



MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Jennifer Steingasser, Deputy Director
DATE: December 28, 2010
SUBJECT: BZA Case 18155 – request to establish a new accessory unit in an existing semi-detached building at 2949 Upton Street, NW

I. RECOMMENDATION

While the Office of Planning (OP) is not in concept opposed to the creation of an accessory unit in this location, OP **cannot recommend approval** of the application. While the application meets the specific criteria of § 202.10, the section applies only to detached dwellings, and the subject property does not meet the three part test for variance relief from that prerequisite for a proposed new accessory apartment.

II. LOCATION AND SITE DESCRIPTION

Address	2949 Upton Street, NW
Legal Description	Square 2243, Lot 47
Ward and ANC	3F
Lot Characteristics	31-foot wide lot; grade at the house slightly elevated above the street elevation; trees screen the front of the house; 16’ alley at rear leading to on-site parking.
Zoning	FH-TSP / R-2 (Forest Hills Tree and Slope Protection Overlay / Semi-detached Residential)
Existing Development	Single family semi-detached dwelling, permitted in this zone
Adjacent Properties	Single family semi-detached houses
Surrounding Neighborhood Character	Some semi-detached and attached dwellings; large apartment buildings; office buildings; a private school.

III. PROJECT DESCRIPTION IN BRIEF

Applicants	Milton Shinberg and Judith Ross, homeowners
Proposal	Establish an accessory apartment in the cellar of an existing single family semi-detached home. No new construction is proposed.

Relief Required	§202.10 – Special Exception to establish an accessory apartment in an existing detached dwelling; §202.10 – Variance to the requirement that the existing dwelling be detached.
-----------------	--

IV. ANALYSIS

SPECIAL EXCEPTION

Section 202.10 allows the establishment of an accessory apartment within an existing one-family detached dwelling if approved by the Board as a special exception and subject to a series of specific conditions. The application meets all of the conditions, as noted below.

202.10 An accessory apartment may be added within an existing one-family detached dwelling if approved by the Board of Zoning Adjustment as a special exception under § 3104, subject to the following provisions:

- (a) **The lot shall have a minimum lot area for the following zone Districts:**
 - (1) **Seven thousand, five hundred square feet (7,500 ft.²) for R-1-A;**
 - (2) **Five thousand square feet (5,000 ft.²) for R-1-B; and**
 - (3) **Four thousand square feet (4,000 ft.²) for R-2 and R-3;**

The subject lot is in the R-2 zone and has a lot area of 4,557 square feet.

- (b) **The house shall have at least two thousand square feet (2,000 ft.²) of gross floor area, exclusive of garage space;**

The subject structure has a total floor area of 3,027 square feet.

- (c) **The accessory apartment unit may not occupy more than twenty-five percent (25%) of the gross floor area of the house;**

Of the total floor area, the accessory apartment would occupy 617 square feet, or 20.4% of the structure.

- (d) **The new apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area; garage space may not be converted;**

The accessory apartment would be within the existing structure.

- (e) **If an additional entrance to the house is created, it shall not be located on a wall of the house that faces a street;**

An existing exterior stair and door on the side of the house would access the cellar apartment.

- (f) Either the principal dwelling or accessory apartment unit must be owner-occupied;**

The owner resides in the principal dwelling.

- (g) The aggregate number of persons that may occupy the house, including the principal dwelling and the accessory apartment combined, shall not exceed six (6);**

The application states that the anticipated maximum occupant load at any one time would be six people.

- (h) An accessory apartment may not be added where a home occupation is already located on the premises; and**

There is no home occupation at the premises.

- (i) The Board may modify or waive not more than two (2) of the requirements specified in paragraphs (a) through (h) of this subsection; provided, that the following occurs:**

- (1) The owner-occupancy requirement of paragraph (f) shall not be waived;**
- (2) Any modification(s) approved shall not conflict with the intent of this section to maintain a single-family residential appearance and character in the R-1, R-2, and R-3 Districts; and**
- (3) Any request to modify more than two (2) of the requirements of this subsection shall be deemed a request for a use variance.**

The application meets the requirements of paragraphs (a) through (h), so no waivers are necessary. However, the property does not meet the basic requirement that the section only applies to detached dwellings. While the order establishing this section of the regulations is very clear that it only applies to detached dwellings (see below for more discussion), OP has not discovered why the original authors drafted the text so specifically to exclude semi-detached or attached structures.

VARIANCE

Because Section 202.10 applies only to detached dwellings, and the subject property is a semi-detached dwelling, a variance is required. In order to be granted a variance, the applicant must demonstrate how they and the property meet the three-part test described in §3103.

- 1. Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?**

The subject property does not exhibit unique or exceptional features. The property is identical to those east and west of it, and similar to those across the street and elsewhere in the neighborhood. The property is not afflicted with any extreme physical constraint.

In a recent case, number 18140, the Board approved variance relief for an attached dwelling that contained an accessory unit. In that case, the Office of Planning found that the property did exhibit an exceptional condition; That property had a long history of having an accessory unit (likely pre-dating the current zoning regulations, and certainly long pre-dating the allowances for accessory units), and the current owner purchased the property with the unit in place. In the instant application, the accessory unit would be completely new.

2. Does the extraordinary or exceptional situation described in the first part of the variance test impose a practical difficulty which is unnecessarily burdensome to the applicant?

Because there is no unique or exceptional conditions affecting the property, there can be no resulting practical difficulty. No reason has been given why the structure could not continue to be used as a single family residence without an accessory apartment.

3. Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?

Relief could be granted without detriment to the public good. The surrounding area has some single family homes like the subject property, but is dominated by larger apartment buildings, commercial uses and institutional uses. One additional rental unit would not be out of character for the area.

Variance relief to allow an accessory unit in a semi-detached structure would, however, impair the intent of the Zoning Regulations. Section 202.10 specifically states that an accessory apartment may be added within a detached dwelling. The subject property is a semi-detached dwelling. Furthermore, an accessory apartment is defined in § 199 as “a complete apartment unit contained within a one-family detached dwelling.” In the Zoning Commission order establishing § 202.10 (then § 202.9) and the definition of accessory apartment, the text of the order explains that the new rules would “define, regulate and permit the establishment of accessory apartment units in single-family detached structures that are located in low density residential zone districts...” (Order 741 (Case 92-06), p. 5). That sentence makes clear that the authors intended accessory apartments to be available only in detached structures, even if those structures were located in zones other than R-1.

FOREST HILLS TREE AND SLOPE PROTECTION OVERLAY

The subject property is within the Forest Hills Tree and Slope Protection Overlay. But because no exterior construction is contemplated under the present application, the overlay has no bearing on this case.

V. HISTORIC PRESERVATION

The subject property is not located in an historic district.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

As of this writing, the Office of Planning has received no comments on this application from other District agencies.

VII. COMMUNITY COMMENTS

As of this writing, the Office of Planning has received no comments regarding the proposal from the ANC or from the community.

VIII. ATTACHMENTS

1. Vicinity Map

JS/mrj
Matt Jesick, Project Manager

Attachment 1 Vicinity Map

