

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



Application No. 21295 of Justin Ryan Gomez and Jesse Martinez, Jr., pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 207.1 and, pursuant to Subtitle X § 1002, for an area variance from the lot occupancy requirements of Subtitle E § 210.1 to allow a new rear deck addition to an existing two-story attached principal dwelling in the RF-1 zone at 1151 Abbey Place, N.E. (Square 773, Lot 199).

HEARING DATE: June 11, 2025

DECISION DATE: June 18, 2025

PROPOSED DECISION AND ORDER

This application was filed on March 13, 2025 on behalf of Justin Ryan Gomez and Jesse Martinez, Jr. (the “Applicants”), the owners of the property that is the subject of the application. Following a public hearing, the Board voted to deny 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 memoranda dated April 4, 2025 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation, the Department of Buildings (“DOB”), the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 6 as well as the Chairman and the at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the property is located, Single Member District ANC 6C07, and the owners of all property within 200

feet of the subject property. Notice was published in the *District of Columbia Register* on May 9, 2025 (72 DCR 005737).

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 6C were automatically parties in this proceeding. The Board received no requests for party status.

Applicant's Case. The Applicant provided evidence and testimony in support of their request for the zoning relief needed to allow a rear deck addition to the existing row building at the subject property.

OP Report. By memorandum dated May 29, 2025, the Office of Planning recommended approval of the zoning relief requested in the application. (Exhibit 40.)

ANC Report. By letter dated June 9, 2025, ANC 6C stated that, at a public meeting on May 14, 2025 with a quorum present, the ANC voted to oppose the application. (Exhibit 49.)

Persons in support. The Board received letters in support of the application from persons living near the subject property, who stated generally that the Applicants' project did not raise concerns with respect to privacy or impacts on nearby properties and would be consistent with the character of the neighborhood.

Person in opposition. The Board heard testimony in opposition to the application from a person living near the subject property who objected to the degree of zoning relief needed for the

Applicants' planned rear deck addition and asserted that the application had not met the requirements for approval of the requested relief.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the east side of Abbey Place between L and M Streets, NE, with the address 1151 Abbey Place NE (Square 773, Lot 199).
2. The subject property is rectangular, with a lot width of 16 feet and a depth of approximately 64.9 feet. The lot area is 1,038 square feet.
3. The subject property abuts a public alley, 15 feet wide, along its rear (east) lot line.
4. The subject property is improved with an attached building used as a principal dwelling. The Applicants testified that the lowest level is used as a short-term rental unit. (Transcript of June 11, 2025 at 97.)
5. The existing building is 25 feet and two stories in height. (Exhibit 34.)
6. The existing lot occupancy is 63 percent.¹ (Exhibit 34.)

¹ The Applicants submitted a referral memorandum, without notes and computations, dated January 15, 2025 (Exhibit 9) and an updated referral memorandum, with notes and computations, dated March 6, 2025 (Exhibits 25 and 26) as well as an exhibit purportedly "notes and computations" but not accompanied by a referral memorandum (Exhibit 30B), and finally a second revised referral memorandum, with notes and computations, dated May 20, 2025 (Exhibit 34). The Applicants acknowledged that their original filing contained some "factual inconsistencies" but asserted that

7. The existing rear yard is 12.75 feet deep. (Exhibit 34.)
8. A prior owner of the subject property constructed a one-story rear deck addition on the first floor of the dwelling.
9. As constructed, the deck is 16 feet wide, extending to both side lot lines, and approximately 12 feet, nine inches deep, extending from the rear wall of the dwelling to the rear lot line. A spiral stair installed in the southeast corner provides access to the ground level at the rear of the lot.
10. A railing, three feet high, extends around the sides and rear edges of the deck.
11. The lower portion of the deck is 8.5 feet above grade. The area below the deck is configured as one vehicle parking space accessible from the public alley.
12. The rear deck addition would increase lot occupancy to 90 percent. (Exhibit 34.)

the “scope of zoning relief requested remain[ed] unchanged.” (Exhibit 30.) The Office of Planning report noted that the Applicants’ original submission contained “errors in measurements and calculations on the site plan” and that the second revised referral memorandum was based on updated plans provided by the Applicants to the Zoning Administrator’s office. The Office of Planning identified certain typographical errors in the second revised referral memorandum but confirmed that the Applicants’ proposal would eliminate the rear yard setback and result in lot occupancy of 90 percent at the subject property. (Exhibit 40.) According to ANC 6C, the lot occupancy of the existing dwelling, without the deck addition, was 71 percent, taking into account an existing covered front porch. (Exhibit 49.) The Board based its deliberations on this application on the notes and computations provided by the Office of Zoning Administration in the second revised referral memorandum (Exhibit 34).

13. The rear deck addition would eliminate the rear yard setback. (Exhibit 34.)
14. The lots abutting the subject property to the north and south are improved with two-story row dwellings similar to the Applicants' dwelling. The rear walls of the three buildings are in alignment.
15. Both adjoining lots have stairs to grade in the rear yard and are bounded by solid wood fences along their side and rear lot lines.
16. Other properties in Square 773 fronting on Abbey Place are rectangular lots similar in size to the subject property and are improved with row dwellings similar to the Applicants' dwelling. Some of the nearby dwellings have rear deck additions.
17. Properties in Square 773 to the east of the subject property, across the alley from the Applicants' lot, are configured as rectangular lots and are improved with row dwellings that front on 4th Street. Several of the dwellings fronting on 4th Street, including those nearest to the subject property, contain rear deck additions.
18. The subject property and the majority of properties in Square 773 are located in a Residential Flat (RF) zone, RF-1.²

² A lot in the southwest corner of Square 733, with frontage on Abbey Place, L Street, and 3rd Street is located in a Mixed Use zone, MU-5A.

19. 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 to more than two principal dwellings. (Subtitle E § 101.1.) 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 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 house as anticipated in the Residential Apartment (RA) zone. (Subtitle E § 101.1.)
20. 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 Applicants seek an area variance from the lot occupancy requirements of Subtitle E § 210.1 and a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 207.1 to allow a new rear deck addition to an existing two-story attached principal dwelling in the RF-1 zone at 1151 Abbey Place, N.E. (Square 773, Lot 199). A maximum lot occupancy of 60

percent is permitted as a matter of right for a single-household dwelling (or flat) in the RF-1 zone. (Subtitle E § 210.1.) The Applicants proposed a lot occupancy of 90 percent at the subject property. A minimum rear yard of 20 feet is required in the RF-1 zone. (Subtitle E § 207.1.) The Applicants proposed no rear yard setback at the subject property. Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 6C, the Board concluded that the application did not meet the requirements for approval of the zoning relief requested.

Area variance. The Board is authorized under § 8 of the Zoning Act to grant a variance where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. *See* Subtitle X § 1000.1.

The Board has the flexibility to consider a number of factors when deciding whether to approve an application for a variance, including the weight of the burden of strict compliance, the severity of the variance requested, and the effect the proposed variance would have on the overall zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990). The Applicants’ proposal would require a significant degree of variance relief, given that

the planned deck would exceed the matter-of-right limit on lot occupancy by 50 percent and would exceed the 70 percent permissible by special exception by approximately 30 percent. The degree of relief requested in this application was not *de minimis* in nature. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1172 (D.C. 1990) (Board may consider whether a variance is *de minimis* in nature and whether for that reason a correspondingly lesser burden of proof rests on the applicant).

The Applicants contended that a variance from the lot occupancy requirements was “necessary due to the property’s non-conforming status” and the need for the “already constructed deck to fully utilize the property’s limited space, enhancing personal use” of the dwelling. According to the Applicants, the subject property faced an exceptional situation due to its lot area (“far below the typical RF-1 lot size”) and constraints created by the building area of the existing dwelling (occupying 63 percent of the lot), which limited “space for alternative solutions” and “by a 12-foot rear yard and an 8-foot elevated rear of the house, combined with the limited space of the rear alley,” which “make it impractical to fully utilize the rear yard.” The Applicants asserted that the deck would provide “essential access to the alley” that was feasible only via the existing deck and spiral stair and would “maximize[] outdoor space, enabling reasonable use of the property as envisioned by zoning regulations.” (Exhibits 5, 15, 30A.)

The Board did not determine that the subject property faced any exceptional situation or condition that would warrant approval of the requested area variance. Uniqueness may arise from a confluence of factors; the critical point is that the extraordinary or exceptional condition must affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d

1164, 1168 (D.C. 1990); see also, *Metropole Condominium Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016). In this case, the subject property is a lot with regular dimensions that did not exhibit any exceptional narrowness, shallowness, or shape. The change in grade between the front and rear of the existing dwelling is not unusual and did not create any exceptional topographical conditions. Similarly, the nonconforming lot area and lot width of the subject property are not exceptional features, especially in Square 733, where almost every lot in the square is nonconforming with respect to lot area and lot width.³ The Board credited the testimony of the Office of Planning that the subject property was “smaller than the current required lot area” for the RF-1 zone but was also “similar in size or larger than most other lots on this square or those in adjacent squares facing Abbey Place, NE or 4th Street, NE.” The Office of Planning countered the Applicants’ claim of an exceptional situation based on the slope exhibited at the subject property, noting that “[i]t appears that the [Applicants’] lot and others facing Abbey Place, NE slope down from the street to the alley, making the main floor of the house being substantially raised above grade and making the existing deck well above the grade at the rear, so it counts towards lot occupancy.” The Board credited the testimony of the Office of Planning that “[t]his is not a unique circumstance on the block, or throughout DC.”

The Board was not persuaded that the subject property faced an exceptional situation based on the Applicants’ alleged need for a first-floor deck. Generally, an applicant’s desire to use property for a certain use is not by itself sufficient to create an extraordinary or exceptional situation or

³ According to ANC 6C, the subject property was created in a subdivision undertaken in 1924 that “created Abbey Place [and] 36 lots with identical dimensions (16’ x 64.855’) on the east side of the new street and another 29 houses on the west side of the street with these same dimensions....All these lots retain these same dimensions today.” (Exhibits 49, 49A.)

condition under the zoning regulations. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972); *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1083 (D.C. 2016) (proposed use of a property, rather than the condition of the property itself, was not a sufficient basis to justify a conclusion that extraordinary conditions affected the property such that the owner should be relieved from general zoning restrictions applicable to other properties in the area). The Applicants did not cite any provision in the Zoning Regulations that requires “functional outdoor access from the main living level” of the dwelling or “ground level at the rear of the property [that is] viable for outdoor use” in light of the requirement or benefit of providing a vehicle parking space at the subject property (see Exhibit 30A). For the same reasons, the Board was not persuaded by the Office of Planning’s testimony that the subject property faced an exceptional situation in that “any viable or reasonable outdoor use of the rear of the property would be limited as access to the ground level or to a conforming deck (no more than 4 feet above grade) via a stair and landing in addition to the required off-street parking space would consume the entire rear yard.” According to OP, the Applicants “cannot utilize the rear yard in the same way that a typical RF-1 homeowner might,” but a deck at the first-floor level would allow the continued use of a parking area below the deck without creating a need for zoning relief from requirements for vehicle parking stated in the Zoning Regulations. (Exhibit 40.)

The Board was not persuaded that any perceived need to retain a vehicle parking pad at the subject property warranted approval of the requested area variance to allow 90-percent lot occupancy. A dwelling built before the enactment of a zoning requirement to provide vehicle parking would not be required to meet the current zoning requirement but would be permitted to remain without

providing parking as a nonconforming aspect. The Applicants and the Office of Planning did not demonstrate that the Zoning Regulations required the provision of a vehicle parking space at the subject property or cite any zoning provision that would require the retention of an existing vehicle parking space, whether required or not, or that would create the need for zoning relief for any proposal not to provide parking at the subject property. The Board agreed with ANC 6C that the parking pad at the subject property did not meet the minimum standards stated in the Zoning Regulations for the dimensions of a zoning-compliant vehicle parking space, given that the depth of the existing rear yard is less than 13 feet.⁴

The Board may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’.... Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990). In this case, the Board did not conclude that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicants as the owner of the subject property. The Applicants contended that the subject property contained “limited space for alternative solutions” for providing usable outdoor space, especially considering the 65-percent lot occupancy created

⁴ See, e.g., Subtitle C § 712.3(e) (“No parking space, whether required or not required, shall have dimensions less than the compact-sized dimensions specified in Subtitle C § 712.6) and Subtitle C § 712.3(f) (“No parking space, whether required or not required, shall have a length less than the full-sized dimensions specified in Subtitle C § 712.5 if the space is directly accessible from a public alley that is fifteen (15) feet or less in width.”). For a full-sized vehicle parking space, the minimum depth of a stall perpendicular to an aisle, in the case of a 90-degree parking angle, is 18 feet. (Subtitle C § 712.5.) For a compact vehicle parking space, the minimum depth of a stall perpendicular to an aisle, in the case of a 90-degree parking angle, is 16 feet. (Subtitle C § 712.6.) The Applicants’ parking pad was created in the rear yard between the rear of the existing dwelling and the rear lot line, which extends to a depth of 12 feet, eight inches. (Exhibit 41E.) The rear yard at the subject property is not large enough for a compact space, or for the full-sized space that would be required under the current zoning regulations due to the 15-foot width of the abutting alley.

by the existing dwelling, the eight-foot elevation of the rear of the first floor above the alley level, and that “access to the rear alley is only feasible through the existing deck and stairs.” According to the Applicants, the rear deck was needed because otherwise the Applicants would not be able to “utilize the rear yard in the same way that a typical RF-1 homeowner might,” where a first-floor deck would be “the only practical means of providing safe, usable, and accessible outdoor living space.” The Applicants contended that the rear deck was the only means to avoid “unreasonable hardship in fully utilizing the property” and to “maximize[] outdoor space, enabling reasonable use of the property as envisioned by zoning regulations.” (Exhibits 5, 15.)

The Board was not persuaded by the Applicants’ assertion that the Zoning Regulations require access to usable outdoor space. The Applicants’ expectations of a “typical RF-1 homeowner” and “reasonable use” did not account for the nonconforming aspects of their lot, especially its small size and the lot occupancy attributable to the existing dwelling. The subject property was legally established before the effective date of the Zoning Regulations but does not meet current zoning requirements, including with respect to lot dimensions, lot occupancy, and rear yard.⁵ A nonconforming lot is not required to meet current zoning requirements with respect to the areas of nonconformity but also might not provide the same attributes as a lot that meets the development standards stated in the 2016 Zoning Regulations.

⁵ The 2016 Zoning Regulations generally require a lot width of at least 18 feet and a lot area of at least 1,800 square feet for the creation of a new record lot containing a row building in the RF-1 zone. (Subtitle E § 202.1.) At 16 feet lot width and 1,038 square feet in lot area, the subject property is approximately 11 percent smaller in terms of lot width and 42 percent (762 square feet) smaller in terms of lot area than the current requirements.

Moreover, the Board agreed with ANC 6C that retention of the existing deck was not essential to the provision of usable outdoor space at the subject property (see Exhibit 49). Without a rear deck, the Applicants would have a rear yard at least 12 feet deep, which could be accessible via a stair from the first floor of the dwelling. As ANC 6C noted, uncovered stairs are excluded from the zoning definition of “building area” (see Subtitle B § 100.2) and so would not increase lot occupancy at the subject property and would not necessarily “consume the entire rear yard,” as claimed by the Applicants. Instead, as noted by ANC 6C, the spiral stair already installed with the existing, unpermitted deck provide access to the rear yard without occupying a large area.⁶

The Office of Planning identified a practical difficulty in that “there is no reasonable alternative to the owner to provide conforming usable outdoor open space to the rear of the house without removal of the existing parking space, which would require parking relief from the zoning regulations” and that the existing deck was installed by a prior owner and “reducing its size or removing the deck would be costly and a practical difficulty. (Exhibit 40.) For the reasons discussed above, the Board did not agree with the Office of Planning that removal of the existing parking pad would constitute a practical difficulty. Similarly, the Board did not agree with OP that costs incurred by the Applicants to correct a zoning violation by reducing the size or removing the existing deck, which was installed without a permit, would create a practical difficulty as a result of the strict application of the zoning regulations. Compare, *Dwyer v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 306, 308 (D.C. 1974) (hardship, if any, did not result from the location, situation, or condition of a property located in a residential zone but solely from

⁶ The proposed spiral stair would have required an area, approximately square, with sides that would not exceed 5.5 feet, as shown on the Applicants’ revised plat at Exhibit 41E.

applicant's acquisition of the property for commercial purposes without first having obtained the necessary change in zoning). The Applicants acknowledged that the plans approved by the Department of Buildings for a renovation project undertaken at the subject property by a prior owner did not include a rear deck addition. (Exhibit 51; Transcript of June 11, 2025 at 95, 123-124.) Nonetheless, a rear deck was constructed. The Applicants also acknowledged knowing about the zoning violation before buying the subject property, at least since DOB issued a stop-work order on the subject property "[w]hile the property was under contract, shortly before settlement." (Transcript of June 11, 2025 at 93-94; see also Exhibit 49, Transcript of June 11, 2025 at 107.) Under the circumstances, the Board determined that any "increased expense" incurred by the Applicants in connection with the rear deck addition were not a result of the strict application of the Zoning Regulations and did not create any practical difficulty that would warrant approval of the requested variance.

The Board was not persuaded that approval of the requested area variance to allow an increase in lot occupancy to 90 percent would not result in substantial detriment to the public good. The Applicants contended that the deck addition would not create negative impacts on neighboring properties but would align "with the character of the neighborhood" and would not encroach onto neighboring properties. (Exhibit 5.) The unsubstantiated claims in the application did not provide sufficient evidence to warrant a determination that the proposed deck would avoid creating objectionable conditions, especially related to privacy. *See, Tenleytown Preservation Ass'n v. District of Columbia Bd. of Zoning Adjustment*, No. 24-AA-1126 at 6-7, 9 (D.C. 2026) (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; Court "[did] not think a party's stated commitment during an agency proceeding

constitutes record evidence – parties routinely make unilateral assurances before agencies and courts, without them constituting ‘new evidence’; Court affirmed Board’s decision where – even if applicant’s representations to the Board constituted new evidentiary facts, rather than mere party assurances or illustrative comments to contextualize the applicant’s proposal at a hearing – they were not material to the Board’s decision, which “overwhelmingly focused” on evidence in the record) (internal quotation and citation omitted).

The Office of Planning report included conclusory assertions that the existing, unpermitted deck “has not proven to be a detriment to the public good” and was not visible from Abbey Place but was similar to a variety of existing decks along the alley, as well as the unfounded claim that the deck would allow “for retention of the required one parking space on the property” and therefore would not impede traffic movements along the alley.⁷ (Exhibit 40.) The OP report acknowledged that “views from the deck onto other properties are possible.” Photographs submitted by the Applicants illustrated the proximity and direct views into nearby dwellings associated with the unpermitted deck. Given the privacy impacts created by an elevated rear deck that would increase the lot occupancy at the subject property to 90 percent, the Board was not persuaded that the requested area variance from lot occupancy requirements could be approved without causing substantial detriment to the public good.

⁷ The letters in support cited by the Office of Planning (Exhibits 28, 31, and 35) expressed “support (or lack of objection) for the existing rear deck” and stated that the writer had “no concerns regarding the deck’s appearance, privacy, or impact on my property.” See also Exhibits 36, 38, and 39. The letters were submitted by the owners of the two lots abutting the subject property to the north and south as well as the owners of four properties to the east, across the alley from the subject property. However, all of the submissions in support of the application were brief form letters, identical except for the signatures and addresses, which did not provide a persuasive basis for a determination that approval of the requested zoning relief would not cause substantial detriment to the public good, especially due to concerns about privacy.

Similarly, the Board was not persuaded by the Applicants or the Office of Planning that approval of the requested variance would not substantially impair the purpose and intent of the zone plan. The Residential Flat zones are residential zones that provide for areas developed primarily with residential row buildings devoted to use as one or two principal dwellings, with limited conversions of buildings to more than two principal dwellings. The RF zones are intended, among other things, 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 Applicants asserted that approval of the requested area variance would “not undermine” the intent of the zoning regulations because the deck would support the “functional residential use” of the subject property, “maintain[] the residential character of the area,” and allow “the Applicants to make reasonable use of the property, consistent with zoning objectives.” (Exhibits 5, 15.) According to the Office of Planning, the proposed deck “would not appear to result in a building form, bulk height or use unanticipated in zoning, and should not appear as an over-development of the site on the block.” (Exhibit 40.)

The Board determined that approval of the requested area variance would substantially impair the intent of the zoning regulations because the deck addition would increase lot occupancy to 90 percent in the absence of any exceptional situation or practical difficulty that would warrant approval of the variance. The deck addition was not necessary for the residential use of the subject property consistent with the purpose of the RF-1 zone to provide for areas predominantly developed with residential row buildings containing one or two principal dwellings on small lots

because the subject property could continue in residential use as one or two dwellings on a small lot without a rear deck that would occupy the entire rear yard. Contrary to the testimony of the Office of Planning, the Board concluded that the proposed deck would result in a structure and use unanticipated in zoning, and would appear as an overdevelopment of the site. The deck addition would increase lot occupancy at the subject property – where the existing dwelling exceeds the maximum 60 percent permitted as a matter of right – to 90 percent, contrary to the intent of Subtitle C § 202.2 to prevent the enlargement of a nonconforming structure with an addition that would not conform to development standards and would increase an existing nonconforming aspect of the structure without meeting the requirements for relief from the applicable development standards.

Special exception. The Applicants requested a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 207.1 to allow a rear deck addition that would eliminate the rear yard setback at the subject property. 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, when, 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* Subtitle X § 901.2.)

Pursuant to Subtitle E § 5201.1, the Board is authorized to grant relief, as a special exception, from specific development standards to allow an addition to a principal residential building on a non-alley lot, subject to specific requirements. The eligible development standards include rear yards.

(Subtitle E § 5201.1(b).) Approval of the special exception requires a showing that the proposed addition would 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.)

The Board was not persuaded that approval of the requested special exception would not unduly affect the light and air available to neighboring properties. The deck would not be an enclosed addition and would have railings with openings that would not completely obstruct the light and air available to nearby properties. However, the deck would eliminate the rear yard at the subject property (besides increasing lot occupancy to 90 percent). The RF-1 zone requires a rear yard of at least 20 feet, in part to avoid adverse impacts on the light and air available to neighboring properties. The Applicants described the proposed deck as “carefully positioned, with appropriate setbacks, avoiding any encroachment or obstruction of views.” (Exhibits 5, 15, 30A.) The proposed deck addition would not have any setbacks from the side or rear lot lines of the Applicants’ lot and would occupy the entire rear yard except for the relatively small portion occupied by a spiral stair.

The Board determined that the proposed deck would unduly compromise the privacy of use and enjoyment of neighboring properties. The application contained conclusory statements that the design of the proposed deck “respects the neighborhood’s character, maintaining privacy and light

for adjacent homes,” noting that its “placement avoids intruding on neighbors’ privacy and does not obstruct light or air.” (Exhibits 5, 15, 30A.) However, the photographs submitted in the application illustrated the proximity of the rear deck to nearby dwellings and the views available from the deck into the windows of nearby dwellings, including the abutting row dwellings and other row dwellings fronting on Abbey Place as well as those located to the east across the alley. Although the dwellings to the east are located across a 15-foot-wide alley from the Applicants’ lot and appear to have rear yard setbacks, the Board was not persuaded, based on the evidence in the record, that the distances between the proposed deck and nearby dwellings were sufficient to avoid unduly compromising the privacy of use and enjoyment of neighboring properties. The Board credited the testimony of ANC 6C that the photographs submitted by the Applicants demonstrated that the rear deck would provide views “from an elevated position” into the windows of abutting dwellings “from as close as 12 [feet].” (Exhibit 49.) The Board did not agree with the Office of Planning that the “urban setting” of the subject property, where “views are possible,” provided a basis for approval of a special exception to allow a deck that would eliminate the rear yard setback at the subject property and provide “views towards decks and rear yards of the adjacent properties to the north and south and into properties across the alley,” as described by OP. (Exhibit 40.)

The Board did not determine that the proposed deck addition, together with the original building, as viewed from the alley would not substantially visually intrude on the character, scale, and pattern of houses along the alley frontage. The rear deck addition to the Applicants’ dwelling would not be visible from Abbey Place or other public way except for the alley abutting the subject property along its rear lot line. The Applicants asserted that the elevation of the planned deck was “similar to those on more than 80% of the homes on the block, ensuring compatibility...” and that

deck addition would be “consistent with the established pattern of rear decks along the alley [with a] design...in keeping with the character and scale of the surrounding properties.” (Exhibits 5, 15, 30A.) The Office of Planning testified that the Applicants’ proposed deck would not be “dissimilar to other decks along the alley,” where “[a] majority of the lots in the square and along the alley have open decks.” According to the Office of Planning, the nearby decks varied in terms of “heights, color, materials and sizes” where “some are enclosed, and some are above enclosed garages...[and] some property owners...have taken steps to secure their privacy and the privacy of others through privacy fences.” (Exhibit 40.) However, the Board agreed with the conflicting testimony provided by ANC 6C, who noted that the Applicants’ “own photographs show that there are essentially no other decks that go all the way out to the rear lot line” on the Abbey Place side of the alley (i.e. the same side as the Applicants’ lot), especially excluding one deck at “at the end of the block...that was constructed illegally.” (Transcript of June 11, 2025 at 116-117.) The Applicants submitted photographs of the rear of the subject property and nearby lots, both to the north and to the south (see Exhibits 10, 12, 24, 30A). The photographs reflected that few, if any, of the properties along the west side of the alley had rear deck additions, especially a deck extending to the rear lot line. Some lots, including both lots abutting the subject property, appear to have exterior stairs leading from the first-floor level down to the level of the rear yard. Many of the nearby rear yards are enclosed by solid fences, at least one with roll-up doors. Rear deck additions appear more common at properties along the east side of the alley but the application did not provide any information about those lots.⁸

⁸ The application did not indicate whether any of the nearby deck additions, whether along the east or west side of the alley, were nonconforming structures. A review of past zoning decisions involving properties located, like the Applicants’ lot, in Square 733 on the east side of Abbey Place, did not produce applications in which the Board granted relief from rear yard requirements to allow deck additions that would extend to the rear lot line. Instead, the prior applications generally involved smaller rear additions on lots the same size as the Applicants’ lot and generally

Review standards. Approval of a special exception requires a determination by the Board that the special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, would not tend to affect adversely, the use of neighboring property

requested special exceptions or variances requiring smaller degrees of relief than the variance requested in this application. See, Application No. 13045 (Canady; November 8, 1979) (Board granted area variances to allow a one-story rear addition, eight feet deep by 16 feet wide, to an existing two-story row dwelling at 1109 Abbey Place N.E. (Lot 178); the lot was 16 feet wide by approximately 64 feet deep, and the addition required variances of 17.31 feet (three percent) from the lot occupancy requirement and 3.15 feet (15.75 percent) from the rear yard requirement; Application No. 13046 (John Williams; November 8, 1979) (Board granted area variances to allow a one-story rear addition, eight feet deep by 16 feet wide, to an existing two-story row dwelling in the R-4 zone at 1129 Abbey Place, N.E. (Lot 188); the applicant's lot was 16 feet wide and approximately 64 feet deep, and the addition required variances of 17.31 feet (three percent) from the lot occupancy requirement and 3.15 feet (15.75 percent) from the rear yard requirement; Application No. 18447 (Karen Slachetku; January 16, 2013): Board granted special exceptions from requirements for lot area, lot width, lot occupancy, and rear yard to allow a rear deck addition to an existing row dwelling in the R-4 zone at 1139 Abbey Place, N.E. (Lot 193); according to the report of the Office of Planning, the applicant proposed a rear deck 7.5 feet deep by 16 feet wide on a lot that was 16 feet wide with a lot area of 1,038 square feet, resulting in lot occupancy of 62 percent (60 percent existing) and a rear yard of 18 feet (25 feet, eight inches existing); Application No. 18768 (Shad A. Gohn; June 10, 2014): Board granted a special exception to allow a rear deck and pergola addition, not meeting requirements for lot occupancy or rear yard, to an existing two-story row dwelling in the R-4 zone at 1162 Abbey Place, N.E. (Lot 216); according to the OP report, the applicant's lot was 16 feet wide with a lot area of 1,038 square feet, and the addition would result in lot occupancy of 65 percent (57 percent existing) and a rear yard of 14.75 feet (20.5 feet existing); Application No. 19222 (Robert Bailey; March 24, 2016) (Board granted special exceptions to allow rear additions not meeting requirements for minimum lot width, lot occupancy, rear yard, and enlargement of a nonconforming structure, to an existing two-story row dwelling in the R-4 zone at 1105 Abbey Place, N.E. (Lot 176); according to the OP report, the applicant's lot was 16 feet wide with a lot area of 1,037.38 square feet, and the new construction (a two-story plus basement rear addition and a 38-square-foot deck on the first floor) would result in lot occupancy of 69 percent (65 percent existing) and a rear yard of 13 feet, 6.5 inches (16 feet, eight inches existing); Application No. 19622 (Mark Rivetti; January 12, 2018) (Board granted special exceptions from requirements for lot occupancy and rear yard to allow a new third floor and a three-story rear addition (replacing an existing one-story rear addition) to an existing two-story row dwelling in the RF-1 Zone at 1121 Abbey Place N.E. (Lot 184); according to the OP report, the applicant's lot was 16 feet wide and 64.86 feet deep, with a lot area of 1,037 square feet, and the new construction would result in lot occupancy of 64 percent (64 percent existing) and a rear yard of 12 feet, 11 inches (12 feet, 11 inches existing); Application No. 19840 (Julie Qureshi Hummel; November 5, 2018) (Board granted special exceptions from requirements for lot occupancy, rear yard, enlargement of a nonconforming structure, and vehicle parking to allow a two-story rear addition, with a first-floor deck and stairs to grade, to an existing two-story row dwelling for use as a flat in the RF-1 zone at 1119 Abbey Place, N.E. (Lot 183); according to the OP report, the applicant's lot was 16 feet wide, with a lot area of 1,038 square feet, and the new construction (replacing an existing one-story rear addition) would result in lot occupancy of 69.74 percent (66.76 percent existing) and a rear yard of 17.35 feet (16.79 feet existing); and Application No. 16168 (Melvold L. Sloan and Phillip L. Portlock; March 28, 1997) (Board denied an application for variances from requirements for lot occupancy and rear yard to allow an addition, 14 feet wide by 16 feet long, to an existing row dwelling in the R-4 zone at 1161 Abbey Place N.E. (Lot 204); Board found no uniqueness to the Applicants' lot that would distinguish it from neighboring properties (1,037.68 square feet of land area, "a rectangular piece of land similar to the other lots in the Square") and no practical difficulty caused by the application of the zoning regulations because the applicants had "[a]nother, less convenient alternative" that did not require zoning relief.

in accordance with the Zoning Regulations and Zoning Maps, and would meet the specific requirements specified in the Zoning Regulations for approval of the requested relief. (Subtitle X § 901.2.) For the reasons discussed above, the Board determined in this case that the application did not demonstrate consistency with the general purpose and intent of the Zoning Regulations and Map or meet the specific requirements for approval of the requested special exception. The application included unsubstantiated claims about a lack of adverse impacts on the use of neighboring properties, which were disputed by ANC 6C, and instead emphasized the Applicants' perceived need for the proposed rear deck to "[enhance their] ability to make full use of the property" and to "[support their] reasonable use of the property by providing access to the rear and usable outdoor space." (Exhibits 5, 15.) The Board did not agree with the Office of Planning that the proposed deck, which would occupy the entire rear yard at the subject property at an elevation of eight feet above grade, "would not result in a structure that would be inconsistent with the RF-1 Zone in terms of bulk, use, or height." (Exhibit 40.)

For the reasons discussed above, the Board concluded that approval of the application would tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The Board was not persuaded by the Applicants' conclusory assertions that the proposed deck addition would not create adverse impacts related to light, air, and privacy, especially considering the size and elevation of the planned deck as well as its proximity to nearby dwellings.

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 did not agree with the Office of Planning’s recommendation to approve the application.

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 6C voted not to support the application, stating issues and concerns including with respect to the degree of variance relief requested and adverse impacts associated with the proposed deck. For the reasons discussed above, the Board agreed with ANC 6C that the application should be denied.

Exceptions to the Proposed Order. Because a majority of the Board members participating in the issuance of this order did not personally hear the evidence in this application, a proposed order was provided to the parties to afford them an opportunity to present written exceptions, in accordance with D.C. Official Code § 2-509(d).

Based on the findings of fact and conclusion of law, the Board concluded that the application did not meet the burden of proof for an area variance from the lot occupancy requirements of Subtitle E § 210.1 or for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 207.1 to allow a new rear deck addition to an existing two-story attached principal dwelling in the RF-1 zone at 1151 Abbey Place, N.E. (Square 773, Lot 199). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 4-0-1 (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Gwen M. Wright to DENY; one Board seat vacant)

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:

PURSUANT TO 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.

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.