

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Stephen Cochran, Case Manager
JL Joel Lawson, Associate Director for Development Review

DATE: June 29, 2018

SUBJECT: BZA #19785 – 322 8th Street, SE (Square 924, Lot 50)– Request for Special Exception relief in order to expand an existing non-conforming accessory structure to accommodate a new dwelling unit

I. BACKGROUND

The applicant has revised its application since its original filing. The report is based on the updated application and plans dated May 30, 2018 (Exhibits 26 – 31), with further revisions filed for the western frontage on June 26, 2018 (Exhibit 35).

II. RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following special exception requests pursuant to Subtitle E § 5201.1, Subtitle U § 304.1 (g), and Subtitle X, Chapter 9:

- Subtitle U § 301.1 (c), Principal Dwelling in an Accessory Structure (permitted subject to conditions in U § 301.1 (c))
- Subtitle E 304.1 Lot Occupancy (60% permitted; 65.8% existing; 69.5% proposed);
- Subtitle C § 202.2 –Expansion of a non-conforming structure

III. LOCATION AND SITE DESCRIPTION

Applicant	Paul Vinovich, Owner
Address	322 8 th Street, SE
Legal Description	Square 924, Lot 50
Ward / ANC	6, 6B
Zone	RF-1, Moderate Density Single Family Rowhouses and Flats
Historic District/ Resource	Capitol Hill Historic District
Lot Characteristics and Existing Development	17.42'-wide rowhouse lot; 2-story rowhouse; Existing 1-story accessory garage at rear immediately abutting the 30'-wide alley .Alley narrows to 15' at it exits to 8 th and 9 th Streets, SE.

Adjacent Properties	There are two-story rowhouses, each with an accessory structure, immediately to north; to the south, across an alley; and to the east, across an alley.
Surrounding Neighborhood Character	Rowhouses in Square 924. New moderate and medium density mixed use PUD development to the west, across 8 th Street. Eastern Market is one and a half block away. .
Proposed Development	Add a second story and an attached second story deck to an existing 1-story accessory garage to house a 2 nd principal dwelling unit.

IV. ZONING REQUIREMENTS AND RELIEF REQUESTED

A dwelling unit in an accessory building is permitted by special exception, subject to conditions in Subtitle U § 301.1(c). The proposed expansion also requires a special exception under Subtitle E § 5201.1, to increase the already non-conforming lot occupancy, which also necessitates a special exception to expand a non-conforming structure under the same criteria.

RF-1 Zone	Regulation	Existing	Proposed	Relief
Lot Width E § 201	18 ft. min	17.42'	No change	Existing Non-conforming
Lot Area E § 201	1,800 sf min.	1,899 sf	No change	Conforming
Lot Occupancy E § 304.1	60% max. 1,139 SF	65.8% 1,250 SF	69.3% 1,316 SF	Special Exception Requested
Height of Accessory Structure E § 5002	20' 2 stories max.	Not provided 1 story	20' 2 stories	Conforming
Size of Accessory Structure E § 5003.1	Greater of 450 sf or 30% of required rear yard.	378 sf	1st floor, 378 sf; 2 nd floor, 378 sf --plus 66 SF deck = 444 SF	Conforming
Rear Yard / Alley Centerline Setback E § 306 and E 5000.3	20' rear yard min. 12' min. setback for accessory structure	58.98' rear yard 15' setback	No Change	Conforming
Dwelling Units in Accessory Structures U § 301.1(c)	Matter-of-right in existing structure; SE if structure is expanded	1 story structure	2nd story, plus deck to accommodate dwelling unit	Special Exception Requested
Dwelling Unit Access U § 301.1(c)(d)(3)	15' alley width for alley's entire length out to street; no more than 300' from street	15' and 30' width at structure, to street, 109 ft. away	No change	Conforming

V. ANALYSIS UNDER THE RELEVANT SPECIAL EXCEPTION CRITERIA

SUBTITLE U § 301 MATTER-OF-RIGHT USES (RF) PRINCIPAL DWELLING UNIT IN AN ACCESSORY STRUCTURE

301.1 *The following uses shall be permitted as a matter of right in an RF zone subject to any applicable conditions:*

[...]

(c) A permitted principal dwelling unit within an accessory building subject to the following conditions of:

- 1) *The accessory building was in existence on January 1, 2013;*

The garage predates 2013.

- 2) *No expansion or addition may be made to the accessory building to accommodate an apartment except as a special exception;*
- 3)

The applicant proposes to expand the accessory structure and therefore requests a special exception. This is covered under the general special exception criteria discussed further below.

- 4) *There shall be permanent access to the accessory building dwelling from a dedicated and improved right of way; and*
- 5) *Permanent access shall be provided by one (1) of the following:*
 - A. *An easement for a permanent passage, open to the sky, no narrower than eight feet (8 ft.) in width, and extending from the accessory building to a public street through a side setback recorded in the land records of the District of Columbia;*
 - B. *Through an improved public alley with a minimum width of twenty-four feet (24 ft.) that connects to a public street; or*
 - C. *On an improved alley no less than fifteen feet (15 ft.) in width and within a distance of three hundred (300) linear feet of a public street;*

The improved 30-foot side and 15-foot wide public alleys provide permanent access.

(d) An accessory building that houses a principal dwelling unit shall not have a roof deck;

The proposed dwelling, as the plans have been revised, would not have a roof deck.

(e) An accessory building constructed as a matter-of-right after January 1, 2013, and that is located within a required setback shall not be used as, or converted to, a dwelling unit for a period of five (5) years after the approval of the building permit for the accessory building, unless approved as a special exception;

The accessory building in question was constructed prior to January 1, 2013.

(f) An accessory building that houses a principal dwelling unit shall not be used simultaneously for any accessory use other than as a private vehicle garage for a dwelling unit on the lot, storage, or as an artist studio; and

The first floor of the building would be used as a private vehicle garage.

(g) Any proposed expansion of an accessory building for residential purposes shall be permitted only as a special exception approval pursuant to Subtitle X, and shall be evaluated against the standards of this section.

The applicant has requested the required special exception. See analysis below.

SUBTITLE X § 901 SPECIAL EXCEPTION CRITERIA - EXPANSION OF ACCESSORY BUILDING TO ACCOMMODATE RESIDENTIAL USE

- 1) *[The special exception] Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

The applicant has applied for a special exception to expand an accessory building to locate a dwelling unit in the accessory building (U § 301.1(c)(b)). The proposed use appears to be in in conformance with the intent of the Regulations to provide housing in walkable, amenity-rich neighborhoods, whether that housing is to be used by the family in the main house as accessory space, or whether it is to be used by a separate family as a second principal dwelling unit on the lot.

- 2) *[The special exception] Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps;*

The proposed expansion of the accessory building to accommodate a dwelling unit should not affect adversely the use of neighboring properties. The use of the alley and the impact on adjacent properties should be minimal. The 30-foot wide and 15-foot wide alley system is bordered by rowhouse development on all sides. A single, dwelling unit of 378 interior square feet, with pedestrian access from the alley, should not add significantly to traffic, noise or light in the alley. The proposed unit would face the garages of the properties to the north, south and east, and the back of the applicant's principal structure to the west. The addition would be 30-feet away from the garage to the east and 15 feet away from the garage to the south. There would be no windows on the north side of the addition. In response to concerns expressed by OP and the property owner to the north, the applicant has revised the plans for the addition's west façade and deck (Exhibit 35, Sheets A-4, A-5). The size of the openings on the west side have been reduced and the deck would no closer than 7 feet from the back yard to the north. The revised plans have also added a screening trellis on the north side of the deck to further protect the privacy of the yard top the north. The applicant has filed a sun study (Exhibit 37) indicating that while there would be some increase in the shadowing of the rear yard to the north, depending on the time of year and time of day, the impact should not be unduly adverse.

SUBTITLE D § 5201 ADDITION TO A BUILDING OR ACCESSORY STRUCTURE LOT OCCUPANCY / SIZE OF ACCESSORY STRUCTURE AND REAR YARD / ALLEY CENTERLINE SETBACK

5201.1 *The Board of Zoning Adjustment may approve as a special exception in the RF zones relief from the following development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:*

- 1) ***Lot occupancy;***
- 2) *Yards;*
- 3) *Courts;*
- 4) *Minimum lot dimensions;*
- 5) *Pervious surface; and*
- 6) ***The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.***

The applicant seeks a special exception for lot occupancy.

5201.2 *Special exception relief under this section is applicable only to the following:*

- (a) *An addition to a residential building;*
- (b) *A new or enlarged accessory structure that is accessory to such a building; or*
- (c) *A reduction in the minimum setback requirements of an alley lot.*

The proposed addition is to an accessory structure.

5201.3 *An applicant for special exception under this section shall demonstrate that the proposed addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

- 1) *The light and air available to neighboring properties shall not be unduly affected;*

The applicant proposes to construct an addition to the existing accessory structure that would retain the existing 378 square foot footprint of the building, add a second story with the same enclosed square footage, and a deck of 66 square feet. This size of the addition should not result in significant light and air impacts to neighboring properties. The orientation of the property would mean that any new shadow from the expanded building would fall on the applicant's rear yard, the alleys to the south and east, and during the late afternoon, minimally on the rear-most portion property to the north.

- 2) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*

The privacy of nearby properties to the south, east and west should not be unduly impacted, given the location of the property's principal structure to the west, the absence of windows on the north and south side of the proposed addition, and the distance between the rear of the proposed addition and the property across the 30' alley to the east. With the revisions filed on June 26, 2018 (Exhibit 35), the applicant appears to have minimized any potential impact on the property to the north.

- 3) *The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially*

visually intrude upon the character, scale, and pattern of houses along the subject street frontage;

The proposed expansion should not intrude on the character of the alley, which flanked by garages of one and two stories. The project has also received concept approval by the Historic Preservation Review Board, further indicating its compatibility with the public ways in the historic district.

- 4) *In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways; and*

The application includes plans, elevations and photographs to represent the proposed addition.

- 5) *The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).*

The application proposes a lot occupancy of 69.3%.

5201.4 *The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.*

OP recommends no special treatments.

5201.5 *This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.*

The proposed use of the property as a flat is a permitted use in the zone. The expansion of the accessory building to house a dwelling unit is permitted by special exception, which the applicant has requested.

5201.6 *This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.*

Neither the proposed height nor the number of stories would be non-conforming.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

The Historic Preservation Review Board voted to give the project concept approval on June 28, 2018. The District Department of transportation has no objection to approval of the requests (Exhibit 38).

VII. COMMUNITY COMMENTS

There were no comments in the record as of the date this report was prepared.

LOCATION MAP

