January 20, 2015

Mr. Matthew Le Grant
Zoning Administrator
Department of Consumer and Regulatory Affairs
1100 Fourth Street, SW, Room 3102
Washington, DC 20024

Re: Notice to ZA of Additional Required Zoning Relief (815 8th Street, NE)

Dear Mr. Le Grant,

At a regularly scheduled and properly noticed meeting[1] on January 8, 2015, our Commission voted 8-0 (with 5 Commissioners required for a quorum) to request that you review the plans submitted in connection with BZA Case No. 18927, which seeks zoning relief in connection with the razing of an existing accessory building and the construction of a replacement structure that would front on the alley at the rear of the property and measure two stories (21 feet) in height. The applicant proposes to use a portion of the first floor of the new structure as a garage, and to use the remainder of the first floor and the entirety of the new second floor as a two-bedroom residential unit. The applicant further proposes to include a footpath running from an entrance at the rear of the primary residence to the entrance to the garage and to cover that footpath with a wooden trellis. The portion of the new structure comprising the residential unit will be inaccessible from the portion of the new structure comprising the garage.

Notwithstanding the requirement that an accessory building be no greater than one story or fifteen feet in height under § 2500.4, the applicant's current request for zoning relief simply seeks special exceptions for the construction of a two-story "rear addition" to an existing single-family dwelling not meeting the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3 in the R-4 District. The applicant has indicated that, in his view, BZA precedent supports the conclusion that the accessory structure and the primary residence constructed on the lot comprise a single building because the footpath between the accessory building and the primary structure is covered by a wooden trellis. As articulated below, it is the considered view of the ANC that, notwithstanding the presence of the trellis, the proposed construction does not represent a "rear addition" to an existing structure, but rather the construction of an entirely new accessory structure that requires, at minimum, a variance from the height requirements of § 2500.4.

The ANC recognizes that prior BZA decisions have concluded that, in some circumstances, a footpath, covered by a trellis, may establish a "meaningful connection" between two separate buildings such that they can be considered a single "building" for zoning purposes. However, the Office of Planning's most recent proposed revisions to the District's zoning code evidence its intention that the BZA no longer adopt this interpretation of the zoning regulations. Moreover, even if the reasoning of BZA's prior decisions on this issue could be considered persuasive, those decisions are distinguishable from this case.

As part of the Zoning Commission's ongoing review of the District's zoning regulations, it directed the Office of Planning at its July 10, 2014 public meeting to provide comments to assist the Zoning

[1] ANC 6A meetings are advertised electronically on the anc6a-announce@googlegroups.com, ANC-6A and NewHillEast yahoogroups, on the Commission's website, and through print advertisements in the Hill Rag.

Commission in addressing the issue of what may constitute a "meaningful connection" between two structures such that they should be considered a single "building" for zoning purposes. As Commissioner May recognized in raising this issue, there was considerable confusion regarding BZA's approach to this question.

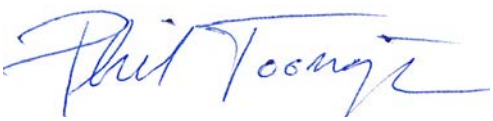
In its most recent revised draft of the District's revised zoning regulations, dated November 2014, the Office of Planning responded to the Zoning Commission's request by including a proposed definition of "Building, Separate" that states the following: "Structures or sections shall be considered parts of a single building if they are joined by an enclosed connection that is fully above grade, is heated and artificially lit; and either a common space shared by users of all portions of the building, such as a lobby or recreation room, or space that is designed and used to provide free and unrestricted passage between separate portions of the building, such as an unrestricted doorway or walkway." The Zoning Commission did not raise any issue with this proposed definition and voted to approve the zoning regulation review for proposed action at its most recent meeting in December. Under this most recent guidance from the Office of Planning, a wooden trellis covering a walkway would not create a "meaningful connection" such that it could create a single "building" out of two separate structures as it is neither "enclosed" nor "heated and artificially lit."

Moreover, even absent the Office of Planning's recent guidance, the relief sought here cannot be justified under BZA's prior precedent. In this case the garage portion of the new structure (to which the trellis is attached) is entirely separate from the two-bedroom residential unit portion of the new structure. Thus there exists no "meaningful connection" between the primary residence on the lot and nearly three-quarters of the secondary building. This case therefore presents an even more attenuated "connection" between the two structures than existed in prior BZA cases, e.g. BZA 18263-B, in which a trellis connected the primary structure directly to the residential unit in the second structure.

The practical implications of treating the new accessory structure as part of a single "building" are significant in this case, as they permit the applicant to evade review under the more demanding standard of an area variance and simply to seek more lenient special-exception review. Simply by including a structure as ephemeral as a wooden trellis, which could be removed with little cost and effort once construction is completed, an applicant may evade entirely, among other zoning code provisions, the restrictions on accessory building height set forth at § 2500.4. As the Office of Planning correctly recognized, this is a perverse result and should not be permitted. We therefore urge you to evaluate the proposed construction in this case, recognize the new structure as an accessory building, and require that the applicant demonstrate entitlement to, at a minimum, a variance from the accessory-building height requirements set forth at § 2500.4.

Please be advised that Andrew Hysell and I are authorized to act on behalf of ANC 6A for the purposes of this case. I can be contacted at philanc6a@gmail.com and Mr. Hysell can be contacted at hysell6a06@gmail.com. I would appreciate a response to this issue at your earliest convenience.

On Behalf of the Commission,



Phil Toomajian
Chair, Advisory Neighborhood Commission 6A