

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

One Judiciary Square
441 4th Street NW
Washington, DC 20001

Appeal by: Courtney Bolin and William Gabler of: The Zoning Administrator's Decision to Issue Building Permit No. B2309496	BZA Case No.: 21231 Virtual Public Hearing: March 12, 2025
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D.C. DEPARTMENT OF BUILDINGS' PRE-HEARING STATEMENT

In this appeal, Appellants Courtney Bolin and William Gabler, of 1507 Irving Street NE, challenge the Zoning Administrator's (ZA) decision to issue Building Permit No. B2309496 to the owners of 3021 15th Street NE for the construction of an accessory building. The ZA's decision was correct on the merits because the Permit complied with the applicable Zoning Regulations, and Appellants' remaining claims do not allege any violation of the Zoning Regulations and therefore should be dismissed as outside the Board's jurisdiction. For these reasons, the Board should deny the appeal.

FACTUAL AND PROCEDURAL HISTORY

In 2023, the owners of 3021 15th Street NE, Square 4017, Lot 0022 (the Property) submitted a permit application to the Department of Buildings (DOB) seeking to create an accessory building by rebuilding and adding a second story to an existing garage (the Project). See *generally* Ex. 11A, Ex. 1.¹ On August 23, 2024, DOB issued Building Permit No. B2309496 (the Permit). Ex. 4.

¹ Unless otherwise noted, all exhibit citations are to exhibits filed in IZIS for the instant appeal.

The Property is in an R-1-B zone and is a corner lot at the intersection of 15th Street and Irving Street NE. Ex. 11A, Ex. 1 at 2. There is no alley in Square 4017. Ex. 11B1, Ex. 4 at 14. The east wall of the Project, running along the rear lot line of the Property, will be close to the side lot line of the Appellants' property, set off by approximately two feet. Ex. 11A, Ex. 1 at 2. The proposed accessory building is situated behind the principal building with the 25-foot required rear yard in between the two buildings. Ex. 11A, Ex. 1 at 2.

On October 22, 2024, Appellants filed the instant appeal, including their Statement of Appeal required by 11-Y DCMR § 302.12(g). *See* Exhibit 2. On February 19, 2025, Appellants filed an Amended Statement of Appeal raising three arguments: (1) that the Permit violates the Zoning Regulations because the accessory building lacks a side yard and is built too close to Appellants' property; (2) that the Permit imposes an alleged unconstitutional easement on their property; and (3) that the Project will deter the development of affordable housing and will "disproportionately harm[] the District's most financially vulnerable residents." Exhibit 11.²

As an initial matter, Appellants' attempt to add new issues in their Amended Statement of Appeal does not comply with the Board's rules. But on the merits, Appellants are incorrect as to their first argument because, as explained below, the Permit for the accessory building complied with the applicable Zoning Regulations. As to Appellants' second and third arguments, they do not allege any violation of the Zoning Regulations and therefore should be dismissed as outside the Board's jurisdiction.

² ANC 5B submitted a report on February 28, 2025. *See* Exhibit 13. The ANC report does not include "[t]he issues and concerns of the ANC about the appeal, as related to the standards against which the application or appeal shall be judged," as required by 11-Y DCMR § 503.2(e), but rather simply states that the ANC voted to support the appeal and attaches the Appellants' written submission to the ANC. Of note, the ANC did not submit any particular recommendation for the disposition of this appeal. *See* Exhibit 13, p. 1.

ARGUMENT

I. The Additional Issues In Appellants' Amended Statement Of Appeal Do Not Comply With The Board's Rules And Thus Are Time-Barred.

11-Y DCMR § 302.13 specifies that “[a]n appeal may not be amended to add issues not identified in the statement of the issues on appeal submitted in response to Subtitle Y § 302.12(g) unless the appellee impeded the appellant’s ability to identify the new issues identified.” Despite this prohibition on adding new issues, on February 19, 2025, Appellants filed a document docketed as Exhibit 11 and titled “Amended Statement of Appeal” without any evidence or even suggestion that “appellee impeded the appellant’s ability to identify the new issues identified,” as required by section Y-302.13.

In their Amended Statement of Appeal, Appellants noted in a footnote that: “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.” Exhibit 11, p.1 n.1. Although Appellants claim in that footnote not to be adding new issues, they do. The Amended Statement of Appeal adds two new issues not identified in the initial Statement of Appeal: (1) the Project requires special exception relief because it does not comply with section U-253.8(c)(1); and (2) approval of the Permit will deter the development of affordable housing in the Brookland neighborhood.

The Board should dismiss the new issues improperly raised by Appellants and not consider them, but DOB is addressing them below out of an abundance of caution.

II. The Permit Was Properly Issued Because The Proposed Accessory Building Is Not Required To Have An Eight-Foot Side Yard, It Complies With The Rear Yard Requirements, And No Special Exception Is Required Because Section D-208.2 Does Not Apply.

Contrary to Appellants’ arguments, the Permit was properly issued for three reasons: (1) the proposed accessory building is not required to have an eight-foot side yard because section D-

208.2 does not apply; (2) the proposed accessory building is situated in the rear yard and complies with the applicable rear yard requirements; and (3) no special exception is required because permanent access to the accessory building is established both through the side yard to 15th Street and through the driveway to Irving Street.

A. The Proposed Accessory Building Is Not Required To Have An Eight-Foot Side Yard Because Section D-208.2 Does Not Apply.

The issue in this case is whether the proposed accessory building requires a side yard. It does not. The first sentence of section D-5001.1 states that the development standards of Subtitle D, Chapter 2, apply unless specifically modified by Subtitle D, Chapter 50.³ Subtitle D, Chapter 50, has a specific provision addressing side yards, which therefore supplants the Subtitle D, Chapter 2 provision on side yards. *Compare* 11-D DCMR § 5005.1 *with* 11-D DCMR § 208.2.⁴ For that reason, the Chapter 50 side yard provision in section D-5005.1 applies, and section D-208.2 does not. Furthermore, to the extent that there is a conflict between the two side yard provisions, the second sentence of section D-5001.1 makes it clear that the Subtitle D, Chapter 50, provision controls. For these reasons, the eight-foot side yard requirement in section D-208.2 does not apply to the proposed accessory building here.

³ 11-D DCMR § 5001.1 provides:

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.

⁴ 11-D DCMR § 5005.1 provides:

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.).

11-D DCMR § 208.2 provides:

Two (2) side yards, each a minimum of eight feet (8 ft.) in width, shall be provided for all detached buildings.

B. The Proposed Accessory Building Is Situated In The Rear Yard And Complies With The Applicable Rear Yard Requirements.

In this case, the accessory building is not in the side yard but rather is situated in the rear yard. For that reason, the two side yard provisions discussed above (sections D-208.2 and D-5005.1) are irrelevant, and Appellants' emphasis on them in their Revised Statement of Appeal is misplaced.

As shown in Exhibit Ex. 11A, Ex 1 at 2 and as explained in the factual background above, the accessory building is situated behind the principal building with the 25-foot required rear yard in between the two buildings.⁵ Because the property is a corner lot, the property's rear lot line abuts the Appellants' side lot line. Looking at the rear yard provisions for accessory buildings in section D-5004.1, there is no required setback from the rear lot line.⁶ Thus, there is no required setback from what is Appellants' side lot line, which is why the accessory building was able to be placed so close to Appellants' house and still be in compliance with the Zoning Regulations.

⁵ Under section B-320.1, the required side yard runs parallel to the side lot line and applies to the entirety of the *principal* structure. However, when the side yard passes the rear-facing façade of the principal structure, then the 25-foot required rear yard begins. 11-B DCMR § 318.2. If the 25-foot required rear yard ends before reaching the rear lot line, then the remainder of the area is considered rear yard. At the point where the side yard intersects with the required rear yard, the rear yard is considered to have extinguished the side yard under section B-320.1 because the required rear yard (25 feet) is larger than the required side yard (eight feet).

11-B DCMR § 320.1 provides:

A required side yard shall be parallel to a side lot line and apply to the entirety of principal buildings and structures. If a required side yard intersects with a required rear yard, the larger yard shall apply for the required distance of the larger yard.

⁶ 11-D DCMR § 5004.1 provides:

An accessory building other than a shed may be located within a rear yard in an R zone provided that the accessory building is:

(a) Not in a required rear yard; and
(b) Set back at least seven and one-half feet (7.5 ft.) from the centerline of any alley.

C. No Special Exception Is Required For The Accessory Apartment Use Because Permanent Access To The Accessory Building Is Established Both Through The Side Yard To 15th Street And Through The Driveway To Irving Street.

An accessory apartment use is allowed as a matter of right in the R-1-B zone so long as it complies with section U-253.8. Appellants argue that the Project was required to obtain a special exception because it does not comply with subsection (c) of section U-253.8, which requires permanent access to the accessory building.⁷ The purpose of permanent access is to ensure that emergency vehicles and personnel would be able to access the accessory building in the case of an emergency such as a fire. Z.C. Case No. 08-06A, Nov. 6, 2013 Public Hearing, Transcript 22:17-22, available at <https://dcoz.dc.gov/page/zoning-regulations-2016-historical-events> (as part of the discussion of accessory apartments, “Within existing accessory structures, they’d be allowed a matter of right. We’ve included an alley access or a side yard requirement. That’s after coordinating with the fire department to make sure that there’s access.”).

Here, this is an uncommon situation in that the Property is a corner lot with no alley in the square. Ex. 11B1, Ex. 4 at 14. Because there is no alley, sections U-253.8(c)(2) and (c)(3) do not apply, and the Property must rely on section U-253.8(c)(1) to meet the permanent access requirement. Here, that requirement is met in two ways: (1) through the eight-foot side yard going from the accessory building west towards 15th Street; and (2) through the driveway going from the accessory building north towards Irving Street. Ex. 11A, Ex. 1 at 2.

⁷ 11-U DCMR § 253.8(c) provides:

An accessory apartment in an accessory building in an R zone, except the R-1B/GT or R-3/GT zone, shall be permitted as a matter of right subject to the following conditions:

...

(c) The permanent access shall be provided by one (1) of the following:

- (1) 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 or shared recorded easement between properties;
- (2) Through an improved public alley with a minimum width of twenty-four feet (24 ft.) that connects to a public street; or
- (3) The accessory building is within three hundred feet (300 ft.) of a public street accessible through an improved public alley with a minimum width of fifteen feet (15 ft.);

D. Appellants' Remaining Arguments Regarding The Permit Are Without Merit Because The Legislative History And Intent Of Z.C. Case Nos. 08-06, 08-06A, And 17-23 Is Irrelevant And The Existing One-Story Garage Was Not An Existing Non-Conformity.

Appellants' Revised Statement of Appeal contains a lengthy discussion of the legislative history and intent of Z.C. Case Nos. 08-06, 08-06A, 17-23, and others. Ex. 11 at 20-29. However, the only point that is relevant to the case at bar relates to the initial proposal in Case No. 08-06A, which proposed to require special exception for an accessory apartment in a new accessory building. However, the Zoning Commission did not adopt that requirement and instead permitted an accessory apartment in an accessory building (existing or new) provided that certain conditions—found in the current section U-253.8—were met.

Appellants' argument about the applicability of section C-202 is likewise unfounded. Ex. 11 at 4. As Appellants noted, the existing one-story garage is mostly removed, and this is essentially new construction that is allowed as a matter of right as explained above.

For the foregoing reasons, the Board should deny the appeal because the Permit was properly issued.

III. The Board Does Not Have Jurisdiction To Hear Appellants' Claim That The Permit Imposes An Alleged Unconstitutional Easement On Their Property.

Appellants' concerns about alleged unconstitutional actions fall outside the jurisdiction of the Board, whose jurisdiction is limited by Section X-1100.3: "The Board of Zoning Adjustment has no jurisdiction to hear and decide any appeal or portion of any appeal where the order, requirement, decision, determination, or refusal was not based in whole or in part upon any zoning regulation or map." Appellants cite to no provision of the Zoning Regulations under which the Permit allegedly caused an unconstitutional easement on their property.⁸ Ex 11 at 29-31.

⁸ Appellants allege that the proposed accessory building encroaches on both neighboring lots. Ex 11 at 30 n. 21; however, the wall check report submitted to DOB shows that it is fully within the property lines. Appellants also raise

IV. The Board Does Not Have Jurisdiction To Hear Appellants' Claim That The Project Will "Deter[] The District's Policies To Increase Affordable Housing And Disproportionately Harm[] The District's Most Financially Vulnerable Residents."

Appellants' concerns about affordable housing and financially vulnerable residents fall outside the jurisdiction of the Board, whose jurisdiction is limited by Section X-1100.3: "The Board of Zoning Adjustment has no jurisdiction to hear and decide any appeal or portion of any appeal where the order, requirement, decision, determination, or refusal was not based in whole or in part upon any zoning regulation or map." Appellants cite to no provision of the Zoning Regulations under which the Permit allegedly caused these harms. Ex. 11 at 31-33.

CONCLUSION

The Board should dismiss the two new issues that were improperly added in the Appellants' Amended Statement of Appeal and deny the appeal because the Permit was properly issued as it complied with applicable side yard and rear yard requirements, no special exception was required, and Appellants' remaining claims are outside the Board's jurisdiction.

Respectfully Submitted,

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concerns about the lot line covenant between the Property owners and the District of Columbia. Ex 11 at 7 n. 5; however, the lot line covenant is a requirement under the Construction Codes, which is outside the jurisdiction of the Board.

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CERTIFICATE OF SERVICE

I certify that on March 5, 2025, a copy of the foregoing was sent via electronic mail to:

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