

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

**I. Introduction.**

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

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

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

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

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

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

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<sup>1</sup> The Board, in Order No. 18263, did not rule directly on the Trellis connection issue. Instead, it refused to dismiss the self-certified special exception application based on the theory that it was "plausible" that the Zoning Administrator could find the Trellis to be a legally sufficient connection. The Board noted that its "grant of this or any other self-certified application does not prevent the Zoning Administrator from denying a building permit because more relief is needed, or the Board from affirming that denial." By the same logic, the Board's decision in Order No. 18263 did not mandate the Zoning Administrator's approval of the Trellis connection, nor does it prevent this Board from determining that the Zoning Administrator was incorrect in approving the Trellis.

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

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

1) The Trellis is below the main floor of the Existing Dwelling, and therefore “shall not be construed as making the structure one (1) building.” (11 DCMR § 199.1 – def. of Building). The definition of Building in the Zoning Regulations states, in part, that: “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.”

“Main Floor” in the Zoning Regulations is defined as “the floor of the story in which the principal entrance of a building is located.” 11 DCMR § 199.1[Emphasis added.] By the plain language of this definition, there can not be more than one main floor in a building. The “main floor,” in this instance, is at the level of the Existing Dwelling’s principal entrance on C Street. The Trellis is located one full level below that main floor, and, literally, by definition, cannot be “construed as making the structure one (1) building.”

2) The Trellis in this case is not structurally sufficient to be considered a legally sufficient communication between the two structures, as required by the Zoning Regulations.

**III. This Appeal is Timely Filed.**

Pursuant to § 2112.2 (a): “An appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision

complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier.”

Although the Building Permit was issued on November 23, 2012, the Appellant did not know of the issuance of this Building Permit, nor the Zoning Administrator’s decisions underlying that issuance, until the evening of August 29, 2013, when the Appellant’s land use attorney, hired that day, searched the PIVS system and discovered that the Building Permit had been issued.

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

So the Appellant first knew of the Zoning Administrator’s decision on August 29, 2013, although it is arguable that the Appellant reasonably should have known of the Zoning Administrator’s decision some time shortly after July 27, 2013. As this Appeal is being filed well within sixty (60) days of both of these two dates, it is timely filed.<sup>2</sup>



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<sup>2</sup> § 3112.2 (c) provides a minimum (not maximum) of sixty (60) days from the date of the administrative decision complained of in which to file an appeal. Further, as the challenged construction has not even commenced as of September 3, 2013, it is not “under roof” and therefore Section 3112.2 (b) does not apply.