

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning
Adjustment



Application No. 20143 of Grand Realty LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the residential conversion requirements of Subtitle U § 320.2, pursuant to Subtitle § U § 301.1 (e) from the use requirements of Subtitle U § 301.1 (c)(1) and pursuant to Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 5003.1, to convert the existing attached principal dwelling into two principal dwelling units and to construct a two-story accessory structure to be used as a third principal dwelling unit in the RF-1 Zone at premises 1117 Morse Street, N.E. (Square 4070, Lot 136).

HEARING DATE: November 13, 2019; November 20, 2019; December 18, 2019
DECISION DATE: December 18, 2019

DECISION AND ORDER

1. Grand Realty LLC (the “**Applicant**”) filed an application with the Board of Zoning Adjustment (the “**Board**”) on August 21, 2019 for special exceptions under the residential conversion requirements of Subtitle U § 320.2, pursuant to Subtitle § U § 301.1 (e) from the use requirements of Subtitle U § 301.1 (c)(1) and pursuant to Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 5003.1, to convert the existing attached principal dwelling into two principal dwelling units and to construct a two-story accessory structure to be used as a third principal dwelling unit in the RF-1 Zone at premises 1117 Morse Street, N.E. (Square 4070, Lot 136)(the “**Property**”). For the reasons explained below, the Board voted to **APPROVE** the Application.

FINDINGS OF FACT

Party Status

2. The Applicant and ANC 5D were automatically parties in this proceeding per Subtitle Y § 403.5.
3. The Board granted a request for Party Status in Opposition from David and Geraldine Hailes, owners and residents of the directly adjacent property at 1119 Morse Street, NE.

The Property

4. The Property contains 2,795 sq. ft. of land area. (Ex. 8.)
5. The Property is rectangular and abuts Morse Street, NE to the north (Ex. 8).
6. The Property borders a public alley to the south, and other row dwellings to the east and west. (Ex. 8.)
7. The area is characterized by a variety of residential uses, including one-family dwellings and flats. There are also a number of apartment buildings located to the south of the Subject Property, directly across the public alley. (Ex. 8.)
8. The Subject Property is improved with a two-story, single-family principal dwelling unit (the “**Principal Building**”). The Applicant is proposing to construct a third-story addition on top of the existing Building and a three-story, six-foot nine-inch (6 ft. 9 in.) addition at the rear of the Building (the “**Addition**”) and add one (1) residential unit in the Principal Building. (Ex. 8.)
9. The Property is located in the RF-1 Zone. (Ex. 8.)
10. The RF zones “are distinguished by a maximum number of principal dwelling units per lot of either two (2), three (3), or four (4) units.” (E § 100.4).
11. The Zoning Regulations permit three (3) units and the use of a new accessory building as a principal dwelling unit via special exceptions.

The Project

12. The Applicant is proposing to construct a third-story addition on top of the existing Building and a three-story, six-foot nine-inch (6 ft. 9 in.) addition at the rear of the Building (the “**Addition**”) and convert the Principal Building to two (2) units. (Ex. 8)
13. The Applicant is also proposing to construct an accessory structure (the “**Accessory Building**”) at the rear of the Subject Property and use the Accessory Building as a third principal dwelling unit, for a total of three (3) dwelling units on the Subject Property (the “**Project**”). (Ex. 8)
14. The Addition to the Principal Building only extends six feet and nine inches (6 ft. 9 in.) beyond the adjacent properties’ rear walls. (Ex. 8).
15. The third story Addition will be setback six feet (6 ft.) from the front façade of the Building. The Accessory Building footprint is 558.59 square feet and is not located in the required rear yard. (Ex. 8)
16. The proposed Project includes two (2) parking spaces located on a parking pad at the rear of the Subject Property, between the Accessory Building and rear lot line. (Ex. 8)

Zoning Relief

17. The Applicant is proposing three (3) principal dwelling units: two (2) in the Principal Building and one (1) in the Accessory Building. Accordingly, the Applicant requested special exception approval pursuant to U § 320.2 for a conversion to three (3) principal dwelling units. (Ex.8).
18. The Applicant proposed to locate one (1) of the principal dwelling units in an accessory building. Subtitle U § 301.1(c) permits, as a matter-of-right, a principal dwelling unit within an accessory building, subject to certain conditions. One of those conditions is that “the accessory building was in existence on January 1, 2013” (U § 301.1(c)(1)). There is currently no accessory building. Subtitle U § 301.1(e) “An accessory building constructed as a matter-of-right after January 1, 2013, and that is located within a required setback shall not be used as, or converted to, a dwelling unit for a period of five (5) years after the approval of the building permit for the accessory building, unless approved as a special exception.” Accordingly, the Applicant is requesting special exception approval pursuant to U § 301.1(e) which evaluates the Addition under the general special exception requirements of Subtitle X. (Ex. 8).
19. Pursuant to E § 5003.1, an accessory structure is limited to a maximum footprint of 450 square feet. The proposed footprint of the Accessory Building is 558.59 square feet. Accordingly, the Applicant is requesting special exception approval pursuant to E § 5201 (as permitted via E § 5007.1). (Ex. 8).

Agency Feedback

20. DDOT submitted a report dated October 25, 2019 (the “**DDOT Report**”). (Ex. 36.)
21. The Office of Planning (“**OP**”) submitted a report dated November 8, 2019 (the “**OP Report**”) recommending approval of the Application. (Ex. 40.)
22. The OP Report concluded that the Application met the special exception requirements of U § 320.2, as the third-story addition Principal Building was limited to 34.75 ft. in height (U § 320.2(a)); there is an existing residential building on the Subject Property (U § 320.2(c)); the lot has 900 square feet of land area per dwelling U § 320.2(d)); the rear addition does not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on the adjacent property U § 320.2(e)); the Addition does not block or impede the function of a chimney, nor will it interfere with any existing solar energy system—as there are none on the adjacent properties (U §§ 320.2(f-g)); the third story will be setback six-feet (6 ft.) from the front façade and will not impact existing building features (U § 320.2(h)); the Addition and Accessory Building will not unduly impact the light, air, or privacy available to the adjacent properties

(U § 320.2(i)); nor will they visually intrude upon the character, scale, or pattern of houses along the street or alley (U § 320.2(i)). (Ex. 40)

23. The OP Report concluded that the Application met the special exception requirements of U § 301.1(e) and the general special exception requirements, as the RF-1 zone is a residential zone that provides for areas predominantly developed with row houses, and anticipates dwelling units being located with an accessory building. As a result, the proposed accessory building that would house the principal dwelling would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. (Ex. 40).
24. The OP Report concluded that the Application met the special exception requirements of E § 5201, as the proposed Accessory Building would not unduly affect the light and air available to neighboring properties (E § 5201.3(a)); the privacy of use and enjoyment of neighboring properties will not be unduly compromised by the proposed Accessory Building (E § 5201.3(b)); and the Accessory Building will not substantially visually intrude upon the character, scale, and pattern of houses along the alley. As well as E §§ 5201.4-6. (Ex. 40)

ANC Report

25. ANC 5D submitted a written report (the “ANC Report,” Ex. 45) stating that the Applicant had presented the Application to the surrounding neighborhood at an ANC Community meeting on November 12, 2019. At that November 12, 2019 public meeting, which had been duly noticed and scheduled and at which a quorum was present, the ANC voted 5-0-2 to oppose the Application.
26. The ANC Report expressed concerns that the “Applicant placed the 33-ft long accessory building in the middle of the rear yard” and that the proposed Accessory Building would impact the light, air, and privacy available to neighboring properties. (Ex. 45).

Persons in Support

27. The Board did not receive any letters in support. No persons testified in support at the hearing.

Persons in Opposition

28. The Board received six letters in opposition (Ex.’s 30-31; 33-34; 37, 41).
29. Mr. and Mrs. Hailes also submitted a letter in opposition, but they were granted party status.

First Hearing- November 20, 2019

30. At the hearing on November 20, 2019, Gregory Kearley, project architect from Inscape Architects, (the “**Architect**”) testified on behalf of the Applicant.
31. Commissioner Lee, Chairperson of ANC 5D, and Mr. Horgan, Chairman of the ANC’s Zoning Committee, testified on behalf of the ANC.
32. David Hailes requested party status in opposition. He testified that he was the directly adjacent neighbor and the owner and resident of 1119 Morse Street, NE.
33. The Board determined that as Mr. Hailes was the owner and resident of the directly adjacent property, he met the requirements for granting party status in opposition.
34. The Applicant made a presentation evidencing how it was meeting the general special exception requirements and the specific requirements of U § 320.2 and E § 5201.
35. Mr. Kearley explained the goals of the project, including family-sized housing and mitigating impacts on neighboring properties by moving some bulk to the rear and actually lowering the Accessory Building a foot and a half (1.5 ft.) below the permitted height.
36. Mr. Kearley presented the shadow studies to the Board s and testified that there was little to no impact on the adjacent properties as demonstrated by the sun studies.
37. The architect testified that there was no impact on the property to owned by Mr. Hailes.
38. The Board asked Mr. Kearley about the matter-of-right option.
39. The Board asked about the ANC’s concerns, specifically U § 320.2(i)(3), as the ANC was concerned about the Accessory Building being built in the middle of the rear yard rather than at the end of the rear yard.
40. The Board also questioned whether the third-floor addition was in character.
41. Mr. Kearley testified that the addition was setback six feet (6 ft.) on the third story so it would not be as visible.
42. The Board suggested using darker materials.
43. Mr. Kearley noted that the third story was permitted as a matter-of-right, but darker materials would be considered.
44. The Board asked why the Applicant did not propose constructing the Accessory Building at the very rear of the lot.

45. Mr. Kearley explained that moving the Accessory Building deeper into the lot was not feasible due to parking considerations.
46. Mr. Kearley pointed out that in the ANC's letter, it used a recent project as an example of preferred design. Mr. Kearley noted that the sample property had a twenty-five foot (25 ft.) wide lot. The additional five feet (5 ft.) allowed greater flexibility with design. The Subject Property is only twenty feet (20 ft.) wide which presented design limitations.
47. Mr. Kearley testified that the Accessory Building was located in such a way to allow for the required two parking spaces.
48. Mr. Kearley testified—and the Office of Planning confirmed—that the location of the Accessory Building itself is permitted as a matter of right.
49. Mr. Kearley testified that the option to move the Accessory Building to the very rear of the lot was not considered because it could not fit parking and in fact, the matter-of-right option would be to shrink the Accessory Building footprint, not move the location.
50. The Board asked about the intended use of the Building and the Architect testified that it was his understanding that the Applicant intended to have condos.
51. Mr. Kearley also testified that the proposed Accessory Building and Addition were purposely designed to not have windows on the sides, facing into the adjacent rear yards in order to mitigate privacy concerns.
52. Neither the ANC nor Mr. Hailes had questions regarding the Applicant's presentation.
53. Mr. Hailes testified regarding his concerns over blocked sunlight, limited breeze, impacts on his view, his comfort, reduced airflow, and privacy. He was also against the proposed height of the Building.
54. Mr. Hailes testified that he was not in support of the third unit and also opposed to the proposed matter-of-right scenario on page 15 of the Applicant's presentation (Exhibit 46).
55. Mr. Horgan testified that there were a lot of positive things about the Project, including family-sized units and excellent design.
56. Mr. Horgan testified that the neighbors were concerned about the location of the Accessory Building in the middle of the rear yard.
57. He testified that the design itself was liked by the ANC's Zoning Committee, but they wanted more activation of the alley.

58. Chairperson Lee testified that the ANC was opposed to three (3) units because that configuration did not fit within this community and the ANC was generally opposed to three-unit buildings.
59. The Board asked the Applicant if they would consider moving the Accessory Building back towards the rear yard. The Applicant testified that this generally was not an option because it would require other relief and shrinking the proposed third unit in order to get parking underneath. At that point, a third unit in the Accessory Building would not be feasible.
60. Mr. Kearley testified that the matter-of-right option would be to do a ten-foot (10 ft.) addition on the Principal Building and a 450 square foot building, but that the Accessory Building would generally be in the same location and still have two (2) floors of residential.
61. The Office of Planning testified that the Accessory Building met the locational requirements of the RF-1 Zone and the proposed Addition on the Principal Building was permitted as a matter-of-right. OP also testified that they did not think the removal of the awnings required a waiver since the porch itself was remaining largely intact.
62. Two (2) neighbors testified in opposition: Robert Schafer (1159 Morse Street, NE) and Frances Rogers (1116 Morse Street, NE).
63. Mr. Schafer appreciated the design considerations and focused primarily on economic concerns. Overall, he was concerned about the project being in harmony with purpose and intent of the zoning regulations because of the third unit.
64. Ms. Rogers also testified in opposition to the third unit because she claimed it would not bring in families to the neighborhood as proposed. It was her opinion that condo owners would not have children and, according to her, families are people with children.
65. The Board referred to the regulations to explain to opponents how they review special exception applications. Specifically, the Board explained that the Applicant made a case as to why the Application meets the enumerated criteria and the Board reviews the Applicant's case.
66. Neither the Applicant nor Mr. Hailes, nor the ANC had questions for persons testifying in opposition.
67. Mr. Kearley was asked about the adjacent neighbor at 1115 Morse Street and testified that the owner spoke to them a number of times and they were certainly aware of the Project.
68. The Board scheduled a continued hearing for December 18, 2019. The Board closed the record on November 20, 2019, except for any proposed agreed-upon

changes between the Applicant and the neighbors and an update to the third story to reflect a darker material as requested by the Board.

Continued Hearing- December 18, 2019

69. A continued hearing was held on December 18, 2019.
70. The Applicant did not change its design but did submit an alternative design for informational purposes (Exhibit 50A).
71. The Board asked the Applicant if other alternatives were considered; specifically, whether the Applicant considered moving the Accessory Building to the rear of the lot.
72. The Applicant testified that it was considered and discussed at the ANC Zoning Committee meeting but was not supported.
73. Mr. Schafer and Commissioner Lee testified again.
74. Mr. Schafer's testimony was again focused on the general purpose and intent of the regulations. The Board explained that there was a specific section that permitted special exception relief to do three (3) units and that it was not against the intent of the Zoning Regulations because it is in the Zoning Regulations.
75. Commissioner Lee stated that the ANC sustained its opposition because there was not enough time to review plans. The Board pointed out that the plans had not changed and the alternative plan was just for informational purposes; the substance of the application had not changed since the last hearing.
76. Mr. Hailes expressed the same concerns that he expressed at the previous hearing.
77. The Office of Planning carefully went through each requirement of U § 320.2, and the general special exception requirements, to demonstrate why it found that the Applicant's proposal met the burden of proof and why OP recommended approval.
78. The Board voted to approve the Application on December 18, 2019.
79. In its deliberation, the Board stated that the Applicant met its burden of proof as it met the general special exception requirements of X § 901.2, U § 320.2, E § 5201 and U § 301.
80. The Board stated that they liked the overall design and that the building footprints were largely matter-of-right, except for a portion of the Accessory Building. The Board also noted that the third unit was contemplated by the Zoning Regulations.

CONCLUSIONS OF LAW

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:

- i. will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.
- ii. will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and
- iii. complies with the special conditions specified in the Zoning Regulations.

For the relief requested by the Application, the “specific conditions” are those of Subtitle E § 320.2 and E § 5201.

Relief granted by the Board 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)).

Subtitle E § 320.2 – Approval in Order to Convert the Subject Property to 3 Residential Units

To qualify for a special exception in order to do a conversion of the Property from one (1) principal dwelling unit, the Application must satisfy the criteria listed below, and the general special exception criteria of Subtitle X § 901.

The Application asserted it satisfied the following criteria of U § 320.2:

Section 320.2(a) *“The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);*

The Board concludes that the Application satisfies this requirement as the Applicant is proposing a height of thirty-four feet and nine inches (34 ft. 9 in.) (Findings of Fact 34, 79).

Section 320.2(b) *The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6;*

The Board concludes that this requirement does not apply, as it will increase the number of units from one (1) unit to three (3) units. (Findings of Fact 34, 79).

Section 320.2(c) *There must be an existing residential building on the property at the time of filing an application for a building permit;*

The Board concludes that the Applicant satisfies this requirement, as there is an existing residential structure on the Subject Property at the time of filing an application for a building permit. (Findings of Fact 34, 79).

Section 320.2(d) *There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;*

The Board concludes that the Applicant satisfies this requirement, as the Applicant is proposing a total of three (3) units, requiring a minimum of 2,700 square feet of land. The Subject Property has 2,795 square feet of land, therefore satisfying the minimum requirement. (Findings of Fact 34, 79).

Section 320.2(e) *An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on the adjacent property;*

The Board concludes that the Applicant satisfies this requirement, as the Applicant is not proposing to extend the Addition further than ten feet (10 ft.) past the furthest rear walls of any principal residential buildings on the adjacent properties. The proposed Addition to the Principal Building will only extend six feet and nine inches (6 ft. 9 in.) past the existing Building's rear wall and the rear walls of the adjacent buildings (which are currently in-line with the existing Building's rear wall). (Findings of Fact 34, 79).

Section 320.2(f) *Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition;*

The Board concludes that the Applicant satisfies this requirement, as the Addition, including roof structures and penthouses, will not block or impede the function of a chimney or other external vent on the adjacent properties. (Findings of Fact 34, 79).

Section 320.2(g) *Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system;*

The Board concludes that the Applicant satisfies this requirement, as the Addition will not interfere with the operation of an existing or permitted solar energy system on any adjacent property. (Findings of Fact 34, 79).

Section 320.2(h) *A roof top architectural element original to the house such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;*

The Board concludes that the Applicant satisfies this requirement. The third story Addition will be set back six feet (6 ft.) from the front façade. The Applicant is proposing to remove a metal awning covering the porch and replace it with a new porch roof and porch area. While the awning and porch are likely not original to the house, out of an abundance of caution, the Applicant is requesting a waiver from this subsection. The existing porch is enclosed and has a sloped metal awning. The new porch will more closely match the existing porches on Morse Street which are not enclosed and have flat roofs. (Findings of Fact 34, 79).

Section 320.2(i) *Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

(1) The light and air available to neighboring properties shall not be unduly affected;

The Board concludes that the Applicant satisfies this requirement, as the light and air available to neighboring properties will not be unduly affected. The proposed Addition will only extend six feet and nine inches (6 ft. 9 in.) past the rear walls of the buildings to the east and west. The three-story rear Addition is permitted as a matter-of-right and, as the shadow studies demonstrated, any shadow created by the Addition will not rise to an undue impact on the light and air available to neighboring properties.

The new Accessory Building is situated towards the rear of the Subject Property and should not have an undue impact on light and air available to the neighboring properties. The Accessory Building is limited to two (2) stories and eighteen feet and six inches (18 ft. 6 in.). While the Applicant is requesting relief for the footprint of the Accessory Building, the height and number of stories is permitted as a matter-of-right. The difference in shadow created by a matter-of-right Accessory Building and the proposed Accessory Building is unlikely to rise to the level of “undue” and will be cast towards the rear of the adjacent properties. (Findings of Fact 34, 36, 79)

(2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and

The Board concludes that the Applicant satisfies this requirement, as the privacy of use and enjoyment of neighboring properties shall not be unduly compromised. Neither the proposed Addition nor the new Accessory Building will have any windows facing east and west. (Findings of Fact 34, 79).

(3) The conversion and any associated additions, 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 or alley;

The Board concludes that the Application satisfies this requirement, as the conversion and any associated Addition, and the new Accessory Building, as viewed from the street, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street. The Addition is set back six feet (6 ft.) from the front façade. The Applicant is proposing to remove a metal awning covering the porch and replace it with a new porch roof and porch area. While the awning and porch are likely not original to the house, out of an abundance of caution, the Applicant is requesting a waiver from this subsection. The existing porch is enclosed and has a sloped metal awning. The new porch will more closely match the existing porches on Morse Street which are not enclosed and have flat roofs.

The houses on this block have some variety; while there are a number of two-story structures, there are also some mid-block third-story additions and two (2), large three-story, multi-unit buildings with 50+ foot rear additions at the end of this block of Morse Street. As past cases on this block have indicated, large rear additions have not been positively received by the community. Accordingly, the Applicant is proposing a modest three-story and third-story addition at the rear of the existing Building and a two-story Accessory Structure. The proposal breaks up the bulk and density and maintains the character of the Principal Building.

The new Accessory Building will not substantially visually intrude upon the character, scale, and pattern of houses along the alley. The Accessory Building is setback approximately twenty feet (20 ft.) from the alley so that when viewed from the alley it does not stand out or intrude upon the existing scale. There is an existing fence on the adjacent property to the east and an existing accessory structure at the rear of the property to the west. Considering the setback of the Accessory Building, the adjacent fence, and the adjacent accessory structure, the Accessory Building will not substantially visually intrude upon the character, scale, and pattern of houses along the alley. (Findings of Fact 34, 79).

Section 320.2(j) *In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;*

The Board concludes that the Application satisfies this requirement, as the Applicant submitted plans showing the relationship of the proposed Addition to the neighboring properties and the public ways. (Findings of Fact 34, 79).

Section 320.2(k) *The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block;*

The Board determined that no special treatment is necessary because the Addition will maintain ample open space, will be a size and scale appropriate for the site, and will have a design consistent with the neighborhood. (Findings of Fact 34, 79).

Section 320.2(l) *The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i)."*

The Board has determined that the Applicant met the waiver requirements of U § 320.2(h). There was some debate by the Office of Planning as to whether a waiver was required. Regardless, any proposed waiver is not in conflict with U § 320.2(i). (Findings of Fact 34, 79).

Based on the above, the Board concludes that the Applicant has demonstrated that the Application meets the specific conditions for the requested special exception approval pursuant to U § 320.2.

Subtitle E § 5201 – Special Exception Relief from the Maximum Accessory Building Footprint (E § 5003.1)

To qualify for special exception relief from the maximum accessory building footprint, the Application must satisfy the criteria listed below, and the general special exception criteria of Subtitle X § 901.

The Applicant asserted that it satisfied the following criteria of E § 5201:

Section 5201.3 *"An Application for special exception under this section shall demonstrate that the addition or accessory structure shall not have a substantially adverse affect on the use of enjoyment of any abutting or adjacent dwelling or property, in particular:*

(a)The light and air available to neighboring properties shall not be unduly affected;

The Board concludes that the Application satisfies this requirement, as the new Accessory Building is situated towards the rear of the Subject Property and should not have an undue impact on light and air available to the neighboring properties. The Accessory Building is limited to two (2) stories and is less than twenty feet (20 ft.) in height. While the Applicant is requesting relief for the footprint of the Accessory Building, the height and number of stories is permitted as a matter-of-right. The difference in shadow created by a matter-of-right Accessory building and the proposed Accessory Building is unlikely to rise to the level of "undue" and will be cast towards the rear of the adjacent properties. (Findings of

Fact 34, 36, 79).

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The Board concludes that the Application satisfies this requirement, as the Accessory Building will be located towards the rear of the Subject Property, there will be no windows facing into the rear yards of either adjacent property, and there will be a significant distance between the Accessory Building and adjacent buildings. (Findings of Fact 34, 79).

(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; and

The Board concludes that the Application satisfies this requirement, as the Accessory Building will not substantially visually intrude upon the character, scale, and pattern of houses along the alley. The Accessory Building is setback approximately twenty feet (20 ft.) from the alley so that when viewed from the alley it does not stand out or intrude upon the existing scale. There is an existing fence on the adjacent property to the east and an existing accessory structure at the rear of the property to the west. Considering the setback of the Accessory Building, the adjacent fence, and the adjacent accessory structure, the Accessory Building will not substantially visually intrude upon the character, scale, and pattern of houses along the alley. (Findings of Fact 34, 79).

(d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use 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; and

The Board concludes that the Application satisfies this requirement, as the Applicant has provided plans, photographs, elevations and section drawings sufficient to represent the relationship of the proposed Accessory Building to the adjacent buildings and views from public ways. (Findings of Fact 34, 79).

(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).

The Board concludes that the Application satisfies this requirement, as the lot occupancy of all new and existing structures will have a total lot occupancy of fifty-eight-point sixty two percent (58.62%). (Findings of Fact 34, 79).

Section 5201.4 *“The Board of Zoning Adjustment may require 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.”*

The Board concludes that the Application satisfies this requirement, as the Applicant will comply with Board directives for protection of adjacent and nearby properties. (Findings of Fact 34, 79).

Section 5201.5 *“This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.”*

The Board concluded that the Applicant is not requesting to introduce or expand a nonconforming use. (Findings of Fact 34, 79).

Section 5201.5 *“This section may not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.”*

The Board concluded the Applicant is not requesting to introduce or expand nonconforming height or number of stories. (Findings of Fact 34, 79).

General Special Exception Relief – Subtitle X § 901

The Application, in addition to meeting the specific conditions of the special exceptions from the lot occupancy, rear yard, and minimum parking requirements, must also meet the general special exception standards in Subtitle X § 901.2 to be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and to not adversely affect the surrounding properties.

The Board concludes that granting the Application's requested special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because the Building meets the intent of the RF-1 Zones, which “are distinguished by a maximum number of principal dwelling units per lot of either two (2), three (3), or four (4) units.” (E § 100.4). The Zoning Regulations permit three (3) units and the use of a new accessory building as a principal dwelling unit via special exceptions. Therefore, the proposed use was contemplated by the Zoning Commission and enumerated in the 2016 Zoning Regulations. Accordingly, the proposed Addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. (Findings of Fact 34, 79).

The Board concludes that granting the Application's requested special exceptions would not tend to adversely affect the use of neighboring properties because the Addition will not impact the light and air or privacy of the neighboring properties. The Addition will also not adversely affect the use of neighboring properties as residential properties. The Project was designed to limit these impacts on neighbors. Instead of proposing a large addition on the Principal Building in order to accommodate three (3) units, the Applicant is proposing to locate the third principal dwelling unit at the rear of the Subject Property in a separate Accessory Building. Three (3) principal dwelling units are permitted via special exception and the physical addition to the Principal Building is permitted as a matter-of-right. The Accessory Building will be separated from the adjacent principal structures by some distance. The Applicant is only proposing one (1) more dwelling unit than would be permitted as a matter-of-right which is unlikely to create additional noise or privacy issues.

Accordingly, the Accessory Building and proposed principal dwelling unit is unlikely not affect the use of neighboring properties. (Findings of Fact 34-35, 79).

The layout of the Project has additional features which improve the its quality and the mitigation of typical concerns in conversion cases. The proposed units are family-sized units. In particular, the open walkway along the side of the accessory building provides direct access to the rear of the Property from the Principal Building. This improves the situation both for parking and trash collection. The occupant of a unit in the Principal Building will have access to trash cans at the rear of the Property, and the access to parking makes it more likely that the spaces would be used, rather than parking on the front street. In addition, the layout provides for separately accessed private yard space for the units, providing outdoor recreation space to multiple units. (Findings of Fact 34-35, 79).

“Great Weight” to the Recommendations of OP

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.) and Subtitle Y § 405.8.)

The Board concludes that the OP Report, which provided an in-depth analysis of how the Application met each of the requirements for the requested special exception relief, is persuasive and concurs with OP’s recommendation that the Application be approved.

“Great Weight” to the Written Report of the ANC

The Board must give “great weight” to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 5D. (§ 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 this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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).

The Board considered the concerns raised by the ANC Report. During the hearing, Mr. Horgan testified on behalf of the ANC and noted that the ANC’s concerns were mostly related to the location of the Accessory Building. (Findings of Fact 39, 56- 57). Mr. Horgan testified that there were a lot of positive things about the Project, including family-sized units and excellent design. (Finding of Fact 55).

The Applicant provided a detailed explanation as to why it chose not to locate the Accessory Building at the very rear of the lot as requested by the ANC. Even under a matter-of-right scenario, moving the Accessory Building to the rear of the lot was not an option. The Office of Planning confirmed that the location of the Accessory Building was permitted as a matter-of-right. The Board considered the ANC’s concerns and concluded that the location of the Accessory Building was permitted as a matter-of-right. (Findings of Fact 39-51; 59-61).

ANC 5D Commissioner Clarence Lee testified that the ANC was generally opposed to three (3) units because that configuration did not fit within the community. (Finding of Fact 58).

Testimony in Opposition

Two (2) persons in opposition and one (1) party in opposition testified at the hearing. Mr. Schafer and Ms. Rogers testified in opposition. Mr. Schafer's testimony focused on economic concerns and he questioned whether the proposal was in harmony with the Zoning Regulations. Ms. Rogers was opposed to the third unit because she thought families would not live in condos. The Board referred to the regulations to explain to opponents how they review special exception applications. Specifically, the Board explained that the Applicant made a case as to why the Application meets the enumerated criteria and the Board reviews the Applicant's case. (Findings of Fact 62-65).

Party in Opposition

Mr. Hailes testified regarding his concerns over blocked sunlight, limited breeze, impacts on his view, his comfort, reduced airflow, and privacy. He was also against the proposed height of the Building. (Finding of Fact 53). Mr. Hailes testified that he was not in support of the third unit and also opposed to the proposed matter-of-right scenario on page 15 of the Applicant's presentation (Exhibit 46 and Finding of Fact 54). The shadow studies demonstrated that there was no impact on Mr. Hailes' light and air (Finding of Fact 37).

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 has satisfied the burden of proof with respect to the request for special exceptions under the residential conversion requirements of Subtitle U § 320.2, pursuant to Subtitle § U § 301.1 (e) from the use requirements of Subtitle U § 301.1 (c)(1) and pursuant to Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 5003.1, to convert the existing attached principal dwelling into two principal dwelling units and to construct a two-story accessory structure to be used as a third principal dwelling unit in the RF-1 Zone.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 35A AND WITH THE FOLLOWING CONDITION:**

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Robert Miller to APPROVE).

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:

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA

DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

