

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 21119 of Vikramaditya Railan and Veena Railan, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle U § 421.1 to allow a new residential development and under Subtitle C § 714.3 from the surface parking screening requirements of Subtitle C § 714.2 to allow a six-unit apartment house by creating two additional dwelling units in an existing four-unit apartment house in a three-story semi-detached building in the RA-1 Zone at 2232 40th Street, N.W. (Square 1317, Lot 15).

HEARING DATE: May 22, 2024
DECISION DATE: June 5, 2024

DECISION AND ORDER

This self-certified application was filed on February 29, 2024, on behalf of Vikramaditya Railan and Veena Railan (together, 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 March 20, 2024, to the Applicant, the lessees at the subject property, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Department of Buildings (“DOB”), the Office of State Superintendent of Education, the Department of Parks and Recreation, the Office of Advisory Neighborhood Commissions, Advisory Neighborhood Commission (“ANC”) 3B, the ANC in which the subject property is located, the Single Member District ANC 3B05, the Councilmember for Ward 3 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.¹ Notice was published in the *District of Columbia Register* on March 29, 2024 (71 DCR 003585).

¹ The party in opposition alleged that she “did not get 40 days’ notice” of the application, possibly because the list of owners of property within 200 feet of the subject property did not include her name, only the address of the abutting property she owned and where she resided. (Transcript of May 22, 2024 at 14, 150.) The Board did not find any deficiency of notice in this case because the Office of Zoning mailed notice to the party in opposition’s address (see Exhibit 16), that notice was not returned as undeliverable, and other means of notice of the application and of the

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Board of Zoning Adjustment

District of Columbia

CASE NO. 21119

EXHIBIT NO. 36

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Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 3B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Marla Leftwich, the owner of a property abutting the Applicant's lot. (Exhibit 31.)

Applicant's Case. The Applicant provided evidence and testimony in support of the application from Dave Bloom, the project architect. The application sought zoning relief needed to allow the creation of two additional dwelling units in an existing four-unit apartment house in a semi-detached building.

OP Report. By report dated May 9, 2024, the Office of Planning recommended approval of the zoning relief requested in the application. (Exhibit 18.)

DDOT. By report dated May 10, 2024, the District Department of Transportation stated no objection to approval of the application. (Exhibit 19.)

ANC 3B. ANC 3B submitted a report, dated May 14, 2024, stating that, at a public meeting on May 9, 2024, with a quorum present, the ANC voted to support the application. (Exhibit 23.)

Party in Opposition. The party in opposition objected to the Applicant's plan to create a new side entrance to the existing building at the subject property, alleging that the entrance would adversely affect her property with respect to privacy, noise, and stormwater run-off. (Exhibits 20A, 29, 35.)

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the west side of 40th Street, N.W. between Benton and W Streets with the address 2232 40th Street, N.W. (Square 1317, Lot 15).
2. The subject property is a rectangular lot measuring 43 feet wide and approximately 97.7 feet deep. The lot area is approximately 4,199 square feet.
3. The subject property is improved with a semi-detached building that is configured as a four-unit apartment house.
4. The existing building is two stories and 26.33 feet in height.
5. The subject property has an existing lot occupancy of approximately 38.78 percent.
6. The subject property has an existing rear yard approximately 39.5 feet in depth.
7. The subject property has an existing side yard of 8.5 feet located along the south side lot line.

public hearing were provided, including by notice to the affected ANC and by posting notice at the subject property, which was maintained for 15 days before the hearing (see Exhibits 24, 25).

8. The Applicant proposed to add a third floor and a three-story rear addition to the existing building and to reconfigure the interior as six dwelling units, each providing two bedrooms. The cellar, first, and second floors will each contain two dwelling units, with one second-floor unit also occupying the third floor.
9. The Applicant will provide a ramp in the front of the subject property to provide access to the existing front door of the building. Other points of entry will be provided at the front, rear, and south side of the building.
10. The two units located on the cellar level will be accessible via exterior stairs in areaways at the front and rear of the building. The two units on the first floor will each have a separate entrance at the front or rear of the building. The two units located on the second and third floors will be accessible through the side entryway to an interior stair.
11. Outdoor decks will be provided on the second floor at the rear of the building and on the third floor at the front of the building.
12. The enlarged building will be three stories and 31.8 feet in height, where 40 feet and three stories are permitted. (Subtitle F § 203.2.)
13. The new construction will increase the floor area ratio (“FAR”) at the subject property from 0.76 to 0.9, where a maximum FAR of 0.9 is permitted. (Subtitle F § 201.1.)
14. The new addition will increase lot occupancy to 40 percent, where a maximum of 40 percent is permitted. (Subtitle F § 210.1.)
15. The new addition will maintain the existing 8.5-foot side yard, where one side yard of at least eight feet is required. (Subtitle F § 208.2.)
16. The rear addition will decrease the rear yard to 39.1 feet, where a minimum of 20 feet is required. (Subtitle F § 207.1.)
17. The subject property abuts a public alley, 16 feet wide, along its rear (west) lot line.
18. The subject property slopes up from 40th Street, flattens, and slopes down towards the alley at the rear. The application did not propose any changes in grade except in connection with the creation of a parking area at the rear of the lot, where retaining walls will be provided on the east and south sides.
19. The parking area will provide four vehicle parking spaces accessible from the alley. The parking area will utilize permeable pavers.
20. A trash enclosure will be provided at the southwest corner of the subject property.

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21. The Applicant will implement a landscaping plan for the new development. (Exhibit 6, Sheet C1.2 and Exhibit 34A). Elements of the landscaping plan include the use of permeable pavers for the walkway and the installation of plantings, including ground covers and trees, along the front, side, and rear of the building.
22. The Applicant will install a solid wood fence, six feet high, along the south side lot line from the front of the building to the rear lot line. (Exhibit 34A.)
23. No new rights-of-way or easements were proposed in connection with the new apartment house.
24. The subject property is located within 0.1 miles of a Metrobus stop near the intersection of 40th and Benson Streets.
25. The subject property is located less than a quarter-mile from the Stoddart Recreation Center and approximately a half-mile from the Guy Mason Recreation Center. Both facilities have various playing fields and recreational programs. (Exhibit 18.)
26. The property abutting the subject property to the north (Lot 14, 2226 40th Street, N.W.) is improved with a two-story semi-detached building similar to the existing building at the subject property. The two buildings are attached along their common side lot line.
27. The building on the abutting lot to the north is used as a six-unit apartment house.²
28. The property abutting the subject property to the south (Lot 16, 2228 40th Street, N.W.) is improved with a two-story semi-detached building similar to the existing building at the subject property. The building on the adjoining lot is configured as a four-unit apartment house and has a side yard on its north side, abutting the subject property.
29. The area surrounding the subject property is primarily residential, containing especially two- or three-story apartment houses.
30. The subject property and nearby properties are located in a Residential Apartment (RA) zone, RA-1.
31. The Residential Apartment (RA) zones are residential zones, designed to provide for residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F § 101.1.)

² In 2023, the Board granted an application for special exceptions under Subtitle U § 421 and from the screening requirements of Subtitle C § 714.3 to allow the creation of two additional dwelling units in the semi-detached building on Lot 14, which was then configured as a four-unit apartment house. The applicant in that case planned a new third floor and a three-story rear addition to the building, with a roof deck. *See* Application No. 20937 (40th Street Heights, LLC; November 7, 2023).

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32. Provisions of the RA zones are intended to (a) Permit flexibility by allowing all types of residential development; (b) Promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (c) Promote a walkable living environment; (d) Allow limited non-residential uses that are compatible with adjoining residential uses; (e) Encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (f) Ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 101.2.)
33. The purposes of the RA-1 zone is to: (a) Permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts; and (b) Permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. (Subtitle F § 101.3.)
34. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached houses, row houses, and low-rise apartments. (Subtitle F § 101.4.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks special exceptions under Subtitle U § 421.1, for a new residential development, and under Subtitle C § 714.3 from the surface parking screening requirements of Subtitle C § 714.2 to allow the creation of two additional dwelling units in an existing four-unit apartment house in a three-story semi-detached building in the RA-1 zone at 2232 40th Street, N.W. (Square 1317, Lot 15). 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 conditions. (See Subtitle X § 901.2.) 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 3B, the Board concludes that the application satisfies the requirements for approval of the requested special exceptions.

New residential development. Pursuant to Subtitle U § 421, the proposed expansion of an existing apartment house – as a new residential development in the RA-1 zone not comprising principal dwellings in detached or semi-detached buildings – requires approval by the Board as a special exception in accordance with the specified standards. To illustrate aspects of the planned development, the Applicant submitted a site plan and a set of typical floor plans and elevations, grading plans (existing and final), as well as a landscaping plan. As required, the application was referred to various agencies for comment and recommendation, and the Applicant submitted the documents necessary to support the request for zoning relief.

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The Board concludes that the application has satisfied the requirements for the requested special exception under Subtitle U § 421. The Applicant proposed to enlarge the existing building at the subject property, increasing the number of dwelling units from four to six. The application demonstrated that the planned additions to the existing building will meet applicable development standards, including with respect to building height in feet and number of stories, side and rear yards, lot occupancy, and floor area ratio. For that reason, the Board concludes that the planned additions will not adversely affect the provision of light and air to neighboring properties.

Approval of the requested zoning relief will not have an undue impact on the privacy available to neighboring properties. The Board was not persuaded by the party in opposition that the new entrance to the Applicant's building will compromise the privacy available to residents of the apartment house on the abutting lot. The entrance will be utilized by only two of six units in the Applicant's building, and will be separated from the abutting apartment house by a distance greater than 16 feet, with a solid privacy fence extending along the shared lot line.

Given the small number of new units in the building and their relatively small size, the Board concludes that the number of students who can be expected to reside in the expanded apartment house can be accommodated at existing and planned area schools.³ The Board also concludes that the public streets, recreation, and other services in the vicinity of the subject property can accommodate the residents who can be expected to reside in the new units. The site is served by Metrobus and will provide four parking spaces in the rear. At least two public recreation centers, as well as other services and amenities, are located within walking distance of the subject property.

Surface parking screening. Pursuant to Subtitle C § 714.1, screening is required for external surface parking spaces (with certain exceptions not relevant to this application). Screening, consisting of a wall, solid fence, or evergreen hedges or trees at least 42 inches high, is generally required around the entire perimeter of a surface parking area. (Subtitle C §§ 712.2(a), (d)). Gaps in the required screening may not exceed 20 feet and may be permitted only to provide driveways and pedestrian exits or entrances that open directly onto a street, sidewalk, or alley. (Subtitle C § 712.2(c)).

The Applicant proposed a parking area for the expanded apartment house that will be bounded by retaining walls and a privacy fence on three sides while the west side, facing a public alley, will remain open. The Board is authorized by Subtitle C § 714.3 to modify or waive the screening rules as a special exception, consistent with specific requirements relating to impacts on the pedestrian environment, existing vegetation or other screening located on adjacent properties, existing topography, and traffic conditions. The Board concludes that the application has satisfied the requirements for the requested special exception under Subtitle C § 714.3. The Applicant's parking area will not be visible from any public street or sidewalk. The lack of screening along the public alley will not affect any pedestrian environments on adjacent streets, sidewalks, or other public areas, but will facilitate vehicular access to the parking area from the adjacent public alley.

³ The Board credits the testimony of the Office of Planning that, “[a]lthough some area schools are listed as close to or over capacity, OP would not anticipate that the addition of two units would have a significant impact on the school capacities to accommodate students from this project.” (Exhibit 18.)

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The parking area will be adequately screened on the sides adjacent to other properties and to the Applicant's building.

Subtitle X § 901.2. 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, as is required for approval of the application under Subtitle X § 901.2. Consistent with the provisions of the RA zones, the expansion of an existing apartment house will permit flexibility by allowing a type of residential development, promote a stable residential area while permitting a variety of types of urban residential neighborhoods, promote a walkable living environment, and encourage compatibility between the location of new buildings or construction and the existing neighborhood. Approval of the application will permit the creation of new dwelling units in a manner consistent with the purpose of the RA-1 zone by permitting flexibility of design in an urban residential development that will conform to applicable height, density, and area requirements. Approval of the zoning relief requested by the Applicant will be consistent with the RA-1 zone by expanding an existing apartment house consistent with applicable development standards, providing two additional dwelling units, and creating a new parking area where the absence of screening walls on one side will facilitate vehicle access to the parking spaces consistent with the requirements for a waiver stated in the Zoning Regulations in Subtitle C § 714.3.

The Board concludes that approval of the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The addition of two dwelling units in an existing apartment house will continue a residential use appropriate at its location in a building that will meet or exceed development standards, thereby avoiding the creation of undue impacts on the light or air available to neighboring properties. The Board was not persuaded by the party in opposition that the planned entrance at the side of the building will create adverse impacts related to noise, given that the new entryway will not serve as recreational space but will provide access to two dwelling units. Similarly, the Board was not persuaded that approval of the application would create adverse impacts related to loss of green space or to the creation of stormwater runoff. The Applicant's building will continue to provide side and rear yards consistent with zoning requirements, and the site will be landscaped. The Applicant will utilize permeable pavers for walkways and the parking area and the project will be subject to regulations, including the green area ratio requirement,⁴ intended to prevent runoff onto nearby properties.

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 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)).) In this case, ANC 3B

⁴ See Subtitle C, Chapter 6 (Green Area Ratio). The green area ratio "sets integrated environmental requirements for landscape elements and site design that contribute to the reduction of stormwater runoff, the improvement of air quality, and the mitigation of the urban heat island effect." (Subtitle C § 600.2.)

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submitted a report in support of the application without stating any issues or concerns about the requested relief.

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 special exceptions under Subtitle U § 421.1 to allow a new residential development (the creation of two new dwelling units in an existing four-unit apartment house) and under Subtitle C § 714.3 from the surface parking screening requirements of Subtitle C § 714.2 to allow a six-unit apartment house in a three-story semi-detached building in the RA-1 zone at 2232 40th Street, N.W. (Square 1317, Lot 15). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown as Exhibits 6 and 34A in the record.

VOTE: 4-0-1 (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Joseph S. Imamura (by absentee ballot) 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:


SARAVA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 29, 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.

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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.