

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.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 8, 2011, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the State Historic Preservation Officer; the District Department of Transportation; the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6B, the ANC in which the subject property is located; Single Member District/ANC 6B01; and the Architect of the Capitol. Pursuant to 11 DCMR § 3112.14, on July 28, 2011 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on July 29, 2011 (58 DCR 6406).

Party Status. The Applicant and ANC 6B were automatically parties in this proceeding. There were no additional requests for party status.

Applicant’s Case. The Applicant provided testimony and evidence from Jack Lester, the property owner, and Jennifer Fowler, an expert in architecture. The Applicant and its expert witness described the project, explained the need for the various forms of zoning relief requested, and addressed issues regarding potential adverse impact. The Applicant plans to construct a rear addition to the row dwelling at the subject property comprising a portion attached to the existing dwelling, a two-story portion abutting the rear property line, which will provide an enclosed parking space and additional living space on the upper floor, and a covered walkway (referred to throughout the hearing as a “trellis”) to connect both portions into one enlarged building.

OP Report. By memorandum dated October 18, 2011, OP recommended approval of the application subject to two conditions: (i) the lattice roof over the walkway must provide at least 51% coverage; and (ii) the covered walkway must provide a communication between the two portions of the building, rather than terminate at the blank rear wall of the existing house. According to OP, “[p]ast precedent dictates that a trellised structure, though not enclosed, can be considered a meaningful connection if the lattice provides at least 51% coverage and if the covered walkway provides communication between the different parts of the building.” (Exhibit 31.)

ANC Report. By letter dated October 12, 2011, ANC 6B indicated that, at a regular monthly public meeting, held October 11, 2011 with a quorum present, the ANC voted 8-0-0 “to support the applicant’s request as presented.”⁴ According to ANC 6B, “the project’s impact on air, light and privacy will be negligible.” (Exhibit 30.)

⁴ The ANC described the necessary relief as a special exception from the open court requirement to construct a two-story addition on the rear of a row dwelling not meeting the required open court width, a special exception from lot occupancy requirements and a special exception from the rear yard setback restriction to construct a two-story addition with a garage at the rear of the property with a second-floor apartment. This essentially restates the relief requested in the application as amended; i.e. a special exception under § 223 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.

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Architect of the Capitol. By memorandum dated August 25, 2011, the Architect of the Capitol submitted its report on the requested special exception in the Capitol Interest Overlay District. The Architect of the Capitol found that the proposed relief for additions to a three-story row dwelling and second floor addition to a proposed garage, not meeting lot occupancy requirements under § 403 and lot control restrictions under § 2516.1, was not inconsistent with the intent of the CAP/R-4 District and would not adversely affect the health, safety, and general welfare of the U.S. Capitol precinct and adjacent area, and was not inconsistent with the goals and mandates of the United States Congress as stated in 11 DCMR § 1200.1. (Exhibit 26.) The Architect of the Capitol suggested that the Applicant should provide shadow diagrams for both equinoxes and solstices reflecting the impact of the additions and the garage on the adjacent neighbors, and that the amount of storage needed at the garage should be questioned as it affected the size of the proposed structure.

Persons in support. The Board received a letter in support of the application from the owners of a nearby property, 127 C Street, S.E. The letter stated the owners' preference for a new livable space, which would be maintained and inhabited, unlike the existing parking slab, as a way to make the alley a safer, more livable place that would improve the look and community of the neighborhood. (Exhibit 27.) The Applicant also submitted a letter in support of the application written by the owner and resident of 119 C Street, S.E., which abuts the subject property.

Persons in opposition. The Board received a letter, dated August 12, 2011, from the Trustee of the Carl O. Winberg 1992 Trust, which owns several lots in the vicinity of the subject property, including two abutting lots (Lots 22 and 832). The letter stated "no objection to the applicant placing a similar structure [i.e. an accessory building] consisting of two stories but there is some deep concern about any additional height added to the existing structure." According to the Trustee, "[a]ny addition to the existing structure at that location would impact sunlight and create a substantial shade problem with the rear yard of 115 C Street." (Exhibit 25.)

The Board heard testimony and received letters in opposition to the application from the zoning committee of the Capitol Hill Restoration Society ("CHRS"), which objected that the planned trellis would not provide a legitimate connection between the Applicant's house and garage, that the Applicant had not demonstrated a need for additional space, and that approval of the project would have a serious impact on the Capitol Hill historic district. The Board also heard testimony in opposition to the application from Charles Parsons, who owns and resides in a neighboring row dwelling on C Street. Mr. Parsons expressed concerns including that the Applicant's project would "aggravate an already overcrowded situation" in the alley and would encourage construction of other residential buildings there.

Post-hearing submissions. At the close of the hearing, the Board requested additional information regarding the position of Mr. Joseph Wall, an adjacent neighbor, on the proposed application. The Board also left the record open for supporting documentation from the Applicant on the second prong of the Section 223 test, and for material from the Applicant, CHRS, and Mr. Parsons regarding the third prong of the Section 223 test. The Board also left the record open for the Applicant to provide additional material and precedent supporting the use

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of a trellis as a communication between two structures to create a single building. The record was closed for all other matters. (Exhibit 37.)

Following the close of the public hearing, CHRS and Mr. Parsons submitted lengthy responses that exceeded the limited issues permitted by the Board. (Exhibits 38 and 39.) The Applicant submitted the materials requested by the Board and included replies to the responses of CHRS and Mr. Parsons. (Exhibits 40-42.)

At a public meeting on November 8, 2011, the Board declined to accept or review the post-hearing responses because they addressed issues that went beyond the limited extent to which the record had been left open and were not accompanied by a request to reopen the record. (Public Meeting Transcript of November 8, 2011 (Tr. Nov. 8) at 34-35.) The Board then proceeded to deliberate based on the evidence and testimony that was properly submitted into the record, including specific consideration of the concerns and issues raised by Mr. Parsons and CHRS at the hearing. (Tr. Nov. 8 at 36-37.)

FINDINGS OF FACT

The Application and its Amendment

1. The application was filed with the Office of Zoning on July 7, 2011 and was self-certified pursuant to 11 DCMR § 3113.2.
2. The Applicant originally sought zoning relief to construct an addition to the existing row dwelling and also to construct an accessory structure on the subject property.
3. Because the two structures would exceed the maximum lot occupancy permitted by § 403, the Applicant sought relief from that provision. Although normally lot occupancy relief requires a variance, § 223.1 of the Zoning Regulations permits relief from this and certain other provisions by special exception for an “addition to a one-family dwelling or flat, in those Residence Districts where a flat is permitted, or a new or enlarged accessory structure on the same lot.”
4. The proposed accessory building would have exceeded the one-story limitation for such structures imposed by 11 DCMR § 2500.4. Because § 2500.4 is not one of the provisions included within § 223, variance relief was sought.
5. The Applicant sought relief from 11 DCMR § 2516, which provides an exception to the building lot control regulations to permit two or more principal structures on a single subdivided lot in residence zones by special exception. There is no dispute that as originally proposed the new structure would be an accessory building. Since there would

not be two principal buildings on the subject lot, it is unclear why § 2516 relief was sought, but in any event relief from that provision was available as a special exception.⁵

6. Thus, prior to its amendment, the only variance needed by the application was from the height limit applicable to the proposed accessory building.
7. The application was amended on October 11, 2011 to eliminate the request for variance relief from the accessory structure height limit and the special exception authorized by § 2516 based on modifications to the plans that reflected a connection between the row dwelling and the rear garage portion of the addition. (Exhibit 29.)
8. The application was also amended to expand the required special exception under § 223 to also include relief from the rear yard requirement of § 404.2 and the court width requirement of § 406. (Id.) The amended relief was also self-certified pursuant to 11 DCMR § 3113.2. (Id.) The Applicant included revised plans and elevations.

The Subject Property

9. The subject property is located at 117 C Street, S.E., an interior lot on the south side of the street (Square 733, Lot 23) and is mapped within the CAP/R-4 District.
10. The subject property is a rectangular parcel 19 feet wide and 119.5 feet deep, with an area of 2,270.5 square feet. The lot exceeds minimum zoning requirements for lot area and lot width (1,800 square feet and 18 feet, respectively).
11. The subject property is improved with a one-family row dwelling three stories in height, with a basement. Due to a change in grade from north (i.e. the front of the house to the south), the basement level of the Applicant's row dwelling is located at the existing grade at the rear of the house.
12. The subject property currently has a lot occupancy of 44.4%, where a maximum of 60% is permitted as a matter of right. The existing rear yard is almost 53 feet deep, where a minimum depth of 20 feet is required.
13. A public alley, known as Rumsey Court, abuts the subject property at the rear. The alley is 30 feet wide for much of its length, including the portion at the rear of the Applicant's property. Rumsey Court is accessible from D Street by two narrower alleys; one is located approximately mid-block and is 15 feet wide, while the other, located in the western portion of the square between two large buildings, is 25 feet wide (although its public

⁵ The notice of public hearing published in the *D.C. Register* at 58 DCR 6406 erroneously stated that the application sought a "special exception from the accessory building one-story height limitation under subsection 2500.4, and a variance from the building lot control restrictions." As noted the exact reverse was true. Unfortunately this error was carried through to footnote 1 of the Summary Order, which stated that the Applicant amended the application "to withdraw special exception relief from 2500.4 and variance relief from 2516.1."

portion is 10 feet wide). Ramsey Court also provides access to 1st Street via a public alley 10 feet wide.

14. The Applicant's dwelling is attached to similar dwellings on both sides. Both of the adjoining properties have accessory buildings in their rear yards, accessible by the alley. The carriage house at 115 C Street, the lot abutting the subject property to the west, has two stories and contains an apartment on the upper floor. The accessory building at the rear of 119 C Street, the lot abutting the subject property to the east, is a one-story garage. Neither of the accessory buildings on the adjoining lots has any windows directly facing the subject property.
15. The majority of lots in the same square as the subject property are developed with attached dwellings similar in size to the Applicant's residence. Although many of the buildings are devoted to residential use, few other properties in the immediate vicinity of the subject property along C Street are used as one-family dwellings. Several of the properties are used by political and lobbying groups in light of the proximity of the U.S. Capitol. At its western edge, the square contains large buildings used by the National Republican Club and the Republican National Committee, as well as a six-story apartment building located on D Street and directly across the alley to the south of the subject property.
16. Several alley lots improved with row dwellings are located to the east of the apartment building. The alley also provides access to numerous accessory buildings, primarily one-story garages but also several two-story carriage houses as well as garages with living space above a ground-floor parking area. There are approximately nine two-story dwellings in the alley near the subject property.

The Applicant's Project

17. The Applicant proposes to construct a rear addition to the row dwelling. While the main part of the house, fronting on C Street, has three floors, parts of the house at the rear have one or two stories. The planned addition will enlarge the entire existing house to three stories by building second and third stories above the existing one-story portion and a third story above the existing two-story portion. Another component of the new construction will comprise a two-story addition located at the rear of the lot, which will contain an enclosed parking space with living space on the upper floor (the "Alley Addition").
18. There will be a walkway between the existing row dwelling and the Alley Addition that will be covered with a trellised structure. The trellis will provide a minimum of 51% coverage over the walkway and in doing so will physically connect the basement level of the existing row dwelling with the first floor of the Alley Addition. (Exhibits 32-33; Public Hearing Transcript of October 25, 2011 (Tr. Oct. 25 at 63-64.).
19. The trellis and covered walkway will be located at grade level at the rear of the subject property. The connection will extend from a door at the basement level of the main portion

of the dwelling to a door providing access to the Alley Addition. The trellis was included in the Applicant's calculations of lot occupancy. (Exhibits 32-33.)

20. The Applicant and OP testified that the Board and the Zoning Administrator had previously accepted trellises as meaningful communications between structures that create one building for zoning purposes. (Tr. Oct. 25 at 89-90, 93-94, 100; see also Exhibit 35 (ruling from the Zoning Administrator that a trellis constitutes a valid roofed connection between structures); *Application No. 17331 of JPI Apartment Development LP* (2005).)
21. The Alley Addition will be built to the rear lot line so as to provide an enclosed parking space accessible via the public alley. The garage portion of the addition will extend the width of the lot, abutting the neighboring accessory garages, and will provide one parking space and storage on the first floor, along with a stairway giving access to the second floor. The second floor will contain approximately 475 square feet of space (19 feet by 25 feet), with a kitchen, living room, and bathroom. The second floor may be used as a separate dwelling, since a two-family dwelling (also known as a flat") is permitted as a matter of right in the R-4 District. (11 DCMR § 330.5.)

Zoning Relief

22. The CAP/R-4 Zone District permits a lot occupancy of 60%. The Alley Addition component of the Applicant's project will increase the lot occupancy from 44.2% to 69.9%. (Exhibit 29.)
23. The CAP/R-4 Zone District requires a 20-foot rear yard. The Alley Addition component of the Applicant's project will be located in and eliminate the existing rear yard. (Exhibit 29.)
24. The CAP/R-4 Zone District requires courts to have a minimum width of four inches per foot of height. The existing property features a seven-foot wide court. The third-story addition will extend the height of the building to 37 feet, which would require a 12-foot wide court, and the second-story addition will extend the height of the building to 28 feet, which would require a nine-foot wide open court. (Exhibit 29.)

The Impact of the Addition

25. As noted, both neighboring properties are improved with similar row dwellings and have similar garages located at the rear of those lots.
26. The Alley Addition will be located across the 30-foot-wide public alley from the buildings on the south side of the square, and at least 48 feet from the closest alley dwellings located to the east of the apartment building.

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27. The Alley Addition has been designed in the same style as other garages in the alley and in the neighborhood and to a similar scale. The Alley Addition will be made of brick similar to existing alley structures, and it will feature detailing similar to the existing alley structures such as arched brick detailing above the windows, two-over-two double-hung wood windows, and a wide brick arch above the garage door. (Exhibit 29.)
28. The project will not block any windows because the existing main structure and carriage house at 115 C Street have no windows on the east façade. The project will have a minimal impact on light and air to other portions of 115 C Street.
29. The subject property will retain a significant area of open space between the rear of the main portion of the house and the Alley Addition.
30. The Alley Addition will be located at a sufficient distance from all adjoining residences to avoid creating any undue effect on the light and air available to those residences.
31. Providing the additional setback to conform to the court requirements would not make an appreciable difference on the impact to 115 C Street, S.E. and would require the Applicant to introduce an otherwise unnecessary and detrimental variation in the side wall of the addition. (Tr. Oct. 25 at 70-72.)
32. The entire addition will not significantly increase traffic or noise in the square. (Exhibit 29.) The project had been designed to permit trash cans to be enclosed and stored within the Alley Addition rather than left out along the alley. (Tr. Oct. 25 at 68-69.)
33. The subject property is a contributing building in the Capitol Hill historic district. The Applicant testified that the project was favorably reviewed by the Historic Preservation Office and the Historic Preservation Review Board.

Harmony with Zoning

34. The subject property is located within the Capitol Interest (CAP) Overlay and is zoned R-4. The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. Its primary purpose is the stabilization of remaining one-family dwellings. (11 DCMR §§ 330.1, 330.2.)
35. The addition will promote the residential use of the property, consistent with the focus on one- and two-family dwellings of the R-4 zoning
36. The Capitol Interest Overlay was established to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the adjacent area. (11 DCMR § 1200.1.)

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.

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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.

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Here, as set forth in the Findings of Fact, the proposed trellis will be designed to contain sufficient coverage to constitute a “roof,” it will be supported by columns, and it will provide shelter and support for the Applicant. Accordingly, the Board concludes that the trellis meets the definition of “building” under the Zoning Regulations.

The definition of “building” under § 199.1 permits separate portions of a structure to be considered as a single building for zoning purposes provided that a communication exists between those separate portions at or above the main floor. For purposes of this definition, “communication” typically means access between the separate portions of the structure. (See *BZA Appeal No. 16646* at 9.) The Zoning Commission has used the term “meaningful connection” to describe a communication sufficient to create a single building. See *Z.C Order No. 08-34, Center Place Holdings, LLC* (2011); *Z.C. Order No. 05-36, First Stage & Consolidated PUD & Related Map Amendment-200 K Street, N.E.* (2006). The Board has previously found that a trellis may constitute such a connection between separate portions of a structure that creates one building under the Zoning Regulations. (*BZA Application No. 17331* at 2.)

The trellis proposed by the Applicant will provide cover over a walkway that will connect to doors in the row dwelling and the Alley Addition. (See Tr. Oct. 25 at 64 (“[W]e’ve basically created doorways on either side of the trellis connection, so that it [will] be a meaningful connection between the house and the rear structure.”)) Therefore a basis exists upon which the Zoning Administrator could reasonably conclude that the trellis will provide a meaningful communication (that is, access) between separate portions of the structure.

Similarly, the Zoning Administrator could reasonably conclude that the trellis will be located at the main floor. The Regulations define “main floor” as the floor of the story in which the principal entrance of a building is located. This definition presumes, however, that the site is located on relatively even grade. On a sloping site such as the property in this case, the site may have multiple “main floors” that correspond to the changes in grade – one main floor that corresponds with the grade at street level at the front of the row dwelling, and another main floor that corresponds with the grade at the rear of the structure, which is one level below the grade at street level.

This understanding is consistent with other treatments of the term “main floor” under the Regulations. The definition of “building area,” for example, excludes portions of a building that do not extend above the level of the main floor of the main building. Here, the trellis is treated as part of the building area and is counted against the building’s lot occupancy based on an understanding that the basement level constitutes a “main floor” because it is located at the level of the existing grade at the rear of the row dwelling. If the trellis is at the main floor for purposes of calculating lot occupancy, then it must also be at the main floor for purposes of determining whether it is a sufficient building connection.

Accordingly, the Board concludes that a plausible basis exists for the Zoning Administrator to conclude that the Board’s grant of this application suffices to clear a building permit application

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for zoning compliance; there is no basis for the Board to dismiss the application in order to avoid an exercise in futility.

The Merits

The Applicant requests special exception relief 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). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

Pursuant to § 223, an addition to a one-family dwelling or flat may be permitted as a special exception, even when the addition does not meet certain zoning requirements including lot occupancy, rear yard, or width of open court, subject to certain conditions. These conditions include that the addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular the light and air available to neighboring properties must not be unduly affected, the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and the addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

Based on the findings of fact, the Board concludes that the requested special exception satisfies the requirements of §§ 223 and 3104.1. The Board credits the testimony of the Applicant and OP that the proposed rear addition will not unduly affect light or air available to neighboring properties, especially since both neighboring properties are improved with similar row buildings and have similar garages located at the rear of those lots. Given the depths of the lots and the width of the abutting alley, and given that the subject property will retain a significant area of open space between the rear of the main portion of the house and the Alley Addition, the Applicant's Alley Addition will be located at a sufficient distance from all adjoining residences to avoid creating any undue effect on the light and air of those residences. The other portion of the rear addition, built on the same footprint and to the same height as the existing house, as well as the one-story connecting walkway, will not create any undue impact on light or air available to neighboring properties due to their location and relatively small scale.

Similarly, the Applicant's new construction will not unduly compromise the privacy of use and enjoyment of neighboring properties. The addition will not allow views from windows significantly different from the existing house, except for the Alley Addition, which will contain a residence on its second floor. The Board does not find that views from the rear of the subject property, looking out over an open area to the north or over an alley 30 feet wide to the south, will compromise the privacy of use or enjoyment of any neighboring property.

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The Applicant's new construction will not be visible from C Street and thus will not visually intrude on the character, scale, or pattern of houses along the street frontage. The addition will be visible from the rear alley, and its appearance will be similar to the numerous existing garages and two-story carriage houses along the alley. The new construction will maintain the residential appearance of the property, and will not alter its scale or character.

The Board notes that the project is also subject to review by the Historic Preservation Review Board for compatibility with the surrounding buildings, among other elements, and, according to the Applicant, has been received favorably. The Board does not credit a statement, made without elaboration in a letter submitted by the zoning committee of the Capitol Hill Restoration Society, that approval of the Applicant's project would have a serious impact on the Capitol Hill historic district. This alleged impact was not explained and thus the Board was unable to discern its import for purposes of a zoning review of a request for special exception approval under §§ 223 and 3104.

The Board concludes that the planned rear addition satisfies the requirements of § 223 and pursuant to § 3104.1, the Board finds that the addition is unlikely to result in a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, or affect light and air available to neighboring properties. The Board also concludes that the rear addition satisfies the requirement of § 3104.1 that it be in harmony with the general purpose and intent of the Zoning Regulations by promoting the residential use of the property, consistent with the focus on one- and two-family dwellings of the R-4 zoning designation of the subject property, and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations.

With regard to harmony with the CAP Overlay District, the Board notes that the Architect of the Capitol found that the Applicant's proposal was not inconsistent with the intent of the CAP/R-4 District and would not adversely affect the health, safety, and general welfare of the U.S. Capitol precinct and adjacent area. In light of its conclusion that the proposed new construction will not adversely affect neighboring properties, the Board finds no need for the shadow diagrams suggested by the Architect of the Capitol. Similarly, since the Board does not find that the size of the proposed garage portion will be inconsistent with the requirements for special exception approval, the Board declined to question the Applicant's need for storage or its impact on the size of the planned garage.

The Board finds no merit in the assertions by Mr. Parsons that the rear addition would contribute to commercialism, overcrowding, increased traffic, and trash accumulation in the alley, or speculation that approval of the requested zoning relief would cause additional applications for similar relief. The Applicant's project will create one enclosed parking space in an area that now provides a parking pad large enough for two vehicles, with new living space located on the second floor of the garage portion of the addition. The garage will also provide storage space, including an area to store trash containers inside. The addition will not result in additional traffic or noise. Especially in light of the prevalence of residential uses along the alley at present, as well as larger commercial or institutional uses located on the western portion of the square, the

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Board does not find that the Applicant's addition will greatly alter existing conditions in the alley.

With regard to the concern that approval of this application might set a precedent, the Board notes that each application is considered on its own merits. An application by Charles and Susan Parsons, for a variance from alley width requirements to allow conversion of the second floor of an alley structure on Rumsey Court into an apartment, was previously approved. (Application No. 17943; order issued July 16, 2009.) Zoning relief was approved for another building on the alley, an accessory garage at 139 C Street, S.E., to allow a new second floor for use as an artist studio (Application No. 11289; order effective June 26, 1973); the Board also granted relief to allow an addition to a row dwelling on the southern portion of Square 733 at 138 D Street, S.E. (Application No. 17879; order issued February 11, 2009). Other applications have been denied, including a request for relief to convert the building at 111 C Street, S.E. into three apartments (Application No. 10750, August 9, 1971) and a request for area variances to allow a second-story addition and conversion of an accessory building into a dwelling at 127 C Street, S.E. (Application No. 12332; order issued September 20, 1977).

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)).) In this case, ANC 6B voted to support the application; the ANC did not raise any issues or concerns but concluded that the project's impact on air, light, and privacy would be negligible. The Board concurs with the ANC's conclusion.

The Board is also required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be approved. As finally revised, the Applicant's plans satisfy the two conditions recommended by the Office of Planning: that the lattice roof over the walkway must provide at least 51% coverage, and that the covered walkway must provide a communication between the two portions of the building and not terminate at a blank rear wall of the existing house. Since the Board's approval includes approval of the revised plans, 11 DCMR § 3125.7, and the Applicant may only carry out its construction in accordance with these plans, 11 DCMR § 3125.8, there is no need to expressly state the conditions in this order.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under § 223 to allow construction of a rear addition to a one-family row dwelling not meeting zoning requirements for lot occupancy (§ 403.2), rear yard (§ 404.1), or width of open court (§ 406.1) in the Capitol Interest (CAP) Overlay/R-4 District at 117 C Street, S.E. (Square 733, Lot 23). Accordingly, it is **ORDERED** that the application, subject to Exhibit No. 33 (Plans), is hereby **GRANTED**.

VOTE: **5-0-0** (Meredith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle, and Anthony J. Hood to Approve.)

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Vote taken on November 8, 2011.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:  for
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 25, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL

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AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.