

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19771 of Lee Wells and Malcolm Haith, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy provisions of Subtitle E § 304.1, and the accessory building size restrictions of Subtitle E § 5004.2, and under Subtitle E §§ 206.2 and 5203.3 from the roof top architectural element provisions of Subtitle E § 206.1, to construct an accessory building and remove an existing porch roof on the existing principal dwelling unit in the RF-1 zone at premises 1834 Ontario Place, N.W. (Square 2583, Lot 351).

HEARING DATE: June 13, 2018
DECISION DATE: June 13, 2018

DECISION AND ORDER

Lee Wells and Malcolm Haith (collectively, the “**Applicant**”) filed an application (the “**Application**”) on April 18, 2018, with the Board of Zoning Adjustment (the “**Board**”) requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified):

- Special exception from the roof top architectural element provisions of Subtitle E § 206.1 pursuant to Subtitle E §§ 206.2 and 5203.3,
- Special exception from the accessory building size restrictions of Subtitle E § 5004.2 pursuant to Subtitle E §§ 5007 and 5201, and
- Special exception from the lot occupancy provisions of Subtitle E § 304.1 pursuant to Subtitle E § 5201,

to remove and replace an existing porch and porch roof on the existing principal dwelling unit and to construct an accessory building at Lot 351 in Square 2583, with an address of 1834 Ontario Place, N.W. (the “**Property**”) in the RF-1 zone. For the reasons explained below, the Board voted to

- **DENY** the requested relief from the roof top architectural element provisions of Subtitle E § 206.1, but
- **APPROVE** the requested special exception relief from the lot occupancy requirements of Subtitle E § 304.1 and the accessory building size restrictions of Subtitle E § 5004.2.

FINDINGS OF FACT

I. BACKGROUND

NOTICE

1. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“**OZ**”) sent notice of the Application and the June 13, 2018 hearing by an April 27, 2018 letter to
 - the Applicant;
 - Advisory Neighborhood Commission (“**ANC**”) 1C, the ANC within which boundaries the Property is located and so the “affected” ANC per Subtitle Z § 101.8;
 - the Single Member District (“**SMD**”) Commissioner for ANC 1C04 and the Office of ANCs;
 - the Office of Planning (“**OP**”);
 - the District Department of Transportation (“**DDOT**”);
 - the Councilmember for Ward 1;
 - the Chairman of the Council;
 - the At-Large Councilmembers; and
 - the owners of all property within 200 feet of the Property. (Exhibit (“**Ex.**”) 17-29.)
2. OZ published notice of the June 13, 2018 hearing in the *D.C. Register* on May 4, 2018 (65 DCR 4823) as well as through the calendar on OZ’s website.

PARTIES

3. In addition to the Applicant, ANC 1C was automatically a party in this proceeding pursuant to Subtitle Y § 403.5. The Board received no requests for party status.

THE PROPERTY

4. The Property is a rectangular interior lot with rear alley access.
5. The Property is currently improved with a one-family row dwelling (the “**Building**”).
6. The Property has an existing lot occupancy of 50%.
7. The Property has an existing rear yard of 49.3 feet.
8. The Building has a front porch that is original to the building and extends across the front façade.
9. The Building was constructed as one in a row of four with consistent front porch designs. The two structures on either side of the Building have retained their original front porches, while the fourth dwelling at the end of the row had its original front porch removed approximately 30-40 years ago. (June 13, 2018 Public Hearing Transcript (“**June 13 Tr.**”) at 226.)

10. The streetscape on the 1800 block of Ontario Place, N.W., has a consistent pattern and character, punctuated with front porches and projecting bays.
11. The Property is within the RF-1 zone district.
12. The purpose of the RF-1 zone is to provide for areas predominantly developed with row houses on small lots within which no more than two (2) dwelling units are permitted. (Subtitle E § 300.1.)

II. THE APPLICATION

13. The Application proposed to renovate the Building and convert it to a flat. The renovation proposed to:
 - add a two-story rear addition;
 - remove the existing front porch and roof and replace it with a smaller front porch with a roof;¹ and
 - construct a new accessory garage structure at the rear of the Property (the “Garage”) in the required 20-foot rear yard.
14. The Application’s proposed removal of the existing porch and replacement with a smaller porch would expose the basement dwelling unit at front façade currently covered by the existing porch.
15. The Application proposed that the Garage would:
 - Be one story, including an internal storage loft, with a pitched roof rising from nine feet facing the required rear yard side to a high point of 13 feet, 8 inches facing the alley;
 - Have a proposed gross floor area (“GFA”) of 375 square feet;
 - Be set back 12 feet from the centerline of the 15-foot wide alley at the rear of the Property, putting it approximately in line with the other accessory structures on the block; and
 - Have no windows facing adjacent properties.

RELIEF REQUESTED

16. The Application requested three special exceptions:
 - from Subtitle E § 206.1’s prohibition on removing or significantly altering a roof top architectural element original to a building in order to alter the existing front porch and

¹ The Applicant’s first building permit issued on October 17, 2017, by DCRA (Permit No. B1705868) permitted the removal of the existing porch structure. However, DCRA subsequently issued a stop work order on February 12, 2018, which denied the Applicant the ability to demolish the front porch pursuant to Subtitle E § 206.1. The Application was filed in response to the stop work order to obtain the relief necessary to continue.

- porch roof, pursuant to Subtitle E § 206.2 and subject to the conditions of Subtitle E § 5203.3;
- from Subtitle E § 5004.2's maximum ten-foot height and 100 square foot GFA for accessory buildings in a required rear yard in order to construct the Garage with a 13-foot, 8-inch height and a 375 square foot GFA, pursuant to Subtitle E § 5007.1 and subject to the conditions of Subtitle E § 5201; and
 - from Subtitle E § 304.1's maximum 60% lot occupancy in the RF-1 zone, pursuant to Subtitle E § 5201 and subject to its conditions, to allow either:
 - a 66% lot occupancy if the requested relief to replace the front porch is granted, or
 - a 69% lot occupancy if the requested relief to replace the front porch is denied.

APPLICATION'S JUSTIFICATION FOR THE REQUESTED RELIEF

Rooftop Architectural Elements

17. The Application asserted that the existing porch roof was structurally unsound and presented a safety hazard and that the requested relief complied with Subtitle E § 5203.3's conditions as follows:
- The proposed porch roof would be smaller than the existing one and would not block or impeded a functioning chimney or other external vent required by code (Subtitle E § 5203.3(b));
 - The proposed porch would not interfere with the operation of an existing or permitted solar energy system on an adjacent property (Subtitle E § 5203.3(c)); and
 - Subtitle E § 5203.3(d)'s prohibition of removing rooftop architectural elements, including porch roofs should not apply because it was clearly erroneous as it contradicted Subtitle E § 5203.3's authorization for relief from Subtitle E § 206 – the same prohibition as Subtitle E § 5203.3(d).
18. The Application asserted that the proposed replacement of the existing porch would comply with the general special exception criteria of Subtitle X § 902.1 because the removal of the porch would not adversely affect the visual character of the block as one of the other row homes constructed at the same time as the Building had removed its porch roof and the facades of the block had “a diversity of character and design.”

Accessory Structures (Rear Yard) & Lot Occupancy

19. The Application asserted that it met the criteria of Subtitle E § 5201 as follows:
- The Garage would not substantially impact the light and air available to the adjacent properties, as demonstrated by the Applicant's shadow study in Exhibit 45 that illustrated that the Garage would cast only minimal additional shadowing on the alley or neighboring property (Subtitle E § 5201.3(a));
 - The Garage would not unduly impact the privacy or use of the adjacent properties because the Garage was designed without windows facing into either of the adjacent properties or the alley and would comply with the minimum setback from the alley centerline (Subtitle E § 5201.3(b));

- The Garage would not visually intrude upon the character, scale and pattern of the existing structures on the alley because most of the existing lots already include accessory structures of approximately the same size as the Garage (Subtitle E § 5201.3(c));
 - The Application provided plans, elevations and photos in support of its request (Ex. 8, 9, 14, 30A, 51B) (Subtitle E § 5201.3(d)); and
 - The Application was eligible for special exception relief because it requested lot occupancy of 66% for the Building and the Garage, below the 70% maximum permitted. (Subtitle E § 5201.3(e).)
20. The Application asserted that the Garage would comply with the general special exception criteria of Subtitle X § 902.1 as follows:
- It would be in harmony with the purpose and intent of the Zoning Regulations and the RF-1 zone because both adjacent properties, as well as a number of others on the block, have accessory garages of approximately the same size as the Garage; and
 - It would not adversely affect the adjacent properties because the Garage would have no windows facing adjacent properties or the alley and the Applicant's shadow study indicated that the Garage would not cause significant shadow impacts to the adjacent properties.

Applicant's Submissions

21. The Applicant made a total of four submissions to the record in support of the Application:
- The initial application, and supporting documents dated April 18, 2018 (Ex. 1-16);
 - A prehearing statement dated May 23, 2018, providing additional supplemental information and responding to issues raised by the ANC (Ex. 30-30F, the "**Prehearing Statement**");
 - A revised prehearing statement dated May 24, 2018, which corrected several minor calculation and labeling errors contained in the plans and self-certification form submitted in the Prehearing Statement (Ex. 34-34D); and
 - A post-hearing statement dated June 20, 2018, responding to the Board's request at the public hearing to provide updated plans and a plat. (Ex. 51-51B.)
22. The Prehearing Statement supplemented the Application with the following information:
- A narrative and visual evidence supporting the Application's assertion that the removal of the existing porch would not "substantially visually intrude upon the character, pattern, and scale" of the other houses along Ontario Place (Ex. 30A);
 - An explanation of how special exception relief from the rear yard requirements of Subtitle E § 5004.2 is permitted by the Zoning Regulations (Ex. 30B);
 - Updated plans showing a reduced garage footprint and additional pervious surface at the front of the Property (Ex. 30C);
 - A revised self-certification showing a reduction in lot occupancy (Ex. 30D);

- The resume and proposed testimony of the Applicant’s proffered expert witness in architecture, Steve Fortiu (Ex. 30E); and
 - A presentation documenting OP’s history of approvals for similar projects. (Ex. 30F.)
23. The Applicant responded (Ex. 30B, 34B) to the ANC’s concerns about the Application’s eligibility for accessory structure rear yard relief (Ex. 40-41) as follows:
- asserting that relief from Subtitle E § 5004.2’s limitations is available as a special exception because Subtitle E § 5004 is entitled “Rear Yard” and Subtitle E § 5201 authorizes special exception relief from development standards for “yards”;
 - supporting this position with an OP report and a memorandum from the Zoning Administrator submitted in BZA Case No. 19747,² that referenced relief from the accessory building size limitation of Subtitle E § 5004.2(b) as available as a special exception; and
 - noting that the requested relief was self-certified and that the Applicant therefore accepted the risk that if the Application failed to request all of the necessary relief that the Zoning Administrator might determine during the permitting process that additional or alternative relief might be required.

Applicant’s Public Hearing Testimony

24. At the public hearing of June 13, 2018, the Applicant testified that DCRA had initially advised the Applicant that the existing porch could be removed because the building permit application had been filed prior to the April 2017 effective date of the rooftop architectural element regulation, but that DCRA had subsequently determined it had erred because these regulations did not include a vesting period so that the Applicant’s building permit was not vested and had to comply with the rooftop architectural elements regulations or seek relief from them. (June 13 Tr. at 185-186, 188.)
25. The Applicant testified that DCRA had confirmed that the existing porch was structurally unsound and therefore would need to be replaced, either with a replica of the historic porch or with the Application’s smaller modified version. (June 13 Tr. at 189-190.)
26. The Applicant’s architect testified that the proposed reduction in the size of the porch would not result in a major change to the architectural continuity of the Property’s block because the block had a variety of architectural styles and elements and so the proposed replacement of the existing porch with a smaller porch would be “just a blip in the larger block of discontinuity.” (June 13, Tr. at 202-204.)

² BZA Case No. 19747 sought variance and special exception relief for an already constructed accessory garage structure which did not meet the lot occupancy, alley centerline setback, or accessory structure building area requirements of the RF-1 zone. All relief was approved by the Board. (Ex. 43 in BZA Case No. 19747.)

27. The Applicant's architect testified that approximately 90% of the houses on the Property's block had an existing accessory structure on their lots and presented the Applicant's shadow study to demonstrate that the Garage would have negligible impacts to light available to the adjacent properties. (June 13 Tr. at 191-194.)
28. In response to testimony given by the ANC and opponents (Ex. 44-47, 50), the Applicant noted that Subtitle E § 206 lacked specific design standards by which the Board or other reviewing agencies could fully evaluate the requests for relief. (June 13 Tr. at 248-249.)

III. RESPONSES TO THE APPLICATION

OP REPORT AND TESTIMONY

The OP Report

29. OP submitted a May 31, 2018, report (Ex. 36, the "**OP Report**") that analyzed the Application against the special exception standards and recommended that the Board:
 - deny the requested special exception from Subtitle E § 206.1's prohibition on removing a roof top architectural element; but
 - approve the requested special exceptions from Subtitle E § 5004.2's limitations on accessory building's height and area and from Subtitle E § 304.1's limitations on lot occupancy.
30. The OP Report opposed the relief to allow the proposed porch replacement based on OP's determination that this relief would not comply with the special exception requirements because the "partial removal of the porch would diminish the architectural integrity of the existing dwelling and its streetscape character." The OP Report specifically noted that:
 - The Building abutted row buildings that had retained their original porches and so the proposed porch replacement would have a greater visual impact to the overall aesthetic of the row than the previous removal of the porch from the end unit of the row, which did not abut the Building; and
 - The smaller replacement porch would expose the basement unit on the front facade, unlike its neighboring buildings in which the original porches hid the basement units (Ex. 36 at 4.)
31. The OP Report supported the relief requested for the Garage because OP determined that the Garage would comply with the special exception requirements because it would not intrude on the character, scale and pattern of garages along the alley, and would not result in any adverse impacts in terms of light and privacy to the neighboring properties. The OP Report specifically noted that the Garage:
 - would be comparable to the other existing garages in the square in terms of height and setback from the alley center line; and
 - no windows were proposed on the sides abutting adjacent properties or the alley.

32. The OP Report responded to the ANC's concern that the requested accessory building relief was not eligible for a special exception (Ex. 40-41) by stating that "[t]ypically, accessory building height relief would require variance relief, not special exception. In this type of case, the relief is related to the rear yard, and the Zoning Administrator has determined that special exception relief pursuant to E § 5007 is available." (Ex. 36 at 2.)

OP Public Hearing Testimony

33. At the public hearing, OP responded to the Applicant's architect's testimony of the varied architectural character of the Property's surrounding neighborhood (Ex. 26) by stating that, despite changes and variations in other architectural elements, OP considered porches to be "an integral part of the residential character of the street frontage" of the Building. (June 13 Tr. at 215.)
34. OP addressed the ANC's assertion that the accessory building relief for the Garage should be a variance, not a special exception (Ex. 40-41), by testifying that:
- OP relied on DCRA's interpretation that Subtitle E § 5004.2 provided flexibility for applicants attempting to construct accessory structures on smaller lots where the accessory structure would by necessity encroach into the designated rear yard;
 - DCRA and OP reviewed applications for relief from Subtitle E § 5004.2 by considering whether the portion of the accessory structure proposed to encroach into the required rear yard area complied with the maximum 10-foot height and 100 square foot GFA; and
 - The Garage did comply with the 10-foot height limitation for the portion in the required rear yard. (June 13 Tr. at 218 to 221.)

DDOT REPORT

35. DDOT submitted a June 1, 2018 report (Ex. 31, the "**DDOT Report**") concluding that the Application would not result in any adverse impacts to the District transportation network and that DDOT therefore had no objection to the Application.

ANC REPORT AND TESTIMONY

The ANC Report

36. ANC 1C submitted a June 6, 2018 report (Ex. 40, the "**ANC Report**") stating that at a duly-noticed public meeting on June 6, 2018, with a quorum present, the ANC voted to oppose the Application and authorized any ANC 1C Commissioner and Alan Gambrell to represent the ANC before the Board.
37. The ANC Report asserted that the Application sought "development rights well beyond what is allowable in RF-1" and also raised numerous issues and concerns related to deficiencies of the application, the accuracy of the zoning relief requested, and the Applicant's ability to meet the special exception criteria, as detailed below.

Application Deficiencies

38. The ANC Report challenged the adequacy of the Application, including that it “fails to clearly and adequately document and describe current or proposed conditions, the proposed scope of work, all of the required zoning relief (E-5201.1(f)) and the potential adverse impact on neighboring properties (E- 5201.3)” and that the “new garage is not shown in context with the new addition and does not address the loss of light and air that would result.” (Ex. 40.)
39. The ANC Report asserted that the Application incorrectly calculated the proposed lot occupancy as 66% because the lot occupancy would be 69% if the Board denied relief from the prohibition on removing the existing front porch.

Incorrect Relief Requested

40. The ANC Report asserted that relief from Subtitle E § 5004.2, regarding size and height of buildings in rear yards, must be considered as a variance, rather than as a special exception. The ANC Report noted that the OP Report had stated that height relief for an accessory structure is typically considered as a variance and had offered “only a limited explanation” as to how the Application met the lesser requirements for a special exception. (Ex. 40 at 2 and 5.)
41. The ANC Report asserted that the Application required additional relief from the minimum pervious requirement and from the minimum rear yard requirement.

Satisfaction of Special Exception Criteria

42. The ANC Report opposed the relief to allow the replacement of the porch based on the assertion that the Property’s block had a consistent architectural character including front porches and projecting bays and the “exposure of the basement façade would significantly increase as a result of the removal of the original porch and roof,” which would “exaggerate the verticality of the row house.”
43. The ANC Report raised concerns about light and air impacts caused by the Garage because:
- it would be higher than neighboring garages, which would cause adverse impacts on neighbors’ use and enjoyment, and
 - its orientation would cause shadowing on adjacent properties and would generally cause crowded conditions on the Property that would diminish the neighbor’s access to light and air.

Public Hearing Testimony

44. Commissioner Ted Guthrie and Alan Gambrell testified on behalf of the ANC at the public hearing.

45. Commissioner Guthrie testified that the removal of the porch would negatively affect the aesthetics of the block and opposed the relief for the Garage because there was a “sense in the rowhouse neighborhoods that we need to have breathing space.” Commissioner Guthrie asserted that the Board should look beyond the conclusions of the Applicant’s shadow studies because the Applicant was also constructing a rear addition that, in combination with the Garage, would result in impacts to the light and air available to the neighboring properties, even though the rear addition complied with matter-of-right limits. (June 13 Tr. at 226-227.)
46. Mr. Gambrell testified that the removing the porch would conflict with the intended character of the RF-1 zone and would diminish the architectural character of the block., Mr. Gambrell testified that row houses in D.C. tended to be built in small clusters of similar architectural styles rather than perfectly uniform full blocks and the Property was part of one such cluster. (June 13 Tr. at 230-232.)
47. Mr. Gambrell asserted that the Application asked for more than the RF-1 zone allows and more than other properties in the neighborhood and that the “challenges were created by the choices that were made” by the Applicant because the Applicant had constructed the rear addition and so reduced the Property’s rear yard and increased its lot occupancy, before electing to also construct the Garage. (June 13 Tr. at 229.)

PERSONS IN SUPPORT

48. The Board received three letters in support of the application from nearby residents. (Ex. 37, 38, 44.)

PERSONS IN OPPOSITION

49. The Board received three letters in opposition from neighbors, as well as a petition in opposition signed by 31 residents of Ontario Place. (Ex. 35, 42, 43, 46, 47.)
50. The Board heard testimony in opposition from Toby Olowofoyeku, Ann Peters, and Pat Bryant at the public hearing, (June 13. Tr. at 237-243), which asserted that:
 - The removal of the porch would adversely affect the streetscape by removing a key architectural element and causing the Building to appear to be four stories instead of three; and
 - The scale of the Applicant’s addition to the Building and the Garage greatly exceeded what should be permitted in the zone.

CONCLUSIONS OF LAW

1. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:

- *will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*
 - *will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*
 - *complies with the special conditions specified in the Zoning Regulations.*
2. For the relief requested by the Application, the “specific conditions” are those of Subtitle E § 5203.3 for the relief to alter a roof top architectural element and of Subtitle E § 5201 for relief from the accessory structure size and lot occupancy requirements.
 3. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board’s discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

ALTERATION OF A ROOFTOP ARCHITECTURAL ELEMENT - SUBTITLE E § 206.1
Subtitle E §§ 206.2 and 5203.3 – Specific Special Exception Standards

4. To obtain the requested relief to allow the partial removal of the existing front porch of the Building, the Application must demonstrate that it meets the conditions of Subtitle E § 5203.1(b), (c), and (d) (*see* Subtitle E §§ 206.2 and 5203.3):
 - (b) *any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;*
 - (c) *any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator;*
 - (d) *A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size.*
5. The Board concludes that the Applicant meets these specific special exception criteria because the proposed porch replacement would not block or impede the functioning of a chimney or other external vent on an adjacent property, nor interfere with the operation of an existing or permitted solar energy system on an adjacent property. The Board agrees with the Applicant that Subtitle E § 5203.1(d) should not apply because it creates a “circular argument” by imposing the same requirement as Subtitle E § 206.1, so that applying Subtitle E § 5203.1(d) would contradict Subtitle E §§ 206.2 and 5203.3’s specific

authorization of relief from Subtitle E § 206.1. The Board does not find the Applicant's challenge to the application of Subtitle E § 5203.1 due to the lack of specific design criteria persuasive because the Zoning Commission chose to not provide specific standards. (June 13 Tr. at 253.)

Subtitle X § 901.2 – General Special Exception Standards

6. The Board concludes that the Applicant has not met the general special exception criteria of Subtitle X § 901.2 because the Board concurs with the conclusions of the OP Report and the statements of the ANC Report that the significant reduction in the front porch roof and size would disrupt the architectural rhythm of the block. The Board concludes that the removal of the porch would not be in harmony with the character and pattern of neighboring homes because the Property is situated between two other dwellings with front porches and similar facades, which form a uniform row in the middle of the block. The Board therefore disagrees that the end unit's removal of its porch is a basis for finding that further alteration of the character and pattern of the row is appropriate.
7. The Board does not find the Applicant's characterization of the character and pattern of the block as "one of variety and discontinuity" (Ex. 30A) persuasive but instead agrees with OP and the ANC's characterization that the block has a consistent character of being punctuated by front porches and projecting bays. The Board also credits the testimony of Mr. Gambrell that rowhomes in D.C. are typically constructed in small clusters of similarly designed houses, and that the Property was part of one such cluster. (June 13 Tr. at 251-252.)
8. The Board concurs with OP and the ANC that the proposed smaller porch would expose the basement façade, which is atypical on row dwellings in the area, and so would contribute to the detrimental impact on the architectural character because the "exposure of the basement façade would significantly increase as a result of the removal of the original porch and roof," which would "exaggerate the verticality of the row house." (Ex. 40.)

ACCESSORY BUILDING SIZE AND LOT OCCUPANCY - SUBTITLE E §§ 5004.2 & 304.1

Subtitle E § 5201.3 – Specific Special Exception Standards

9. To obtain the requested relief to allow the Garage, the Application must demonstrate that it meets the conditions of Subtitle E § 5201. Relief under this section is limited to projects that:
 - *are an addition to a residential building, a new or enlarged accessory structure to a residential building, or a reduction in the minimum setback requirements of an alley lot;* (Subtitle E § 5201.2;) and
 - *do not authorize the introduction or expansion of either a nonconforming use or the introduction or expansion of nonconforming height or number of stories or a lot occupancy exceeding 70%.* (Subtitle E §§ 5201.3(e), 5201.5, and 5201.6.)

10. The Board notes that because it does not approve the Application's request for relief from Subtitle E § 206.1 to reduce the size of the porch, the Application requests relief from Subtitle E §§ 304.1 to allow a 69% lot occupancy.
11. The Board concludes that the Application is eligible for special exception relief from Subtitle E §§ 5004.2 and 304.1 because the Garage:
 - is a new accessory building;
 - would not introduce a nonconforming height because it is under the 20-foot maximum height for all other accessory structures permitted by Subtitle E § 5002, even though it exceeds the height permitted for an accessory structure in a required rear yard; and
 - would not cause the Property's lot occupancy to exceed the 70% maximum eligible as a special exception.
12. Pursuant to Subtitle E § 5201.3(d) an applicant must demonstrate that the requested relief, if granted, would not have a substantially adverse effect as follows:
 - (a) *the light and air available to neighboring properties shall not be unduly affected;*
 - (b) *the privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and*
 - (c) *the addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage.*by providing the Board with “*graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.*”
13. The Board concludes that the Application satisfies the requirements of Subtitle E § 5201.3(d) because it provided sufficient plans, photographs, and elevations to demonstrate that it met the criteria of Subtitle E § 5201.3(a), (b), and (c), as discussed below.

Subtitle E § 5201.3(a) – Light and Air

14. The Board concludes that the Application demonstrated that the Garage would not unduly affect the light and air available to neighboring properties because:
 - The Garage would be of a similar size as other accessory structures on adjacent properties and along the alley;
 - The Applicant's shadow studies demonstrated that the Garage would not have an adverse impact on adjacent properties because the increased shadows caused by the impacts of the 13-foot Garage's three feet of additional height over a 10-foot, matter-of-right structure would be negligible; and
 - The Applicant's shadow studies and plans demonstrated that the Garage, in combination with the Property's other structures, would not impact unduly the light and air available to neighboring properties, even with the resulting lot occupancy of 69%. (Ex. 45.)

Subtitle E § 5201.3(b) – Privacy of Use and Enjoyment

15. The Board concludes that the Garage would not unduly compromise the privacy of use and enjoyment of neighboring properties because:
- The Garage would not have any windows facing adjacent properties and would therefore not cause any impacts on privacy;
 - The Garage’s use as accessory to the principal dwelling unit in the Building would be consistent with other garages fronting on the alley and would therefore not impact the use or enjoyment of neighboring properties; and
 - The Garage’s height is not significantly different than other accessory structures along the alley and therefore would not have a detrimental impact on adjacent properties.

Subtitle E § 5201.3(c) – Visual Intrusion

16. The Board concludes that the Garage, 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 subject street frontage and from the rear alley because:
- The Garage would not be visible from street frontage on Ontario Place N.W.; and
 - While the Garage will be visible from the public alley at the rear of the Property, it is sufficiently similar to other existing structures that it would not cause an impact on the character or pattern of these alley garages.

Subtitle X § 901.2 – General Special Exception Standards

17. Pursuant to Subtitle X § 901.2(a), the Board concludes that the requested special exceptions from the accessory building and lot occupancy requirements meet the general special exception standards in Subtitle X § 901.2 because:
- Granting these special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps as required by Subtitle X § 901.2(a) because the Zoning Regulations for the RF-1 zone provide that accessory structures may be constructed in this zone, and the proposed structure is compatible with other accessory structures along the alley; and
 - The Garage would not adversely affect the use of neighboring properties, as required by Subtitle X § 901.2(b) because it would not have an adverse impact on light and air available to adjacent properties, the privacy of use, the enjoyment of adjacent properties, or the visual character of the street frontage or public alley, as discussed above in the analysis of the special exception criteria of Subtitle E § 5201.3.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

18. The Board must give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Y § 405.8. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).

19. The Board credits the analysis of the OP Report and finds its recommendation that the Application should be approved-in-part and denied-in-part persuasive and concurs in that judgement. (Ex. 36.)

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

20. The Board must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 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) (2012 Repl.)) and Subtitle Y § 406.2. To satisfy the great weight requirement, the Board must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).
21. The Board found the ANC Report’s concerns about the removal of the front porch persuasive and concurred with that judgment in its denial of the Application’s request for relief from Subtitle E § 206.1.
22. The Board was not persuaded by the ANC Report’s concerns regarding the impact of the requested relief from the accessory building and lot occupancy requirements as detailed above in the analysis of compliance with the special exception requirements.
23. The ANC Report raised other issues and concerns that were not addressed in the Board’s discussion of the special exception criteria, which the Board will address in turn.

Application Deficiencies

24. The Board finds that the Application included sufficient materials to allow the Board to fully evaluate the impacts of the areas of zoning relief requested, specifically:
- a detailed statement addressing the criteria for special exception relief;
 - an explanation of the scope of work proposed, including the elements that do not require zoning relief; (Ex. 5, 8, 14) and
 - the architectural plans and color photographs showing the Property, as updated with plans showing that the lot occupancy would be 69% if the Board denied the requested relief to remove the front porch. (Ex. 34C.)

Incorrect Relief Requested

25. The Board is not persuaded by the ANC Report’s concern that the Application did not include all necessary relief required to construct the Garage because:

- The Board concludes that the Application included adequate justification, including a memorandum from the Zoning Administrator’s office, that the relief requested is sufficient (Ex. 34B);
- The Board credits the OP Report’s support of the Applicant’s decision to request relief from these requirements as a special exception; and
- The self-certification process pursuant to Subtitle Y § 300.6(b) carries the risk that the relief requested is not correct or complete and therefore the potential for this additional relief does not have bearing on the Board’s analysis of the Application’s requested relief.

Precedential Value of Decision

26. The Board is not persuaded by the ANC Report’s concern that approval of the relief requested in this case will create “bad precedent for the neighborhood and its ability to enforce the RF-1 provisions,” because the Board:
- considers each application before it on the basis of its individual circumstances so that prior decisions of the Board do not create precedent that the Board is required to follow; and
 - will undertake a detailed review of future requests for relief in the RF-1 zone to determine whether the standards established under the Zoning Regulations are met.

DECISION

Based on the case record, the testimony at the hearing, and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant did not satisfy the burden of proof with respect to the request for special exception relief under Subtitle E §§ 206.2 and 5203.3 from the roof top architectural element provisions of Subtitle E § 206.1 and therefore **DENIES** the Application’s request for that relief.

VOTE (June 13, 2018) 5-0-0 (Peter G. May, Carlton E. Hart, Frederick L. Hill, Lesylleé M. White, and Lorna L. John to **DENY**).

Based on the case record, the testimony at the hearing, and 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 special exceptions under Subtitle E § 5201 from the accessory building size restrictions of Subtitle E § 5004.2 and the lot occupancy provisions of Subtitle E § 304.1 and therefore **APPROVES** the Application’s request for that relief for Lot 351 in Square 2583, subject to the following **CONDITION**:

1. The Addition shall be constructed in accordance with the plans submitted as Exhibit 51B in the record,³ as required by Subtitle Y §§ 604.9 and 604.10.

³ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. (Exhibits 15 and 34D.) In granting the requested self-certified relief subject to the plans submitted with the Application, the

VOTE (June 13, 2018) 3-2-0 (Frederick L. Hill, Lesylleé M. White, and Lorna L. John to **APPROVE**; Carlton E. Hart and Peter G. May opposed to the motion).

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: July 6, 2020

PURSUANT TO 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 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 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

Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any such application that would require additional or different zoning relief from that is granted by this Order.

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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.