

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19657 of Mala Mahmood, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the residential conversion regulations of Subtitle U § 320.2 to allow a rear addition and conversion of an existing attached principal dwelling into a three-unit apartment house in the RF-1 Zone at premises 1135 Morse Street, N.E. (Square 4070, Lot 145).¹

HEARING DATES: January 17 and February 14, 2018
DECISION DATE: March 7, 2018

DECISION AND ORDER

This self-certified application was submitted on October 19, 2017 by Mala Mahmood, the owner of the property that is the subject of the application (the “Applicant”). The application requested special exception relief to allow a three-story rear addition to a two-story attached principal dwelling, with the rear wall of the addition extending more than 10 feet past the rear walls of residential buildings on adjacent properties, and conversion of the building to a three-unit apartment house in the RF-1 district at 1135 Morse Street, N.E. (Square 4070, Lot 145). After a public hearing, the Board of Zoning Adjustment (the “Board”) voted to grant the application subject to one condition.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated November 28, 2017, the Office of Zoning provided notice of the application to the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Councilmember for Ward 5, and the chairman as well as the four at-large members of the D.C. Council. Pursuant to 11 DCMR Subtitle Y § 402.1,

¹ The Applicant initially requested relief under Subtitle E § 205.5 (which requires special exception approval for construction of a rear wall of an attached building extending more than 10 feet beyond the farthest rear wall of any principal residential building on an adjoining property), in addition to a special exception under Subtitle U § 320.2 to allow the conversion of the Applicant’s building to an apartment house. (*See* Exhibit 1.) The self-certified application was subsequently amended to request only a special exception under Subtitle U § 320.2. (*see* Exhibit 13.) The latter provision applies in the case of a conversion of a residential building to apartment house use, and contains a similar restriction in Subtitle U § 320.2(e) (“An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property”), from which the Applicant requested a waiver.

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on November 28, 2017 the Office of Zoning mailed letters providing notice of the hearing to the Applicant; the owners of all property within 200 feet of the subject property; Advisory Neighborhood Commission (“ANC”) 5D, the ANC in which the subject property is located; and Single Member District/ANC 5D06. Notice was also mailed the same date to ANC 6A, because the subject property was located within 200 feet of the boundaries of ANC 6A.² Notice was published in the *District of Columbia Register* on December 1, 2017 (64 DCR 12327).

Party Status. The Applicant and ANC 5D were automatically parties in this proceeding. There were no additional requests for party status.

Applicant’s Case. The Applicant provided evidence and testimony about the planned addition and conversion, and asserted that the proposal would satisfy all requirements for approval of the requested zoning relief. The Applicant initially proposed a three-story rear addition, 34.5 feet high, that would have extended 40 feet beyond the rear walls of the residences on adjoining properties. The Applicant later revised the planned design to propose a rear addition extending 30 feet beyond the adjoining rear walls on the basement level, with setbacks from the rear lot line on the other floors.

OP Report. By memorandum dated January 5, 2018, the Office of Planning recommended approval of a special exception under Subtitle U § 320.2 to allow conversion of the Applicant’s residential building to an apartment house, but denial of the Applicant’s request for a waiver of Subtitle U § 320.2(e), concerning the proposal to build the rear addition as initially designed, on the ground that the Applicant had not demonstrated that the addition would be in keeping with the neighborhood character and would not have an adverse impact to neighbors. (Exhibit 35.) In a supplemental report dated January 31, 2018, OP recommended approval of the Applicant’s revised proposal. (Exhibit 51.)

DDOT. By memorandum dated January 3, 2018, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 32.)

ANC Report. By letter dated January 16, 2018, ANC 5D indicated that, at a properly noticed public meeting on January 9, 2018 with a quorum present, the ANC voted to adopt a resolution in opposition to the original application. The resolution stated the ANC’s issues and concerns as: (1) the rear addition would extend further than 10 feet past the rear wall of any adjacent property, and would block back yard sunlight of neighbors to the west; (2) the proposal would create an adverse impact on light/shade on adjacent neighbors located between this development and the existing converted development on the west side of adjacent properties; (3) the Applicant’s proposed building density, design, and size would be inconsistent with character and streetscape of surrounding properties on the residential street, as the proposed wall extension of 40 feet would be massive; (4) several neighbors indicated strong opposition to the proposal at ANC meetings; and (5) the Applicant had not submitted a shadow study. Through testimony at the public hearing

² ANC 6A did not participate in this proceeding.

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on February 14, 2018 representatives of the ANC indicated its opposition to the Applicant's revised proposal as well.

Persons in support. The Board received letters from persons in support of the application indicating that those persons had seen the Applicant's plans and had no objection to the proposed addition.

Persons in opposition. The Board received letters and heard testimony from persons in opposition to the application. The persons in opposition mentioned concerns about parking and objected to conversions of principal dwellings to apartments, citing objectionable changes in the character of the neighborhood, and to rear additions that would extend more than 10 feet beyond the rear wall of an adjoining residence, citing adverse impacts on light and air.

FINDINGS OF FACT

1. The subject property is located on the south side of Morse Street, N.E. approximately mid-block between West Virginia Avenue and Montello Avenue, N.E. (Square 4070, Lot 145).
2. The subject property is rectangular, approximately 19 feet wide and 145 feet deep, with a lot area of 2,798 square feet. Along the rear property line, the subject property abuts a public alley, 20 feet wide, which runs parallel to Morse Street for the entire length of the square.
3. The subject property is improved with a two-story plus basement attached building constructed in 1919 and used a principal dwelling. The dwelling has a mansard roof with a dormer, a design that was uniformly applied to the dwellings on the south side of the block. The rear wall of the Applicant's building is in alignment with the rear walls of the two adjoining attached dwellings.
4. The Applicant plans to construct a three-story, plus basement, rear addition to the existing two-story attached dwelling. On the third floor, the front of the addition will be set back approximately 19.5 feet from the front façade of the existing building. At the basement level, the addition will extend into the rear yard 30 feet beyond the rear walls of the two adjoining residences. The other floors will be set back from the rear property line such that they will not extend as far into the rear yard as the basement level. The first and second floors of the addition will extend 25 feet, and the third floor will extend 20 feet, into the rear yard beyond the rear walls of the two adjacent residences. The eastern wall of the addition will be set back four feet from the property to the east (1137 Morse). The western elevation will not contain any windows, and the windows on the east elevation will be covered with a privacy film.
5. The planned addition will increase the height of the building at the subject property from 26.5 feet to 34.5 feet, where a maximum of 35 feet is permitted as a matter of right. (Subtitle

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U § 320.2(a); Subtitle E § 303.) The rear yard will be decreased from 92.5 feet to 62 feet, where a minimum of 20 feet is required. (Subtitle E § 306.) Lot occupancy will increase from 26.2 percent to 49 percent, where a maximum of 60 percent is permitted as a matter of right. (Subtitle E § 304.)

6. While the front facades of the attached dwellings on the same side of Morse Street as the subject property remain generally uniform, many of the residences have been enlarged at the rear with either enclosed additions or decks (or both). Most of the nearby rear additions extend eight to 25 feet beyond the original rear walls. Two nearby attached dwellings to the west of the Applicant's property, also on the south side of Morse Street (at 1123 and 1125), were previously enlarged and converted to apartment houses; their rear additions extend 55 feet and their front facades were significantly altered as well.
7. Many nearby properties have fences bordering their rear yards. The two properties to the west of the subject property (at 1131 and 1133 Morse Street) have privacy fences, six feet high. The eastern property line of the subject property now contains a chain-link fence, which the Applicant plans to replace with a privacy fence similar to the fence now along the western property line.
8. Solar panels have been installed on the roof of a nearby residence to the west of the subject property (at 1131 Morse Street), as well as on some residences on the north side of the street.
9. Properties along Morse Street in the vicinity of the subject property were developed primarily with two-story attached dwellings of similar architectural design. A two-story church is located, along with its parking lot, across the alley to the south of the subject property. The surrounding neighborhood is primarily residential, at a moderate density characterized by attached dwellings and apartment houses. Development along Florida Avenue one block to the south of the subject property includes institutional, retail, and neighborhood service uses.
10. The subject property is located in an RF-1 zone, where applicable zoning provisions are intended, among other things, to recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city. (Subtitle E § 100.3(a).)
11. The purpose of the RF-1 zone is to provide for areas predominantly developed with attached row houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 300.1.)

CONCLUSIONS OF LAW AND OPINION

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The Applicant seeks a special exception under Subtitle U § 320.2 to allow a three-story rear addition to a two-story attached principal dwelling, with a waiver of Subtitle U § 320.2(e) to allow the rear wall of the addition to extend more than 10 feet past the rear walls of residential buildings on adjacent properties, and conversion of the building to a three-unit apartment house in the RF-1 district at 1135 Morse Street, N.E. (Square 4070, Lot 145). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) 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 Subtitle X § 901.2.)

Pursuant to Subtitle U § 320.2, conversion of an existing residential building, existing prior to May 12, 1958, to an apartment house may be permitted as a special exception in the RF-1 zone, subject to conditions: (a) the maximum height of the residential building and any addition must not exceed 35 feet; (b) the fourth dwelling unit and every additional even number dwelling unit thereafter must comply with Inclusionary Zoning (“IZ”) requirements; (c) there must be an existing residential building on the property at the time of filing an application for a building permit; (d) there must be a minimum of 900 square feet of land area per dwelling unit; (e) an addition must not extend further than 10 feet past the furthest rear wall of any principal residential building on an adjacent property; (f) any addition must not block or impede the functioning of a chimney or other external vent on an adjacent property; (g) any addition must not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property; (h) a rooftop architectural element original to the house such as cornices, porch roofs, a turret, tower, or dormers must not be removed or significantly altered; and (i) any addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular (1) the light and air available to neighboring properties must not be unduly affected, (2) the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and (3) the conversion and any associated addition, 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 or alley. Pursuant to Subtitle U § 320.2(l), the Board may waive certain conditions, including the restriction on extension of the rear wall, so long as the waiver will not be in conflict with the requirements of Subtitle U § 320.2(i) pertaining to the light, air, and privacy available to neighboring properties and the visual impact of the project on the character, scale, and pattern of houses.

Based on the findings of fact, the Board concludes that the application satisfies the requirements for special exception relief in accordance with Subtitle U § 320.2 and Subtitle X, chapter 9. The subject property now contains a residential building that was existing before May 12, 1958. The height of the existing building and the planned addition will not exceed 35 feet. The lot area, at 2,798 square feet, is sufficient to satisfy the requirement for at least 900 square feet of land area for each of the three units planned for the new apartment house. Because the Applicant proposes

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a conversion of the building to a three-unit apartment house, the IZ requirements do not apply to this application.

The Board finds no evidence to suggest that the planned addition would block or impede the functioning of any chimney or external vent on any adjacent property. Solar energy systems have been installed on a few properties in the immediate vicinity of the subject property; however, the Applicant has demonstrated that the planned addition will not significantly interfere with the operation of any existing solar energy system on an adjacent property.³ The RF-1 zone permits a maximum building height of 35 feet and three stories as a matter of right. (11 DCMR Subtitle E § 303.1.) Under the circumstances, a matter-of-right third-floor addition could have a greater impact on solar energy systems than will the Applicant's planned rear addition, because the Applicant's addition will be set back a significant distance from the front of the existing building to avoid interfering with the solar arrays that have been installed on nearby properties. The front setback will also avoid the removal or alteration of any roof-top architectural element original to the house, and will minimize views of the addition from the street so that the building will largely retain its current appearance.

The Applicant has requested a waiver of Subtitle U § 320.2(e) to allow the planned addition to extend more than 10 feet past the furthest rear wall of any principal residential building on an adjacent property. The Board concludes that the revised design for the addition, including the proposed extension of more than 10 feet from the rear walls of the two adjoining residences, satisfies the requirements for special exception approval.

The addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property with respect to the light and air available to neighboring properties. A third floor may be permitted as a matter of right, and in this case the planned three-story rear addition will have both a front setback and rear setbacks that will lessen the potential massing of the addition. The east side of the addition will be set back four feet from the side lot line, thereby preserving a source of light and air available to the property to the east. The sun study submitted by the Applicant demonstrated that the new construction will not have significant impacts on the shadows created on neighboring properties, since the impact on daylight will be limited to shadows cast onto the abutting property to the west during the morning hours, given the angle of Morse Street. After the planned enlargement of the building, the Applicant's property will continue to comply with applicable zoning requirements with respect to height, lot occupancy, and rear yard. The addition will extend more than 10 feet from the rear walls of the adjoining residences, but the largest extension will occur at the basement level, which will be partially below grade and otherwise largely hidden behind privacy fences. The Applicant has demonstrated, especially by means of a shadow study, that the extensions of 25 and 20 feet beyond the rear walls on the upper levels of the addition will not unduly affected the light and air available to nearby properties.

³ See especially the Applicant's shadow study. (Exhibit 52.)

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The Board concludes that the planned addition, including the rear extension greater than 10 feet from the adjoining residences, will not unduly compromise the privacy of use and enjoyment of any neighboring property. The addition will not have any windows on its west elevation, thereby preventing views from the addition toward properties to the west. The windows on the east elevation will be treated with a privacy film to allow light into the addition while minimizing views of nearby properties to the east.

The Board concludes that the planned conversion, including the proposed addition, as viewed from the street and rear alley, will not substantially visually intrude on the character, scale, or pattern of houses along the subject street or alley. The Applicant's proposal will largely maintain the existing appearance of the building because the existing architectural features, including the front porch, will be retained. The new third floor will be set back almost 20 feet from the existing façade, thereby minimizing views of the addition from the street and maintaining the pattern of houses along the street.

The subject property is located on a block where many residences have already been improved with rear additions of varying lengths. The setbacks on floors one through three of the Applicant's addition will reduce its perceived bulk, in keeping with the varied nature of the rear additions already existing on the block. The Applicant's addition will maintain the residential character of the property and will not be out of scale with other nearby residences, some of which were previously converted to apartment house use.

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested 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. As discussed above, the Board does not find that the new rear addition and conversion to a three-unit apartment house will create any adverse impacts on the use of neighboring property. Approval of the requested special exception will be in harmony with the purpose of the RF-1 zone, and consistent with the intention of provisions applicable in the RF-1 zone to recognize and reinforce the importance of neighborhood character, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board concurs with OP's recommendation that the application, as revised to redesign the proposed addition, should be approved in this case.

The Board is also 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)(3)(A) (2012 Repl.)) In this case ANC 5D expressed opposition to the Applicant's original proposal, stating issues and concerns

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relating to potential adverse impacts on light available to nearby properties and asserting that the planned addition would be inconsistent with the character and streetscape of surrounding properties in terms of its density, design, and size. The ANC also expressed opposition to the Applicant's revised design, especially on the ground that approval of the requested zoning relief would alter the character of the neighborhood. As discussed above, the Board did not find the ANC's views persuasive and instead concludes that the Applicant has provided sufficient evidence, including a shadow study, to demonstrate compliance with zoning requirements for the planned addition and conversion.

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 pursuant to Subtitle U § 320.2 to allow a three-story rear addition to a two-story attached principal dwelling, with a waiver of Subtitle U § 320.2(e) to allow the rear wall of the addition to extend more than 10 feet past the rear walls of the residential buildings on adjacent properties, and conversion of the building to a three-unit apartment house in the RF-1 zone at 1135 Morse Street, N.E. (Square 4070, Lot 145). Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 52 – UPDATED ARCHITECTURAL PLANS AND ELEVATIONS - AND WITH THE FOLLOWING CONDITION:**

1. The windows on the eastern elevation of the addition shall be covered with a privacy film sufficient to preclude views of the properties to the east from the addition.

VOTE: 3-0-2 (Carlton E. Hart, Frederick L. Hill, and Lorna L. John to APPROVE; Lesylleé M. White and Anthony J. Hood opposed).

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 30, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITION IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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 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.