

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 18664 of Charles C. Parsons, pursuant to 11 DCMR §§ 3100 and 3101, from a decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, made November 23, 2012, to approve Building Permit No. B1210100 for construction of an addition to a flat in the CAP/R-4 Zone District at premises 117 C Street, S.E. (Square 733, Lot 23).

HEARING DATE: December 3, 2013
DECISION DATE: February 4, 2014

ORDER DENYING APPEAL

This appeal was submitted to the Board of Zoning Adjustment (“Board” or “BZA”) on September 5, 2013 by Charles C. Parsons (the “Appellant”). The appeal challenges a decision made by the Zoning Administrator (“ZA”) on November 23, 2012 to approve Building Permit No. B1210100 (“Permit”) for construction at 117 C Street, S.E. (Square 733, Lot 23) (“Property”). The Permit authorized construction of an addition to an existing row dwelling on the Property (“Addition”), which is located in the CAP/R-4 Zone District. The Property fronts on both C Street and Rumsey Court. The Appellant alleges that the proposed construction failed to constitute a valid addition to an existing structure under the definition of “Building” in Title 11, D.C. Municipal Regulations (“Zoning Regulations”), § 199.1.

Based on the Board’s previous findings and conclusions in Application No. 18263 as independently reviewed by this Board, which addressed the exact factual and legal issues raised in this matter, and the evidence of record, including the prehearing submissions and testimony received at the public hearing, the Board sustains the decision of the Zoning Administrator for the reasons set forth below.

PROCEDURAL HISTORY

The Board previously approved the building addition at issue here in BZA Application No. 18263. In the original application, the Board approved the Addition pursuant to § 223 of the Zoning Regulations. (BZA Application No. 18263 (2011) (“Application”).)

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Mr. Parsons appeared as a person in opposition in the Application. Because there were no parties in opposition, the Board issued its initial decision as a summary order. Mr. Parsons filed a motion for reconsideration of the Application, and the Board denied the motion. (See BZA Application No. 18263-A (2012).)

Mr. Parsons 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 the Board's determination. *Parsons v. D.C. Bd. of Zoning Adjustment*, D.C. Court of Appeals No. 11-AA-1606, decided February 28, 2013. The Board issued the full order on July 25, 2013. (BZA Application No. 18263-B (2013).)

While the appeal was pending, the Department of Consumer and Regulatory Affairs ("DCRA") approved and issued the Permit on November 25, 2012. In July 2013, the owners of the Property commenced construction of the Addition pursuant to the Permit. (Exhibit 23 at 1.) Mr. Parsons appealed that DCRA decision to issue the Permit to the Board.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on December 3, 2013. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, Advisory Neighborhood Commission ("ANC") 6B (the ANC in which the property is located), the property owners, and DCRA. (Exhibits 15-18.)

Parties

The Appellant in this case is Charles C. Parsons, the owner of a residential property at 129 C Street, S.E., which is located six houses removed from the Property. DCRA is the Appellee, as the "person" whose administrative decision is the subject of the instant appeal, pursuant to 11 DCMR § 3199.1(a)(2). The decision or determination is DCRA's issuance of the Permit. The alleged zoning error was the Zoning Administrator's determination regarding whether the construction constituted a valid addition to the existing building under the Zoning Regulations such that the Addition and existing building constitute one building for zoning purposes. Stephanie and John Lester, the owners of the property ("Owners") are automatically a party to the proceeding under 11 DCMR § 3199.1(a)(3). ANC 6B was also automatically a party in the case.

Motion for Stay

On September 19, 2013, counsel for the Appellant filed a motion requesting either a stay of the building permit or, in the alternative, an expedited hearing date. By response dated September 25, 2013, counsel for the Owners opposed the stay but supported the expedited hearing date. At the hearing, counsel for the Appellant withdrew the requests. (Hearing Transcript of Dec. 3, 2013, (“Tr.”), p. 118-19.)

Pre-Hearing Submissions

The Board received prehearing materials from the Appellant on November 20, 2014, pursuant to 11 DCMR § 3112.10. (Exhibit 21.) DCRA and the Owners each submitted prehearing materials for the Board’s consideration on November 25, 2013 (Exhibit 22 (DCRA); Exhibits 23-29 (Owners).)

Appellant’s Case

The Appellant argued that the Permit was invalid because the proposed trellis connecting the Addition to the existing building did not constitute a sufficient connection to render the existing building and Addition a single building for zoning purposes. Specifically, the Appellant argued that the connection was insufficient because (a) it is located below the main floor of the Property and (b) as a trellis, is not structurally sufficient to constitute a legal building connection. Accordingly, the Appellant argued that the Zoning Administrator should have concluded that the Addition was instead a standalone two-story accessory structure that exceeded the height requirements and therefore required variance relief. (Exhibits 3 and 21.)

Owners’ Case

The Owners asserted the appeal should be denied because the Addition satisfies the requirements of the Zoning Regulations. The Owners presented a legal analysis demonstrating that the existing building and the Addition did in fact constitute a single building under the definition of “Building” in § 199.1 of the Zoning Regulations. Specifically, the Owners demonstrated with exhibits it submitted into the record that (a) trellises constitute a sufficient building connection and communication between otherwise separate portions of a structure under established District of Columbia law; and (b) the trellis connection is located at the main floor of the building because buildings on sloping sites may have multiple “main floors” and even if a building can have only one main floor, that main floor is the Rumsey Court level where the trellis is located. Therefore, the proposed construction was properly considered as an addition to the existing building. (Exhibits 23-29.)

DCRA's Case

DCRA also argued that the proposed trellis constituted a valid building connection under District of Columbia law. Furthermore, DCRA argued that the Board had already concluded that the connection was sufficient when it rejected Appellant's arguments in the original application and approved BZA Application No. 18263. (Exhibit 22.)

Closing of the Record

At the close of the hearing, the Board deferred its decision on the merits of the case and closed the record. The Board scheduled the case for decision on February 4, 2014, at which time it considered the merits of the case and voted 4-0 to deny the appeal.

FINDINGS OF FACT

The Property

1. The Property that is the subject of this appeal is known as Lot 23 in Square 733, and is located at 117 C Street, S.E.
2. The rear of the Property abuts Rumsey Court, a 30-foot wide public alley.
3. The Property is located in the CAP/R-4 Zone District. The R-4 Zone District permits both one-family dwellings and flats (*i.e.* a two-family dwelling). The R-4 District also permits dwellings without side yards, which are referred to as row dwellings.
4. The Property is improved with a three-story row dwelling.
5. The Property slopes significantly from north to south, such that the level of the rear yard is at Rumsey Court, and this level is one floor below the C Street level of the Property.
6. Appellant's property is located six houses to the east of the Property, at 129 C Street, S.E.

The Project

7. The Owners seek to improve the Property with an addition containing a first-story garage and second-story apartment ("Project").
8. The Project will be connected to the existing row dwelling by a trellis-covered walkway. The trellis and covered walkway will be located at grade level at the rear of the subject property, which is the Rumsey Court level of the Property.

9. The Rumsey Court level of the Property serves as the principal entrance to the main house as well as the flat.
10. The Rumsey Court entrance is closest to the Owners' parking space and is regularly used to enter and exit the home.
11. 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 Project.
12. The trellis has a roof that will provide a minimum of 51% coverage over the walkway and is supported by columns.
13. The Board granted special exception approval for the Project in BZA Application No. 18263 (2011). In that case, and in response to questions posed to it by the Court of Appeals, the Board explained why the trellis would provide a physical building connection and meaningful communication between the existing row dwelling and the Project¹.
 - a. The Board determined, based on past precedent, that a trellis meets the definition of "building" because it is a roofed structure supported by columns that provides shelter.
 - b. The Board also found that the covered walkway created by the trellis permitted meaningful communication between the row dwelling and the Addition.
 - c. Finally, the Board concluded that the trellis-covered walkway was located at the Rumsey Court level of the Property, which constituted the main floor of the building.

(BZA Application No. 18263-B (2013) at 6-7 (FOF 18-20); 10-12.)

14. Pursuant to Building Permit No. 1210100, issued November 25, 2012, the Department of Consumer and Regulatory Affairs approved:

A new 2-floor rear addition to the existing SFD row structure with a new covered walkway connecting a new 2-floor addition which [sic] 1st floor as garage at all the way to the rear of property line, with a landscaped wall per BZA # 18263 – Special Exception for Lot Occupancy, Rear Yard Setback & Court on 11/17/2011. Interior to be renovated, includes new kitchen, and master bath. Conversion from

¹ Ordinarily the Board would not address such issues in a special exception, since the only issue is whether the requested relief should be granted and not whether more relief is needed. The Board only reached the trellis issue in the special exception remand in order to explain to the court why the application did not fall within the rare circumstance when the Board would on its own motion dismiss an application because there was no plausible basis to conclude that the relief requested is sufficient.

SFD to 2-family flat, unit one – main house, unit two – on 2nd floor of the attached garage’s apartment.

15. At the public hearing, counsel for all parties, including the Appellant, stipulated that the plans for the Project approved by the Permit, including the trellis connection, remained the same as the plans reviewed by the Board in Application No. 18263. (Tr. Dec. 3, 2013 at 119-121.)

CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to hear and decide appeals when it is alleged by the appellant that there is an error in any decision made by any administrative officer in the administration of the Zoning Regulations. (11 DCMR §§ 3100.2, 3200.2.) In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. (11 DCMR § 3100.4.)

The question in this case is whether the Zoning Administrator erred in concluding that the Project and the existing row-dwelling constituted a single building as a result of the connection between the portions created by the trellis. Based on the findings of fact in this case, as well as the Board’s extensive findings and conclusions on the issue of the trellis in Application No. 18263, the Board is not persuaded by the Appellant that the Zoning Administrator erred in making this determination.

The definition of “building” appears at 11 DCMR § 199.1. Although stated in one paragraph, this order will separate each sentence for ease of reference

Building - a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel.

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.

The second sentence explains why the subject property and the row-dwellings it is attached to are each separate buildings, because each is separated from the other by common division walls. Such is not the case for the existing row-dwelling and the proposed addition. Were it not for the existence of the trellis each would be considered separate buildings. Whether the trellis makes these otherwise separate structures into a single building is addressed by the third sentence of the definition. Although that sentence provides that the existence of a communication below the

main floor cannot turn otherwise separate structures into one building, it necessarily follows that the existence of such a communication at or above the main floor would.

In Application No. 18263, the Appellant advanced the same arguments it presented in this Appeal; namely that the trellis does not establish the type of substantial communication contemplated in the definition and, even if it did, the connection is below the main floor. In that matter, the Board concluded that the Zoning Administrator retained the authority to interpret the Zoning Regulations and determine whether the trellis-covered walkway is a sufficient building connection. (BZA Application No. 18263-B at 10. *See also* Footnote 1, *supra*.) However, given the questions posed by the Court of Appeals in its remand, the Board elected to explain why the Zoning Administrator could plausibly conclude that the connection was both sufficient and not below the main floor and, accordingly, why the application should not have been dismissed. *Id.*

Based on the facts presented to the Board in Application No. 18263, the Board concluded that the Zoning Administrator could plausibly determine that the trellis-covered walkway constituted a valid building connection. (BZA Application No. 18263-B at 11-12.) In doing so, the Board spelled out in detail the reasons why the trellis-covered walkway met the requirements of the Regulations and why such interpretation was consistent with past precedent.

- First, the Board noted that in *Application No. 17331 of JPI Apartment Development LP* (2005) at 2, it had 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. All of these elements were satisfied by the trellis.
- Second, the Board concluded that the trellis would cover a walkway between the row dwelling and the Addition, and the trellis would therefore facilitate meaningful “communication” (that is, access) between the portions of the structure.
- Third, the Board concluded that the trellis-covered walkway was located at the “main floor” of the structure. Because the Zoning Regulations define the main floor as the floor at which the “principal entrance” is located, the Board concluded that, on a sloping site, the slope can result in multiple principal entrances that correspond to the changes in grade and, therefore, multiple main floors. In the case of the Project, the trellis was located at the Rumsey Court level of the building, which contained principal entrances to both the unit in the row dwelling and the Addition.

For all of these reasons, the Board concluded that the trellis constituted a portion of the “building” that provided “communication” at the “main floor” of the structure, and therefore met the requirements of the definition of “building” in § 199.1. (Application No. 18263-B at 10-12.)

The term “main” is not defined in the Zoning Regulations. *Merriam-Webster Dictionary* defines the word “main” to mean - the chief part, essential point. In this case the rear door where the cars are parked is used more than the door in the front of the house. Therefore the rear door meets the definition of "essential" and therefore the connection at the rear may be considered a communication.

Based on the same facts present before the Board in Application No. 18263, the Zoning Administrator independently concluded that the trellis constituted a sufficient building connection, and accordingly DCRA issued the permit that is the subject of the appeal. Now that the building permit has been issued, the Board is no longer dealing with a theoretical determination, but with the actual decision by the Zoning Administrator. But since the facts remain the same, then so is the Board’s conclusion that a single building was formed by the trellis and therefore the Zoning Administrator’s determination should be sustained.

The Board’s prior conclusion that the trellis is located at the main floor of the building is further buttressed by the record in this case. As noted in the above findings of facts, the Rumsey Court level of the property (that is, the level at which the trellis connection is located) serves as the principal entrance to the main house as well as the flat. Further, the Rumsey Court entrance is closest to the Owners’ parking space and is regularly used to enter and exit the home.

Advisory Neighborhood Commission 6B

The Board is required to give “great weight” to the issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d) (2012 Repl.)) In this case, ANC 6B voted to take no position on the above-referenced appeal. Accordingly, the ANC has not provided any advice that would cause the Board to conclude the appeal should be granted.

DECISION

Based on the findings of fact and conclusions of law, the Board concludes that the Appellant has not satisfied its burden of proof with respect to claim of error regarding the Zoning Administrator’s approval of Building Permit No. 1210100, issued on November 25, 2012, to approve construction of an addition in the CAP/R-4 Zone District at 117 C Street, S.E. (Square 733, Lot 23). Accordingly, it is therefore **ORDERED** that the appeal is **DENIED**.

VOTE: **4-0-1** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Anthony J. Hood to Deny; one Board seat vacant.)

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

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: August 21, 2015

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.