

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

**701 Jefferson Street, NE
Cheryl Jeannine Rich Trust**

PRELIMINARY STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF

This statement is submitted on behalf of the Cheryl Jeannine Rich Trust (the “Applicant”), for the property located at 701 Jefferson Street, NE (Square 3749, Lot 95) (the “Property”). The Applicant seeks zoning relief pursuant to Subtitle U § 253.8(f) and Subtitle X § 901.2 of the District of Columbia Zoning Regulations (Title 11 DCMR) to convert an existing one-car garage on the Property into a two-level accessory apartment.

Pursuant to Subtitle Y § 300.15, the Applicant will submit its Prehearing Statement to the Board of Zoning Adjustment (“BZA” or “Board”) no fewer than thirty (30) days before the public hearing on this application. At that time and during the hearing, the Applicant will present testimony and evidence demonstrating that it meets the burden of proof for the requested relief. The following is a preliminary statement outlining how the Applicant satisfies that burden.

I. BACKGROUND

The Property has a land area of 2,794 square feet and is located on the south side of Jefferson Street, NE, mid-block, between Chillum Place and Nicholson Street, in the Riggs Park neighborhood, within the boundaries of ANC 5A-01. In keeping with the character of the area, the Property is improved with an existing two-story semi-detached row home and one-car garage to the rear. There is a 5-foot wide side yard along the western property line, and a 16-foot wide public alley that abuts the Property to the south.

The Property is zoned R-2, consistent with the surrounding neighborhood. The R-2 zone is intended to: (a) provide for areas developed with semi-detached houses; and (b) protect these areas from encroachment by denser forms of residential development. See Subtitle U § 101.6. It is intended to support moderate-density neighborhoods that contain a mix of semi-detached and detached dwellings.

II. PROPOSED ACCESSORY APARTMENT IN ACCESSORY BUILDING

The Applicant proposes to convert the existing one-story garage at the rear of the Property into a two-level accessory building with a 300-square foot accessory dwelling unit. As depicted on the enclosed architectural plans, the accessory building will have a height of 17’- 8.5” and the parapet extends to approximately 19’- 5”. The first level of the accessory building will have an enclosed one-car garage and a stairway that provides access to the accessory dwelling unit above.

Pursuant to Sub. D § 201.1, in all R zones, one (1) principal dwelling unit and one (1) accessory apartment shall be permitted per lot of record, subject to Subtitle U, Use Permissions. Sub. U § 253.8 states that an accessory apartment in an accessory building in an R zone, except

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the R-1B/GT or R-3/GT zone, shall be permitted as a matter of right subject to the following conditions:

- (a) There shall be permanent access to the accessory building apartment;
- (b) The dwelling use of the accessory building shall be coterminous with the permanent access;
- (c) The permanent access shall be provided by one (1) of the following:
 - (1) A permanent passage, open to the sky, no narrower than eight (8 ft.) in width, and extending from the accessory building to a public street through a side setback or shared recorded easement between properties;
 - (2) Through an improved public alley with a minimum width of twenty-four (24 ft.) that connects to a public street; or
 - (3) The accessory building is within three hundred feet (300 ft.) of a public street accessible through an improved public alley with a minimum width of fifteen feet (15 ft.).
- (d) An accessory building that houses an apartment shall not be used simultaneously for any accessory use other than as a private vehicle garage, an artist studio, or storage for a dwelling unit on the lot;
- (e) An accessory building that houses an apartment shall not have a roof deck; and
- (f) An accessory apartment proposed within an accessory building that does not meet the conditions of this section shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, and subject to the following conditions:
 - (1) The accessory building shall be located such that it is not likely to become objectionable to a neighboring properties because of noise, traffic, parking, or other objectionable conditions; and
 - (2) Evidence that there are adequate public facilities for the health and safety of the residents.

The proposed accessory building will not meet any of the requirements for permanent access provided in Sub. U § 253.8 (c) of the Zoning Regulations. As such, the Applicant seeks special exception relief from the Board as discussed below.

III. SPECIAL EXCEPTION RELIEF

A. Relief Requested

The Applicant seeks special exception relief from the criteria Sub. U § 253.8(c), which sets forth the criteria for permanent access to an accessory apartment. It states that permanent access shall be provided by one of the following:

- A permanent passage, open to the sky, no narrower than eight (8 ft.) in width, and extending from the accessory building to a public street through a side setback or shared recorded easement between properties;
- Through an improved public alley with a minimum width of twenty-four (24 ft.) that connects to a public street; or
- The accessory building is within three hundred feet (300 ft.) of a public street accessible through an improved public alley with a minimum width of fifteen feet (15 ft.)

[Sub. U § 253.8(c)(1) –(3).]

In this case, the permanent access does not meet any of the foregoing criteria. First, the access extending from the apartment unit to Jefferson Street, along the western boundary of the Property, has a width of 5 feet where a minimum width of 8 feet is required. Second, although the public alley south of the Property connects to both Jefferson Street and Chillum Place, the public alley has a width of 16 feet where a minimum of 24 feet is required. Finally, the Property is located mid-block, more than 300 feet of Jefferson Street or Chillum place via the public alley.

B. Compliance with Conditions in Sub. U § 253.8(f)

Pursuant to Sub. U § 253.8(f), an accessory apartment proposed within an accessory building that does not meet the conditions of this section shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, and subject to the following conditions:

- (1) The accessory building shall be located such that it is not likely to become objectionable to neighboring properties because of noise, traffic, parking, or other objectionable conditions; and
- (2) Evidence that there are adequate public facilities for the health and safety of the residents.

The proposed accessory apartment meets both criteria. First, the accessory apartment would be located to the rear of the Property and have direct access from the alley. A parking pad will be constructed with the apartment so that the occupant does not have to utilize on-street parking. The proposed footprint and building height of 17 feet would be in keeping with the

current aesthetics on the block. Finally, DC Water has confirmed with the Applicant, through the permitting process, that water is available for the proposed accessory apartment. The surrounding residential development further demonstrates that adequate public infrastructure—water, electricity, and transportation—is available to support the health and safety of the accessory unit’s occupants.

C. Compliance with General Special Exception Criteria of Subtitle X § 901.2

Pursuant to D.C. Code § 6-641.07(g)(2) and Subtitle X § 901.2, the Board is authorized to grant a special exception if it finds that the requested relief is in harmony with the general purpose and intent of the Zoning Regulations and Map, and will not tend to adversely affect the use of neighboring property, subject to any specific conditions set forth in the regulations. The stated purposes of the Zoning Regulations are set forth in D.C. Code § 6-641.02:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the application satisfies the specific requirements for the relief requested. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

As summarized above, the Board must determine whether the requested relief is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property. See 11-X DCMR §§ 901.2(a)–(b):

- a. Relief Requested is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps; and*

b. Relief Requested will not Tend to Adversely Affect the Use of Neighboring Property[.]

In this case, the relief requested would facilitate the construction of an accessory apartment, which is in harmony with the general purpose and intent of the R-2 zone district. In this zone district, a principal dwelling unit and one accessory apartment are permitted on a record lot as a matter of right. While the proposed access does not meet the specific requirements of Sub. U § 253.8(c) relating to permanent access, such as the minimum width or alley dimensions, it remains functionally adequate and is consistent with the existing site conditions and the character of the block. Further the proposed accessory apartment should not adversely affect the use of the neighboring residential properties given its location at the rear of the building, the modest size of the apartment unit, and the availability of off-street parking.

IV. COMMUNITY ENGAGEMENT

The Property is located within the boundaries of ANC 5A, which is the “affected” Advisory Neighborhood Commission pursuant to Subtitle Y § 101.8. Specifically, the Property is within the bounds of ANC-5A-01, which is the Single Member District for Commissioner Keith J. Sellars. The Applicant will notify Commissioner Sellars and ANC 5A upon filing this application and will engage with the ANC throughout the review process.