

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



**Application No. 20680 of DMV Realty Investments, LLC**, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle E § 205.5, to allow a three-story rear addition to an existing two-story semi-detached principal dwelling in the RF-4 Zone at 801 20<sup>th</sup> Street, NE (Square 4495, Lot 20).

**HEARING DATES:** April 13 and May 4, 2022  
**DECISION DATE:** May 18, 2022

**DECISION AND ORDER**

This self-certified application was filed December 20, 2021 on behalf of DMV Realty Investments, LLC (“Applicant”), the owner of the property that is the subject of the application. Following a 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, on January 7, 2022, the Office of Zoning provided notice of the application and of the public hearing by memoranda to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 5D, the ANC in which the subject property is located, and Single Member District ANC 5D05, the Office of Advisory Neighborhood Commissions, the Department of Consumer and Regulatory Affairs, the Office of the Attorney General, the Councilmember for Ward 5 as well as the Chairman of the Council and three at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on January 14, 2022 (69 DCR 000285-000291) as well as through the calendar on the Office of Zoning website.

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 5D were automatically parties in this proceeding. The Board received no requests for party status.

Applicant’s Case. The Applicant presented evidence and testimony from Eric Teran, the project architect, in support of the request for zoning relief needed to allow construction of a three-story rear addition to an existing semi-detached dwelling that would extend more than 10 feet beyond the rear wall of the principal residential building on an adjoining lot.

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OP Report. By report dated March 31, 2022, the Office of Planning recommended approval of the application. (Exhibit 25.) OP reiterated its recommendation in a supplemental report dated May 2, 2022. (Exhibit 33.)

DDOT Report. By memorandum dated April 11, 2022, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 27.)

ANC Report. By report dated March 17, 2022, ANC 5D indicated that, at a public meeting on March 8, 2022 with a quorum present, the ANC voted to recommend denial of the application. (Exhibit 23.) The chairperson of ANC 5D, who represented the ANC in this proceeding, reiterated the ANC's objection to approval of the application in two subsequent letters, dated April 27, 2022 and May 13, 2022. (Exhibits 31, 48.)

Persons in support. The Board received a petition in support of the application signed by persons living near the subject property, which stated that the Applicant's planned addition would not cause any adverse impacts.

**FINDINGS OF FACT**

1. The property that is the subject of this application is a corner lot bounded by 20<sup>th</sup> Street, NE on the west and H Street, NE on the south, with an address of 801 20<sup>th</sup> Street, NE (Square 4495, Lot 20).
2. The subject property is rectangular, 33 feet wide and 91.25 feet deep, with a lot area of 3,011 square feet.
3. The subject property is improved with a semi-detached principal dwelling that is two stories and 25 feet, four inches in height.
4. The existing dwelling is set back 15 feet from both 20<sup>th</sup> Street at the front and H Street on the side, consistent with the building restriction lines ("BRL") along both street frontages. The dwelling has a rear yard of approximately 45 feet. The existing lot occupancy is 18.6 percent.
5. The rear (east) lot line of the subject property abuts a public alley that is 16 feet wide.
6. The Applicant proposed to enlarge the existing dwelling with a new third floor and a three-story rear addition and to convert the building to a three-unit apartment house. The two lower units will have four bedrooms, while the unit on the third floor will have two bedrooms.

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7. Two vehicle parking spaces will be created at the rear of the lot, accessible from the public alley. The Applicant will install a fence to screen views of the parking spaces from the BRL area and public sidewalks along H Street.
8. The entrance to one apartment will be on 20<sup>th</sup> Street. The entrances to the other two units will be via a door on the H Street frontage near the parking spaces at the rear of the lot.
9. The new construction will provide windows on the façades facing west (front), east (rear), and south (fronting on H Street). The north façade will not have any windows.
10. The apartment house will have a roof deck accessible to the residents of the unit on the third floor. The roof deck will be located toward the front of the building facing the two abutting streets.
11. The new construction will increase the lot occupancy at the subject property to 36.6 percent, where a maximum of 60 percent is permitted as a matter of right. (Subtitle E § 604.1.)
12. The project will provide a rear yard of approximately 20 feet, four inches, where a minimum of 20 feet is required. (Subtitle E § 606.1.)
13. The addition will increase the building height to three stories and 39 feet, eight inches, where three stories and 40 feet are permitted. (Subtitle E § 603.1.)
14. The floor area ratio will be 1.47, where a maximum of 1.8 is permitted. (Subtitle E § 602.1.)
15. The Applicant's building is attached on the north side to a two-story row dwelling. The abutting row dwelling has a one-story rear porch addition that extends 8.3 feet deeper than the existing rear wall of the Applicant's building. The rear wall of the Applicant's building, on both the first and second floors, aligns with the rear wall of the second floor of the abutting row dwelling.
16. The new three-story rear addition will extend approximately 25 feet from the existing rear wall of the Applicant's dwelling.
17. The new addition will extend beyond the existing rear walls of the abutting row dwelling to the north by approximately 16.5 feet on the first floor and 24.8 feet on the second floor.
18. The subject property is one of three corner lots along H Street at either 20<sup>th</sup> or 21<sup>st</sup> Street. The corner lot to the east of the subject property contains a three-story apartment house that extends more than 72 feet deep along H Street. The corner lot to the west of the subject property contains a two-story dwelling that extends 56 feet along H Street, and approximately 14 feet deeper than the row dwelling to its north.

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19. The three corner lots are larger than the nearby lots to the north, which are primarily improved with row dwellings. Properties to the south, across H Street, also contain row dwellings. The nearby residential buildings primarily have two stories but some have been enlarged with third floors and rear additions.
20. Some of the properties to the north of the subject property, in the same square, have accessory structures in their rear yards that are accessible from the public alley abutting the rear lot lines of the properties.
21. The subject property is located in a Residential Flat (RF) zone, RF-4. The Residential Flat zones are residential zones that provide for areas developed primarily with row dwellings but within which there have been limited conversions of dwellings or other buildings into more than two dwelling units. (Subtitle E § 100.1.)
22. The provisions of the RF zones are intended to (a) 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; (b) allow for limited compatible non-residential uses; (c) allow for the matter-of-right development of existing lots of record; (d) establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones; (e) allow for the limited conversion of rowhouse and other structures for flats; and (f) prohibit the conversion of flats and row houses for apartment buildings as anticipated in the Residential Apartment (RA) zone. (Subtitle E § 100.1.)
23. The RF zones are distinguished by the maximum number of principal dwellings permitted per lot, ranging from two to four. (Subtitle E § 100.4.) The RF-4 zone permits a maximum of three dwelling units per lot. (Subtitle § 602.2.)
24. The purpose of the RF-4 zone is to provide for areas predominantly developed with row houses of three or more stories where a mix of apartment buildings might also exist. (Subtitle E § 600.1.)
25. The RF-4 zone is typically, but not exclusively, an established residential neighborhood adjacent or proximate to higher density zones including residential, mixed-use, and downtown areas. (Subtitle E § 600.2.) The RF-4 zone is intended to promote the continued rowhouse character and appearance as well as the residential use of larger row house buildings. (Subtitle E § 600.4.)

**CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks a special exception, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle E § 205.5, to allow a three-story rear addition to an existing two-story semi-detached principal dwelling in the RF-4 zone at 801 20<sup>th</sup> Street, NE (Square 4495, Lot 20). 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 E § 205.5, a rear wall of a semi-detached building may be constructed to extend farther than 10 feet beyond the farthest rear wall of any principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 and subject to Subtitle E § 5201. The Board is authorized by Subtitle E § 5201.1 to grant relief from certain development standards to allow an addition to a principal residential building on a non-alley lot subject to specific requirements. In accordance with Subtitle E § 5201.4, an application for special exception relief from a development standard must demonstrate that the planned addition 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 enjoyment of neighboring properties must not be unduly compromised, and (c) the proposed addition, together with the original 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 and alley frontage.

The RF-4 zone permits, as a matter of right, buildings that are three stories and up to 40 feet in height, as well as rear additions that extend up to 10 feet beyond the rear wall of a residential building on an adjoining property; additions extending more than 10 feet may be approved by special exception. In this case, the Applicant's planned three-story addition will extend more than 10 feet beyond the two-story row dwelling located on the property to the north, larger than the limit for matter-of-right construction by approximately 6.5 feet on the first floor and 14.8 feet on the upper floors. Based on the findings of fact, the Board concludes that the Applicant has satisfied the requirements for the requested special exception.

The Board concludes that the planned addition will not unduly affect the light and air available to neighboring properties. The size of the addition will satisfy the applicable development standards with respect to the lot occupancy and floor area ratio permitted as a matter of right. The subject property is a corner lot, separated by streets from the closest dwellings to the west and south. The nearest dwellings to the east are also at a significant distance from the subject property, which abuts an alley and will provide a rear yard consistent with RF-4 development standards in addition to the rear yards provided by the dwellings to the east. The Board concludes that the planned addition will not unduly affect the light and air available to the adjoining property to the north. The Applicant provided sun studies that illustrated the expected shadow impacts of the planned construction relative to an addition that could be undertaken as a matter of right (Exhibits 14, 44). The studies demonstrated that the additional length of the rear addition, beyond the length permitted as a matter of right, will increase the shadow impacts on nearby properties to the north and in the alley to the east but those impacts will not be significant or extensive compared to the impacts of an addition of the size permitted as a matter of right. The Board agrees with the

testimony of the Office of Planning that “the additional shadows anticipated to be cast are minimal, would vary depending on the season, and would appear to not be for extended periods of the day” so that the increase in shadows would not be considered excessive or unreasonable in an area developed primarily with row buildings.

The Board concludes that the planned addition will not unduly compromise the privacy of use and enjoyment of neighboring properties. As already noted, the addition will be at a significant distance from nearby dwellings except for those directly north of the subject property. However, the addition will not have any windows on its north façade and therefore will not provide any views of the neighboring dwellings to the north. The planned roof deck will be located closest to the abutting streets, at a distance from nearby dwellings, and will not provide views into neighboring properties.

The Board concludes that the planned addition, together with the original building, as viewed from the street, alley, and other public way, will not substantially visually intrude on the character, scale, and pattern of houses along the street and alley frontage. The Applicant submitted photographs showing the variety of building types in the immediate vicinity of the subject property, especially on the nearby corner lots on H Street to the east and west of the subject property, and other nearby residential buildings previously enlarged with third-floor additions. The Board agrees with the testimony of the Office of Planning, which noted that the height of the rear addition will comply with the Zoning Regulations and concluded that the proposed height and scale of the planned addition will be “in keeping with the intent of the zoning and the prevailing residential character of the blockfronts.”

The Board concludes that approval of the application 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 is required for approval of the application under Subtitle X § 901.2. Approval of the application will be consistent with the purposes of the Residential Flat zone as an area developed primarily with row dwellings but within which there have been limited conversions of dwellings to more than two dwellings. Conversion of the existing residential building to three dwelling units is permitted as a matter of right in the RF-4 zone, which was intended to provide for areas predominantly developed with row houses of three or more stories where a mix of apartment buildings might also exist and to promote the continued rowhouse character and appearance as well as the residential use of larger row house buildings. Consistent with the provisions of the RF zones, approval of the requested zoning relief will recognize and reinforce the importance of neighborhood character, walkable neighborhoods, 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, allow for the limited conversion of a rowhouse structures for flats, and prohibit the conversion of a row house for an apartment building as anticipated in the Residential Apartment zone.

Approval of the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The subject property will remain a permitted residential use after construction of an addition that will satisfy applicable development

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standards other than the extension greater than 10 feet from the rear wall of the adjoining residential building. For the reasons already discussed, the Board does not find that the planned addition will unduly affect the light, air, or privacy of any neighboring property.

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.

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 voted to recommend denial of the application “for failure to meet the requirements set forth in [Subtitle E] § 5201.3.”

The ANC stated a concern that the requested special exception “would have a substantially adverse effect on the use of enjoyment of the abutting dwelling” because the Applicant’s “project would negatively impact the light and air available to the neighboring property.” (Exhibit 23.) For the reasons already discussed, the Board does not agree that the Applicant’s planned addition will unduly affect the light and air available to nearby dwellings, including the abutting row dwelling, especially as compared to a rear addition that could be constructed as a matter of right.

The ANC also asserted that approval of the application was likely to set a precedent that would negatively impact rear setbacks on the remainder of the block, contrary to the intent of the Zoning Commission in mapping the RF-4 zone in the area encompassing the subject property.<sup>1</sup> The Board does not agree that approval of the application would establish a precedent for any other property or undermine the integrity of the RF-4 zone, especially considering the planned residential use of the property and that the building will comply with the RF-4 development standards with the exception of the length of the new rear addition beyond the rear wall of the adjoining dwelling. An extension greater than 10 feet is permitted as a special exception in the RF-4 zone and, for the reasons discussed above, the Board concludes that the application satisfied the requirements for approval of the requested special exception.

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 under Subtitle E § 205.5 to allow a three-story addition to an existing semi-detached principal dwelling in the RF-4 Zone at 801 20<sup>th</sup> Street, NE (Square 4495, Lot 20). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans submitted as Exhibit 43 in the record.

**VOTE: 4-1-0** (Frederick L. Hill, Lorna L. John (by absentee vote), Chrishaun S. Smith, and Carl H. Blake to APPROVE; Anthony J. Hood opposed).


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<sup>1</sup> Square 4495, including the subject property, was included in the 13.5-acre “Proposed RF-4 Area” that the Zoning Commission rezoned from RA-2/MU-42 to RF-4 in a proceeding initiated by a petition filed by ANC 5D. (See Z.C. Case No. 19-30, order effective February 19, 2021.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**ATTESTED BY:**



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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** September 30, 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



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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.