

## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Matt Jesick, Case Manager  
*JL* Joel Lawson, Associate Director for Development Review

**DATE:** January 26, 2018

**SUBJECT:** BZA #19666 – 1209 Park Road, NW – Request for relief under Subtitle E § 5201 and U § 301 in order to construct a new dwelling unit in an accessory structure

### **I. RECOMMENDATION**

The Office of Planning (OP) recommends **approval** of the following requested special exception and variance, subject to the conditions below:

- U § 301.1(c)(b) No expansion to an accessory building to accommodate a dwelling unit except as a special exception;
- U § 301.1(c)(d)(3) Permanent access (15' alley width required from the accessory building to the street; 15' at building, but only 10' at streets; variance relief).

**Conditions** – OP's recommendations of approval are subject to:

- The applicant obtaining from FEMS in writing a statement that that they would have adequate access to the accessory building and dwelling unit given that the alley is less than 15'-wide;
- The accessory building is equipped with sprinklers.

OP also recommends **approval** of the following requested special exceptions pursuant to Subtitle E § 5201:

- E § 5003.1 Lot Occupancy / Size of Accessory Structure (450 sf permitted, 377 sf existing, 533 sf proposed);
- E § 5004.1 Rear Yard / Alley Centerline Setback (12' required, 7.5' existing, 7.5' proposed).

In their most recent submission, Exhibit 49, the applicant requests potential relief from the building height limit. Such relief was not advertised and no justification for this relief was provided, so OP has not provided analysis.

### **II. LOCATION AND SITE DESCRIPTION**

Applicant	Caryn Shenewerk, Owner
Address	1209 Park Road, NW

Legal Description	Square 2839, Lot 119
Ward / ANC	1, 1A
Zone	RF-1, Moderate Density Single Family Rowhouses and Flats
Historic District or Resource	None
Lot Characteristics and Existing Development	22.5'-wide rowhouse lot; 2-story rowhouse; Existing 1-story accessory garage at rear immediately abutting the 15'-wide alley; Alley narrows to 10' at its exits to 13 <sup>th</sup> and 11 <sup>th</sup> Streets.
Adjacent Properties	Moderate to medium density 3-story apartment building to the east, which extends back almost to the alley; Behind that building is a parking pad; To the east is an identical rowhouse, which also has a 1-story accessory garage at the alley.
Surrounding Neighborhood Character	Mix of rowhouses and apartment buildings within the neighborhood; 11 <sup>th</sup> Street, to the east, has commercial uses.
Proposed Development	Expand an existing 1-story accessory garage to house a dwelling unit on a new second floor, which the applicant states would be for their own private use, rather than a rental unit.

### III. ZONING REQUIREMENTS AND RELIEF REQUESTED

A dwelling unit in an accessory building is permitted as a matter-of-right, subject to conditions. But the expansion of an accessory building for residential purposes is only permitted by special exception, and also remains subject to the matter-of-right conditions of U § 301.1(c).

Furthermore, because the alley is not 15' in width from the accessory structure the entire way to the public street, the access requirements of U § 301.1(c)(d) would not be met, and an area variance would be required<sup>1</sup>.

Finally, in order to develop as proposed, the applicant requests special exception relief for Lot Occupancy / Size of Accessory Structure and Rear Yard / Alley Centerline Setback, both pursuant to E § 5201.

RF-1 Zone	Regulation	Existing	Proposed	Relief
Lot Width E § 201	18'	22.5'	No change	Conforming
Lot Depth	n/a	142.5'	No change	Conforming
Lot Area E § 201	1,800 sf	3,206 sf	No change	Conforming

<sup>1</sup> At Exhibit 49, the applicant argues that the relief to alley width should be considered a special exception; OP, however, concurs with the most recent Zoning Administrator statement, seen in the email at Exhibit 49C, that the appropriate form of relief is a variance.

RF-1 Zone	Regulation	Existing	Proposed	Relief
Height of Accessory Structure E § 5002	20' 2 stories	9'11.5" 1 story	20' 2 stories	Conforming
Lot Occupancy / Size of Accessory Structure E § 5003.1	450 sf max.	377 sf	452 sf – 1st floor 533 sf – 2 <sup>nd</sup> floor	Requested
Rear Yard / Alley Centerline Setback D § 306	12' min.	7.5'	No Change	Requested
Dwelling Units in Accessory Structures U § 301.1(c)	Matter-of-right in existing structure; SE if structure is expanded	1 story structure	2 <sup>nd</sup> story to accommodate dwelling unit	Requested
Dwelling Unit Access U § 301.1(c)(d)(3)	15' alley width for alley's entire length out to street; no more than 300' from street	15' width at structure, 10' width at alley entrance; approx. 160' to street	No change	Relief Required

#### IV. ANALYSIS

This section contains the following analyses:

- U § 301.1 – Matter of right conditions for a principal dwelling unit in an accessory structure;
- **General special exception criteria of X Chapter 9** – Expansion of accessory building to accommodate residential use;
- **Variance criteria of X Chapter 10** – Alley width;
- E § 5201 – Lot occupancy / size of accessory structure and rear yard / alley centerline setback.

#### SUBTITLE U § 301 MATTER-OF-RIGHT USES - PRINCIPAL DWELLING UNIT IN AN ACCESSORY STRUCTURE

*301.1 The following uses shall be permitted as a matter of right in an RF zone subject to any applicable conditions:*

*[...]*

*(c) A permitted principal dwelling unit within an accessory building subject to the following conditions of:*

- (a) The accessory building was in existence on January 1, 2013;*

According to the applicant the garage was certainly in existence as of 2005, and possibly as early as 1919.

- (b) *No expansion or addition may be made to the accessory building to accommodate an apartment except as a special exception;*

The applicant proposes to expand the accessory structure and therefore requests a special exception. Please refer to the general special exception criteria discussed further below.

- (c) *There shall be permanent access to the accessory building dwelling from a dedicated and improved right of way; and*

The improved public alley provides permanent access.

- (d) *Permanent access shall be provided by one (1) of the following:*
  - (1) *An easement for a permanent passage, open to the sky, no narrower than eight feet (8 ft.) in width, and extending from the accessory building to a public street through a side setback recorded in the land records of the District of Columbia;*
  - (2) *Through an improved public alley with a minimum width of twenty-four feet (24 ft.) that connects to a public street; or*
  - (3) *On an improved alley no less than fifteen feet (15 ft.) in width and within a distance of three hundred (300) linear feet of a public street;*

The subject property does not meet subparagraphs (1) or (2). The site is approximately 160' from the alley entrance at 13<sup>th</sup> Street. The alley is 15' wide where the accessory structure is located, but narrows to 10' wide at both 13<sup>th</sup> Street and 11<sup>th</sup> Street, and a variance is therefore required. Please see the variance analysis below.

- (d) *An accessory building that houses a principal dwelling unit shall not have a roof deck;*

The proposed dwelling would not have a roof deck

- (e) *An accessory building constructed as a matter-of-right after January 1, 2013, and that is located within a required setback shall not be used as, or converted to, a dwelling unit for a period of five (5) years after*

*the approval of the building permit for the accessory building, unless approved as a special exception;*

The building in question was constructed prior to January 1, 2013.

- (f) An accessory building that houses a principal dwelling unit shall not be used simultaneously for any accessory use other than as a private vehicle garage for a dwelling unit on the lot, storage, or as an artist studio; and*

The first floor of the building would be used as a private vehicle garage.

- (g) Any proposed expansion of an accessory building for residential purposes shall be permitted only as a special exception approval pursuant to Subtitle X, and shall be evaluated against the standards of this section.*

The applicant has requested the required special exception. See analysis below.

#### **SUBTITLE X § 901 SPECIAL EXCEPTION CRITERIA - EXPANSION OF ACCESSORY BUILDING TO ACCOMMODATE RESIDENTIAL USE**

- (a) [The special exception] Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

The applicant has applied for a special exception in order to expand an accessory building for the purposes of locating a dwelling unit in the accessory building (U § 301.1(c)(b)). In general the proposed use is in conformance with the intent of the Regulations to provide housing in walkable, amenity-rich neighborhoods, whether that housing is to be used by the family in the main house as accessory space, or whether it is to be used by a separate family as a second principal dwelling unit on the lot. However, the Regulations also are intended to protect the safety of residents of both a subject property and nearby properties. In this case the goal of safety is addressed in the Regulations by a requirement for adequate access, which was intended to allow access by emergency services, among other service providers. A 15' minimum alley clearance would be required from the subject site out to the street, over a distance of no more than 300 feet. While close enough to 13<sup>th</sup> Street, the alley narrows to 10'. Therefore, the Office of Planning has advised the applicant to obtain written confirmation from Fire and Emergency Medical Services (FEMS) that they can provide adequate service to the accessory building. In addition, the applicant should agree to provide sprinklers in the accessory building. As of this writing OP and the applicant have attempted to contact FEMS, but have not yet received a response.

- (b) *[The special exception] Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps;*

The proposed expansion of the accessory building to accommodate a dwelling unit should not affect adversely the use of neighboring properties. The applicant has stated that the space could be for their own personal use, but if the space is used as a separate dwelling unit, the use of the alley and the impact on adjacent properties should be minimal. The alley is bordered by dense development on all sides, including apartment buildings and commercial uses. A single, small dwelling unit should not add significantly to traffic, noise or light in the alley. Immediately adjacent to the accessory building is a parking pad to the east and another garage to the west, and across the alley is another parking pad, so there are few adjacent residential structures that would be impacted. The sides of the building, including the east side facing the adjacent apartment building, would not have windows, and would therefore protect privacy.

#### **SUBTITLE X § 1000 VARIANCE CRITERIA - ALLEY WIDTH**

- (a) *Exceptional Situation Resulting in a Practical Difficulty*

A variance to U § 301.1(c)(d)(3) is required because the alley that provides access to the accessory structure is not 15' wide from the structure the entire way to the public street. The alley is 15' wide at the subject site but narrows to 10' as it approaches both 13<sup>th</sup> and 11<sup>th</sup> Streets. This results in a practical difficulty to the applicant in that the alley could not be widened in any realistic way, which would therefore limit their ability to use their property.

- (b) *No Substantial Detriment to the Public Good*

Relief to the access requirements should not have a detrimental impact to the public good provided that FEMS states that they can adequately service the accessory building and dwelling unit. OP recommends conditions of approval that the applicant obtain a written statement from FEMS to that effect, and that the building contain sprinklers.

- (c) *No Substantial Harm to the Zoning Regulations*

The Regulations intend to provide adequate access for emergency services, such as FEMS, and utilities. If FEMS states that the alley provides adequate access, the required variance should not harm the intent of the Regulations. It will be incumbent on the applicant to provide the dwelling with utility access.

#### **SUBTITLE D § 5201 ADDITION TO A BUILDING OR ACCESSORY STRUCTURE - LOT**

## **OCCUPANCY / SIZE OF ACCESSORY STRUCTURE AND REAR YARD / ALLEY CENTERLINE SETBACK**

*5201.1 The Board of Zoning Adjustment may approve as a special exception in the RF zones relief from the following development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:*

- (a) Lot occupancy;*
- (b) Yards;*
- (c) Courts;*
- (d) Minimum lot dimensions;*
- (e) Pervious surface; and*
- (f) The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.*

The applicant seeks a special exception for lot occupancy / size of accessory structure and rear yard / alley centerline setback.

*5201.2 Special exception relief under this section is applicable only to the following:*

- (a) An addition to a residential building;*
- (b) A new or enlarged accessory structure that is accessory to such a building; or*
- (c) A reduction in the minimum setback requirements of an alley lot.*

The subject site has a residential building at the front of the property and an accessory building that is proposed to be expanded.

*5201.3 An applicant for special exception under this section shall demonstrate that the proposed addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

- (a) The light and air available to neighboring properties shall not be unduly affected;*

The applicant proposes to construct an addition to the existing accessory structure that would result in a footprint of more than 450 square feet. At the second floor the footprint would be 533 square feet. This size, while larger than the normal maximum, should not result in significant light and air impacts to neighboring properties. Firstly, the orientation of the property would mean that any new shadow from the expanded building would fall on the alley, the adjacent parking pad, the adjacent garage, or possibly the parking pad across the alley. Secondly, the proposed angle of the roof should minimize shadow because it would be more parallel to the sun's rays than if the slope of the roof were reversed. Finally, the adjacent apartment building likely already causes significant shadow on the

area in question, and the expansion of the accessory building should not noticeably change the existing condition.

- (b) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*

The privacy of nearby properties should not be unduly impacted. Windows are provided only on the north and south walls, which face the alley and a parking pad, and the back yard of the subject property, respectively. No windows are proposed on the side elevations.

- (c) *The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage;*

The proposed expansion of the garage should not intrude on the character of the alley, which is highly varied. The alley is confronted with many garages, at least one of which is two stories tall. The alley also has apartment buildings and parking facing it. The garage being located at the property line, and not meeting the 12' centerline setback requirement, is not unusual. And placing the second story directly above the rear wall of the existing garage makes practical and visual sense.

- (d) *In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways; and*

The application includes plans, elevations and photographs to represent the proposed addition.

- (e) *The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).*

The application proposes a lot occupancy of 55%.

5201.4 *The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.*

OP recommends no special treatments.



*5201.5 This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.*

The proposed use of the property as a flat is a permitted use in the zone. The expansion of the accessory building to house a dwelling unit is permitted by special exception, which the applicant has requested.

*5201.6 This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.*

According to the Zoning Administrator, the height as currently depicted would require a variance from E § 5002.

## **V. COMMENTS OF OTHER DISTRICT AGENCIES**

OP has contacted FEMS, but as of this writing has not received a response. At Exhibit 45, DDOT submitted a report stating they have no objections to the proposed relief.

## **VI. COMMUNITY COMMENTS**

The record includes a number of letters in support from neighbors, including the adjacent neighbor to the west, at Exhibits 30 through 41. At Exhibit 42 is the ANC letter in support of the application.