

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 21206 of Rebecca Latorraca, pursuant to 11 DCMR Subtitle X §1002, for a use variance from Subtitle U § 401.1 to allow an accessory apartment in the cellar of an existing attached principal dwelling in the RA-2 zone at 2302 Ontario Road, NW (Square 2562, Lot 76).

HEARING DATE: December 11, 2024
DECISION DATE: December 11, 2024

ORDER DISMISSING APPLICATION
BECAUSE NO RELIEF IS NEEDED

This application was filed on August 28, 2024, by Rebecca Latorraca (the “Applicant”), the owner of the property that is subject to the application. Following a public hearing, the Board voted to dismiss the application because no zoning relief was necessary.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by letters, dated September 19, 2024, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation, the Department of Buildings, Advisory Neighborhood Commission (“ANC”) 1C, the ANC in which the subject property is located, and Single Member District 1C07, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 1 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on October 4, 2024 (71 DCR 011881) and was mailed to the National Park Service on October 3, 2024.

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 1C were automatically parties in this proceeding. The Board received no requests for party status.

Applicant’s Case. The Applicant presented evidence and testimony in support of the application, including from Yusra Elkhitam, the project manager. The application requested approval to allow an accessory apartment in the cellar of an existing attached principal dwelling.

OP Report. By memorandum dated November 27, 2024, the Office of Planning recommended approval of the application. (Exhibit 34.)

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ANC Report. By letter dated October 28, 2024, ANC 1C stated that, at a regularly scheduled meeting on October 9, 2024, with a quorum present, the ANC voted in support of the zoning relief requested in the application. (Exhibit 31.)

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the west side of Ontario Road NW south of its intersection with Kalorama Road, with the address 2302 Ontario Road, N.W. (Square 2562, Lot 76).
2. The subject property is rectangular, 16 feet wide and approximately 120 feet deep. The lot area is 1,920 square feet. (Exhibit 2.)
3. The subject property is improved with an attached building that is two stories and approximately 25.75 feet in height. The building has a cellar.
4. The existing building was constructed around 1908 and is 16 feet wide. The northwest façade extends 50 feet, while the southeast façade extends 34 feet. The rear portion of the dwelling is 16 feet deep and 12 feet wide, forming a court, four feet wide, at the southwest corner of the dwelling. (Exhibit 22.)
5. The cellar was configured with a kitchen containing a stove and sink, a bathroom with a tub, and a washer/dryer. The first floor of the dwelling also contained a kitchen with a stove, sink, refrigerator, and dishwasher. (Exhibit 3.)
6. The cellar is accessible via an interior stair from the first floor. The cellar is also accessible via an exterior door in the rear yard. (Exhibit 34.)
7. The Applicant purchased the subject property in 1996. According to the Applicant, the cellar already contained a kitchen and was being used as an accessory apartment at the time of purchase. (Exhibit 35A.)
8. The Applicant planned to carry out interior renovations to the building without altering the exterior or adding to the existing structure.
9. The subject property is located in a Residential Apartment (RA) zone, RA-2 zone. The Residential Apartment zones are residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F § 101.1.)
10. The RA zones are intended to (a) permit flexibility by allowing all types of residential development; (b) promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (c) promote a walkable living environment; (d) allow limited non-residential uses that are compatible with adjoining residential uses; (e)

encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (f) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 101.2.)

11. The purposes of the RA-2 zones are to (a) permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts; and (b) permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. (Subtitle F § 101.3.)
12. The RA-2 zone provides for areas developed with predominantly moderate-density residential zones. (Subtitle F § 101.5.)

CONCLUSION OF LAW AND OPINION

The Applicant seeks a use variance from Subtitle U § 401.1 to allow an accessory apartment in the cellar of an existing attached principal dwelling in the RA-2 zone.¹ The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (2012 Repl.), to grant a variance “[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided 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. (See also Subtitle X § 1000.1.)

For zoning purposes, an “accessory apartment” is defined as “A dwelling unit that is secondary to the principal single household dwelling unit in terms of gross floor area, intensity of use, and physical character, but which has kitchen and bath facilities separate from the principal dwelling and may have a separate entrance.” (Subtitle B § 100.2.) An accessory apartment is not included in the list of uses permitted as a matter of right in the Residential Apartment (RA) zones (see Subtitle U § 401.1). However, pursuant to Subtitle U § 250, an accessory apartment is permitted as a matter of right as an accessory use in all Residential House (R) zones subject to the requirements of Subtitle U § 253 and, pursuant to Subtitle U § 410.1, any accessory use permitted in the R zones under Subtitle U § 250 is permitted as a matter of right as an accessory use in the RA zones. Accordingly, the Board concludes that an accessory apartment – which is permitted as

¹ The application sometimes referred to the existing or proposed use of the subject property as a two-unit flat (see, e.g., Exhibits 7, 13, 35A) but generally stated the proposed use as “a single dwelling unit with an accessory apartment” (see Exhibits 35A, 35B). The application was submitted with a referral memorandum from the Office of the Zoning Administrator, which stated the necessary relief as a use variance from Subtitle U § 401.1 to allow a single dwelling unit with an accessory apartment because the “proposed use is not allowed as a matter of right or as a special exception.” (See Exhibits 2, 20.) Accordingly, the Board considered the proposed use of the subject property as a principal dwelling with an accessory apartment.

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a matter of right as an accessory use in the R zones under Subtitle U § 250, subject to the requirements of Subtitle U § 253 – is also permitted as an accessory use as a matter of right in the RA zones, subject to the requirements of Subtitle U § 253.

In accordance with Subtitle U § 253, one accessory apartment is generally permitted as a matter of right in a principal dwelling in the R zones, subject to the requirements stated in Subtitle U § 253. (Subtitle U § 253.2.) These requirements include that either the principal dwelling or the accessory apartment must be owner-occupied for the duration of the accessory apartment use (Subtitle U § 253.5), the total number of persons who may occupy the accessory apartment must not exceed three (Subtitle U § 253.6), and the property owner must obtain a Residential Rental Business License and have the property inspected for housing code compliance before renting an accessory apartment (Subtitle U § 253.13). When an accessory apartment is located in a principal dwelling, requirements include that the house must have a minimum gross floor area of 1,200 or 2,000 square feet, depending on the zone where the building is located, and the accessory apartment may not occupy more than 35 percent of the gross floor area of the house. (Subtitle U § 253.7.)

In this case, the Board credits the Applicant's testimony that an accessory apartment can be established in the cellar of the principal dwelling at the subject property consistent with the requirements of Subtitle U § 253, noting that the referral memorandum from the Office of Zoning Administration submitted as part of the application also stated the proposed use as "a Single Dwelling Unit with an accessory apartment." (Exhibit 20.) The dwelling apparently is sufficiently large, since the Applicant indicated that the building contains approximately 1,400 square feet of "livable area" (Exhibit 35A) and the notes and computations included with the Zoning Administrator's referral memorandum (Exhibit 2) reflected that the building area of the two-story building at the subject property is 677 square feet. The Applicant testified that the accessory apartment will occupy 34 percent of the gross floor area of the building. (Transcript of December 11, 2024 at 92.)

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2018 Repl.).) The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.).) In this case, the Office of Planning recommended approval of the requested relief. ANC 1C voted in support of the application without stating any issues or concerns. For the reasons discussed above, the Board concludes that the zoning relief requested is not needed, and therefore did not deliberate on the merits of the application.

Based on the findings of fact and conclusions of law, the Board concludes that the application for a use variance from Subtitle U § 401.1 to allow an accessory apartment in the cellar of an existing attached principal dwelling in the RA-2 zone at 2302 Ontario Road, N.W. (Square 2562, Lot 76) should be dismissed because the zoning relief requested is not necessary. Accordingly, it is ordered that the application is **DISMISSED**.

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VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Anthony J. Hood to dismiss.)

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

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

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 11, 2025

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

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.