

5034 Nebraska Avenue, NW

BZA CASE NO. 21404

Zone: R-2

ANC: 3F

Applicant: 512 Taylor, LLC

APPLICANT'S TEAM

Ritesh Matta & Alper Akan | Owner Representatives

Dagmawi Gebrekidan | Project Architect (One Design Services)

Martin Sullivan | Applicant's Counsel (Sullivan & Barros, LLP)

Sullivan & Barros, LLP



Board of Zoning Adjustment

District of Columbia

CASE NO. 21404

EXHIBIT NO. 53

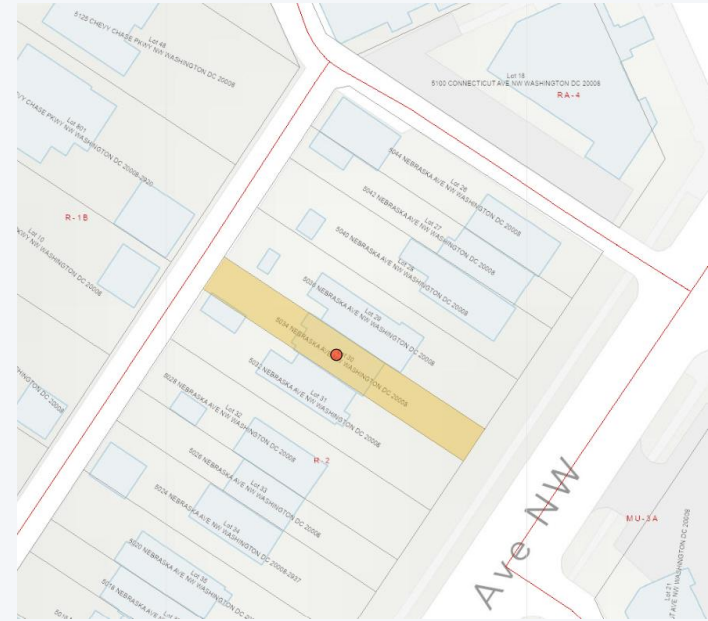
Subj. Property

5034 Nebraska Ave., NW

Project Introduction

5034 Nebraska Avenue, NW — R-2 Zone

Lot Area	2,932 sq. ft.
Existing Use	2-story, single-family row dwelling
Proposed Use	Single-family dwelling
Relief Sought	Side Yard (D-208.7) – for one 5 ft. side yard for the length of the addition. Only one such side yard is required.
Agency Support	OP recommending approval; DDOT has no objection
Proposed Project	The Applicant is proposing to construct a three-story rear addition that is set back from the front.



Groups of 3 is typical for this part of the block

One Area of Relief Requested

Relief sought pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle D § 5201

1

Side Yard — 0 ft. Existing, 0 ft. Proposed

D § 208.7 | D § 5201

The Building is an existing row dwelling (no side yards) in an R-2 zone where buildings are required to have one, 8 ft. side yard. The Building is currently nonconforming with respect to the side yard requirements and, pursuant to D-208.7, in the case of a building with a nonconforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be reduced or eliminated; and provided further, that the width of the side yard adjacent to the extension or addition shall be a minimum of 5 ft.. The proposal is requesting to maintain the existing condition—no side yards. Therefore, relief is requested from the requirement to provide one 5-foot side yard for the addition.

ANC & Community Engagement

Neighbors

Applicant's counsel has been in communication with oppositions counsel in an attempt to address concerns.

Applicant's counsel made suggestions to mitigate any privacy concerns.

Opposition's suggestion was to completely eliminate the 3rd story addition.

ANC 3F

The Applicant and the SMD spoke on the phone mid June to address questions and concerns.

The Applicant also attended ANC 3F's meeting on June 30th.



Property Context

Subj. Property
5034 Nebraska Ave., NW



Property Context

Subj. Property
5034 Nebraska Ave., NW

Property Context

5036 Nebraska Ave., NW

Subj. Property
5034 Nebraska Ave., NW

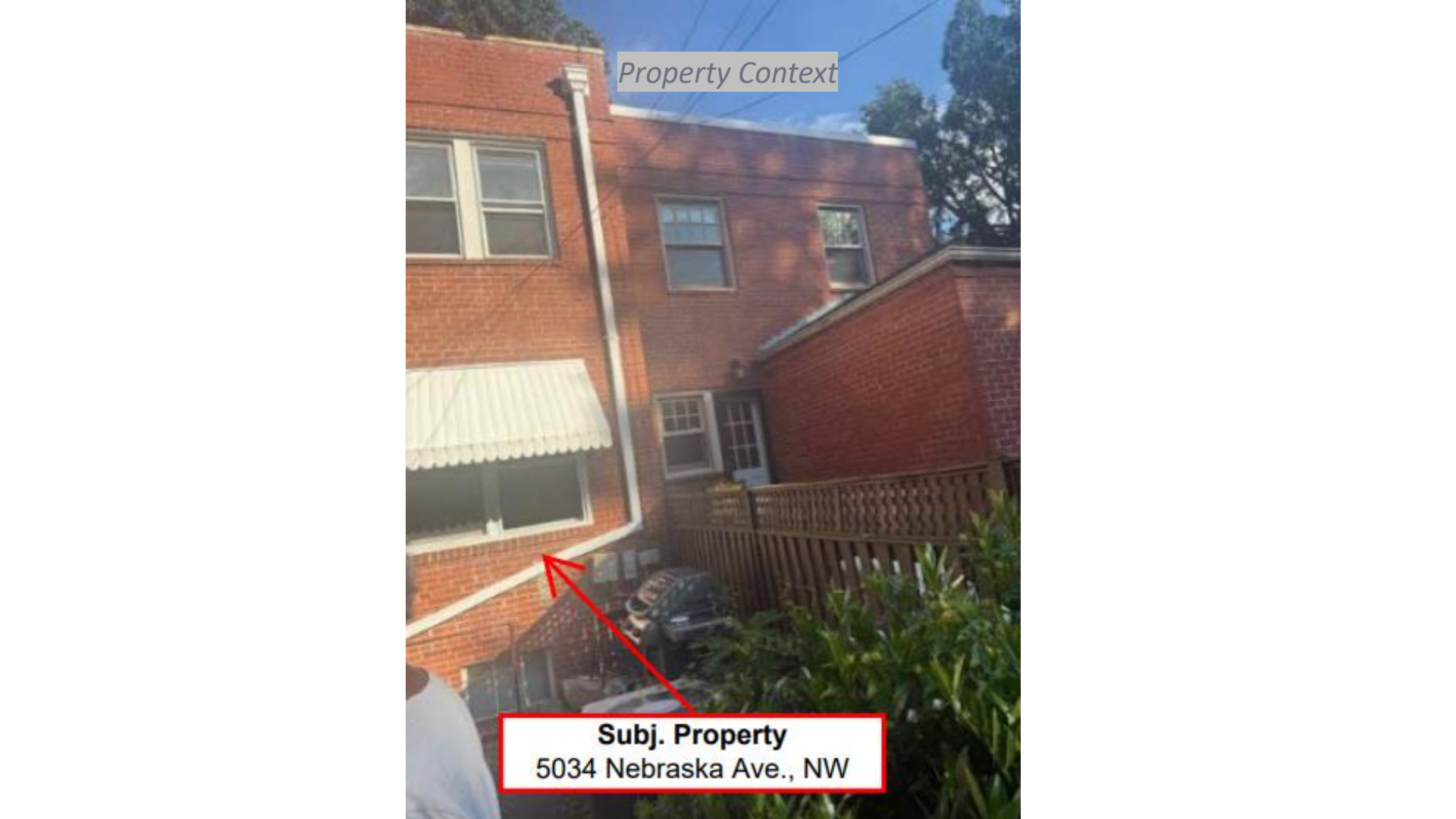
5032 Nebraska Ave., NW



Property Context



Subj. Property
5034 Nebraska Ave., NW



Property Context

Subj. Property
5034 Nebraska Ave., NW

Office of Planning Recommendation

Office of Planning recommends approval; DDOT has no objection

✓ OP RECOMMENDS APPROVAL of the requested special exception

Light & Air

The application complies with all R-2 bulk standards except the side yard requirement. A matter-of-right addition could be constructed with a 5-foot side setback, and the applicant's shadow study compares that scenario with the proposed addition. Although the proposed design would create a small amount of additional shadow on adjacent properties, the difference is limited and not undue, per BZA practice, compared to what could be built as a matter of right.

Privacy

No windows are proposed on the building sides. The open decks will be located at the rear of and on top of the dwelling. The placement of these features is logical as to not create undue privacy concerns to any neighboring property.

Character/Scale/Pattern

The proposed addition will be visible from the public alley but will not extend more than 10 feet beyond the furthest adjacent rear walls and will be partially screened by site features and neighboring structures. The proposed decks and balconies are typical residential elements. Although the third-story addition occupies the existing footprint, the front deck setback, substantial front yard, vegetation, and surrounding buildings will minimize visibility from the street. Therefore, the proposal will not be visually intrusive from public rights-of-way.

Side Yard — Meeting the Standards

Subtitle D § 208.7 and § 5201.4 — Criteria Analysis

§ 901.2(a) Harmony

The Applicant proposes to expand an existing nonconforming structure that has occupied the undersized lot for approximately 85 years. The proposed improvements are consistent with the purpose and intent of the Zoning Regulations and will not increase density beyond what is permitted or introduce any prohibited uses.

§ 901.2(b) Will not Tend to affect, adversely, the use of neighboring property

The Applicant does not propose side-facing windows. The 3rd story addition is set back from the front façade, and the proposed roof deck and rear decks are typical features for row dwellings. Aside from the requested side yard relief resulting from the existing nonconforming conditions, the proposal complies with all other applicable development standards. The impact on light and air and privacy is minimal and clearly does not impact the *use* of neighboring property.

§ 5201.4(a) Light & Air

As shown in the shadow studies, the additional shadow is limited and is not considered undue.

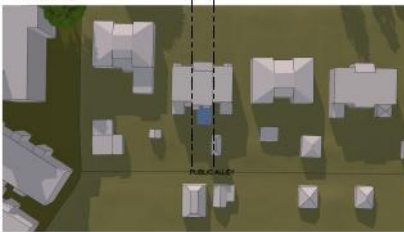
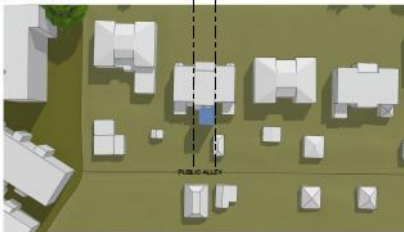
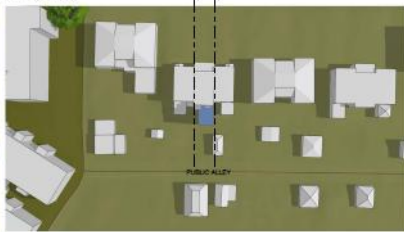
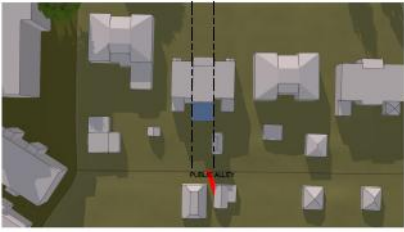
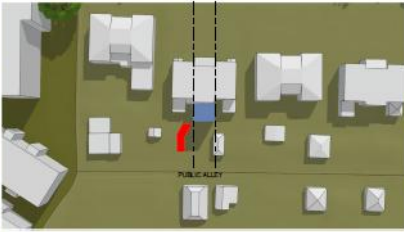
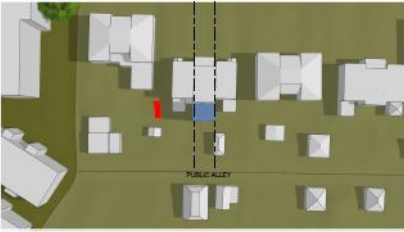
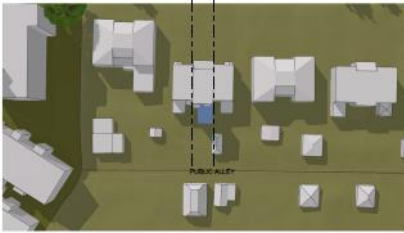
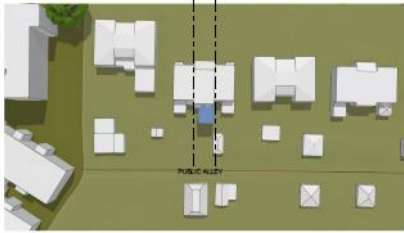
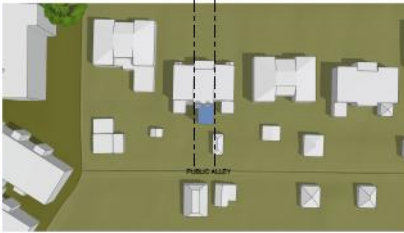
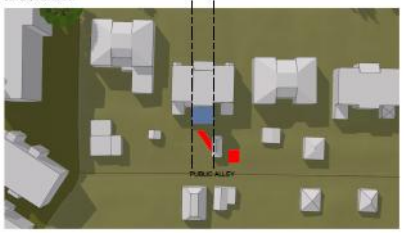
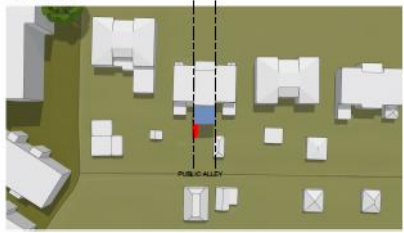
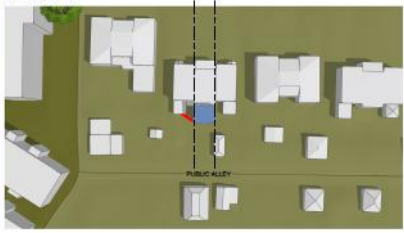
§ 5201.4(b) Privacy

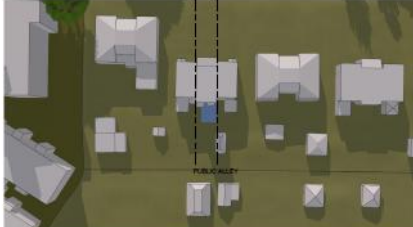
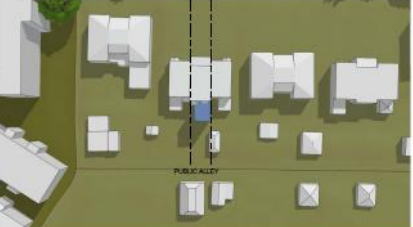
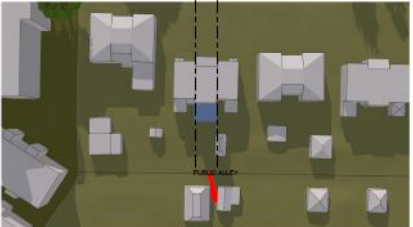
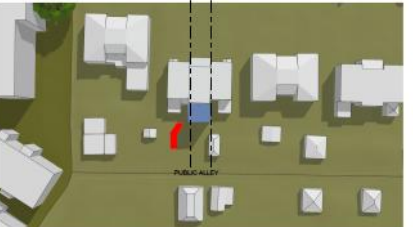
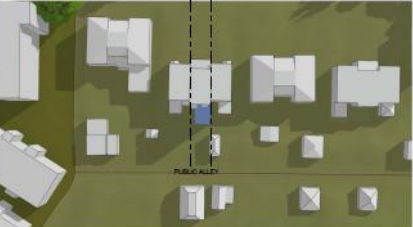
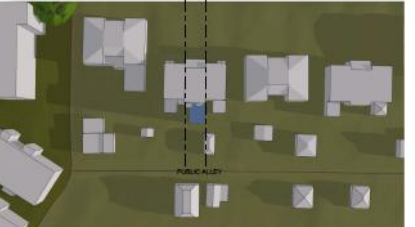
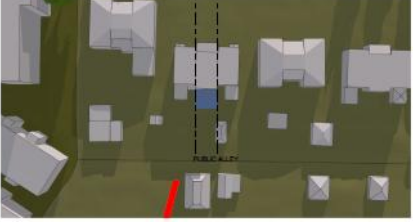
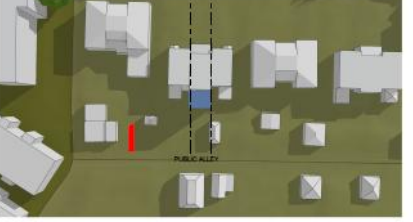
The Applicant is not providing any north-facing or south-facing windows. The proposed open decks will be located at the rear and above the dwelling, consistent with typical residential design. Their placement minimizes potential privacy impacts and will not create undue privacy concerns for neighboring properties.

§ 5201.4(c) Visual Character

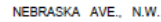
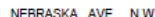
There is no substantial visual intrusion on character scale and pattern on houses that is viewed from the street or alley. The applicant is proposing a significant setback from the front building line and the building itself is already set back substantially from the front property line. As viewed from the rear alley, filling in what would otherwise be a 5-foot court, Does not substantially visually intrude on the character scale and pattern of views from the alley. The rear yard setback is well over the minimum rear yard required and no relief is required from the 10-foot rule.

Shadow Studies

	9:00 AM	12:00 PM NOON	3:00 PM
VERNAL EQUINOX MATTER OF RIGHT	Mar 20, 09:00 AM 	Mar 20, 12:00 PM 	Mar 20, 03:00 PM 
VERNAL EQUINOX PROPOSED	Mar 20, 09:00 AM 	Mar 20, 12:00 PM 	Mar 20, 03:00 PM 
SUMMER SOLSTICE MATTER OF RIGHT	Jun 21, 09:00 AM 	Jun 21, 12:00 PM 	Jun 21, 03:00 PM 
SUMMER SOLSTICE PROPOSED	Jun 21, 09:00 AM 	Jun 21, 12:00 PM 	Jun 21, 03:00 PM 

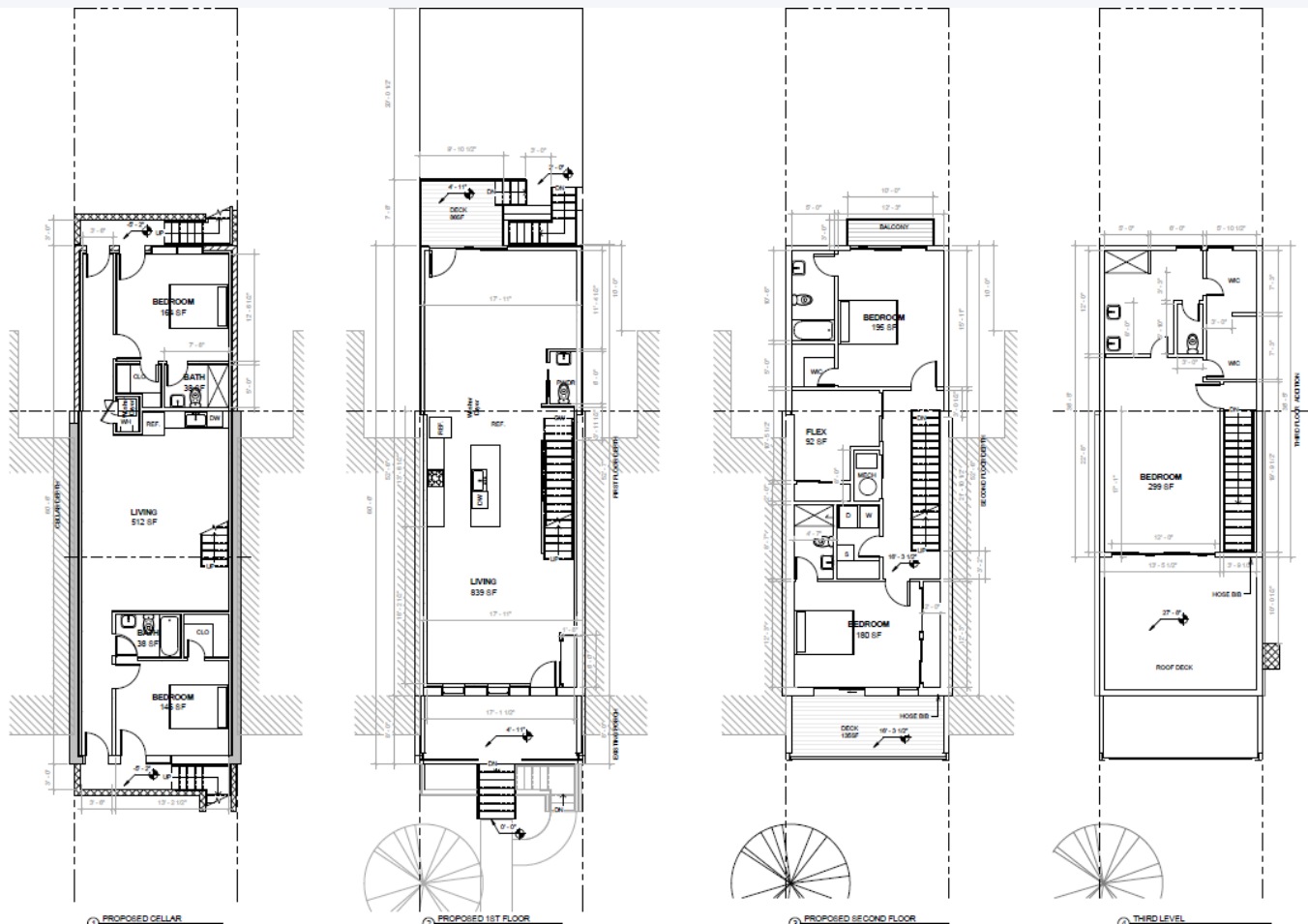
		9.00 AM	12.00 PM NOON	3.00 PM
AUTUMNAL EQUINOX MATTER OF RIGHT	Sep 23, 09:00 AM:			
AUTUMNAL EQUINOX PROPOSED	Sep 23, 09:00 AM:			
WINTER SOLSTICE MATTER OF RIGHT	Dec 21, 09:00 AM:			
WINTER SOLSTICE PROPOSED	Dec 21, 09:00 AM:			

Existing

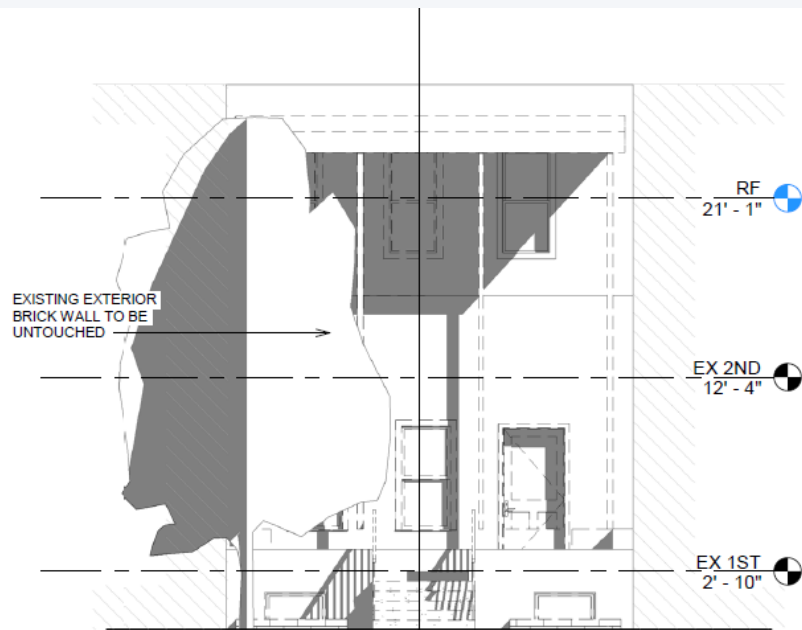


Proposed

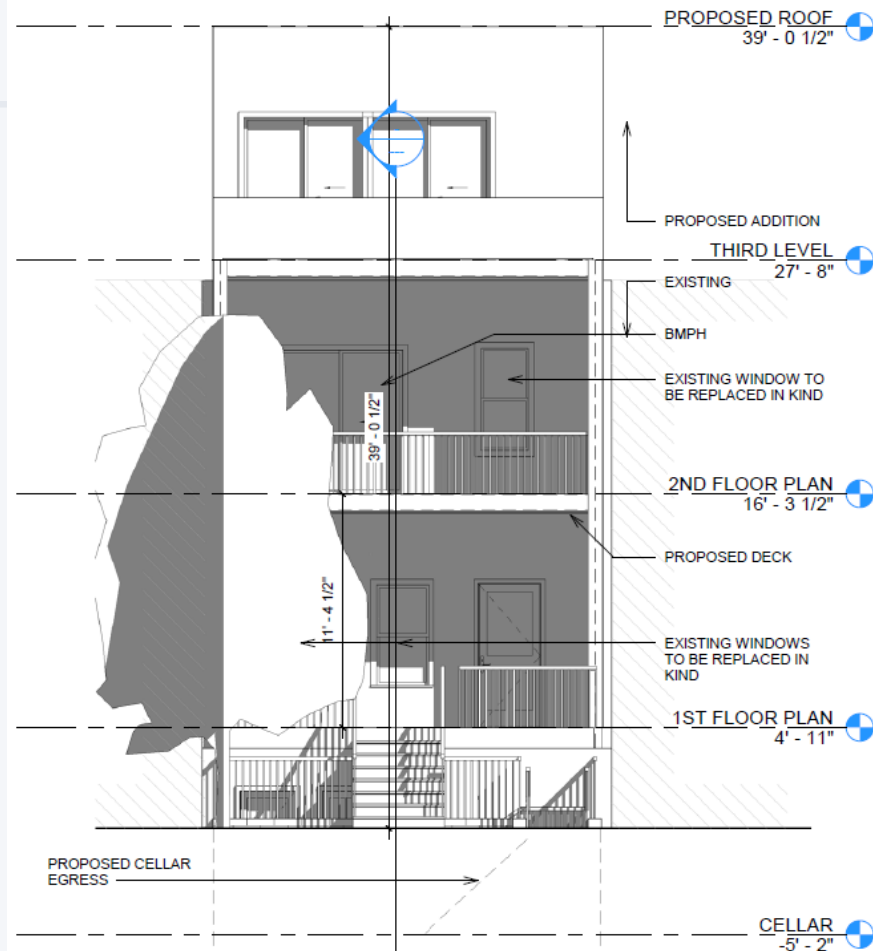
Proposed Floor Plans



Elevations - Front

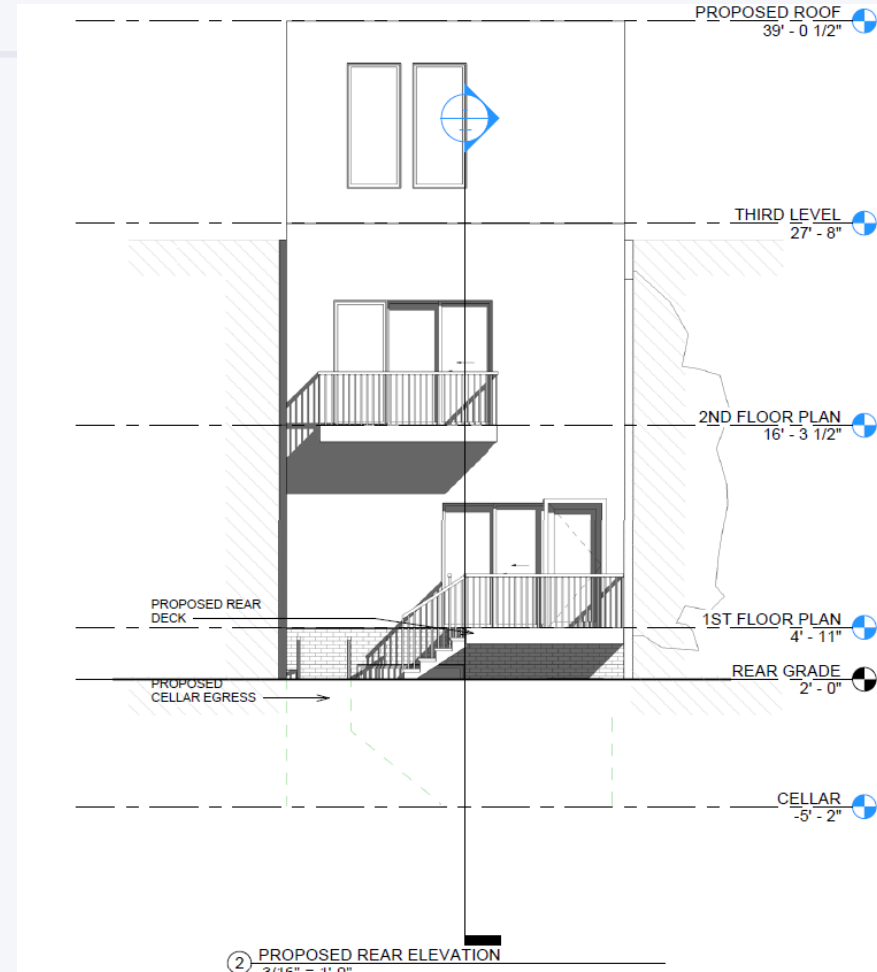
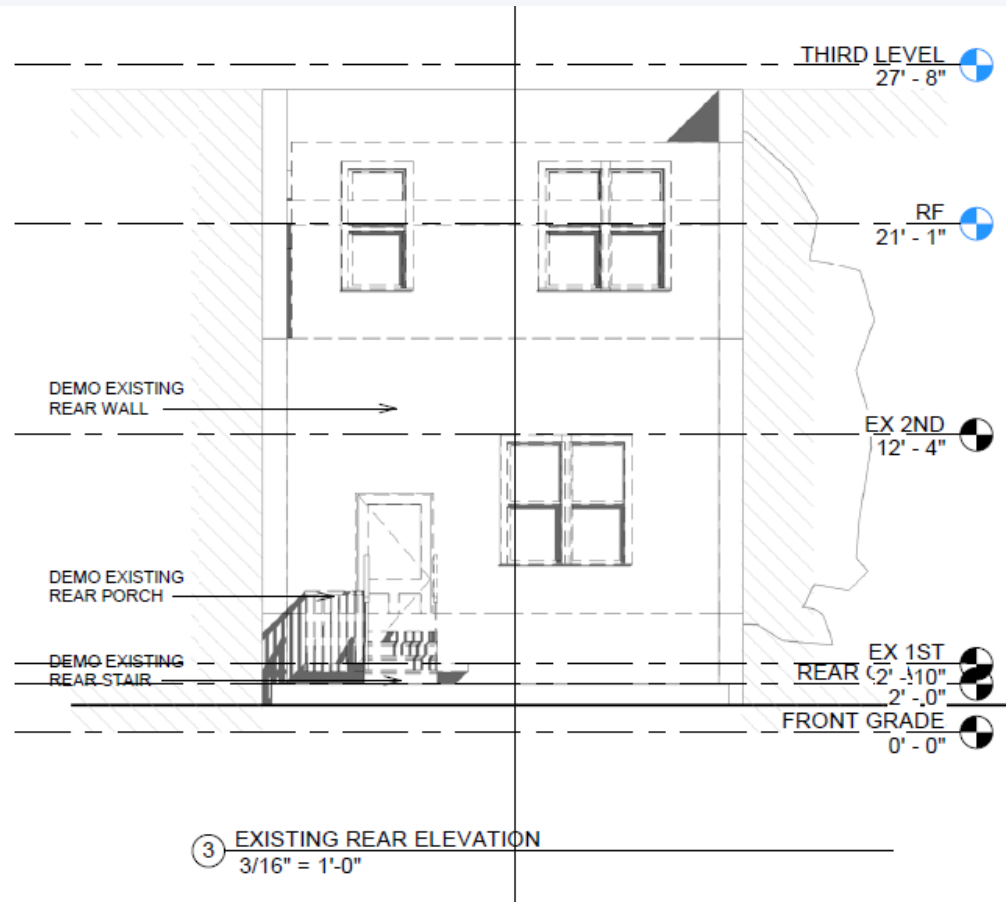


① EXISTING FRONT ELEVATION
3/16" = 1'-0"

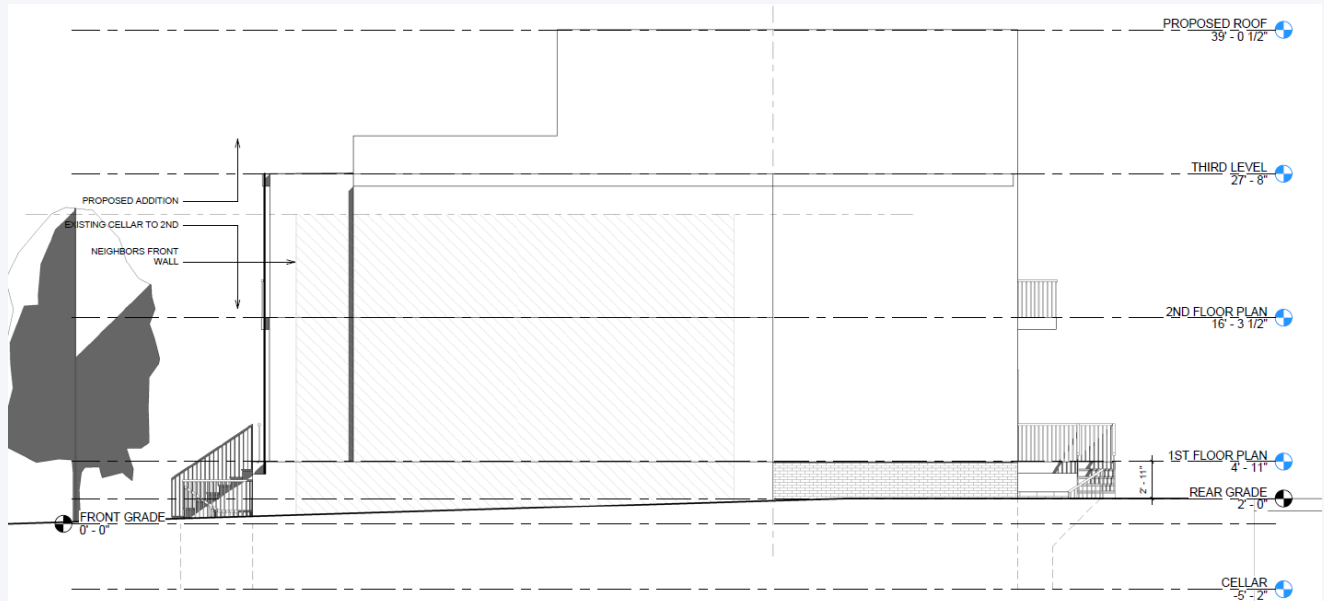
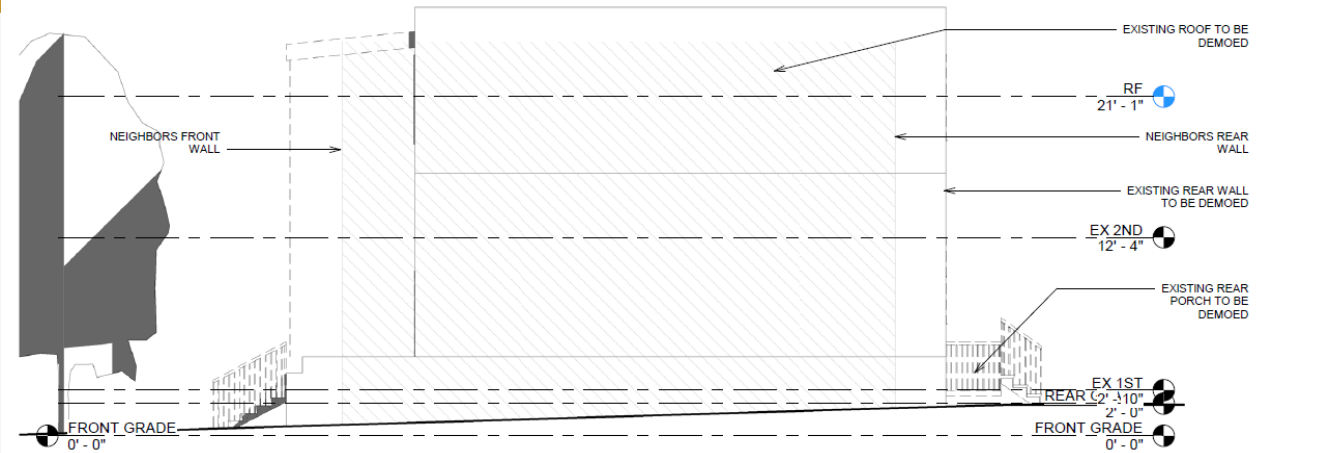


① PROPOSED FRONT ELEVATION
3/16" = 1'-0"

Elevations - Rear

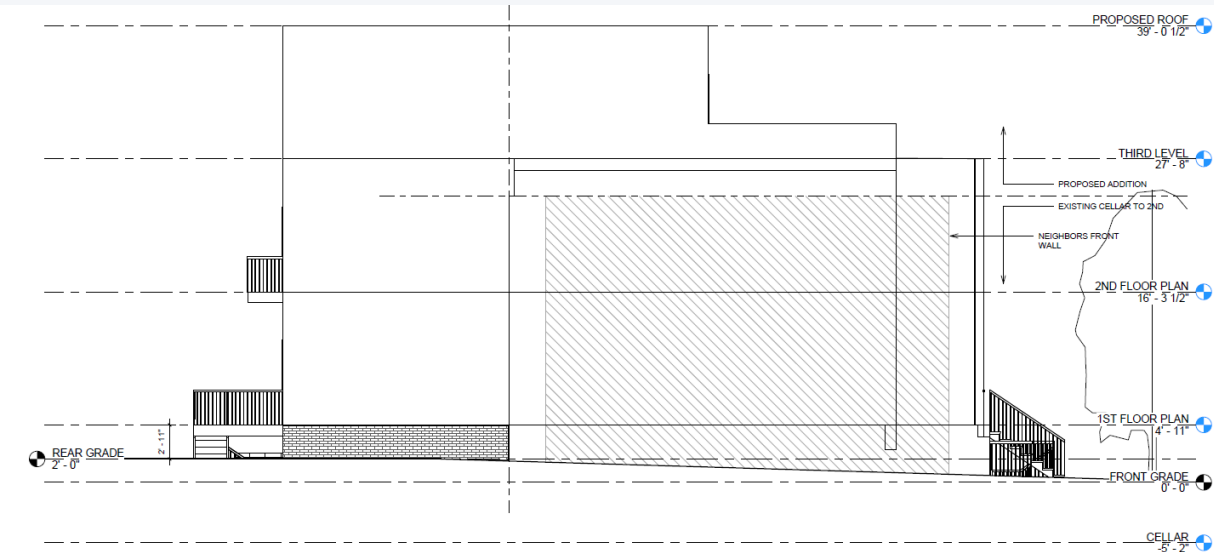
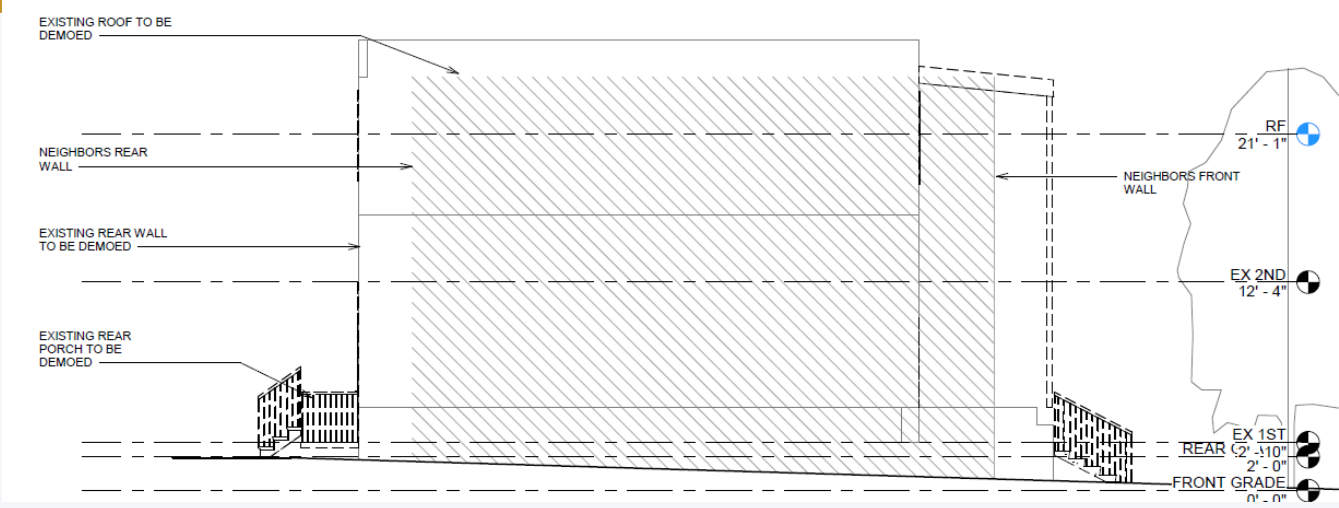


Elevations Right Side



Elevations

Left Side



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18263-B of Stephanie and John Lester, pursuant to 11 DCMR §§ 1202.1 and 3104.1, for a special exception under § 223 to allow a rear addition to an existing one-family row dwelling not meeting requirements for lot occupancy (§ 403), rear yard (§ 404), or open court width (§ 406) in the CAP/R-4 District at premises 117 C Street, S.E. (Square 733, Lot 23).¹

HEARING DATE: October 25, 2011
DECISION DATE: November 8, 2011

DECISION AND ORDER ON REMAND

This self-certified application was submitted on July 7, 2011 by Stephanie and John Lester (collectively, the “Applicant”), the owners of the property that is the subject of the application. The application, as finally amended, requests a special exception under § 223 of the Zoning Regulations to allow construction of a rear addition to a one-family row dwelling not meeting zoning requirements related to lot occupancy, rear yard, or width of open court in the Capitol Interest (CAP) Overlay/R-4 District at 117 C Street, S.E. (Square 733, Lot 23). Following a public hearing, the Board voted to approve the application.

This application was originally approved by summary order issued November 17, 2011. Charles Parsons,² who appeared at the public hearing as a person in opposition to the application, petitioned the D.C. Court of Appeals for review of the Board’s decision, and the Court vacated the summary order and directed the Board to prepare a full order with findings of fact and conclusions of law to facilitate judicial review of its decision. *Parsons v. D.C. Bd. of Zoning Adjustment*, D.C. Court of Appeals No. 11-AA-1606, decided February 28, 2013. Pursuant to the Court’s directive, the Board now issues this order.³

¹ This caption has been revised to reflect the zoning relief ultimately requested by the Applicant. A full discussion of the original application and its amendment is contained in the findings of facts.

² Following the issuance of the original summary order in November 2011, Mr. Parsons filed a motion for reconsideration as well as a request to waive the Board’s rules and permit filing of a motion for reconsideration by a person who was not a party in the original proceeding. For the reasons set forth in BZA Order No. 18263-A, the Board denied Mr. Parson’s request for a waiver and dismissed the related motion for reconsideration.

³ Mr. Parsons filed a “Motion for Resolution on Merits” on May 23, 2013. In addition to requesting that the Board prepare this order, Mr. Parsons also requested a hearing on his motion for reconsideration and that he be made a party. The Board did not consider the remand instructions as encompassing any other action than the issuance of this order, and therefore instructed the Office of Zoning staff to return the motion to Mr. Parsons.

37. By report dated August 25, 2011, the Architect of the Capitol submitted a memorandum finding that the application was not inconsistent with the intent of the CAP/R-4 Zone District and would not adversely impact the health, safety and general welfare of the U.S. Capitol Precinct or be inconsistent with the goals and mandates of the U.S. Congress. (Exhibit 26.)

CONCLUSIONS OF LAW AND OPINION

Preliminary Matter – The Trellis Issue

In its letter to the Board and during its testimony the CHRS zoning committee asserted that the use of the trellis to connect the existing dwelling and the Alley Addition would not result in the creation of a single enlarged building. If that is correct, then the Applicant's proposal would result in a principal building and an accessory building on the lot. The only meaningful difference in the zoning relief required under that scenario would be that the Applicant would need a variance from height limit applicable to accessory buildings.

As will be explained, the Board has consistently held that arguments asserting the need for additional zoning relief are irrelevant to its consideration of an application for special exception relief. Nevertheless, the Board will also explain why a basis exists to conclude that the Applicant's planned trellis will create a single building.

This Application was self-certified pursuant to 11 DCMR § 3113.2. That provision allows an architect or attorney to certify that zoning relief is needed and the type of relief required. Prior to the adoption of § 3113.2, an application needed to be accompanied by a Zoning Administrator referral, which could not be obtained unless a building permit application was filed and rejected. Self-certification therefore allows property owners who know what zoning relief is needed to seek that relief prior to applying for a building permit.

However, because there is always the chance that the Zoning Administrator might later disagree as to the type of relief needed, each self-certification form, including the one made here, requires the applicant, and where applicable its agent, to acknowledge that:

[T]hey are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment (BZA) does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

Thus the Board's grant of this or any other self-certified application does not prevent the Zoning Administrator from denying a building permit because more relief is needed, or the Board from affirming the denial.

BZA APPLICATION NO. 18263-B
PAGE NO. 10

It is for this reason the Board has consistently held that assertions of an erroneous certification are irrelevant to its review of applications. For example, in *Application No. 16974 of Tudor Place Foundation* (2004), the Board responded to such an assertion by stating:

Assuming that the opposition is correct . . . the most that can be said is that the applicant will need variance relief. That fact alone does not require the Board to deny a special exception. . . . Our inquiry is limited to the narrow question of whether the Applicant met its burden under the general and specific special exception criteria.

Accord *Application No. 18250 of Raymundo B. Madrid* (2011); *Application No. 17537 of Victor Tabb* (2007) (“The question of whether an applicant should be requesting variance relief is not germane to the question of whether a special exception should be granted.”)

These holdings are consistent with the Court of Appeal’s admonition that “[i]n evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought.” *Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment*, 802 A.2d 359, 363 (D.C., 2002). It would defeat the entire purpose of the self-certification process if one of the “requirements of the exception sought” is to prove the exception alone will suffice. The sufficiency of the self-certified relief must be proven in the first instance to the Zoning Administrator and not the Board.

This is not to say that the Board may not, on its own motion, dismiss an application when there is no plausible basis to conclude that the relief requested is sufficient. The Board has the right not to waste its time. For example, if an applicant’s own undisputed computation showed that a proposed building would exceed the maximum height permitted, the Board could dismiss the application if the applicant refused to add the needed variance. But where, as here, the issue is not one of computation, but interpretation, the Board should at this stage allow the Zoning Administrator to carry out the function of “administratively interpreting . . . the Zoning Regulations” vested in him by Part 3 (F) of Reorganization Order No. 55 (1953).

Nevertheless, since the Board allowed testimony and submissions on the trellis issue, it will explain why dismissal of the Application was not warranted.⁶

Subsection 199.1 of the Zoning Regulations defines a “building” as a structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, or chattel. The Board has previously concluded that a trellis meets the definition of “building” when it has a roof that provides at least 51% coverage, is supported by columns, and is used for the shelter, enclosure or support of persons. See *Application No. 17331 of JPI Apartment Development LP* (2005) at 2.

⁶ The record was not reopened as part of the remand and therefore the Board has no knowledge as to whether a building permit was applied for or issued. This order is written based upon the facts known to the Board at the time of its original decision.