

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 20329 of Ekop I. Graham, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception pursuant to Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.3, to construct two new semi-detached dwellings in the R-2 Zone at premises 1138 51st Street, NE (Square 5201, Lot 809).¹

HEARING DATES: December 9, 2020 and March 3, 2021²

DECISION DATES: December 9, 2020, January 27, 2021, and March 3, 2021

DECISION AND ORDER

This self-certified application was filed on June 30, 2020 by Ekop I. Graham, the owner of the property that is the subject of the application (the “Applicant”). Following public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing, by memoranda dated September 21, 2020, to the Applicant, the Office of Planning (“OP”), the District Department

¹ This caption has been amended to reflect changes in the application, which originally requested area variances from the lot width and lot area requirements of Subtitle D § 302.1 and the side yard requirements of Subtitle D § 206.3. (Exhibit 3.) Although the proposal did not change, the Applicant subsequently amended the relief requested to a special exception under Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.3 after consulting with the Office of Planning about the status of the underlying record lots at the subject property (see the updated self-certification form filed on December 7, 2020, Exhibit 40B). The Applicant withdrew the requests for variance relief. (Transcript of December 9, 2020 at 82.)

² At the close of the public hearing on December 9, 2020, the Board voted to approve the application. The following day, an individual, Frances Hammett, submitted a request under Subtitle Y § 103.13(m) to reopen the record to submit a written version of her planned oral testimony, because she had been unable to testify at the public hearing due to technical issues outside of her control. The Board’s chairman granted the request on December 10, 2020 and reopened the record for the sole purpose of receiving Ms. Hammett’s planned oral testimony in opposition to the application (at Exhibit 46). The parties were notified of an opportunity to respond to the testimony through December 17, 2020. Responses were received from the Applicant (Exhibit 48) and from Antawan Holmes, the chairperson and representative of ANC 7C in this proceeding (Exhibit 49). At a public meeting on January 27, 2021, the Board voted to rescind its December 9 vote and to hold a continued public hearing on March 3 for the limited purpose of addressing the issues raised in the new testimony. At the conclusion of the continued public hearing, the Board again voted to approve the application.

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of Transportation (“DDOT”), the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 7 as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 7C, the ANC in which the subject property is located, Single Member District ANC 7C07, and the owners of all property within 200 feet on the subject property. Notice was published in the *District of Columbia Register* on October 30, 2020 (67 DCR 12666) as well as through the calendar on the Office of Zoning website.

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 7C were automatically parties in this proceeding. The Board did not receive any requests for party status.

Applicant’s Case. The Applicant provided evidence and testimony in support of the application from architects Andrei Banks and Herbert Grievous.

OP Report. By memorandum dated November 24, 2020, OP recommended approval of the zoning relief requested in the amended application. (Exhibit 36.)

DDOT. By memorandum dated November 27, 2020, DDOT stated no objection to the approval of the application. (Exhibit 37.)

ANC 7C. By letter dated November 16, 2020, ANC 7C stated that, at a regularly scheduled and properly noticed meeting on November 12, 2020 with four of six commissioners in attendance, the ANC voted in support of the amended application, contingent upon the Applicant presenting its development plan to, and seeking approval from, the Deanwood Citizens Association (“DCA”). Because the Applicant and DCA were unable reach an agreement, “ANC 7C must vote in opposition of this request.” (Exhibit 44.)

Person in opposition. The Board received testimony in opposition to the application from a resident of a property adjoining the Applicant’s property. The neighbor was concerned with potential damage to her home as a result of construction. The neighbor expressed particular concern about potential erosion and runoff, the removal of four large trees on the Applicant’s property, privacy, and the aesthetics of the neighborhood with the addition of a two-story semi-detached building.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the west side of 51st Street with an address of 1138 51st Street, NE (Square 5201, Lot 0809).
2. The subject property is rectangular, 109 feet deep and 40 feet wide. The lot area is 4,360 square feet.
3. The property is unimproved and contains some trees.

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4. The subject property is currently configured as an Assessment and Taxation Lot (Lot 809) that overlays two record lots (Lots 64 and 65). The record lots were included in the original 1926 subdivision of the property.
5. Each of the record lots is 20 feet wide and 109 feet deep, with a lot area of 2,180 square feet. The current zoning regulations require a lot width of at least 30 feet and a lot area of at least 3,000 square feet for a semi-detached dwelling. (Subtitle D § 302.1.)
6. The two record lots are “substandard” as record lots existing before the effective date of the Zoning Regulations that do not conform with the lot dimension and lot area requirements of the zone where the lots are located. A substandard lot may be considered a conforming lot for the purposes of building permits and uses provided any building or structure thereon will meet the development standards of the relevant zone and provided the non-conformity will not be increased. (Subtitle C § 301.1.)
7. The Applicant proposed to construct a new semi-detached principal dwelling on each record lot.
8. Each building will be 15 feet wide, with one side yard of five feet. Pursuant to Subtitle D § 302.1, the minimum requirement is one side yard of at least eight feet.
9. The new construction will comply with applicable development standards other than side yard. Each lot will have a lot occupancy of 40 percent, consistent with the maximum permitted under Subtitle D § 304.1. Building height will be two stories and 33 feet, where maximums of three stories and 40 feet are permitted. (Subtitle D § 303.1.) The lots will have rear yards of 31 feet (Lot 64, to the north) and 26 feet (Lot 65, to the south), where a minimum of 20 feet is required. (Subtitle D § 306.2.)
10. Each building will have a below-grade garage accessible from the public alley, 16 feet wide, that abuts the subject property at the rear (west).
11. The dwelling on Lot 64 will have windows facing the abutting property to the north.
12. To the north of the subject property is a three-story apartment house. That building sits on a corner lot at the intersection of 51st Street, Meade Street, and Eastern Avenue, NE.
13. The dwelling on Lot 65 will have windows facing the abutting property to the south.
14. To the south of the subject property is a one-story detached principal dwelling.
15. The surrounding neighborhood character is a mix of detached, semi-detached, and attached principal dwellings and small apartment houses.

16. The subject property is located in a Residential House (R) zone, R-2.
17. The Residential House zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.)
18. The provisions of the R zones are intended to (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; (b) 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; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and dimensions for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 100.2.)
19. The purpose of the R-2 zone is to (a) provide for areas with semi-detached dwellings and (b) protect these areas from invasion by denser types of residential development. (Subtitle D § 300.4.) The R-2 zone is intended to provide for areas predominantly developed with semi-detached houses on moderately sized lots that also contain some detached dwellings. (Subtitle D § 300.5.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception pursuant to Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.3 to construct a new semi-detached dwelling on each of two substandard lots. 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* Subtitle X § 901.2).

Subtitle D § 5201.1 provides that, for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board may grant relief from the development standards of Subtitle D in the form of a special exception, subject to the provisions of Subtitle D § 5201 and the general special exception criteria at Subtitle X, Chapter 9. The Applicant seeks a special exception from the side yard requirements of Subtitle D § 206.3.

Subtitle D § 5201.4 provides that an application for special exception relief under Subtitle D § 5201 must demonstrate that the new principal building will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically: (a) the light and air available to neighboring properties must not be unduly affected; (b) the privacy of use and

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enjoyment of neighboring properties must not be unduly compromised; and (c) the new principal building, as viewed from the street, alley, and other public way, must not substantially visually intrude on the character, scale, and pattern of houses along the street or alley frontage. In demonstrating compliance with those requirements, an applicant should use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the new building to adjacent buildings and views from public ways.

Based on the findings of fact, the Board concludes that the application, as amended, satisfies the requirements for a special exception consistent with the requirements of Subtitle D § 5201.4. First, the light and air available to neighboring properties will not be unduly affected by the project. (Subtitle D § 5201.4(a).) The Applicant proposed two semi-detached dwellings, each with a side yard of five feet, where one side yard per lot, eight feet deep, is required. Under the circumstances of this application, the Board agrees with the Office of Planning that the provision of five-foot side yards will not unduly affect the light and air available to neighboring properties. The adjoining properties contain a three-story apartment house and one-story principal dwelling, each of which was also built with some setback from the lot lines in common with the Applicant's property.³ Residences on nearby properties to the west are separated by an alley, 16 feet wide, as well as rear yards. Any impacts on light and air resulting from the smaller side yard setbacks will be diminished by two-story height of the new semi-detached dwellings.

Second, the privacy of use and enjoyment of neighboring properties will not be unduly compromised. (Subtitle D § 5201.4(b).) The new semi-detached dwellings will have windows facing north and south, and the Board heard testimony from a neighbor and the representative of ANC 7C that the new development would create privacy concerns. The Board finds that the smaller side yards will not unduly compromise the privacy of the neighboring properties. Especially considering that the buildings on the adjoining lots also have side yards, the Board concludes that the Applicant's proposal is consistent with the intent of the R-2 zone to provide for semi-detached houses on "moderately sized lots" where expansive side yards are not anticipated.

A resident of the detached dwelling immediately to the south of the subject property testified that the Applicant should be required to install an eight-foot privacy fence along the shared lot line. The ANC's representative supported that request. However, the Applicant declined, in part because an eight-foot fence would require separate approval. (Exhibit 48.) The Board concurs with the Office of Planning that the views from "windows on the sides facing nearby properties ... would not be increased relative to windows on buildings with conforming side yards." (Exhibit 36.) Because the provision of five-foot side yards, rather than eight-foot side yards, will not alter the degree of privacy available to nearby properties, the Board does not find that a privacy fence is necessary to mitigate an adverse impact arising from approval of the requested special exception; therefore the Board declined to require the installation of a privacy fence as a condition of approval of the relief requested.

³ The Applicant estimated the distance between the proposed semi-detached dwellings and the existing buildings on the adjoining lots as more than 10 feet. (Exhibit 38.)

Third, the Board concludes that the new dwellings, as viewed from the street, alley, and other public way, will not substantially visually intrude upon the character, scale, and pattern of houses along the street or alley frontage. (Subtitle D § 5201.4(c).) The new two-story dwellings will provide a transition between the neighboring three-story apartment house to the north and the one-story detached dwelling to the south. Their use as principal dwellings will be consistent with the residential character and scale of the neighboring dwellings.

Based on the findings of fact, the Board also concludes that the application satisfies the requirements for a special exception under Subtitle X § 901.2. First, the project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. (Subtitle X § 901.2(a).) The project is consistent with the general purpose and intent of the provisions of the Residential House zones, which are intended to, *inter alia*, provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; recognize and reinforce the importance of neighborhood character and low- and moderate-density housing to the overall housing mix and health of the city; and allow for the matter-of-right development of existing lots of record. The project is consistent with the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development. The project will develop two new semi-detached dwellings on an unimproved vacant parcel. The project will satisfy the R-2 development standards other than the side yard requirement and will be compatible with the surrounding neighborhood, which is characterized by a mix of detached and semi-detached homes and small apartment buildings. Approval of the application is also consistent with zoning provisions allowing the development of substandard lots, because the planned semi-detached dwellings will meet the development standards of the R-2 zone other than the side yard requirement and will not increase the non-conforming aspects of the existing record lots.

Second, the Board concludes that approval of the requested zoning relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. (Subtitle X § 901.2(b).) In recommending approval of the requested special exception, the Office of Planning did not suggest that any aspect of the application required special treatment for the protection of adjacent and nearby properties. DDOT determined that approval of relief from the side yard requirements would not have adverse impacts on the District's transportation network. The Board heard testimony from a neighbor and the ANC about potential issues relating to erosion, stormwater management, and the removal of trees; however, these issues concerned matters outside the Board's purview in this proceeding and did not state a reason for the Board to deny a relatively limited request for zoning relief from side yard requirements.

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 agrees with OP's recommendation that, in this case, the application should be approved.

Under Section 13(d) of the Advisory Neighborhood Commission Act of 1975, the Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl).) In this case, ANC 7C ultimately voted not to

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support the application because the Applicant failed to agree with the Deanwood Citizens Association on the terms of a “community benefits agreement” addressing hours of construction and opportunities for local hires, outreach to the most affected neighborhood residents, and flooding remediation.

The Board appreciates the unique perspective the ANC can bring in stating its issues and concerns pertaining to an application for relief from zoning requirements. However, the “great weight” requirement extends only to the issues and concerns of the affected ANC that are legally relevant to the application at issue. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), *citing Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 180 (D.C. 1981). In this case, ANC 7C did not state any issues or concerns related to the requirements for approval of the requested special exception set forth in Subtitle D § 5201 or Subtitle X § 901.2 to which the Board can give great weight.

Based on the findings of fact and conclusions 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 D § 5201 from the side yard requirements of Subtitle D § 206.3 to allow a new semi-detached dwellings on each of two substandard lots in the R-2 zone at 1138 51st Street, N.E. (Square 5201, Lot 809). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the architectural plans and elevations submitted as Exhibit 10.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Anthony J. Hood to **APPROVE**; one Board seat vacant)

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: May 23, 2022

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.

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.