

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



Application No. 20380 of Polygon Holdings, LLC, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle U § 421 to allow a new residential development and under Subtitle F § 5201 from the side yard requirements of Subtitle F § 306.2(a) to allow a new third story and a three-story rear addition for a 17-unit apartment house in the RA-1 Zone at premises 4457-4459 MacArthur Boulevard, N.W. (Square 1363, Lots 57 and 961).^{1,2}

HEARING DATES: April 28, July 14, and October 6, 2021, and May 11, 2022
DECISION DATE: May 25, 2022

DECISION AND ORDER

This self-certified application was filed on September 15, 2020 on behalf of Polygon Holdings, LLC (“Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing, by letters dated December 6, 2020 and January 7, 2021, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Office of State Superintendent of Education, the Department of Parks and Recreation, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 3 as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 3D, the ANC in which the subject property is located, the Single Member District ANC 3D09, and the owners of all property within

¹ This caption has been modified to reflect that the application was amended. The Applicant originally requested special exception relief for a new nine-unit apartment house in an RA-1 zone. After the public hearing began, the Applicant acquired the adjacent property to the west located at 4459 MacArthur Blvd., N.W. and revised the application to propose a 17-unit apartment house. The areas of relief requested were unchanged.

² By orders issued August 25, 2023, the Zoning Commission approved text amendments that established new zone names and amended some of the regulations applicable to the Applicant’s proposal. (See Zoning Commission Orders No. 18-16 and 19-27.) This order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing.

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200 feet of the subject property. Notice was published in the *District of Columbia Register* on November 27, 2020 (68 DCR 013995) and on December 11, 2020 (68 DCR 014464).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 3D were automatically parties in this proceeding. At the beginning of the public hearing on April 28, 2021, the Board granted requests for party status in opposition to the application from Dawn Lea, then the owner of the property abutting the subject property to the west (Exhibits 27, 52 and 65), and from Foxhall Terrace, LLC, the owner of an apartment house on MacArthur Blvd. to the west of the abutting property. (Exhibit 45.) Dawn Lea discontinued her participation in this proceeding after selling her property to the Applicant, and the Board deemed her party status withdrawn.

Applicant's Case. The Applicant provided evidence and testimony in support of the application from Adam Crain, the project architect, and Frank Rameshni, a representative of the property owner. As finally revised, the application sought zoning relief needed to permit a new three-story, 17-unit apartment house.³

OP Report. By reports dated January 28 and June 23, 2021, the Office of Planning recommended approval of the original application. (Exhibits 35, 59.) Subsequently, OP submitted an additional supplemental report, dated April 28, 2022, which recommended approval of the revised application. (Exhibit 88.)

DDOT. By report dated January 28, 2021, the District Department of Transportation stated no objection to approval of the original application subject to conditions related to the Applicant's compliance with tree preservation requirements and the Applicant's use of an existing easement agreement with Foxhall Terrace, LLC (Lot 976). (Exhibit 37.)

ANC 3D. ANC 3D initially asked the Board to cancel the public hearing in light of the Applicant's alleged failure "to obtain the required permissions and licenses from the District of Columbia Department of Consumer and Regulatory Affairs."⁴ (Exhibits 28, 31.) By report dated April 7, 2021, ANC 3D indicated that, at its regularly scheduled and noticed meeting on April 7, 2021, with a quorum present, the ANC voted to oppose the original application, citing the project's "substantially adverse effect on the use and enjoyment of neighboring properties, most especially [the adjoining property at] 4459 MacArthur Boulevard N.W." (Exhibit 44.) By report dated April 8, 2022, ANC 3D indicated that, at its regularly scheduled and noticed meeting on April 6, 2022, with a quorum present, the ANC voted to support the amended application.⁵ (Exhibit 85).

³ The initial application involved only one of two existing semi-detached dwellings, which the Applicant proposed to enlarge for use as an eight-unit apartment house. The application was revised after the former party in opposition sold the second semi-detached dwelling to the Applicant, who then planned additions to both buildings and a 17-unit apartment house.

⁴ As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. *See* D.C. Official Code § 10-561.01 *et seq.*

⁵ The ANC's second report listed only relief from the side yard requirements as the relief requested but also stated that "ANC 3D supports this application and granting of the requested relief." (Exhibit 85.)

Party in Opposition. Foxhall Terrace, LLC asserted that approval of the application would cause adverse impacts to its property with respect to vehicular access and parking, especially since residents of the Applicant's new apartment house would increase the use of an easement over the party in opposition's lot.

Persons in opposition. The Board received letters in opposition to the initial application from persons who generally cited concerns that the Applicant's proposed development would have negative impacts on the light, air, and privacy available to neighboring properties as well as on the character, scale, and pattern of homes nearby. The persons in opposition also stated concerns about traffic and parking.

FINDINGS OF FACT

1. The property that is the subject of this application comprises two adjoining interior lots on the north side of MacArthur Boulevard, N.W. between Q Street, N.W. and Foxhall Road, N.W., with the addresses of 4457 and 4459 MacArthur Boulevard, N.W. (Square 1363, Lots 57 and 961).
2. The subject property is rectangular, approximately 61.79 feet wide and 141.35 feet deep. The lot area is approximately 8,410 square feet.
3. The subject property was improved with two semi-detached principal dwellings built in 1905, and accessory structures in the rear yards.
4. The existing dwellings are each 20 feet and two stories in height. The buildings shared a party wall.
5. The existing lot occupancy of the subject property is approximately 25.9 percent.
6. The subject property has an existing rear yard approximately 55.2 feet in depth.
7. The subject property has side yards of eight feet on both the east and west sides of the semi-detached buildings.
8. The Applicant proposed to redevelop the subject property with a new 17-unit apartment house.
9. The Applicant planned to combine the two existing buildings on the subject property into one building and to construct rear and third-story additions to the building. The existing accessory structures will be demolished.
10. The new apartment house will contain three two-bedroom units and fourteen one-bedroom units, with two of these units including dens. The cellar, second, and third floors will each contain four apartments, while the first floor will be configured as five units.

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11. Two of the 17 apartments will be dedicated as Inclusionary Zoning (“IZ”) units.⁶ The Applicant indicated that the IZ units will be located on the first and second floors of the new apartment house as Unit 5, a one-bedroom unit of approximately 571 square feet, and Unit 11, a two-bedroom unit of approximately 838 square feet.
12. The new building will be three stories and 39 feet in height, where 40 feet and three stories are permitted. (Subtitle F § 303.1.)
13. The lot occupancy at the subject property will be 41.1 percent, where a maximum of 40 percent is permitted. (Subtitle F § 304.1.) The Applicant anticipated obtaining approval of the proposed lot occupancy as a deviation or modification permitted by Zoning Administrator’s ruling in accordance with Subtitle A § 304.
14. The new building will have a floor area ratio (“FAR”) of 1.08, where a maximum FAR of 1.08 is permitted. (Subtitle F § 302.)
15. The new building will provide a rear yard of 42 feet deep, where a minimum of 20 feet is required. (Subtitle F § 305.1.)
16. The new building will be approximately 61.79 feet wide and will maintain the existing eight-foot side yards on both sides of the building. The Applicant indicated that the minimum requirement for the new apartment house was two side yards at 9.75 feet due to the planned height of the building. (Subtitle F § 306.2.)
17. The new building will retain the front porches and façades of the existing semi-detached buildings. The third-floor addition will be set back a distance sufficient to retain the slope of the existing mansard roof. The location of the existing entryway stairs will also be retained.
18. The front wall of the new apartment house will be located 20 feet from the front property line, consistent with the existing front wall, and there will be an additional 15 feet of public space between the front property line and the sidewalk.
19. The existing grade on the subject property will not be changed to accommodate the new apartment house.
20. An enclosure for the storage of trash and recyclable materials will be provided in the rear yard of the subject property.
21. The Applicant provided a landscaping plan for the new development (Exhibit 87A.) The landscaping will include a four-foot solid wooden fence located along the surface parking spaces and trash enclosure in the rear. Along the eastern side entry path and front and rear of the subject property the landscaping will include ground covers and green roofs which

⁶ See Subtitle C, Chapter 10 (Inclusionary Zoning).

- will be surrounded by shrubs. The landscaping will also include a “garden path” in the front yard that will connect the front entry walk with the two side entry walks.
22. The new apartment house will provide a roof deck accessible via stairs contained in a penthouse structure that will include ancillary roof space.
 23. The subject property does not have a direct means of vehicle access from any street or public alley but will provide five vehicle parking spaces (including three compact spaces) at the rear of the lot. The parking spaces will be accessible through an existing right-of-way easement allowing use of a driveway on Lot 976, the abutting property to the west of the subject property.
 24. The subject property will provide six long-term bicycle parking spaces in the cellar level of the new building. A rack of two short-term bicycles parking spaces will also be provided at the front of the site.
 25. The subject property is within walking distance of several Metrobus routes.
 26. The subject property is located in close proximity to a Capital Bikeshare station.
 27. The subject property is within walking distance of several parks and recreational centers, including the Hardy Recreation Center and Park, the Foundry Branch Valley Park, and Foundry Branch Tunnel, which provides direct access to the Capital Crescent Trail and the C&O Canal towpath.
 28. The area surrounding the subject property is predominantly residential, containing principal dwellings and flats in detached and semi-detached buildings as well as apartment houses. The subject property is within walking distance of several restaurants, grocery stores, retail stores, and medical offices.
 29. The subject property is “in-boundary” for schools operated by D.C. Public Schools, Key Elementary School, Hardy Middle School, and Jackson-Reed High School. The utilization rates for those schools range approximately from 75 to 98 percent.
 30. The abutting property to the north of the subject property contains a two-story detached principal dwelling (Lot 849; 4461 MacArthur Blvd., N.W.).
 31. The abutting property to the east (4455 MacArthur Blvd., N.W.) is improved with a two-story apartment house. Its west side yard, adjoining the subject property, provides a driveway to vehicle parking spaces located along the side of the apartment house, which is located approximately 30 feet from the Applicant’s building.
 32. The abutting property to the west (Lot 976, 4465 MacArthur Blvd., N.W.) is improved with a three-story building built in 1962-1963 and configured as a 36-unit apartment house. The building is located approximately 22 feet from the Applicant’s building.

33. The east side yard of Lot 976, abutting the subject property, contains a driveway approximately 10 feet wide that provides access to vehicle parking spaces located along the east side and rear of Lot 976.
34. The driveway is subject to a right-of-way easement created in 1929 for the benefit of the subject property (Lot 57, formerly Lot 962; and Lot 961) as well as Lot 849, which abuts the subject property to the north (4461 MacArthur Blvd.).
35. The Applicant did not propose any changes in grade or new rights of way or easements in connection with the new apartment house.
36. The subject property and nearby properties are located in a Residential Apartment (RA) zone, RA-1.
37. The Residential Apartment (RA) zones permit urban residential development and compatible institutional and semi-public buildings. (Subtitle F § 100.1.) The RA zones are designed to be mapped in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F § 100.2.)
38. Provisions of the RA zones are intended to (a) provide for the orderly development and use of land and structures in areas characterized by predominantly moderate- to high-density residential uses, (b) permit flexibility by allowing all types of residential development; (c) promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (d) promote a walkable living environment; (e) allow limited non-residential uses that are compatible with adjoining residential uses; (f) encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (g) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 100.3.)
39. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, row houses, and low-rise apartments. (Subtitle F § 300.2.)
40. The purposes of the RA-1 zone are to (a) permit flexibility of design by permitting all types of urban residential development if they conform to applicable height, density, and area requirements and (b) permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. (Subtitle F § 300.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks special exceptions, pursuant to 11 DCMR Subtitle X, Chapter 9, under Subtitle U § 421 to allow a new residential development and under Subtitle F § 5201 from the side

yard requirements of Subtitle F § 306.2(a) to allow a new third story and a three-story rear addition to existing semi-detached buildings for use as a 17-unit apartment house in the RA-1 zone at 4457-4459 MacArthur Boulevard, N.W. (Square 1363, Lots 961 and 57). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to specific conditions. (See 11 DCMR Subtitle X § 901.2.) Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and ANC 3D, the Board concludes that the application has met the requirements for approval of the requested zoning relief.

New residential development. Pursuant to Subtitle U § 421, the proposed apartment house – as a new residential development in the RA-1 zone not comprising principal dwellings in detached or semi-detached buildings – requires approval by the Board as a special exception in accordance with the specified standards. As required, the application was referred to various agencies for comment and recommendation, and the Applicant submitted the documents necessary to support the request for zoning relief.

The Board concludes that the application satisfied the requirements for the requested special exception under Subtitle U § 421. The Applicant proposed to combine two existing semi-detached dwellings, with third floor and rear additions, to create a new three-story apartment house containing 17 one- and two-bedroom apartments. Given the relatively small number of new units in the building, the sizes of the units, and the number of public schools located in the surrounding neighborhood, serving children from pre-kindergarten through high school, the Board concludes that the number of students who can be expected to reside in the new apartment house can be accommodated at existing and planned area schools.

The Board also concludes that the public streets, recreation, and other services in the vicinity of the subject property can accommodate the residents who can be expected to reside in the new building. The subject property is located in an urban area within a few blocks of a variety of parks and recreation facilities as well as nearby commercial and service uses and public transit options. The Board notes that DDOT did not state any objection to approval of the application.

The new apartment house will provide bicycle parking as well as parking for five vehicles accessible via an easement allowing use of an existing driveway on an abutting property. The party in opposition argued that the Applicant's proposal would improperly intensify the use of the driveway, contrary to the terms of the easement allowing access to the driveway. The Board did not agree, since the planned provision of five new parking spaces at the subject property will not significantly increase the use of the driveway.⁷ The Board agrees with the Applicant that other arguments raised by the party in opposition, including claims that "the proposed intensified use of the 10-foot driveway right-of-way is not authorized" by the terms of the easement, are not within the Board's purview in this proceeding.

⁷ The Applicant estimated that the driveway is currently used to provide vehicle access to approximately 30 parking spaces on Lot 976. (Exhibit 54.)

Side Yard. The Applicant also requested a special exception under Subtitle F § 5201 from the side yard requirements of Subtitle F § 306.2(a) to allow two side yards of eight feet, which is the existing condition for the two semi-detached dwellings at the subject property. Under Subtitle F § 306.2, the Applicant's project would require two side yards of at least 9.75 feet. Pursuant to Subtitle F § 5201.1(b) the Board is authorized to grant relief from the development standards for side yards for an addition to a principal residential building on a non-alley lot, subject to certain requirements and the general special exception criteria at Subtitle X, Chapter 9. The requirements include that the proposed addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property; specifically (a) the light and air available to neighboring properties shall not be unduly compromised, (b) the privacy of use and enjoyment of neighboring properties shall not be unduly compromised, and (c) the proposed addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude on the character, scale, and pattern of houses along the street and alley frontage. (Subtitle F § 5201.4.)

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and ANC 3D, the Board concludes that the application satisfied the requirements for approval of the requested special exception. The planned additions to the existing semi-detached dwellings, for the purpose of creating a new apartment house, will not unduly compromise the light and air available to neighboring properties or compromise the privacy of use and enjoyment of neighboring properties. The Applicant submitted a shadow study (Exhibit 93A at 22) illustrating the relatively limited shadow impacts of the planned construction, which will comply with zoning requirements including with respect to building height. The subject property will continue to maintain the existing eight-foot side yards on both sides of the building, and both the buildings on the adjoining lots have significant setbacks from the lot lines shared with the subject property.

The Board also concludes that the additions, together with the original building, as viewed from the street, will not substantially visually intrude on the character, scale, or pattern of houses along the street frontage. The Applicant will maintain the front façades of the existing buildings, with a setback on the third-floor addition sufficient to maintain the existing slope of the mansard roof. The street frontage in the vicinity of the subject property currently contains a variety of building types, and the new apartment house will be similar in height and number of stories as the apartment houses to the east and west.

General standards. The Board concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as is required for approval of the application under Subtitle X § 901.2. Consistent with the provisions of the RA zones, the new apartment house will provide for the orderly development and use of land in an area characterized by predominantly moderate- to high-density residential uses, permit flexibility in the type of residential development, promote a stable residential area while permitting a variety of types of urban residential neighborhoods, promote a walkable living environment, and encourage compatibility between the location of the planned new building and the existing neighborhood. The Applicant's planned low-rise apartment house will be consistent with the

purpose of the RA-1 zone by permitting flexibility of design in an urban residential development that will generally conform to applicable height, density, and area requirements.

The Board concludes that approval of the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, as is also required for approval of the application under Subtitle X § 901.2. The new apartment house will be devoted to a residential use appropriate at its location and will meet or exceed development standards with respect to height, FAR, rear yard, and parking. The Applicant will install a solid fence around the parking and trash storage areas, as well as landscaping around the exterior of the building to enhance the appearance of the property and to minimize views from neighboring properties. As discussed above, the Board concludes that the Applicant's project will not adversely affect the use of neighboring properties with respect to light, air, or privacy.

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board agrees with OP's recommendation that, in this case, the application, as amended to propose a 17-unit apartment house, should be approved.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)) In this case, ANC 3D submitted a report indicating its support for the amended application, without stating any issues or concerns. (See Exhibit 85.)

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions to permit a new residential development under Subtitle U §421.1 and from the side yard requirements of Subtitle F § 306.2(a), pursuant to Subtitle F § 5201, to allow a third story and three-story rear addition in order to create a 17-unit residential apartment house in the RA-1 zone at 4457-4459 MacArthur Boulevard, N.W. (Square 1363, Lots 961 and 57). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown as Exhibit 93A in the record.

VOTE: 5-0-0 (Frederick L. Hill (by absentee vote), Lorna L. John, Carl H. Blake, Chrishaun Smith, and Anthony J. Hood 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 K. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 30, 2024

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 UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.