

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



Application No. 21053 of Kevin Jones, pursuant to 11 DCMR Subtitle X § 901, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 210.1 to allow a two-story rear addition to an existing two-story attached residential building (two-unit flat) in the RF-1/DC zone at 1529 S Street, N.W. (Square 191, Lot 15).

HEARING DATE: February 28, 2024

DECISION DATE: February 28, 2024

DECISION AND ORDER

This self-certified application was filed August 4, 2023, by Kevin Jones (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 of the public hearing by letters, dated November 15, 2023, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 2B, the ANC in which the subject property is located, and Single Member District 2B09, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 2 as well as the Chairman of the Council 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).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 2B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from David Aberle, the owner of a property adjacent to the subject property. (Exhibits 37, 39, 39A.)

Applicant’s Case. The Applicant presented evidence and testimony in support of the application, including from Martin Locraft, the project architect. The application requested approval of an increase in lot occupancy to allow a two-story rear addition to an existing two-story attached residential building (flat).

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OP Report. By memorandum dated February 14, 2023, the Office of Planning recommended approval of the application. (Exhibit 38.).

ANC Report. By letter dated December 18, 2023, ANC 2B stated that, at a regularly scheduled meeting on December 13, 2023, with a quorum present, the ANC adopted a resolution in support of the Applicant's request for zoning relief. (Exhibit 32.)

Party in opposition. David Aberle argued that the approval of the requested zoning relief would adversely affect the use and enjoyment of the abutting property, especially with respect to light, air, and privacy, and that the Applicant's proposed addition would visually intrude on the view from the party in opposition's roof deck.

Persons in support. The Board received a letter and heard testimony in support of the application from the owners of the property directly to the west of the subject property. (Exhibit 34.)

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the north side of S Street N.W. with the address 1529 S Street, N.W. (Square 191, Lot 15).
2. The subject property is rectangular, approximately 18.29 feet in width and 117.3 feet deep. The lot area is approximately 2,145 square feet.
3. The subject property is improved with an attached building that is two stories and approximately 31 feet in height. The rear of the building has a one-story portion and a rear deck addition with stairs to grade in the rear yard.
4. The building is configured as a two-unit flat, with one dwelling in the basement.
5. The subject property also contains a two-story accessory structure located in the rear yard. The accessory structure extends to the side and rear lot lines and is approximately 30 feet deep.
6. The existing dwelling extends approximately 45.7 feet, creating a rear yard of approximately 71 feet, seven inches. The existing lot occupancy is 64.2 percent.
7. The Applicant proposed to construct a two-story rear addition that will replace the existing one-story portion and extend 5.7 feet further into the rear yard.
8. The new addition will result in a rear yard of approximately 66 feet and lot occupancy of 69.4 percent. There will be no change in height or the number of stories.

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9. The new addition will not have windows on either the western or eastern walls.¹
10. The abutting property to the east of the subject property (at 1527 S Street N.W.) contains a three-story rowhouse with a two-story portion at the rear. The building has a roof deck, with a railing, on the two-story portion.
11. The abutting property to the west of the subject property (at 1531 S Street N.W.) contains a two-story attached building similar to the Applicant's building, with an accessory structure in the rear yard.
12. The property immediately further to the west, across a 16-foot-wide alley and parking area, contains a seven-story apartment house fronting on 16th Street.
13. The existing buildings on both of the lots abutting the subject property extend further into the rear yards beyond the rear wall of Applicant's building. (Exhibit 41.)
14. The Applicant's addition will not extend further than the rear wall of either existing building on the lots abutting the subject property. Both abutting buildings will continue to extend further into the rear yards beyond the rear wall of Applicant's building. (Exhibit 41.)
15. The abutting dwelling to the west creates a court along the lot line in common with the subject property in the middle portion of the lot. (Exhibit 5.) A solid wood fence extends along the west lot line at the rear of the Applicant's building. The east lot line of the subject property abuts a two-story solid brick wall in the middle portion of the lot.
16. The rear (north) lot line of the subject property abuts a public alley 15 feet wide.
17. The subject property is located in the Greater U Street historic district.
18. The area surrounding the subject property contains primarily row houses and multiple-dwelling buildings. (Exhibit 38.)
19. The subject property is located in a Residential Flat (RF) zone, RF-1/DC. 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 dwellings. (Subtitle E §101.1.)
20. 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

¹ The west side of the addition will feature false windows - a decorative feature created by relief in the brick - facing the abutting property to the west along the lot line in common with the subject property.

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 records; (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 houses as anticipated in the RA zone. (Subtitle E §101.2.) 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 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.)
22. In addition to the purposes of the RF-1 zone, the purposes of the Dupont Circle Residential Flat (RF-1/DC) zone are to (a) recognize that the Dupont Circle area is a unique resource in the District of Columbia that must be preserved and enhanced; (b) provide strong protections to retain its low scale, predominantly residential character, independent small retail businesses, human scale streetscapes, and historic character; (c) enhance the residential character of the area by maintaining existing residential uses and controlling the scale and density of residential development; (d) protect the integrity of “contributing buildings,” as that term is defined by the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144, as amended; D.C. Official Code §§ 6-1101 to 6-1115 (formerly codified at D.C. Official Code §§ 5-1001 to 5-1015 (1994 Repl. & 1999 Supp.))); (e) preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide; (f) enhance the streetscape by maintaining the public space in front of buildings as landscaped green spaces; and (g) encourage greater use of public transportation and the free circulation of vehicles through public streets and alleys. (Subtitle E § 300.2.)
23. The RF-1/DC zone requires a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk and ensures a general compatibility in the scale of new buildings with older, low-scale buildings. (Subtitle E § 300.3.)

CONCLUSION OF LAW AND OPINION

The Applicant seeks a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 210.1 to allow a two-story rear addition to an existing two-story attached residential building in the RF-1/DC zone at 1529 S Street, N.W. (Square 191, Lot 15). 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

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property in accordance with the Zoning Regulations and Zoning Maps, subject to specific conditions. (See 11 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle E § 5201.1, the Board may grant relief from certain development standards as a special exception, including lot occupancy up to a maximum of 70 percent for all new and existing structures on the lot. (Subtitle E § 5201.1(a).) 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 2B, the Board concludes that the application satisfied the requirements for approval of the requested special exception to allow an increase in lot occupancy at the subject property. The Applicant proposed a rear addition to an existing two-story residential building that will increase lot occupancy to 69.4 percent, within the limit for approval by special exception. The Applicant's building will meet the other development standards applicable in the RF-1 zone, including with respect to building height and rear yard.

The Board concludes that the Applicant's project will not unduly affect the light and air available to neighboring properties. The Applicant submitted a sun path diagram (Exhibit 41) showing that the planned addition will not create extensive shadow impacts, in part because the abutting building to the east has a greater height than the Applicant's dwelling and because a large apartment house is located nearby to the west. The shadow impacts of the planned addition will not be undue because the Applicant's dwelling will not extend as deep into the rear yard as the abutting buildings or extend higher than the railing of the roof deck on the abutting building to the east. The Board credits the testimony of the Office of Planning that the addition will not impact sunlight in the immediate area, due to the light impacts already being created by the abutting building to the east and the multiple-dwelling building two lots down to the west. For those reasons, the Board was not persuaded by the party in opposition that the Applicant's addition, combined with the existing accessory structure, would significantly impact the light and air available to the adjacent property.

The Board concludes that the Applicant's planned addition will not unduly compromise the privacy of use and enjoyment of neighboring properties. The addition will be enclosed, without any windows providing direct views of nearby properties, including the roof deck on the adjoining property. The planned addition will be located at a substantial distance from properties to the north, given the rear yards and the separation by an alley. The Board agrees with the Office of Planning that the planned addition will not unduly affect the privacy of use or enjoyment of any nearby property.

The Board concludes that the proposed addition, together with the original building, as viewed from the street or alley, will not substantially visually intrude on the character, scale, and pattern of houses along the street and alley frontage. The two-story addition will comply with applicable height limits and will not be visible from S Street.² Views of the addition from the alley will be limited by existing accessory structures, fences, and trees.

Subtitle X, Chapter 9. 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. The planned addition will continue and enhance the residential use of the subject property in a manner consistent with applicable development standards. Approval of the application will be 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. Approval of the requested special exception will also be consistent with the purposes of the Dupont Circle Residential Flat (RF-1/DC) zone to preserve and enhance the Dupont Circle area, to retain its low scale, predominantly residential character with human-scale streetscapes and historic character, and to enhance the residential character of the area by maintaining existing residential uses and controlling the scale and density of residential development.

The Board also concludes that approval of the application will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. For the reasons discussed above, the Board concludes that the Applicant's project will not unduly affect the light, air, or privacy available to neighboring properties. The Board was not persuaded by the party in opposition that the proposed addition would diminish the enjoyment derived from the roof deck on the adjoining property due to the reduction in views available from the deck. The Board notes that "loss of view" is not a factor specified in the Zoning Regulations relevant to the Board's deliberations on whether a proposed project will have an adverse effect on the neighboring properties. *Compare, Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004) ("actual enjoyment of the air and light by the owner of the house is upon his own land only, ... one may obstruct his neighbor's windows at any time and no action can be maintained for obstructing a view"). For the reasons discussed above, the Board concludes that the proposed addition, which will comply with applicable height limits and will not unduly affect the light, air, or privacy available to nearby properties, will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, including with respect to views available from the roof deck on the adjoining property.

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 2B adopted a

² The Applicant conducted a flag test with a representative from the Historic Preservation Office on June 21, 2023 to assess the visibility of the planned addition.

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resolution in support of the application that did not state any issues or concerns about the approval of the zoning relief requested by the Applicant. 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 Applicant has satisfied the burden of proof with respect to the request for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 210. 1 to allow a two-story rear addition to an existing two-story attached residential building (flat) in the RF-1/DC zone at 1529 S Street, N.W. (Square 191, Lot 15). Accordingly, it is **ORDERED** that the application is **GRANTED** in conformance with plans shown at Exhibit 41, dated February 26, 2024.

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:



On behalf of

SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 2, 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 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.