

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



Application No. 20715 of Mark Rivetti, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 206.4 from the requirements of Subtitle E § 206.1(a) to allow removal or modification of a rooftop architectural element original to an existing three-story attached principal building in the RF-1 zone at premises 1121 Abbey Place, N.E. (Square 773, Lot 184).

HEARING DATES: July 6 and October 19, 2022
DECISION DATE: October 19, 2022

DECISION AND ORDER

This self-certified application was filed on February 10, 2022, by Mark Rivetti (“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. The Applicant initially requested expedited review of the application pursuant to Subtitle Y § 401. The Office of Zoning provided notice of the application and scheduled the matter for decision at a public meeting on May 25, 2022. (Exhibit. 22.) The Board removed the application from the meeting agenda at the request of ANC 6C, dated April 15, 2022. (Exhibit 30.) In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning then provided notice of the application and of the public hearing, by letters dated April 20, 2022, 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, the Single Member District ANC 6C06, the Office of Advisory Neighborhood Commissions, the Department of Consumer and Regulatory Affairs,¹ the Councilmember for Ward 6 as well as the Chairman and three at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on April 29, 2022 (69 DCR 004156).

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

¹ 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.*

BZA APPLICATION NO. 20715
PAGE NO. 2

Applicant's Case. The Applicant requested zoning relief to allow a modification of a rooftop architectural element original to the existing building at the subject property. The Applicant proposed to install a new metal railing on the roof of an existing front porch so as to create a deck on the second floor of the Applicant's three-story attached principal dwelling.

OP. By memorandum dated June 24, 2022, the Office of Planning recommended approval of the application. (Exhibit 44.)

DDOT. By memorandum dated May 12, 2022, the District Department of Transportation stated no objection to approval of the application. (Exhibit 34.)

ANC 6C. ANC 6C submitted a letter, dated April 15, 2022, stating that, at its regular scheduled and noticed meeting on April 13, 2022, with a quorum present, the ANC voted to oppose the application. (Exhibit 30.) The ANC filed additional reports on July 5 and October 5, 2022, reiterating its opposition to the application. (Exhibits 46 and 61.)

Persons in Support. The Board received letters from persons in support of the application who indicated no objection to the Applicant's proposal.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the east side of Abbey Place, N.E., between L and M Streets, N.E., with the address of 1121 Abbey Place, N.E. (Square 773, Lot 184).
2. The subject property is a rectangular lot measuring 16 feet wide and 64.9 feet deep, with a lot area of 1,037 square feet.
3. The subject property is improved with a three-story attached principal dwelling.
4. The existing building has a covered front porch, with a flat roof, that was original to the building. The front porch was approximately 5.3 feet deep and extended 10.7 feet from the southern lot line across the front of the building.
5. In 2018, the Board approved zoning relief to allow a new third floor and a three-story rear addition to the building at the subject property. (See Application No. 19622 (Mark Rivetti; January 12, 2018.)) The addition was set back approximately 15 feet from the front of the existing building, creating an open deck at the third-floor level, on the roof of the second floor, with a metal railing along the front and sides. The Applicant completed the additions in 2019.
6. In 2020, the Applicant obtained permits from DCRA for repairs on the porch roof, which was in disrepair. As part of the project, the Applicant installed a metal railing on the porch roof so as to create a new deck on the second level of the dwelling, accessible via a new door that replaced a second-floor window.

7. The Applicant received notification from DCRA indicating that the permit approving the porch repairs did not extend to installation of the metal railing on the porch roof. The Applicant was later notified that separate zoning relief was necessary to permit the addition of the metal railing to the porch roof. (Exhibit 2.)
8. The proposed railing on the porch roof will be a two-inch horizontal rail made of metal, consistent with the railing used on the third-floor deck. The vertical members of the railing on the porch roof will be slightly wider than on the third floor, in recognition of the wider supporting columns on the existing front porch so that the vertical widths are scaled down from the first floor to the third floor.
9. The abutting properties to the north and south of the subject property contain attached dwellings similar to the Applicant's building. Both have front porches with flat roofs.
10. Other properties along the east side of Abbey Place in the vicinity of the subject property also contain row dwellings. The buildings near the subject property display a variety of porch types and patterns with different architectural styles, sizes, roof slopes, and materials. At some dwellings, a front porch has been removed or an awning was installed instead of a roof.
11. The surrounding neighborhood is improved with a mix of low- to medium-density residential developments, predominantly comprising rowhouses. The buildings exhibit a variety of architectural features.
12. The subject property is located in a Residential Flat (RF) zone, RF-1.
13. The RF zones are residential zones, which 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.)
14. 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.)

15. 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 § 300.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under Subtitle E § 206.4 to allow the modification of a rooftop architectural element original to an existing three-story attached principal dwelling in the RF-1 zone at 1121 Abbey Place, N.E. (Square 773, Lot 184). 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 Map, subject to any specified conditions. (See 11 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle E § 206.1, a rooftop architectural element original to a principal building, including a porch roof, generally may not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. The Applicant proposed to modify an element original to a dwelling by installing a railing on the existing roof of a one-story front porch. The Board is authorized to grant relief from the requirements of Subtitle E § 206.1 as a special exception subject to the requirements stated in Subtitle E § 5207. (Subtitle E § 206.4.) Specifically, the Board may approve a special exception from the requirements of Subtitle E § 206.1 when the proposed construction will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property; in particular (1) the light and air available to neighboring properties must not be unduly affected, (2) the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and (3) the proposed construction, 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 or alley frontage. (Subtitle E § 5207.1(a).)

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 of ANC 6C, the Board concluded that the application satisfied the requirements for approval of the requested special exception to allow the addition of a metal railing on the roof of an existing front porch of an attached principal dwelling. As required under Subtitle E § 5207.1(b), the Applicant provided graphical representations, including plans, photographs, and drawings, sufficient to represent the relationship of the proposed construction to adjacent buildings and views from public ways.

The Board concluded that approval of the requested relief will not affect the light and air available to neighboring properties. The Applicant demonstrated that the railing will be an open design that will cause only negligible changes to light and air. The porch is on the southern portion of the front of the dwelling, so most of the new shadowing resulting from the railing will fall on the front wall of the Applicant's dwelling. The Board credits the testimony of the Office of Planning that

the open nature of the railing and its location will minimize any impacts to light or air flow to adjacent properties. (Exhibit 44.)

The Board concluded that approval of the requested relief will not compromise the privacy of use and enjoyment of neighboring properties. The addition of the railing will facilitate use of the porch roof as a deck, but the Applicant demonstrated that, due to the location of the porch, any views looking into the second-floor windows on the dwelling to the north will be limited. Views toward the dwelling to the south will be similar to views from the street or from dwellings across the street. Neither the railing nor the use of the porch roof as a deck will unduly compromise the privacy of nearby properties.

The Board agrees with the Applicant and the Office of Planning in concluding that the proposed railing, as viewed from the street, will not substantially visually intrude on the character, scale, and pattern of houses along the street or alley frontage. The Applicant submitted photographs of the street frontage, which demonstrated the variety of porches along the street in the vicinity of the subject property, as well as the prevalence of trees along the street, which will limit views of the new railing. The Board credits the testimony of the Office of Planning that the railing will not substantially intrude on the character of houses along the block, given the “thin dimensions of the members that comprise the railing,” which will minimize their visibility. (Exhibit 44.)

The Board was not persuaded by the testimony of ANC 6C that the new railing on the front porch roof will be “highly visible” or “highly anomalous and out of keeping with the consistent character of the block.” (Exhibit 46.) Although no other porch roof in the same block as the subject property currently has a railing, that feature is not unusual for a row dwelling. The Board does not agree that the Abbey Place blockfront exhibits a “consistent character,” given the variety of architectural styles and porch types (or absence of porches) near the subject property.

Subtitle X requirements. The Board concluded that approval of the requested 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 properties in accordance with the Zoning Regulations and Zoning Map, as is required for approval of the application under Subtitle X § 901.2. The approval is consistent with the intent of the RF-1 zone to provide for areas predominantly developed with row houses on small lots within which no more than two dwelling units are permitted, and with the provisions of the RF zones intended to recognize and reinforce the importance of neighborhood character, 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.

The Board concluded that approval of the application will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Zoning Map. For the reasons discussed above, the Board concludes that approval of the proposed modification of an existing porch roof will not affect the light, air, or privacy of neighboring properties. The Board credits the testimony of the Office of Planning that approval of the application will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property.

BZA APPLICATION NO. 20715
PAGE NO. 6

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 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 6C opposed the application. The Board credits the view of the ANC in this matter but did not find its advice a persuasive reason to deny the application, in part because many of the issues and concerns stated by ANC 6C related to construction undertaken pursuant to the Applicant’s previous application. For the reasons discussed above, the Board did not agree with ANC 6C that this application did not meet the requirements for approval of the relief requested to allow the installation of a railing on the roof of the front porch.

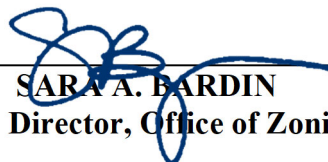
Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under Subtitle E § 206.4 to allow the modification of rooftop architectural element original to an existing three-story attached principal dwelling (new railing on an existing porch roof) in the RF-1 zone at 1121 Abbey Place, N.E. (Square 773, Lot 184). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans submitted as **Exhibit 17** in the record.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Carl H. Blake, and Peter G. May to APPROVE, Chrishaun S. Smith 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: November 4, 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

BZA APPLICATION NO. 20715
PAGE NO. 7

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.