

Applicant's Response to the Party Status Filing

The Applicant offers no objection to the granting of party status as proposed. As to the party requester's attempts at a substantive argument, we respond hereinbelow.

Light and Air

The matter-of-right permitted Building Area for the second story of the subject Accessory Building is 450 square feet. The Application proposes a Building Area of 472 square feet, making the amount of special exception relief just 22 square feet. This amounts to approximately a 1-foot strip off any one side of the proposed 2nd-story Addition. While the lack from such a small degree of relief is self-evident, the Applicant has provided a shadow study that shows no impact on *any* neighboring property, let alone the six who claim that this proposal will block out the sun.

So, faced with the opposition of two benign special exception proposals that safely meet the conditions for their approval, party opponent chose to try to mislead this Board by grossly misrepresenting the applicable law, as follows.

First, party opponents claim that relief is required to do *any* addition at all, because the existing building has a nonconforming footprint. This is patently false. While that claim may have arguably been true under the 1958 Zoning Regulations, it has certainly not been true since the adoption of the 2016 Zoning Regulations. Meaning, vertical additions to nonconforming buildings have been permitted by right since September 2016. (Applicable Regulations from 1958 and 2016 attached hereto as Exhibit A.)

Second, party opponents claim that because the proposed nonconforming addition is on top of an existing nonconforming building, relief from C-202 (relating to the expansion of nonconforming structures) is also required, in addition to the requested special exception relief under D-5201. Again, this is patently false. In ZC Order #19-14, which became effective in January 2022, the Zoning Regulations were amended to provide that, for a nonconforming addition to a nonconforming building, the redundant relief from C-202 would no longer be required.¹

¹ From OP's Set-Down Report in ZC #19-14: "*Subtitle C§ 202.2 regulates enlargements and additions to nonconforming structures. Subtitle C§ 202.2(b) can be read to require additional relief that often causes confusion in the evaluation of special exceptions to certain development*

Accordingly, relief from C-202 is not required here. (See p. 4 from the adopted Notice of Proposed Rulemaking in ZC Case No. 19-14 attached hereto as Exhibit B).

The third material legal misrepresentation is party opponents' claim that the Subject Property has a maximum permitted lot occupancy of forty percent (40%).² The Applicant's property is improved with a row dwelling, which straddles its two side lot lines. As such, pursuant to D-210.1, the property has a maximum permitted lot occupancy of sixty percent (60%). Party opponents claim that the existence of a private easement on a neighboring property magically alters the Zoning Regulation definition of "row dwelling" into a semi-detached building. The party opponents state this as a naked conclusion, without providing any legal support or logical analysis. But, of course, there is no "neighboring easement" exception to D-210.1, and a neighboring easement does not create a side yard on a neighboring property, and it does not turn a row dwelling into a semi-detached building, as such terms are defined in the Zoning Regulations. The maximum permitted lot occupancy for the Subject Property is sixty percent (60%).³

Privacy. Regarding privacy under D-5201.4, there is no material difference in the Accessory Building's windows from the additional proposed 22 square feet of Building Area. Regarding privacy in the context of the use of the accessory apartment, the application safely meets the very specific requirements for approval of an accessory apartment, none of which relate to any neighbors' privacy.

Parking. The Property has a 1-space parking requirement, which will be satisfied on the Property.

Visual intrusion. A portion of the Accessory Building *may* be visible if one stands on P Street, directly in front of the narrow opening between the buildings at 3253 and 3255 P. But the proposal

standards. This amendment would clarify that conforming enlargements or additions to nonconforming structures would be permitted, and relief is only required when a nonconformity is extended or created. Additional relief would no longer be needed from C § 202.2 itself as part of the special exception process of Chapter 52." [emphasis added.]

² While the originally filed application, on Form 135, incorrectly stated the maximum permitted lot occupancy as forty percent (40%), this has been corrected, and party opponent was aware of this correction prior to its submission of the party status request.

³ All three of these areas of the Zoning Regulations are well-established and widely known. These are not vague or ambiguous, or questioned provisions. It's common knowledge in the zoning field.

enjoys concept approval from the Old Georgetown Board. And the comments from party opponents stating that they would rather not look at the proposed addition are not relevant.

Construction. These “arguments” are not properly before this Board.

“Insufficient request for special exception relief.” This argument is nonsensical. The Zoning Regulations provide for the *waiver* of up to two of the requirements for an accessory apartment under U-253. The waivers relate only to the U-253 requirements and have nothing to do with any relief requested separately from U-253.

There are several other unexplained factual misrepresentations in the party opponent's argument, among them a claim that three trees are being removed. No trees will be removed as part of this project and it's not clear on what basis party opponent makes this and other claims of supposed fact.

In summary, the party opponents have created both facts and law out of whole cloth in a feeble attempt to make two benign special exception requests appear controversial. This Application safely meets all conditions for approval for both special exceptions, and as such should be approved.

Respectfully Submitted,

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