

Cochran, Patricia (DCOZ)

From: edplevy@aol.com
Sent: Tuesday, July 24, 2018 5:13 PM
To: DCOZ - BZA Submissions (DCOZ)
Subject: Case Number 19521A; David Hunter Smith, Applicant; 3520 S Street, NW; Relief Sought: Modification of Significance/Variance (Correction)

Letter in opposition to granting Modification of Significance to include Variance (Supersedes Exhibit 57)

I write to respond briefly to certain points in "Applicant's Rebuttal to ANC Report." (This letter corrects and supersedes my letter of earlier today on this same subject.)

First, Sections 1209.3 and 1209.4 of Subtitle D state, respectively, that an accessory building may have a maximum of two stories in the R-19 zone and one story in the R-20 zone. Subtitle U, Section 253.9 imposes several conditions for an accessory apartment in the R-19 and R-20 zones. One of those conditions (section 253.9(a)) is that the apartment "shall only be permitted on the second story of a detached accessory building." Giving effect both to this condition and to the language of Sections 1209.3 and 1209.4, means that an apartment is not permitted in an accessory building in the R-20 zone. Put another way, and contrary to the Applicant's contention in its rebuttal to the ANC report, this condition (section 253.9(a)) cannot encourage or require that an apartment be on the second story of an accessory building in the R-20 zone, because no second story is permitted in the R-20 zone.

Second, with respect to point 3 in its rebuttal, the Applicant ignores two key facts. One is that the DCRA almost immediately withdrew its zoning review approval of the applicant's project. In addition, in its Summary Order granting special exception relief in the proceeding underlying this matter, the BZA explicitly stated that, in granting such relief, it "made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed." Thus, the BZA recognized the possibility that the project here could violate a zoning requirement. And contrary to the Applicant's statement in its rebuttal, it was not reasonable for the Applicant to rely on the special exception as sufficient for this project.

Edward P. Levy
3534 T Street, NW
Washington, DC 20007