

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



**Application No. 20725 of Raymond Brown**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9 for special exceptions under Subtitle E §§ 5201 and 5202 from the rear yard requirements of Subtitle E §§ 506.1, the alley centerline setback requirements of Subtitle E § 5004.1(b), and the accessory building location requirements of Subtitle E § 5004.1(a), and, pursuant to Subtitle X § 1002, for an area variance from the lot occupancy requirements of Subtitle E § 504.1, to allow a one-story accessory structure (garage) with a roof deck in the rear yard of an existing three-story attached residential building (two-unit flat) in the RF-3 zone at 420 4<sup>th</sup> Street, N.E. (Square 780, Lot 64).<sup>1, 2</sup>

**HEARING DATE:** June 8, 2022

**DECISION DATE:** June 8, 2022

**DECISION AND ORDER**

This self-certified application was filed on October 13, 2021 by Raymond Brown (the “Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application with respect to the requested special exception relief and to deny the request for an area variance.

**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 memoranda dated March 18, 2022 to the Applicant, the Office of Planning (“OP”) and the Historic Preservation Office, the District Department of Transportation (“DDOT”), the Office of Advisory Neighborhood Commissions, the Department of Consumer and Regulatory Affairs,<sup>3</sup> the

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<sup>1</sup> This caption has been revised to reflect an amendment of the application. The Applicant originally requested relief from the lot occupancy requirement as a special exception under Subtitle E § 504.1 but amended the relief requested to an area variance from Subtitle E § 504.1. (See Exhibits 3, 13, and 18.)

<sup>2</sup> 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.

<sup>3</sup> 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. 20725**  
**PAGE NO. 2**

Department of Public Works, the Metropolitan Police Department, the Fire and Emergency Medical Services Department, DC Water, Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the property is located, Single Member District ANC 6C02, the Councilmember for Ward 6 as well as the Chairman and three at-large members of the D.C. Council, the Architect of the Capitol, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on March 25, 2022 (69 DCR 002461-002466).

Parties. 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 provided evidence and testimony, including from Michael Burns, the project architect, in support of the application for the zoning relief to allow a new accessory structure with a roof deck in the rear yard of the subject property.

OP Report. By memorandum dated May 27, 2022, the Office of Planning recommended denial of the requested area variance from the lot occupancy requirements. OP recommended approval of the requested special exceptions if the Board granted the area variance. (Exhibit 34.)

DDOT Report. By memorandum dated May 27, 2022, the District Department of Transportation indicated no objection to the Applicant’s proposal. (Exhibit 35.)

DPW Report. By memorandum dated June 8, 2022, the Department of Public Works stated that its Solid Waste Collections division had visited the subject property and determined that the Applicant’s project would not affect DPW’s solid waste collection operations as long as construction activity was contained entirely on private property. (Exhibit 33.)

ANC Report. By letter dated June 7, 2022, ANC 6C indicated that, at a public meeting on May 11, 2022 with a quorum present, the ANC voted to oppose the requested zoning relief because “the application...fails to satisfy the stringent variance standard.” (Exhibit 37.)

Persons in support. The Board received letters and heard testimony in support of the application from persons living near the subject property, who stated generally that the Applicant’s project would provide “functional and usable exterior space on a very limited lot” in a manner similar to a nearby property.

Persons in opposition. The Board received a letter in opposition to the application from the Capitol Hill Restoration Society, whose zoning committee voted to oppose the application as not meeting the requirements for a variance and a prior Board decision affecting a property in the same square. (Exhibit 30.)

**FINDINGS OF FACT**

1. The property that is the subject of this application is an interior lot on the west side of 4<sup>th</sup> Street between D and E Streets, N.E., with the address 420 4<sup>th</sup> Street, N.E. (Square 780, Lot 64).

2. The subject property is rectangular, approximately 16.28 feet wide and 75 feet deep. The lot area is 1,221 square feet.
3. The subject property was improved with an attached building configured as a two-unit flat.
4. The existing building is three stories and approximately 31 feet in height.
5. The existing building has rear decks on the two upper levels, with stairs to grade from the first-floor deck.
6. The existing improvements resulted in a lot occupancy of approximately 73.3 percent. The attached building, without the existing decks, occupies approximately 61.3 percent of the lot.
7. The subject property abuts a public alley, 10 feet wide, along its rear (west) lot line.
8. The Applicant proposed to replace the existing decks with a new two-story rear deck addition. The decks would extend the width of the dwelling at a depth of five feet, eight inches from the rear wall of the dwelling.
9. The Applicant also proposed to construct a new accessory structure in the rear yard of the subject property. The accessory structure would be built to the side lot lines (north and south) as well as to the rear (west) lot line. The roof of the new accessory structure would be configured as a deck, with two stairs providing access to both levels of the new rear deck addition to the principal building.
10. The new accessory structure would be 16.28 feet wide and 20 feet long, resulting in a building area of approximately 328 square feet. The one-story building would be approximately nine feet in height to the roof level and approximately 12 feet to the parapet.
11. The accessory structure would be used to provide parking for one vehicle.
12. The new construction would increase the lot occupancy at the subject property to 95.6 percent.
13. Properties abutting the subject property to the north and south are improved with row buildings similar to the Applicant's building. The abutting property to the north (422 4<sup>th</sup> Street) has a two-level rear deck addition. The abutting property to the south (418 4<sup>th</sup> Street) has a one-story accessory structure in its rear yard that has a roof deck surrounded by a wooden fence approximately six feet high.
14. The surrounding area is developed primarily with rowhouses. Alley lots in the interior of

**BZA APPLICATION NO. 20725**  
**PAGE NO. 4**

Square 780 are used as a vehicle parking lot for a nearby office use.<sup>4</sup>

15. 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).
16. 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.)
17. 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).
18. 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).
19. By memorandum dated April 5, 2022, the Architect of the Capitol indicated no objection to the application, stating that the zoning relief requested by the Applicant “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 26.)

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<sup>4</sup> The Board approved zoning relief, subject to conditions, in 1976 to allow a parking lot use on alley lots in Square 780 and has granted subsequent applications to continue the use. See, e.g., Application No. 12061 (Marvin B. Hopkins; April 7, 1976) and Application No. 21112 (Heritage Foundation; May 21, 2024).

## **CONCLUSIONS OF LAW AND OPINION**

The Applicant requested zoning relief, including an area variance from the lot occupancy requirements of Subtitle E § 504.1, to allow a one-story accessory structure (garage) with a roof deck in the rear yard of an existing three-story attached residential building (two-unit flat) in the RF-3 zone at 420 4<sup>th</sup> Street, N.E. (Square 780, Lot 64). The Board is authorized under § 8 of the Zoning Act to grant variance relief 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 the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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 § 1000.1.)

The Applicant requested an area variance from the lot occupancy requirements applicable in the RF-3 zone to allow an increase in lot occupancy at the subject property to 95.6 percent. The Applicant’s proposal would require a significant degree of variance relief given that, in the RF-3 zone, a maximum of 60 percent lot occupancy is permitted as a matter of right and up to 70 percent may be permitted by special exception. (Subtitle E §§ 504.1, 5201.2(a).) The degree of relief requested in this application was not *de minimis* in nature. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1172 (D.C. 1990) (Board may consider whether a variance is *de minimis* in nature and whether for that reason a correspondingly lesser burden of proof rests on the applicant).

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 6, the Board concludes that the application failed to satisfy the burden of proof with respect to the requested variance. The Board does not find that the subject property is faced with any exceptional situation or condition that would warrant approval of the requested variance.<sup>5</sup> The subject property has a regular, rectangular shape and is flat, with no unusual changes in topography.

The Applicant asserted that the subject property exhibited exceptional circumstances as an “undersized lot” resulting from its history: “the original lots were subdivided to create the interior alley and the interior alley lot (62) now used...for vehicular parking.” (Exhibit 19.) According to the Applicant, the subdivision greatly reduced the original depth of the lot and decreased the lot area from its prior size of approximately 2,437 square feet, thereby creating the need for zoning relief. The Board credits the testimony of the Office of Planning that the subject property was not

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<sup>5</sup> The Board reached a similar conclusion in denying a request for an area variance that would have allowed a lot occupancy of 89 percent for a similar project on a nonconforming lot in the same square as the subject property. *See* Application No. 17188 (Deborah Miles; December 21, 2004) (Board denied an application for zoning relief to allow an accessory structure (garage) in the rear yard of a row dwelling, having found no exceptional condition or situation of the Applicant’s lot or practical difficulty to the Applicant).

exceptionally small and did not present an exceptional condition because its size “is identical to other nearby lots” and “significantly larger than some other lots in [Square 780] and adjacent squares.” The Office of Planning acknowledged the Applicant’s testimony that “the present lot configuration is much smaller than the original lot,” but described that situation as “almost universal...where original lots were subdivided to create smaller lots” and not an exceptional condition that would warrant variance relief. (Exhibit 34.) ANC 6C also concluded that the attributes of the subject property were not exceptional, noting that the Applicant’s lot “sits in a row of six consecutive row houses (412 through 422 4th St.) on identically sized 1,221sf lots.” (Exhibit 37.) The Applicant’s plan to build an accessory structure intended to provide occupiable space and covered parking did not create any exceptional condition, because generally an applicant’s desire to utilize property for a certain use is not by itself sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations, *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972).

The Board did not conclude that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the subject property. The Applicant’s project was intended to create outdoor space above the accessory structure for use by residents of one dwelling at the subject property as well as to provide “covered, secured, parking on site....” According to the Applicant, the strict application of the Zoning Regulations would result in practical difficulty to the Applicant as owner of the subject property by depriving the Applicant of an accessory structure and therefore “of an otherwise permitted garage (off-street parking)....” (Exhibit 19.) The Board agrees with the Office of Planning that an accessory structure is not needed to provide outdoor space or secured parking at the subject property.

Under the circumstances of this application, the Board does not conclude that approval of the requested variance would result in substantial detriment to the public good. However, the zone plan would be impaired by approval of the requested variance by allowing a degree of lot occupancy significantly higher than the limit prescribed by the Zoning Regulations. The Board credits the testimony of the Office of Planning that approval of the requested area variance would be counter to the intent of the Zoning Regulations “to govern the massing of buildings on a site” because the application proposed “a lot occupancy very close to 100%.” (Exhibit 34.)

Special exceptions. The Applicant also requested special exceptions under Subtitle E §§ 5201 and 5202 from the rear yard requirements of Subtitle E § 506.1, the alley centerline setback requirements of Subtitle E § 5000.4, and the accessory building location requirements of Subtitle E § 5004.1 to allow the planned accessory structure (garage) in the rear yard of the existing residential building at the subject property.<sup>6</sup> 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

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<sup>6</sup> The application requested relief from the alley centerline setback requirement of Subtitle E § 5000.4. However, that provision applies to a private garage as a principal use on a non-alley lot. Consistent with the analysis provided by the Office of Planning, the Board considered the necessary relief as a special exception from the alley centerline setback requirement of Subtitle E § 5004.1(b), which applies to an accessory building located within a rear yard. Under both provisions, the required setback is 7.5 feet from the centerline of the alley.

**BZA APPLICATION NO. 20725**  
**PAGE NO. 7**

Zoning Regulations, when, 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 specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle E § 5201, the Board is authorized to grant relief as a special exception from specified development standards, including the requirements for rear yard, alley centerline setback, and location of an accessory building. Approval of the relief requires a demonstration that the proposed accessory structure will 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 planned accessory structure, together with the original 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.

Aside from the increase in lot occupancy discussed above, the Applicant's proposed accessory structure would comply with applicable development standards except for its setback from the centerline of the abutting alley (five feet where at least 7.5 feet is required) and its location in the required rear yard at the subject property.<sup>7</sup> Especially considering that the Applicant's proposal would comply with applicable height and building area requirements, the Board concludes that the accessory structure would not affect the light or air available to neighboring properties or compromise the privacy of use and enjoyment of neighboring properties. The new accessory structure would be visible from the public alley at the rear of the subject property, but would not visually intrude on the character, scale, and pattern of houses along the alley frontage. The Applicant submitted photographs illustrating the variety of fences, roll-up doors, and accessory structures currently visible along the alley. The majority of roll-up doors and accessory structures shown in the photographs appear to have been built directly abutting the public alley at a height equal to or higher than the Applicant's proposal.

Consistent with Subtitle E § 5202, the Board concludes that the proposed development would be compatible with the present and proposed development of the neighborhood, which is primarily developed with row buildings, many of which have accessory structures in their rear yards. The Board credits the report of the Architect of the Capitol in concluding that the proposed development would be consistent with the goals and mandates set forth in plans for the development of the Capitol grounds and related areas.

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<sup>7</sup> The Board credits the testimony of the Office of Planning that relief from the rear yard requirement was not needed under the circumstances of this application. An accessory structure may be located in a rear yard (although not a required rear yard), where the "rear yard" is generally defined as the yard between the rear line of a building (i.e. the principal building) and the rear lot line. (*See* Subtitle B § 100.1 and Subtitle E § 5004.1.) To the extent that relief from the rear yard requirements was necessary, the Board concludes that the application met the requirements for approval of the requested special exception for the reasons discussed in the order.

Subtitle X, Chapter 9. For the reasons discussed above, the Board concludes that approval of the requested special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Applicant's proposal was consistent with the purpose of the RF-3 zone to provide for the residential use of a row building with two dwelling units and with the provisions of the RF zone 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.

Approval of the requested special exceptions would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The Applicant's project was designed to provide open space in the rear yard of the dwellings as well as secured vehicle parking. The Board notes DDOT's lack of objection to the Applicant's request for relief from the alley centerline setback requirement.

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 request for an area variance from the lot occupancy requirements should be denied. OP did not object to approval of the special exceptions requested by the Applicant.

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 asserted that the application should be denied in its entirety because it failed to meet the requirements for approval of the requested area variance. For the reasons discussed above, the Board agreed with the ANC that the request for an area variance from the lot occupancy requirements should be denied but concluded that the application met the requirements for approval of the requested special exceptions.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof for special exceptions under Subtitle E §§ 5201 and 5202 from the rear yard requirements of Subtitle E §§ 506.1, the alley centerline setback requirements of Subtitle E § 5004.1(b), and the accessory building location requirements of Subtitle E § 5004.1(a) but failed to satisfy the burden of proof for an area variance from the lot occupancy requirements of Subtitle E § 504.1 to allow a one-story accessory structure (garage) with a roof deck in the required rear yard of an existing three-story attached residential building (two-unit flat) in the RF-3 zone at 420 4<sup>th</sup> Street, N.E. (Square 780, Lot 64). Accordingly, it is **ORDERED** that the application is **GRANTED** in part and **DENIED** in part.


**VOTE: 4-0-1** (Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller voting to DENY the area variance and to GRANT the special exceptions; Frederick L. Hill not present, not voting)



**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:** August 28, 2024

PURSUANT TO 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.