

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



**Application No. 21037 of Nathaniel and Patricia Robb**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 207.1 and from the lot occupancy requirements of Subtitle E § 210.1 to allow a rear two-level deck and stair addition to an existing three-story attached residential building (two-unit flat) in the RF-1 zone at 1361 Oak Street, N.W. (Square 2835, Lot 73).

**HEARING DATES:** March 20, April 10, and May 22, 2024

**DECISION DATES:** December 13, 2023 and May 1, June 5, and June 26, 2024

**DECISION AND ORDER**

This application was filed on April 21, 2023 by Nathaniel and Patricia Robb (the “Applicants”), 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. The Applicants 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 December 13, 2023. (Exhibit 19.) In accordance with Subtitle Y §§ 400.4 and 401.5, the Office of Zoning provided notice of the application and of the public meeting, by letters dated October 19, 2023, to the Applicants, the Office of Planning (“OP”), the District Department of Transportation, Advisory Neighborhood Commission (“ANC”) 1A, the ANC in which the subject property is located, the Single Member District ANC 1A04, ANC 1D, an ANC whose boundaries are within 200 feet of the subject property but is not an “affected ANC,”<sup>1</sup> the Office of Advisory Neighborhood Commissions, the Department of Buildings, the Councilmember for Ward 1 as well as the Chairman and four 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 October 27, 2023 (70 DCR 014357). At a public meeting on December 13, 2023, the Board removed the application from the expedited review agenda and scheduled a public hearing for

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<sup>1</sup> The Zoning Regulations define an “affected Advisory Neighborhood Commission” as “The ANC for the area within which the property that is the subject of a Zoning Commission or Board of Zoning Adjustment application or appeal is located, except that if the subject property is located on a street that serves as a boundary line between two ANCs, then the term ‘affected ANC’ means both ANCs.” (Subtitle B § 100.2.)

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March 20, 2024. A revised notice was published in the *District of Columbia Register* on November 17, 2023 (70 DCR 015217).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicants and ANC 1A were automatically parties in this proceeding. The Board denied an untimely request for party status in opposition to the application from Tim Hampton, a resident of Otis Place near the subject property. (Exhibits 43, 43A, 43B.) The Board also received a request for party status in opposition to the application from Daniel Hayes, who later withdrew the request. (Exhibits 42, 48.)

Applicants' Case. The Applicants provided evidence and testimony in support of the application, including from Delaunte Allen, a resident at the subject property, and from Chris Marshall and Ronald Alvarenga, contractors for the project. The Applicants requested zoning relief needed to allow a two-level rear deck and stair addition to the existing building at the subject property, replacing an existing one-level deck and stair.

OP Report. By reports dated March 7, April 8, and May 17, 2024, the Office of Planning recommended approval of the requested relief. (Exhibits 35, 53, 74.)

ANC 1A. By report dated February 21, 2024, ANC 1A indicated that, at its regularly scheduled and noticed meeting on February 12, 2024, with a quorum present, "ANC 1A could not come to a consensus on a recommendation for or against this BZA case." (Exhibit 34.) Subsequently, by letter dated June 14, 2024, ANC 1A indicated that, at its scheduled and noticed special meeting on June 12, 2024, with a quorum present, the ANC voted to oppose the application "based on light and shadow impacts of the structure." (Exhibit 83).

Person in Support. The Board received a letter from a person in support of the application who indicated no objection to the Applicants' proposal.

Persons in Opposition. The Board received letters and heard testimony in opposition to the application from residents living near the subject property. The persons in opposition generally objected to the size of the Applicants' project, alleging that the rear decks would cause undue negative impacts on the light, air, and privacy available to the neighboring properties and create a visual intrusion. The persons in opposition also alleged that approval of the application would facilitate the use of the Applicants' building as three dwelling units, contrary to zoning requirements.

**FINDINGS OF FACT**

1. The property that is the subject of this application is an interior lot on the north side of Oak Street, N.W., between 14<sup>th</sup> Street and Holmead Place with the address 1361 Oak Street, N.W. (Square 2835, Lot 73).
2. The subject property is a rectangular lot measuring 24 feet wide and 82.5 feet deep. The lot area is approximately 1,980 square feet. (Exhibit 71.)

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3. The subject property is improved with an attached building that is 34 feet and three stories in height, with a basement. The subject property has an existing rear yard of approximately 16 feet and a lot occupancy of approximately 59 percent.
4. The Applicants reconstructed the building at the subject property after a fire in 2009. The reconstruction included the addition of an elevator at the rear of the building. The elevator shaft is located at the center of the building and extends approximately five feet from the rear wall for approximately 5.5 feet. (Exhibit 3.)
5. The existing building is configured as two dwelling units. Unit 1 is located on a portion of the first floor and on the second and third floors. The Applicants testified that the third floor is used as recreational space with a wet bar and bathrooms. Unit 2 occupies the remainder of the first floor and the basement. The dwellings are accessible through separate entrances located at the front of the building. (Exhibit 81; Transcript of April 10, 2024 at 58, 66.)
6. The elevator is accessible only to Unit 1, providing access to the first and third floors. Unit 1 also contains an interior stair to each floor.
7. In 2017, the Board approved special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the rear yard requirements of Subtitle E § 306.1 to allow a rear deck addition to the existing building (a two-unit flat) at the subject property. In that application, the Applicants originally included a request for a special exception under Subtitle U § 320.2 and a variance from Subtitle E § 302 to allow three dwelling units in the building but subsequently withdrew those requests. In approving relief to allow the proposed lot occupancy and rear yard, the Board noted that “[t]he Applicant amended the application and clarified their intent to maintain a two-unit flat and not convert to three units, as originally cited.” See Application No. 19434 (Nathaniel Robb and Patricia Kilby-Robb; March 22, 2017.)
8. The Department of Consumer and Regulatory Affairs issued a certificate of occupancy to the Applicants on May 31, 2017 to authorize use of the building (basement through third floor) at the subject property as a two-unit flat.<sup>2</sup> (Exhibit 15.)
9. The existing deck on the first floor of the building extends across the width of the lot at a depth of approximately eight feet, with doors on the first floor on either side of the elevator shaft. A stair to grade is located in the center of the deck. One vehicle parking space is provided on either side of the stair, accessible from a public alley abutting the subject property along the rear lot line. (Exhibit 47.)

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<sup>2</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.*

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10. At the rear of the existing building, the second floor has a window on either side of the elevator shaft. On the third floor, the elevator shaft is flanked by a set of French doors on either side, each with a Juliette balcony.
11. The Applicants proposed to remove the existing deck, stair to grade, and Juliette balconies and to construct a new rear deck addition providing decks on the first and third floors of the building, connected by a spiral staircase to grade in the rear yard.
12. The new decks will each extend 23 feet across the width of the dwelling at a depth of 10 feet from the main portion of the rear wall (four feet, nine inches beyond the rear of the elevator shaft). The spiral stair in the center will extend approximately five feet into the rear yard beyond the deck. (Exhibit 47.)
13. The new deck addition will not affect existing heating and air conditioning equipment under the existing deck, or the two vehicle parking spaces.
14. The new deck addition will increase the lot occupancy at the subject property to 64 percent and will reduce the rear yard to seven feet. (Exhibit 71.)
15. The Applicants will install a solid privacy screening, three feet high, on the railing around the perimeter of the third-floor deck, except as needed to provide access to the spiral stair, as shown on Exhibit 81.
16. The subject property abuts a public alley 15 feet wide along its rear (north) lot line.
17. The lots abutting the subject property to the west and east contain two-story attached dwellings.
18. The surrounding neighborhood is predominately low-density residential in character, containing a mix of low- to medium-density residential buildings, with a commercial corridor located to the west along 14<sup>th</sup> Street. (Exhibit 35.)
19. The subject property is located in a Residential Flat (RF) zone, RF-1.
20. The RF zones are residential zones, which 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 designed to be mapped in areas identified as low-, moderate- or medium-density residential areas suitable for residential life and supporting uses. (Subtitle E § 101.3.)
21. 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 Residential Apartment (RA) zone. (Subtitle E § 101.2.)

22. 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 § 101.4.)

### **CONCLUSIONS OF LAW AND OPINION**

The Applicants requested special exceptions under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 207.1 and from the lot occupancy requirements of Subtitle E § 210.1 to allow a two-level rear deck addition, with a spiral stair to grade, at an existing three-story attached residential building (two-unit flat) in the RF-1 zone at 1361 Oak Street, N.W. (Square 2835, Lot 73). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), 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 specific requirements. (See 11 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle E § 5201.1, the Board is authorized to grant relief as a special exception from certain development standards to allow an addition to a principal residential building on a non-alley lot. Eligible development standards include rear yard and lot occupancy up to a maximum of 70 percent. (Subtitle E §§ 5201.1(a), (b).) Under Subtitle E § 5201.4, an application for special exception relief must demonstrate that a proposed addition 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 proposed addition, together with the original building, as viewed from the street, alley, or other public way, must not substantially visually intrude on the character, scale, and pattern of houses along the street or alley frontage. 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 1A, the Board concludes that the Applicants satisfied the requirements for approval of the requested special exceptions.

The Applicants proposed a rear deck and stair addition that will result in a rear yard of seven feet at the subject property, where the requirement under Subtitle E § 207.1 is a rear yard of at least 20 feet. The addition will increase lot occupancy at the subject property to 64 percent, less than the 70 percent permitted by special exception.

The Board concludes that the planned addition will not unduly affect the light and air available to neighboring properties. The addition will not be enclosed but will comprise open decks on two

levels of a three-story building, with the distance of one floor of the building between the two levels of the deck addition. The addition will utilize open railings on the spiral stair and on the lower deck and a railing with privacy screening on the upper deck, which will not unduly affect the light or air available to neighboring properties. Given the north-south orientation of the Applicants' building, the location of the addition on the north side of the building will not significantly increase light or shadow impacts beyond those created by the building itself.<sup>3</sup>

The Applicants' addition, with privacy screening on the upper level, will not unduly compromise the privacy of use and enjoyment of neighboring properties. The height of the Applicants' existing building is greater than some nearby buildings, including the two-story dwellings on the abutting lots. The Applicants' building has windows on each level of the rear façade, including small balconies at the third level, as well as an existing deck on the first floor. The Board concludes that the planned addition will not significantly alter the existing views from the subject property, especially on the lower level. At the upper level, the provision of screening along the railing will minimize views by persons seated on the deck into the abutting lots and across the alley, without obstructing light or air to nearby properties. In addition to the privacy screening, views from the new decks will be mitigated by distance, since the closest dwellings to the north are separated by the width of the abutting public alley as well as the rear yards at the subject property and nearby lots.

The Board concludes that the planned addition, together with the original building, as viewed from the street or alley, will not substantially visually intrude on the character, scale, or pattern of houses along the street or alley frontage. The rear addition will not be visible from any street, including Oak Street at the front of the subject property. The Board credits the testimony of the Office of Planning that multiple other buildings along the alley frontage in common with the subject property have rear additions similar to the two-level deck and stair addition planned by the Applicants. (Exhibit 35; see also Exhibits 33, 44.) The Board was not persuaded by persons in opposition that properties along the alley to the west of the subject property should not be considered on the ground that those lots were not zoned RF-1. The relevant consideration under Subtitle E § 5201.4(c) is the character, scale, and pattern of houses along a given street or alley frontage, not limited to properties within the same zone as an applicant's lot.

Subtitle X § 901.2. For the reasons discussed above, the Board concluded that approval of the application, subject to a condition to protect the privacy of nearby dwellings, will not tend to affect adversely the use of 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 planned addition will permit the continued residential use of the subject property as a two-unit flat, and the subject property will continue to provide two vehicle parking spaces in the rear yard.

The Board also concluded that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The planned rear deck and stair

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<sup>3</sup> For these reasons, the Board did not grant a request from the commissioner for SMD 1A04, on behalf of ANC 1A, to require the Applicants to conduct "a shadow study ... to determine the potential impact of the proposed development on adjacent properties" (see Exhibit 73).

addition will enhance the use of the existing building for residential purposes, consistent with the purpose of the Residential Flat zones to provide for areas predominantly developed with residential row buildings on small lots where no more than two principal dwelling units are permitted. Approval of the requested special exceptions is also consistent with the intent of the RF zones to recognize and reinforce the importance of neighborhood character, walkable neighborhoods, 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.

Some persons in opposition to the application expressed concerns that approval of the application would facilitate the use of the Applicants' building as three principal dwellings, contrary to applicable zoning requirements. The Board considered the application as a request for special exceptions to allow a two-level rear deck and stair addition for an existing building configured as a two-unit flat. The Applicants submitted photographs and plans of the interior of the building, both existing and proposed, which showed that the third floor lacked the attributes of a separate dwelling, such as a kitchen (see Exhibits 66, 81). The Applicants testified that the third floor was not used as a third unit but as a recreational space for the use of the residents of one of the two dwellings in the building. The Board concludes that approval of the application, consistent with the plans shown at Exhibit 81, will not facilitate the use of the Applicants' building as three dwelling units. The scope of the Board's purview in this proceeding was limited to a determination of whether the application satisfied the requirements for approval of the requested zoning relief, which did not include any relief needed to create an additional dwelling unit at the subject property or extend to matters not stated in the zoning provisions relevant to the specific special exceptions.<sup>4</sup>

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.) 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 an 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)).) In this case, ANC 1A initially took no position and later voted to oppose the application, stating that the ANC "shares many of the concerns" voiced by neighbors, especially with respect to potential impacts on light and privacy and the intended use of the deck addition. The Board credits the view of the ANC in this matter but did not find its advice a persuasive reason to deny the application. ANC 1A stated its opposition to approval of the application due to "light and shadow impacts" of the Applicants' planned addition but did not state specific concerns. For the reasons described above, the Board concluded that the deck and stair addition will not unduly affect the light or air available to neighboring properties and agreed with the recommendation of the Office of Planning 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 Applicants have satisfied the burden of proof with respect to the request for special exceptions from the rear yard

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<sup>4</sup> The Zoning Administrator has "primary authority for the administration of and determination of compliance with the Zoning Regulations of the District of Columbia...." D.C. Official Code § 10-561.06(a).

requirements of Subtitle E § 207.1 and from the lot occupancy requirements of Subtitle E § 210.1 to allow a two-level rear deck and stair addition to an existing three-story attached residential building (two-unit flat) in the RF-1 zone at 1361 Oak Street, N.W. (Square 2835, Lot 73). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown as Exhibit 81 in the record and subject to the following **CONDITION**:

1. The Applicants shall install and maintain solid privacy screening, three feet high, on the railing around the perimeter of the third-floor deck, except as needed to provide access to the spiral stair, as shown on Exhibit 81.

**VOTE: 4-0-1** (Frederick L. Hill, Carl H. Blake, Chrichaun S. Smith, and Anthony J. Hood to APPROVE; Lorna L. John not present, 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:**

  
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**SARA A. BARDIN**  
Director, Office of Zoning

**FINAL DATE OF ORDER:** October 14, 2025

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 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.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITION IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.