

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant’s Statement in Support of Special Exception Approval

Haider Haimus and Jessica Bachay

308 11th Street, NE; Square 963, Lot 68.

I. INTRODUCTION.

This Statement is submitted on behalf of Haider Haimus and Jessica Bachay (collectively known as the “Applicant”), owners of the property located at 308 11th Street, NE (Square 963, Lot 68) (the “Subject Property”). The Subject Property is improved with a two-story plus cellar row dwelling used as a two-family flat (the “Building”) and a one-story accessory building (the “Accessory Building”), currently used as a garage. The Applicant is proposing to construct a third-story addition and roof deck (the “Addition”) on top of the existing Building and a second-story addition (the “Accessory Addition”) on top of the existing Accessory Building. The Accessory Building’s rear wall will also be re-built and extended. The Addition and the Accessory Addition (collectively known as the “Project”) will require the following areas of approval:

1. Special Exception Approval Pursuant to E § 5201 (Lot Occupancy, Accessory Building Footprint and Center Alley-line Setback, Extending a Non-Conforming Aspect)

- Lot Occupancy (E § 304.1): The existing lot occupancy is sixty-seven-point two percent (67.2%). The Applicant is not proposing to increase the footprint of the principal Building; however, they are proposing to increase the footprint of the Accessory Building by extending the rear wall. Therefore, the Applicant is proposing a lot occupancy of sixty-nine-point eight percent (69.8%). Accordingly, the Applicant is requesting special exception approval pursuant to E § 5201.

- Alley Center Line Setback (E § 5004.1): An accessory structure abutting an alley must be set back at least twelve feet (12 ft.) from the center line of the alley. The existing Accessory Building is setback three feet and four inches (3 ft. 4 in.) from the center line of the alley. As the Accessory Addition will be on top of the existing Accessory Building footprint, it will also be setback only three feet and four inches (3 ft. 4 in.). Accordingly, the Applicant is requesting special exception approval pursuant to E § 5201.
- Extending a Non-Conforming Aspect of the Structure (C § 202.2): Through the Project, the Applicant is increasing existing non-conforming aspects of the Building and Accessory Building, including the lot occupancy and the center alley-line setback. Accordingly, the Applicant is requesting special exception approval pursuant to E § 5201.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the special exception approval requested pursuant to Subtitle E § 5201 from the lot occupancy requirements of E § 304.1; the alley center line setback requirement of E § 5004.1; and the prohibition against extending a nonconforming aspect of a structure of C § 202.2.

III. BACKGROUND.

A. Description of the Property and Surrounding Area.

The Subject Property is located in the RF- 1 Zone and in the Capitol Hill Historic District. It is an interior rectangular lot measuring one hundred and five point eighty-eight feet (105.88 ft.) in length, sixteen point sixteen feet (16.16 ft.) in width and 1,711 square feet in land area. The Subject Property is improved with a two-story plus cellar row dwelling used as a two-family flat

and a one-story Accessory Building. Abutting the Subject Property to the north is an adjoining row home used as a single-family dwelling. Abutting the Subject Property to the south is an adjoining row home used as a flat. To the west is a public alley, and to the east is 11th Street, NE. Both the adjoining buildings to the north and south of the Subject Property also have garages along the alley. There are a variety of accessory buildings along the alley as shown in photographs included with the Application.

B. Proposed Project.

The Applicant is proposing to construct a third-story addition and roof deck on top of the existing Building. The third-story addition to the principal Building includes a proposed roof deck measuring eighteen feet (18 ft.) in length (the "Roof Deck"). The Roof Deck will be setback from the front façade by eleven feet and seven inches (11 ft 7 in.). The proposed third story living space will be set back from the front façade by twenty-nine feet and four inches (29 ft. 4 in) and increase the overall height of the Building to thirty-five feet (35 ft.). The Applicant is not proposing to expand the footprint nor the lot occupancy of the existing principal Building. Moreover, the Applicant is maintaining the Building's existing dormer and mansard roof.

The Applicant is also proposing to construct a second-story addition on top of the existing Accessory Building, and re-build and extend the rear wall towards the principal Building, increasing the length of the Accessory Building from twenty feet and four inches (20 ft. 4 in.) to twenty-three feet and two inches (23 ft. 2 in.). The Applicant is maintaining the existing parking space which currently occupies the first floor of the Accessory Building. The proposed second story Accessory Addition will only have a total footprint of three hundred seventy-four-point six square feet (374.6 sq. ft.) and include office space and a bathroom. The proposed height of the Accessory Building will be limited to twenty feet (20 ft.).

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION APPROVAL.

A. Overview.

Pursuant to 11-X DCMR § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception approval where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property, subject also, in this case, to the specific requirements for approval pursuant to 11-E DCMR § 5201. In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

B. General Special Exception Requirements of 11-X DCMR § 901.2.

The Applicant is requesting approval to construct a third-story addition and roof deck on top of the existing Building and a second-story addition on top of the existing Accessory Building. To obtain this approval, an Applicant must meet the general special exception requirements of X § 901.2. The granting of a special exception in this case “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps ...” (11 DCMR Subtitle X § 901.2).

1. Project will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

The Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Subject Property is located in the RF-1 Zone which provides “for areas developed primarily with row dwellings, but within which there have been limited conversions of dwellings or other buildings into more than two (2) dwelling units.” (E § 100.1) The Subject Property is currently used as a two-family flat, and the Applicant is not proposing to change the existing use. Moreover, the regulations specifically permit special exception approval for the expansion of an accessory structure and principal building. Accordingly, the proposed Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

2. Project will not tend to affect adversely, the Use of Neighboring Property in accordance with the Zoning Regulations and Zoning Maps.

As described more fully below, the Project will not impact the light and air or privacy of the neighboring properties. The Project will also not adversely affect the use of neighboring properties as residential properties as the Applicant is not proposing to change the existing use.

C. Requirements of 11-E DCMR § 5201.

The proposal in this Application satisfies the requirements of 11-E DCMR § 5201, as follows:

Section 5201.3 “An Application for special exception under this section shall demonstrate that the addition or accessory structure shall not have a substantially adverse affect on the use of enjoyment of any abutting or adjacent dwelling or property, in particular:

(a)The light and air available to neighboring properties shall not be unduly affected;

The Project will not unduly affect the light and air available to the neighboring properties. The Applicant is proposing a small third-story addition and roof deck to the principal Building. The Roof Deck will be setback from the front façade by eleven feet and seven inches (11 ft 7 in.).

The proposed third story living space will be set back from the front façade by twenty-nine feet and four inches (29 ft. 4 in) and will be eight feet and four inches (8 ft. 4 in.) tall. Moreover, the Applicant is maintaining the Building's existing dormer and mansard roof. The Building's overall height will be thirty-five feet (35 ft.) and the Applicant is not proposing to increase the Building's overall footprint. The proposed Accessory Addition is only one-story and will have a total footprint of three hundred seventy-four-point six square feet (374.6 sq. ft.). As mentioned, there are already a variety of accessory buildings along the alley as shown in photographs included with the Application.

(b)The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The privacy of use and enjoyment of any neighboring properties will not be unduly compromised by the proposed Project. The Project has been carefully designed to let light in without impacting the privacy of the adjacent properties. The Applicant is not proposing any windows on the south side of the Addition. The Applicant is proposing one (1) window on the Addition that will face the north property, but the Building already has several other existing windows that face this direction, and one (1) additional window shall not unduly compromise the privacy. Moreover, the adjoining buildings to the north and south of the Subject Property have existing rear balconies.

While the Applicant is proposing a new Roof Deck, it will be setback from the front façade by eleven feet and seven inches (11 ft 7 in.). Moreover, the Roof Deck will be surrounded by a brick parapet wall to match the existing design and provide privacy. The Applicant is proposing new windows on the front facade of the proposed third-story Addition, but the Addition will be set

back from the existing Building's front façade by twenty-nine feet and four inches (29 ft. 4 in). There is one (1) proposed window on the rear of the Addition that will face the Accessory Building. Any new windows on the Accessory Addition are limited to the east and west facades and will face the principal Building and the alley, respectively. The Applicant is also proposing a Juliet balcony on the second story of the Accessory Building that will face the principal Building. However, as previously mentioned, the adjoining neighbors have existing rear balconies; therefore, the privacy shall not be unduly compromised.

(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

The Project, together with the existing Building, will not visually intrude upon the character, scale, or pattern of the houses along 11th Street or the accessory structures on the alley. There are a variety of accessory structures along the alley, including accessory buildings directly adjacent on either side of the Subject Property. The Accessory Addition is modest at three hundred seventy-four-point six square feet (374.6 sq. ft.) and limited at twenty feet (20 ft.) in height. The principal Building is limited at thirty-five feet (35 ft.) in height, and the Applicant is maintaining the principal Building's existing dormer and mansard roof. The Subject Property is located in the Capitol Hill Historic District and is subject to review by HPRB. Accordingly, the Project has been designed with historic guidelines in mind and should not impact the character, scale, or pattern of accessory structures along the street and alley.

(d)In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use 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; and

The Applicant has provided plans, photographs, elevations and section drawings sufficient to represent the relationship of the proposed Project to the adjacent buildings and views from public ways.

(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%)

The lot occupancy of all new and existing structures will have a total lot occupancy of 69.8%.

Section 5201.4 “The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.”

The Applicant will comply with Board directives for protection of adjacent and nearby properties.

Section 5201.5 “This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.”

The Applicant is not requesting to introduce or expand a nonconforming use.

Section 5201.5 “This section may not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.”

The Applicant is not requesting to introduce or expand nonconforming height or number of stories.

V. CONCLUSION.

For the reasons outlined in this Applicant's Statement, the Applicant respectfully requests the special exception approval as detailed above.

Respectfully Submitted,

Applicant's Statement
308 11th Street, NE

Martin P Sullivan

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Sullivan & Barros, LLP
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