

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19560 of Adam Ross and Peng Wu, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 205.5 from the rear yard requirements of Subtitle E § 205.4 to allow a two-floor rear addition to an existing principal dwelling in the RF-1 Zone at premises 1739 Harvard Street, N.W. (Square 2588, Lot 160).

HEARING DATE: October 4, 2017
DECISION DATE: November 15, 2017

DECISION AND ORDER

This self-certified application was submitted on June 15, 2017 on behalf of Adam Ross and Peng Wu, the owners of the property that is the subject of the application (the “Applicants”). The application requested special exception relief to allow a two-floor rear addition to an existing principal dwelling, not meeting requirements for rear additions in the RF-1 district at 1739 Harvard Street, N.W. (Square 2588, Lot 160). After a public hearing, the Board of Zoning Adjustment (the “Board” or “BZA”) voted to grant the application at a decision meeting on November 15, 2017.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 18, 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 1, as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission 1D (the “ANC”), the ANC in which the subject property is located; ANC 1C, because the subject property is located on a street that serves as a boundary line between ANC 1D and 1C; and Single Member District Commissioner for ANC 1D05. Pursuant to 11 DCMR Subtitle Y § 402.1, on August 18, 2017 the Office of Zoning mailed letters providing notice of the hearing to the Applicants, the Councilmember for Ward 1, ANC 1D, ANC 1C, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on August 18, 2017 (64 DCR 8214).

Party Status. The Applicants and ANCs 1D and 1C were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Bryan Thompson

BZA APPLICATION NO. 19560
PAGE NO. 2

and Susanne Rinner, the owners of the residence abutting the subject property to the west. (Exhibit 37.) The Board denied the request of Steve Roberts, who resides four houses away. (Exhibit 36.)

Applicants' Case. The Applicants provided evidence and testimony about the planned addition, and asserted that the proposal would satisfy all requirements for approval of the requested zoning relief. The Applicants revised their plans several times. The plans showing the final design were submitted as Exhibits 80 and 81. The Applicants submitted a shadow study for the final design as Exhibit 82.

OP Reports. OP submitted two reports in this case. In the first, dated September 22, 2017, the Office of Planning stated that it could not make a recommendation on the application because information was lacking on the special exception criteria set forth in Subtitle E § 5201.3 (a) and (b), and requested shadow studies from the Applicants. The report analyzed the remaining special exception criteria, and concluded that the Applicants satisfied them. (Exhibit 39.) In a supplemental report dated October 30, 2017, OP stated that it reviewed the Applicants' shadow studies and revised plans, concluded that the additional information provided a sufficient basis for it to assess whether the application meets the special exception criteria, and recommended approval of the revised application. (Exhibit 71.)

DDOT. By memorandum dated September 22, 2017, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 40.)

ANC Reports. ANC 1D submitted two reports. The first, dated September 27, 2017, stated that the ANC voted to recommend that the Board postpone the hearing, and request updated burden of proof statements from the Applicants that directly address the concerns raised by residents within a 200-foot radius of the subject property. (Exhibit 46.) The second, dated October 24, 2017, stated that the ANC voted to recommend that the Board deny the application because it concluded granting the relief would have a substantially adverse effect on the use or enjoyment of abutting or adjacent dwelling or property. The resolution attached to the letter stated that the ANC, in reaching this conclusion, had two issues and concerns. First, immediately adjoining neighbors have expressed opposition to this application. Second, the rear lots on the stretch of Harvard Street, N.W. that contain the subject property are narrow and shallow. As a result, the proposed addition will have a more pronounced effect on adjacent properties than it would if they had larger backyards. (Exhibit 58.) ANC 1C did not submit a report.

Party in Opposition. The party in opposition contended the proposed addition would block a portion of the light and air available to their rear yard, increase the probability of water damage, and impact the privacy, use, and enjoyment of their adjoining property located at 1737 Harvard Street, N.W. The party in opposition contended that because the row of homes that includes the subject property is composed of small homes, on narrow lots, with the homes positioned close to the rear of the lot, the addition created an undue impact on their property. They also argued that there were other options available to the Applicants to develop their property. The party submitted

BZA APPLICATION NO. 19560
PAGE NO. 3

a shadow study that reflected an earlier iteration of the Applicant's proposed addition that was slightly larger than the final design. (Exhibit 76.)

Person in support. The Board received a letter from Joe McReynolds, who resides at 1755 Harvard Street, N.W. The letter stated that he lives next to the largest "popback" rear addition on the row of identical houses. He stated that the rear addition adjacent to his property is larger than the addition proposed in this application, and that the impact of the addition is "minimal" and makes no difference on his quality of life.

Persons in opposition. The Board received letters and testimony from persons in opposition to the application. The persons in opposition objected that rear additions that exceed the matter-of-right limit would negatively impact neighboring properties and should be denied.

FINDINGS OF FACT

1. The subject property is located on the north side of Harvard Street, N.W. (Square 2588, Lot 160).
2. The subject property has a rectangular shape. It is 15 feet wide and approximately 128 feet deep.
3. The subject property is improved with an attached building used as a principal dwelling.
4. The building has three stories above grade in the front and two in the back. The lot abuts an alley at the rear and there is a parking space at the rear of the lot.
5. The front of the building faces south, and the rear yard faces north.
6. The subject property is located on a sloping grade. Because the grade slopes up from the front to the back of the lot, the first story of the building is completely above grade in the front and completely below grade in the rear.
7. The rear of the subject property is not visible from Hobart Street, N.W.
8. The subject property is part of a row of simultaneously constructed, nearly identical, modernist brick row dwellings with staggered front and rear facades. The front and rear facades of the building to the east are aligned with those of the subject property. The front facade of the building to the west is set back approximately four feet, and the rear facade extends approximately two feet beyond that of the subject property.
9. The existing rear wall of the existing building on the subject property has windows facing the rear yard.
10. The Applicants propose to construct a two-story rear addition. The addition would extend 13 feet on the second floor from the existing rear wall of the building to enable the existing

BZA APPLICATION NO. 19560
PAGE NO. 4

kitchen, dining room and relocated living room to be on the same floor, which is at grade level in the rear because of the slope. The addition would extend the third floor, which is the second floor above grade in the rear, by 11 feet to enable construction of a new bedroom. The addition would extend 13 feet beyond the rear wall of the building to the east on the second floor and 11 feet beyond on the third floor. The addition would extend ten and eight feet, respectively, past the second and third floors of the house to the west. (Exhibits 39, 80-81.)

11. There will be no windows on either side wall of the addition. The rear wall will include windows directly facing the rear yard. (Exhibit 39.)
12. The Applicants submitted their final revised plans on November 7, 2018, (Exhibits 80, 81) along with shadow studies for the addition shown in the revised plans. (Exhibit 82.)
13. The revised plans show the total lot occupancy for the existing building and addition will be 34.4%. (Exhibit 81.)
14. The Applicants' shadow studies show:
 - (a) at no time of the year would either a by-right addition or the proposed addition cast any new shadows on the face of the houses to the east or west, or those nearby, because the north-facing rear walls are already in shadow under existing conditions;
 - (b) some shadow is currently cast in rear yards during the spring, summer and fall by existing buildings, fences, chimneys and – for some properties – by adjacent one-story additions;
 - (c) new shadows cast by the Applicants' proposed addition would be limited to the rear yards of adjacent houses;
 - (d) during the autumnal and vernal equinoxes, the shadow cast by the proposed addition beyond the shadow cast by a by-right addition would be: minimal during mid-day; be increased somewhat, on 1741 Harvard Street's rear yard at 9:00 a.m., and would be minimally increased on 1737 Harvard Street's rear yard at 4:00 p.m.;
 - (e) on the longest day of the year, June 21, the shadow cast by the portion of the proposed addition that is deeper than what would be permitted by-right would also be negligible during mid-day, though there would be a greater increase in the shadowing of 1741 Harvard Street's back yard at 9:00 a.m. and a similar increase on 1737 Harvard Street's back yard at 4:00 p.m.
15. There are existing one-story rear additions at 1709, 1711, 1715, 1727, 1735 1745, 1747, 1749 and 1761 Harvard Street and two-story rear additions at 1725 and 1757 Harvard Street. These additions range from approximately five feet to approximately 16 feet in depth.

BZA APPLICATION NO. 19560
PAGE NO. 5

16. 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).)
17. 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

The Applicant seeks a special exception pursuant to 11 DCMR Subtitle X, Chapter 9, under Subtitle E § 205.5, from the rear addition requirements of Subtitle E § 205.4, to allow a two-floor rear addition to an existing principal dwelling in the RF-1 Zone at premises 1739 Harvard Street, N.W. (Square 2588, Lot 160).

The Board is authorized under § 8 of the Zoning Act (D.C. Official Code § 6-641.07(g)(2) (2018 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-X DCMR § 901.2.)

Subtitle E § 205.5 provides that the Board may approve a rear wall of an attached or semi-detached dwelling that extends farther than ten feet beyond the farthest rear wall of any principal residential building on adjacent property as a special exception pursuant to Subtitle X, Chapter 9, and as evaluated against the criteria of Subtitle E §§ 5201.3 through 5201.6.

Pursuant to Subtitle E § 5201.3, an applicant for a special exception must demonstrate that the addition will not have “a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property”. In particular, the applicant must demonstrate that the addition will not “unduly affect” the light and air available to neighboring properties, (Subtitle E § 5201.3(a),) and that the privacy of use and enjoyment of neighboring properties will not be “unduly compromised.” (Subtitle E § 5201.3(b).) The planned addition, as viewed from a street, alley, and other public way, must not “substantially visually intrude on the character, scale, and pattern of houses along the street frontage.” (Subtitle E § 5201.3(c).)

Based on the findings of fact, the Board concludes that the application satisfies those requirements for special exception relief.

BZA APPLICATION NO. 19560
PAGE NO. 6

The proposed addition will not unduly affect the light and air available to neighboring properties because of the very modest scope of the relief requested and the fact that it extends back into the north facing the rear yard.

The first level of the addition would extend three feet beyond by-right limit on the house's second floor, which is at ground level due to the upward slope of a hill from the front to the back of these properties. The second level of the addition would extend one foot beyond the by-right limits on the house's third floor. This is a small amount of relief. The addition will be on the north side of the building, reducing its impact on light because the rear yards are already in shadows cast by the existing buildings. Accordingly, the impact of this relief on neighboring properties is quite small.

The sun studies further support the Board's conclusion that the impact of the relief on the light and air available to neighboring properties will be quite small. At no time of the year would either a by-right addition or the proposed addition cast any new shadows on the face of the houses to the east or west, or those nearby, because the north-facing rear walls are already in shadow under existing conditions. Some shadow is currently cast in rear yards during the spring, summer and fall by existing buildings, fences, chimneys and – for some properties – by adjacent one-story additions. New shadows cast by the Applicants' proposed addition would be limited to the rear yards of adjacent houses. During the autumnal and vernal equinoxes, the shadow cast by the proposed addition beyond the shadow cast by a by-right addition would be: minimal during mid-day; be increased somewhat, but not unduly, on 1741 Harvard Street's rear yard at 9:00 a.m., and would be minimally increased on 1737 Harvard Street's rear yard at 4:00 p.m. On the longest day of the year, June 21, the shadow cast by the portion of the proposed addition that is deeper than what would be permitted by-right would also be negligible during mid-day. While there would be a greater increase in the shadowing of 1741 Harvard Street's rear yard at 9:00 a.m. and a similar increase on 1737 Harvard Street's rear yard at 4:00 p.m., the overall effect of the shadows created from the deeper-than-by-right portion of the addition would be small.

The proposed addition will not unduly compromise the privacy of use and enjoyment of neighboring properties. There are no windows on either side of the proposed addition and no terrace off the upper floor. There is also no significant increase in the percentage of fenestration in the rear wall.

The planned addition, as viewed from a street, alley, and other public way, will not substantially visually intrude on the character, scale, and pattern of houses along the street frontage. The addition would not be visible from Harvard Street or Hobart Street, but would be visible from the alley at the rear. There are already one-story rear additions at 1709, 1711, 1715, 1727, 1735 1745, 1747, 1749 and 1761 Harvard Street, and two-story rear additions at 1725 and 1757 Harvard Street. These additions range from approximately five feet to approximately 16 feet in depth.

Consistent with Subtitle E § 5201.3(d), the Applicant has provided graphical representations, including plans, photographs, and drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways.

BZA APPLICATION NO. 19560
PAGE NO. 7

The lot occupancy of the new and existing structures on the lot is 34.4%; thus, it is well within the 70% limitation of Subtitle E § 5201.3(e). The Board does not require any 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 in this case because it does not believe any of these are necessary. The application therefore complies with Subtitle E § 5201.4. The use of the addition is conforming and therefore the application complies with Subtitle E § 5201.5. The proposed height and number of stories of the addition conforms with the matter-of-right zoning limits, and therefore the application complies with Subtitle E § 5201.6.

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. 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 does not find that the rear addition will create any adverse impacts on the use of neighboring properties.

Great Weight to OP and ANC

The Board is required to give “great weight” to the recommendation of the Office of Planning. D.C. Official Code § 6-623.04 (2018 Repl.). For the reasons discussed above, the Board concurs with OP’s recommendation that the application 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) (2018 Repl.)). In this case, ANC 1D expressed two issues and concerns in its reports. First, immediately adjoining neighbors opposed this application. Second, the rear lots that contain the subject property and its adjacent neighbors are relatively narrow and shallow, such that an addition will have a more pronounced effect on these properties than it would on properties with larger rear yards.

The Board does not find this advice persuasive because, for the reasons discussed above, it concludes that the Applicants have met their burden of showing that the proposed addition met the specific special exception standards for approval. The arguments presented by the neighbors who opposed the application were not compelling because the impact on neighboring properties will be minor. While it may be true that the impact of the addition on neighboring properties will be greater than if it were added to a property with a wider and deeper lot, the actual effect of this addition on neighboring properties will be very small.

BZA APPLICATION NO. 19560
PAGE NO. 8

The opposition party similarly contended that because the subject property is in a row composed of small homes, on narrow lots with the homes positioned close to the rear of the lot, the addition created an undue impact on their property. The opposition party also argued that there are other options available to the Applicants to develop their property. For the reasons discussed above, the Board concludes that the Applicants have met their burden of showing that the addition met the special exception criteria, despite the size and shape of the lots and positioning of the buildings. The existence of other potential options is not included in the applicable special exception test.

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 under 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 205.5 from the rear yard requirements of Subtitle E § 205.4 to allow a two-floor rear addition to an existing two-story principal dwelling in the RF-1 Zone at premises 1739 Harvard Street, N.W. (Square 2588, Lot 160).

Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 80 - PROPOSED UPDATED ARCHITECTURAL PLANS AND ELEVATIONS AND EXHIBIT 81 - UPDATED ELEVATIONS.**

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter G. May 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: February 15, 2019

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.