

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



Application No. 20543 of Crystal and Jeffrey Cargill, as amended, pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 320.2 to allow the conversion of an existing residential building to an apartment house use and, pursuant to Subtitle X § 1002, for an area variance from the land area requirement of Subtitle U § 320.2.(c) to permit the use of an existing accessory structure as a third dwelling unit in the RF-3 zone at 316 2nd Street, S.E. (Square 763, Lot 21).^{1, 2}

HEARING DATES: December 1, 2021 and April 20, 2022

DECISION DATE: April 20, 2022

DECISION AND ORDER

This application was filed on May 24, 2021 by Crystal and Jeffrey Cargill, the owners of the property that is the subject of the application (together, the “Applicants”). Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 13, 2021 and March 24, 2022, the Office of Zoning provided notice of the application and the public hearing to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Department of Consumer and Regulatory Affairs³ (“DCRA”), Advisory Neighborhood Commission (“ANC”) 6B, the ANC in which the subject property is located, Single Member District ANC 6B01, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 6 as well as the Chairman and three at-large members of the D.C. Council, the owners of all property within 200 feet of the subject property, the Architect of the Capitol, and the Commission

¹ The caption has been modified to reflect that the application was amended. The Applicants originally requested a use variance to allow an apartment house, consistent with a referral from the Zoning Administrator (see Exhibits 4 and 18). The Applicants later filed a self-certification form amending the relief requested (see Exhibit 59D).

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.

³ 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.*)

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of Fine Arts. Notice was published in the *District of Columbia Register* on July 23, 2021 (68 DCR 007208).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 6B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application submitted by Carol Howell, the owner of an abutting property.

Applicant's Case. The Applicant presented evidence and testimony in support of the request for zoning relief needed to allow the use of an existing accessory structure as a principal dwelling at the subject property, where the principal building is configured as two dwelling units.

OP Report. By memorandum dated April 1, 2022, the Office of Planning recommended approval of the amended application. (Exhibit 64.)

DDOT Report. By memorandum dated November 18, 2021, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 46.)

ANC Report. By memorandum dated November 26, 2021, ANC 6B indicated that, at a public meeting on November 9, 2021 with a quorum present, the ANC voted in support of the application. (Exhibit 50.)

Architect of the Capitol. By memorandum dated April 7, 2022, the Architect of the Capitol indicated no objection to the zoning relief requested by the Applicant. (Exhibit 66.)

Party in Opposition. The party in opposition provided evidence and testimony including from Robert Eitel as an expert in civil engineering and Don Lipscomb as an expert in architecture. The party in opposition argued that enlargement of the Applicant's principal building and use of the accessory structure as a dwelling would exceed the maximum permitted lot occupancy and would cause adverse impacts relating to light, privacy, noise, trash storage, and parking.

Persons in Support. The Board received letters in support of the application from persons living near the subject property.

Person in Opposition. The Board received a letter from a person in opposition to the application, who asserted that the enlargement of the Applicant's dwelling would adversely affect solar panels installed on her property.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the east side of 2nd Street S.E. with the address 316 2nd Street, S.E. (Square 0763, Lot 0021.)

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2. The subject property is generally rectangular, approximately 18.25 feet wide and 100 feet deep.⁴ Its lot area is 1,814 square feet.
3. The subject property is improved with an attached building that has three stories at the front of the lot and two- and one-story segments that extend toward the rear of the lot. The portion of the principal building that was built to each side yard extends approximately 33.8 feet deep. The remainder of the building created a court, approximately 4.75 feet wide, along the side lot line on the south side of the subject property.
4. A two-story accessory structure is located in the rear yard.
5. The principal building was constructed circa 1874. The accessory structure was also constructed in the mid-1800s.
6. The accessory structure is generally square, extending approximately 18.5 feet on each side, with a building area of approximately 329 square feet. The accessory structure extends to the rear lot line as well as to both side lot lines. Its height is approximately 19 feet, eight inches. The area between the accessory structure and the principal building serves as a patio.
7. The accessory structure is accessible from both the rear yard and from the alley. On the alley side, the lower level originally had an opening designed for the width of a horsedrawn carriage. That opening was partially enclosed by a prior owner, who installed a traditional door instead.
8. The principal building at the subject property has been used as a two-unit flat at least since 1985. The two units – one on the first floor and one on the second and third floors – have separate entrances, kitchens, and washer-dryer arrangements.
9. A certificate of occupancy issued July 30, 1985 authorized the use of the first, second, and third floors of the building at the subject property as a “flat: one unit on first; one unit on second and third floors.” (Exhibit 11.) The same information was provided in an application for a certificate of occupancy, dated March 28, 1985. (Exhibit 12.)
10. When the Applicant purchased the subject property in 2018, it was marketed as having three dwelling units, two in the principal building and one in the accessory structure (see Exhibits 8, 10).
11. According to the Applicant, the accessory structure was originally used to store hay and horse supplies. At some “unknown period in the past” a prior owner converted the accessory structure “into an apartment fit to human use.” (Exhibit 3.)

⁴ The lot is irregularly shaped at the rear such that the south lot line extends approximately 98 feet and the rear (east) lot line extends approximately 13 feet. The subject property would be rectangular but for a portion, approximately 2 feet deep by five feet wide, at the southeast corner of the lot that is part of the abutting property to the south.

12. When the Applicant acquired the subject property in 2018, the accessory structure contained a kitchen with a stove, microwave, refrigerator, sink, and dishwasher on the first floor. The second floor was configured as a bedroom and bathroom with a shower, and contained a washing machine and clothes dryer. The accessory structure has an electric meter, heating and air conditioning systems, and water heater separate from the principal building.
13. The Applicant provided statements from two former residents who lived in the principal building at the subject property. One, a resident from approximately August 2015 until November 2017, stated that the accessory structure was used as a dwelling and was occupied by a tenant (not the owner of the property) during that time. The other former resident lived at the subject property from February 2017 until February 2018 and indicated that the accessory structure had been used as “a separate unit” during that period and apparently had been used as a dwelling “for a number of years” since a prior owner acquired the property “several decades ago.” (Exhibits 68, 70.)
14. The subject property is the only lot in the vicinity with an accessory structure that is not used for vehicle storage and is configured as a dwelling. (Exhibit 3.)
15. The subject property abuts a public alley along the rear lot line. The alley is 15 feet wide and provides access to C and D Streets. The accessory structure is located approximately 140 feet from D Street via the alley.
16. The Applicant undertook a project to renovate and enlarge the principal building at the subject property. The project included expansion of the second floor, adding a roof deck with pergola over the existing first floor at the rear, as well as expansion of the third floor over the second floor.
17. The planned construction will not increase the lot occupancy at the subject property. As measured at the first-floor level, lot occupancy will remain unchanged at 77.6 percent. Lot occupancy would increase from 61.2 to 62 percent on the second floor and from 26 to 43.8 percent on the third floor. By email dated August 9, 2021, the Zoning Administrator granted a request for minor flexibility to allow lot occupancy in excess of 60 percent on the second floor.⁵ (Exhibit 59C.)
18. The subject property is located in the Capitol Hill Historic District, and the accessory structure is a contributing building.
19. By memorandum dated October 22, 2021, the Commission of Fine Arts indicated “no objection to the issuance of a revised permit for the renovation of and addition to the rear

⁵ Pursuant to Subtitle A §§ 304.2 and 304.3, the Zoning Administrator is authorized to permit certain deviations from the Zoning Regulations, including a deviation of up to two percent of the area requirements governing lot occupancy.

of an existing house, with a modified design to conform with District zoning regulations.” (Exhibit 59D1.)

20. The properties abutting the subject property to the north and south are also improved with attached residential buildings that have three stories toward the front of the lots with one- and two-story rear additions. The abutting property to the north has a court, approximately five feet wide, between the two-story portion of the building and the side lot line shared with the subject property. The buildings on both abutting lots are configured as two-unit flats.
21. The area surrounding the subject property is predominantly residential in character, consisting of a mix of row buildings and apartment houses as well as some institutional uses.
22. The subject property is located in a Residential Flat (“RF”) zone, RF-3. The RF 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 dwelling units. (Subtitle E § 100.1). 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).
23. 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 record; (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 rowhouse and other structures for flats; and (f) prohibit the conversion of flats and row houses for apartment buildings as anticipated in the RA zone. (Subtitle E § 100.3.)
24. The purpose of the RF-3 zone, the Capitol Interest Zone, is to provide for areas adjacent to the U.S. Capitol precinct predominantly developed with row houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 500.3).
25. The RF-3 zone is intended to (a) promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to that jurisdiction in a manner consistent with the goals and mandates of the United States Congress in Title V of the Legislative Branch Appropriation Act, 1976 (Master Plan for Future Development of the Capitol Grounds and Related Areas), approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288), and in accordance with the plan submitted to the Congress pursuant to the Act; (b) reflect the importance of and provide sufficient controls for the area adjacent to the U.S. Capitol; (c) provide particular controls for properties adjacent to the U.S. Capitol precinct and the area adjacent to this jurisdiction, having a well-recognized general public interest;

and (d) restrict some of the permitted uses to reduce the possibility of harming the U.S. Capitol precinct and the area adjacent to that jurisdiction. (Subtitle E § 500.2).

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under Subtitle U § 320.2 to allow the conversion of an existing residential building to a three-unit apartment house use in the RF-3 zone at 316 2nd Street, S.E. (Square 763, Lot 21). 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 the neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* Subtitle X § 901.2).

In accordance with Subtitle U § 320.2, the Board is authorized to permit, by special exception, the conversion of a residential building existing on a lot before May 12, 1958 to use as an apartment house in an RF zone provided that (a) the building to be converted is in existence on the property at the time DCRA accepts a building permit application for the conversion or expansion; (b) the fourth dwelling unit and every additional even number dwelling unit thereafter is subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning;⁶ and (c) the property contains at least 900 square feet of land area per each existing and new dwelling unit. Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the report submitted by ANC 6B, the Board concludes that the application has satisfied the requirements for approval of the requested special exception under Subtitle U § 320.2. Both the principal and accessory buildings have been in existence since before May 12, 1958. The Applicant proposed to create a dwelling unit in the accessory structure at the subject property, which also contains two dwellings in the principal building, creating a total of three dwelling units. The lot area of the subject property is not sufficient to meet the minimum requirement of 2,700 square feet for three dwelling units; however, for the reasons discussed below, the Board concluded that the application met the requirements for an area variance from the land area requirement.

The Board also concluded that the application met the requirements for approval of a special exception under Subtitle E § 5202.1 and Subtitle X § 901.2. Consistent with Subtitle E § 5202.1(a), the Board concludes that approval of the requested special exception is compatible with the present and proposed development of the neighborhood. Approval of the application will allow the residential use of existing buildings at the subject property, which is located in a residential zone. With respect to Subtitle E § 5202.1(b) and (c), the Board notes that the Architect of the Capitol determined that the Applicant's proposal "is not inconsistent with the intent of the RF-3 zone district and would not adversely affect the public health, safety, and general welfare of the U.S. Capitol Precinct and area adjacent to this jurisdiction, and is not inconsistent with the goals and mandates of the United States Congress as stated in 11-E DCMR § 5202.1." (Exhibit 66.)

⁶ Because the Applicant's proposal called for the creation of fewer than four dwelling units, the Inclusionary Zoning provisions did not apply to this application.

Approval of the application is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The Applicant proposed to convert existing buildings at the subject property to a three-unit apartment house use, which is permitted under the Zoning Regulations as a special exception. An accessory structure in an RF zone may be devoted to use as a principal dwelling where, as in this case, the property meets the access requirements of Subtitle U § 301.1(c)(4), considering the width of the alley abutting the subject property and the distance of the accessory structure from an improved street. Approval of the requested special exception is consistent with the “limited conversions” of buildings to more than two dwelling units in a moderate- or medium-density residential area, as envisioned in the RF-3 zone. Approval of the application is also consistent with the intent of the RF zones to 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. For the reasons already discussed, the Board concludes that approval of the requested special exception is consistent with the purposes of the Capitol Interest (RF-3) zone.

Approval of the requested special exception will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. The Applicant proposed to continue the residential use of the subject property without enlarging the existing accessory structure, which meets current requirements for building area and height both in feet and in number of stories. The subject property will continue to meet applicable development standards, including with respect to rear yard and building height. The Board was not persuaded by testimony from the party in opposition, who asserted that approval of the application would adversely affect light and air available to nearby properties, because the testimony objected to the Applicant’s enlargement of the principal building, which was not at issue in this application for zoning relief to allow three principal dwellings at the subject property.

Area variance. The Applicant also seeks an area variance from the minimum land area requirement of Subtitle U § 320.2(c) to allow a third dwelling unit on a lot not providing at least 900 square feet of land area per dwelling unit. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (2012 Repl.), to grant variances where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map. (See Subtitle X § 1002.1(a)).

The subject property provides approximately 605 square feet of land area per unit, or 67 percent of the minimum requirement. Based on the findings of fact, and having given great weight to the

recommendation of the Office of Planning and the report of ANC 6B, the Board concludes that the application satisfies the requirements for approval of the requested area variance.

The subject property exhibits an extraordinary or exceptional situation or condition in that the lot contains an existing two-story accessory structure that is of a size suitable for a principal dwelling but is not readily adaptable to any other use permitted by the Zoning Regulations.⁷ The Applicant's accessory structure cannot be used as a garage in its current form, given the absence of a door suitable to provide vehicle access, and its status as a contributing building in a historic district creates restrictions on potential modifications to the exterior of the accessory building, such as installing a larger door.

The strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the property because the inability to meet the land area requirement would, absent variance relief, preclude the use of the subject property as three dwelling units, which would otherwise be permitted by special exception. As discussed above, the Board concluded that the application met the requirements for approval of the special exception, other than the land area requirement. Absent approval of a variance from the land area requirement, the Applicant would experience practical difficulties related to the expense of reconfiguring the accessory structure for a use other than as a dwelling, when no such use was identified. The constraints of the existing accessory building preclude its use as a garage, even on the first floor, given the lack of vehicle access to the structure and the limits on the ability to change its external features related to its status as a contributing building in a historic district. Alternatively, the Applicant would be required to convert the principal building to use as a dwelling for a single household (rather than its current use as a flat), so that the number of dwelling units at the subject property would not exceed two. Given that the other requirements for a special exception to allow three units at the subject property were met, the Board concludes that the strict application of the land area requirement would cause practical difficulty to the Applicant by preventing the use of a third dwelling unit at the subject property.

Approval of the requested variance would not cause substantial detriment to the public good. The record does not reflect that the past use of the accessory structure as a dwelling caused any adverse impacts on the use of neighboring properties. Conversion of the existing buildings at the subject property to three dwelling units similarly will not affect the use of neighboring properties. The principal and accessory buildings are sufficiently large to house three dwelling units; the Applicant did not propose to enlarge the existing accessory structure and undertook the expansion of the principal building in a manner compliant with applicable development standards.

Approval of the requested variance will not substantially impair the intent, purpose, or integrity of the zone plan. The RF-3 zone permits three dwelling units at the subject property as a special

⁷ The past use of the accessory structure as a dwelling did not create an exceptional circumstance that would warrant approval of the requested variance, absent any evidence that the prior residential use was legally established. Prior illegal use of a particular property is inapplicable to the exceptional-condition inquiry. *Roth v. District of Columbia Bd. of Zoning Adjustment*, 279 A.3d 840, 846 (D.C. 2022), quoting *Capitol Hill Restoration Soc'y, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 398 A.2d 13 at 14-15, 846 (D.C. 1979).

exception, and the application demonstrated compliance with the requirements for approval of the special exception, other than the land area requirement. For the reasons discussed above, the Board concludes that approval of the application is consistent with the intent of the RF-3 zone, including with respect to the promotion and protection of the public health, safety, and general welfare of the U.S. Capitol precinct and the adjacent area. Approval of the requested variance is also consistent with the intent of the RF zones to 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.

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 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 1974, 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 6B submitted a report stating its support for the application, without stating any issues or concerns. For the reasons discussed above, the Board agrees with ANC 6B that the application met the requirements for approval of the zoning relief requested.

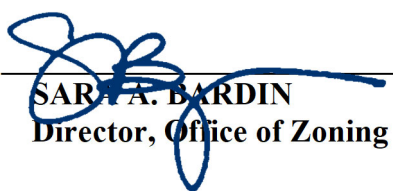
Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under Subtitle U § 320.2 to allow the conversion of an existing residential building to an apartment house use and for an area variance from the land area requirement of Subtitle U § 320.2.(c) to permit the use of an existing accessory structure as a third dwelling unit in the RF-3 zone at 316 2nd Street, S.E. (Square 763, Lot 21). Accordingly, it is **ORDERED** that the application is **GRANTED**.

VOTE: 4-0-1 (Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to APPROVE; 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: _____


SARAH A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 10, 2024

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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 § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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.