The Board of Zoning Adjustment
For The District of Columbia

Appeal of Decision Regarding Building Permit No. B2309496 (Issued on August 23, 2024)	BZA Appeal No.: _____ (Temporary Case No.: BZATmp4576)

Statement of Appeal

This appeal is submitted by Appellants Courtney Bolin and William Gabler, whose property is situated at 1507 Irving Street NE, Washington, D.C. 20017 (Lot 9 of Square 4017). As outlined below, Zoning Administrator's decision that the proposed new two-story accessory apartment to be constructed at 3021 15th Street NE, Washington, D.C. 20017 (Lot 22 of Square 4017) violates both Ms. Bolin and Mr. Gabler's constitutional due process rights, and the clear and unambiguous language of 11 DCMR (Zoning Regulations of 2016) ("Regulations"). Thus, Building Permit No. B2309496 (issued Aug. 23, 2024) must be revoked, and the placement of the new structure must be brought into conformance with the Regulations before construction can continue.

Standing and Jurisdictional Statements

Appellants Courtney Bolin and William Gabler have standing to bring the present appeal as homeowners of 1507 Irving St NE, whose property line is about a foot away from the proposed two-story home and whose own home is located about 12 feet from the proposed two-story home. As explained below, Ms. Bolin and Mr. Gabler are negatively impacted from the expansion of the prior nonconforming structure, which has since been demolished. As a result of the Zoning Administrator's failure to enforce the unambiguous requirements of the Regulations and granting the permit as a matter of right, Ms. Bolin and Mr. Gabler's

constitutional due process rights have been violated: they were not given adequate opportunity to protect their property from the burden of the constructive easement that the Zoning Administrator has placed upon it to accommodate all future required exterior maintenance to the new two-story home. In addition to the constitutional due process violations, failure to faithfully apply the Regulations has resulted in a permit being issued as a matter of right without the eight-foot side yards requirements being met, resulting in present and future damage to Ms. Bolin and Mr. Gabler's home without the permit being channeled through the proper variance and special exception procedures.[1] If the construction continues, in addition to placing an unconstitutional easement on Ms. Bolin and Mr. Gabler's property, they will be deprived of natural light, as well as the ability to maintain, use, and enjoy their own home. Ms. Bolin and Mr. Gabler's privacy in their home will also drastically decrease. Additionally, as discussed further below, failure to enforce the Regulations impedes long-term growth in Ms. Bolin and Mr. Gabler's community by giving preferential treatment to homeowners with resources to construct accessory apartments before other neighboring homeowners could do the same, discouraging the development of affordable housing the residential house zones and placing unconstitutional constructive easements on any bordering property to which access would be required to perform required exterior maintenance.

Appellants Courtney Bolin and William Gabler's appeal of Building Permit No. B2309496 (issued as a matter of right on Aug. 23, 2024) is timely because it is filed within

[1] Though not within the jurisdiction of the Board, Ms. Bolin and Mr. Gabler's lights on the first floor of their home began flickering during the demolition. As construction continued, the flickering has become frequent and continuous.

60 days of the issuance of the building permit. 11 DCMR, Subtitle Y, § 302.4. The permit, however, which describes the work to be conducted as restoration of an existing garage "in need of repair," did not provide adequate notice. It was not until mid-September 2024, when construction began, and the then-existing nonconforming structure was demolished, that Ms. Bolin and Mr. Gabler discovered that the work extended beyond repairs. And it was not until the end of September 2024, that the permit materials were made publicly available on the Department of Building's website due to an inadvertent website error. Further, Ms. Bolin was never provided a neighbor notification as required under 12A DCMR § 106.2.18.3. All of these circumstances have impacted Ms. Bolin and Mr. Gabler's ability to meaningfully understand and navigate the issues in a timely manner.[2]

Errors on Appeal

1. Whether, by failing to enforce the Regulations, the Zoning Administrator violated Ms. Bolin and Mr. Gabler's constitutional due process rights to protect their property from being burdened with a constructive easement, resulting from the Zoning Administrator permitting a two-story secondary home to be built without the required side yards such that the 3021 15th Street NE homeowners will have to enter Ms. Bolin and Mr. Gabler's property to perform all future required exterior maintenance.

2. Whether the new accessory apartment permitted at 3021 15th Street NE violates the clear and unambiguous language of the 2016 Zoning Regulations by permitting a detached

[2] As a result of the lack of proper notice, Ms. Bolin and Mr. Gabler respectfully reserve their right to supplement their appeal as allowed under 11 DCRM, Subtitle Y, Chapter 3, § 302.16.

building, a freestanding two-story secondary home, to be built without the required eight-foot side yard required in the R-1 zone.

Evidence and Witnesses

Ms. Bolin and Mr. Gabler will supplement their appeal prior to the hearing to provide a complete list of evidence and witnesses, as permitted by 11 DCRM, Subtitle Y, Chapter 3, § 302.12, within the time allotted by 11 DCRM, Subtitle Y, Chapter 3, § 302.16.

Relevant Facts

In mid-September 2024, the 3021 15th Street NE homeowners ("15th Street Homeowners") demolished an old garage situated in a corner of their property and bordering two adjoining properties. At that time, Ms. Bolin and Mr. Gabler first became aware that the scope of the construction project occurring at their adjoining property line was much greater than the description of work described a neighbor notification letter addressed to Mr. Gabler, which indicated an intent to "repair" an existing nonconforming garage situated at the property line shared by the 15th Street Homeowners and Ms. Bolin and Mr. Gabler's property. [3] Ms. Bolin and Mr. Gabler attempted to view the permit materials online; unfortunately, due to a website error, they were not publicly available until the end of September 2024. Exhibit A. Once the permit materials were made publicly available, Ms. Bolin and Mr. Gabler realized that the 15th Street NE Homeowners intended to construct a new two-story secondary home, of nearly equal height to Ms. Bolin and Mr. Gabler's own

[3] Ms. Bolin and Mr. Gabler jointly own the property located at 1507 Irving Street NE, Washington, D.C. 20017 (Lot 9 of Square 4017). Ms. Bolin was never provided the neighbor notification as required by 12A DCMR § 106.2.18.3. For this reason, the building permit was improperly issued without meeting the legally required notice. 11 DCMR, Subtitle A, Chapter 3, § 301.1.

home, about a foot away from their shared property line. As shown below, the new construction significantly enlarges the prior nonconforming garage.

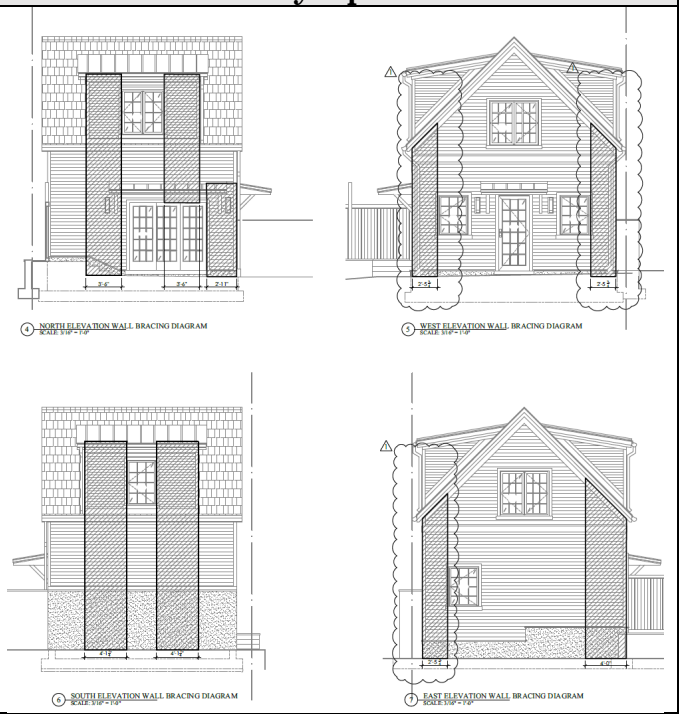
Rear Side Prior Garage	New Accessory Apartment Home
	

Exhibit B; Exhibit C.

As the 15th Street Homeowner's architectural plans acknowledge, the placement of the old garage was nonconforming under the current Regulations. *See* Exhibit D (stating "exist[ing] accessory structure (2-car garage) to be repaired/re-built in place w/ 2nd floor addition per ***Subtitle C***, Section ***202.1 & 202.2***") (emphasis in original). Likewise, the architect relied upon the age of the existing garage to exempt a repaired structure from having to comply present with the eight-foot side yards requirement. *See* Exhibit D (stating "exist[ing] accessory structure constructed prior to 2016 zoning regulations exempt from meeting ***Subtitle D***, Section ***5005.1***") (emphasis in original). This language is annotated below.

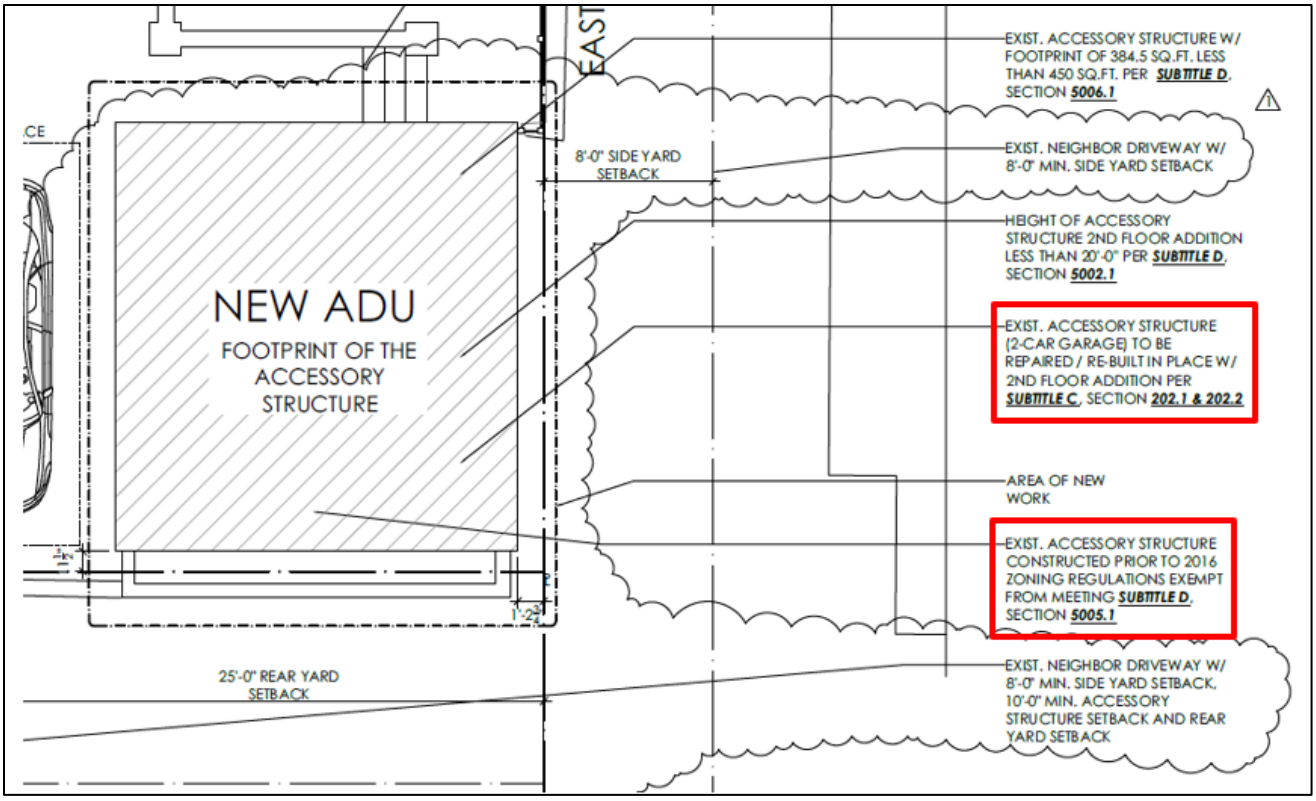


Exhibit D (annotated). Yet, when construction began, the nonconforming garage was demolished to make way for an entirely nonconforming new two-story home.

After reviewing the permit materials and the Regulations, Ms. Bolin and Mr. Gabler believed the permit was issued by mistake. After several calls, Ms. Bolin reached a Zoning Technician at the Office of Zoning Administration. After explaining Ms. Bolin and Mr. Gabler's concerns that the new construction was nonconforming with the eight-foot side yards requirements placed on all detached buildings in the R-1 zone and would result in a constructive easement on Ms. Bolin and Mr. Gabler's property, the Zoning Technician directed Ms. Bolin's inquiry to his superiors for review. Through the Zoning Technician, the Zoning Administrator responded that the approved permit demonstrates compliance with the Zoning Regulations. Exhibit E. This determination was based on the following:

> [T]he side yard setback development standards of Subtitle D § 208.2 do not apply to Accessory Structures because accessory structures have their own development standards found in 11-DCMR Subtitle D Chapter 50. The key points found in chapter 50 are the following:
>
> > 11-DCMR 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. ***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***.
>
> So the development standards of Chapter 2 are overridden by Chapter 50, and in the event of a conflict, Chapter 50 regulations are the ones that apply to the Accessory Structure.
>
> . . .
>
> [Ms. Bolin] also brought up the point about Subtitle D § 208.2 containing language specifically referring to detached structures, however, this refers to a ***detached principal structure***, as opposed to a ***semi-detached*** or ***attached principal structure*** as can be found in Subtitle D §§ 208.3, 208.4, and 208.5. Not all of the principal structures found in the R-1B Zones across the District are detached, and therefore, these sections provide for the applicable regulations for those properties that are not Detached Structures. Again, this section does not apply to Accessory Structures, since this section is specifically modified by Chapter 50.

Exhibit E (emphasis in original). No written response was given to Ms. Bolin's inquiry regarding 11 DCMR, Subtitle C, entitled "Nonconformities," of the Regulations, or her concerns about constructive easement that would be required for future exterior maintenance. Rather, the Zoning Administrator determined that the side yard requirements of "Subtitle D § 208 do not apply to Accessory Structures because [they] have their own development standards under . . . Subtitle D Chapter 50." Exhibit E. The Zoning Administrator also, misquoting the language of the Regulations, determined that "Subtitle

D § 208.2 contain[s] language specifically referring to . . . detached principal structure[s]." Exhibit E.[4]

Ms. Bolin responded to this determination, pointing out that the Zoning Regulations language did not limit the side yards requirement to principal buildings and providing regulatory support that unambiguously required eight-foot side yards for all detached buildings in the R-1 zone. Exhibit F. Without addressing the regulatory provisions cited by Ms. Bolin, the Deputy Zoning Administrator responded that the "accessory building at 3021 15th ST NE complies with the Accessory Building Regulations contained in Subtitle D, Chapter 50 of the 2016 Zoning Regulations." Exhibit G. No further written explanation was received. On October 22, 2024, Ms. Bolin and Mr. Gabler met with the Zoning Administrator and Deputy Zoning Administrator via video.

Appellees' Aggrievances

By failing to apply the Regulations, the Zoning Administrator has placed a burden Ms. Bolin and Mr. Gabler's property without first providing due process. First, if the new accessory apartment is built without the side yards required under plain and unambiguous text of the Regulations, the Zoning Administrator's decision places a constructive easement on Ms. Bolin and Mr. Gabler's property because they will be forced to allow the 15th Street Homeowners access onto their property for all future exterior maintenance required on their two-story secondary home. Second, the Zoning Administrator is impeding Ms. Bolin and

[4] While discussed in more detail below, 11 DCMR, Subtitle D, Chapter 2, § 208.2 requires that "[t]wo (2) side yards, each a minimum of eight feet (8 ft.) in width, shall be provided for ***all detached buildings***," which are defined in the Regulations as a "building that is completely separated from all other buildings . . . ." 11 DCMR, Subtitle B, Chapter 1, § 102.

Mr. Gabler's ability to maintain and use their own property without potential damage to the 15th Street Homeowners new two-story secondary home. Third, by allowing expanded nonconforming use, Ms. Bolin and Mr. Gabler will have a residential building, of almost equal height, placed just over a foot away from their property line without the protections provided by the Regulations, including their right to notice of special exception and the opportunity to be heard regarding the impacts the new nonconforming building will have on their own home.

Finally, the Zoning Administrator's decision fails to protect the Brookland community's long-term growth by giving preferential treatment to homeowners with resources to construct accessory apartments before other neighboring homeowners can construct accessory apartments. By failing to enforce the required side yards of accessory apartments, a neighboring property owner who later seeks to build an accessory apartment would have to choose whether to situate their own accessory apartment further away from the abutting property line (placing a heavier burden on their own property) or build an detached accessory apartment abutting the existing accessory apartment (resulting in the windows of the existing accessory apartment requiring closure and depriving the new accessory apartment of light as well). Such preferential treatment discourages later-building homeowners from constructing accessory apartments, harming the District of Columbia's initiatives to increase affordable housing in residential house zones. Likewise, it places a constructive easement on their properties to accommodate all future maintenance.

Argument

Contrary to the plain and ordinary meaning of the Regulations, the Zoning Administrator has determined that detached accessory apartments built in the R-1 zone are exempt from the side yards requirement imposed under 11 DCMR, Subtitle D, Chapter 2 § 208.2. This determination relies on misunderstood regulatory language and completely dismisses binding regulatory authority expressly governing the placement of detached buildings, including accessory apartments. As a result, Ms. Bolin and Mr. Gabler's property will be burdened without allowing them to exercise their procedural due process rights.

I. Relevant Regulatory Framework

In 2016, the Zoning Commission repealed the earlier enacted 1958 Regulations and adopted a new set of Regulations in compliance with Z.C. Order No. 08-06A. 11 DCMR, Subtitle A, Chapter 1, § 100.1. The newly enacted Regulations govern whenever they require larger setbacks, reduced bulk, more stringent lot occupancy restrictions, or higher standards than imposed by other statutes or municipal regulations. 11 DCMR, Subtitle A, Chapter 1, § 101.3; *see also* 11 DCMR, Subtitle A, Chapter 1, § 101.4. In addition to the clear regulatory requirements, the Zoning Administrator must (and failed to) provide the constitutional guarantees that the District of Columbia will not deprive any person of their property rights without due process of law. *E.g.*, *Tri Cnty. Indus., Inc. v. Dist. of Colum.*, 104 F.3d 455 (D.C. Cir. 1997); *see also Cedar Point Nursery v. Hassid*, 594 U.S. 139, 154 (2021) ("The fact that a right to take access is exercised only from time to time does not make it any less a physical taking.").

The Regulations govern the placement, construction, modification, and use of residential buildings in the Residential House (R) zones, including both principal buildings

and accessory apartments. 11 DCMR, Subtitle A, Chapter 1, §§ 101.5, 101.9. The Regulations expressly define certain terms of art, *see generally* 11 DCMR, Subtitle B, §§ 100.1, 100.2, and provide that any word not expressly defined in 11 DCMR, Subtitle B, Chapter 1 "shall have the meanings given in Webster's Unabridged Dictionary," 11 DCMR, Subtitle B, Chapter 1, § 100.1(g); *see also* 11 DCMR, Subtitle B, Chapter 1, § 100.1(d) (explaining that "shall" means "mandatory and not discretionary"). Thus, when interpreting and applying the Regulations, the Zoning Administer must rely on Webster's Unabridged Dictionary ("Webster's") to construe the meaning of any word not expressly defined in the Regulations. *See* 11 DCMR, Subtitle B, Chapter 1, § 100.1(g).

a. Regulatory Requirements Placed on Residential Properties Located in the R-1 Zone by 11 DCMR, Subtitle D, Chapters 2 and 50

The Regulations govern both the structure and use of buildings. 11 DCMR, Subtitle A, Chapter 1, § 101.5. Accordingly, the Regulations define various types of buildings by their structural configuration. For example, a "***detached building***" as a "building that is completely separated from all other buildings and has two (2) side yards," a "***semi-detached building***" as a "building that has only one (1) side yard," and a "***row building***" as a "building that has no side yards." 11 DCMR, Subtitle B, Chapter 1, § 102. The Regulations also define the uses that those building structures may serve. For example, a "***principal building***" is the "building in which the primary use of the lot is conducted," an "***accessory building***" is 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," and an "***accessory apartment***" is a "dwelling unit that is secondary to the principal single household dwelling unit in terms of gross floor area, intensity of use, and physical character, but which has

kitchen and bath facilities separate from the principal dwelling and may have a separate entrance." 11 DCMR, Subtitle B, Chapter 1, § 102; *see also* DISTRICT OF COLUMBIA OFFICE OF ZONING: ZONING HANDBOOK (2024) (distinguishing use from structure). The structural and use definitions are not mutually exclusive—for example, a principal building or an accessory building may take form as a detached building.

In the R-1 zone, the Regulations restrict the structures that may serve as principal buildings to detached buildings. 11 DCMR, Subtitle D, Chapter 2, § 200.3 ("A principal building on a lot in any of the R-1 zones shall be a detached building."). This means that an accessory apartment in the R-1 zone must be a detached building because it must either be (1) located within the principal building, which must be a detached building, or (2) in a separate detached building. 11 DCMR, Subtitle D, Chapter 2, § 201.3; 11 DCMR, Subtitle U, Chapter 2, § 253.2.[5] By contrast, in the R-2 zone, on any given lot, a principal building may be a semi-detached building, but an accessory apartment on that lot may be either (1) a semi-detached building (when located within the principal building), or (2) a completely separate detached building. 11 DCMR, Subtitle D, Chapter 2, § 201.4; 11 DCMR, Subtitle U, Chapter 2, § 253.2.

[5] Note that if an accessory apartment is located in a principal dwelling, the Regulations define the accessory apartment and principal dwelling as two "buildings" within a single structure. 11 DCMR, Subtitle B, Chapter 1, § 102 (defining a "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. When separated from the ground up or from the lowest floor up, ***each portion shall be deemed a separate building***, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.").

Where a homeowner elects to build an accessory apartment as a detached building in the R-1 zone, the accessory apartment must comply with all of the requirements placed on all detached buildings in 11 DCMR, Subtitle D, Chapter 2 that are not "specifically modified" or in "conflict" with 11 DCMR, Subtitle D, Chapter 50. 11 DCMR, Subtitle D, Chapter 50, § 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. 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."). This includes yards requirements, such as side yards. 11 DCMR, Subtitle D, Chapter 2, §§ 208.1–208.8.[6]

The Regulations define "***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 structure." 11 DCMR, Subtitle B, Chapter 1, § 100.2 (also defining "lot line" as the "lines bounding a lot"). Because the Regulations do not define "adjacent side," the definition provided by Webster's controls. 11 DCMR, Subtitle B, Chapter 1, § 100.1(g). "Adjacent" means "having a common border" (e.g., "abutting, touching"). Adjacent, WEBSTER'S UNABRIDGED DICTIONARY, https://unabridged.merriam-webster.com/unabridged/adjacent (last visited Oct. 5, 2024). Thus, for an accessory building situated in the corner of an R-1 zone lot, the lot lines that border the adjacent sides of the accessory building are that building's side yards.

[6] The Regulations defines a "yard" as an "exterior space, other than a court, on the same lot with a building or other structure [that is] open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title." 11 DCMR, Subtitle B, Chapter 1, § 100.2.

In the R-1 zone, the minimum side yard required for all detached buildings is eight feet. 11 DCMR, Subtitle D, Chapter 2, § 208.2. The only "specific modification" of the side yard requirements of 11 DCMR, Subtitle D, Chapter 2 to accessory buildings in the R-1 zone is an expansion of the side yard requirement placed on a principal building (increasing the minimum side yard from eight feet to ten feet) where a homeowner constructs an accessory building beside the principal building:

> 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 DCMR, Subtitle D, Chapter 50, § 5005.1 (emphasis added). Indeed, 11 DCMR, Subtitle D, Chapter 50, § 5005.1 expressly preserves the side yard requirement placed on accessory buildings.

b. Regulatory Amendments Further Support the Regulations' Clear and Unambiguous Language Preserving the Side Yards Requirements For Accessory Buildings

On February 11, 2021, the Zoning Commission of the District of Columbia ("Commission") amended 11 DCMR, Subtitle D, Chapter 50. Final Rulemaking & Order No. 17-23 published at 66 DCR 2337 (February 11, 2019). The amendment stems from a petition filed by the Office of Planning's proposing amendments to "clarify and provide consistency in the regulations governing accessory buildings across zones." Final Rulemaking & Order No. 17-23 published at 66 DCR 2337 (February 11, 2019); *see also* Z.C. Case No. 20-19, OP Petition and Set Down Report (Sep. 4, 2020) and Public Meeting Transcript (Sep. 14, 2020).

At the September 14, 2020 public meeting, the Office of Planning explained that the regulatory provisions governing the placement of accessory buildings at that time required "small garden shed structures" to comply with both the side yard requirements "from the principle [sic] building and also . . . conformance with the [accessory building] side yard set back requirements." Z.C. Case No. 20-19, Public Meeting Transcript, *50–51 (Sep. 14, 2020). When addressing one of the Commissioner's concerns that the Board of Zoning Adjustment might receive more cases if homeowners were permitted to "put[] something right up against the fence of a next door neighbor," the Office of Planning responded that it would consider those concerns. Z.C. Case No. 20-19, Public Meeting Transcript, *51–52 (Sep. 14, 2020). Ultimately, the Zoning Commission made the following amendment—removing the "[n]o minimum side yard" requirement for accessory buildings construed to the rear of a principal building—to 11 DCMR, Subtitle D, Chapter 50, § 5005.1:

Regulatory Language Before February 11, 2021 Amendment	**Regulatory Language After February 11, 2021 Amendment**
5005.1 No minimum side yard is required for an accessory building in a R zone, unless the accessory building is located beside the principal building, whereby it shall be 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.).	5005.1 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.). 5005.2 A shed may be located within a required side yard of a principal building.

Thus, while past versions of the Regulations disposed of the side yards requirements imposed upon accessory buildings, the current Regulations do not. Rather, the Regulation was amended to remove the "specific modification" 11 DCMR, Subtitle D, Chapter 50, § 5005.1 previously placed on 11 DCMR, Subtitle D, Chapter 2, § 208.2's requirement that all

detached buildings in the R-1 zone, including detached accessory apartments, have side yards of at least eight feet.

Title 11 DCMR, Subtitle D, Chapter 50 does not "specifically modify" or "conflict" with the side yard requirement placed on all detached buildings—including detached buildings serving as a principal building or detached buildings serving as an accessory apartment—requiring at least eight feet. 11 DCMR, Subtitle D, Chapter 2, § 208.2. The only specific modification that 11 DCMR, Subtitle D, Chapter 50 places on 11 DCMR, Subtitle D, Chapter 2, § 208.2 is an expansion of the side yards requirement principal building when a homeowner wishes to construct an accessory building beside the principal building. While the Zoning Administrator may have correctly found the pre-2021 language to be conflicting with other side yard requirements, the amendment history makes clear that the regulations for minimum side yards must still be met.[7]

c. Requirements Placed on Accessory Apartments Situated in Detached Buildings By Subtitle U, Chapter 2

In addition to physical requirements 11 DCMR, Subtitle D, Chapter 50, 11 DCMR, Subtitle U, Chapter 2 places on additional use requirements on detached buildings serving as accessory apartments. For example, by requiring the owner occupy either the principal dwelling or the accessory apartment for the duration that the accessory apartment is in use. 11 DCMR, Subtitle U, Chapter 2, § 253.5. Additionally, where a proposed accessory apartment is nonconforming such that a special exception is required, the use of an accessory apartment cannot be "objectionable to neighboring properties because of noise,

[7] To the extent that the prior Regulations enabled the construction of a structure that could not be reasonably maintained without also granting a constructive easement onto a neighbor's property, this would be unconstitutional.

traffic, parking, or other objectionable conditions" due to the accessory apartment's "location." 11 DCMR, Subtitle U, Chapter 2, § 253.8(f)(1).

II. The Residential Building Permitted By the Zoning Administrator Is Illegal Because It Awards A Constructive Easement On Appellants' Property And Fails To Comply With The Side Yard Requirements Set Out In Subtitle D of the Regulations

Though the Regulations clear and unambiguous language expressly requires side yard setbacks for accessory apartments, the Zoning Administrator must not interpret the Regulations in a manner that allows buildings on neighboring properties to be built, as a matter of right, such that the location of the new building results in a constructive easement on a neighboring property without providing due process to the affected property owners. *E.g.*, U.S. CONST. amend. XIV, § 1; 11 DCMR, Subtitle A, Chapter 1, § 101.4; *see also* 11 DCMR, Subtitle A, Chapter 1, § 101.3. By allowing a detached two-story home to be built without enforcing the minimum side yards requirement, the Zoning Administrator has approved the placement of a building where all future maintenance will result in a constructive easement on Ms. Bolin and Mr. Gabler's property. The procedures in place failed to provide Ms. Bolin and Mr. Gabler with the ability to be heard with respect to the implications on their property prior to depriving them of their procedural due process rights. *E.g.*, *Tri Cnty. Indus., Inc. v. Dist. of Colum.*, 104 F.3d 455 (D.C. Cir. 1997); *see also Cedar Point Nursery v. Hassid*, 594 U.S. 139, 154 (2021) ("The fact that a right to take access is exercised only from time to time does not make it any less a physical taking."). For this reason alone, the Zoning Administrator's interpretation of the Regulations must be reversed.

The Zoning Administrator's decision contradicts the plain meaning of the clear and unambiguous Regulatory Language. First, the Zoning Administrator erroneously determined that the "the side yard setback development standards of Subtitle D § 208.2 do not apply to Accessory Structures because accessory structures have their own development standards found in 11-DCMR Subtitle D Chapter 50." Exhibit E (citing 11 DCMR, Subtitle D, Chapter 50, § 5001.1) (providing that the "development standards in Subtitle D, Chapter 2, shall apply to accessory buildings in the R zones except as specifically modified by this chapter" or in "the event of a conflict between the provisions of this chapter and other regulations of this title"). Since February 11, 2021, when the Zoning Commission removed the regulatory language disposing of accessory building side yards requirements when the accessory building is not located beside the principal building (discussed above), the regulatory provisions of Subtitle D, Chapter 50, § 5005.1 have only provided a "specific[] modifi[cation]" to the side yard requirements placed on accessory apartments built beside a principal building. Thus, the side yards requirements set forth in 11 DCMR, Subtitle D, Chapter 2, § 208.2 are binding and require "all detached buildings" in the R-1 zone have side yards that are "each a minimum of eight feet (8 ft.) in width." Here, because the new accessory apartment is not beside the home, the Regulations require the new accessory apartment (currently permitted location annotated in yellow) to be placed within the area defined by the blue outline relative to the adjacent properties' (annotated in red overlay) bordering property lines:

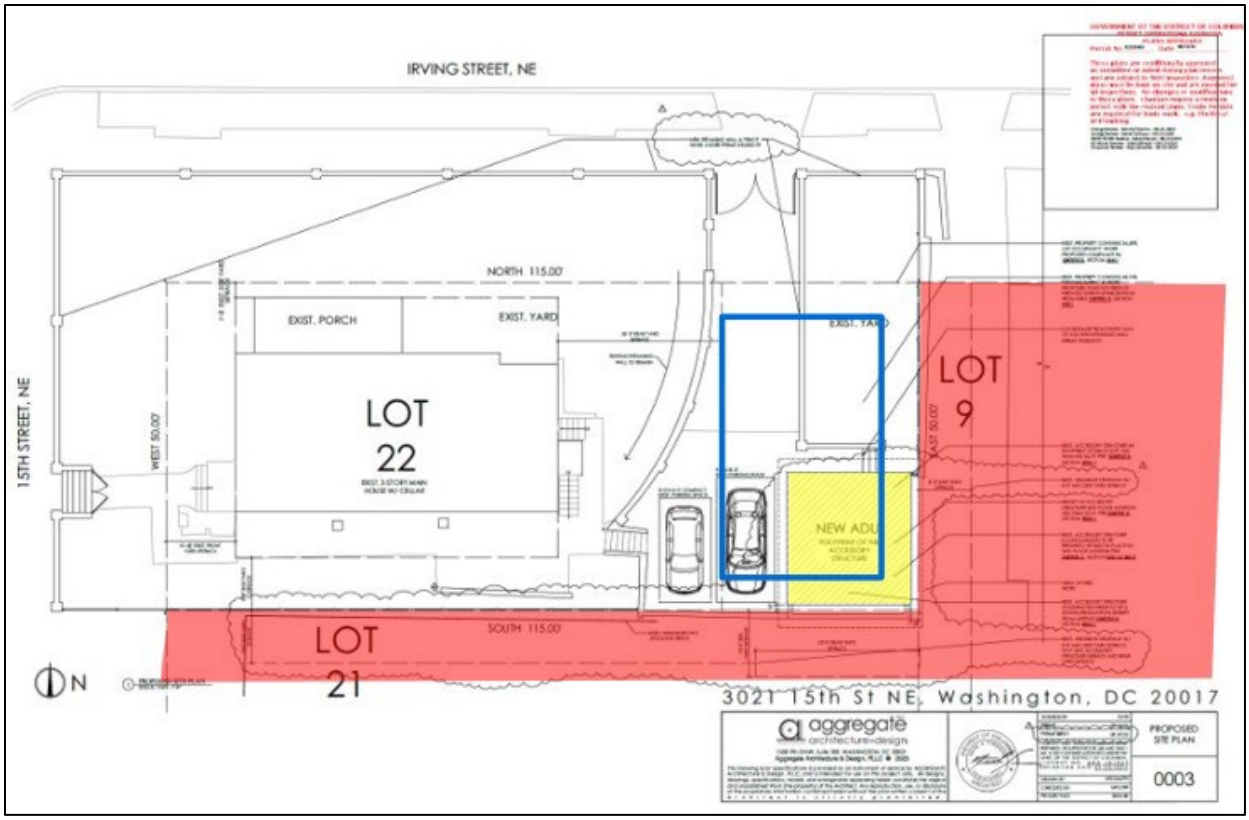


Exhibit C (annotated); *see also* 11 DCMR, Subtitle D, Chapter 2, § 208.2; 11 DCMR, Subtitle D, Chapter 50, § 5005.1; 11 DCMR, Subtitle B, Chapter 1, § 100.2 (defining "side yards" as a "yard between any portion of a building or other structure and the adjacent side lot line"); Adjacent, WEBSTER'S UNABRIDGED DICTIONARY, https://unabridged.merriam-webster. com/unabridged/adjacent (last visited Oct. 5, 2024) (defining "adjacent" as "having a common border" (e.g., "abutting, touching"). Indeed, the architectural plans acknowledge that the placement of the new accessory apartment was only permissible in view of the prior garage, which has since been demolished. Exhibit C (citing 11 DCMR, Subtitle C, Chapter 2, §§ 202.1, 202.2).

The Zoning Administrator's decision also contradicts the clear and unambiguous language of the Regulations. The Zoning Administrator's decision concludes that 11 DCMR,

Subtitle D, Chapter 2, § 208.2 is limited to "detached ***principal*** structures." Exhibit B (emphasis added). This ruling, however, misstates the Regulation, which reads in full:

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

11 DCMR, Subtitle B, Chapter 1, § 100.2. Further, the clear and unambiguous definition for "detached building" provided by the Regulations does not limit "detached buildings" to "detached principal buildings." Rather, the definition expressly applies to all buildings:

> A ***building*** that is ***completely separated from all other buildings*** and has two (2) side yards.

11 DCMR, Subtitle B, Chapter 1, § 100.2. Nor do the Regulations limit "buildings" to "principal buildings," rather, the Regulations define "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. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

11 DCMR, Subtitle B, Chapter 1, § 100.2.

In the end, the Zoning Administrator's decision departs from the Regulations and places a burden on Ms. Bolin and Mr. Gabler's property.

III. The New Nonconforming Accessory Apartment Creates Objectionable Conditions to the Neighboring Properties By Deterring the Development of Future Affordable Housing and Placing a Burden on Ms. Bolin and Mr. Gabler's Property

Ms. Bolin and Mr. Gabler do not dispute the 15th Street Homeowners right to build a second home on their property. Indeed, Ms. Bolin and Mr. Gabler support the District of Columbia's initiatives to make it easier for homeowner to construct accessory apartments

as part of its greater initiative to increase affordable housing. But, as more homeowners seek to build accessory apartments, they must be permitted to rely on the clear and unambiguous language of the Regulations to protect both their rights and the rights of their neighbors. DISTRICT OF COLUMBIA OFFICE OF ZONING: ZONING HANDBOOK (2024) ("Zoning is a technical subject, but it affects everyone."). Without enforcing the Regulation's side yards requirements, the Zoning Administrator is giving preferential treatment to homeowners with the resources to build first, allowing the first homeowner to build up a two-story home up to their shared property line and forcing their neighbors to alter their own land use plans to accommodate the imposition imposed and have the burden of a constructive easement placed on their property.

Further, neighbors that may seek to construct an accessory apartment on their own property at a later time are faced with a difficult decision. If they build to the shared property line themselves, the existing windows of the first built accessory apartment would be required to be closed, inviting hostility. But if they build on their own property to accommodate the existing accessory apartment, they are forced to apply a side yard requirement that their neighbor was exempted from. Worse still, by failing to enforce the side yards requirement, neighbors may be deterred from building entirely—for example, if they are situated between two neighboring lots with accessory apartments built on the adjacent side lot lines on either side. This cannot be the intent of the Regulations, and the Zoning Administrator's deviation from the express requirements to allow new nonconformities places future of sustainable development, community relationships, and affordable housing in question.

In this case, by failing to enforce the Regulations and allowing a new two-story accessory apartment to be built in nonconformance (as acknowledged in the 15th Street Homeowner's own proposed development plans), the Zoning Administrator has essentially placed an easement on Ms. Bolin and Mr. Gabler's property. For the new two-story accessory apartment to be maintained, the 15th Street Homeowners will inevitably have to enter Ms. Bolin and Mr. Gabler's property.[8] The new structure, a much larger building, only exacerbates the potential for future issues and oversites.

Additionally, to the extent that the Zoning Administrator or Board may not have been asked to enforce the side yard requirements placed on accessory buildings since the February 11, 2021 amendments to 11 DCMR, Subtitle D, Chapter 50, § 5005.1 took effect, this is not surprising. Many homeowners contemplating new construction anticipate that a two-story accessory apartment will require exterior maintenance and plan for this by allowing adequate side yards such that they can maintain the home without burdening neighboring properties. Were Ms. Bolin and Mr. Gabler's home not oriented so close to the new construction, they may not have appreciated the oversight. This oversight, however, has true implications.

Had the Zoning Administrator applied the Regulations' side yards requirement, the 15th Street Homeowners could have sought a special exception, allowing Ms. Bolin and Mr. Gabler to exercise their due process rights to protect their own property while working with

[8] Indeed, lack of access to the exterior wall bordering Ms. Bolin and Mr. Gabler's property may be why the previous nonconforming garage was in such disrepair—neither the prior nor present owners inspected the rear side of the old garage in the years that Ms. Bolin and Mr. Gabler have lived in their home.

the 15th Street Homeowners and the Board to find an amiable solution for both parties. Instead, Ms. Bolin and Mr. Gabler were not given adequate notice, nor an opportunity to be heard, before the permit was granted.

Conclusion

For at least the forgoing reasons, the Irving Street Homeowners respectfully request that the presently issued Building Permit No. B2309496 be revoked, and that the proposed accessory apartment be set back the required 8 feet from Ms. Bolin and Mr. Gabler's property line. Alternatively, to the extent that the 15th Street Homeowners ask for a special exception or variance, Ms. Bolin and Mr. Gabler respectfully request that the 15th Street Homeowners go through the required processes so that Ms. Bolin and Mr. Gabler are not deprived of their own due process rights to protect their own property and voice their own interests in front of the Board.

Respectfully Submitted,
Courtney Bolin and William Gabler

Certificate of Service

Courtney Bolin and William Gabler certify that, on October 22, 2024, they served notice of this appeal on the required parties by:

- Two paper copies of the notice of appeal and supporting documents were mailed first class, postage prepaid, to the Office of Zoning, 441 4th Street NW, Suite 200S, Washington, D.C. 20001;
- One Paper one copy of the notice of appeal and supporting documents was mailed first class, postage prepaid, to Claire King, a joint owner of 3021 15th Street NE, Washington, D.C. 20017;
- One Paper one copy of the notice of appeal and supporting documents was mailed first class, postage prepaid, to Brent Kroll, a joint owner of 3021 15th Street NE, Washington, D.C. 20017; and
- One Paper one copy of the notice of appeal and supporting documents was mailed first class, postage prepaid, to Advisory Neighborhood Commission 5B, P.O. Box 4449, Washington, D.C. 20017.

Respectfully Submitted,
Courtney Bolin and William Gabler