

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



Application No. 21044 of Theresa Roosevelt and Robert O’Loughlin, pursuant to 11 DCMR Subtitle X § 901, for a special exception under Subtitle D § 207.5 to allow the rear wall of a semi-detached building to extend farther than 10 feet beyond the farthest rear wall of any adjoining principal residential building on any adjacent property for a two-story rear addition to an existing two-story semi-detached principal dwelling in the R-2 zone at 2918 Upton Street, NW (Square 2235, Lot 86).

HEARING DATES: February 28 and March 20, 2024
DECISION DATE: March 20, 2024

DECISION AND ORDER

This self-certified application was filed on September 26, 2023, by Theresa Roosevelt and Robert O’Loughlin (the “Applicants”), the owners of the property that is the subject of the application.¹ 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 November 16, 2023, to the Applicants, the Office of Planning (“OP”), the District Department of Transportation, the Department of Buildings, Advisory Neighborhood Commission (“ANC”) 3F, the ANC in which the subject property is located, and Single Member District 3F05, ANC 3C, whose boundaries are within 200 feet of the subject property, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 3 as well as the Chairman and the 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 November 24, 2023 (70 DCR 015306).

¹ The application originally requested a special exception under Subtitle D § 306.4 (Exhibit 4) and was revised (Exhibit 30) after the Zoning Commission adopted text amendments, which renumbered the provision at issue in this proceeding without any substantive change (see Zoning Commission Order No. 18-16/19-27-19-27B, Z.C. Case Nos. 18-16, 19-27, 19-27A, & 19-27B, August 25, 2023.) 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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Party Status. Pursuant to Subtitle Y § 403.5, the Applicants and ANC 3F were automatically parties in this proceeding. The Board granted requests for party status in opposition to the application from Adam and Lindsey Darrow, the owners of a property abutting the subject property (Exhibits 31, 31A, 31B, 31C), and from James Gasser, the owner of another property near the subject property (Exhibits 32, 32A, 32B, 32C).

Applicants' Case. The Applicants presented evidence and testimony in support of the application, including from Eric Gelman, the Applicants' architectural designer. The application requested the zoning relief needed to allow a two-story rear addition to the Applicants' existing two-story semi-detached principal dwelling.

OP Report. By memorandum dated February 16, 2024, the Office of Planning recommended approval of the application. (Exhibit 33.)

ANC Report. By report dated February 23, 2024, ANC 3F stated that, at a public meeting on February 20, 2024, with a quorum present, the ANC voted to recommend approval of the application. (Exhibit 56.)

Parties in opposition. The parties in opposition provided evidence and testimony in opposition to the application, including from Michael Marti, an architect. According to the parties in opposition, approval of the requested zoning relief would adversely affect the use and enjoyment of their properties, especially with respect to light, air, and privacy.

Persons in Support. The Board received letters in support of the application from persons living near the subject property in the 2900 block of Upton or Tilden Street. The letters indicated that those persons had seen the Applicants' plans and had no objection to the Applicants' project.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the south side of Upton Street N.W. with the address 2918 Upton Street, NW (Square 2235, Lot 86).
2. The subject property is rectangular, approximately 27.41 feet wide and 139.50 deep. The lot area is approximately 3,824 square feet. (Exhibits 2, 30.)
3. The subject property was improved with a semi-detached building that is two stories with a cellar and is approximately 28 feet in height. The rear of the building has a covered patio above grade extending 11 feet into the rear yard.
4. The Applicant's building is configured and used as a principal dwelling.
5. The existing dwelling extends approximately 38 feet, creating a rear yard of approximately 88.5 feet. The existing lot occupancy is approximately 24.3 percent. (Exhibits 2, 30, 33.)

6. The existing dwelling has a side yard measuring approximately 8.11 feet on the west side.
7. The Applicants proposed to construct a two-story rear addition, with a deck addition on the first floor, that will replace the existing patio.
8. The rear addition will extend across the width of the existing dwelling and 15 feet deep. The rear deck will be approximately 19 feet wide and extend an additional eight feet further into the rear yard, with steps down to grade three feet from the east side. (Exhibits 6, 67.)
9. The new addition will result in a rear yard of approximately 65.5 feet and a lot occupancy of approximately 28 percent.² (Exhibits 30, 64, 67.)
10. The rear addition will have five windows on its west façade, two on the first floor and cellar level and one on the second floor. The three windows on the first and second floors will utilize translucent privacy glass. (Exhibits 67, 69.)
11. The south façade of the rear addition, facing the rear yard of the subject property, will contain windows or doors with window panes on each level. (Exhibit 67.)
12. The addition will not have windows on its east façade. (Exhibit 20.)
13. The east side of the Applicants' dwelling is attached to a similar two-story semi-detached dwelling on the abutting lot to the east (Lot 87; 2916 Upton Street, N.W.). The rear walls of the existing buildings are aligned. The dwelling on the abutting lot has a rear deck addition on the first floor, with a lattice privacy screen along its west side. (Exhibits 5, 69.)
14. In 2022 the owners of the abutting dwelling obtained the zoning relief necessary to allow a two-story rear addition extending 15 feet beyond the existing rear wall and rear deck addition to their dwelling. The project has not yet been built. (See, Application No. 20618, Christine and Michael Galano; February 17, 2022; Application No. 20618-A; February 14, 2024.)
15. The abutting property to the west of the subject property (Lot 49; 2920 Upton Street N.W.) contains a three-story row building. The front portion of the east façade of that building, which is brick and contains no windows, extends along the lot line in common with the Applicants' lot. A two-story extension, which is set back from the side lot line and extends 10 feet beyond the brick portion of the dwelling, has windows facing the subject property

² The Applicants submitted several self-certification forms that were prepared before the final revisions to the dimensions of the planned deck. The last self-certification form (Exhibit 30) stated the proposed rear yard as approximately 63.5 feet. However, the Applicants' updated statement (Exhibit 64) and revised architectural plans (Exhibit 67) indicated that the initial design was revised so that the depth of the proposed deck was reduced from approximately 10 feet to 8 feet, which would result in a rear yard of approximately 65.5 feet.

and the rear of the lot on both floors. (Exhibits 5, 18, 69; Transcript of February 28, 2024 at 52.)

16. A solid wooden fence extends along the side lot line shared by the subject property and Lot 49, the abutting property to the west. (Exhibits 59, 69.)
17. The rear yard of Lot 49 contains a tree and other vegetation. (Exhibits 59, 69.)
18. The adjoining property immediately west of Lot 49 (Lot 48, 2922 Upton Street, N.W.) contains a three-story attached building. The building on Lot 48 has a rear deck addition on the first floor, with a wooden privacy screen along its east side. (Exhibits 59, 69.)
19. A public alley 15 feet wide extends east-west across the interior of Square 2235, abutting the rear (south) lot lines of the subject property and other lots fronting on Upton Street. (Exhibit 2.)
20. The subject property is located in a Residential House (R) zone, R-2. The Residential House (R) zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 101.1.)
21. The Residential House zones are intended to (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; (b) 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; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and lot width for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 101.2.)
22. The R-2 zone is intended to provide for areas predominantly developed with semi-detached houses on moderately sized lots that also contain some detached houses. (Subtitle D § 101.7.)
23. The purpose of the R-2 zone is to: (a) provide for areas with semi-detached houses; and (b) protect these areas from denser types of residential development. (Subtitle D § 101.6.)

CONCLUSION OF LAW AND OPINION

The Applicants seek a special exception under Subtitle D § 207.5 to allow a two-story rear addition to an existing two-story semi-detached principal dwelling in the R-2 zone at 2918 Upton Street, N.W. (Square 2235, Lot 86). 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 exceptions 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 Maps, subject to specific conditions. (See 11 DCMR Subtitle X § 901.2.)

The Applicants proposed a rear addition to their semi-detached dwelling that will extend 15 feet beyond the rear wall of the adjoining principal residential building on the abutting lot to the east. An addition to a semi-detached building may be constructed with a rear wall extending farther than ten feet beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved by the Board as a special exception. (Subtitle D § 207.5.) 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 3F, the Board concludes that the application satisfied the requirements for approval of the requested special exception.

The Board concludes that approval of the requested zoning relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, as required in accordance with Subtitle X § 901.2. Approval of the application is consistent with intent of the Residential House zones to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development and to recognize and reinforce the importance of neighborhood character, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city. The Applicant's proposal is also consistent with the intent of the R-2 zone to provide for areas predominantly developed with semi-detached houses on moderately sized lots.

The Board concludes that approval of the requested zoning relief will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, in accordance with Subtitle X § 901.2. With the planned addition, the Applicants' dwelling will meet development standards applicable in the R-2 zone, including with respect to side yard, rear yard, building height, and lot occupancy.

The Applicants submitted a shadow study (Exhibit 57) that compared their proposed addition, extending 15 feet beyond the rear wall of the existing rear wall of adjoining dwelling to the east, with a hypothetical addition extending 10 feet, which would be permitted as a matter of right. Because of the north-south orientation of the Applicants' dwelling, the rear addition will not affect the light available to the abutting property to the east. The Board credits the testimony of the Applicants' architectural designer that, even under the "most extreme conditions," the planned addition will not have "any major impact" on the light available to the abutting property to the west. (Transcript of February 28, 2024 at 54.)

Considering the planned height of the addition and the distance provided by the side yard at the subject property as well as the provision of a rear yard in excess of zoning requirements, the Board was not persuaded by the parties in opposition that the planned addition will unduly affect the light or air available to the dwellings to the west of the subject property. The Board credits the testimony

of the Office of Planning that the Applicants' planned addition will not create any light or air impacts "substantially different" than what would result from an addition permitted as a matter of right. (Transcript of February 28, 2024 at 81.)

Similarly, the Board concludes that approval of the application will not unduly compromise the privacy of use and enjoyment of neighboring properties. The dwelling on the abutting property to the west provides views of the subject property, while the windows with translucent privacy glass in the Applicants' addition will provide light into the addition but will preclude views to the west. The addition will be located at a distance from the rear deck on the dwelling to the west of the abutting lot, where views will be minimized by an existing privacy screen. Views from the windows facing south will be minimized by existing vegetation and the distance created by the Applicants' rear yard and the abutting public alley.

The Board was not persuaded by the parties in opposition that approval of the requested zoning relief would be inconsistent with the character of the block or adversely affect the viewsheds from nearby dwellings. The addition will not be readily visible from Upton Street, and any views from the rear alley will be limited due to the distance of the rear yard as well as existing fences and tree coverage. The Applicants submitted photographs illustrating a variety of dwelling types located along Upton Street in the vicinity of the subject property, with larger attached dwellings to the west and smaller semi-detached dwellings, similar to the Applicants' dwelling, to the east. Similarly, the photographs showed the prevalence of fences as well as a variety of building types, including some decks, visible from the public alley. The Board concludes that the Applicants' planned addition will not alter the existing varied nature of the dwellings in the vicinity.

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 (2018 Repl.)) For the reasons discussed above, the Board agrees with OP's recommendation that the application should be approved.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)) In this case, ANC 3F submitted a report indicating that the ANC voted to recommend approval of the application, without stating any issues or concerns. For the reasons discussed above, the Board concurs with the ANC's support for the application.


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 a special exception under Subtitle D § 207.5 to allow the rear wall of a two-story rear addition to an existing two-story semi-detached principal dwelling to extend 15 feet beyond the farthest rear wall of an adjoining principal residential building on an adjacent property in the R-2 zone at 2918 Upton Street, N.W. (Square 2235, Lot 86). Accordingly, it is **ORDERED** that the application is **GRANTED** in conformance with the plans in the record, including Exhibit 67, consistent with Subtitle Y §§ 604.9 and 604.10.

VOTE: 4-0-1 (Frederick L. Hill, Carl H. Blake, Chrishaun 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:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 20, 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.

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.