

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



**Application No. 20449 of PD 236 Properties, LLC**, as amended, pursuant to 11 DCMR Subtitle X § 901 for special exceptions under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 306.1 and from the lot occupancy requirements of Subtitle E § 304.1 to allow a new three-story attached principal dwelling in the RF-1 zone at 1173 3<sup>rd</sup> Street NE (Square 773, Lot 274)<sup>1, 2</sup>

**HEARING DATES:** July 28, October 6, and December 1, 2021; March 9, June 15, June 22, and July 27, 2022

**DECISION DATE:** July 27, 2022

**DECISION AND ORDER**

This self-certified application was filed on January 12, 2021 by PD 236 Properties, LLC (the “Applicant”), the owner of the property that is subject to this application. Following a public hearing, the Board voted to deny 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 February 8, 2021, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the subject property is located, and Single Member District 6C06, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 6 as well as the Chairman of the Council and three at-large members of the D.C. Council, and the owners of all properties within

---

<sup>1</sup> This caption has been modified to reflect that the Applicant amended the application. As originally filed, the application included a request for a special exception under Subtitle E § 206.4 to allow modification of a rooftop architectural element as well as special exceptions from requirements for lot occupancy and rear yard (see Exhibit 10). The Applicant initially amended the application to withdraw the request for a special exception under Subtitle E § 206.4 and to add a request for a variance from the lot occupancy requirements of Subtitle E § 306.1 as an alternative to the initial request for a special exception from lot occupancy requirements under Subtitle E § 5201 (see Exhibit 32A). On July 25, 2022, the Applicant again amended the application by withdrawing the variance request after revising the plans to remove a proposed rear deck addition to the new dwelling (see Exhibit 100).

<sup>2</sup> By orders issued August 25, 2023, the Zoning Commission approved text amendments that reorganized and renamed certain zones, including the renumbering of development standards at issue in this proceeding. (See Zoning Commission Orders No. 18-16, 19-27, 19-27B.) This order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing.

**BZA APPLICATION NO. 20449**  
**PAGE NO. 2**

200 feet of the subject property. Notice was published in the *District of Columbia Register* on February 5, 2021 (68 DCR 001606). After the Applicant amended the application, the Office of Zoning sent notice of the amended application and the rescheduled public hearing to the same entities by memoranda dated April 22, 2021.<sup>3</sup>

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 6C were automatically parties in this proceeding. The Board received no requests for party status.

Applicant's Case. The Applicant presented evidence and testimony in support of the application, including from Phi Nguyen and Sara Trigo, the project architect and an expert in architecture. As finally revised, the application requested approval of special exceptions from lot occupancy and rear yard requirements to allow a three-story attached dwelling with a cellar and roof deck at the subject property.

OP Report. By memorandum dated July 15, 2022, the Office of Planning recommended approval of the application as finally amended. (Exhibit 99.) In earlier reports, OP recommended approval of the zoning relief requested by the Applicant (see Exhibits 30, 61).

DDOT Report. By memorandum dated April 15, 2021, the District Department of Transportation indicated no objection to approval of the initial application. (Exhibit 31.)

ANC Report. By letter dated April 21, 2021, ANC 6C stated that, at a public meeting on April 14, 2021 with a quorum present, the ANC voted to oppose the application. (Exhibit 33.) At a later public meeting, on September 9, 2021 with a quorum present, ANC 6C voted to oppose the application as initially revised. (Exhibit 76.) In a letter dated July 26, 2022, in response to additional revisions to the Applicant's proposal, ANC 6C stated its continued opposition to the application. (Exhibit 102.)

Persons in support. The Board received letters and heard testimony in support of the application from persons who resided, owned property, or operated a business near the subject property. The persons in support generally stated that they had no objection to the Applicant's proposal or commented favorably on the Applicant's proposal.

Persons in opposition. The Board received a letter in opposition to the application from the zoning committee of the Capitol Hill Restoration Society. The letter noted the lack of a shadow study and stated the committee's agreement with the ANC's position opposing the proposal. (Exhibit 48.)

---

<sup>3</sup> The hearing was originally set for April 28, 2021 and was administratively rescheduled. The hearing began on July 28, 2021 and was continued to October 6, 2021 and then to December 1, 2021. The continued hearing was postponed several times at the Applicant's request (see Exhibits 89, 92, 97).

**FINDINGS OF FACT**

1. The property that is the subject of this application is an interior lot located on the east side of 3<sup>rd</sup> Street, N.E., near its intersection with M Street, with the address 1173 3<sup>rd</sup> Street, NE. (Square 773, Lot 274).
2. The subject property is rectangular, approximately 14.75 feet wide and 54.86 feet deep. The lot area is approximately 809.1 square feet.
3. The subject property was improved with an attached building configured as a principal dwelling.
4. The existing building is two stories and approximately 18 feet, 3 inches in height. The dwelling extends approximately 29 feet, creating a rear yard of approximately 24 feet, 10.25 inches. The existing lot occupancy is 52.9 percent. (Exhibits 100, 101.)
5. The Applicant proposed to remove the existing structure except for its party walls and to redevelop the subject property with a larger attached building for use as a principal dwelling.
6. As proposed, the building would have three stories and a cellar level, with a building height of approximately 33 feet, 4 inches. (Exhibit 101.)
7. As finally proposed, the new building would extend 38 feet, 4 inches, creating a rear yard of approximately 15 feet, 6.25 inches. The proposed lot occupancy of the new building would be 69.9 percent. (Exhibits 100, 101.)
8. The front façade of the first and second floors of the new dwelling would be set back one foot from the front lot line. The one-foot setback of the new building would recreate the setback of the existing building and align the front façade of the Applicant's building with the existing buildings on abutting lots. (Exhibit 101; Transcript of October 6, 2021 at 195.)
9. The third floor of the new building would be set back approximately five feet from the front façade of the lower floors. (Exhibit 101; Transcript of July 27, 2022 at 152.)
10. The roof of the third floor would be configured as a deck bounded by parapet walls extending along the edges of the building.
11. The lot abutting the subject property to the north (Lot 275 at 1175 3<sup>rd</sup> Street N.E..) contains a two-story attached principal dwelling. The rear wall of the Applicant's new building would align with the rear wall of the dwelling on Lot 275. (Exhibit 101.)
12. The lot abutting the subject property to the south (Lot 273 at 1171 3<sup>rd</sup> Street N.E.) contains a three-story attached principal dwelling. The rear wall of the Applicant's new building

would extend nine feet, four inches further than the rear wall of the abutting building to the south. (Exhibit 101.)

13. The rear (east) lot line of the subject property abuts a public alley 15 feet wide.
14. The east side of the 1100 block of 3<sup>rd</sup> Street N.E. contains 34 attached buildings in a row extending approximately 500 feet south from the lot at the southeast corner of 3<sup>rd</sup> and M Streets. The corner lot at the north (1179 3<sup>rd</sup> Street) contains a retail use in a one-story building. The corner lot to the south contains a six-story apartment house located at the northeast corner of 3<sup>rd</sup> and L Streets.<sup>4</sup>
15. The 34 rowhouses were built pursuant to a single permit issued in 1924 to developers Boss & Phelps.<sup>5</sup> The buildings were generally sited two to three feet above the sidewalk level. The majority have flat fronts with a few embellishments as well as a double-sloped pent roof and sloped parapets above the party walls, except for peaked roofs that recur every half-dozen dwellings. Other repeating patterns include small rain-shed canopies over some entrances, exposed rafter tails, and higher rooflines on some dwellings, where the second-story windows are arranged together instead of having separated openings. (Exhibit 33.)
16. Properties across 3<sup>rd</sup> Street to the west of the subject property and across M Street to the north of the subject property are located in a Production, Distribution, and Repair (PDR) zone, PDR-1.
17. The Uline Arena, a group of several buildings comprising a commercial development, is located across 3<sup>rd</sup> Street west of the subject property. Two large mixed-use buildings are under construction north of M Street within 200 feet of the subject property. (Exhibits 30, 61, 71.)
18. A Mixed-Use zone, MU-5A, is located to the south of the subject property, encompassing properties at the corner of 3<sup>rd</sup> and K Streets, N.E. as well as properties to the south. Buildings in the Mixed-Use zone include the six-story apartment house on L Street between Third Street and Abbey Place.
19. The subject property and nearby properties to the east and south are located in a Residential Flat (RF) zone, RF-1. The neighborhood to the east contains mostly rowhouses. (Exhibits 30, 61.)

---

<sup>4</sup> In 2021 the Board granted an application for special exceptions under Subtitle E § 5201 from the requirements for lot occupancy (Subtitle E § 304.1) and rear yard (Subtitle E § 306.1) to allow a three-story rear addition to an existing three-story attached dwelling at 1165 3<sup>rd</sup> Street, N.E. (Square 773, Lot 270). See Application No. 20333 (Matthew Pickner; June 30, 2021).

<sup>5</sup> The corner lot (1179 3<sup>rd</sup> Street) was previously improved with a row dwelling built under the same permit but was later redeveloped. (Exhibit 33.)

20. The Residential Flat zones are residential zones that provide for areas developed primarily with row dwellings, but within which there have been limited conversions of dwellings or other buildings into more than two principal dwellings. (Subtitle E § 100.1.)
21. The provisions of the RF zones are intended to (a) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low-and moderate-density housing to the overall housing mix and health of the city; (b) allow for limited compatible non-residential uses; (c) allow for the matter-of-right development of existing lots of records; (d) establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones; (e) allow for the limited conversion of rowhouses and other structures for flats; and (f) prohibit the conversion of flats and row houses for apartment buildings as anticipated in the Residential Apartment (RA) zones. (Subtitle E §100.3.) The RF zones are designed to be mapped in areas identified as low-, moderate-, or medium-density residential areas suitable for residential life and supporting uses. (Subtitle E § 100.2.)
22. The purpose of the RF-1 zone is to provide for areas predominantly developed with row houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 300.2.)

## **CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks special exceptions under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 306.1 and from the lot occupancy requirements of Subtitle E § 304.1 to allow a new three-story attached dwelling in the RF-1 zone at 1173 3<sup>rd</sup> Street, NE (Square 773, Lot 274). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations, when, in the judgment of the Board, the special exceptions 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.)

The Applicant proposed to construct a new residential building at the subject property with a lot occupancy of 69.9 percent and a rear yard of 15.5 feet. The development standards applicable in the RF-1 zone generally require a maximum of 60 percent lot occupancy and a rear yard of at least 20 feet (Subtitle E §§ 304.1, 306.1.) Pursuant to Subtitle E § 5201.1, the Board may grant relief from those development standards, up to a maximum lot occupancy of 70 percent, as a special exception to allow a new residential building on a substandard non-alley record lot. (Subtitle E § 5201.1(a), (b).) In accordance with Subtitle E § 5201.4, the new dwelling 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 must not be unduly affected, (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and (c) the new principal building, as viewed from the street, alley, and other public

way, must not substantially visually intrude on the character, scale, and pattern of houses along the street and alley frontage. Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 6C, the Board concludes that application failed to satisfy the requirements for approval of the requested special exceptions.

The Board was not persuaded that the Applicant's project would not unduly affect the light and air available to neighboring properties or unduly compromise the privacy of use and enjoyment of neighboring properties. The Applicant submitted sun studies that illustrated the shadow impacts that would be created by the new dwelling. The sun studies demonstrated that the shadow impacts of the Applicant's proposal would exceed the shadow impacts of a building permitted as a matter of right at the subject property (see Exhibits 71C1 and 71C2). Without additional detailed information, the Board was not persuaded by the Applicant's assertion that the increases would be "very minimal throughout the year," or by the testimony of the Office of Planning that "the building should not impact the air available to nearby properties...." (See, Transcript of October 6, 2021 at 201; Exhibit 30.) Similarly, based on the evidence in the record, the Board was not persuaded that the Applicant's proposal, especially the planned roof deck, would not unduly compromise the use and enjoyment of neighboring properties.

The Board concludes that the proposed new dwelling, as viewed from the street, would substantially visually intrude on the character, scale, and pattern of houses along the street frontage of the subject property. The application proposed a new three-story attached dwelling that would not exceed the building height or number of stories permitted as a matter of right at the subject property. The planned design of the dwelling maintained some characteristics of the block, including the berm above the sidewalk level and a front façade aligned with the existing buildings on the abutting lots. In other respects, however, the Applicant's proposed design would result in a substantial alteration of the character, scale, and pattern of houses along the street frontage, which retains a significant degree of its original, unified design.

The Applicant's proposal was intended to maximize the livable space possible in a new dwelling on the subject property.<sup>6</sup> Because the subject property is a relatively small, narrow lot, the proposed size of the dwelling created a need for relief from applicable development standards pertaining to lot occupancy and rear yard. The Applicant originally planned to align the front façades of each of the planned three floors, then revised the design to incorporate a five-foot setback on the third floor. Despite the five-foot setback of the planned third floor, the Board concludes that the Applicant's proposal would constitute a visual intrusion on the character, scale, and pattern of houses along 3<sup>rd</sup> Street. For example, the new construction would not provide either a double-sloped pent roof, which characterizes most nearby dwellings, or a peaked roof, as exists on some houses along the street frontage, but was designed to correspond to newer construction nearby.

---

<sup>6</sup> The Applicant testified that the planned dwelling was designed to maximize livable space on the subject property, a small, narrow lot, and described the five-foot setback of the third floor, proposed in a revised design, as "very significant" due to the attendant loss of livable space and resulting design challenges. (Transcript of October 6, 2021 at 191.)

The Applicant asserted that the five-foot setback would “preserve[] the two-story residential massing at the front of the Project.” (Exhibit 71.) However, the Applicant did not demonstrate that the proposed massing would be consistent with the existing character, scale, and pattern of houses along the street frontage. Instead, the Applicant asserted that the “character and scale of this neighborhood is influenced by varied design, element, context, and patterns,” and that “the broader context of the neighborhood” – at a minimum, both sides of 3<sup>rd</sup> Street near the subject property – should be considered in a determination of compliance with Subtitle E § 5201.4(c). The Applicant’s architect testified that the planned third floor, including the five-foot setback, was designed to “strengthen[] the two-story reading of the block, while also creating a gesture that is consistent with the other third-floor additions” on the block, especially the dwelling on the abutting property to the south. The proposed front windows on the third floor were designed to be similar in size and proportion to the windows on the adjacent property. (Transcript of October 6, 2021 at 197-198.) According to the architect, the “proposed façade makes a direct reference to the new modern residential and commercial development in the immediate vicinity, at the corner, and directly in front.” (Transcript of October 6, 2021 at 197-198.)

The Board was not persuaded by the Applicant’s assertions that newer developments in the vicinity “compromise the ‘character, scale and pattern’ of 3<sup>rd</sup> Street” or that the proposed dwelling met the requirements of Subtitle E § 5201.4(c) when considered relative to the newer buildings, such as the Uline Arena development and new mixed-use buildings along M Street. The requirements of Subtitle E § 5201.4(c) refer to a more limited scope – the houses along the street frontage and alley frontage of an applicant’s property – and do not call for an assessment of the “evolving neighborhood pattern” or the opposite side of the street from an applicant’s property, especially when those properties are located in a different zone district from an applicant’s property. (See Exhibits 57, 71).

Similarly, the Office of Planning noted that the Applicant’s new building “would be somewhat different in character from the prevalent character of buildings on this side of 3<sup>rd</sup> Street.” (Exhibit 30.) Despite the difference in character, OP concluded that “the proposed building form and design would not substantially intrude upon the character and pattern of buildings on the street” in part because the proposed design “would not be inconsistent with a rowhouse residential form.” The Office of Planning testified that the new building could “appropriate[] reflect a more contemporary style” since the subject property was not located in a historic district, “particularly given the greater context of other building modernizations on the block, the renovations to Uline Arena across the street, and the construction of modern mixed use buildings a short distance away on the north side of M Street.” (Exhibit 30.) The Board did not agree with OP’s assessment regarding visual impact, which was not based on the character, scale, and pattern of houses along the street frontage of the Applicant’s property and did not address the cohesive nature of the existing row buildings. The Board agrees with ANC 6C that the relevant inquiry in this case is limited to the east side of the 1100 block of 3<sup>rd</sup> Street, because that segment contains the “houses along the street and alley frontage” of the subject property that is therefore relevant to this application.

**BZA APPLICATION NO. 20449**  
**PAGE NO. 8**

Subtitle X, Chapter 9. The Board concludes that approval of the requested special exception would not satisfy the requirements of Subtitle X § 901.2. For the reasons already discussed, the Board was not persuaded that approval of the application would not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The Board also concludes that approval of the application would not be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Applicant proposed a new attached principal dwelling at the subject property, which would be consistent with the purposes of the RF zones by providing a residential use in accordance with the intent of the RF-1 zone. However, approval of the application would not recognize and reinforce the importance of neighborhood character or improvements to the overall environment and would not allow for the matter-of-right development of an existing record lot.

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.) For the reasons discussed above, the Board did not agree with the Office of Planning’s recommendation to approve the application.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d)(3)(A).) In this case, ANC 6C submitted several letters in opposition to the application. The ANC stated issues and concerns related to potential adverse impacts related to light and air, especially with respect to the abutting property to the north of the Applicant’s lot. ANC 6C also argued that the Applicant’s planned dwelling would not be consistent with the character, scale, and pattern of houses along the street frontage. For the reasons discussed above, the Board agreed with the ANC that the application should be denied.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has failed to satisfy the burden of proof with respect to the request for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the rear yard requirements of Subtitle E § 306.1 to allow a new three-story attached principal dwelling in the RF-1 zone at 1173 3<sup>rd</sup> Street, N.E. (Square 773, Lot 274). Accordingly, it is **ORDERED** that the application is **DENIED**.

**VOTE: 3-1-1** (Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to DENY; Lorna L. John opposed; Frederick L. Hill not participating)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

ATTESTED BY:

  
SARA A. BARDIN  
Director, Office of Zoning

**FINAL DATE OF ORDER:** July 15, 2025

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.

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.