



March 5, 2025

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Frederick L. Hill, Chairperson  
Board of Zoning Adjustment  
441 4th Street, NW, Suite 200S  
Washington, DC 20010

**Re: BZA Appeal No. 21231  
Property Owners' Prehearing Statement & Motion to Strike**

Chairperson Hill and Honorable Members of the Board:

On behalf of Claire King and Brent Kroll (the "**Owners**"), owners of the property located at 3021 15<sup>th</sup> Street NE (Square 4017, Lot 22), please find enclosed a Prehearing Statement as to the merits of the subject appeal, including the rationale for the Owners' Motion to Strike Appellants' various time-barred and nongermane arguments attached at **Tab A**. This appeal is scheduled to be heard by the Board on March 12, 2025.

Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of March, 2025, a copy of the foregoing Property Owners' Prehearing Statement & Motion to Strike was served, via electronic mail, on the following:

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Meridith Moldenhauer



Madeline Shay Williams

**BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**APPEAL OF  
COURTNEY BOLIN AND WILLIAM GABLER**

**BZA CASE NO. 21231  
HEARING DATE: MARCH 12, 2025**

**PROPERTY OWNERS' PREHEARING STATEMENT TO DENY APPEAL & MOTION  
TO STRIKE**

As the owners of the property that is the subject of this appeal (the “**Appeal**”) brought by Courtney Bolin and William Gabler (the “**Appellants**”), Claire King and Brent Kroll (the “**Owners**”), file this Prehearing Statement and Motion to Strike Appellants’ time-barred and nongermane arguments (the “**Motion**”). The Owners understand that the Assistant General Counsel for the District Department of Buildings (“**DOB**”) will submit a response to the Appeal. As such, the Owners request that this Prehearing Statement and Motion be considered in conjunction with DOB’s filing.

The Board should dismiss this Appeal of Building Permit B2309496 (the “**Building Permit**”), authorizing the rebuilding of a garage and accessory structure with a second floor addition and conversion to an accessory dwelling unit (the “**ADU Project**”) at 3021 15<sup>th</sup> Street NE (Square 4017, Lot 22) (the “**Property**”).

The only legal issue present in this Appeal is whether the ADU Project is located in the side yard or rear yard of the Property. The outcome would determine whether the ADU Project is fully-compliant with the Zoning Regulations and thus, the validity of the issuance of the Building Permit.

However, the Appellants allege two arguments concerning the Building Permit:

1. The Zoning Administrator erroneously permitted a two-story detached secondary home to be built without the required eight-foot side yards.
2. The Appellants’ property will be burdened with a constructive easement based on the approval of the Building Permit.

These claims are without merit. The pro se Appellants are confusing the Zoning Regulations and conflating facts and issues not pertinent to the legal standard for a zoning appeal before the Board of Zoning Adjustment.

The Building Permit is fully compliant with the Zoning Regulations and the R-1B zone. The ADU Project is located in the rear of the principal structure on the Property, which is governed by Subtitle D § 5004. As Subtitle D § 5004 does not impose side yard requirements for accessory structures in the R zone, the Appellants' argument is baseless and the Building Permit was properly issued.

The issue of whether a constructive easement burdening the Appellants' property would be created by the issuance of the Building Permit is outside the scope of the Board's jurisdiction, but even if properly before the Board, a constructive easement would not be created as a result of approving the Building Permit.

### **STATEMENT OF FACTS**

The following statement focuses on facts that are pertinent to the merits of the Appeal.

#### **I. The Property**

The Property is located in the R-1B zone in the Brookland neighborhood of ANC 5B. The Property is a corner lot located at the intersection of 15<sup>th</sup> Street and Irving Street. As a corner lot, the Property can select its street frontage and 15<sup>th</sup> Street is the front. The Property is improved with a detached, single-family home (the "**Principal Structure**"). The Property was previously improved with a garage located in the southeastern corner of the Property (the "**Garage**"). The Appellants' property abuts the eastern lot line of the Property and fronts on Irving Street.

## **II. Proposed Use & Building Permit**

On August 23, 2024, DOB issued a Building Permit to the Owners for the “garage and accessory structure in need of repair to be re-built in place with the addition of a second story and converted to an accessory dwelling unit for a maximum of three persons” in order to construct the ADU Project. *See* Exhibit 4.

The Owners have a nine-year-old son, who was diagnosed with autism at the age of three. He currently functions developmentally and emotionally at about the level of a four-year-old. He is non-verbal, not potty-trained, and will likely not have the ability to obtain a high school diploma. However, the Owners have a strong support system and hope for the best for their son and his development. The Owners intend to use the ADU Project as a long-term housing unit for their son, should he develop enough to live independently, while also being in close proximity to his family who would continue to support him.

As confirmed by the email communication between the Owners and the Appellants included at Appellants’ Exhibit 11B1 on pg. 22 and also attached here at **Tab B**, on October 17<sup>th</sup>, 2024, the Owners met with the Appellants in good faith, along with the Owners’ architect, to discuss the Building Permit and address the Appellants’ concerns.

## **III. Building Permit Appeal**

The 60-day window to appeal<sup>1</sup> the Building Permit, which was issued on August 23, 2024, closed on October 22, 2024. The Office of Zoning’s Interactive Zoning Information System shows that some of the supporting documentation was filed on October 22, 2024, but that the Appeal Application Form and Supplemental Certificate of Service was not filed until October 30 2024.

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<sup>1</sup> A building permit appeal must be filed within 60 days from when the person appealing the building permit had “notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier.” *See* Subtitle Y § 302.2.

This may serve as sufficient evidence for dismissal of the Appeal on technical and procedural grounds based on the requirement to file an appeal within 60 days.

### **MOTION TO STRIKE**

In the Amended Statement of Appeal at Exhibit 11, the Appellants make several arguments outlined below that the Owners believe should be stricken from the record and disregarded by the Board.

1. The demolition of the Garage was outside of the scope of the Building Permit.
2. The ADU Project would require special exception relief under Subtitle U § 253.8(c)(1).
3. Constructing the ADU Project to the property line without a side yard would create a fire hazard.
4. Approval of the Building Permit will deter the development of affordable housing in the Brookland neighborhood.

As these arguments are time-barred and not germane to the pertinent legal issue in this Appeal, the Owners submit the Motion attached at **Tab A** for the following reasons.

#### **I. Appellants' Argument Pertaining to the Garage Demolition is Time-Barred and Not Germane.**

Throughout the factual portions of the Appeal at Exhibit 2, the Appellants' allege that the demolition of the Garage was outside of the scope of the Building Permit. However, Appellants failed to raise any appellate issue related to the demolition of the Garage and did not list it as an actual issue for appeal in the Appellants' initial filing at Exhibit 2. *See* pg. 13.

As is well known, a zoning 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." *See* Subtitle Y § 302.13. Since the Appellants do not make any formal appeal related to the demolition of the Garage, the Board should ignore the Appellants references and issues with the same.

Additionally, the demolition of the Garage is not relevant to the legal issue presented in this Appeal, which is whether the ADU Project is located in the side yard or rear yard of the Property. As such, the Board should disregard this argument.

**II. Appellants' Claim That a Special Exception is Required Under Subtitle U is Time-Barred.**

The Appellants allege a new argument in the Amended Statement of Appeal at Exhibit 11 that the ADU Project would also require special exception relief under Subtitle U § 253.8(c)(1), which was not included in the Appellants' initial filing at Exhibit 2. *See* pg. 17. As outlined under Subtitle Y § 302.13, this argument is time-barred as it was not raised in the initial filing and thus, the Board should not consider this argument.

**III. Appellants' Claim that the ADU Project Would Pose a Fire Hazard is Time-Barred and Not Germane.**

In the Appellants' Amended Statement of Appeal filed at Exhibit 11, the Appellants' also allege a new concern not included in the initial Statement of Appeal at Exhibit 2 pertaining to fire safety. Even with this issue being time-barred under Subtitle Y § 302.13, the Owners clearly addressed this issue with the assistance of their architect during the October 17<sup>th</sup>, 2024 meeting with the Appellants as stated in the email communication on pg. 22 of Exhibit 11B1 and attached here at **Tab B**.

In addition to this issue being time-barred and having already been addressed by the Owners prior to this Appeal, this argument is not germane to the present Appeal. Fire safety is governed by Title 12 of the D.C. Code under the Fire Code Supplement within the D.C. Construction Code and is not a zoning issue within the scope of the Zoning Regulations in Title 11 of the D.C. Code. Therefore, any issue pertaining to fire safety is outside of the jurisdiction of the Board. *See* Subtitle Y § 100.4; *see also* *President & Directors of Georgetown Coll. v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 63 & 77-78 (D.C. 2003) (The Board should

avoid making determinations regarding issues outside of its expertise and area of responsibility in land use).

#### **IV. Appellants' Argument That Approval of Building Permit Would Deter Affordable Housing is Not Germane.**

Appellants' argument pertaining to the alleged deterrence of affordable housing due to issuance of the Building Permit is a policy argument that is also outside of the jurisdiction of the Board under Subtitle Y § 100.4. Therefore, this argument should be dismissed as it does not fall within the jurisdiction of the Board to review as there is also no error present here under the Zoning Regulations. Thus, this argument is not germane to the present legal issue.

While the Owners maintain that this issue is outside the scope of the Board's jurisdiction, the approval of the Building Permit would not deter the development of housing in the Brookland neighborhood as it would provide for more affordable housing and would not prevent future ADU permit applications. As such, the Board should disregard this argument.

### **THE ZONING REGULATIONS**

In Subtitle D of the Zoning Regulations, Chapter 2 governs the "general" development standards for residential house or "R" zones, whereas Chapter 50 governs "accessory building" regulations for residential house or "R" zones. In the event of a conflict between Chapter 50 and another chapter in Subtitle D, such as Chapter 2, the provisions of Chapter 50 control. *See* Subtitle D § 5001.1.

The Zoning Regulations define a "detached building" as "a building that is completely separated from all other buildings and has two (2) side yards." *See* Subtitle B § 100.2. An "accessory building," such as an ADU, is defined as "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." *Id.*



A “rear yard” is defined in the Zoning Regulations as “a yard between the rear line of a building or other structure and the rear lot line.” *Id.* Rear yard regulations for accessory buildings within R zones are governed by Subtitle D § 5004. In the R zone, an accessory building may be located within a rear yard as long as the accessory building is not in a required rear yard and is set back at least 7.5 feet from the centerline of any alley. *See* Subtitle D § 5004.1.

A “side yard” is defined in the Zoning Regulations as “a yard between any portion of a building or other structure and the adjacent side lot line. *See* Subtitle B § 100.2. Side yard regulations for accessory buildings within R zones are governed by Subtitle D § 5005.

Additionally, the Zoning Regulations define “street frontage” as the property line where abuts a street. *Id.* Further, when a lot abuts more than one street, the Zoning Regulations provide that “the owner shall have the option of selecting which is to be the front for purposes of determining street frontage.” *Id.*

## **ARGUMENT**

### **I. The Zoning Regulations do not require an eight-foot side yard for detached accessory dwelling units like that proposed by the ADU Project.**

The language of the Zoning Regulations is clear that the Building Permit does not require an eight-foot side yard between the Property and the Appellants’ property. Further, it is clear, based on the unambiguous language of the Zoning Regulations that the Building Permit complies with all relevant requirements and thus, this Appeal should be denied.

The Appellants’ arguments pertaining to the definition and requirements of side yards for detached buildings according to Subtitle D, Chapter 2 are irrelevant to the Building Permit. The Appellants were notified by a Zoning Technician and the Zoning Administrator as confirmed in the Appellants’ Statement of Appeal, that Chapter 50 of Subtitle D governs the regulation of detached accessory dwelling units, such as the ADU Project, and controls the regulation of ADUs

whenever there is a conflict with Chapter 2. *See* Exhibit 2, pg. 6-7; Subtitle D § 5001.1. Therefore, while the Appellants argue that the requirement for all detached units to have two separate eight-foot side yards pursuant to Chapter 2 should apply to the Building Permit, their argument is incorrect as the Zoning Regulations clearly outline in Chapter 50 that the referenced side yards are not required for ADUs.

The Appellants spend a substantial portion of their appeal alleging that the ADU Project is located within the Principal Structure's side yard, which would require two separate side yards of eight-feet pursuant to Subtitle D § 5001.1. However, this argument is flawed in that it presupposes that the ADU Project is being built in the side yard of the Principal Structure. This is incorrect based on the clear language contained within the definitions of side and rear yards outlined Subtitle B. A "side yard" is defined in the Zoning Regulations as "a yard between any portion of a building or other structure and the adjacent side lot line. *See* Subtitle B § 100.2. A "rear yard" is defined in the Zoning Regulations as "a yard between the rear line of a building or other structure and the rear lot line." *Id.*

The Zoning Regulations provide that when a lot abuts more than one street, "the owner shall have the option of selecting which is to be the front for purposes of determining street frontage." Here, as the Property is a corner lot which abuts both 15<sup>th</sup> Street and Irving Street, the Owners have the ability to determine the street frontage. In this case, the Owners have selected 15<sup>th</sup> Street as the street frontage, which is reflected by the Property's address of 3021 15<sup>th</sup> Street. Therefore, this would make the Property's lot line along 15<sup>th</sup> Street the "front" lot line and the lot line between the Principal Structure and the Appellant's property as the "rear" lot line.

Based on the definitions of a side yard and a rear yard as well as the Property's frontage along 15<sup>th</sup> Street NE, the ADU Project is proposed to be built in the "rear" yard of the Principal Structure, and as such, is governed by Subtitle D § 5004 as opposed to Appellants' improper

reliance on Subtitle D § 5005.<sup>2</sup> Therefore, there is no requirement for the ADU Project to comply with the side yard setback requirements outlined in Chapter 2 of Subtitle D.

In fact, the only zoning requirements for the ADU Project relevant to Appellants' arguments is that the ADU Project (1) not be in a required rear yard and (2) is set back at least 7.5 feet from the centerline of any alley. *See* Subtitle D § 5004.1. Here, the ADU Project is not proposed to be located in a required rear yard and there is no alley abutting the Property, as shown in the plans filed in the record. *See* Exhibit 6, pg. 8. Therefore, the Appellants arguments are incorrect and there is no issue with the setbacks from the property line for the Building Permit.

Additionally, the Appellants argue that much of the regulations pursuant to Chapter 2 apply to the ADU Project because it is a “detached building.” However, their argument ignores the fact that the term “accessory building” has its own definition, which is distinct and separate from the definition of a “detached building” within Subtitle B of the Zoning Regulations. As such, the majority of the arguments raised by the Appellants as to the requirements for side and rear yard setbacks for “detached buildings” are incorrectly applied as the ADU Project is a different type of structure and is not governed by regulations pertaining to “detached buildings.”

**II. Whether a constructive easement would be created by the approval of the Building Permit is outside the scope of the Board's jurisdiction, yet even if properly before the Board, there would be no constructive easement created burdening the Appellants' property.**

Preliminarily, the Appellants' argument pertaining to a constructive easement is outside of the jurisdiction of the Board. *See* Subtitle Y § 100.4; see also *President & Directors of Georgetown Coll. v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 63 & 77-78 (D.C. 2003)(The Board should avoid making determinations regarding issues outside of its

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<sup>2</sup> The Appellants assume Subtitle D § 5005 sets forth the requirements for side yards of ADUs, when instead, it outlines the requirements for an ADU being placed within the side yard of a principal structure, which is not the case here.

expertise and area of responsibility in land use). The Appellants argue that the approval of the Building Permit will result in a constructive easement on their property. Specifically, the Appellants argue that the lack of an eight-foot side yard between their property and the ADU Project will lead the Owners to encroach upon the Appellants' property to conduct exterior maintenance on the ADU Project. This argument should be dismissed as it does not fall within the jurisdiction of the Board to review as there is no error present here under the Zoning Regulations.

While the Owners maintain that this issue is outside the scope of the Board's jurisdiction, this issue is merely speculative at best. The Appellants have provided no evidence to support this theory and are merely attempting to argue that hypothetical future actions may require maintenance services to be conducted from their property.

The Zoning Regulations permit row structures and in some zones have no side yard requirements<sup>3</sup> and can be constructed to 100% lot occupancy.<sup>4</sup> In many of these zones and conditions, structures can be built in compliance with the Zoning Regulations face-on-line with abutting property lines and do not violate the Zoning Regulations nor create constructive easements.

### **CONCLUSION**

The Appellants make several arguments in the Amended Statement of Appeal at Exhibit 11 that should be stricken from the record and disregarded by the Board because they are time-barred and nongermane to the legal issue in this Appeal. Therefore, the Board should grant the Owners' Motion attached at **Tab A**.

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<sup>3</sup> R, RF, and RA zones. See Subtitle D § 208.5; Subtitle E § 208.2; and Subtitle F § 208.2.

<sup>4</sup> MU and D zones allow for 100% lot occupancy and no side yard requirements. See Subtitle G, Chapter 2; Subtitle I, Chapter 2.

The Appellants' arguments regarding the Building Permit are without merit. The language of the Zoning Regulations is clear that the Building Permit does not require an eight-foot side yard between the Property and the Appellants' property and that it complies with all relevant zoning requirements.

The Appellants' argument pertaining to a constructive easement is outside the jurisdiction of the Board, but even if properly before the Board, this argument is merely speculative at best as the Appellants argue that hypothetical future actions may require maintenance services to be conducted from their property. There is no existing lawful private restriction that impedes into the Appellants' property and thus, there is no issue pertaining to the deprivation of the Appellants' constitutional rights.

Accordingly, this Appeal should be denied.

Respectfully submitted,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read 'M. Moldenhauer', written over a horizontal line.

Meridith Moldenhauer

A handwritten signature in blue ink, appearing to read 'M. Shay Williams', written over a horizontal line.

Madeline Shay Williams