

Tab B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 20144 of David Barth and Lisa Kays, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E §§ 205.5 and 5201 from the rear addition requirements of Subtitle E § 205.4, from the lot occupancy requirements of Subtitle E § 404.1, from the accessory building rear yard requirements of Subtitle E § 5004.1, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition with a basement to an existing, attached principal dwelling unit, and a second-story addition to a detached accessory building in the RF-2 zone at premises 1832 15th Street, N.W. (Square 191, Lot 56).

HEARING DATE: January 15, 2020¹
DECISION DATE: February 12, 2020

DECISION AND ORDER

David Barth and Lisa Kays (collectively, the “**Applicant**”) filed an application (the “**Application**”) on August 19, 2019, 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 rear wall extension requirements of Subtitle E § 205.4 pursuant to Subtitle E §§ 205.5 and 5201;
- Special exception from the nonconforming structure requirements of Subtitle C § 202.2 pursuant to Subtitle E § 5201.1(f);
- Special exception from the accessory building rear yard requirements of Subtitle E § 5004.1 pursuant to Subtitle E §§ 5007 and 5201; and
- Special exception from the lot occupancy requirements of Subtitle E § 404.1 pursuant to Subtitle E § 5201;

to construct a two-story rear addition with a basement to an existing, attached principal dwelling unit, and a second-story addition to a detached accessory building at Lot 56 in Square 191, with an address of 1832 15th Street, N.W. (the “**Property**”) in the RF-2 zone. For the reasons explained below, the Board voted to **APPROVE** the requested special exception relief as stated above.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. In addition to the Applicant, Advisory Neighborhood Commission (“**ANC**”) 2B, the ANC within which boundaries the Property is located and so the “affected” ANC per Subtitle Y § 101.8, was automatically a party in this proceeding pursuant to Subtitle Y § 403.5.

¹ The hearing was postponed from November 13, 2019, to January 15, 2020, at the Applicant’s request (Exhibit 44).

2. On October 4, 2019, the Board received requests for party status in opposition (Exhibits [“Ex.”] 31 and 32) from:
 - Peter and Brittany Bepler, the owners of 1830 15th Street, N.W., the abutting property to the south of the Property (the “**South Abutters**”) and
 - Taylor and Sarah Nickel, the owners of 1834 15th Street, N.W., the abutting property to the north of the Property (the “**North Abutters**”, and collectively with the South Abutters, the “**Party Opponents**”).The Party Opponents asserted that they would be significantly and uniquely impacted by approval of the Applicant’s requested special exceptions because the Rear Addition and the Accessory Building Addition would have significant impacts to the light, air, and privacy available to their properties and significantly impact their use and enjoyment of their properties.
3. The Applicant filed an October 11, 2019, response stating that it did not object to the party status in opposition requests. (Ex. 47.)
4. At its October 16, 2019, public meeting, the Board granted both party status requests. (Ex. 48.)

NOTICE

5. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“**OZ**”) sent notice of the Application and the November 13, 2019, hearing by a September 25, 2019 letter to:
 - the Applicant;
 - ANC 2B;
 - Single Member District (“**SMD**”) Commissioner ANC 2B09;
 - Office of ANCs;
 - Office of Planning (“**OP**”);
 - District Department of Transportation (“**DDOT**”);
 - Councilmember for Ward 2;
 - Chairman of the Council;
 - At-Large Councilmembers; and
 - the owners of all property within 200 feet of the Property (Ex. 16-28).
6. OZ published notice of the November 13, 2019, hearing in the September 20, 2019, *D.C. Register* (66 DCR 12389) as well as through the calendar on OZ’s website.

THE PROPERTY

7. The Property is a rectangular interior lot with rear alley access.
8. The Property is currently improved with a three-story, one-family row dwelling (the “**Building**”) and a one-story, 363-square-foot accessory building located at the rear of the Property, currently used as a garage (the “**Accessory Building**”). (Ex. 70A.)

9. The Building shares party walls with the principal buildings on the abutting lots owned by the Party Opponents.
10. The Property has an existing lot occupancy of 56.5%, of which the Accessory Building comprises approximately 20%. (Ex. 70B.)
11. The Property has an existing rear yard of 63.5 feet, exceeding the 20-foot minimum required by Subtitle E § 406.2. (Ex. 70B.)
12. The surrounding properties are mostly attached dwelling units, many of which include rear additions. The south end of the block is improved with a four story, multi-unit apartment house. Many of the surrounding properties also include accessory structures fronting on the alley, including the two immediately adjacent properties. (Ex. 83B.)
13. The Property is located within the RF-2 zone.
14. Pursuant to Subtitle E § 400.2, the RF-2 zone is intended to, *inter alia*:
 - (b) Provide strong protections to retain its low scale, predominantly residential character, independent small retail businesses, human scale streetscapes, and historic character;
 - (c) Enhance the residential character of the area by maintaining existing residential uses and controlling the scale and density of residential development; [and]
 - (e) Preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide.
15. Pursuant to Subtitle E § 400.3, “*The RF-2 zone requires a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk and ensures a general compatibility in the scale of new buildings with older, low-scale buildings.*”
16. The RF zones permit an accessory building as a matter of right provided it is:
 - Subordinate in size and use to the principal building;
 - Constructed after the principal building and not in front of the principal building;
 - Considered in the lot occupancy, pervious surface, and floor area ratio calculations for the lot; and
 - Compliant with applicable development standards (Subtitle E § 5000), including the maximum 20-foot height in the RF-2 zone pursuant to Subtitle E § 5002.1.

II. THE APPLICATION

THE PROJECT

17. The Application proposed to construct:
 - A three-story, 13.25-foot rear addition to the Building (the “**Rear Addition**”); and
 - A second-story addition on the Accessory Building (the “**Accessory Building Addition**,” and collectively with the Rear Addition, the “**Project**”).
18. The Accessory Building Addition would increase the height of the Accessory Building to 19 feet while maintaining its existing building footprint of 363 square feet.

19. The Application asserted that the Accessory Building Addition would comply with the requirements of the RF-2 zone except for the relief requested – from the lot occupancy, rear yard/alley centerline setback, and nonconforming structure requirements.

RELIEF REQUESTED

20. The Application requested four special exceptions:
- From Subtitle E § 205.4’s maximum ten-foot (10 ft.) rear wall extension beyond the rear walls of the adjoining principal buildings on the abutting lots to allow an additional three and one-quarter feet (3.25 ft.) of rear extension (total rear extension of 13.25 feet), pursuant to Subtitle E § 5201;
 - From Subtitle E § 5004.1’s minimum twelve-foot (12 ft.) rear yard/setback from the alley centerline for the Accessory Building’s proposed new second story to extend the existing nonconforming five-foot (5 ft.) rear yard/setback existing on the Accessory Building’s first floor, pursuant to Subtitle E §§ 5007 and 5201;
 - From Subtitle C § 202.2’s limits on extending an existing nonconforming structure to allow the extension of the Accessory Building’s existing nonconforming five-foot (5 ft.) alley centerline setback to the proposed new second story of the Accessory Building, pursuant to Subtitle E § 5201; and
 - From Subtitle E § 404.1’s maximum 60% lot occupancy to allow an additional 9.75% (total of 69.7% lot occupancy), pursuant to Subtitle E § 5201.

APPLICATION’S JUSTIFICATION FOR THE REQUESTED RELIEF

Subtitle E § 5201.3(a) – No Undue Effects on Light and Air

21. The Application asserted that the Project would not unduly affect the light and air available to the neighboring properties because:

Rear Addition

- At 13.25 feet, the Rear Addition would extend only three and one-quarter feet (3.25 ft.) beyond the ten feet (10 ft.) permitted as a matter of right and the Board had previously considered other similarly sized additions to be “*de minimis*”;
- At approximately 24 feet and three stories the rear Addition would also remain under the 35-foot maximum height permitted in the RF-2 zone (Subtitle E § 403.1);
- As demonstrated by the Applicant’s shadow studies (discussed below), the Rear Addition would not unduly impact the light available to the adjacent properties (Ex. 70A.)

Accessory Building Addition

- The proposed second story would maintain the Accessory Building’s existing 363 square foot footprint and would remain below the 20-foot maximum height for accessory structures permitted in the RF-2 zone (Subtitle E § 5002.1); and
- The Accessory Building is located at the rear of the Property, and as such, most of the resulting shadow impacts will only impact the rear alley. (Ex. 70A.)

Lot Occupancy

- The proposed lot occupancy of the Project would not unduly affect the light and air available to the neighboring properties because the Property’s 50+ foot deep rear yard (including Project) would allow open space extending 30 feet – more than the 20-foot

minimum rear yard required in the RF-2 zone - between the Rear Addition and the Accessory Building. (Ex. 99A.)

Subtitle E § 5201.3(b) – No Undue Compromise of Privacy

22. The Application asserted that the Project would not unduly compromise the privacy of use and enjoyment of the neighboring properties because:

Rear Addition

- The Rear Addition does not include any windows on the north or south elevations that would face the neighboring properties, with the only proposed windows facing west to the Accessory Structure across the 30-foot open space; and
- The 30-foot open space between the Rear Addition and the Accessory Building will be enclosed by a six-foot wooden fence which will further screen the adjacent properties from view. (Ex. 70A.)

Accessory Building Addition

- The windows on the Accessory Structure will not face the North and South Abutters but will only look either onto the Property facing east to the Rear Addition or onto the alley.

Lot Occupancy

- The Project's lot occupancy would not result in any additional undue compromises to the privacy of use and enjoyment of the neighboring properties.

Subtitle E § 5201.3(c) – No Substantial Visual Intrusion

23. The Application asserted that the Project would not substantially visually intrude upon the character, scale, and pattern of the street frontage because:

Rear Addition

- The Rear Addition will not be visible from the street frontage along 15th Street N.W.;
- Many other properties on the square also have rear additions, including many of approximately the same scale as the Rear Addition proposed by the Application; and
- The Property is located in the Greater U Street Historic District and is subject to review by the Historic Preservation Review Board (“HPRB”) and the Rear Addition has been designed in accordance with the historic guidelines. (Ex. 70A.)

Accessory Building Addition

- Most properties on the square also have an accessory structure, including many of approximately the same scale, and with similar alley centerline setbacks as the Accessory Building proposed by the Application. (Ex. 70A and 83A at 4.)

Lot Occupancy

- The Project's lot occupancy will not result in any additional, substantial visual intrusions upon the character, scale, and pattern of the street frontage.

General Special Exception Standards for all Requested Relief (Subtitle X § 901.2(a) and (b))

24. The Application asserted that the Project would:

- Be in harmony with the general purpose and intent of the RF-2 zone because the Project proposes:
 - Additions to a principal dwelling unit, which are allowed as a matter of right in the RF-2 zone; and
 - Only one dwelling unit, which is less than the two dwelling units per lot allowed as a matter of right in the RF-2 zone; and

- Not adversely affect the use, light, air and privacy of the neighboring properties because the Rear Addition was only extending 3.25 feet beyond the 10 feet permitted as a matter of right and that the Accessory Building will remain under the 20-foot matter-of-right height limit. (Subtitle X § 901.2(b).)

APPLICANT'S SUBMISSIONS AND TESTIMONY

25. The Applicant made a total of five submissions to the record in support of the Application:
- The August 19, 2019, initial application and supporting documents (Ex. 1-10);
 - An updated application form, self-certification form, burden of proof statement, and statement of community outreach dated August 26 and 29, 2019 (Ex. 11-14);
 - A December 4, 2019, prehearing submission including an updated statement and revised plans and a self-certification that modified the original plans and added new relief (Ex. 70-70C, the **"First Prehearing Submission"**);
 - A December 26, 2019, prehearing submission, including updated plans and shadow studies (Ex. 81-83B, the **"Second Prehearing Submission"**); and
 - A January 31, 2020, supplemental submission that provided design alternatives requested by the Board (Ex. 99-99B, the **"Supplemental Submission"**).

The First Prehearing Submission

26. The First Prehearing Submission noted that the Applicant had hired a new architect and new counsel since the initial filing of the Application and had also made revisions to the plans and requested relief as follows:
- The Plans had been revised to remove the second-story deck originally proposed, but the general massing of the Building and Accessory Building remained similar to what had originally been proposed; and
 - The Applicant added a request for special exception relief from the nonconforming structure requirements of Subtitle C § 202.2 to extend the Accessory Building's existing non-conforming rear yard/setback from the alley centerline.

The Second Prehearing Submission

27. The Second Prehearing Submission included updated plans that included:
- An existing partial block plan and context aerial photo to demonstrate the character of the houses along 15th Street, N.W., including the presence of several rear additions and accessory structures of various sizes;
 - Side elevations and renderings of the Project as viewed by the North and South Abutters; and
 - Six axonometric views of the block in order to demonstrate what the proposed Project would look like from the alley along the rear of the properties on 15th Street, N.W.
28. The Second Prehearing Submission also included shadow studies (Ex. 81A and 81B, the **"Applicant's Shadow Studies"**) showing the difference in shadows created by the existing, proposed and matter-of-right conditions at 9 a.m, noon, and 3 p.m. on the spring and autumn equinox, summer solstice, and winter solstice. The Applicant's Shadow Studies demonstrated that the Project would have following impacts when compared to the Property's existing conditions:

- No increase in shadows on the South Abutter;
- A slight increase in shadows on the North Abutter at noon during the summer and winter solstices (Ex. 81A-81B);
- The largest increase in shadows to the North Abutter's property at noon and 3 p.m. during the spring and autumn equinoxes, with the shadows concentrated on the northern portion of the North Abutter's yard at noon and moving to the western portion later in the afternoon (Ex. 81A at 1-3); and
- Most of the shadows cast on the North and South Abutters during the winter months in the morning and afternoon are existing and due to the four-story multi-unit building at the south end of the block (Ex. 81B, p. 2, 4).

Public Hearing Testimony – January 15, 2020

29. At the January 15, 2020, public hearing, the Applicant and their architect provided testimony in support of the Application including:
- An explanation of the Applicant's Shadow Studies (January 15, 2020, Public Hearing Transcript [“**Jan 15. Tr.**”] at 330-333);
 - An overview of the requested relief (Jan. 15 Tr. at 333-334);
 - An overview of the existing conditions on the Property including the existing lot occupancy of 56.5% and the larger than normal 65.3-foot rear yard (Jan. 15 Tr. at 333-334); and
 - An explanation of conditions in the surrounding square including the presence of other rear additions and the fact that the Accessory Building, with the proposed Accessory Building Addition, would be in line with several other existing accessory structures, several of which are already two stories. (Jan. 15 Tr. at 334-336; Ex. 93 at 48-49.)
30. The Applicant cited to the Board's decisions in prior cases where the Board had granted rear addition relief, including:
- Requests for rear addition relief in which the Board had determined that additions of comparable size to the Rear Addition were “*de minimis*”; and
 - A rear addition requiring lot occupancy relief for a property two houses removed from the Property at 1828 15th Street, N.W (Jan. 15 Tr. at 335-336).
31. At the conclusion of the hearing the Board continued the proceedings for a limited scope hearing on February 12, 2020, so that the Applicant could submit plan alternatives and meet with the Party Opponents.

The Supplemental Submission

32. The Supplemental Submission responded to the Board's requests at the conclusion of the January 15, 2020, public hearing by:
- Providing revised plans to include changes to the number, size, and glazing of both the Rear and Accessory Building Additions' proposed windows to address the privacy concerns raised by the Party Opponents and the Board (Ex. 99A and 99B); and
 - Stating that the negotiations between the Applicants and the Party Opponents did not result in a mutually agreeable resolution.

Public Hearing Testimony - February 12, 2020

33. At the continued limited scope February 12, 2020, public hearing, the Applicant responded to concerns about the Project by stating that:
- It had revised the windows of the Project, as shown in the Supplemental Submission, to reduce their number and size and provided alternative glazing options to address the privacy concerns of the Party Opponents;
 - The Rear and Accessory Building Addition were not out of context with the surrounding neighborhood as several nearby properties included both accessory structures and/or rear additions;
 - The 3.25 feet of relief over the 10 feet permitted as a matter of right for a rear addition was “very much in line with the very low end of what the Board has safely approved in this area;” and
 - The parties had been unable to reach a resolution on the extent of the Rear Addition (February 12, 2020, Public Hearing Transcript [“**Feb. 12 Tr.**”] at 6 and 17).

III. RESPONSES TO THE APPLICATION

OP REPORT AND TESTIMONY

34. In addition to its testimony at the public hearing, OP submitted two reports analyzing the Application:
- A January 3, 2020, report (Ex. 86, the “**OP Report**”) that analyzed the Application against the special exception standards and recommended that the Board approve the four requested special exceptions; and
 - A February 7, 2020, supplemental report (Ex. 100, the “**Supplemental OP Report**”) that reviewed the Applicant’s proposed plan alternatives and concluded that they would address the privacy concerns raised by the neighbors at the January 15, 2020, public hearing.

The OP Report

35. The OP Report recommended that the Board approve the Application based on OP’s conclusion that the Application had provided adequate evidence that it satisfied the special exception requirements for the requested relief because:
- The Applicant’s shadow studies indicated that the Project would not unduly affect the light and air of the adjacent properties because the greatest shadows occurred during the winter months, and the impacts were limited to the property to the north;
 - The Project’s proposed substantial rear yard - at over 50 feet (including the Accessory Building), more than twice the minimum required in the RF-2 zone - would help ensure that sufficient light and air would remain available to the neighboring properties even with the Rear and Accessory Building Additions;
 - The Rear Addition did not include windows on the north or south facades facing the North and South Abutters;
 - The Rear Addition increased the privacy of neighbors by extending rear wall of the Building because views into the yards of the adjacent properties would actually be reduced by 13.25 feet;
 - Three other properties on the same block as the Property include principal buildings that extend back further than the Rear Addition; and

- Although the Accessory Building has nonconforming rear yard/alley centerline setback, it does not directly face any properties to the west because it partially faces the intersection of the 10-foot wide north south alley and another alley running east-west.

Public Hearing Testimony - January 15, 2020

36. At the January 15, 2020, public hearing, OP testified that:

- Based on its review of the Application, in particular the Applicant's shadow studies, OP concluded that the light and air to the neighboring properties and their privacy of use and enjoyment would not be unduly compromised. OP noted that the Rear Addition would potentially increase the privacy of the adjacent properties by cutting off views of the properties by extending the rear wall of the Building farther into the rear yard (Jan. 15 Tr. at 365-366); and
- The Accessory Structure's portion of the Property's lot occupancy limited the size of the Rear Addition that the Applicants could construct as a matter of right, to potentially less than the 10 feet permitted under Subtitle E §§ 205.5. (Jan. 15 Tr. at 368.)

The Supplemental OP Report

37. The Supplemental OP Report analyzed the Applicant's alternative plans included in the Supplemental Submission and concluded that the revisions would reduce views from the Property into the neighboring properties and so reduce impacts to the privacy and use of those neighboring properties because:

- The revisions to the proposed windows on the first and second floors of the Rear Addition either reduced the number of windows or their size or substituted frosted glass for clear glazing, which OP concluded would "provide less visibility into the adjoining yards than the original proposal";
- The removal of one window and increased height of the other windows on the proposed second floor of the Accessory Building reduced visibility from those windows into the adjoining properties; and
- The reduced number of windows on the alley facing side of the Accessory Building further limited privacy impacts.

Public Hearing Testimony - February 12, 2020

38. At the February 12, 2020, continued public hearing, OP testified (Feb. 12 Tr. at 12-13) that:

- OP stood by its reports and prior testimony and its conclusion that the Project would not unduly affect the surrounding properties in terms of light, air and privacy;
- Neither the Rear Addition nor the Accessory Building included windows on the north or south facades where they would directly impact the adjacent properties, but rather faced into the Property of onto the alley;
- The Rear Addition would extend these courtyard-facing windows further into the rear yard which would increase the privacy of the adjacent properties;
- The Accessory Building's proposed second story would not be out of character for the neighborhood because several other properties on the square include two-story accessory structures; and
- With regards to shadow impacts:

“I don’t think the question is whether or not [a proposed addition] produced more shadow, [since] the more you build, the more shadow you’re going get. It’s whether or not [the proposed addition] creates an undue hardship or a situation where you’re adversely affecting the neighboring properties. And the Office of Planning’s conclusion was that the amount of shadow that you were going to get from the Applicant’s 13.25-foot proposal [for the Rear Addition] was not ... an undue hardship on the neighboring properties.” (Feb. 12 Tr. at 15-16.)

DDOT REPORT

39. DDOT submitted a December 28, 2019, report (Ex. 84, 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 2B

40. ANC 2B did not submit a written response to the Application.

PARTY OPPONENTS

41. In addition to testimony at the public hearing, the Party Opponents made a total of eight submissions to the record in response to the Application:

- The initial party status requests from the North and South Abutters outlining the basis for the party status requests and detailing the Party Opponents’ concerns with the Project (Ex. 31-32, the “**Party Status Requests**”);
- Two separate letters of opposition from the South Abutters (Ex. 34, 42) and one letter of opposition from the North Abutters (Ex. 43) sent to ANC 2B and HPRB outlining the Party Opponents’ objections to the Project;
- Shadow studies commissioned by the Party Opponents (Ex. 88-90, the “**Opponents’ Shadow Studies**”); and
- A response to the Applicant’s Supplemental Hearing Submission (the “**Opponents’ Mid-Hearing Submission**”, Ex. 101-101A).

The Party Status Requests

42. The Party Status Requests asserted that the Project would:

- Significantly impact the North and South Abutter’s access to light and air, as well as their privacy and enjoyment of use of their properties; and
- Be out of character with the character of the neighborhood and the purpose and intent of the Zoning Regulations.

Opponents’ Shadow Studies

43. The Opponents’ Shadow Studies, which depicted the shadows cast only at 11 a.m., but for each month, and without showing the four-story multi-unit building at the south end of the block or its shadows, concluded that the Project would cause:

- No shadow impacts on the South Abutters; and
- Approximately 30% to 40% shadowing of the North Abutter’s yard during summer; and
- Approximately 60% shadowing of the North Abutter’s yard during spring and fall. (Ex. 88 at 3, 5, and Ex. 89.)

Public Hearing Testimony - January 15, 2020

44. The Party Opponents responded to the Applicant's testimony at the January 15, 2020, public hearing by testifying that:
- The Project's combined Rear and Accessory Building Additions would result in undue impacts, as compared to an addition that would comply with both the lot occupancy and rear wall extension limits (Jan. 15. Tr. at 349-351);
 - The Project's proposed 69.7% lot occupancy was "just too large for this property and this project is too large" so that the requested relief constituted an "extreme special exception" and requires a higher burden of proof and increased scrutiny," even though the requested lot occupancy relief was eligible for a special exception (Jan. 15 Tr. at 346);
 - The Applicant's citations to prior Board decisions approving rear addition relief were not analogous to the Application since it included "substantial lot occupancy relief" (Jan. 15 Tr. at 342-343);
 - The Project would cast significant shadows on the North Abutter's garden that are not accurately shown by the Applicant's Shadow Study's "Matter-of-Right" scenario because it did not reflect that the Property's existing 56.5% lot occupancy limited matter-of-right expansion to a three and one-half foot (3.5 ft.) rear addition in order to remain under the 60% lot occupancy limit (Jan. 15. Tr. at 351-358);
 - The Project's number and size of windows would cause privacy impacts to both the North and South Abutters (Jan. 15. Tr. at 351-358);
 - The Project was not in harmony with the intent of the RF-2 zone, particularly Subtitle E § 400.2(e) and its call to "[p]reserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide" (Jan. 15 Tr. at 347); and
 - Others in the neighborhood and the Dupont East Civic Action Association ("DECAA") also opposed the Project. (Jan. 15 Tr. at 346-347.)

Mid-Hearing Submission

45. The Party Opponents' Mid-Hearing Submission:
- Repeated the arguments advanced in their prior filings and January 15, 2020, public hearing testimony including that:
 - The Project would have undue adverse impacts on the light, air, and privacy enjoyed by the Party Opponents;
 - The Rear Addition "far exceeded" the three and one-half foot (3.5 ft.) addition that the Party Opponents asserted was the true matter-of-right limit given the Property's existing lot occupancy (Ex. 101); and
 - The Applicant's revisions to the Project's proposed windows, while appreciated, were insufficient to resolve the Party Opponents' concerns or cause them to withdraw their opposition;
 - Included additional shadow studies illustrating the shadow impacts of the Project compared to the three and one-half foot (3.5 ft.) rear addition the Party Opponent's asserted was the maximum allowed as a matter of right when considering the maximum 60% lot occupancy permitted by right (Ex. 101A); and
 - Stated that the Party Opponents would support the Rear Addition if it was reduced to 10 feet instead of 13.25 feet and included the revisions proposed to the windows as shown

in the Applicant's revised plans, which the Party Opponents asserted would resolve their concerns while also not significantly impacting the Project.

Public Hearing Testimony - February 12, 2020

46. At the February 12, 2020 continued hearing, the Party Opponents:
- Repeated their opposition to the Application's request for combined lot occupancy relief and rear wall extension relief and asked the Board to consider the holistic effect of the combined relief requested; and
 - Reiterated that the Rear Addition would "substantially" and "unduly" impact the light, air, and privacy available to their properties. (Feb. 12 Tr. at 16 and 17.)

PERSONS IN SUPPORT

47. The Board received three letters in support of the Application from nearby residents. (Ex. 45, 55, and 56.)
48. Aaron Landry, Secretary of ANC 2B and Chair of the ANC 2B Zoning, Preservation, and Development Committee (the "**Zoning Committee**") testified in his personal capacity that:
- He supported the Project and concurred with the conclusions of the OP Report that the Project would not result in any undue impacts to the neighboring properties;
 - The Zoning Committee had reviewed the Application and had recommended that the ANC approve all requested areas of relief subject to the Applicant providing a shadow study; and
 - The full ANC decided not to take any action to respond to the Application. (Jan. 15 Tr. at 382-389.)

PERSONS IN OPPOSITION

49. The Board received 34 letters in opposition from neighbors. (Ex. 33-43, 50-53, 58, 60-64, 66-69, 71-78, 85 and 85A.) The letters raised concerns about the impact of the Project on the character of the surrounding neighborhood, the impacts to neighboring properties, and the perceived lack of public outreach from the Applicants.
50. DECAA submitted a letter stating that at its November 18, 2019, public meeting it had approved a resolution to challenge the Application because of its concerns that the Project would negatively impact the light, air and privacy available to the adjacent properties, and "drastically change the character, historic nature and low scale footprint" of the surrounding neighborhood. (Ex. 59.)
51. Nick DelleDonne testified on behalf of DECAA stating that DECAA had concluded that the Project would seriously affect the neighboring properties and the neighborhood as a whole. (Jan. 15 Tr. at 396-397.)
52. Ed Hanlon, SMD Commissioner for ANC 2B09, testified in his personal capacity in opposition to the Application stating that:
- There had been "near unanimous" opposition to the Project at the ANC's public meeting on the matter; and

- He had concerns that the Project would result in significant impacts to the light and air available to the neighboring properties. (Jan. 15 Tr. at 399-406.)

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 § 5201 for relief from the regulations governing wall extensions, accessory structure rear yard/alley centerline setback, nonconforming structure extensions, and lot occupancy.
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)).

ELIGIBILITY FOR RELIEF PURSUANT TO SUBTITLE E § 5201

4. The Board concludes that the Application is eligible for special exception relief pursuant to Subtitle E § 5201 because:
 - The Rear Addition is an addition to a residential building and the Accessory Building Addition is an enlargement of an accessory structure to a residential building (Subtitle E § 5201.2);
 - The Project does not propose:
 - The introduction or expansion of either a nonconforming use (Subtitle E § 5201.5);
 - The introduction or expansion of a nonconforming height or number of stories (Subtitle E § 5201.6); and
 - A lot occupancy exceeding 70% (Subtitle E § 5201.3(e)).

SPECIFIC SPECIAL EXCEPTION STANDARDS (SUBTITLE E § 5201.3)

5. 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; and*
- (d) 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.”*

6. 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, for the requested relief from the following regulations:
- Rear wall extension limits (Subtitle E § 205.4);
 - Accessory Building – rear yard/alley centerline setback requirement (Subtitle E § 5004.1) and nonconforming structure expansion limits (Subtitle C § 202.2); and
 - Lot occupancy limits (Subtitle E § 404.1).

Subtitle E § 5201.3(a) – No Undue Effects on Light and Air

7. The Board concludes, in agreement with OP’s analysis and recommendation, that the Application demonstrated that the Project would not unduly affect the light and air available to neighboring properties because:
- The Rear Addition will be separated from the Accessory Building by an approximately 30-foot open space, which exceeds the RF-2’s minimum 20-foot rear yard;
 - The Accessory Building would not exceed the 20-foot maximum height permitted for accessory structures in the RF zones;
 - The Accessory Building would be of a similar size as other accessory structures on adjacent properties and on the square, several of which are two stories including the one immediately adjacent to the south;
 - Although the Applicant’s Shadow Studies and Party Opponent’s Shadow Studies and Mid-Hearing Submission differed over what constituted a matter-of-right option against which to compare the Project’s shadow impacts, the Board based its conclusions that the shadows cast by the Project would not unduly affect the light to the North and South Abutters based on comparing the shadows cast by the existing Building and Accessory Building with those cast by the Project, as depicted by the Applicant’s Shadow Studies (FF 28), as follows:
 - The Project would not cast any shadows on the South Abutter (FF 28,43);
 - The Project would cast only slightly increased shadows on the North Abutter at noon during the summer and winter months (FF 28);
 - The Project would cast the most shadows at noon and 3 p.m. during the spring and autumn equinoxes, but these shadows would move during the day so that the North Abutter would still receive a substantial amount of sunlight, including afternoon sun on the area of the garden in the northeast corner raised as a particular concern (FF 28; Feb. 12 Tr. at 21);
 - In reaching the conclusions that the shadow impacts would not, in the aggregate, unduly affect the light reaching the North Abutter, the Board found the Applicant’s Shadow Studies more persuasive because they:

- Depicted the shadows at three times during each day (9 a.m., noon, and 3 p.m.), not the 11 a.m. time shown by the Party Opponent’s Shadow Studies that likely is the time of maximum shadowing from the Project and so ignores the changing shadows during each day – as can be seen by comparing the morning and afternoon shadows at the spring and autumn equinox; and
- Included the shadows cast by the four-story multiunit building at the south end of the block that on the winter solstice completely shadows the North and South Abutters and the Property in the morning and afternoon, with slightly less shading at noon – shadows that are not included in the Party Opponent’s Shadow Studies for December and January;
- While the Project, would result in some impacts to light and air given the proposed total lot occupancy of 69.7%, these impacts would not be undue because the Project would provide a deep rear yard that is more than twice the minimum required by the RF-2 zone and so allows 30 feet of open space – exceeding the minimum 20-foot required rear yard - between the Rear Addition and the Accessory Building (FF 21);
- The Project remained under the 70% lot occupancy limit permitted for a special exception and as such remains subject to the special exception criteria and not the more stringent variance standards (Feb. 12 Tr. at 25);
- The Board is unpersuaded by the Party Opponents’ argument that the increased lot occupancy proposed for the Project is “too large” for the Property because the lot occupancy remains within the range that the Board can grant by special exception and the Rear and Accessory Building Additions will remain below the matter-of-right height limits;
- The Party Opponents stated that their concerns would be resolved if the Rear Addition was reduced to extend only ten feet back instead of the proposed 13.25 feet, and the Board concludes that the additional three and one-quarter feet (3.25 ft.) was not significant enough, based on the Applicant’s Shadow Study, to create undue adverse impacts to light and air available to the North and South Abutters. (FF 28; Feb. 12 Tr. at 9-11, 19-21, 23.)

Subtitle E § 5201.3(b) – No Undue Compromise of Privacy

8. The Board concludes that the Project would not unduly compromise the privacy of use and enjoyment of neighboring properties because:
- The Rear and Accessory Building Additions have no windows on the side facades facing the North and South Abutters that would have direct sightlines from the Property onto the North and South Abutters;
 - The Rear and Accessory Building Addition’s windows facing into the Property will only provide a limited sideways view of the neighboring rear yards;
 - The Applicant’s revised plans in the Supplemental Submission addressed the privacy concerns raised by the Party Opponents as follows:
 - For the Rear Addition, by reducing the size of the proposed windows on the second floor and adding frosted glass for the window in the master bathroom;
 - For the Accessory Building, by reducing the size of the windows facing into the Property and adding frosted glass in the powder room window (Ex. 99A);
 - The Project’s six-foot-high privacy fence between the Property and the North and South Abutters will further protect privacy;

- The Rear Addition would reduce the amount of the neighboring rear yards visible from the Property; and
- The use of the Accessory Building as an accessory use to the Building's principal dwelling unit would be consistent with other accessory structures fronting on the alley and would therefore not impact the use or enjoyment of neighboring properties. (FF 22, 37.)

Subtitle E § 5201.3(c) – No Substantial Visual Intrusion

9. The Board concludes that the Project, 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 Rear and Accessory Building Additions will not be visible from 15th Street, N.W.;
 - The Rear Addition will match the height of the Building and both the Rear and Accessory Building Additions comply with the matter of height limits of the RF-2 zone;
 - The Rear Addition is not out of character with the pattern of surrounding development because other properties in the square have rear additions of various sizes and the Accessory Building will screen the view of the Rear Addition from the alley; and
 - The Accessory Building Addition maintains the existing footprint of the Accessory Building;
 - The Accessory Building is sufficiently similar in terms of height, scale, and setbacks to other existing accessory structures in the square, including that of the South Abutter, so that it would not visually intrude upon the character or pattern of these accessory structures along the alley. (FF 23; Feb. 12 Tr. at 21.)

SUBTITLE X § 901.2 – GENERAL SPECIAL EXCEPTION STANDARDS

10. Pursuant to Subtitle X § 901.2(a), the Board concludes that the Project will be in harmony with the general purpose and intent of the Zoning Regulations as discussed above and because:
- All of the relief requested by the Application qualifies as special exception relief, subject only to the general and specific special exception standards. The Board cannot arbitrarily institute an undefined and more stringent standard of review, as suggested by the Party Opponents' argument that a "higher standard" of special exception review should apply to this case because (i) the Zoning Regulations do not impose such a standard, and (ii) the Board must evaluate the Project based on the standards of the Zoning Regulations; and
 - The Project furthers the RF-2 zone's intent to maintain the zone's low-scale predominantly residential character and open backyards by:
 - Limiting the height of the Rear Addition to that of the Building, which is less than the height permitted as a matter of right;
 - Retaining a 30-foot open space between the Rear Addition and Accessory Building;
 - Limiting the height of the Accessory Building Addition to below the matter-of-right height;
 - Maintaining the use of the Property as residential, with the Accessory Building used for "purposes that are incidental to the use of the principal building";
 - Not increasing the number of principal dwelling units on the Property; and

- Maintaining the Accessory Building’s existing footprint to not impact the “free circulation of vehicles,” in compliance with the intent of the RF-2 zone. (Subtitle E § 400.2(g).)

11. Pursuant to Subtitle X § 901.2(b), the Board concludes that the Project will not adversely affect the use of the neighboring properties as discussed above and because the Applicant revised the Project’s design to address the Party Opponents’ privacy concerns. (FF 21-22, 24, 28, and 37.)

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

12. 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).
13. The Board finds OP’s recommendation to approve the Application persuasive based on OP’s determinations that the potential impacts on the North and South Abutters would not have substantially adverse effects, including shadow and privacy impacts, on abutting or adjacent properties and concurs in that judgement.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

14. 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.)); *see* 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).
15. Since ANC 2B did not submit a written report to the case record, the Board has nothing to which it can give great weight.

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 for the requested relief and therefore **APPROVES** the Application’s request for the following relief for Lot 56 in Square 191,

- The rear wall extension limits of Subtitle E § 205.4;
- The nonconforming structure expansion limits of Subtitle C § 202.2;
- The accessory building rear yard/alley centerline setback requirements of Subtitle E § 5004.1; and
- The lot occupancy limits of Subtitle E § 404.1;

subject to the following **CONDITION**:

1. The Project shall be constructed in accordance with the plans submitted as Exhibit 99A in the record,² as required by Subtitle Y §§ 604.9 and 604.10.

VOTE (February 12, 2020) 3-1-1 (Frederick L. Hill, Lorna L. John, and Carlton E. Hart to **APPROVE**; Michael G. Turnbull opposed to the motion; 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: January 27, 2021

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

² Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 (Exhibit 70C). In granting the requested self-certified relief subject to the plans submitted with the Application, the 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.

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.