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)

Appellants Courtney Bolin and William Gabler's Brief in Support of Their Motion to Reopen the Record to Respond to Appellees' New Arguments Presented at the March 12, 2025 Hearing and Alternative Motion to Strike

Appellees Department of Buildings ("DOB"), and Claire King and Brent Kroll ("15th Street Homeowners") filed their prehearing statements on March 5, 2025. BZA Exs. 14, 15. Appellants Ms. Bolin and Mr. Gabler replied to their briefing on March 7, 2025. BZA Ex. 17. During the March 12, 2025 hearing, both the DOB and the 15th Street Homeowners presented new arguments and evidence that were not disclosed in their prehearing briefing. In view of the Appellees' new positions, Ms. Bolin and Mr. Gabler moved to reopen the record to provide a supplemental response. If the motion is granted, Ms. Bolin and Mr. Gabler respond to the new arguments raised by the Appellees as follows:

Appellees' New Arguments	Appellants' Responses to the Appellees' New Arguments
DOB conceded that the accessory building meets the definition of a "detached building" but argued that the new accessory apartment is governed solely by Subtitle D § 5004.1. Hearing at 5:36–5:40.	If the provisions of Subtitle D § 5004.1 fully supplant the provisions of Subtitle D § 208.2 as DOB argued at the hearing, then ***an accessory building other than a shed can never be built to the rear of a principal building on a non-alley lot***. Subtitle D § 5004.1 ("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.").
DOB's argument that a "detached principal building" is subject to the Regulations' "detached building" yards requirements, but that a "detached accessory building" does not have to meet the	The DOB's argument rests on Ms. Vitale's unsupported hearsay. FRE802. Her statements allege to be based upon her knowledge of the Regulations and regulatory history, but no such support has been offered by DOB and Appellants cannot find any support in the regulations or regulatory history. The Regulations define these terms at Subtitle B § 100.2:

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Regulations' "detached buildings" requirements is unsupported. Hearing at 5:09–5:11.	• Principal building: The building in which the primary use of the lot is conducted. • Accessory building: 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. • Detached building: A building that is completely separated from all other buildings and has two (2) side yards.[1] ***No "detached principal building" nor "detached accessory building" exists in the Regulations***. Rather, the Regulations unequivocally require all detached buildings (not just those used as principal buildings) in the R1-B zone —other than sheds—to have side yards of eight feet to be built without a special exception/variance. 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."); 5005.1 (specifically modifying the side yards requirement of accessory buildings placed in a principal building's side yard); 208.2 (requiring side yards of at least eight feet for all detached buildings); 208.7 (requiring that side yards not be eliminated). The plain and ordinary meaning of the Regulations is further supported by the regulatory history. *See generally* BZA Ex. 11 at 20–29; June 8, 2009 Public Meeting Transcript at 101–05 (discussing the minimum side yards that should apply to residential zone buildings and stating "***obviously you have to have some yard and that yard needs to be passable and maintainable***" and that the Zoning Commission did not "want to encourage a situation where what's already not maintainable and not passable would get worse" because property owners would have to be to be "able to go back there and clean it and paint the wall if you need to, or what have you").[2] To the extent that the Board credits Ms. Vitale's testimony based on her alleged knowledge of past public meetings and hearings to justify deviating from the plain language of the Regulations, it should require DOB to provide citations supporting Ms. Vitale's statements.
Ms. Vitale consistently presented testimony illustrating that the Zoning Administrator's Office departs	For example: • *Compare* Hearing at 5:33 (Ms. Vitale testifying that a "required rear yard" is ***measured from the wall of the principal building towards the lot line***) *with* Subtitle B § 318 (providing that a

[1] In response to Commissioner Wright's question, Ms. Vitale conceded that the building at issue in this appeal "meet[s] the definition of a detached building." Hearing at 5:37–5:38.

[2] Available online at https://app.dcoz.dc.gov/trans/090608zc.pdf.

from the Regulations' measurement yards directives.	required rear yard is ***measured the from a building's rear lot line towards the building*** in every instance). • *Compare* Hearing at 5:33 (Ms. Vitale testifying that a "required rear yard" is a ***static distance of 25 feet***) *with* Subtitle B § 318.2 (stating that a "required rear yard" occupies the ***half*** of the "rear yard" closest to the rear lot line) and Subtitled D § 207.1 (providing that the minimum "rear yard" permitted in the R-1 zone is 25 feet and thus that the ***minimum "required rear yard" is 12.5 feet***). • *Compare* Hearing at 6:05 (Ms. Vitale testifying that ***"side yards" only apply to "principal buildings"***) *with* Subtitle B §§ 319.1 ("***Side yards regulate the distance between a building*** and a side lot line."), 100.2 (defining "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 other structure."), 100.2 (defining "building" as a "structure requiring permanent placement on the ground that has one (1) or more floors and a roof supported by columns or walls.").
DOB rested its entire regulatory interpretation case on the testimony of Ms. Vitale. *E.g.*, Hearing at 5:06–6:14. Appellees argued that Ms. Vitale is a zoning expert based on her one year of service as the Deputy Zoning Administrator and 12 years of experience working in the Office of Planning. Hearing at 5:08–5:09. Ms. Vitale represented that she was "very involved in the zoning regulation review process that resulted in the 2016 update." Hearing at 5:08–5:09.	Under the Regulations, DOB failed to "provide written evidence to the Board of [Ms. Vitale's] expertise" in regulatory interpretation. Subtitle Y § 203.9. DOB likewise failed to move for Ms. Vitale to be qualified as an expert in regulatory interpretation. Subtitle Y § 506.1(b). Because Ms. Vitale did not submit a written report, nor cite support for her testimony regarding the Zoning Commission's intent, her should not be weighed. If anything, Ms. Vitale's testimony should be considered as the testimony of a ***fact witness*** because she does not meet the requirements of a regulatory interpretation expert. Ms. Vitale's testimony is based on insufficient facts or data, and is not the product of reliable principals or methods. FRE702. In the place of these things, Ms. Vitale relies on alleged inadmissible hearsay from public meetings occurring over a decade ago. FRE802. Although Ms. Vitale allegedly justified her deviation from the plain language of the Regulations based on her "knowledge" of the Zoning Commission's "intent," her memories lack support in the public record. *E.g.*, Hearing at 5:23-5:26; *see also* Hearing at 5:51 (representing the Zoning Commission's "desire"). To the extent that DOB wishes to rely upon Ms. Vitale's memory of meetings occurring well over a decade ago, the Board should require Ms. Vitale to provide an expert report grounded in citations to the relevant public records. Without support, Ms. Vitale cannot be relied upon as an expert—regulatory interpretation experts would not blindly advance hearsay memories to contradict the Regulations, nor the publicly recorded

	regulatory history. The Board cannot accept her unsupported statements without compromising the integrity of the hearing system. Further, Ms. Vitale's opinions are not the product of reliable principals or methodologies. An expert in regulatory interpretation would apply the canons of construction—Ms. Vitale did not. For example, Ms. Vitale does not apply the definitions of defined terms and she reads in limiting language where there is none. A regulatory expert would take care with these core sematic canons of construction. Likewise, Ms. Vitale refuses to begin with a presumption that the Zoning Commission used terms consistently throughout the Regulations and she declines to give effect to any provision that proves her mistake. A regulatory expert would take care to avoid any construction that no reasonable person could approve of; Ms. Vitale, in contrast, is advocating for her mistake to be affirmed despite her unsupported interpretation's creation of an unconstitutional constructive easement on Appellants' private property without providing due process or just compensation.
DOB argued that Subtitle D, Chapter 50 has been "interpreted and applied" the same way in other instances, and that the Zoning Administrator has issued permits for entirely new accessory apartments with no setback. Hearing at 5:42–45	***DOB has not provided any permit numbers*** in support of this statement. To the extent that the Board entertains Ms. Vitale's representation that the Zoning Administrator has issued permits for accessory apartments with no setback, it should be required to provide a list of these permits so that the Board may verify the veracity of this statement. FRE403; FRE801; FRE705.
The 15th Street Homeowners' representation that BZA Case Nos. 21170, 21248, 21141 are comparable lacks merit. Hearing 6:19–6:20.	These cases are not comparable for at least the following reasons: • BZA Case No. 21170: This permit was not issued as a matter of right; the property owner was ***seeking special exception*** lot occupancy relief from Subtitle D § 210.1 pursuant to Subtitle D § 5201.2 and Subtitle X § 901.2. The semi-detached principal building had a 5.5-foot side yard, exceeded the minimum required rear yard, had alley access, and letters supporting granting the special exception. ***No detached accessory building was proposed.*** The permit was approved by 3-0-2 vote. • BZA Case No. 21248: This permit was not issued as a matter of right; property owner ***seeking special exception*** to place ***shed*** in the principal buildings' rear yard (NOTE: the shed is being constructed in the principal building's side yard—not its rear yard; special exception appears to have been required because the proposed shed is 10x12 feet). The ***neighbors and***

	ANC supported the special exception and the permit for the one-story building. The permit was approved by 5-0-0 vote. • BZA Case No. 21141: This permit was not issued as a matter of right; the property owner was ***seeking special exception*** relief from Subtitle D § 5004.1(a) pursuant to Subtitle D § 5201.2 and Subtitle X § 901.2. The property owners sought to ***enlarge an existing garage situated about 11 feet away from the center line of the alley***. The proposed extension left ***a side yard of about 10 feet***. The building was not being converted into an accessory apartment and was one story.
The 15th Street Homeowners represented that it would be "catastrophic" for the Board to entertain the constructive easement placed on Appellants' private property because other zones permit 100 percent occupancy. Hearing at 6:18–6:19.	This is wholly unsupported. The 15th Street Homeowners' citation to zones allowing 100 percent occupancy (i.e., the MU and D zones) does not lend support to the matter at hand. The 15th Street Homeowners' citation to Subtitle G, Chapter 2 does not disclose any instance permitting 100 percent lot occupancy. Nor Subtitle I, Chapter 2. Nor have they cited an instance where a building would be permitted up to the lot line of a privately owned lot; there is no constitutional violation where the district places a constructive easement on public property. Further, though they argue that it is well-settled that these Regulations have been applied regularly and any challenge has been struck down, they have cited no case where the Zoning Administrator's failure to enforce the Regulations' side yards requirements was challenged before the Board or the D.C. Court of Appeals. This is a matter of first impression and ***the Board cannot rule in Appellees' favor without violating Supreme Court precedent*** finding constructive easements issued without due process and just compensation violate a property owners' constitutional rights. BZA Ex. 11 at 29–30.
The 15th Street Homeowners testified that the ANC support their project, as well as other neighbors. Hearing at 6:15–6:16.	This representation is, at best, inadmissible hearsay. FRE801. The ***ANC was unaware of the building at issue*** because the Zoning Administrator issued the Permit as a matter of right. February 19, 2025 ANC Meeting at 2:02:07–2:03:08.[3] As indicated in the ANC's report, they oppose the 15th Street Homeowners' accessory apartment. BZA Exs. 13 (ANC report), 18 (ANC supplemental report). To the extent that the ***15th Street Homeowners allege other neighbors do not mind their property being encroached upon***—in violation of

[3] Available online at https://dc-gov.zoom.us/rec/play/Slr7wEppEuF9BqpLLdOsArG67jWrm_iRIiwAfj4w5cObAS8AETJC7i-UM0lZfdoU3mLlhLAx3DpqWJkM.gKvOIfuW6g0EdRDY?accessLevel=meeting&canPlayFromShare=true&from=share_recording_detail&continueMode=true&componentName=rec-play&originRequestU.

	their constitutional right to due process and just compensation—and support the new two-story accessory apartment, there is ***no evidence in the record proving this***. FRE802. Without an affidavit or letter showing that other neighbors are aware of the encroachment on their property and this appeal and nonetheless support construction, the Board should not weigh the 15th Street Homeowners' hearsay representation. FRE802.
The 15th Street Homeowners asked if Appellants told the ANC that "there [was] no point in hearing from the property owners" at the February 19, 2025 ANC meeting. Hearing at 3:55–3:58.	First, the 15th Street Homeowners question ***misquotes*** Ms. Bolin and introduces incomplete evidence out of context. FRE 403; FRE 106; FRE802. During the properly noticed ANC meeting, where Appellants' request for ANC report was included on the ***properly noticed agenda***, Commissioner Ra Amin asked if the 15th Street Homeowners could be given an opportunity to present before the Appellants' filing deadline. Ms. Bolin responded to Mr. Amin's question, explaining that the 15th Street Homeowners were on notice of the appeal since it was filed on October 22, 2024, that they had the same amount of time to seek ANC support as Appellants, and that they were more familiar with the process of seeking ANC support because they had done so in the past. Commissioner Jingwen Sun also noted that the ***property owners were not required to seek ANC support*** because the permit was issued as a matter of right and emphasized the importance of supporting Ms. Bolin and Mr. Gabler's appeal because the issue presented impacts the volume of future disputes the ANC may be forced to address and the implications on the community. Additionally, Commissioner Edward Borrego noted that the ***Zoning Administrator had misinterpreted the Regulations in a similar case several years prior*** and that mistakes like this one can happen. The ANC then ***voted unanimously to support Appellants*** in the present appeal. February 19, 2025 ANC Meeting at 1:51:46–2:03:45.[4] Second, the 15th Street Homeowners ***do not cite any legal authority*** in support of their argument that they were entitled to a personal invitation to the publicly noticed meeting, because ***there is no such provision***. The ANC complied with the authority that binds it; the 15th Street Homeowners merely ***failed to exercise diligence***.

[4] Available online at https://dc-gov.zoom.us/rec/play/Slr7wEppEuF9BqpLLdOsArG67jWrm_iRIiwAfj4w5cObAS8AETJC7i-UM0lZfdoU3mLlhLAx3DpqWJkM.gKvOIfuW6g0EdRDY?accessLevel=meeting&canPlayFromShare=true&from=share_recording_detail&continueMode=true&componentName=rec-play&originRequestU.

DOB indicated that Appellants did not understand how to apply the Regulations with respect to a wall check report filed on the record the day before the hearing. Hearing at 3:52–3:53; BZA Ex. 21 (wall check report)	DOB's question was ambiguous and DOB interrupted Ms. Bolin before she was permitted to answer. FRE 403. Appellants understand how to apply the Regulations; however, DOB ***misrepresented*** that Ms. Bolin and Mr. Gabler's property line is approximately two feet away from the new building. This is ***inaccurate*** under the Regulations because it ***does not account for the building's projections as Subtitle B § 323 requires***. As Appellants tried to explain, the projections of the building at issue (e.g., the windows) encroach upon Appellants' property in violation of the Regulations. They were not permitted to do so.
The 15th Street Homeowners and DOB's representation that Appellants failed to meet their burden of proof is inaccurate. Hearing at 6:45–6:47.	The 15th Street Homeowners' argued that Appellants failed to meet their burden of proof because their briefing is not supported by the testimony of an architect, and DOB argued that the Appellants' appeal must be denied because neither is an attorney. Neither argument is accurate. First, Appellants' opening brief cites the 15th Street Homeowners' own architect's representations to the Zoning Administrator. *E.g.*, BZA Ex. 11 at 3–4. The ***15th Street Homeowners' own architect's statements support Ms. Bolin and Mr. Gabler's reading of the Regulations***. The 15th Street Homeowners did not present their architect at the hearing, presumably to prevent cross-examination. Further, because the Appellants' arguments are questions of law and not fact, an architect is not needed to meet their burden of proof. Second, Ms. Bolin is a licensed attorney in good standing with the D.C. Bar. She has six years of legal experience, including experience in both statutory and regulatory interpretation. No challenge has been presented to the legal methodology she applied as an licensed attorney; only the conclusion she reached.

Conclusion

For at least the forgoing reasons, along with the other briefing and evidence in the record, Ms. Bolin and Mr. Gabler respectfully request that the Board that the Board grant their appeal. Alternatively, at the very least, Ms. Bolin and Mr. Gabler move to strike all undisclosed arguments, witnesses, and evidence from the record as unreasonably prejudicial.

Respectfully Submitted,
Courtney Bolin and William Gabler
Pro Se Appellants[5]

[5] 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.

Certificate of Service

Courtney Bolin and William Gabler certify that, on March 24, 2025, they served notice of this filing on the required parties by emailing this motion and supporting brief to:

- The Department of Buildings, james.moeller1@dc.gov
- Meridith Moldenhauer, mmoldenhauer@cozen.com
- The Office of the Zoning Administrator, dob@dc.gov
- ANC 5B, 5B@anc.dc.gov

Respectfully Submitted,
Courtney Bolin and William Gabler
Pro Se Appellants