

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant’s Prehearing Statement in Support of Special Exception Approval

Haider Haimus and Jessica Bachay, Applicants

308 11th Street, NE; Square 963, Lot 68.

I. INTRODUCTION.

This Statement is submitted on behalf of Haider Haimus and Jessica Bachay (collectively known as the “Applicant”), owners of the property located at 308 11th Street, NE (Square 963, Lot 68) (the “Subject Property”). The Subject Property is improved with a two-story plus cellar row dwelling used as a two-family flat (the “Building”) and a one-story accessory building (the “Accessory Building”), currently used as a garage. The Applicant intends to add a second story to the existing one-story accessory building at the rear of the Subject Property and to expand the footprint of that accessory building to 2 feet, 10 inches on the interior side (the “Addition”). The Addition to the Accessory Building (the “Project”) will require the following relief:

1. Special Exception Relief Pursuant to E § 5201 from the Lot Occupancy requirements of E § 304.1.

The existing lot occupancy for the Subject Property is sixty-seven-point two percent (67.2%). The Applicant proposes to increase the footprint of the Accessory Building by 2 feet, 10 inches and add a second story to the Accessory Building, thereby increasing the total lot occupancy of all structures on the Subject Property to sixty-nine-point eight percent (69.8%). Accordingly, the Applicant is requesting special exception relief from the sixty-percent (60%) lot occupancy limits of Subtitle E § 304.1.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the special exception approval requested pursuant to Subtitle E § 5201 from the lot occupancy requirements of E § 304.1.

III. BACKGROUND.

A. Description of the Property and Surrounding Area.

The Subject Property is located in the RF- 1 Zone and in the Capitol Hill Historic District. It is an interior rectangular lot measuring one hundred and five point eighty-eight feet (105.88 ft.) in length, sixteen point sixteen feet (16.16 ft.) in width and 1,711 square feet in land area. The Subject Property is improved with a two-story plus cellar row dwelling used as a two-family flat and a one-story Accessory Building. Abutting the Subject Property to the north is an adjoining row dwelling. Abutting the Subject Property to the south is an adjoining row dwelling with an apparent lot occupancy of seventy-five percent (75%) and a roof deck without railing on the accessory structure adjacent to the Subject Property's Accessory Building. To the west is a public alley, and to the east is 11th Street, NE. Both the adjoining buildings to the north and south of the Subject Property also have garages along the alley. There are a variety of accessory buildings along the alley as shown in photographs included with the original Application.

B. Proposed Project.

The Applicant is proposing to construct a second-story addition on top of the existing Accessory Building, and to rebuild and extend the rear wall towards the principal Building, increasing the length of the Accessory Building from twenty feet and four inches (20 ft. 4 in.) to

twenty-three feet and two inches (23 ft. 2 in.).¹ The Applicant is maintaining the existing parking space which currently occupies the first floor of the Accessory Building. The proposed second story Addition will only have a total footprint of three hundred seventy-four-point six square feet (374.6 sq. ft.) and include office space and a bathroom. The proposed height of the Accessory Building will be twenty feet, four inches (20 ft. 4 in.), safely under the maximum permitted height of twenty-two feet (22 ft.).

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION APPROVAL.

A. Overview.

Pursuant to 11-X DCMR § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception approval 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, subject also, in this case, to the specific requirements for approval pursuant to 11-E DCMR § 5201. In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

B. General Special Exception Requirements of 11-X DCMR § 901.2.

¹ The Applicant is also planning on constructing a 3rd-story addition to the principal building on the Subject Property. While that addition is included in the subject plans, it is a matter-of-right addition and is not part of this special exception request.

The Applicant is requesting approval to construct a second-story addition on top of the existing Accessory Building and to expand the existing lot occupancy to sixty-nine point eight percent (69.8%). To obtain this approval, an Applicant must meet the general special exception requirements of X § 901.2. The granting of a special exception in this case “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 ...” (11 DCMR Subtitle X § 901.2).

1. Project will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

The Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Subject Property is located in the RF-1 Zone which provides “for areas developed primarily with row dwellings, but within which there have been limited conversions of dwellings or other buildings into more than two (2) dwelling units.” (E § 100.1) The Subject Property is currently used as a two-family flat, and the Applicant is not proposing to change the existing use. Moreover, the regulations specifically permit special exception approval to exceed the permitted lot occupancy, up to seventy percent (70%) lot occupancy. The expanded Accessory Building will comply with the height limits of two (2) stories and 22 feet. Accordingly, the proposed Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Board has approved several lot occupancy requests approving second stories to accessory buildings in the Capitol Hill area.²

² The Applicant's architect alone has successfully secured approval for several accessory building second story additions with lot occupancy relief, including BZA Applications No. 20038, 19838, 18997, 18927, and 18835. Just across the street, at 313 11th Street, NE, approval was granted for 67.6% lot occupancy with a 2-story accessory building (BZA case no. 19339).

2. Project will not tend to affect adversely, the Use of Neighboring Property in accordance with the Zoning Regulations and Zoning Maps.

As described more fully below, the Project will not impact the light and air or privacy of the neighboring properties. The Project will also not adversely affect the use of neighboring properties as residential properties as the Applicant is not proposing to change the existing use.

C. Requirements of 11-E DCMR § 5201.

The proposal in this Application satisfies the requirements of 11-E DCMR § 5201, as follows:

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 Project will not unduly affect the light and air available to the neighboring properties. The proposed Accessory Addition is only one-story and will have a total footprint of three hundred seventy-four-point six square feet (374.6 sq. ft.). As mentioned, there are already a variety of accessory buildings along the alley as shown in photographs included with the Application. A shadow study is provided along with this Prehearing Statement. The Shadow Study shows the difference in shading between a matter-of-right accessory building addition and the proposed Addition. Such additional resulting shadow is minimal, with a small amount of additional shadow on 310 11th Street, for a small part of the day in one season, no shadow at all on 306 11th Street, as that property is south of the Subject Property, and all other additional shadow falling on the top of the garage to the north or the alley.

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

The privacy of use and enjoyment of any neighboring properties will not be unduly compromised by the proposed Project. The Project has been carefully designed to let light in without impacting the privacy of the adjacent properties. Windows on the Accessory Addition are limited to the east and west facades and will face the principal Building and the alley, respectively. The Applicant is also proposing a Juliet balcony on the second story of the Accessory Building that will face the principal Building. However, as previously mentioned, the adjoining neighbors have existing rear balconies; therefore, the privacy shall not be unduly compromised.

(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 Project, together with the existing Building, will not visually intrude upon the character, scale, or pattern of the houses along 11th Street or the accessory structures on the alley. There are a variety of accessory structures along the alley, including accessory buildings directly adjacent on either side of the Subject Property. The Accessory Addition is modest at three hundred seventy-four-point six square feet (374.6 sq. ft.) and limited at twenty feet (20 ft.) in height. The principal Building is limited at thirty-five feet (35 ft.) in height, and the Applicant is maintaining the principal Building's existing dormer and mansard roof. The Subject Property is located in the Capitol Hill Historic District and is subject to review by HPRB. Accordingly, the Project has been designed with historic guidelines in mind and should not impact the character, scale, or pattern of accessory structures along the street and alley.

(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 Applicant has provided plans, photographs, elevations and section drawings sufficient to represent the relationship of the proposed Project to the adjacent buildings and views from public ways.

(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 lot occupancy of all new and existing structures will have a total lot occupancy of 69.8%.

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 Applicant will comply with Board directives for protection of adjacent and nearby properties.

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

The Applicant is not requesting to introduce or expand a nonconforming use.

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 Applicant is not requesting to introduce or expand nonconforming height or number of stories.

V. CONCLUSION.

For the reasons outlined in this Applicant's Statement, the Applicant respectfully requests the special exception approval as detailed above.

Respectfully Submitted,

Applicant's Prehearing Statement
308 11th Street, NE

Martin P Sullivan

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Sullivan & Barros, LLP
Date: March 24, 2021