

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

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**Application of Harold and Danielle Bulger**

Premises: 3401 Lowell Street, N.W.  
Square 2089, Lot 828  
New Case No. 21387  
Former Case No. 20205

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**STATEMENT OF THE APPLICANT**

**I. INTRODUCTION**

This Statement is submitted on behalf of Harold and Danielle Bulger (the “Applicants”) in support of Application No. 21387 and their request for renewal of the relief previously granted in *BZA Order No. 20205* concerning 3401 Lowell Street, N.W. (the “Property”). The architect represented the prior owner as Applicant of record and now serves as the Applicants’ agent in this proceeding.

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**II. PROCEDURAL HISTORY**

1. On July 1, 2020, the Board of Zoning Adjustment (“Board”) issued *Order No. 20205* approving relief to allow a two-story rear addition to the existing detached single-family dwelling located at 3401 Lowell Street, N.W. Specifically, the Board granted:
  - A special exception under Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.7;
  - A special exception under Subtitle D § 5201 from the pervious surface requirements of Subtitle D § 308.1; and
  - A waiver under Subtitle U § 253.10 from the accessory apartment requirements of Subtitle U § 253.7(c).
2. The Board’s approval was conditioned on maintaining a four-foot western side yard and providing a landscaped buffer of tall, narrow trees along the western property line.
3. The Board found that the proposed relief:

- Would not unduly affect the light and air available to neighboring properties;
  - Would not unduly compromise the privacy of neighboring properties; and
  - Would not substantially intrude upon the character, scale, or pattern of houses in the Cleveland Park Historic District.
4. On April 29, 2022, the District of Columbia Court of Appeals affirmed *Order No. 20205* in full.
  5. The Board's Order specifies that it is valid for two years unless the applicant files plans for a building permit or requests a timely extension. Due to financial hardship, the prior owner was unable to proceed. The Applicants now seek granting of the Application to carry forward the identical design previously approved.<sup>1</sup>

## Enclosures

For the Board's reference, attached are:

- Exhibit A: *BZA Order No. 20205* (July 1, 2020);
- Exhibit B: Opinion of the District of Columbia Court of Appeals affirming *Order No. 20205* (April 29, 2022); and
- Exhibit C: A Proposed Order Re. Application No. 21387.

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## III. RELIEF REQUESTED

The Applicants request granting of their Application, or, in the alternative, renewal of *Order No. 20205*, limited to the following relief:

- A special exception under Subtitle D § 5201 from the side yard requirements of Subtitle D § 208.7 (Previously D § 206.7); and
- A special exception under Subtitle D § 5201 from the pervious surface requirements of Subtitle D § 211.1 (Previously D § 308.1).

In consultation with the Office of Zoning, and to expedite this proceeding, the Applicants have withdrawn the prior request for a waiver under Subtitle U § 253.10 relating to an accessory apartment entrance.

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<sup>1</sup> For clarification, the Architect's filing references prior neighbor outreach from the last iteration of this project; however, Applicants are engaged in continuous outreach and engagement with neighbors near the property.

#### IV. RENEWAL IS APPROPRIATE

Pursuant to Subtitle Y § 705.1, an order may be renewed where the relief remains necessary, and no material facts have changed. Although the original approval expired, the Applicant demonstrates good cause for the extension, or granting of the Application.

1. **Relief remains necessary.** The Property remains subject to the same dimensional constraints that warranted approval in 2020. The approved addition cannot be constructed without the same side yard and pervious surface relief.
2. **No material change in facts.** The surrounding context, zoning, and historic district protections remain unchanged. The Applicants propose to proceed with Plans reflecting the same identical exterior design and physical footprint as previously approved by the Board, ANC 3C, and the Historic Preservation Review Board.
3. **Good cause shown.** The prior owner was unable to advance the project due to financial hardship. The Applicants are prepared to proceed promptly and have engaged the same architect to ensure continuity.
4. **Merits already affirmed.** The Board's original findings were comprehensive and affirmed by the D.C. Court of Appeals, which determined that the Board properly exercised its discretion in granting the relief.

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#### V. CONCLUSION

The Board has already determined that the requested relief satisfies the applicable standards, and that conclusion was upheld by the District of Columbia Court of Appeals. Granting of the Application will simply allow Applicants to implement plans reflecting the identical exterior design and physical footprint as previously approved, and will restore and enhance a contributing property in the Cleveland Park Historic District that has long been neglected.

For these reasons, the Applicants respectfully request that the Board grant Application No. 21387.

Respectfully submitted,

Harold and Danielle Bulger, *Applicants*

Dated: September 3, 2025

# EXHIBIT A

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



**Application No. 20205 of Christopher Cahill**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201, from the side yard requirements of Subtitle D § 206.7 and the pervious surface requirements of Subtitle D § 308.1, and under Subtitle U § 253.10 from the accessory apartment requirements of Subtitle U § 253.7(c), to construct a two-story rear addition and to permit an accessory apartment with an entrance on a street facing façade in an existing detached principal dwelling in the R-1-B zone at premises 3401 Lowell Street, N.W. (Square 2089, Lot 828).

**HEARING DATES:** April 1, 2020 and June 24, 2020<sup>1</sup>  
**DECISION DATE:** July 1, 2020

**DECISION AND ORDER**

Christopher Cahill (the “**Applicant**”) filed an application (the “**Application**”) with the Board of Zoning Adjustment (the “**Board**”) on November 22, 2019, requesting the following relief from the requirements of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified):

- A special exception pursuant to Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.7,
- A special exception pursuant to Subtitle D § 5201 from the pervious surface requirements of Subtitle D § 308.1, and
- A waiver pursuant to Subtitle U § 253.10 from the accessory apartment requirements of Subtitle U § 253.7(c),

to construct a two-story rear addition and to permit an accessory apartment with an entrance on a street facing façade, in an existing detached principal dwelling for Lot 828 in Square 2089, with an address of 3401 Lowell Street, N.W. (the “**Property**”) and located in the R-1-B zone. For the reasons explained below, the Board voted to **APPROVE** the Application.

**FINDINGS OF FACT**  
**BACKGROUND**

**PARTIES**

1. In addition to the Applicant, Advisory Neighborhood Commission (“**ANC**”) 3C, the “affected” ANC per Subtitle Y § 101.8, was automatically a party in this proceeding pursuant to Subtitle Y § 403.5.

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<sup>1</sup> This case was tentatively placed on the Board’s expedited review calendar for the public meeting of February 26, 2020. On February 7, 2020, the Office of Zoning removed the case from the expedited review calendar and rescheduled it for a public hearing on April 1, 2020, pursuant to Subtitle Y § 401.7(a). (Exhibit 28.) The case was subsequently postponed due to the COVID-19 public health emergency and rescheduled for a virtual hearing on June 24, 2020.

2. James and Carol Hulme, the owners of 3210 34<sup>th</sup> Street, N.W., the lot abutting the north side of the Property (the “**North Abutters**”), filed a request for party status in opposition on June 20, 2020. (Exhibit [“**Ex.**”] 40.)
3. At the June 24, 2020, public hearing, the Board granted the North Abutter's party status request. (BZA Public Hearing Transcript of June 24, 2020 [“**June 24 Tr.**”] at 210.)

**NOTICE**

4. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“**OZ**”) sent notice of the Application and the originally scheduled February 26, 2020 meeting on January 6, 2020 by letter (Ex. 15-27) to:
  - The Applicant;
  - ANC 3C;
  - The Single Member District (“**SMD**”) Commissioner for ANC 3C09 and the Office of ANCs;
  - The Office of Planning (“**OP**”);
  - The District Department of Transportation (“**DDOT**”);
  - The National Park Service (“**NPS**”);
  - The Councilmember for Ward 3;
  - The Chairman of the Council;
  - The At-Large Councilmembers; and
  - The owners of all property within 200 feet of the Property.
5. OZ also published notice of the February 26, 2020 public meeting in the January 3, 2020, *D.C. Register* (67 DCR 145) as well as through the calendar on OZ’s website.

**THE PROPERTY**

6. The Property is located on the northwest corner of Lowell and 34<sup>th</sup> Streets, N.W. and is bounded:
  - To the north by the North Abutters;
  - To the east by 34<sup>th</sup> Street, N.W.;
  - To the south by Lowell Street, N.W., the “front” of the Property; and
  - To the west and south by 3403 Lowell Street, N.W. (the “**West Abutters**”). (Ex. 9, 46.)
7. The Property is located at the rise of a hill so that it is higher than adjacent properties. (Ex. 46, June 24 Tr. at 223.)
8. The Property is nonconforming for lot width, measured on its Lowell Street frontage, at 40 feet, ten feet less than the minimum required by Subtitle D § 302.1. (Ex. 30, 46.)
9. The West Abutters’ house is shielded from the Property by a side yard that is larger than normal for the neighborhood due to a property swap between the former owners of the West Abutters and the Property. The shared property line includes a stand of mature trees

- that casts significant shadows. (Ex. 8, 9, 30, 34, 46A1 at Sheets SP1 and SP2; and June 24 Tr. at 222.)
10. The rear of the Property wraps around the northern rear yard of the West Abutters with a strip of land that separates the West and North Abutters. (Ex. 9.)
  11. The Property is improved with a detached, two-story, single family dwelling with a finished attic and cellar (the “**Building**”), a swimming pool and related structures in the strip of land between the West and North Abutters, and a driveway with a curb cut on 34<sup>th</sup> Street, N.W., along the northern rear lot line shared with the North Abutters. (Ex. 30.)
  12. The existing swimming pool area measures approximately 771 square feet including an equipment shed and impervious pool deck surrounded by a wall. (Ex. 9, 30.)
  13. The Building has windows and an open two-story porch facing into the rear yards of the North and West Abutters. (Ex. 46, Sheet A0.4; June 24 Tr.at 282-284.)
  14. The Building has been “vacant for years with minimal upkeep to the property and none for the Building [which is] in need of mold remediation and extensive renovations.” (Ex. 30.)
  15. The Property’s two existing side yards are both nonconforming with the requirements of Subtitle D § 206.2 to have two eight-foot side yards for detached buildings in the R-1-B zone (Ex. 9, 30, 46):
    - Eastern Side Yard: Zero-foot side yard created by the past widening of 34<sup>th</sup> Street, N.W., which left the Building’s eastern side porch projecting into the 34<sup>th</sup> Street, N.W. public right of way (Ex. 9, 30, 46; June 24 Tr. 223); and
    - Western Side Yard: 2.9-foot wide side yard.
  16. The Property has a nonconforming pervious surface percentage of 40.2%, less than the 50% minimum required in the R-1-B zone by Subtitle D § 308.1. (Ex. 30.)
  17. The development in the immediate vicinity of the Property includes detached one family dwellings in a variety of size and architectural styles, John Eaton Elementary School, and Cleveland Park Church. (Ex. 9, 34, 40, 46, 47; June 24 Tr.at 227-230.)
  18. The Property is located in the Cleveland Park Historic District.
  19. The Property is located in the R-1-B zone, intended “to provide for areas predominantly developed with detached houses on moderately sized lots,” with the purpose to:
    - “Protect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes”; and
    - “Stabilize the residential areas and promote a suitable environment for family life.” (Subtitle D §§ 300.1 and 300.3.)

**THE APPLICATION**

**THE REAR ADDITION**

20. The Application proposes to renovate the Building, including replacing the existing two-story open rear porch with a larger three-story rear addition (the “**Rear Addition**”). (Ex. 30, 46.)
21. The Application proposes to provide a 25.2 foot rear yard, more than the 25-foot minimum required by Subtitle D § 306.1. (Ex. 9.)
22. The Application proposes to extend the existing nonconforming side yards (Ex. 9, 30, 46):
  - Eastern Side Yard – extend the existing nonconforming zero-foot side yard along the entire 21.9-foot length of the Rear Addition to the rear of the Property; and
  - Western Side Yard – extend the existing nonconforming 2.9-foot side yard by increasing it to four feet along most of the Rear Addition, except for a six-foot long, one-story fireplace projection bay that is proposed to have a three-foot side yard.
23. The Application proposes to reduce the Property’s pervious surface nonconformity by eliminating approximately 1,110 square feet of existing impervious surface that will increase the Property’s pervious surface from 40.2% to 44.1%, which would remain less than the minimum 50% required by Subtitle D § 308.1. (Ex. 9, 46.)
24. The Application proposes to add a second supplementary “catering kitchen” for private parties in the Building’s cellar level. This second kitchen constitutes evidence of a second dwelling unit in the Building’s cellar level, which is permitted in the R-1-B zone as an accessory apartment subject to the requirements of Subtitle U § 253. (Ex. 9, 30.)
25. The Rear Addition proposes an entrance to the cellar under the existing eastern side porch facing 34<sup>th</sup> Street, N.W., from which it will not be directly visible. (Ex. 9, 46.)

**ZONING RELIEF REQUESTED**

26. The Application requested the following relief required for the Rear Addition (Ex. 9, 11):
  - A special exception pursuant to Subtitle D § 5201 from the requirements of Subtitle D § 206.7 to not reduce or eliminate an existing nonconforming side yard and to maintain at least a five-foot side yard, to authorize:
    - The extension of the existing nonconforming zero-foot eastern side yard along 34<sup>th</sup> Street, N.W. for the length of the Rear Addition; and
    - The extension of the existing nonconforming 2.9-foot western side yard but increased to the proposed three- and four-foot substandard side yard;
  - A special exception pursuant to Subtitle D § 5201 from the pervious surface requirements of Subtitle D § 308.1 to provide 44.1% pervious surface on the Property instead of the 50% minimum required in the R-1-B zone; and
  - A waiver pursuant to Subtitle U § 253.10 from the accessory apartment requirements of Subtitle U § 253.7(c) to permit an additional entrance for the accessory apartment to be located on a wall of the house facing a street.

**APPLICANT'S JUSTIFICATION FOR RELIEF**

**Side Yard Relief**

***Subtitle E § 5201.3(a) – No Undue Effects on Light and Air***

27. The Application asserted that the requested side yard relief would not unduly affect the light and air available to the neighboring properties because:

- While the Rear Addition will extend the existing nonconforming side yard conditions of the Building, it will not increase the nonconforming side yards on either the east or west sides, and will in fact provide a greater side yard along the western property line;
- The West Abutter includes a large setback from the shared property line;
- The North Abutter will be separated from the Rear Addition by a conforming rear yard, and will be further separated by the North Abutter's driveway; and
- The Rear Addition will otherwise comply with the height and bulk requirements of the R-1-B zone.

***Subtitle E § 5201.3(b) – No Undue Compromise of Privacy***

28. The Application asserted that the requested side yard relief would not unduly compromise the privacy of use and enjoyment of the neighboring properties because:

- The requested side yard relief along the Property's western lot line would provide for a greater side yard setback than currently exists at the front of the Property and is only a foot less than the minimum five-foot side yard required by Subtitle D § 206.7;
- The Rear Addition is separated and screened from the West Abutter's home by the large side yard on the West Abutter's property and the existing line of mature evergreen trees along the shared property line; and
- The Rear Addition would continue the existing nonconforming side yard condition along the Property's eastern lot line and would continue to be separated from nearby properties by 34<sup>th</sup> Street, N.W.

***Subtitle E § 5201.3(c) – No Substantial Visual Intrusion***

29. The Application asserted that the Rear Addition, together with the Building, will not visually intrude upon the character, scale, or pattern of houses on Lowell and 34<sup>th</sup> Streets, N.W., because:

- Nonconforming side yards are not uncommon within the block and within the Cleveland Park neighborhood as a whole;
- The Rear Addition is designed to be slightly smaller than the Building and to comply with the development standards of the R-1-B zone except for the side yard relief; and
- The Addition has been revised several times during its review by the ANC, the Cleveland Park Historic Society's Architectural Review Committee, and the Historic Preservation Review Board ("HPRB"), resulting in a project that fits with the historic fabric of the neighborhood.

***General Special Exception Standards for all Requested Relief (Subtitle X § 901.2(a) and (b))***

30. The Application asserts that the requested side yard relief meets the general special exception requirements because it would be in harmony with the purpose and intent of the Zoning Regulations and not adversely affect the neighboring properties since:

- The Property's nonconforming lot width and side yards limit the ability to expand the Building while maintaining the existing visual character of the Building;
- The Rear Addition maintains a conforming rear yard abutting the North Abutters and is bounded by Lowell and 34th Streets, N.W., to the east and south;
- The Rear Addition conforms to OP's Historic Standards, and has undergone significant changes in response to comments from HPRB; and
- The Rear Addition includes a landscaping plan that will enhance the open area abutting Lowell and 34<sup>th</sup> Streets, N.W., that will help screen the Rear Addition.

**Pervious Surface Relief – Special Exception**

31. The Application asserted that the requested pervious surface relief meets the general special exception requirements because (Ex. 30):
- The Rear Addition will reduce the existing nonconformity by increasing the amount of pervious surfaced by 3.9% to 44.1%, closer to the minimum 50% required and therefore in harmony with the purpose and intent of the Zoning Regulations; and,
  - The relief will not adversely affect the neighboring properties because the Rear Addition proposes an extensive landscaping plan, and the increased pervious surface will help reduce any adverse effects resulting from stormwater runoff.

**Waiver from Accessory Apartment Requirements - Subtitle U § 253.10**

32. The Application asserted that it met the criteria for the requested waiver from the matter-of-right accessory apartment prohibition of Subtitle U § 253.7(c) from locating a secondary entrance on a wall of the house facing a street because:
- The Property will be owner-occupied;
  - The Property is eligible for the waiver because it is not located in the R-19 or R-20 zone; and
  - The Rear Addition will maintain a single household residential appearance and character for the Building because the secondary cellar entrance:
    - Proposes to meet the intent of this prohibition by its location in the covered areaway under the existing side porch so that it is shielded from view from 34<sup>th</sup> Street, N.W.;
    - Is the best location for an entrance to the cellar level since the alternative locations would likely result in greater impacts due to the Property's location on a corner lot, the existing nonconforming side yard on the western property line, and the desire to provide a compliant rear yard and to provide as much pervious surface as possible.

**APPLICANT'S SUBMISSIONS AND TESTIMONY**

33. The Applicant submitted detailed plans, elevations and photographs, detailing the Rear Addition and its relation to the surrounding properties. (Ex. 46A1-A2.)

**Public Hearing Testimony**

34. At the June 24, 2020, public hearing, the Applicant presented images of the plans of the Rear Addition and photographs showing the present conditions of the Property and neighboring properties (Ex. 46A1, 46A2) and testified that:

- The Applicant accepted the ANC Report’s proposed conditions (Finding of Fact 38, below) to provide a minimum four-foot western side yard and a landscape buffer with tall narrow trees to shield the West Abutters from the Rear Addition (June 24 Tr. at 219);
- The Rear Addition’s design underwent over thirty changes in response to comments made by OP, HPRB, and neighbors during HPRB’s review of the Rear Addition (June 24 Tr. at 211);
- The Rear Addition had been discussed in at least eight public meetings and hearings related to the HPRB application and ANC review, and none of the opponents had appeared at these public opportunities to raise their current objections (June 24 Tr. at 217);
- The Rear Addition’s design minimized impacts on the North Abutters by maximizing the width between the Property’s eastern and western lot lines to preserve as much of the rear yard as possible as a buffer between the Rear Addition and the North Abutters, with landscaping improvements proposed along the shared lot line between the Property and the North Abutters (June 24, Tr. at 247-248); and
- The images in the record at Exhibit 46, Sheet A0.4, rebut the North Abutters’ claims that the addition would unduly affect their privacy, because they show the current views from the Building’s windows into the North and West Abutters. (June 24 Tr.at 282-284.)

## **RESPONSES TO THE APPLICATION**

### **OP REPORT AND TESTIMONY**

#### **OP Report**

35. OP submitted a March 18, 2020, report (Ex. 34, the “**OP Report**”) that recommended approval of the Application based on OP’s conclusions that:
- The Rear Addition’s proposed substandard side yards:
    - Would not unduly affect the light and air available to neighboring properties because:
      - The impact of the proposed extension of the nonconforming western side yard would be limited on the West Abutter because proposed side yard is larger than the existing nonconforming western side yard and the West Abutter is significantly set back from the property line and has an existing line of mature trees along the shared property line; and
      - The impact of the proposed extension of the nonconforming eastern side yard on the property across 34<sup>th</sup> Street, N.W. to the east would be minimal due to the intervening public right of way;
    - Would not unduly compromise the privacy of neighboring properties because the significant separation from the West Abutter and the existing landscaping along the shared side property line would provide additional privacy between the properties;<sup>2</sup>
  - The Rear Addition was designed to not visually intrude upon the character and scale of the neighborhood, was reviewed by OP’s Historic Preservation division, and was approved by HPRB in August 2019;
  - The requested pervious surface relief lessens the existing nonconforming 40.2% pervious surface, although it is still short of the 50% minimum required; and

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<sup>2</sup> The OP Report noted that the West Abutters signed a petition in support of the Rear Addition. (Ex. 31.) The West Abutters subsequently submitted a letter opposing the Application. (Ex. 49.)

- The requested waiver for a secondary entrance for an accessory apartment on a street-facing wall “should not negatively impact the single household residential appearance and character of the surrounding neighborhood in the R-1-B zone [because the] proposed entrance would be located partially below grade via an areaway and would be screened from the street by landscaping.”

**Public Hearing Testimony**

36. At the public hearing, OP testified in support of the Application and responded to the Board’s questions as follows:

- The Rear Addition would not unduly affect the light and air available to neighboring properties (Subtitle D § 5201.3(a)) because it is south of the North Abutters and because it provided a full 25-foot rear yard setback (June 24 Tr. at 251-256); and
- The Rear Addition would not substantially visually intrude upon on the character, scale, and pattern of the neighboring houses (Subtitle D § 5201.3(c)) because:
  - The Rear Addition’s frontage along 34<sup>th</sup> Street, N.W., would not be irregular or impermissibly encroach on the public right of way;
  - The existing structures along the 34<sup>th</sup> Street, N.W., right of way were varied in scale, massing, and uses, including a large school building and different sizes of residential structures;
  - The Rear Addition would be one foot narrower and slightly lower than the Building, twelve feet lower than the 40-foot maximum height permitted in the zone, and in conformity with the rear yard and lot occupancy requirements;
  - “From an urbanist’s perspective”, the Property’s corner location could support a larger building than those located mid-block; and
  - The Rear Addition had a residential appearance that would match the character of the neighborhood.

**DDOT REPORT**

37. DDOT submitted a February 10, 2020, report (Ex. 29 , the “**DDOT Report**”) stating no objection to the Application based on DDOT’s determination that the Rear Addition would not result in any “adverse impacts on the District’s transportation network.”

**ANC REPORT**

38. ANC 3C submitted a written resolution (Ex. 44, the “**ANC Report**”), approved by the ANC at a duly noticed and scheduled public meeting on June 10, 2020, at which a quorum was present, stating that the ANC was concerned about the potential impacts on neighboring properties but had no objection to the requested relief because:

- The Rear Addition’s extended nonconforming eastern side yard:
  - Did not adjoin any neighboring property because it borders the 34<sup>th</sup> Street, N.W. public right of way;
  - Would be consistent with the existing pattern of houses that have both front and side elevations facing 34<sup>th</sup> Street, N.W.;
  - Had been approved by HPRB; and
  - Would not adversely affect public safety per DDOT’s determination;

- The Rear Addition’s extended nonconforming western side yard would not adversely impact the West Abutters provided the Board imposed the ANC’s proposed conditions that:
  - The Applicant should maintain at least a four-foot side yard; and
  - The Applicant should plant and maintain a landscape buffer featuring tall, narrow trees to break up the length of the addition and provide privacy;
- The ANC had no objection to the requested pervious surface relief; and
- The additional entrance on the cellar level facing 34th Street, N.W., would be shielded by an areaway.

**PARTY IN OPPOSITION - NORTH ABUTTERS**

**Party Status Submission**

39. The North Abutters’ party status submission (Ex. 40) included photographs of the current conditions on the Property, on the North Abutters' property, and on 34<sup>th</sup> Street, N.W., as well as diagrams of the Rear Addition, and argued that unless it was reduced in scale the Application should be denied because:

- The Rear Addition would unduly affect the North Abutters' light, air, privacy, and enjoyment of their property because it would be too close to the North Abutters' swimming pool, located along the Property's northern property line shared with the North Abutter;
- The Rear Addition would visually intrude on the character, scale, and pattern of houses along the subject street frontage unless substantially reduced;
- The Application did not sufficiently justify the Rear Addition's lack of a side yard setback along 34<sup>th</sup> Street, N.W.; and
- The Application proposed to introduce or expand a nonconforming use as a special exception contrary to Subtitle D § 5201.5.

**Public Hearing Testimony**

40. The North Abutters testified at the public hearing in opposition, arguing that the Rear Addition:

- Would be out of scale with the existing neighborhood and would intrude upon the pattern and scale of existing development by creating a “canyon effect” in conjunction with the renovations occurring to the Eaton School across the street (June 24 Tr. at 226-228);
- Would unduly affect the light, air, and the privacy of use of the North Abutters’ Property, particularly their swimming pool located along the shared property line (June 24 Tr. at 232-235); and
- Could be reduced to more closely comply with the Zoning Regulations while still affording the Applicant more space. (June 24 Tr. at 240-242.)

**PERSONS IN SUPPORT**

41. The Applicant submitted a petition in support signed by several neighbors in response to the Applicant’s submission to the Architectural Review Committee of the Cleveland Park Historical Society. (Ex. 31.)

**PERSONS IN OPPOSITION**

42. The West Abutters, Constance Pendleton and Jason Gross, submitted a letter in opposition (Ex. 49) to the Application asserting that:
- The Application inaccurately stated that:
    - The neighbors had “signed off on ‘every aspect of the project’” and/or had expressed support for the design because the design had changed greatly from what was originally proposed; and
    - The West Abutters had mature trees along the shared side lot line with the Property, because these trees had all come down over the past year due to age, storms, and drought;
  - The West Abutters did not support the Rear Addition’s final design because:
    - It would block light and air, cast shade and promote mold and mildew, create dangerous conditions from construction and demolition debris, and vent the new gas fireplace onto the West Abutters; and
    - Its size, the location of its windows, pool, and patio and lack of adequate screening would adversely affect the West Abutters’ privacy of use and enjoyment of their property;
  - The Rear Addition should be changed to:
    - Reduce its depth to no more than 50% of the depth of the Building (without the now demolished two-story rear porch);
    - Increase the side yard on the Property’s western lot line to at least five feet, if not to the required eight-foot side yard;
    - Remove the third floor, including the proposed porch/balcony facing the West and North Abutters; and
    - Maintain the Building’s existing side yard along 34<sup>th</sup> Street, N.W., as measured from the second floor walls, not the first and cellar floor porch.
43. At the public hearing, the West Abutters presented video evidence of the current conditions of the Property and neighborhood and reiterated the opposition to the Application. (Ex. 59.)
44. Several neighbors on the 3400 block of Lowell Street, N.W., and on nearby 33<sup>rd</sup> Place, N.W., submitted letters (Ex. 38, 39, 45) opposing the Application because the Rear Addition would:
- Detrimentially impact their privacy, light, air, safety, and the use and enjoyment of their homes and would adversely affect the streetscape;
  - Create a dangerous traffic situation for the school located across the 34<sup>th</sup> Street, N.W.;
  - Be larger than the Applicant had originally presented to the community; and
  - Provide an insufficient planting area to provide an adequate green canopy if the Board granted the requested pervious surface relief.
45. Other nearby residents submitted letters (Ex. 41, 50, 51, 53) objecting to the Rear Addition due to its proposed scale and impact on the surrounding properties and the streetscape along 34<sup>th</sup> Street, N.W.

46. A group of nearby residents submitted a letter (Ex. 52) opposing the Application and requesting that the Board either deny the Application or require design changes to reduce the scale of the Rear Addition and impose a condition preventing the use of the accessory apartment by a tenant because:
  - The Application did not articulate a sufficient basis for not providing the required side yard setbacks;
  - The Rear Addition’s dormer design would encroach on the privacy of the West Abutters;
  - The Rear Addition’s location would encroach on the privacy of the North Abutters; and
  - The requested pervious surface relief would reduce the area available for plantings which function as screening and increase stormwater runoff.
47. A group of current and former parents of children attending Eaton Elementary School submitted a letter (Ex. 48) opposing the Application because its size and location would make the intersection more dangerous for children crossing the intersection of Lowell and 34<sup>th</sup> Streets, N.W., by reducing visibility and light.
48. After the Board closed the public hearing, the North Abutters filed two motions and the West Abutters filed one motion to re-open the record under Subtitle Y § 602.6 to submit supplemental evidence. (Ex. 54, 57, and 58.)

**CONCLUSIONS OF LAW**

1. At its July 1, 2020, public meeting, the Board denied the North and West Abutters’ motions to re-open the record to supplement the record because the Board concluded that these motions failed to demonstrate the good cause and lack of prejudice to the parties required by Subtitle Y § 602.6 since the North and West Abutters had already had the opportunity to present their evidence and views and had done so by filing submissions to the record and testifying at the public hearing. The Board concluded that the record included the evidence necessary for the Board to decide the case without requiring additional information from the parties.

**SPECIAL EXCEPTIONS – SIDE YARD AND PERVIOUS SURFACE**

2. Section 8 of the Zoning Act of 1938 (June 20, 1938, 52 Stat. 797, ch. 534, as amended; D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:
  - (a) *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*
  - (b) *Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*
  - (c) *Complies with the special conditions specified in the Zoning Regulations.*
3. For the side yard and pervious surface relief requested by the Application, the “specific conditions” are those of Subtitle D § 5201 for relief from Subtitle D §§ 206.7 and 308.1.
4. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific

regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

5. The Board concludes, based on the case record and testimony and in agreement with the analysis and recommendations of OP and the ANC Report, that the Applicant has met its burden of proof for the two requested special exceptions for relief from the side yard and pervious surface requirements, for the following reasons.

**Eligibility for Special Exception Relief pursuant to Subtitle D § 5201**

6. The Board concludes that the Application is eligible for special exception relief pursuant to Subtitle D § 5201 because:
  - The Rear Addition is an addition to a building with only on principal dwelling unit (Subtitle D § 5201.2(a)); and
  - The Application does not propose:
    - To introduce or expand a nonconforming use because the Building will remain a principal dwelling unit in a detached building as allowed by right in the R-1-B zone pursuant to Subtitle U § 201.1(a) (Subtitle D § 5201.5);
    - To introduce or expand a nonconforming height or number of stories (Subtitle D § 5201.6); and
    - A lot occupancy exceeding 50% (Subtitle D § 5201.3(e)).

**Specific Special Exception Standards - Subtitle D § 5201.3**

7. Pursuant to Subtitle D § 5201.3, an applicant must demonstrate that the requested relief, if granted, would not have a substantially adverse effect as follows:
  - (a) *The light and air available to neighboring properties shall not be unduly affected;*
  - (b) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and*
  - (c) *The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage; and*
  - (d) by providing the Board with "*graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.*"
8. The Board concludes that the Application satisfies the requirements of Subtitle D § 5201.3(d) because it included sufficient plans, photographs, and elevations to demonstrate that it met the criteria of Subtitle D § 5201.3(a)-(c), as discussed below, for the requested relief from the following regulations:
  - Side Yards (Subtitle D § 206.7); and
  - Pervious Surface (Subtitle D § 308.1).

**Subtitle D § 5201.3(a) – No Undue Effects on Light and Air**

9. The Board concludes that the Application demonstrated that the Rear Addition for which special exception relief is requested would not unduly affect the light and air available to neighboring properties for the following reasons:
- The Application requests only modest relief – one foot less than required for the western side yard; five feet less than required for the eastern side yard; and a 5.9% diminution of the minimum 50% pervious surface requirement;
  - The neighboring properties to the east and south of the Property are separated by public rights of way of sufficient size to mitigate any potential impact;
  - For the West Abutters, the Rear Addition would provide a larger side yard than the existing nonconforming western side yard along the Building and the West Abutters' house is significantly setback from the shared property line; and
  - For the North Abutters, the Rear Addition complies with the required rear yard setback and lot occupancy and height limits and so has no direct impact on the North Abutters' light and air beyond that allowed as a matter of right.

**Subtitle D § 5201.3(b) – No Undue Compromise of Privacy**

10. The Board concludes that the Rear Addition would not unduly compromise the privacy of use and enjoyment of neighboring properties because:
- The Application requests only modest relief – one foot less than required for the western side yard; five feet less than required for the eastern side yard; and a 5.9% diminution of the minimum 50% pervious surface requirement;
  - The neighboring properties to the east and south, will be separated from the Property by public rights of way of sufficient size to mitigate any potential impact;
  - For the West Abutters,
    - The Building already has windows that provide views of the West Abutters' side and rear yards so that the Rear Addition will not significantly increase these views; and
    - The West Abutters' privacy will be protected from the Rear Addition by the landscape buffer required by the ANC and agreed to by the Applicant, as well as by the West Abutters' own significant side yard setback; and
  - For the North Abutters,
    - The Rear Addition complies with the required rear yard setback and lot occupancy and height limits and so has no direct impact on the North Abutters' light and air beyond that allowed as a matter of right;
    - The Building already has windows that provide views of the North Abutters' rear yard so that the Rear Addition will not significantly increase these views; and
    - The Applicant will provide additional landscaping along the property line shared with the North Abutters to further screen the North Abutter's Property as shown on the plans and confirmed in the Applicant's hearing testimony.

**Subtitle D § 5201.3(c) – No Substantial Visual Intrusion**

11. The Board concludes that the Rear Addition, as viewed from the street, alley, and other public way, will not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage and from the rear alley because:

- The Rear Addition conforms with the R-1-B zone matter-of-right height, lot occupancy, and rear yard requirements and the Rear Addition has been designed to be of a smaller scale than the existing Building;
- Based on the photos and other evidence in the record, the extensive review and design changes that resulted in the approval of the Rear Addition by HPRB, and the testimony of OP, the Board concludes that the development surrounding the Property is comprised of a mix of different architectural styles, building sizes and uses (June 24 Tr. at 238) and that the Rear Addition will not be unusual in terms of scale or design given this preexisting mix; and
- The Board is not persuaded by the North Abutter's arguments that the Rear Addition will project impermissibly into the 34<sup>th</sup> Street, N.W., right of way, because the Application only proposes to extend the existing eastern side yard that is nonconforming due to the historic widening of 34<sup>th</sup> Street, N.W. In reaching this conclusion the Board credits the DDOT Report that concluded that the Rear Addition would not have any adverse impact on the District's transportation network, which includes the 34<sup>th</sup> Street, N.W. right of way.

**General Special Exception Standards - Subtitle X § 901.2**

12. Pursuant to Subtitle X § 901.2(a), the Board concludes that the requested special exception relief from the side yard and pervious surface requirements will:

- Be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because:
  - The Zoning Commission has determined that the requested relief is appropriate for the R-1-B zone provided the Board determines that granting the requested relief will not create undue adverse impacts, which the Board has done in analyzing the specific special exception criteria above (Conclusion of Law 6-10) and in analyzing the general special exception criteria in the discussion immediately following;
  - The Application does not propose to introduce or expand a nonconforming use since both the principal dwelling unit and the accessory apartment are permitted as a matter of right in the R-1-B zone; and
  - The requested relief is consistent with the purposes and intent of the R-1-B Zone District by returning a vacant, unmaintained structure to residential use which will protect and “stabilize the residential areas and promote a suitable environment for family life.” (Subtitle D §§ 300.1 and 300.3); and
- Not tend to adversely affect the use of neighboring properties by creating any undue adverse impacts as discussed above in the consideration of the specific special exception criteria and because:
  - The Application will result in development of the Property with a high quality residential project that has undergone review and received approval by HPRB as not conflicting with the Cleveland Park Historic District and has the support of OP and the ANC (based on the adoption of the ANC's conditions that the Applicant accepted);
  - DDOT determined that the requested relief would not cause adverse impacts on the District's transportation network and so the Board concludes it would not create a safety hazard for pedestrians crossing 34<sup>th</sup> Street, N.W., including children attending the Eaton School across the street; and

- The requested pervious surface relief would not result in undue adverse impacts because the Application proposes to increase the Property’s pervious surface and so reduce the current nonconformity by almost half – from 40.2% to 44.1% - which should reduce stormwater runoff from the Property while also providing extensive landscaping of the Property, particularly on the portions abutting the public rights of way on Lowell and 34<sup>th</sup> Streets, N.W.

**WAIVER FROM ACCESSORY APARTMENT REQUIREMENTS - SUBTITLE U § 253.10**

13. The Zoning Act also authorizes the Board to hear and decide “other special questions” the Zoning Regulations assigns to the Board, including the waiver under Subtitle U § 253.10 from Subtitle U § 253.7(c)’s prohibition on a building with an accessory apartment having a secondary entrance on a street-facing wall.
14. The Board concludes, in accordance with OP’s analysis and recommendation, that the Application demonstrated it met the requirements of Subtitle U § 253.10 because:
  - The Application stated that the Property will be owner-occupied;
  - The Property is eligible for the requested waiver because it is not located in the R-19 or R-20 zone; and
  - The Building will maintain its appearance and character as a single household residence because the secondary cellar entrance will be shielded from view on 34<sup>th</sup> Street, N.W. by its location in the covered areaway under the existing side porch.

**“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

15. The Board must give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8) *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
16. The Board concludes that the OP Report, which provided an in-depth analysis of how the Application met each of the requirements for the requested special exception and waiver relief, is persuasive and concurs with OP’s recommendation to approve the Application.

**“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC**

17. The Board must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 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) (2012 Repl.)) and Subtitle Y § 406.2. To satisfy the great weight requirement, the Board must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).

18. The Board concurs with the ANC Report that the relief requested and the Rear Addition do not cause undue adverse impacts on neighboring properties and with the ANC Report's conclusion that the only potentially undue adverse impacts would be on the West Abutters, unless these are mitigated by the ANC Report's proposed conditions - to require the western side yard adjacent to the Rear Addition be a minimum of four feet and to install and maintain a landscape buffer of tall narrow trees in this western side yard to screen the Building and Rear Addition from the West Abutters. The Board therefore adopts the ANC's proposed conditions, which the Applicant accepted, to mitigate the Application's requested relief, with the clarification that the four-foot minimum side yard not apply to the one-foot projection for the Rear Addition's chimney, which may be three feet from the Property's western lot line shared with the West Abutters, as shown on the plans. (Ex. 9.)

**DECISION**

Based on the case record, the testimony at the hearing, and the Findings of Fact and Conclusions of Law herein, the Board concludes that the Applicant has satisfied its burden of proof with respect to its request for the following relief<sup>3</sup>:

- A special exception Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.7;
- A special exception Subtitle D § 5201 from the pervious surface requirements of Subtitle D § 308.1; and
- A waiver pursuant to Subtitle U § 253.10 from the accessory apartment requirements of Subtitle U § 253.7(c),

and therefore orders the Application for that relief be **GRANTED**, subject to the following **CONDITIONS**:

1. The Rear Addition shall be constructed in accordance with the plans at Exhibit 9;
2. The Applicant shall maintain a four-foot (4 ft.) side yard for the Rear Addition along the Property's west lot line (with the exception of the first-floor fireplace projection as shown in the approved plans); and
3. The Applicant shall plant and maintain a landscape buffer along the Property's west lot line featuring tall, narrow trees to break up the length of the Rear Addition and provide privacy.

**VOTE (July 1, 2020): 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Anthony J. Hood to **APPROVE**; 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.

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<sup>3</sup> Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. (Exhibit 11.) In granting the requested self-certified relief subject to the plans submitted with the Application, the Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any such application that would require additional or different zoning relief from that is granted by this Order.

**ATTESTED BY:**

  
SARA A. BARDIN  
Director, Office of Zoning

**FINAL DATE OF ORDER:** February 12, 2021

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.

PURSUANT TO SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS 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 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.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

# EXHIBIT B

**DISTRICT OF COLUMBIA COURT OF APPEALS**

No. 21-AA-129

JAMES H. HULME, *et al.*, PETITIONERS,

v.



DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, RESPONDENT.

On Petition for Review of an Order of the  
District of Columbia Board of Zoning Adjustment  
(Order No. 20205)

(Submitted October 1, 2021

Decided April 29, 2022)

Before BECKWITH, EASTERLY, and DEAHL, *Associate Judges*.

**MEMORANDUM OPINION AND JUDGMENT**

PER CURIAM: James and Carol Hulme seek review of a final order of the District of Columbia Board of Zoning Adjustment granting Christopher Cahill's request for special exceptions for an addition to his property. Because we conclude that the Board's findings are supported by substantial evidence, we affirm.

**I.**

In November 2019, Mr. Cahill filed an application with the Board proposing renovations to the property, a single-family home at the corner of Lowell Street and 34th Street NW. These renovations included a three-story rear addition, which would replace a smaller existing two-story open-air porch. Because the proposed rear addition would create a nonconforming zero-foot side yard along 34th Street for the length of the addition, Mr. Cahill sought a special exception from the side yard requirements of 11 D.C.M.R. Subtitle D, § 206.7 (2021).<sup>1</sup> The Board held a virtual

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<sup>1</sup> Mr. Cahill also sought a special exception from the pervious surface requirements of Subtitle D § 308.1 and a waiver of the accessory apartment

public hearing on Mr. Cahill’s application in June 2020. At the hearing, the Hulmes—whose home directly abuts the subject property to the north along 34th Street—were granted party status and testified in opposition to the application. The neighbors whose home abuts the property to the west also opposed the application, as did other neighbors and persons affiliated with the elementary school across the street from the property. The D.C. Department of Transportation (DDOT) and the local Advisory Neighborhood Commission (ANC) submitted no objection to the special exceptions, and the application received approval from the Historic Preservation Review Board (HPRB). The Office of Planning (OP) also recommended approval of the application and testified in support of the application at the hearing.

The Board rendered an oral decision granting the special exceptions and subsequently entered a written final decision and order setting forth its findings of fact and conclusions of law. The Hulmes timely petitioned this court for review of the Board’s decision.

## II.

In reviewing the Board’s decision, we must determine “(1) whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings.” *Dupont Circle Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 182 A.3d 138, 141 (D.C. 2018) (quoting *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1215 (D.C. 2016)). We will not reverse the Board’s decision “unless its findings and conclusions are ‘[a]rbitrary, capricious, an abuse of discretion, or otherwise not accordance with law;’ in excess of [the Board’s] jurisdiction or authority; or ‘[u]nsupported by substantial evidence.’” *Economides v. District of Columbia Bd. of Zoning Adjustment*, 954 A.2d 427, 433 (D.C. 2008) (first and third alterations in original) (quoting D.C. Code § 2-510(a)(3) (2001)).

The Board “ordinarily must grant [an] application” for a special exception where the applicant has met his burden to demonstrate that the proposal satisfies the requirements generally applicable to special exceptions and those requirements

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requirements of Subtitle U § 253.7(c). Neither is at issue here.

“enumerated in the particular regulation pursuant to which the exception is sought.” *Glenbrook Rd. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d 22, 30 (D.C. 1992) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

Special exceptions to D.C. zoning regulations are subject to two generally applicable requirements: an applicant must show that a special exception (1) “[w]ill be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and (2) “[w]ill not tend to affect adversely[] the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.” 11 D.C.M.R. Subtitle X, § 901.2 (2021). At this stage, the Hulmes do not meaningfully challenge the Board’s conclusion that these general requirements were met.<sup>2</sup> Instead, they focus their challenge on one of the enumerated requirements for relief from the side yard requirements, which provides that the “proposed addition . . . together with the original building, . . . as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the street or alley frontage.” 11 D.C.M.R. Subtitle D, § 5201.4(c).

The Hulmes contend that Mr. Cahill failed to prove that the proposed addition would not be a substantial visual intrusion because he failed to provide information as to the “character, scale, and pattern of houses along 34th Street.” Absent such a showing, they argue, it was arbitrary and capricious for the Board to rule in Mr. Cahill’s favor.

The Board concluded, however, that the rear addition “will not substantially visually intrude upon the character, scale, and pattern of houses” because “the development surrounding the Property is comprised of a mix of different architectural styles, building sizes and uses . . . and . . . the Rear Addition will not

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<sup>2</sup> To the extent the Hulmes contend that the “no undue adverse impact” finding was not supported by substantial evidence, we disagree. The Board found no adverse effect on three grounds that the Hulmes do not challenge, including (1) that the project has received the support of the OP and the ANC and been deemed consistent with the Cleveland Park Historic District, (2) that the project would not cause a safety hazard for pedestrians, and (3) that the project includes “extensive landscaping” that will reduce stormwater runoff and help screen the addition.

be unusual in terms of scale or design given this preexisting mix.” The Board based this conclusion “on the photos and other evidence in the record, the extensive review and design changes that resulted in the approval of the Rear Addition by HPRB, and the testimony of OP.”<sup>3</sup> The Board also found the Hulmes’ arguments about the proximity to the 34th Street right of way unpersuasive “because the Application only proposes to extend the existing eastern side yard that is nonconforming due to the historic widening of 34th Street” and because DDOT had found “no adverse impact on the District’s transportation network.” And the Board described OP’s testimony, to which the Board gave “great weight,” as concluding that the 34th Street frontage “would not be irregular or impermissibly encroach on the public right of way.” The Board’s determination that the application met the requirements for the special exception was supported by substantial evidence, and its decision to approve the application was not arbitrary or capricious.

Nevertheless, we must consider the Hulmes’ contentions that the Board’s decision was not supported by “subsidiary findings . . . on all material issues,” *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, 293 A.2d 470, 473 (D.C.

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<sup>3</sup> The Hulmes also argue that a commissioner’s reliance on Google Street View at the hearing subjects the Board’s decision to reversal. Vice Chairperson Hart noted that it “seemed [from Street View] like there was a variety of architectural styles already going on” in the area. The Hulmes do not argue that the information gleaned from Street View would be any different than the information provided in the many photographs, plans, and maps in the record before the Board. As the written decision and order makes clear, there was other evidence in the record concerning the variety of architectural styles in the neighborhood. The Hulmes themselves presented “street views” along 34th Street to the Board. Even if the use of Street View was improper, then, the Board’s finding is supported by substantial evidence on the record as a whole and we see no reason to remand. *See Economides*, 954 A.2d at 433; *see also Am. Combustion, Inc. v. Minority Bus. Opportunity Comm’n*, 441 A.2d 660, 668 (D.C. 1982) (“We will not overrule an agency’s decision merely because it went outside the record on a collateral matter which, given the record before it, could have had no bearing on the ultimate decision.”); *Apartment & Off. Bldg. Ass’n of Metro. Wash. v. Pub. Serv. Comm’n of the District of Columbia*, 129 A.3d 925, 930 (D.C. 2016) (noting that the principle that “an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which the action can be sustained” is “subject to [an] exception[]” where “the agency would doubtless reach the same result”).

1972), and that it rested on a mistaken understanding of the facts. These arguments both concern the relation of the house to the property line along 34th Street. As the Hulmes point out, the existing house has an open-air, covered porch that extends over the lot line and into the public space, but the house itself—not including the porch—is set back four or five feet from the property line. The proposed addition would move the house itself against the lot line.

The Hulmes assert that OP's report and testimony, on which the Board relied, was based on the mistaken premise "that the existing house was located on the street lot line." During Mr. Hulme's questioning of OP's Jonathan Kirschenbaum, Mr. Kirschenbaum stated that the "house itself is built on the property line." When Mr. Hulme asked if Mr. Kirschenbaum would have to "change [his] views" if it "turned out that the house itself was not built on the property line and was set back," Mr. Kirschenbaum responded that he "would have to evaluate based on any changes [he saw] to the plans." What the Hulmes do not acknowledge, however, is that any confusion surrounding this point was explicitly cleared up later in the hearing. Mr. Cahill's architect testified that "[t]he house is behind the property line right now" and that the project would build "behind the porch line" but beyond the existing house line and up to the property line, noting that this was always "part of the paperwork" but "needed to be corrected as a matter of record" in light of "one statement made during OP's answer to Mr. Hulme's question." Mr. Kirschenbaum then clarified that he was "thinking about the proposed house when [he] answered that question" and that the existing porch "goes off the property line which means that it obstructs the side yard, which means there's no side yard . . . on that side of the house. So regardless of the existing house or the proposed house, there's no compliant side yard along 34th Street." Thus, we reject the Hulmes' claims that the OP report and the Board's approval of the project were premised on factual errors.

Relatedly, the Hulmes argue that the Board erred in failing to make a finding of fact concerning "whether any other house on the 34th Street frontage was constructed on the street lot line with no setback." But, as the Hulmes acknowledge, whether other homes on the street were built on the lot line was not a *contested* issue. The Board thus was not required to make a specific finding on this point. *See Economides*, 954 A.2d at 433, 437 (requiring Board to make a finding on "each material *contested* issue of fact" and noting the Board's view that in the absence of contradictory evidence on an issue there is no need for a specific factual finding (emphasis added) (quoting *Mendelson v. District of Columbia Bd. of Zoning Adjustment*, 645 A.2d 1090, 1094 (D.C. 1994))); *Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n*, 402 A.2d 36, 42 n.9 (D.C. 1979) ("[T]he

required findings are limited to material contested issues of fact, for not every factual issue injected by a party is germane to the decision.”). Similarly, the uncontested record evidence that no other house is built without a setback from the 34th Street lot line does not mean that the Board’s decision is not supported by substantial evidence. The Board found that there was variety in the structures in the area and accorded great weight to the ANC’s and HPRB’s determinations. The Board’s conclusion that the proposal would not cause a substantial visual intrusion flows rationally from those findings.<sup>4</sup>

An open-air porch extending over the lot line may well, as the Hulmes argue, “pale[] in comparison” to a higher, enclosed addition built along the lot line in terms of visual effect, notwithstanding the fact that the side yard is the same width—and equally nonconforming—in either scenario. But the Board explicitly considered testimony to this effect and concluded that the addition would not be a visual intrusion. This determination was not arbitrary or capricious.

The Board’s decision is affirmed.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO  
Clerk of the Court

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<sup>4</sup> The Hulmes have no support for their related argument that the lot line issue was material to whether the addition intruded upon the “pattern” of houses on the street, such that the Board failed to address the “pattern” element. *See Economides*, 954 A.2d at 433 (“An agency’s interpretation of the regulations that govern it ‘must be accorded great weight, and must be upheld unless it is plainly erroneous or inconsistent with the regulations.’” (quoting *Glenbrook Rd. Ass’n*, 605 A.2d at 30)).

Copies sent to:

Presiding Administrative Law Judge

James H. Hulme, Esquire

Caroline S. Van Zile, Esquire  
Solicitor General for the District of Columbia

# EXHIBIT C

## PROPOSED DECISION AND ORDER

### FINDINGS OF FACT

1. On July 1, 2020, the Board of Zoning Adjustment (the “Board”) issued *Order No. 20205*, approving relief to allow a two-story rear addition to the existing detached dwelling at 3401 Lowell Street, N.W. (the “Property”).
  2. The Board granted:
    - A special exception pursuant to Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.7;
    - A special exception pursuant to Subtitle D § 5201 from the pervious surface requirements of Subtitle D § 308.1; and
    - A waiver pursuant to Subtitle U § 253.10 from the accessory apartment requirements of Subtitle U § 253.7(c).
  3. The Board conditioned approval on maintaining a four-foot side yard along the west lot line (except for a first-floor fireplace projection) and planting and maintaining a landscape buffer of tall, narrow trees along the west lot line.
  4. On April 29, 2022, the District of Columbia Court of Appeals affirmed *Order No. 20205* in full.
  5. The prior owner, who was the Applicant of record in Case No. 20205, fell into financial hardship and was unable to advance the project.
  6. The current Applicants are the new owners of the Property and now request renewal of the relief granted in *Order No. 20205*.
  7. In consultation with the Office of Zoning, the Applicants have withdrawn the request for relief under Subtitle U § 253.10 (accessory apartment entrance). This Application is therefore limited to the special exception relief under Subtitle D § 5201 and § 208.7 (Previously D § 206.7) for the side yard and pervious surface requirements.
  8. The surrounding zoning, site conditions, and applicable regulations have not materially changed since the Board’s original approval.
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## CONCLUSIONS OF LAW

1. The Board concludes that:
    - The requested relief remains necessary because the proposed addition cannot be constructed without relief from the side yard and pervious surface requirements;
    - No material facts or law have changed, as the Property remains in the R-1-B zone within the Cleveland Park Historic District, and the Applicants propose to build the identical exterior design and physical footprint previously approved;
    - Good cause exists because the prior owner was unable to proceed due to financial hardship, and the new owners are prepared to carry forward the approved project.
  2. The Board further notes that the merits of the requested relief were fully adjudicated in 2020, found to satisfy all applicable standards, and affirmed by the District of Columbia Court of Appeals.
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## DECISION

Based on the record before the Board, the testimony at the original hearing, and the Findings of Fact and Conclusions of Law herein, the Board concludes that the Applicants have satisfied their requirements.

It is therefore **ORDERED** that the Application for relief is hereby **GRANTED**, limited to the following relief:

- A special exception under Subtitle D § 5201 from the side yard requirements of Subtitle D § 208.7 (Previously D § 206.7); and
- A special exception under Subtitle D § 5201 from the pervious surface requirements of Subtitle D § 211.1 (Previously D § 308.1),

### **subject to the following CONDITIONS:**

1. The rear addition shall be constructed in accordance with the plans approved in *BZA Order No. 20205* (Exhibit 9 of the original record).
2. The Applicants shall maintain a four-foot (4 ft.) side yard for the rear addition along the Property's west lot line (except for the first-floor fireplace projection as shown in the approved plans).
3. The Applicants shall plant and maintain a landscape buffer along the Property's west lot line featuring tall, narrow trees to break up the length of the addition and provide privacy.

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**VOTE:** [to be completed by the Board]

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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: [to be completed]