

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



**Application No. 20928 of Matthew and Sarah Tucker**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 207.1 and, pursuant to Subtitle X § 1002, for an area variance from the lot occupancy requirements of Subtitle E § 210.1 to allow a rear deck addition to an existing two-story attached principal dwelling in the RF-1 zone at 616 7th Street, N.E. (Square 860, Lot 135).<sup>1</sup>

**HEARING DATES:** September 20, October 18, November 8, and December 20, 2023  
**DECISION DATE:** December 20, 2023

**DECISION AND ORDER**

This application was filed on March 25, 2023 by Matthew and Sarah Tucker (jointly, the “Applicant”), the owners 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 of the public hearing, by letters dated May 4 or July 20, 2023, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Department of Buildings, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 6 as well as the Chairman and the four at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the subject property is located, the Single Member District ANC 6C05, ANC 6A, whose boundaries extend within 200 feet of the subject property, and the owners of all property within 200 feet of the subject property. Notice of the public hearing was published in the *District of Columbia Register* on May 19, 2023 (70 DCR 007100).

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

Applicant’s Case. The Applicant provided evidence and testimony in support of the application for zoning relief needed to allow a rear deck addition on the first level of their house that would

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<sup>1</sup> By orders issued August 25, 2023, the Zoning Commission approved text amendments changing the names of some zone district and renumbering some provisions. (See Zoning Commission Orders 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.

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not meet the minimum rear yard requirements and would exceed the maximum lot occupancy requirements.

OP Report. By memoranda dated September 7 and December 1, 2023, the Office of Planning recommended denial of the Applicant's request for an area variance from the lot occupancy requirements. The Office of Planning did not oppose the Applicant's request for a special exception from the rear yard requirement. (Exhibits 23 and 42.)

ANC 6C. By letter dated September 12, 2023, ANC 6C indicated that, at its regularly scheduled and noticed meeting on July 14, 2023, with a quorum present, the ANC voted to support the application. (Exhibit 25).

Persons in Support. The Board received letters from persons in support of the application who indicated no objection to the Applicant's proposal. The Capitol Hill Restoration Society also submitted a letter in support of the application. (Exhibit 13.)

**FINDINGS OF FACT**

1. The property that is the subject of this application is an interior lot on the west side of 7<sup>th</sup> Street N.E. between Morris Place and F Street with the address of 616 7<sup>th</sup> Street N.E. (Square 860, Lot 135).
2. The subject property is a rectangular lot measuring 16 feet wide and 38.9 feet deep. The lot area is approximately 624 square feet.
3. The subject property is improved with an attached building that is two stories in height.
4. The building consists of two dwelling units with one unit located on the first and second floors, and the second unit located on the basement level.<sup>2</sup>
5. The existing lot occupancy of the subject property is approximately 77 percent.
6. The subject property has an existing rear yard approximately 8.8 feet in depth.
7. The existing rear yard consists of a paved area measuring approximately 144 square feet that is bounded by fences separating the Applicant's lot from adjoining properties to the north and south. The southern portion of the rear (west) lot line abuts a brick wall, part of a building on an adjoining lot to the west.<sup>3</sup>

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<sup>2</sup> The basement unit was legally established as a dwelling and is separately metered, but is currently vacant and used by the Applicant for storage. (Transcript of December 20, 2023 at 45.)

<sup>3</sup> The Applicant's fence around the perimeter of what appears to be the rear yard apparently encompasses a portion of property, directly to the east of the adjoining garage, that is not part of the Applicant's lot. The fence was installed by a previous owner.

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8. The rear yard of the subject property contains two air conditioning units (occupying 36 square feet) located close to the property line on the north side and a four-foot-wide stair (occupying approximately 30 square feet) located at the center.
9. The stairs are approximately 3.5 feet wide and provide access to the basement unit. The upper unit does not have direct access to the rear yard.
10. The upper unit has a double French door, six feet wide, on the main level at the rear of the house. The French doors are directly above, and wider than, the existing basement egress steps. The base of the French doors is approximately 80 inches above grade.<sup>4</sup>
11. The Applicant installed the French doors around 2021 when the rear wall of the dwelling had to be rebuilt as a result of damage caused by a water leak.
12. The Applicant proposed to construct a rear deck addition at the main level of the dwelling.
13. The deck will extend approximately 15 feet across the width of the dwelling and will be approximately 7.5 feet deep, resulting in a rear yard of approximately one foot.
14. The deck will be five and a half feet above the ground so as to align with the existing French doors and to provide access to the stairs to the basement as well as to the air conditioning equipment.
15. As a result of the deck addition, the lot occupancy at the subject property will increase to 94 percent.
16. The rear portion of the subject property contains wood fences along both side lot lines and the rear lot line to the north of the building on the abutting lot to the west.
17. The lots abutting the subject property to the north and south contain attached dwellings similar to the Applicant's dwelling.
18. The building on the abutting lot to the west of the subject property is approximately 12 feet wide and 11.5 feet tall, and is used as a garage. The structure is made from brick and has no windows facing the subject property.
19. The dwelling on the abutting lot to the north has a rear deck addition at its main level. Several other dwellings to the north have similar deck additions.
20. A public alley extends east-west through Square 860 between 7<sup>th</sup> and 8<sup>th</sup> Streets. The alley is located to the south of the property that abuts the Applicant's lot to the south.

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<sup>4</sup> The Applicant testified that they chose the location of the French doors to accommodate a planned deck, similar to decks on other properties, without realizing the zoning issues attendant to a deck addition at the subject property. (Transcript of December 20, 2023 at 34.)

21. The surrounding neighborhood is improved with a mix of low- to medium-density residential developments, predominantly two-story row buildings and apartment houses.
22. The subject property is located in a Residential Flat (RF) zone, RF-1.
23. 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 (2) 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.)
24. 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.)
25. 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 § 301.)

## **CONCLUSIONS OF LAW AND OPINION**

The Applicant requested a special exception from the rear yard requirements and an area variance from the lot occupancy requirements to allow a rear deck addition to an existing two-story attached principal dwelling in the RF-1 zone at 616 7th Street, N.E. (Square 860, Lot 135). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant a special exception, 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 specific conditions. (See 11 DCMR Subtitle X § 901.2.).

Rear yard. The Applicant proposed a rear deck addition that would result in a rear yard of approximately one foot, where the minimum requirement is a rear yard of 20 feet. (Subtitle E § 207.1.) Pursuant to Subtitle E § 5201.1(b) the Board is authorized to grant relief from certain development standards, including rear yard, for an addition to a principal residential building on a non-alley lot, subject to certain requirements and the general criteria at Subtitle X, Chapter 9. The requirements include that the proposed addition must not have a substantially adverse effect on the

use or enjoyment of any abutting or adjacent dwelling or property; specifically (a) the light and air available to neighboring properties must not be unduly affected, (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and (c) the proposed addition, 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. (Subtitle E § 5201.4.)

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the report of ANC 6C, the Board concludes that the Applicant has satisfied the requirements for approval of the requested special exception. The deck addition will not unduly affect the light and air available to neighboring properties or unduly compromise the privacy of use and enjoyment of neighboring properties, due to its open design, relatively small size, and location. The views from the deck will be minimized by existing fences between the Applicant's rear yard and adjoining properties. The new deck, together with the original building, as viewed from the street, will not substantially visually intrude on the character, scale, or pattern of houses along the street or alley frontage. The deck will not be visible from the street, and the Applicant's lot does not abut an alley at the rear. The deck might be visible from the alley to the south, but views will be obstructed by fences and the existing garage structure to the west of the Applicant's lot. To the extent that the Applicant's deck will be visible, it will appear similar to existing rear deck additions on nearby dwellings.

The Board concludes that approval of the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as is required for approval of the application under Subtitle X § 901.2. Consistent with the purpose of the RF-1 zones, the deck addition will enhance the residential use of the property by creating usable outdoor space on a small lot. The deck addition will also be consistent with the intent 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. For the reasons discussed above, the Board concludes that approval of the requested special exception will not tend to affect adversely the use of neighboring property. The creation of usable outdoor space is a common feature in the rear yards of row houses located on small lots.

Lot Occupancy. The Applicant requested an area variance, pursuant to Subtitle X § 1002.1, from the lot occupancy requirements of Subtitle E § 210.1 to allow the planned rear deck addition. The Board is authorized under Section 8(g)(3) of the Zoning Act, D.C. Official Code § 6-641.07(g)(3)(2012 Repl.) to grant a variance, as provided in the Zoning Regulations, where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property. The Board may grant the variance from the strict application of the regulation so as to relieve such difficulties or hardship, provided that the 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 also Subtitle X § 1002.1(a).)

The planned rear deck addition will increase lot occupancy at the subject property to 96.4 percent, where the maximum lot occupancy permitted as a matter of right is 60 percent. (Subtitle E § 210.1.) Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the report of ANC 6C, the Board concludes that the application has met the requirements for approval of the requested area variance.

For purposes of variance relief, the extraordinary or exceptional condition affecting a property may arise from a confluence of factors. There is no requirement that each factor by itself makes a property unique; the critical requirement is that the extraordinary or exceptional condition must affect a single property. *See, e.g. Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016); *Roth v. District of Columbia Bd. of Zoning Adjustment*, 279 A.3d 840, 845-846 (D.C. 2022). In this case, the Board agrees with the Applicant that the subject property exhibits an exceptional situation due to a confluence of factors, which include the small size of the lot, where an existing dwelling already covers most of the lot, a small rear yard that is not accessible from the main level of the dwelling and is partially unusable as open space because a significant portion of the rear yard is occupied by air conditioning equipment and stairs, and the location of the existing French doors relative to the air conditioning equipment and to existing stairs to the basement level of the dwelling.

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 by precluding access from the main level of the building (the dwelling currently occupied by the Applicant) necessary to use the rear yard as an outdoor space. The Board credits the Applicant's testimony that the small size of the rear yard, the existing location of the air conditioning equipment, and the existing location of the French doors effectively preclude the construction of a landing and stair to grade. The Applicant addressed various options and why they would not be feasible because, for example, the rear yard was too small to accommodate a new stair to grade, or a stair and landing would block access to the air conditioning equipment, or would require cost-prohibitive changes such as the relocation of existing features so that posts for a landing could be sited appropriately without blocking the basement stairs.

The Board concludes that the requested area variance can be approved without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. The Applicant proposed to improve an existing dwelling with a rear deck, an unenclosed addition that will not affect the light or air available to neighboring properties. The deck will not significantly affect privacy relative to the potential use of the existing rear yard, especially considering that the RF-1 zone does not require any side yard setbacks and the Applicant's property has a solid fence around the perimeter of the rear yard. Consistent with the purpose of the RF-1 zones, the deck addition will be suitable for residential use on a small lot by creating usable outdoor space while maintaining the open nature of the rear yard.

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 did not

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agree with the Office of Planning's recommendation in this case with respect to the area variance request, but concurred that approval of the requested special exception was appropriate.

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 submitted a letter in support of the application without stating any issues or concerns, noting that a "majority of the commissioners agreed that permitting the deck's construction would improve the useability of the rear yard within this extremely small lot."<sup>5</sup> For the reasons discussed above, the Board agrees with the ANC's recommendation that the application should be approved.


Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception from the rear yard requirements of Subtitle E § 207.1 and for an area variance from the lot occupancy requirements of Subtitle E § 210.1 to allow a rear deck addition to an existing two-story attached principal dwelling in the RF-1 zone at 616 7th Street, N.E. (Square 860, Lot 135). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown as Exhibit 7 in the record.

**VOTE: 5-0-0** (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Anthony J. Hood to APPROVE)

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

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

ATTESTED BY:

  
SARA A. BARDIN  
Director, Office of Zoning

**FINAL DATE OF ORDER:** July 19, 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

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<sup>5</sup> The ANC report noted that the application originally understated the proposed lot occupancy at 83 percent but had been revised to 96.4 percent, in keeping with the ANC's estimate "that the lot occupancy of the proposed condition is close to 100%, not 83% as originally stated." (Exhibit 25.)

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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 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.