some did not, but that the plat prepared by the Surveyor in 2008 did not. OP did not make a determination as to whether the easement exists, but pointed out that if it does, the lot area and the lot occupancy involved in the application could change. OP also noted that "[t]he existence of the right of way has no bearing on the issue of FEMS access." (Exhibit 43.)

ANC Report. ANC 1B filed a letter with the Board on September 9, 2008, stating that, at a properly-noticed public meeting with a quorum present, the ANC voted unanimously to support the application for special exception. The letter notes that the ANC had not received any comments from the residents of Square 2577, but that the "two-story addition appears to be consistent in height and design with the three row properties to the east, and should have minimal impact on the large apartment structure to its west." (Exhibit 24.)

FINDINGS OF FACT

The subject property and the surrounding neighborhood

1. The subject property is located at address 1505 Harvard Street, N.W. (Square 2577, Lot 42), in a D/R-5-B zone district.
2. The subject property is a rectangle on three sides, with an angled rear lot line. Its western lot line is 35.74 feet long, while its eastern lot line is 61.62 feet long, resulting in an angled rear lot line of 46.78 feet long, while the front lot line, parallel to Harvard Street, is only 38.96 feet long.
3. The area of the subject property is approximately 1,896 square feet, and its lot width is 38.96 feet. There is no minimum lot area or minimum lot width prescribed in this R-5-B zone district. (11 DCMR § 401.3.)
4. The property is improved with an existing two-story, one-family row dwelling attached to the row dwelling to the east.
5. Between the western wall of the subject dwelling and the western lot line of the subject lot, and therefore in the side yard of the subject dwelling, is a concrete-paved driveway, 16.75 feet wide, which extends from Harvard Street toward the rear of the lot.
6. Based upon the entire land area of the property, the lot occupancy of the subject dwelling is approximately 48.9%, less than the 60% maximum permitted in this R-5-B zone. (11 DCMR § 403.2.)
7. The rear yard of the subject dwelling goes from a depth of three feet, along the western lot line, to a depth of 19.3 feet, along the eastern lot line. Due to the angled rear lot line and the placement of the dwelling, the average rear yard depth is approximately 9.66 feet. This is less than the minimum of 15 feet required, but no part of the addition will be in the rear yard, so the rear yard dimensions will not change as a result of the proposed construction. (11 DCMR § 404.1.)
8. The property immediately to the west of the subject property is developed with a six-story multiple dwelling, The Copperfield Condominium building. Running along the eastern lot line of the condominium building, and therefore adjacent to the Applicant's driveway, is a thick brick wall, approximately eight feet tall. This brick wall stands approximately eight feet away from the eastern wall of the condominium building. The top of the brick wall is attached to the condominium's eastern wall by a series of what appear to be metal beams, and under these beams, and therefore between the brick wall and the condominium building's wall, is space for vehicle parking.
9. The rest of Square 2577 is developed with row dwellings, fronting on Harvard Street to the south, like the subject property, or fronting on Columbia Road, to the north.

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10. The rear yards of the dwellings fronting on Columbia Road abut the rear yards of the dwellings fronting on Harvard Street, with no rear alley in between to separate them.
11. The surrounding neighborhood is characterized by a mix of one-family row dwellings, multiple dwellings, and institutional uses, such as places of worship.

The Applicant's proposal

-
12. The Applicant proposes to construct an attached two-story garage addition to the existing row dwelling, which would replace the existing driveway.
 13. The addition would be 16.75 feet wide by 25 feet deep, for an area of 420 square feet. At 16.75 feet wide, the addition would extend from the subject dwelling to the brick wall on the eastern property line of the adjacent condominium building, blocking access from Harvard Street to the rear yard of the subject property.
 14. The addition will be 22 feet tall, and will contain a garage on the first floor and a storage/work area on the second floor.
 15. Assuming that the entire land area of the lot is counted, the lot occupancy of the subject dwelling with the addition is increased to 69.6%, more than the 60% permitted, necessitating zoning relief. (11 DCMR § 403.2.)
 16. The front of the addition will be flush with the front wall of the dwelling, and the rear wall of the addition will sit three feet before the end of the western lot line and will be parallel to Harvard Street.

The existence of an easement

17. The subject lot is currently shown on the Surveyor's records as record Lot 42 in Square 2577. In January of 1914 it was part of Lots 36 and 37 in "Meridian Hill" Block 20. A drawing of those lots is shown in Exhibit 37.
18. Lots 36 and 37 were the subject of a conveyance described in a deed recorded January 22, 1914. (Exhibit 37, page 2.) That deed made the conveyance "[s]ubject to a right of way for alley purposes over the Northerly 4 feet of said lots." Later that year, the two lots were subdivided to create Lots 40, 41, and 42, and Block 20 became Square 2577.
19. The language in the deed is sufficient to create the type of servitude on the land known as an easement.
20. Three deeds from October, 1917, detail the transfers of Lots 42, 41, and 40 in Square 2577 and each deed specifies that the said Lot is transferred "subject to right of way for alley purposes over Northerly four feet of said lot." (Exhibit 54, Second Attachment.)

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21. No known subsequent deeds of transfer specifically reference this easement, but none of these deeds expressly terminates it.
22. Therefore, a four-foot-wide easement currently runs along the rear lot line of the subject property.
23. The easement runs from the western lot line of the subject lot, through the rear yards of the two lots to its east, and terminates at 15th Street, the north-south street which forms the eastern boundary of Square 2577.
24. The easement has been used to provide access to 15th Street from the rear yards of most of the one-family dwellings on Square 2577 – both those facing Harvard Street and Columbia Road.
25. Abutting neighbors, as well as workmen, when necessary, use the easement.
26. The easement does not provide, nor does it appear that it was meant to provide, any access from these dwellings' rear yards to Harvard Street.
27. Although the 1914 documentation of the easement states that it is for "alley purposes," at only four feet wide, its uses would be limited to pedestrians and conveyances which could fit in its four-foot width.
28. Both ends of the easement strip, at 15th Street, and at the western property line of the subject property, are gated, and all along the sides of the strip, on both sides, there appear to be fences, walls, and/or sheds.
29. If the portion of land on the subject lot and within the easement strip is excluded from the calculation of lot area, the lot occupancy of the Applicant's dwelling with the proposed addition would be approximately 75.8%, rendering this application ineligible for special exception relief pursuant to § 223, which is only available if the lot occupancy requested by an application is 70% or less. (11 DCMR § 223.3.)

The special exception relief

30. The western wall of the proposed addition will be set against the approximately eight-foot-tall brick wall on the eastern lot line of the condominium building. This brick wall is at least a car length away from the condominium building wall; thus, the addition will be at least that distance from the condo building.
31. The addition will be only two stories high, whereas the condo building is six stories high.
32. The side of the addition facing the condo building will be of split-faced decorative block and will have no windows.

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33. At 22 feet high, the addition will be the same height as the subject dwelling to which it will be attached, and its front will be flush with the front of the dwelling.
 34. The front façade of the addition will be clad in brick veneer. It will have a garage door and a street door on the ground level, and one central bay window on the second level, as well as an interesting, shaped roof line, to match the character, scale and pattern of houses along the Harvard Street frontage.
-
35. The rear façade of the addition will be covered in vinyl siding and will have no windows, with only a door at the ground level.
 36. One small outdoor light will be positioned next to the street door on the front façade and next to the ground level door on the rear façade.
 37. The addition will be used to store a vehicle in its first floor garage, replacing the vehicle storage provided by the driveway. The second story will be used as a storage room/work room. Neither use will cause undue noise or odors.

CONCLUSIONS OF LAW

Introduction

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief 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. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 223.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and if the applicant meets its burden, "the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

In this case, before addressing the special exception tests, the Board must first address the preliminary issue of what effect, if any, the existence of the easement has on the calculation of lot area. If the land within the easement is not included in the lot area calculation, the lot occupancy of the Applicant's dwelling plus addition is 75.8%, more than the 70% permitted by § 223, making § 223 relief unavailable. If, however, the land within the easement is included in

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the lot area calculation, the lot occupancy of the Applicant's dwelling plus addition is 69.6%, and § 223 relief is available.

The Existence and Effect of the Easement/Right-of-Way

As set forth in the Findings of Fact, the Board has now determined that a four-foot-wide easement was established in 1914 running along the rear lot line of the subject lot and that the easement has never been terminated. The easement continues through the two rear yards to the east and terminates at 15th Street, providing a rear means of access to 15th Street to many of the residents of Square 2577.

Now that the existence of the easement has been definitively ascertained, the Board must determine whether its land area is included in the calculation of the subject lot area. There is no dispositive case on the question in this jurisdiction, but there appear to be two major schools of thought represented in the case law of this, and other, jurisdictions. One school of thought holds that the trier of fact should determine whether the right-of-way is "private" or "public" in nature, and, generally, if the former, its land area would be included in lot area calculations, but if the latter, its land area would be excluded from such calculations. *See, e.g., Mishkin v. City of Allentown Zoning Board*, 51 Pa. D & C.2d 441, 444 (1971). (The court stated: "[w]e regard the board's decision that there is a distinction between public and private 'streets' for the purposes of deciding whether the 'net land area' requirement was met in this case is sound."); *Metzenbaum v. City of Carmel-by-the-Sea*, 234 Cal.App.2d 62, 44 Cal. Rptr. 75 (1965), relied on by this Board in *Appeal No. 17631 of ANC 3E and Todd Boley* (2008).

This private vs. public test was applied by this Board in *Appeal No. 17631 of ANC 3E and Todd Boley* (2008), and turns on whether the easement is considered "private" or "public." To make this determination, courts look to factual aspects of the easement and its use, such as whether it was properly dedicated and accepted by a municipality (*MacCorkle v. City of Charleston*, 105 W.Va. 395, 142 S.E. 841 (Sup. Ct. App. W. Va. 1928); *Watson v. Carver*, 27 App. D.C. 555, 559-560 (Ct. App. D.C. 1906)), how the easement actually functions, *i.e.*, how it is used and by whom (*Kohler v. Martin*, 916 P.2d 910, 913-914 (Ct. App. Utah 1996); *Loveladies Property Owners Ass'n. v. Barnegat City Service Co.*, 159 A.2d 417, 422-423 (N.J. Supr. App. Div. 1960)), and regardless of who uses it, who actually has a right to use it (*Mishkin*, 51 Pa. D.& C. at 444). Courts also look at the easement's physical attributes, such as its width (*Preston v. Siebert*, 21 App. D.C. 405, 413 (1903)), whether it connects other public or private ways, (*Watson*, 27 App. D.C. at 559-560), and whether it is gated or "signed" as private (*Kohler v. Martin*, 916 P.2d 910, 913-914 (Ct. App. Utah 1996); *Johnson v. Texas*, 773 S.W. 721, 723 (Ct. App. Tex. 1989)).

The second school of thought looks directly to the definition of "lot" in the applicable regulations. For example, in *Loveladies Property Owners Ass'n. Inc. v. Barnegat City Service Co.*, 159 A.2d 417 (N.J. Supr. App. Div. 1960), the court held that easements that created a private street could not be considered part of a zoning lot, which was defined as "a parcel of land

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on which a main building and its accessory buildings are or may be placed, together with the required open spaces.” The court held that the easements in question were not land on which buildings “may be placed” as they were private access easements. The court also held that the easements could not be considered as part of “the required open spaces” included in the definition of “lot” because the “open space” reference plainly meant the front, rear, and side yards, which are aesthetically and functionally different from a right-of-way available for the passage of pedestrians.

Another case which takes the same approach and came to the same conclusion is *Sommers v. Mayor and City Council of Baltimore*, 135 A.2d 625 (Ct. App. Md. 1957). The definition of “lot” being interpreted in that case was, in pertinent part, as follows: “a parcel of land now or hereafter laid out and occupied by one building and the accessory buildings ... including such open spaces as are required.” The *Sommers* court specifically stated that whether the easement in question was public or private was irrelevant. What it found relevant was that the easement did not fit within the definition of “lot” because it was not “a parcel of land laid out and occupied by one building and the accessory buildings,” nor, apparently, a required open space. And, because it did not fit within the definition of lot, the land area within the easement was not included in the calculation of lot area.

The definition of “lot” at 11 DCMR § 199.1 appears to contain the same elements as these cases: “The land bounded by definite lines that, when occupied by a building or structure and accessory buildings, includes the open spaces required under this title.”

Nevertheless, the Board sees no reason to depart from its past precedent that applied the private vs. public distinction in favor of a test that requires it to interpret the laws of property rather than the Zoning Regulations. Jurisdictional considerations aside, any determination of the right of a property owner to encroach upon an easement area would invariably embroil the Board in private disputes wholly unrelated to zoning. For example, in this very case the Applicant proposed to encroach upon an easement that the opposition claims may not be built upon.

In addition, the application of the buildable area test would result in inconsistent treatment of limitations on construction, depending upon whether the limitation is public or private. Thus, land area located in “open spaces required under” the Zoning Regulations would count towards lot occupancy, but open spaces required by private agreements would not. In contrast, the private vs. public test treats public areas created by private agreement the same way as public space is treated; neither are included within the computation of lot occupancy.

Applying the private vs. public test to this easement, the Board concludes it is a private easement that should be included in the calculation of lot area and therefore, lot occupancy. After considering relevant factors, such as the users of the easement, the uses it has been put to, its narrow width, the existence of a gate, and its non-through nature, the Board concludes that it is a “private” easement primarily used by, and intended for the use and benefit of, the residents of Square 2577, and particularly those whose properties abut it. Use by all abutting property

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owners, and not merely by one property owner, does not change what would otherwise be a private easement into a public one. *Kohler v. Martin*, 916 P.2d at 913. (“It is well established that mere use of the roadway by adjoining property owners (and public invitees thereof) does not create a public thoroughfare.”)

The Board, therefore, concludes that the portion of land within the easement running along the rear lot line of the subject property is included in the calculation of the lot area of the subject lot. Therefore, the lot occupancy of the Applicant’s dwelling, including the proposed addition, is 69.6%, within the 70% permitted by § 223. The Board will now proceed to address the applicable special exception tests set forth in §§ 223 and 3104.

The Special Exception

Section 3104 mandates that, to be granted a special exception, construction proposed by an application must not tend to adversely affect the use of neighboring property. This mandate is echoed in § 223.2(a), which states that such construction shall not unduly affect the light and air to neighboring properties, and in § 223.2(b), which states that such construction shall not unduly compromise the use and enjoyment of neighboring properties.

The special exception requested by this application is for a two-story addition to a one-family row dwelling. This addition will be the same height as the dwelling to which it is attached. On the other side of the addition is a six-story multiple dwelling, but the western wall of the addition will not be set against the eastern wall of the multiple dwelling. Instead, the two walls will be separated by an open space of approximately eight feet – a space used for parking by residents of the multiple dwelling and enclosed by a one-story, thick brick wall to the east and an open-work roof.

Due to the existence of the brick wall enclosing the parking space, the addition will have little or no effect on the light and air available to the first floor of the multiple dwelling and the second story of the addition will be set away from the second floor of the multiple dwelling by approximately eight feet, a sufficient space to allow light and air to the second floor condo. The balconies to some of the condos will be facing the addition, but there will be open space of approximately six feet between them and the wall of the addition. These balconies also begin at the front wall of the condo building and extend back, away from Harvard Street. Because the condo building’s front wall is set several feet closer to Harvard Street than the front wall of the addition, any impact on light and air will be minimized.

Due to the angled rear lot line of the subject lot, the rear of the addition will be set from three to approximately eight feet from the rear of the lot. Adjacent to this open space is the rear yard of the abutting property which fronts on Columbia Road. The rear wall of the addition is therefore set at a sufficient distance from the rear wall of the closest neighbor’s dwelling to allow sufficient light and air to reach this neighbor.

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The only window on the entire addition faces the street. With no windows on the rear or side of the addition, no neighbors' privacy of use or enjoyment is compromised. The street-facing window is a bay window, adding architectural interest to the otherwise simple front. The front of the addition is flush with the front wall of the dwelling, and does not visually intrude upon the character, scale and pattern of houses along Harvard Street. As for other issues, because the addition will be replacing a driveway with a garage, there will be no increase in impermeable ground surface area and no net loss of off-street parking.

The addition, and the lot occupancy relief requested, are in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and meet the necessary provisions of §§ 3104 and 223, therefore, the special exception must be granted. *First Washington Baptist Church*, at 701.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the OP. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. Both OP and ANC 1B recommended the granting of this application and the Board agrees with this recommendation.

For all the reasons stated above, the Board concludes that the application satisfies the burden of proof for a special exception under § 3104, pursuant to § 223, to construct an addition to a one-family dwelling at the subject property. Accordingly, it is hereby **ORDERED** that the application, pursuant to Exhibit No. 7, Plans, be **GRANTED**.

**VOTE TO GRANT
RELIEF AT**

OCTOBER 21, 2008

DECISION MEETING: 5-0-0

(Ruthanne G. Miller, Shane L. Dettman,
Marc D. Loud, Mary Oates Walker, and
Anthony J. Hood to Grant)

**VOTE TO AFFIRM
GRANT OF RELIEF**

AT JULY 20, 2010

DECISION MEETING: 3-0-2

(Meridith H. Moldenhauer, Shane L. Dettman,
and Michael G. Turnbull to Grant; Nicole C. Sorg
not present, not voting; No other Board members
(vacant) participating)

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

A majority of Board members approved the issuance of this order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: NOV 24 2010

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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.

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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



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NOV 24 2010

As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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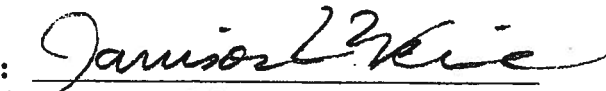
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ATTESTED BY:


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