

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



Application No. 20853 of 1212 Oates Street LLC, pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under Subtitle E § 204.4 from the requirements of Subtitle E § 204.1 to allow a significant alteration of a rooftop architectural element (a porch roof) original to a principal building at an existing row building (two-unit flat) in the RF-1 zone at 1212 Oates Street, N.E. (Square 4060, Lot 79).¹

HEARING DATES: March 29, July 26, and December 6, 2023, January 31, 2024
DECISION DATE: January 31, 2024

DECISION AND ORDER

This self-certified application was filed on September 27, 2022 on behalf of 1212 Oates Street LLC (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.

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 public hearing by memoranda dated November 3, 2022 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 5D, the ANC in which the property is located, Single Member Districts ANC 5D04 and 5D07, the Office of Advisory Neighborhood Commissions, the Department of Buildings, the Councilmember for Ward 5 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property

¹ The caption originally stated the relief requested as a special exception from the rooftop and upper floor requirements of Subtitle E § 206.1 pursuant to Subtitle E §§ 206.4 and 5207 and Subtitle X § 901.2. By order issued August 25, 2023, the Zoning Commission approved text amendments that amended some of the regulations applicable to the Applicant’s proposal. (See Zoning Commission Orders No. 18-16 and 19-27.) The Applicant updated the application with corrected citations to relevant provisions (see Exhibit 54). This order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing.

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within 200 feet of the subject property. Notice was published in the *D.C. Register* on November 18, 2022 (69 DCR 014251).²

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 5D were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application submitted by Martin Holmes (Exhibits 21, 21A, 29B, 29C), the owner of a property abutting the subject property.

Applicant's Case. The Applicant provided evidence and testimony in support of the application, including from Andrei Banks, an expert in architecture.

OP Report. By memorandum dated March 16, 2023, the Office of Planning recommended approval of the special exception requested by the Applicant. (Exhibit 30.)

DDOT Report. By memorandum dated March 17, 2023, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 31.)

ANC Report. By letter dated March 28, 2023, ANC 5D indicated that the ANC voted at a public meeting on March 13, 2023, with a quorum present, to oppose the Applicant's project. (Exhibit 38.)

Party in opposition. The party in opposition, Martin Holmes, provided evidence and testimony in opposition to the application, including from Guillermo Rueda, an expert in architecture. The party in opposition asserted that "the disjointed and out-of-character design" of the Applicant's project would isolate his dwelling from other dwellings on the street and that the Applicant's proposal required additional zoning relief. (Exhibit 29C.)

Persons in opposition. The Board received letters in opposition to the application from residents living near the subject property, who generally objected to the appearance of the Applicant's project.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the north side of Oates Street near its intersection with Montello Avenue, with the address 1212 Oates Street, N.E. (Square 4060, Lot 79).
2. The subject property is rectangular, approximately 16.75 feet wide and 77.5 feet deep. The lot area is 1,298 square feet.

² The public hearing was originally scheduled for March 29, 2023 and postponed four times at the Applicant's request (Exhibits 41, 47, 50, 59.)

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3. The subject property was improved with an attached building formerly used as a principal dwelling. The building was two stories and 24.5 feet in height. The front façade had a one-story covered porch.
4. The Applicant undertook a project to enlarge the existing building with a new third story as well as a three-story rear addition for the conversion of the building to a two-unit flat. The building height will be increased to 34.25 feet.
5. The Applicant obtained Building Permit No. B1915131 on July 22, 2020 and began construction.
6. The Applicant retained a firm of geotechnical experts who prepared a report indicating that “the top of the building’s footing was 1’-1” below the current slab and the new slab should be lowered to the top of the existing footings to provide the desired cellar ceiling height.” After beginning construction, the Applicant discovered that the footing was uneven; “to level the foundation, the Applicant poured a new slab at the same height as the old slab as depicted in the permit plans.... The height of the building, which was reframed to the same height as the height of original foundation slab, increased causing the porch roof to block a portion of natural light to the first floor of the building.” (Exhibit 28.)
7. The Applicant rebuilt the porch roof 18 inches higher than the original porch roof. An inspection performed by the Department of Consumer and Regulatory Affairs identified a violation of the Zoning Regulations in connection with the changes to the porch roof.³
8. The Applicant now proposes to retain the newly constructed porch roof at its current height. (Exhibit 28.) The two existing masonry columns at the outer edges of the front of the porch will be raised 18 inches with matching brick and coursing sizes. The new porch canopy and roofing will be rebuilt to match the existing profile. (Exhibits 5, 28A.)
9. The properties abutting the subject property to the east and west are similar in size and shape. The abutting lots contain attached dwellings similar to the Applicant’s existing dwelling, including a one-story front porch.
10. The porch roof original to the existing building at the subject property was approximately six inches higher than the porch roof on the abutting building to the west and lower than the porch roof on the abutting building to the east.
11. The new porch roof on the Applicant’s building will be higher than the porch roofs on both abutting dwellings. (Exhibits 5, 28A.)
12. The subject property abuts a public alley along its rear (north) lot line. The alley extends generally east-west through the interior of the square, with a north-south segment providing

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.*

access to Oates Street to the south and Owen Place to the north. The north-south segment abuts the west side lot line of the abutting property to the west of the subject property.

13. The subject property is not located in a historic district.
14. The subject property is located in a Residential Flat (RF) zone, RF-1.
15. The Residential Flat zones are residential zones that provide for areas developed primarily with residential row buildings but within which there have been limited conversions of dwellings or other buildings into more than two principal dwelling units. (Subtitle E § 101.1.) 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 lot width for the subdivision and creation of new lots of record in RF zones; (e) allow for the limited conversion of single household dwellings and other structures for flats; and (f) prohibit the conversion of single household dwellings and flats for apartment house as anticipated in the Residential Apartment zones. (Subtitle E § 101.2.)
16. The purpose of the RF-1 zone is to provide for areas predominantly developed with residential row buildings on small lots within which no more than two principal dwelling units are permitted. (Subtitle E § 101.4.)

CONCLUSIONS OF LAW

The Applicant seeks a special exception under Subtitle E § 204.4 from the requirements of Subtitle E § 204.1 to allow a significant alteration of a rooftop architectural element (a porch roof) original to a principal building at an existing row building (two-unit flat) in the RF-1 zone at 1212 Oates Street, N.E. (Square 4060, Lot 79). 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, 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 § 204.1 (and subject to exceptions not relevant to this application), a rooftop architectural element original to a principal building (such as cornices, porch roofs, a turret, tower, or dormers) must not be removed or significantly altered, including by shifting its location, changing its shape, or increasing its height, elevation, or size. The Applicant proposed to replace the roof of a front porch, which was original to the existing building at the subject property, with a new porch roof approximately 18 inches higher than the original roof.

In accordance with Subtitle E § 204.4, the Board is authorized to grant relief from the requirements of Subtitle E § 204.1 as a special exception subject to specific requirements. The requirements include that the proposed construction must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property; in particular, (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 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 § 204.4(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 stated by ANC 5D, the Board concludes that the application has met the requirements for approval of the requested zoning relief.

The Board concludes that approval of the requested special exception will 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 proposed to alter a rooftop architectural element original to a principal building – the roof of a one-story front porch – by installing a new porch roof in a different location, approximately 1.5 feet higher than the original porch roof, which was removed. The Applicant’s proposal did not involve changing the shape or increasing the size of the porch roof, which will be supported by the existing columns with extensions of the same dimensions. The Board agrees with the Applicant and the Office of Planning that the planned new porch roof will not affect the light, air, or privacy available to neighboring properties, which have similar front porches.

The Board concludes that the proposed construction, as viewed from the street and nearby alley, will not substantially visually intrude on the character, scale, or pattern of houses along the street or alley frontage. The Applicant submitted plans and photographs sufficient to represent the relationship of the proposed construction to adjacent buildings and views from the street and the nearby public alley segment that intersects with Oates Street (see, e.g. Exhibit 67, pp. 4, 9-10; Exhibit 70). The plans reflected that the Applicant’s new porch roof, unlike the original porch roof, will be higher than the roof of the porch on the abutting property to the east. However, under the circumstances, the Board does not consider the change in elevation as a significant difference that would render the new porch roof a substantial visual intrusion on the character, scale, and pattern of houses along the street frontage. The roof itself will be of the same dimensions and materials. The elevations of the existing porch roofs on the block are not uniform but are progressively higher to the east of the subject property in light of the sloping nature of the street.

The Board credits the Applicant’s testimony that “this block of Oates Street is not uniform, but contains a mix of aesthetics, structures, setbacks, building heights and porches/awnings.” (Exhibit 28.) The Board also credits the testimony of the Office of Planning that the new porch roof will not substantially visually intrude on the character, scale, and pattern of houses along the street because “on this block-face, the porch roofs are not all of a similar design and height” and the block contains “porch roofs that are not at the same height as neighboring porch roofs, as well as houses with no porch roof.” (Exhibit 30.) In light of the existing variety of front porches on the block, the Board was not persuaded by the party in opposition that the Applicant’s proposal would

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“isolate” the abutting dwelling from other dwellings on the street by virtue of the change in the location of the porch roof at the subject property.

Subtitle X, Chapter 9. For the reasons discussed above, the Board concludes that approval of the application 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, as is required for approval of the application under Subtitle X § 901.2. The Applicant’s project will continue the residential use of the building at the subject property as a two-unit flat, a use permitted as a matter of right in the RF-1 zone. The Applicant indicated that the project will comply with applicable development standards with respect to building height, yards, and lot occupancy. Accordingly, the Board concludes that approval of the requested special exception will be consistent with the purpose of the RF-1 zone to provide for areas predominantly developed with residential row buildings on small lots with no more than two principal dwellings. 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, 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 concludes that approval of the requested special exception will not adversely affect the use of neighboring properties. As discussed above, the new porch roof will not affect the light, air, or privacy available to nearby properties. The Applicant indicated that the new porch roof will provide for the drainage of stormwater toward the front of the Applicant’s building with “minimal discharge” to abutting properties. The party in opposition objected to the change in elevation of the new porch at the subject property but did not demonstrate that the replacement of the porch roof would affect the use of any other property, including the front porches of the abutting dwellings.

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 5D voted to oppose the application on grounds including that approval of the application would “cause significant harm to the adjacent and adjoining neighbors” and “substantially intrude upon the character, scale, and pattern of houses along the street, isolating and breaking up what was once a uniform stretch of rowhomes.” (Exhibit 38.) The Board credited the unique vantage point of ANC 5D but, for reasons discussed above, did not find its advice a persuasive reason to deny the application. The ANC’s objections were based largely on changes to the Applicant’s front porch, especially the elevation of the porch floor, and changes to other aspects of the Applicant’s building, and were not related to the Applicant’s modification of the porch roof that generated a need for zoning relief. The Board did not agree with the ANC that, prior to the Applicant’s project, “the porches and upper roofs on this block were identical in character” or that

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the relocation of the Applicant's porch roof would affect the use of porches on neighboring properties.

ANC 5D also stated concerns about matters that were outside the scope of the Board's jurisdiction in this proceeding, including allegations that the building at the subject property did not comply with all applicable zoning requirements, especially with respect to building height in feet and number of stories, and concerning the Applicant's removal of a cornice original to the existing building. The Board has consistently held that approval of a self-certified application does not constitute a finding by the Board that the relief requested was the zoning relief needed to obtain necessary permits and does not prevent the Zoning Administrator from denying a building permit application because other relief is needed.⁴ The District of Columbia Court of Appeals has held that "the 'great weight' requirement extends only to issues and concerns that are 'legally relevant.'" See, e.g., *Bakers Local Union No. 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176 at 179 (D.C. 1981) and *Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241(DC 1993).


Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof for a special exception under Subtitle E § 204.4 from the requirements of Subtitle E § 204.1 to allow a significant alteration of a rooftop architectural element (a porch roof) original to a principal building at an existing row building (two-unit flat) in the RF-1 zone at 1212 Oates Street, N.E. (Square 4060, Lot 79). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibits 5 and 28A of the record in accordance with Subtitle Y §§ 604.9 and 604.10.

VOTE: 4-1-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, and Tammy M. Stidham to APPROVE; Chrishaun S. Smith opposed)

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: April 3, 2025

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.

⁴ See, e.g., Application No. 16974 (Tudor Place Foundation, Inc.; July 29, 2004) and Application No. 17537 (Victor Tabbs; July 27, 2007).

PURSUANT TO 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 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 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.