

**BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT
BZA APPEAL NO. 18664**

INTERVENOR'S PRE-HEARING STATEMENT

Introduction

Jack and Stephanie Lester (“**Lesters**”), the owners of the property at issue in Appeal No. 18664 (“**Appeal**”), have lived in a rowhouse at 117 C Street SE (“**Property**”) with their three children for 13 years. The Lesters are currently improving their Property to expand their rowhouse to accommodate their growing family and add an apartment that the Lesters will rent out to supplement their income and fund the renovation (“**Project**”).

The Property is located in the CAP/R-4 Zone District, which permits a flat as a matter of right. In order to construct the Project, the Lesters sought and received special exception approval from this Board pursuant to BZA Application No. 18263, and the Board approved the Project over two years ago, on November 8, 2011 (“**Order**”). The Order was affirmed by the Board on reconsideration in Application No. 18263-A and later on remand in Application No. 18263-B. (Exhibit A.) The Lesters then applied for and received Building Permit No. 1210100 (“**Permit**”), which authorized the Project pursuant to the Order. (Exhibit B.) Specifically, the Permit authorized:

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 the 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. Conversion from SFD to 2-family flat, unit one – main house, unit two – on 2nd floor of the attached garage’s apartment.

The Permit was issued over one year ago, on November 25, 2012. The Lesters began construction in July 2013.

The Appellant complains that the Zoning Administrator erred in issuing the Permit because the “covered walkway” referenced on the building permit—a trellis connecting the existing rowhouse and proposed rear alley addition—is located below the “main floor” of the Property and, as a trellis, is not structurally sufficient to constitute a legal building connection. However, consistent and well-settled interpretations of the Zoning Regulations support the Zoning Administrator’s finding that the proposed trellis is a valid building connection under the Zoning Regulations.

- The Zoning Administrator has consistently determined that buildings on sloping sites may have multiple “main floors.”
- The Zoning Administrator has repeatedly concluded that covered walkways, including trellises, are valid “building connections” under the District of Columbia Zoning Regulations.

Indeed, as the Board has already specifically explained, in its detailed 15-page administrative order approving the relief required to construct the Project, “a plausible basis exists for the Zoning Administrator to conclude that the Board’s grant of this application suffices to clear a building permit application for zoning compliance.” Order at 11-12. For these reasons, the Board should affirm the issuance of the Permit and deny the appeal.

I. Buildings on Sloping Sites May Have Multiple Main Floors.

The Appellant relies heavily on the article “the” to support a simplistic understanding of the term “main floor” and assert that a building can only have one principal entrance and therefore only one main floor. However, the definition of “main floor” set forth in the Zoning Regulations presumes that the building at issue is located on relatively even grade. Significant changes in grade can create situations where a building has multiple principal entrances and therefore, multiple main floors. The Zoning Administrator has recognized this complexity and previously found that properties on sloping sites may have multiple principal entrances and

therefore multiple main floors. See Zoning Determination Letter regarding the Washington Hilton, attached as Exhibit C.

Here, as explained by the Board in the Order and as shown on the drawing attached as Exhibit F, the Property slopes significantly from north to south, creating one “main floor” at the C Street level and another “main floor” at the rear yard level. Each level has its own principal entrance – the C Street level entrance on C Street, and the rear yard level entrance on Rumsey Court. (The rear yard level also has an entrance from C Street.) This understanding is consistent with the treatment of the term “main floor” in other definitions in the Zoning Regulations, such as the definition of “building area.” The term “building area” excludes portions of a building that are located below the main floor of the building. If the Appellant’s interpretation of “main floor” were applied to this case, however, that would mean that the entire rear yard level of the Property would be excluded from the definition of building area and could therefore be theoretically occupied completely by a structure. To avoid this irrational outcome, the Zoning Administrator has reasonably concluded that buildings on sloping sites have multiple main floors. Accordingly, anything built at the rear yard level counts as building area and therefore against the permitted lot occupancy on the property.

Furthermore, the rear yard/basement level is the “main floor” for the second dwelling unit on the Property. Again, the R-4 Zone permits a flat—two separate dwelling units. For any resident of the second dwelling unit on the Property, the only entrance is from basement/rear yard level. Under existing conditions, the entrance to the basement apartment is from C Street. Under proposed conditions, the entrance to the rear apartment will be from the alley entrance, which is at the rear yard level. In either case, the entrance described above is the only entrance to the second unit so it is, by definition, the principal entrance for the second unit in the flat.

Accordingly, in determining where the “main floor” was located, the Zoning Administrator appropriately considered not only the principal entrance for the Lesters but also the principal entrance for the second unit on the Property.

Finally, even if the Appellant were correct that a property could only have one principal entrance and therefore only one main floor, the Zoning Administrator still could have concluded that the rear yard level was the “main floor.” The Appellant’s arguments rely on a key assumption – that the Property’s C Street entrance is the “principal entrance.” However, for many families such as the Lesters, the principal entrance is not necessarily the ceremonial “front door” but rather the back door, closest to their parking space, where they regularly enter and exit their home after school, trips to the grocery store, soccer practice and so on. And again, the rear yard level is the only entrance for the second unit on the Property. Therefore, the Zoning Administrator could have reasonably concluded here that the rear yard level constitutes the main floor because it contained the Lesters’ garage entrance as well as the sole entrance to the apartment. Such an interpretation is bolstered by the fact that the rear of the Property abuts a 30-foot wide named alley known as Rumsey Court, which itself has multiple row dwellings with a principal entrance on the alley. Therefore, even under the Appellant’s constrained reading of the Zoning Regulations, the lowest level constitutes the “main floor” because it is where the “principal entrance” used by the Lesters and their future tenant is located.

II. Covered Walkways, Including Trellises, Constitute Valid Building Connections.

The Appellant relies on a series of passages about trellises from other jurisdictions to argue that the proposed trellis is not a valid building connection. The Appellant’s legal citations, however, have no bearing on the interpretation of the District of Columbia Zoning Regulations and ignore the long and well-established understanding of building connections within the

District of Columbia – as well as the Board’s affirmation of this understanding as applied to the Project.

It is well settled that in the District of Columbia seemingly-separate structures may be connected as “one building for zoning purposes” so long as they are linked through an adequate building connection. Property owners choose to do this for any number of reasons – to allocate density among the various structures, to take advantage of a measuring point for building height, to share parking and loading, and so on. The definition of “building” under the Zoning Regulations does not expressly state what constitutes a valid building connection; rather, the Regulations merely state that the existence of communication below the main floor does not convert the structures into a single building. Through dozens of examples over the past few decades, the Zoning Administrator has interpreted the Regulations to require a “meaningful connection” between the structures in order to meet the definition of “building” under the Zoning Regulations. So long as the structures are located on a single lot of record and are adequately connected at or above the main floor of the building, the Zoning Administrator has consistently deemed otherwise separate structures to be a single building for zoning purposes.

Approved building connections have included a variety of “communications” such as locked doorways between buildings, shared spaces, and covered walkways – including trellises. See pages 15-16 of September 2008 OP Report to the Zoning Commission regarding Building Height attached as Exhibit D (stating that “meaningful connection” has “generally been interpreted to mean that some above ground interrelatedness is required, but often only in token fashion) and pages 2-3 of December 2008 OP Report to the Zoning Commission regarding the

same issue.¹ As just one example, the complex of office buildings located at 810, 820-830, 840, and 888 1st Street, NE, all appear to be separate structures but are in fact a single building for zoning purposes located on a single lot of record and connected by a series of covered walkways and trellises. The Zoning Administrator's determination in this case – and the Board's conclusion in the related zoning application – represent a reasonable continued application of these established understandings of what constitutes a valid building connection under current District of Columbia zoning law.

III. The Zoning Administrator's Approval of the Permit is Supported by Public Policy.

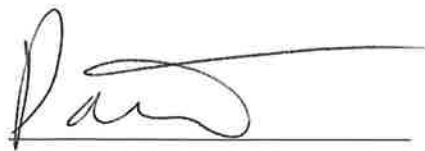
The Lesters understand that Appellant has doggedly pursued his challenge to their addition as a matter of principle and out of concern that the Lesters' addition would establish "precedent" for similar additions elsewhere on Capitol Hill. See Order at 13. However, as the Board itself noted, each application is considered on its own merits; some applications are approved, and others are denied. Assuming that the Lesters' case will "open the floodgates" ignores that unique surrounding context that supported the Board's original special exception approval in this case. That context includes a larger two-story alley structure immediately to the west of the Property, a five-story apartment building immediately to the south of the Property across Rumsey Court, and multiple two-story alley dwellings southeast of the Property along Rumsey Court. Indeed, the Appellant himself received Board approval to create an apartment on the second floor of a two-story carriage house at rear 124 D Street SE, across the alley from Appellant's own property at 129 C Street SE. See BZA Application No. 17943.

¹ Note that the Office of Planning initially proposed excluding building connections such as a trellis as creating a single building out of otherwise separate structures. This underscores the fact that such trellis connections have been interpreted as permissible under the existing Zoning Regulations.

In any event, larger forces are at work that will likely incentivize the creation of additional two story accessory structures with apartments on Capitol Hill—without the need for a building connection. The District of Columbia is revising the entirety of the Zoning Regulations (see Z.C. Case No. 08-06A), including allowing two-story accessory structures with second-story apartments similar to what is being constructed by the Lesters but as separate, standalone structures. Pursuant to guidance provided by the Zoning Commission at public hearings in 2009, the Office of Planning has proposed new regulations that would explicitly allow for apartments to be constructed in two-story accessory buildings. Such uses would be permitted either by right or by special exception depending on the location of the accessory structure. The proposed regulations are attached as Exhibit E. To the extent that the Appellant is concerned about changes in development patterns in the surrounding neighborhood, he should be focused on the citywide changes rather than a single project that is clearly consistent with the established understandings of the Zoning Regulations.

Conclusion

For the reasons set forth herein, the Zoning Administrator did not err in issuing the Permit. The Lesters respectfully request that the Board deny the appeal.

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David M. Avitabile

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 DCRA/ Zoning Administrator:

John Postulka
Assistant Attorney General
Office of the General Counsel – DCRA
1100 4th Street SW, 5th Floor
Washington, DC 20024

For the Appellant:

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

For ANC 6B:

ANC 6B
921 Pennsylvania Avenue SE
Washington, DC 20003

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David M. Avitabile