The Board of Zoning Adjustment
For The District of Columbia

Appeal of Zoning Administrator Decision to Issue Building Permit No. B2309496 (August 23, 2024)	BZA Appeal No.: 21231 (Temporary Case No.: BZATmp4576)

Amended Statement of Appeal[1]

This appeal is submitted by Appellants Courtney Bolin and William Gabler, whose property is situated at 1507 Irving Street NE, Washington, D.C. 20017 (Lot 9 of Square 4017). As outlined below, the Zoning Administrator's decision to issue Building Permit No. B2309496 ("Permit") for a new two-story accessory apartment at 3021 15th Street NE, Washington, D.C. 20017 (Lot 22 of Square 4017) violates both the clear and unambiguous language of 11 DCMR (Zoning Regulations of 2016) ("Regulations"), and Ms. Bolin and Mr. Gabler's constitutional rights. Thus, the Permit must be revoked, and the new accessory apartment must be brought into conformance with the Regulations.

Standing and Jurisdictional Statements

Appellants Courtney Bolin and William Gabler have standing to bring the present appeal as the aggrieved homeowners of the adjacent property. Subtitle Y § 302.12(f). The new two-story accessory apartment is being constructed inches away from their abutting property line. As a result, Ms. Bolin and Mr. Gabler's property has been subjected to frequent and ongoing trespass and damage. Ms. Bolin and Mr. Gabler's privacy in their home and their ability to use and enjoy their own property has been greatly diminished.

[1] In their original statement of appeal, Ms. Bolin and Mr. Gabler respectfully reserved their right to file supplemental documents pursuant to Subtitle Y § 302.16. This amended statement of appeal does not add new issues. Subtitle Y § 302.13.

The Board has jurisdiction to hear this appeal, which seeks review of the Zoning Administrator's decision that the new accessory apartment does not require any setback from Ms. Bolin and Mr. Gabler's property. Subtitle Y §§ 100.4, 302.12(e). Ms. Bolin and Mr. Gabler's appeal is timely because it was filed within 60 days of the issuance of the Permit. Subtitle Y § 302.2.[2]

Errors on Appeal

1. Whether the Zoning Administrator erred by approving the Permit and allowing a new two-story accessory apartment as a matter of right in violation of the clear and unambiguous regulatory requirement that all new detached buildings, including new detached accessory apartments, have eight-foot side yards to be constructed without a special exception.

2. Whether, by failing to faithfully enforce the Regulations and placing a constructive easement on Ms. Bolin and Mr. Gabler's property, the Zoning Administrator rendered portions of the Regulations unconstitutional and violated Ms. Bolin and Mr. Gabler's constitutional rights.

Evidence and Witnesses

Appellants Ms. Bolin and Mr. Gabler respectfully submit their evidence and witness lists, which reflect the sources of evidence they may wish to offer into evidence at the public hearing, as attachments at the end of this brief. This evidence does not include the materials that are necessarily part of the record. *See generally* Subtitle Y § 203.

[2] As noted in Ms. Bolin and Mr. Gabler's original statement of appeal, filed on October 22, 2024, the Permit was deceptive and did not provide adequate notice. The permit describes the work be conducted as restoration of an existing garage "in need of repair." This was not true. When construction began, the existing garage was demolished (mid-September 2024). Unfortunately, due to a website error on the Department of Building's website, the Permit materials were not made publicly available until late-September 2024. In addition to the deficiency of notice provided by the building permit, Ms. Bolin was never provided a neighbor notification as required under 12A DCMR § 106.2.18.3.

Relevant Facts

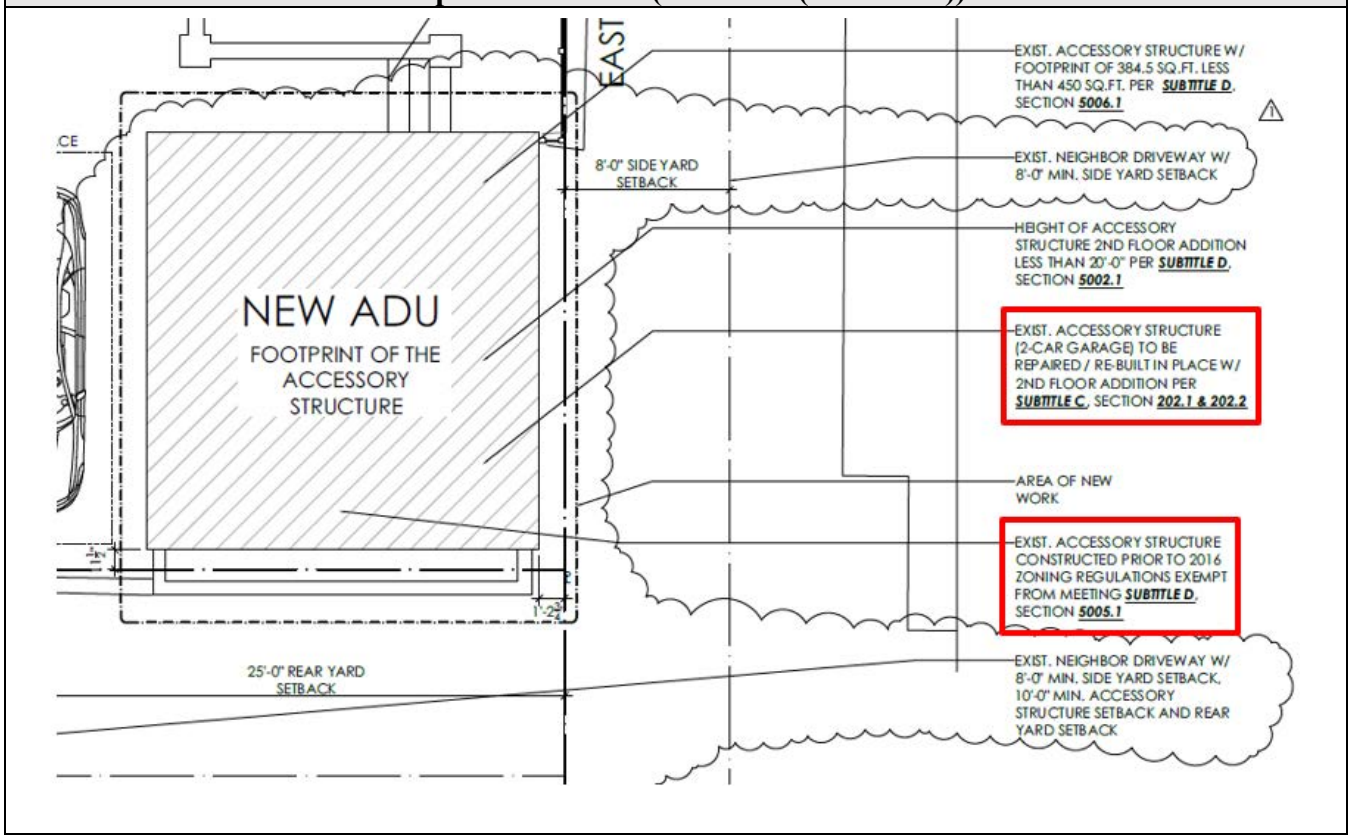
In mid-September of 2024, the 3021 15th Street NE homeowners ("15th Street Homeowners") completely demolished their nonconforming garage that bordered Ms. Bolin and Mr. Gabler's driveway. At this time, Ms. Bolin and Mr. Gabler became suspicious that the scope of the 15th Street Homeowners' construction project was much greater than the description of work provided a neighbor notification letter addressed to Mr. Gabler, which indicated that the then-existing garage was "in need of repair."[3] Ms. Bolin and Mr. Gabler attempted to view the 15th Street Homeowners' permit materials online; unfortunately, due to a website error, they were not publicly available until the end of September 2024. Ex. 2. Once the permit materials were made publicly available, Ms. Bolin and Mr. Gabler realized that the 15th Street Homeowners intended to construct an entirely new two-story accessory apartment inches away from their property. The new construction is more than twice the height of the demolished garage and stands taller than Ms. Bolin and Mr. Gabler's own home.

Side of Demolished Garage Previously Facing Appellants' Home (Ex. 1 at 1)	**Side of New Two-Story Accessory Apartment Facing Appellants' Home (Ex. 10)**
	

[3] Appellants Ms. Bolin and Mr. Gabler jointly own the property located at 1507 Irving Street NE. Ms. Bolin was never provided the neighbor notification as required by 12A DCMR § 106.2.18.3. The Permit was improperly issued without first meeting the legally required notice. Subtitle A § 301.1.

As the 15th Street Homeowner's architectural plans acknowledge, the placement of a ***new*** accessory apartment is ***nonconforming*** with the current eight-foot side yards requirement:

Proposed Site Plan (Ex. 1 at 3 (annotated))



Ex. 1 at 3 (annotated).

As indicated in his drawings, the architect relied on the "exist[ing] accessory structure (2-car garage)" that was being "repaired/re-built in place" to avoid seeking a special exception under "***Subtitle C***, Section ***202.1 & 202.2***" for an entirely new two-story accessory apartment that is more than twice the height of the now-demolished garage. Ex. 1 at 3; *see also* Subtitle C §§ 202.1, 202.2 (providing that "repairs" are permissible without seeking special exception, but any "[e]nlargements or additions" that do not conform to the Regulations' "use and development standards" or increase "any existing, nonconforming aspect of the structure" are only permissible with a special exception). His representation

was deceptive: when construction began, the garage was completely demolished and there was no structure to be "repaired."

The architect also relied on the age of the now-demolished garage to exempt the entirely new accessory apartment from the Regulations' eight-foot side yards requirement, stating that the "exist[ing] accessory structure constructed prior to 2016 zoning regulations [is] exempt from meeting ***Subtitle D***, Section ***5005.1***." Ex. 1 at 3; *see also* Subtitle D § 5005.1 (providing that new accessory buildings other than sheds require eight foot side yards on the side of the building that borders an adjacent lot). Based on the 15th Street Homeowner's architect's own representations to the Zoning Administrator, as well as Ms. Bolin and Mr. Gabler's own reading of the Regulations, the ***new*** accessory apartment cannot be built in its current location because it does not meet the eight-foot setback requirement.

After receiving access to the Permit materials, Ms. Bolin and Mr. Gabler believed the Permit was issued by mistake—the existing structure was demolished and the new accessory apartment was being built without any setback from the abutting private lots. After several calls, Ms. Bolin spoke with a Zoning Technician at the Zoning Administrator's Office and expressed her and Mr. Gabler's concerns that the new construction was noncompliant with the eight-foot side yards requirements placed on all detached buildings in the R-1 zone and would result in a constructive easement on Ms. Bolin and Mr. Gabler's property. The Zoning Technician directed Ms. Bolin's inquiry to his superiors for review. Through the Zoning Technician, the Zoning Administrator responded that the Permit complies with the Regulations, explaining:

> [T]he side yard setback development standards of Subtitle D § 208.2 do not apply to Accessory Structures because accessory structures have their own development standards found in 11-DCMR Subtitle D Chapter 50. The key points found in chapter 50 are the following:
>
> > 11-DCMR Subtitle D § 5001.1: The development standards in Subtitle D, Chapter 2, shall apply to accessory buildings in the R zones ***except as specifically modified***

> by this chapter. ***In the event of a conflict between the provisions of this chapter and other regulations of this title, the provisions of this chapter shall control***.
>
> So the development standards of Chapter 2 are overridden by Chapter 50, and in the event of a conflict, Chapter 50 regulations are the ones that apply to the Accessory Structure.
>
> . . .
>
> [Ms. Bolin] also brought up the point about Subtitle D § 208.2 containing language specifically referring to detached structures, however, this refers to a ***detached principal structure***, as opposed to a ***semi-detached*** or ***attached principal structure*** as can be found in Subtitle D §§ 208.3, 208.4, and 208.5. [4] Not all of the principal structures found in the R-1B Zones across the District are detached, and therefore, these sections provide for the applicable regulations for those properties that are not Detached Structures. Again, this section does not apply to Accessory Structures, since this section is specifically modified by Chapter 50.

Ex. 3. No response was given to Ms. Bolin's inquiry regarding Subtitle C, entitled "Nonconformities," of the Regulations, or her and Mr. Gabler's concerns that the Zoning Administrator's determination would require access to their property to perform future exterior maintenance of the new two-story accessory apartment.

Ms. Bolin responded, noting that the Regulations required eight-foot side yards for ***all detached buildings***—not just detached ***principal*** buildings—in the R-1 zone. Ex. 4. Without addressing the regulatory provisions cited by Ms. Bolin, the Deputy Zoning Administrator responded that the "accessory building at 3021 15th ST NE complies with the Accessory Building Regulations contained in Subtitle D, Chapter 50 of the 2016 Zoning Regulations." Ex. 5. No further written explanation was received.

On Thursday, October 17, 2024, shortly after learning that the deadline to appeal the Permit was October 22, 2024, Ms. Bolin met with the 15th Street Homeowners. Ms. Bolin expressed her and Mr. Gabler's concerns about the location of the new two-story accessory apartment, reiterating their fire safety

[4] The Zoning Administrator misquotes Subtitle D § 208.2—it is not limited to "detached ***principal*** buildings." Rather, it requires that "[t]wo (2) side yards, each a minimum of eight feet (8 ft.) in width, shall be provided for ***all detached buildings***," which are defined in the Regulations as a "building that is completely separated from all other buildings . . . ." Subtitle B § 102.

concerns.[5] Ms. Bolin and Mr. Gabler offered to assist with the costs of relocating the new building in an effort to maintain goodwill and avoid the expenses of this appeal. The 15th Street Homeowners agreed to consider this offer and asked Ms. Bolin and Mr. Gabler not to pursue an appeal. The next day, October 18, 2024, the 15th Street Homeowners emailed Ms. Bolin and Mr. Gabler, stating:

> It appears that this is more a matter of principle with the zoning department, and how the government is legally allowing us to do this project.
>
> We talked with our contractor, and we estimate it will cost around $80k with the potential of going higher to move the foundation 16 feet from your house instead of the current roughly 12 feet we're at. ***We've explored this alteration with our architect and do not feel it to be viable based on how it affects our driveway and adjacent spaces***. ***We appreciate your offering to consider paying for some or all of that cost, but we are not interested in that path***. We've also paid for the next week of construction in its current phase. As such, we are planning to continue with construction as permitted tomorrow and next week.
>
> ***We've consulted with trade professionals, government professionals and legal experts about the possibility of our permit being rescinded. All have said in different ways it is extremely unlikely and very costly for that to be accomplished, and for us to not be overly worried of that outcome***. If you were to decide to appeal, and while this was being sorted out, the construction / site would proceed one of two ways. First, we would finish the project while the permit is in effect. If you were to get the permit cancelled, we may eventually have to tear down the affected section of the building within a setback. This is assuming our permit is ever taken back. We understand this could take several years to determine, but we would be able to utilize it until that is ultimately decided. The other would be to leave this as a construction site indefinitely until this is solved but would be unsightly and underutilized. It could also lead to pests and a lack of property security for both our properties. This would be a daily reminder of our situation until it was resolved. That doesn't seem to be a benefit for you or us.
>
> . . .

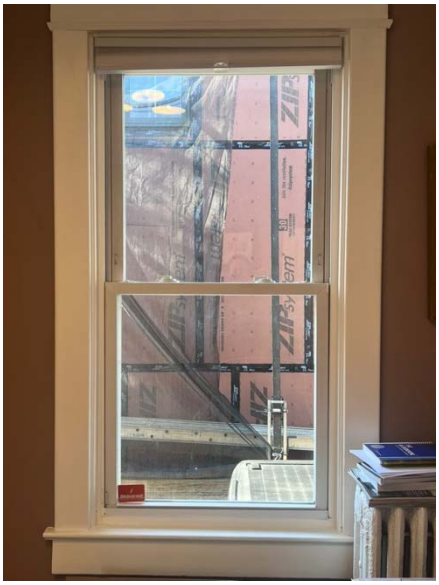
[5] Ms. Bolin and Mr. Gabler were concerned about fire safety because the 15th Street Homeowners entered into a "Declaration[s] of Covenants For Openings on or near Adjacent Construction or Property Lines" with the District of Columbia ("Covenant") (Ex. 1 at 115–30). The Covenant names Ms. Bolin and Mr. Gabler's home and discusses fire safety issues arising from the proposed accessory apartment having openings "within" the required "fire separation distance of one point six (1.6 ft)." Ex. 1 at 115. Ms. Bolin made multiple attempts to contact the program manager that approved the covenant via phone and email; he did not respond. At this time, Ms. Bolin and Mr. Gabler are unsure of the safety implications that the new accessory apartment may have on their wooden home that is over a century old in the event of a fire.

Ex. 6 (emphasis added); *see also* Ex. 1 at 78. When the 15th Street Homeowners sent this email, the foundation for the new accessory apartment had not yet been poured:

Photo of Construction Site on October 19, 2024 (Ex. 11)

On October 22, 2024 (the last day to appeal the Permit), Ms. Bolin and Mr. Gabler met with the Zoning Administrator and Deputy Zoning Administrator via video conference. During that meeting, the Deputy Zoning Administrator relied on the regulatory history to support the Zoning Administrator's interpretation of the Regulations, explaining that the Zoning Commission intended to maintain neighborhood character (i.e., by providing uniformity in the "line of sight" as property became more developed in the residential zones) and neighbor privacy (i.e., by requiring accessory apartments sit at least 25 feet back from the principal building to preserve the privacy of neighboring lots). After allowing Ms. Bolin and Mr. Gabler to explain the implications of the Permit on their own property, the Zoning Administrator and Deputy Zoning Administrator expressed sympathy, suggesting that they would take Ms. Bolin and Mr. Gabler's concerns into consideration. After the meeting ended and Ms. Bolin and Mr. Gabler had fully exhausted their remedies with the Zoning Administrator, Ms. Bolin and Mr. Gabler filed the present appeal.

Since filing this appeal, the continued construction has unduly compromised Ms. Bolin and Mr. Gabler's property. They have lost the natural light and privacy that they once enjoyed, and suffered frequent trespass and property damage. The proximity and height of the new accessory apartment leave no options for maintaining privacy other than keeping the windows to their home's master and guest bedrooms, living room, sunroom, and bathroom completely covered:

Master Bedroom Window (Ex. 12)	**Sunroom Window (Ex. 13)**
	
Guest Bedroom Window (Ex. 14)	**Livingroom Bedroom (Ex. 15)**
	

Ms. Bolin and Mr. Gabler's property has been exposed to trespass and damage. Construction workers frequently come onto Ms. Bolin and Mr. Gabler's property without their consent. In one instance, construction workers squeezed past Ms. Bolin and Mr. Gabler's cars to walk a metal scaffolding onto their driveway; the workers then installed the scaffolding so that the two load bearing support beams rested on Ms. Bolin and Mr. Gabler's concrete driveway. The workers attempted to obscure this trespass by stretching the black barrier they installed on Ms. Bolin and Mr. Gabler's property around the perimeter of the encroaching construction site:

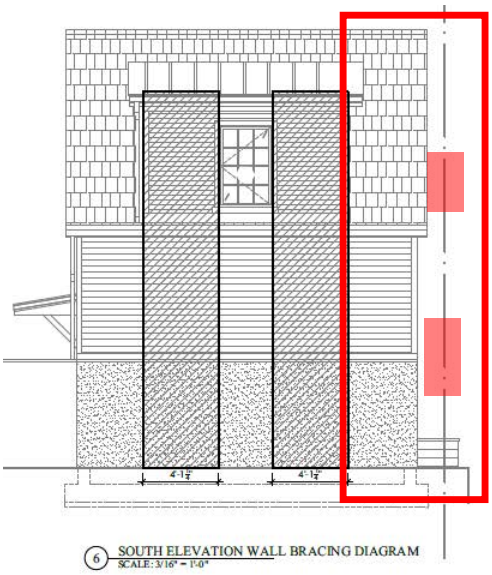
Construction Workers Standing On Ms. Bolin and Mr. Gabler's Property While Installing Scaffolding (Ex. 16)	**Foot of Scaffolding Support Beam Resting on Ms. Bolin and Mr. Gabler's Concrete Driveway (Ex. 17)**
	

While installing the scaffolding, the workers supported themselves by leaning against the car that was parked in Ms. Bolin and Mr. Gabler's driveway adjacent to the construction:

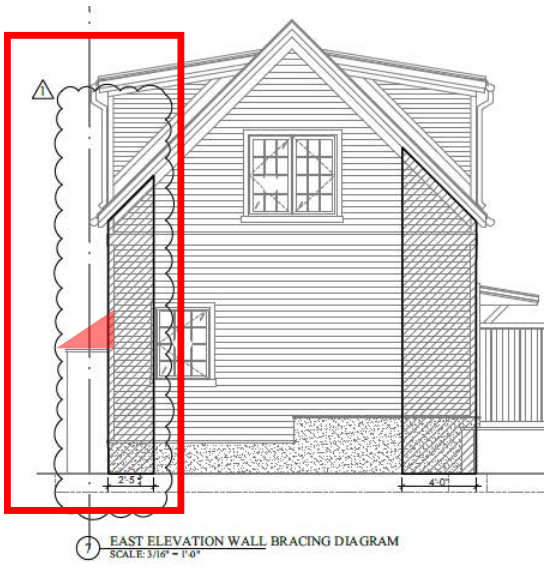
Photograph Showing Abrasion From Workers Leaning On Car In Ms. Bolin And Mr. Gabler's Driveway (Coated In Saw Dust From Construction) (Ex. 18)


Workers have also left discarded materials (e.g., broken clay blocks, debris) on Ms. Bolin and Mr. Gabler's property and intentionally damaged their fence, *e.g.*, Ex. 19; Ex. 20, and stored construction materials such as boards and panels over their property, *e.g.*, Ex. 28. In addition to damage undisputably caused by the new construction, Ms. Bolin and Mr. Gabler's home shook constantly during demolition and excavation. During this time, their lights began flickering throughout their home (*e.g.*, Ex. 21; Ex. 22) and two windows cracked in the same week (*see* Ex. 23; Ex. 24).

The proposed construction plans themselves have been proven infeasible without encroaching on neighboring properties as well. The new apartment borders two adjacent lots: one belonging to Ms. Bolin and Mr. Gabler, and one belonging to another family (3019 15th Street NE). The new construction encroaches on Ms. Bolin and Mr. Gabler's property because the accessory apartment windows facing their driveway swing out into their driveway when opened:

New Accessory Apartment Plan (Ex. 1 at 168)	Encroachment on Ms. Bolin and Mr. Gabler's Property (Ex. 26; *see also* Ex. 1 at 32)
	

And the new construction encroaches on another private lot because the accessory apartment includes a roofed portion that extends over their property line, increasing the amount of runoff water that both the 3019 15th Street NE neighbors and Ms. Bolin and Mr. Gabler receive on their own lots:

New Accessory Apartment Plan (Ex. 1 at 168)	Encroachment on 3019 15th Street NE Property (Ex. 25)
	

Appellees' Aggrievances

By failing to apply the clear and unambiguous requirements of the Regulations, the Zoning Administrator placed an unconstitutional burden Ms. Bolin and Mr. Gabler's property.

First, in direct violation of the Regulations' express and unequivocal language, the Zoning Administrator allowed a new two-story accessory apartment to be built as a matter of right without imposing ***any*** side yard setback and without a special exception. The Zoning Administrator's decision places a constructive easement on Ms. Bolin and Mr. Gabler's property, effectively forcing them to allow access to their property during construction and for all future exterior maintenance. Without relief, Ms. Bolin and Mr. Gabler will have a new two-story residential building placed inches away from their property without the protections provided by the Regulations.

Second, to the extent the Board affirms the Zoning Administrator's erroneous interpretation of the Regulations, Ms. Bolin and Mr. Gabler's constitutional rights will be further infringed: the constructive easement placed on their property without first providing due process would become an unconstitutional taking without just compensation. This constitutional violation is not limited to Ms. Bolin and Mr. Gabler—the Zoning Administrator's decision places many homeowners at risk. By failing to apply the Regulations, the Zoning Administrator gives preferential treatment and unconstitutional property rights to homeowners with resources to construct accessory apartments first. She also places the development of residential communities, as well as the safety of those communities' residents, at risk. Under the Zoning Administrator's interpretation, homeowners who later seek to build accessory detached apartments cannot use their property equally because they would be forced to dedicate a larger portion of their property to providing space between the two accessory apartments (or, alternatively, they must force the first homeowner to make fire safety modifications to their home, *see* Ex. 115–130). The Zoning

Administrator's decision also disproportionately harms the most financially vulnerable residents who cannot afford to appeal her decision.

Argument

Contrary to the plain and ordinary meaning of the Regulations, the Zoning Administrator has determined that certain accessory apartments built in the R-1 zone are exempt from the side yards requirement imposed on all detached buildings under Subtitle D § 208.2. This determination relies on misquoted regulatory language and completely dismisses binding regulatory authority expressly governing the placement of detached buildings, including accessory apartments. As a result, Ms. Bolin and Mr. Gabler's property has been unconstitutionally burdened.

I. The Zoning Administrator's Decision Contradicts The Clear And Unambiguous Language Of The Regulations, As Well As The Zoning Commission's Intent

a. The Regulations Require Accessory Apartments To Have Eight-Foot Side Yards In The R-1B Zone

The Regulations are clear: detached buildings, including those used as accessory apartments, must have eight-foot side yards in the R-1B zone. The Zoning Administrator nonetheless determined that the 15th Street Homeowner's new two-story accessory apartment did not require any side yard setback. Her error stems from her misreading of the Regulations and her position that a building defined by its use cannot also be defined by its structure.

Subtitle D, Chapter 2 permits two residential buildings per lot in the R-1 zone: "one (1) principal dwelling unit and one (1) accessory apartment," subject to Subtitle U. Subtitle D § 201.1. For both principal buildings and accessory apartments constructed in "detached buildings," the Regulations specify that the minimum side yards requirement without seeking a special exception is eight feet. Subtitle D §§ 208.1, 208.2. Subtitle D, Chapter 50 ***enlarges*** the side yards requirement when a detached accessory building (other than a shed) is built ***beside*** to the principal building—specifying that the side of the detached accessory building bordering the abutting lot must have an eight-foot side yard and that the side

of the detached accessory building bordering the principal building must have a ten-foot side yard. Subtitle D §§ 5005.1, 5005.2. The Zoning Administrator's position that detached buildings constructed for accessory uses do not require side yards whenever they are built ***behind*** a principal building is wholly unsupported by the Regulations.

First, the Zoning Administrator's statement that only principal buildings (and never accessory buildings) can be detached buildings contradicts the Regulations, as well as the Zoning Administrator's own use of the term. The Regulations define various types of building structures and building uses.[6] For example, the Regulations ***structural definitions*** define a "***detached building***" as a "building that is completely separated from all other buildings and has two (2) side yards," a "***semi-detached building***" as a "building that has only one (1) side yard," and a "***row building***" as a "building that has no side yards." Subtitle B § 102. And the Regulations ***building use definitions*** define a "***principal building***" is the "building in which the primary use of the lot is conducted," an "***accessory building***" is a "subordinate building located on the same lot as the principal building, the use of which is incidental to the use of the principal building," and an "***accessory apartment***" is 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 § 102; *see also* DISTRICT OF COLUMBIA OFFICE OF ZONING: ZONING HANDBOOK (2024) (distinguishing use from structure). The structure and use definitions are ***not mutually exclusive***—for example, a principal building or an accessory apartment may take form as a detached building.

[6] The Regulations govern both the structure and use of buildings. To provide clarity and remove ambiguity, the Regulations expressly define certain terms of art relating to building structure and certain terms of art relating to building use of, *see generally* Subtitle B §§ 100.1, 100.2, and provide that any word not expressly defined in Subtitle B, Chapter 1 "shall have the meanings given in Webster's Unabridged Dictionary," Subtitle B § 100.1(g); *see also* Subtitle B § 100.1(d) (explaining that "shall" means "mandatory").

Here, the Zoning Administrator erred in determining that a building cannot be defined by use and structure simultaneously. The permitted accessory apartment is being constructed as a "building that is completely separated from all other buildings," and will be used as a "dwelling unit that is secondary to the principal single household dwelling unit." Thus, it must meet the Regulations' requirements for detached buildings used as accessory apartments—here, that means that the new two-story accessory apartment must have eight-foot side yards.[7]

The Zoning Administrator's decision that new two-story accessory apartments in detached buildings do not require side yards relies on misquoted regulatory language. The Zoning Administrator explained that Subtitle D § 208.2 does not apply because it refers only to "***detached principal structure[s]***." Ex. 3**.** But Subtitle D § 208.2 is much broader—it reads:

> Two side yards, each a minimum of eight feet (8 ft.) in width, shall be provided for ***all detached buildings***.

Subtitle D § 208.2 (emphasis added). The Regulations do not limit the side yards requirements to principal buildings as the Zoning Administrator suggests. In fact, the Office of the Zoning Administrator uses the "detached building" term to describe detached accessory buildings. Ex. 27 ("If the garage is replaced and NOT attached [to the principal building], then it WOULD be considered a detached structure . . ." for the

[7] The Regulations do not limit the yards requirements to principal buildings. The Regulations define a "yard" as an "exterior space . . . on the same lot with a ***building or other structure*** [that is] open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title." Subtitle B § 100.2. The Regulations define "***side yards***" as a "yard between any portion of ***a building or other structure*** and the ***adjacent*** side lot line, extending for the full depth of the building or structure." Subtitle B § 100.2 (also defining "lot line" as the "lines bounding a lot").

Because the Regulations do not define "adjacent," the definition provided by Webster's Unabridged Dictionary controls. Subtitle B § 100.1(g). Thus, in the Regulations, "adjacent" means "having a common border" (e.g., "abutting, touching"). Adjacent, WEBSTER'S UNABRIDGED DICTIONARY, https://unabridged.merriam-webster.com/unabridged/adjacent; *see also* Zoning Administrator Interpretation 4: Meaning of Abut, https://dob.dc.gov/node/1621566 ("'adjacent' does not infer that two objects have to actually touch, just that they be close by, while 'abut' denotes actual touching or intersection").

purposes of determining its location and obtaining building permit number B2308376.). The Zoning Administrator's own use of "detached building" contradicts her reasoning for departing from the clear and unambiguous regulatory text when granting the Permit. In doing so, she has injected inconsistency and unpredictability in the otherwise clear regulatory text and illogically narrowed the scope of the Regulations.

Further, even under the Zoning Administrator's erroneous and wholly unsupported interpretation that only principal buildings have side yards, the Permit could not have issued without a special exception. To construct an accessory apartment, the conditions of Subtitle U must be met. Subtitle D § 201.1. Subtitle U specifies that buildings constructed for "accessory uses" must comply with Subtitle U § 250, and that any "accessory apartments" must comply Subtitle U § 253 to be granted without a special exception. Subtitle U §§ 202.1(b), 203.1, 250.1(a). Subtitle U § 253.3 requires—among other things—permanent access to detached accessory apartments.

Under Subtitle U § 253.8(c), there is only one means of permanent access available to a non-alley lot: "A permanent passage . . . no narrower than eight feet (8 ft.) in width and extending from the accessory building to a public street through a side setback or shared recorded easement between properties." Subtitle U § 253.8(c)(1). Applying the Zoning Administrator's reasoning, any non-alley lot can only have a detached accessory apartment as a matter of right if the eight foot wide passage supplied for the residents of the accessory apartment runs through the side yard of the principal building. There is no such passage available to the two-story accessory apartment that the Zoning Administrator allowed as a matter of right when she approved the Permit. Nor is one possible without additional work requiring a special exception. *See* Ex. 1 at 3 (site plan showing the two retaining walls that create a barrier to 15th Street); Ex. 11 (photo showing one of the retaining walls that creates a barrier to 15th Street). Because of this, even under the

Zoning Administrator's erroneous interpretation, she should never have granted the Permit without the 15th Street Homeowners first obtaining a special exception.

Second, the Zoning Administrator's determination that Subtitle D, Chapter 50 disposes of all side yards requirements for accessory apartments not located beside a principal building (*see* Ex. 3), further contradicting the Regulations. Subtitle D, Chapter 2 permits ***two residential buildings*** per lot in the R-1 zone: "one (1) principal dwelling unit and one (1) accessory apartment." Subtitle D § 201.1. Where a homeowner elects to build an accessory apartment in a detached building in the R-1 zone, the accessory apartment must comply with the requirements placed on all buildings by Subtitle D, Chapter 2 that are not "specifically modified" or in "conflict" with Subtitle D, Chapter 50. Subtitle D § 5001.1. This includes the yards requirements, such as side yards requirements. Subtitle D §§ 208.1–208.8. Thus, for a new detached building used as an accessory apartment in the R-1 zone, side yards of at least eight-feet are required. Subtitle D §§ 208.2, 5005.1; Subtitle B § 100.2. The only exception is when a homeowner seeks to construct an accessory apartment beside their home, then the Regulations ***enlarge*** the side yard requirements placed on the detached accessory apartment:

> An accessory building other than a shed may be located in a side yard in a R zone, provided that it is removed from the side lot line ***a distance equal to the required side yard and from the principal building a minimum of ten feet (10 ft.)***.

Subtitle D § 5005.1 (emphasis added). This modification does not create a "conflict" where the accessory apartment is not built beside the principal building, thus whenever an accessory apartment is constructed behind the principal building Subtitle D, Chapter 2 controls. In all instances, a new detached accessory apartment is required to maintain a minimum eight-foot side yard with an adjacent private property.

Here, the Zoning Administrator erred by permitting an entirely new nonconforming structure that cannot be maintained without entering Ms. Bolin and Mr. Gabler's property based on the belief that she only needed to consider Subtitle D, Chapter 50's side yards directives. This was wrong. Subtitle D, Chapter 50 ***only*** governs of the side yards requirements of Subtitle D, Chapter 2 when it "specifically modifies"

or creates a "conflict" with Chapter 2's requirements. Subtitle D § 5001.1. Because none of the specific side yards modifications provided by Subtitle D, Chapter 50 apply to the new two-story accessory apartment, there is no conflict and its location is governed by Chapter 2, which requires the accessory apartment to have—at minimum—an eight foot side yard between it and Ms. Bolin and Mr. Gabler's adjacent property. Subtitle D §§ 208.1, 208.2.

Despite this, the Zoning Administrator permitted a new two-story accessory apartment to be built inches away from Ms. Bolin and Mr. Gabler's property. The Regulations do not support this determination under any interpretation. *See also* Subtitle A §§ 101.1 (The Regulations should be interpreted to provide "adequate light and air" and prevent "the overcrowding of land."), 101.3 (indicating larger setbacks are preferred under the Regulations). At the very least, the 15th Street Homeowners should have been required to obtain a special exception, putting their neighbors on notice of the scope of construction and encouraging discussions to gain community support, before the Zoning Administrator issued a permit allowing the new two-story accessory apartment to be built such that all exterior maintenance will require use of the neighbors' private property and that the building encroaches on their property.

For at least these reasons, Ms. Bolin and Mr. Gabler respectfully request that the Board revoke the Permit and require the 15th Street Homeowners to bring their new two-story accessory apartment in conformance with the Regulations before construction continues.[8]

[8] The Zoning Administrator's decision must be revoked to prevent inequitable outcomes as well. Here, the Zoning Administrator's oversight created a windfall for the 15th Street Homeowners: by allowing them to build at their neighbors' property line, they maximized the use of their own land at the expense of others. Even after Ms. Bolin and Mr. Gabler offered to bear the financial burden of correcting the mistake, the 15th Street Homeowners decided to move forward with construction because they did not want their own "driveway and adjacent spaces" to be compromised by the new two-story accessory apartment. Ex. 6. Having received a permit without having to go through the proper special exception process, they determined that the high costs of appealing and the low likelihood of success would deter Ms. Bolin and Mr. Gabler from seeking relief. Ex. 6. They reasoned that, in the unlikely event of any ruling in Ms. Bolin and Mr. Gabler's favor, they would be able to construct and live in the accessory

b. To The Extent The Board Believes There May Be Ambiguity In The Regulations, The Zoning Administrator's Decision Contradicts Zoning Commission's Intent

In 2008, the Zoning Commission held its first meeting to discuss its plan to overhaul the 1958 zoning regulations. In the eight years that followed, the Zoning Commission held numerous meetings and hearings on various issues, including their plans regarding accessory apartments. Z.C. Case No. 08-06 (November 6, 2013 Public Hearing Transcript) at 14–22 (noting that the proposed accessory apartment regulatory provisions were "one of the issues that [the Zoning Commission] had . . . the most public exchange on").[9] In 2016, the Zoning Commission repealed the earlier enacted 1958 Regulations and adopted a new set of Regulations in compliance with Z.C. Order No. 08-06A; the new Regulations greatly expanded homeowners' ability to have accessory apartments inside their home as a matter of right and outside of their home by special exception.

The public record shows that, while there was wide support for permitting accessory apartments as a matter of right within a home or an existing garage, this was not true for new detached accessory apartments. The Zoning Commission found some comments more helpful than others. For example, Nancy MacWood (at the time, she had served as an ANC in the R-1 zone for 13 years) cautioned against allowing new accessory apartments in detached buildings as a matter of right, explaining:

> ***Two-story 20-foot high garages and accessory structures could be nearly as tall as some residences. Whereas now the mass of garages or accessory structures are minimal enough to allow them next to a neighbor's lot line without disturbing privacy or light and air.***
>
> ***The taller structures could cast shadows or, alternatively, illuminate second floor windows where previously there were none. Again, there is no mention of this in the comp plan because it wasn't contemplated as the land use policy change.***

apartment for "several years" before they "may eventually have to tear down the affected section of the building," and unilaterally determined that continuing construction was to both parties' benefit. Ex. 6.

[9] Available online at https://app.dcoz.dc.gov/trans/131106zc.pdf.

> The Office of Planning wants to transform a basically passive structure into an activated structure with home occupations or accessory dwelling units. The larger size makes no sense and has no utility unless it can be used for something that is prohibited today.
>
> ***The Zoning Commission should not authorize the taller accessory structures on a lot line without a special exception, which would give the neighbors an opportunity to object. . . . Special exception should only be granted if it is demonstrated that a home occupation must be located in an accessory structure and the use won't interfere with neighbor's enjoyment of their homes and property***.
>
> [An accessory dwelling unit] should not be authorized under any circumstances without specific guidance from the council that a second household in a second residential structure is appropriate on a single family lot.
>
> There is no data to support the need to do this. And it would be a wiser course to monitor the implementation of more flexible rules for internal [accessory dwelling units] and alley lot residences before permitting two residences on single family lots.

Z.C. Case No. 08-06 (November 6, 2013 Public Hearing Transcript) at 114–18 (emphasis added).[10] In response to the Commission's questions, Ms. MacWood added that in the ***one instance*** where a homeowner sought to build a detached accessory apartment, "there was eventually a lawsuit." *Id.* at 130 (emphasis added).

Several months later the Zoning Commission held a public meeting to discuss the proposed regulations for accessory apartments in detached buildings. At that meeting, Commissioner May suggested that the Zoning Commission should revisit the types of accessory apartments that are permitted as a matter of right:

> [G]iven the volume of comments that we had and the concerns about accessory dwelling units, ***I feel like we need to do something to address that concern, and maybe we need to have a broader use of special exceptions for accessory dwelling units***, or maybe some stronger conditions to address it, because I think [that] a lot of people are concern[ed] that this is going to have an ***extraordinary impact on their neighborhood*** . . . .

[10] Available online at https://app.dcoz.dc.gov/trans/131106zc.pdf.

Z.C. Case No. 08-06 (May 12, 2014 Public Meeting Transcript) at 50 (emphasis added).[11] At that same meeting, Commissioner May also raised concerns that detached accessory apartments could "create ***fire hazards***" if their location was not carefully considered and regulated. *Id.* at 53–54 (emphasis added).

At the next meeting where accessory apartments were discussed, Mr. Lawson from the Office of Planning responded to the Zoning Commissioners' concerns that the proposed regulations for detached accessory apartments would create issues if granted as a matter of right. Mr. Lawson suggested that it may be possible to use larger side yard setbacks to reduce the number of special exceptions that would be required, explaining:

> What we're proposing to change ***because we've heard, I'll use the word vociferous, concern, from all parts of the city . . . that there are a lot of concerns about the ability to do an accessory dwelling unit within an accessory building.***
>
> . . .
>
> ***There may be some ways that we can address some of those concerns through setback requirements***, through . . . some means like that because it [addresses] most of the concerns that we've heard . . . .

Z.C. Case No. 08-06A (July 10, 2014 Public Meeting Transcript) at 107–08.[12]

Several months later, at the next public hearing, the Zoning Commission received additional comments opposing accessory apartments in detached buildings. For example, a resident who had "owned a home . . . in Chevy Chase for four decades," commented:

> there is a serious problem with proposed Subtitle D matter-of-right treatment of accessory dwelling units [in] accessory buildings as distinguished from [accessory dwelling units] interior to the main structure. Special exception treatment allows for neighborhood notice and comment. I bought into an R1 Zone for single-family residences. [More detached accessory apartments] alters that regulatory status. It is no longer R1."

[11] Available online at https://app.dcoz.dc.gov/trans/140512zc.pdf.
[12] Available online at https://app.dcoz.dc.gov/trans/140710zc.pdf.

Z.C. Case No. 08-06A (Sep. 8, 2014 Public Hearing) at 12–15.[13] And a representative from Neighbors for Neighborhoods commented that they saw:

> ***[N]o reason to allow two-story accessory buildings as a matter of right***. As an approach to aging in place, an apartment above the garage or a unit that requires a second story to provide more than 450 square feet of living space is not a space that's likely to be or to remain senior friendly.
>
> If the goal is an on-site caregiver, housing the at-risk senior and caregivers in separate buildings on the same lot [doesn't] make sense.
>
> As a solution for shrinking household size, external [accessory apartments] are nonsensical. Some policymakers say houses are too big for empty-nesters or a widow or a couple. How does adding another 900 square foot [accessory apartment] in the backyard solve that problem?
>
> If the goal is to provide small starter homes, then external [accessory apartments don't fill that need. They don't allow ownership opportunities for their residents. The owner of an external unit is by definition someone who can afford that unit and an entirely separate single-family unit as well.
>
> These units aren't green. They aren't affordable. They don't help people age in place or by an inexpensive first home. They aren't a best practice. They're an intriguing project for architects and a potential boom for speculators."

Id. at 16–18.

In response to the overwhelming negative public comments on allowing accessory apartments in detached accessory buildings as a matter of right, ***the Zoning Commission voted to allow accessory apartments in detached buildings by special exception only***. Z.C. Case No. 08-06A (Oct. 7, 2014 Public Meeting) at 259 ("Staff records the vote 5 to 0 to 0 to allow as a special exception an accessory building by new construction including additions. Commissioner Hood moving, Commissioner Miller seconding. Commissioners May, Cohen and Turnbull in support."); *see also id.* at 258 ("Staff records the vote 5 to 0 to 0 to allow an accessory apartment in an accessory building only by special exception regardless of when the accessory building was constructed. Commissioner Hood moving, Commissioner Turnbull seconding.

[13] Available online at https://app.dcoz.dc.gov/trans/140908zc.pdf.

Commissioners May, Cohen and Miller in support."), *id.* at 254 ("Staff records the vote 4 to 1 to 0 to approve allowing one accessory apartments as a matter of right subject to specified conditions within the main house.").[14] The Zoning Commission's vote with respect to accessory apartments is repeated in the Z.C. Final Rulemaking & Order No. 08-06A, which states:

> ***Accessory Apartments***:
>
> The adopted text permits accessory apartments as a matter-of-right use subject to certain conditions in the R-1-A, R-1-B, R-2, and R-3 zones; and as a special exception in the Georgetown residential zones. Based upon the population growth of the District of Columbia and the decreased average family size, ***the Commission recognized the potential for accessory apartment to contribute to the housing supply in a way that maintains neighborhood character and makes efficient use of land and existing infrastructure***.
>
> . . . .
>
> The Commission recognized that accessory apartments have been a permitted accessory use since 1958 and continue to be a valid accessory use consistent with the Comprehensive Plan Action Item H-1.5-B, which reads:
>
> > Explore changes which would facilitate development of accessory apartments (also called "granny flats" or in-law units), English basements, and single room occupancy housing units. ***Any changes to existing regulations should be structured to ensure minimal impacts on surrounding uses and neighborhood***.
>
> . . .
>
> ***The Commission also added conditions to the use that will minimize impacts on surrounding uses and neighborhoods***, including a limit on the size of the apartment relative to the principal structure, and establishing a minimum house size in which an accessory apartment may be located.
>
> . . .
>
> ***An accessory apartment in a detached accessory building would be permitted by right if the accessory building existed before January 1, 2013; otherwise, an apartment in a detached accessory building would be a special exception use subject to access and utility limitations.***

[14] Available online at https://app.dcoz.dc.gov/trans/141007zc.pdf.

> For all these reasons, the Commission concludes that it has balanced the need to increase housing opportunities in the District with the preservation of the small scale residential character of existing neighborhoods.

Z.C. Notice Of Final Rulemaking & Order No. 08-06A at 21–22, 168.[15] Relevant here, the original language of Subtitle D provided:

> Subtitle D § 201.1: In all R zones, ***one (1) principal dwelling unit*** per lot of record shall be ***permitted as a matter-of-right***.
>
> Subtitle D § 201.1: In all R zones, ***one (1) accessory apartment*** shall be ***permitted per lot of record subject to the use permissions specified in Subtitle U***.
>
> Subtitle D § 309.1: Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X and subject to ***the provisions and limitations of Subtitle D §§ 5201 and 5205***.
>
> Subtitle D § 5101.2: ***Special exception relief under this section is applicable only to the following***:
>
> > (a) An addition to a building with only one (1) principal dwelling unit; or
> >
> > (b) A ***new or enlarged accessory structure*** that is accessory to such a building.
>
> Subtitle D § 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:
>
> > (a) The ***light and air available to neighboring properties shall not be unduly affected***;
> >
> > (b) The ***privacy of use and enjoyment of neighboring properties shall not be unduly compromised***;
> >
> > (c) 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***;
> >
> > (d) 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

[15] Available online at https://online.encodeplus.com/regs/washington-dc/doclibrary.aspx?id=938dfd6c-07ca-435b-8e68-f76cc36a0eef.

> proposed addition or accessory structure to ***adjacent buildings and views from public ways***; and . . . .
>
> Subtitle D § 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***.

Subtitle D (08-06A archived version).[16]

After enacting the 2016 Regulations' accessory apartment provisions, the Zoning Commission never voted to change the requirement that a new accessory apartment in a detached building be permitted only by special exception. Subtitle Z § 603.5 (requiring vote to amend the substance of the Regulations). There were, however, a few technical amendments over the years.

For example, in February 2019, the Office of Planning recommended that the Zoning Commission amend the Regulations to "clarify and provide consistency across the accessory building regulations." Z.C. Notice Of Final Rulemaking & Order No. 17-23.[17] No substantive changes were intended and there were no discussions relating to accessory apartments. Z.C. Notice Of Final Rulemaking & Order No. 18-16/19-27-19-27B at (noting that the Office of Planning's "petition did not propose any substantive changes to the [2016] Zoning Regulations").[18]

In 2021, Subtitle D of the Regulations was amended to "provide consistency in the regulations governing accessory buildings across zones," and make minor substantive amendments. Final Rulemaking & Order No. 20-19.[19] The only substantive change relating to the placement of detached accessory buildings was to exclude sheds from the side yards requirements placed on all other types of accessory buildings, such as accessory apartments or garages. In discussions leading up to the Zoning Committee's

[16] Available online at https://online.encodeplus.com/regs/washington-dc/archivedialog.aspx.

[17] Available online at https://online.encodeplus.com/regs/washington-dc/doclibrary.aspx?id=34ca50fc-d912-4a35-8016-8ea36e2473bd.

[18] Available online at https://online.encodeplus.com/regs/washington-dc/doclibrary.aspx?id=4e41559e-cfdb-4fdb-9d08-727dcf456781.

[19] Available online at https://online.encodeplus.com/regs/washington-dc/doclibrary.aspx?id=8da5b0ee-28f4-4690-99df-13b1509a64cd.

decision to exclude sheds, which it defined as "accessory building[s], not used for habitable or automobile purposes, that [do] not exceed 50 square feet (50 sq. ft. in area and [are] less than 10 feet (10 ft.) in overall height" (Subtitle B § 100.2). Even though this change for a subclass of detached accessory buildings that are small in size and limited in use, there was hesitation that such a change could cause neighbor disputes.

For example, at the September 14, 2020 public meeting, the Office of Planning explained that the Regulations governing the placement of accessory buildings at that time required "small garden shed structures" to comply with both the side yard requirements "from the principle [sic] building and also . . . conformance with the [accessory building] side yard setback requirements." Z.C. Case No. 20-19 (September 14, 2020 Public Meeting Transcript) at 50–51.[20] However, in response to a Zoning Commissioner's concerns that the Board might receive more cases if homeowners were permitted to "put[] something right up against the fence of a next door neighbor," the Office of Planning responded that it would take those concerns under consideration. Z.C. Case No. 20-19 (September 14, 2020 Public Meeting Transcript) at 51–52. Ultimately, the Zoning Commission voted to adopt the following amendment—removing the proposed "[n]o minimum side yard" requirement for accessory buildings, limiting the exclusion to sheds only:

Proposed Regulatory Language	Adopted Regulatory Language
5005.1 No minimum side yard is required for an accessory building in a R zone, unless the accessory building is located beside the principal building, whereby it shall be removed from the side lot line a distance equal to the required side yard and from the principal building a minimum of ten feet (10 ft.).	5005.1 An accessory building other than a shed may be located in a side yard in a R zone, provided that it is removed from the side lot line a distance equal to the required side yard and from the principal building a minimum of ten feet (10 ft.). 5005.2 A shed may be located within a required side yard of a principal building.

[20] Available online at https://app.dcoz.dc.gov/Content/Search/Download.aspx?exhibitid=2 16849.

It is clear from the public record that Subtitle D, Chapter 50 was never intended to dispose of the side yard requirement placed on accessory apartments situated in detached buildings, which require side yards of at least eight feet. Subtitle D § 208.2. Rather, the only specific modification that Subtitle D, Chapter 50 places on Subtitle D § 208.2 is an expansion of the side yards requirement of accessory apartments built beside a home (by requiring ten feet on the side of the accessory apartment bordering the home).

Here, the Zoning Administrator's decision contradicts the regulatory language and is based on an unsupported belief that her determination was in line with the Zoning Commission's intent. As the Zoning Administrator and Deputy Zoning Administrator explained during their October 22, 2024 meeting with Ms. Bolin and Mr. Gabler, the Permit was issued based on their belief that it conformed not only with the Regulations, but also with the public policy considerations that the Zoning Commission sought to protect when enacting the Regulations' accessory apartment provisions. But their belief that a two-story accessory apartment can be built ***on*** a neighboring lot line is wholly unsupported by the public record, which is replete with discussions seeking to avoid the very issues that Ms. Bolin and Mr. Gabler now face. Thus, to the extent that the Board determines that there is any ambiguity in the Regulations, the public record proves the Zoning Commission never intended for accessory apartments in detached accessory buildings to be exempted from the yards requirements.

Further still, in addition to the regulatory history, other provisions in the current Regulations further support a finding that the Zoning Administrator's decision departs from the Regulations—for example, Subtitle D § 208.6 mandates that side yards cannot be "eliminated," Subtitle D § 208.7 requires "a minimum of five feet (5 ft.)" side yards be maintained when nonconforming buildings are modified, and Subtitle D § 5100.1 provides that accessory buildings on an alley lots can only be 20 feet tall (rather than 22 feet) and must leave five feet from "any lot line of" an abutting private property.

In the end, for the Board to find in favor of the Zoning Administrator in this appeal, it must turn a blind eye to both the Regulations' unambiguous language and the Zoning Commission's intent to allow new detached accessory apartments by special exception only. If the Zoning Administrator had faithfully enforced the Regulations as the Zoning Commission intended, the 15th Street Homeowners would have gone through the special exception process and the Board would have determined whether or not the new accessory apartment is "objectionable to neighboring properties because of noise, traffic, parking, or other objectionable conditions" due to the accessory apartment's "location." Subtitle U § 253.8(f)(1); *see also* Subtitle U § 253.10 (mandating that the single residential appearance and character of the R zones must be maintained). The 15th Street Homeowner's architect may have helped them navigate the special exception process by encouraging transparent discussions with their neighbors to gain community support—rather than using ambiguous language that the existing nonconforming garage was "in need of repair" to minimize neighbor concern. Through the special exception process, the harm to Ms. Bolin and Mr. Gabler's property could have been addressed without them being forced to spend thousands of dollars and a tremendous amount of time advocating for an arrangement where the light and privacy of their home would not be destroyed solely for the sake of maintaining the 15th Street Homeowners' "driveway and adjacent spaces," Ex. 6, and their property is not burdened constant trespass.

For these reasons, in addition to those outlined above, Ms. Bolin and Mr. Gabler respectfully request that the Board revoke the Permit and require the 15th Street Homeowners to bring their new two-story accessory apartment in conformance with the Regulations before construction continues.

II. The Building Permitted By The Zoning Administrator Is Illegal Because It Places An Unconstitutional Easement on Ms. Bolin and Mr. Gabler's Property and Renders Portions Of The Regulations Invalid

In addition to administering the Regulations, the Zoning Administrator must strive to avoid any interpretation of the Regulations that renders them unconstitutional, *see* Subtitle A §§ 101.7, 101.3, 101.4, as well as uphold the constitutional guarantees that the District of Columbia will not deprive any person

of their property rights without due process of law and just compensation, *see, e.g.*, *Tri Cnty. Indus., Inc. v. Dist. of Colum.*, 104 F.3d 455 (D.C. Cir. 1997); *see also Cedar Point Nursery v. Hassid*, 594 U.S. 139, 154 (2021) ("The fact that a right to take access is exercised only from time to time does not make it any less a physical taking."); *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) ("[W]here government requires an owner to suffer a permanent physical invasion of her property—however minor—it must provide just compensation.").

But here, the Zoning Administrator failed to do so. By allowing a new two-story accessory apartment to be built without any setback requirement, the Zoning Administrator has effectively placed an easement on the neighboring private properties.[21] For example, since construction has begun on the new two-story accessory apartment, Ms. Bolin and Mr. Gabler's property has been exposed to trespass and damage. *See, e.g.*, Exs. 12–24; Ex. 1 at 115–30. Workers have—out of necessity—accessed Ms. Bolin and Mr. Gabler's property to install a scaffolding and perform other necessary work due to the lack of space necessary to construct a two story building. In the process, Ms. Bolin and Mr. Gabler have lost their privacy and have suffered property damage. The reality is that accessing Ms. Bolin and Mr. Gabler's property to build, inspect, and maintain the new two story residential building is unavoidable, because the Zoning Administrator's determination that no setback is required between Ms. Bolin and Mr. Gabler's property encouraged the 15th Street Homeowners to build up to their lot line. Ultimately, if the Zoning Administrator's decision is not reversed, the Regulations will be rendered unconstitutional. The District cannot give away private property rights without providing due process of law and just compensation.

To protect the District's residents from having their constitutional rights infringed upon and prevent future lawsuits against the District for constitutional violations, the Board must reverse the Zoning

[21] Further still, as discussed above, the new two-story accessory apartment ***encroaches*** on both neighboring lots.

Administrator's decision and enforce the Regulations' setback requirements for accessory apartments in detached buildings.[22]

III. Enforcing The Zoning Administrator's Decision Deters The District's Policies To Increase Affordable Housing and Disproportionately Harms The District's Most Financially Vulnerable Residents

This harm to Ms. Bolin and Mr. Gabler is not isolated to them alone—the Zoning Administrator's decision fails to protect the long-term growth of residential communities in the District, by giving preferential treatment to homeowners with resources to construct accessory apartments first. Ms. Bolin and Mr. Gabler do not dispute the 15th Street Homeowners right to have an accessory apartment on their property. Indeed, Ms. Bolin and Mr. Gabler support the Zoning Commission's intent to allow accessory apartments within a principal building as a matter of right. But as more homeowners seek to build accessory apartments in detached buildings, residents must be allowed to rely on the clear and unambiguous language of the Regulations to protect both their rights and the rights of their neighbors.

In the case before the Board, the Zoning Administrator has failed to faithfully apply the Regulations. In the process, she has injected confusion—departing from the defined meaning of "detached building" to justify her decision here (Ex. 3) while properly applying it elsewhere (Ex. 27). This inconsistency will harm the District's most vulnerable residents.

Without enforcing the Regulation's side yards requirements, the Zoning Administrator is giving preferential treatment to homeowners with the financial resources to build first, allowing them to maximize the use of their own lot at the expense of residents without the resources to push back against an unconstitutional building permit. Families with lesser financial resources will most certainly suffer their own property decreasing in value due to the close proximity of the new residential building. Beyond

[22] The issues in this case are ***similar*** to the issues raised by the adjacent neighbors opposing the issuance of a permit in ***BZA Case No. 21239***, involving a building permit that was improved by the Zoning Administrator without the required side yard requirements for an addition to a principal home located at ***3220 Brothers Place SE***.

the immediate harm, those families may be deterred from building their own accessory apartment to house a caregiver or family members, or to generate a source of supplemental income in the future due to their lot being overcrowded by adjacent homeowners' accessory apartments.

Further, homeowners building accessory apartments up to their lot lines presents serious safety concerns. As more homeowners begin constructing accessory apartments, building up to a lot line will prevent emergency response vehicles from navigating to accessory apartments—this could allow fires to spread further and prevent residents from receiving lifesaving medical care. As homeowners utilize covenants to build accessory apartments with at-risk fire openings (Ex. 1 at 115–30), it is more likely safety violations will occur in the future as housing density increases. Currently, there is no mechanism in place to put neighboring homeowners on notice of these covenants, which appear to implicate their own safety. To maintain safety, the Board must enforce the setback requirements of the Regulations.

To the extent that the Zoning Administrator or Board may not have been asked to enforce the side yard requirements placed on accessory buildings previously, this does not negate the prevalence of the problem. Rather, it suggests that families do not have access to the resources required to dispute any imposition placed on their property by the Zoning Administrator. While the 15th Street Homeowners would have only paid $325 to apply for a special exception, Ms. Bolin and Mr. Gabler were forced to pay $1,040 to file this appeal. Further, while special exceptions are not adversarial and easier to navigate without legal counsel, appeals are not. If the cost of filing an appeal does not preclude a neighbor from seeking regulatory enforcement, the costs of obtaining legal representation might—in 2024, the American Bar Association reported legal fees in the District have outpaced the rest of the country with many litigators charging more than $900 per hour. Amanda Robert, *This city has the highest billing rates for*

litigators in the nation, survey shows, ABA Journal (July 15, 2024).[23] Likewise, by failing to require a special exception, the burden of proof is shifted from the person seeking to build to the person harmed by the issued permit. Ms. Bolin and Mr. Gabler have been forced to spend thousands of dollars since the Permit issued—residents struggling to make ends meet or on fixed incomes cannot do this. As a matter of equity, the Board must enforce the Regulations and require special exceptions where a two-story accessory apartment is being constructed at the detriment of a neighbor.

Conclusion

For at least the forgoing reasons, the Irving Street Homeowners respectfully request that the presently issued Building Permit No. B2309496 be revoked, and that the proposed accessory apartment be set back the required eight feet from Ms. Bolin and Mr. Gabler's property line. To the extent that the 15th Street Homeowners ask for a special exception or variance, Ms. Bolin and Mr. Gabler respectfully request that the 15th Street Homeowners go through the required processes so that Ms. Bolin and Mr. Gabler are not deprived of their own due process rights to protect their own property and voice their own interests in front of the Board.

Respectfully Submitted,
Courtney Bolin and William Gabler
Pro Se Appellants[24]

[23] Available online at https://www.abajournal.com/news/article/dc-litigators-have-the-highest-billing-rates-in-nation-survey-shows.

[24] Ms. Bolin is a licensed attorney in good standing with the D.C. Bar (Bar No. 1671517). She is appearing in this appeal on her own behalf.

Exhibit List	
Ex. 1	Permit No. B2309496 Materials
Ex. 2	Email
Ex. 3	Email
Ex. 4	Email
Ex. 5	Email
Ex. 6	Email
Ex. 7	Email
Ex. 8	Email
Ex. 9	Email
Ex. 10	Photo
Ex. 11	Photo
Ex. 12	Photo
Ex. 13	Photo
Ex. 14	Photo
Ex. 15	Photo
Ex. 16	Photo
Ex. 17	Photo
Ex. 18	Photo
Ex. 19	Photo
Ex. 20	Photo
Ex. 21	Video
Ex. 22	Video
Ex. 23	Photo
Ex. 24	Photo
Ex. 25	Photo
Ex. 26	Photo
Ex. 27	Document
Ex. 28	Photo
Ex. 29	Photo
Ex. 30	Photo
Ex. 31	Photo
Ex. 32	Photo
Ex. 33	Photo
Ex. 34	Photo

Ex. 35	Photo
Ex. 36	Photo
Ex. 37	Photo
Ex. 38	Photo
Ex. 39	Photo
Ex. 40	Photo
Ex. 41	Photo
Ex. 42	Photo
Ex. 43	Photo
Ex. 44	Photo
Ex. 45	Photo
Ex. 46	Photo
Ex. 47	Photo
Ex. 48	Photo
Ex. 49	Photo
Ex. 50	Photo
Ex. 51	Photo
Ex. 52	Photo
Ex. 53	Photo
Ex. 54	Photo
Ex. 55	Photo
Ex. 56	Photo
Ex. 56	Photo
Ex. 57	Video
Ex. 58	Video
Ex. 59	Video
Ex. 60	Video
Ex. 61	Photo
Ex. 62	Photo
Ex. 63	Photo
Ex. 64	Photo
Ex. 65	Photo
Ex. 66	Photo
Ex. 67	Photo
Ex. 68	Photo

Ex. 69	Photo
Ex. 70	Photo
Ex. 71	Video
Ex. 72	Video
Ex. 73	Video
Ex. 74	Photo
Ex. 75	Photo
Ex. 76	Photo
Ex. 77	Photo
Ex. 78	Photo
Ex. 79	Photo
Ex. 80	Photo
Ex. 81	Photo
Ex. 82	Photo
Ex. 83	Photo
Ex. 84	Photo
Ex. 85	Photo
Ex. 86	Photo
Ex. 87	Photo
Ex. 88	Photo
Ex. 89	Photo
Ex. 90	Photo
Ex. 91	Photo
Ex. 92	Photo
Ex. 93	Photo
Ex. 94	Photo
Ex. 95	Photo
Ex. 96	Photo
Ex. 97	Photo
Ex. 98	Photo
Ex. 99	Photo
Ex. 100	Photo
Ex. 101	Video
Ex. 102	Video
Ex. 103	Video

Ex. 104	Video
Ex. 105	Photo
Ex. 106	Video
Ex. 107	Photo
Ex. 108	Document

Witness List	
Courtney Bolin	Aggrieved homeowner will testify on adverse impacts of permitted construction on 1507 Irving Street NE.
William Gabler	Aggrieved homeowner will testify on adverse impacts of permitted construction on 1507 Irving Street NE.

Certificate of Service

Courtney Bolin and William Gabler certify that, on February 19, 2025, they served notice of this filing on the required parties by emailing this amended appeal brief to:

- The Office of the Zoning Administrator, dob@dc.gov
- Brent Kroll, kroll.brent@gmail.com
- Claire King, cking808@gmail.com
- ANC 5B, 5B@anc.dc.gov

Respectfully Submitted,
Courtney Bolin and William Gabler
Pro Se Appellants