

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



Application No. 21220 of 327 Upshur, LLC, pursuant to 11 DCMR Subtitle X § 901, for a special exception under Subtitle E § 207.5 to allow the rear wall of a row building to extend farther than 10 feet beyond the farthest rear wall of adjoining principal residential buildings and under Subtitle U § 320.2 to allow the conversion of an existing residential building to a three-unit apartment house use at an existing two-story attached principal dwelling, with third-story and three-story rear additions, in the RF-1 zone at 1154 Morse Street, N.E. (Square 4065, Lot 814).

HEARING DATE: February 26, 2025

DECISION DATE: March 12, 2025

DECISION AND ORDER

This self-certified application was filed on September 23, 2024 by 327 Upshur, LLC (the “Applicant”), the owner of the property that is subject of the application. Following a public hearing, the Board voted at a public meeting 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 20, 2024 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation, the Department of Buildings, Advisory Neighborhood Commission (“ANC”) 5D, the ANC in which the subject property is located, and Single Member District 5D03, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 5 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 December 6, 2024 (71 DCR 014961).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 5D were automatically parties in this proceeding. A request for party status in opposition to the application was filed by Austin Smith, the owner of property abutting the subject property, but was subsequently withdrawn (Exhibits 21, 23).

Applicant’s Case. The Applicant presented evidence and testimony in support of the application, including from Gregory Kearley, the project architect. The application requested zoning relief

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needed to allow the expansion of an existing two-story attached principal dwelling, with a new accessory building in the rear yard, and the conversion of the existing dwelling to a three-unit apartment house use.

OP Report. By memorandum dated February 20, 2025, the Office of Planning recommended approval of the application subject to a condition intended to preclude the use of the new accessory building as one or more principal dwelling units. (Exhibit 27.)

ANC Report. By report dated February 24, 2025, ANC 5D stated that, at a public meeting on February 11, 2025 with quorum present, the ANC voted to oppose the application. (Exhibit 35.)

Persons in opposition. The Board received letters in opposition to the application, including from some residents near the subject property. The persons in opposition generally stated their objection to the Applicant's proposal due to the proliferation of similar multi-unit buildings in the area, which the persons in opposition asserted had caused adverse effects on neighboring properties with respect to density, parking, light and air, privacy, and the character of the neighborhood.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot located on the north side of Morse Street, N.E. between Montello and West Virginia Avenues, with the address 1154 Morse Street, N.E. (Square 4065, Lot 814).
2. The subject property is generally rectangular but irregularly shaped, with a portion 6.75 feet wider than the majority of the lot extending 26.4 feet from the rear lot line. The subject property is approximately 18 feet wide on the front (south) lot line and 24.75 feet wide on the rear (north) lot line. The property is approximately 150 feet deep. (Exhibits 26A, 27, 39.)
3. The lot area of the subject property is approximately 2,878 square feet. (Exhibit 26A.)
4. The subject property is improved with an attached building that is two stories and approximately 25 feet in height. The building is set back 10 feet from the front lot line and extends approximately 49 feet, resulting in a rear yard of approximately 91 feet. The existing lot occupancy is 45 percent. (Exhibits 26A, 26D.)
5. The Applicant's building is configured as a principal dwelling, with a cellar, and was constructed in 1909. (Exhibits 26D, 27.)
6. The Applicant proposed to enlarge the existing building with a new third floor, with a stairway to a roof-top deck, as well as a three-story rear addition.
7. As a result of the new construction, the building will be three stories and approximately 32 feet in height. (Exhibit 26A.)

8. The addition will extend the depth of the existing building to 65 feet. The second and third floors will have rear decks five feet deep. A spiral stair located along the west side lot line will provide access from the second-floor deck to the rear yard. The Applicant will provide new stairs from the rear yard down to the cellar and up to the first floor. (Exhibit 11.)
9. The addition will not have windows on either the western or eastern walls. (Exhibit 27.)
10. The new third floor will be set back approximately 12 feet from the front façade of the existing building and approximately six feet from an existing rooftop architectural element. (Exhibit 27.)
11. The Applicant will provide a deck on the roof of the new third floor. A penthouse enclosing a stair to provide access to the deck will be located on the east side toward the rear of the building.
12. The Applicant proposed to convert the building, as enlarged, to three principal dwelling units. The cellar and first floor will each be configured as one dwelling, and the third unit will occupy the second and third floors. (Exhibit 39.)
13. The Applicant proposed to construct a new accessory structure in the rear yard of the subject property. The new accessory structure will be two stories and 19.5 feet in height. (Exhibit 27.)
14. The addition and new accessory structure will increase the lot occupancy of the subject property to 59.55 percent. (Exhibits 26A, 27, 39.)
15. The new accessory structure will abut the east side lot line and will be set back approximately 18.5 feet from the rear lot line. The accessory building will extend 14 feet wide and approximately 26 feet toward the principal building, resulting in a building area of 364 square feet. (Exhibits 26D, 39.)
16. The area between the accessory building and the west lot line will contain stairs to the rear of the subject property. The west façade will contain a door and one window. (Exhibit 39.)
17. The south façade of the accessory building, facing the principal building, will contain stairs up to a door on the second floor as well as a window. (Exhibit 39.)
18. The rear (north) façade abutting the public alley and the east façade of the accessory building will not contain any windows.
19. Both floors of the accessory structure will contain living space, a full bathroom, utilities, and a washer and dryer. Each floor will contain a sink but will not provide kitchen facilities. (Exhibit 39.) The Applicant indicated that the first floor of the accessory building

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will be dedicated to the residents of the dwelling unit in the cellar of the principal building while the second floor will be dedicated to the residents of the dwelling unit on the first floor of the principal building. According to the Applicant, the subject property will be redeveloped as a three-unit condominium project and the condominium bylaws will assign each floor of the accessory building to the dwelling units in the cellar or on the first floor of the principal building. (Transcript of February 26, 2025 at 51, 69.)

20. An area 20 feet deep between the enlarged principal building and the new accessory building will be maintained as a patio with brick pavers.
21. The subject property abuts a public alley, 20 feet wide, along the rear lot line.
22. The area at the rear of the subject property, 18 feet wide and 18.5 feet deep between the new accessory building and the rear lot line, will be configured as two vehicle parking spaces accessible from the abutting alley. An area on the west side of the lot, adjacent to the parking area will be used for trash storage. A walkway will provide access from the parking area to the rear yard of the subject property.
23. The Applicant will install a roll-up door and fencing along the rear property line. (Exhibit 27.)
24. A one-story accessory structure primarily located on the abutting lot to the west encroaches by 6.75 feet onto the subject property toward the rear of the lot, where the subject property is 24.75 feet wide. The remainder of that accessory structure abuts the west side lot line of the subject property with a solid wall.
25. The Applicant will install a new fence and retaining wall along the west side lot line between the Applicant's principal and accessory buildings.
26. A solid wood fence extends along the east side lot line.
27. The lot abutting the subject property to the west (Lot 817, 1152 Morse Street N.E.) contains a two-story attached principal dwelling and an accessory building in the rear yard.¹ (Exhibits 26D, 39.)
28. The lot abutting the subject property to the east (Lot 113, 1156 Morse Street N.E.) contains a two-story attached principal dwelling and an accessory building in the rear yard. (Exhibit 26D, 39.)

¹ The Applicant indicated an intent to create an easement in the condominium documents to ensure that the owner of the abutting property will continue to have access to the accessory structure (a garage) that encroaches onto the subject property. (Exhibit 39.)

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29. The addition at the subject property will extend the rear wall of the Applicant's building 16 feet further than the rear walls of the residential buildings on the abutting lots to the east and west. (Exhibit 39.)
30. The area surrounding the subject property is residential in character, containing primarily attached buildings used as one or more dwellings.² (Exhibits 4, 39.)
31. The subject property and surrounding properties are located in a Residential Flat (RF) zone, RF-1. 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.)
32. 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 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 Residential Apartment zones. (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.)
33. 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.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks special exceptions under Subtitle D § 207.5 to allow a rear addition extending the rear wall of the Applicant's building more than 10 feet beyond the rear walls of residential buildings on adjoining lots and under Subtitle U § 320.2 to allow the conversion of the building to a three-unit apartment house at an existing two-story attached principal dwelling in the RF-1 zone at 1154 Morse Street, N.E. (Square 4065, Lot 814). The Board is authorized under § 8 of

² The Board previously granted special exceptions to allow the conversion of existing residential buildings to three-unit apartment house use at three properties on the south side of the 1100 block Morse Street (Square 4070). See, Application No. 20279 (HJB Properties LLC; October 3, 2020) (additions to attached principal dwelling and conversion at 1121 Morse Street N.E., Lot 138), Application No. 20143 (Grand Realty LLC; August 16, 2021) (conversion of an attached principal dwelling at 1117 Morse Street, Lot 136), and Application No. 19657 (Mala Mahmood; August 30, 2018) (additions to attached principal dwelling and conversion at 1135 Morse Street, Lot 145).

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the Zoning Act, D.C. Official Code § 6-641.07(g)(2), 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 requirements. (See 11 DCMR Subtitle X § 901.2.)

Extension of the rear wall. The Applicant proposed a rear addition to an attached building that will extend 16 feet beyond the rear walls of the adjoining principal residential buildings on the abutting lots to the east and west. An addition to an attached building may be constructed with a rear wall extending farther than 10 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 5D, the Board concludes that the application satisfied the requirements for approval of the requested special exception.

The Applicant's three-story rear addition will not create adverse impacts on the use of the adjoining residential buildings with respect to the light, air, or privacy available on the nearby lots. The building as enlarged will meet development standards applicable in the RF-1 zone with respect to building height, lot occupancy, and rear yard. The Applicant submitted a shadow study (Exhibit 9) that compared the proposed addition, extending 16 feet beyond the rear walls of the existing adjoining dwellings to the east and west, with a hypothetical addition extending 10 feet, which would be permitted as a matter of right. The Board credits the testimony of the Office of Planning that, based on the Applicant's shadow study, the shadowing impacts of the planned addition on the adjacent properties will not be undue. Considering especially the planned height of the addition as well as the provision of a rear yard in excess of zoning requirements, the Board concluded the planned addition will not unduly affect the light or air available to the dwellings to the west and east of the subject property.

Similarly, the Board concludes that approval of the planned rear addition will not unduly compromise the privacy of any adjoining principal residential building on any adjacent property. The lack of windows on either side of the planned addition will preclude views of the adjoining properties. The Board credits the testimony of the Office of Planning that views from the addition into the adjacent rear yards will generally be similar to the present condition of the Applicant's property. The planned addition will be located a substantial distance from the closest dwellings to the north, given the depths of the rear yards and the separation by an alley. The fences along the side lot lines of the subject property as well as the planned roll-up door and fencing along the rear lot line will also enhance privacy.

Conversion to apartment house use. The Applicant requested a special exception under Subtitle U § 320.2 to allow the conversion of the existing residential building at the subject property to a three-unit apartment house. In accordance with Subtitle U § 320.2, the subject property contains a residential building that was existing on the lot before May 12, 1958. The Applicant proposed to enlarge the existing building for use as three principal dwellings. The lot area of the subject

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property is sufficient to provide at least 900 square feet of lot area per dwelling unit for the planned three units.

General requirements. 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. The Applicant's proposal to provide three dwelling units in an attached building at the subject property is consistent with the provisions of the Residential Flat zones, which are residential zones that provide for areas developed primarily with residential row buildings with limited conversions of buildings into more than two principal dwellings. The application demonstrated that the Applicant's proposal met the requirements for such a conversion, in this case to three dwelling units, under Subtitle U § 320.2. Approval of the application 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. The Applicant's enlarged building will continue and enhance the residential use of the subject property in a manner consistent with applicable development standards other than the planned extension of the rear wall, which the Board determined should be approved as a special exception, as discussed above.

The Board 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, in accordance with Subtitle X § 901.2. For the reasons stated above, the Board concludes that approval of zoning relief to allow extension of the rear wall of the Applicant's building and its conversion to three dwelling units will not create adverse impacts with respect to light, air, privacy, or other potential adverse impacts such as noise or parking. The residential project will satisfy the zoning requirement for vehicle parking and will meet applicable development standards with respect to building height and yards.

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 the application should be approved. The Board notes that the Office of Planning expressed concern that the proposed accessory building might be used as one or more additional dwelling units at the subject property, contrary to zoning requirements. The Office of Planning recommended adoption of a condition intended to preclude the creation of separate dwellings in the accessory building by requiring the Applicant to file into the record of this proceeding "revised plans ... with the space reconfigured to ensure that it could not function as one or more independent units." (Exhibit 27.) The Board declined to adopt the condition because the application requested, and the Board granted, approval of a conversion to allow three units. The creation of additional units, beyond the three units approved, would violate provisions applicable in the RF-1 zone, including Subtitle U § 301.1(b), which limits to two the number of units permitted at the subject property as a matter of right, and Subtitle U § 320.2, which requires the provision of Inclusionary Zoning units when a conversion involves more than three dwelling units and states a minimum lot area requirement that the subject property could not meet with more than three units. The Office of Planning stated that its recommended condition was "intended to

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ensure that the proposal is consistent with the wording and intent of the RF zone.” As discussed above, the Board concluded that approval of the zoning relief requested in this application was consistent with the applicable zoning regulations. The Board did not conclude that OP’s recommended condition was necessary to avoid the creation of any potential adverse impact associated with the approval of the requested zoning relief but was intended to address a potential violation of the zoning regulations and therefore was outside the scope of the Board’s purview in this proceeding, which was limited to a determination of whether the application met the requirements for approval of the requested zoning relief.³

The Office of Planning also expressed concern that the Applicant’s project required a variance from the requirement to provide 30 feet of street frontage under Subtitle C § 303.4. The Applicant disagreed and did not include a request for relief from Subtitle C § 303.4 in this application. The application was submitted with a certification signed by an architect that certified “the required zoning relief.” (See Subtitle Y § 300.6.) Because the application was self-certified, the Board made determinations on the relief requested without considering whether additional or other relief was also required. The Board has consistently held that assertions of an erroneous certification are irrelevant to its review of applications. *See, e.g.,* Application No. 16974 (Tudor Place Foundation; July 29, 2004).

The Board is 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).) In this case, ANC 5D voted to oppose the application, citing neighboring residents’ opposition to a third unit and the Applicant’s failure to provide “an easement or other protective mechanism” for the owner of the abutting lot whose accessory structure encroached onto the subject property. (Exhibit 35.) The Board credits the ANC’s testimony but did not find its advice a persuasive reason to deny the application. For the reasons discussed above, the Board determined that the application met the requirements for approval of the special exception requested to allow three principal dwellings at the subject property. The ANC did not state any issues or concerns pertaining to the encroachment of the accessory building that were germane to the Board’s deliberations on the application. The Board is required to accord “great weight” only to the issues and concerns of the affected ANC that are legally relevant to the application at issue. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), *citing Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 180 (D.C. 1981).

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 E § 207.5 to allow the rear wall of a row building to extend 16 feet beyond the farthest rear walls of the adjoining principal residential buildings on adjacent properties and under Subtitle U § 320.2 to allow the conversion of an existing residential building to a three-unit apartment house use at an existing two-story attached principal dwelling in the RF-1 zone at 1154 Morse Street, N.E. (Square

³ 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).

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4065, Lot 814). Accordingly, it is **ORDERED** that the application is **GRANTED** in conformance with the plans in the record, including Exhibit 39, consistent with Subtitle Y §§ 604.9 and 604.10.

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

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.