

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 20302 of SQL512TAYLOR LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 320.2, to construct a third-story a three-story rear addition and to convert an existing semi-detached principal dwelling unit into a three-unit apartment house in the RF-1 zone at premises 512 Taylor Street N.W. (Square 3231, Lot 98).

HEARING DATE: October 28, 2020
DECISION DATE: November 18, 2020

Pursuant to notice, at its November 18, 2020, public meeting, the Board of Zoning Adjustment (the “**Board**”) considered the application (the “**Application**”) of SQL512TAYLOR LLC (the “**Applicant**”) that requested the following relief under 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 U § 320.2¹ to authorize the conversion of an existing semi-detached principal dwelling unit into a three-unit apartment house at Lot 98 in Square 3231, with an address of 512 Taylor Street N.W. (the “**Property**”) in the RF-1 zone. For the reasons explained below, the Board voted to **APPROVE** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following were automatically parties in this proceeding pursuant to Subtitle Y § 403.5:

- The Applicant; and
- Advisory Neighborhood Commission (“**ANC**”) 4C, the ANC within which boundaries the Property is located and so the “affected” ANC per Subtitle Y § 101.8.

NOTICE

2. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“**OZ**”) sent notice of the Application and the October 28, 2020, hearing by an August 6, 2020, letter to:

- The Applicant;

¹ The Zoning Commission amended Subtitle U § 320.2 by the Notice of Final Rulemaking in Z.C. Case No. 19-21 that took effect on November 13, 2020, prior to the Board’s decision and therefore governs the Application.

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- ANC 4C;
- Single Member District (“**SMD**”) Commissioner ANC 4C08;
- Office of ANCs;
- Office of Planning (“**OP**”);
- District Department of Transportation (“**DDOT**”);
- Councilmember for Ward 4;
- Chairman of the Council;
- At-Large Councilmembers; and
- The owners of all property within 200 feet of the Property (Exhibit [“**Ex.**”] 12-23).

3. OZ published notice of the October 28, 2020, hearing in the October 9, 2020, *D.C. Register* (67 DCR 11577) as well as through the calendar on OZ’s website.²

THE PROPERTY

4. The Property is a 2,772 square foot rectangular lot. (Ex. 7.)
5. The Property abuts on the following:
 - To the north, it fronts on Taylor Street, N.W.;
 - To the east by a public alley;
 - To the south by a public alley;
 - To the west by a two-story row dwelling. (Ex. 7, 11.)
6. Across the alleys to the east and south are two- and three-story row dwellings. (Ex. 7.)
7. The Property is currently improved with a two-story semi-detached building (the “**Building**”) that houses a principal dwelling unit. (Ex. 7.)
8. There are no solar installations on the abutting property to the west. (Ex. 7.)
9. The Property is located in the RF-1 zone, which are “*residential zones, which provide for areas developed primarily with row dwellings, but within which there have been limited conversion of dwellings or other buildings into more than two (2) dwelling units.*” (Subtitle E § 100.1.)

II. THE APPLICATION

THE PROJECT

10. The Application seeks relief to expand and convert the existing semi-detached principal dwelling unit into a three-unit apartment house (the “**Project**”).

² At its October 28, 2020, public hearing, the Board on its own motion waived Subtitle Y § 402.1(a)’s required 40-day period between the *DC Register* and the public hearing required by to pursuant to Subtitle Y §§ 101.9 and 402.11.

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11. The Application asserts that the completed Project will conform to the height and bulk matter-of-right development standards for the RF-1 zone.

RELIEF REQUESTED

12. The Application requests:

- A special exception pursuant to Subtitle U § 320.2 to authorize the conversion of the existing residential building to an apartment house. (Ex. 3 and 7.)

JUSTIFICATION FOR RELIEF

13. The Application asserted that the Project satisfied the residential conversion criteria of Subtitle U § 320.2 because:

- The Building to be converted and expanded is existing on the Property (Subtitle U § 320.2(a));
- Since the Project will only have three-units, it is not subject to the Inclusionary Zoning (“IZ”) requirements of Subtitle C, Chapter 10, that are only triggered by the provision of a fourth unit (Subtitle U § 320.2(b)); and
- The Property’s lot area of 2,772 square feet exceeds the minimum 900 square feet required for each of the Project’s three units (Subtitle U § 320.2(c)). (Ex. 7.)

14. The Application asserted that it met the special exception standards of Subtitle X § 901.2(a) and (b) because the Project:

- Would be in harmony with the purpose and intent of the Zoning Regulations since apartment house conversions are permitted by special exception in the RF-1 zone and the Project would otherwise conform to the RF-1 development standards; and
- Would not tend to adversely affect the use of neighboring properties because the Project would result in only a minor expansion of the Building and its use.

APPLICANT’S TESTIMONY AND SUBMISSIONS

15. At the October 28, 2020, public hearing, the Applicant:

- Presented testimony on the scope of the Project and discussions with OP regarding minor design features;
- Confirmed that it had agreed to all of the conditions contained in the ANC Report (defined below) except for the \$15,000 affordable housing contribution, which the Applicant asserted was not reasonable and beyond the scope of the Board’s review. (BZA Public Hearing Transcript of October 28, 2020 [“**Oct. 28 Tr.**”] at 198-200, 202-204.)

16. In response to questions and concerns raised at the October 28, 2020, public hearing, the Applicant submitted updated plans and elevations that adopted the OP Report’s (defined below) design suggestions. (Ex. 46.)

III. RESPONSES TO THE APPLICATION

OP

17. OP submitted an October 16, 2020, report (Ex. 26, the “**OP Report**”) that recommended that the Board approve the Application based on OP’s conclusion that the Application had satisfied the requirements for the requested special exception for the residential conversion requirements under Subtitle U § 320.2 because:
 - Residential conversions are permitted by special exception in the RF-1 zone, and the Project would otherwise conform to the matter-of-right development standards; and
 - The Project would not result in any adverse impacts to the adjacent or neighboring properties, although the OP Report recommended, but did not require, design changes for the Project’s façade along the eastern alley to reduce its mass and make it more consistent with the character of nearby homes.
18. At the October 28, 2020, public hearing, OP testified in support of the Application and that:
 - The OP Report correctly stated that the Project would not interfere with an existing solar energy system on an adjacent property, even though a building on the property located across the alley to the east of the Property (4024 Fifth Street, N.W.) has solar panels, because the Property is separated from that building by its rear yard and the eastern alley for an approximate total distance of 70-80 feet;
 - OP’s design suggestions focused on the Property’s location as the end unit of row buildings bordering a public alley that provided views of the proposed addition and conversion from the street; and
 - The Project would conform to the matter-of-right standards in terms of height and massing. (Oct. 28 Tr. at 207-208, 226-229.)

DDOT

19. DDOT submitted an October 16, 2020, report (Ex. 27, the “**DDOT Report**”) stating that DDOT had no objection to the Application based on its determination that the Application would not result in any adverse impacts to the District transportation network.

ANC

20. The ANC submitted an October 4, 2020, report (Ex. 39, the “**ANC Report**”) stating that at its duly noticed June 10, 2020, meeting at which a quorum was present, the ANC voted:
 - To express the following concerns:
 - Construction management;
 - Parking;
 - Lead testing of water lines;
 - Stormwater management; and
 - Affordable housing; and

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- To support the Project only if the Applicant agreed to adopt all conditions that the ANC asserted would resolve its concerns, including that:
 - The Applicant adopt construction management protocols, including providing contact information for contractors, limited hours of construction, limited use of the public alleys, dumpster location and trash control, pest control, notice of electrical and water shutoffs, and lighting exterior lighting of the Property;
 - The plans for the Project depict two parking spaces at the rear of the Property accessible from the alley;
 - The Applicant test the Property's water lines, both public and private, and replace any lead lines found;
 - The Applicant install permeable pavers for any driveway, walkway, or patio surface to alleviate water runoff and flooding; and
 - The Applicant make a \$15,000 contribution to an organization that supports affordable housing in Ward 4 prior to selling the Property.

OTHER RESPONSES

21. The Board received four letters in support of the Application. (Ex. 25, 40-42.)
22. The Board received nine letters in opposition to the Application. (Ex. 29-36, 38.)
23. At the October 28, 2020 public hearing, several neighbors - Linda Cotton, Annette Olson, Michelle Escumbise, Sandra Hoffman, and Dianna Waters (collectively, the "**Opponents**") – testified in opposition to the Application because they asserted the Project would:
 - Shade the solar panels on Ms. Olson's property at 4204 Fifth Street, N.W., for approximately an hour a day;
 - Block light and air to the surrounding properties;
 - Flood in the alley;
 - Increase parking demand in the surrounding neighborhood;
 - Change the character the neighborhood both in its appearance and scale, as well as in the introduction an apartment house use to a mostly single-family neighborhood; and
 - Not contribute to the supply of affordable housing by creating multiple smaller units instead of a single larger family-sized unit. (Oct. 28 Tr. at 210-224.)

CONCLUSIONS OF LAW

1. Section 8 of the Zoning Act of 1938 (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:
 - *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*
 - *Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*
 - *Complies with the special conditions specified in the Zoning Regulations.*

2. For the relief requested by the Application, the “specific conditions” are those of Subtitle U § 320.2.
3. 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)).

SPECIFIC SPECIAL EXCEPTION STANDARDS - SUBTITLE U § 320.2

4. Pursuant to Subtitle U § 320.2 (as in effect at the time of the Board’s decision), an applicant must demonstrate that the requested relief meets the following requirements, in addition to the general special exception requirements of Subtitle X, Chapter 9:
 - a. *The building to be converted or expanded is in existence on the property at the time the Department of Consumer and Regulatory Affairs accepts as complete the building permit application for the conversion or expansion;*
 - b. *The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6; and*
 - c. *There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per each existing and new dwelling unit.*
5. The Board concludes that the Application satisfies the requirements of Subtitle U § 320.2 because:
 - The building to be converted is in existence on the Property (Subtitle U § 320.2(a));
 - The Application does not propose a fourth unit which would subject the Project to the IZ requirements of Subtitle C, Chapter 10 (Subtitle U § 320.2(b)); and
 - The Property’s 2,772 square feet provide 924 square feet for each of the three units proposed for the Project, which exceeds the 900 square foot minimum required (Subtitle U § 320.2(c)). (Findings of Fact [“FF”] 4, 7, 10, 13, 17, 18.)

GENERAL SPECIAL EXCEPTION STANDARDS - SUBTITLE X § 901.2

6. The Board concludes that the relief requested by the Application complies with the requirements of Subtitle X § 901.2 as follows:
 - The Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map because:
 - The Zoning Commission had determined that apartment house conversions are appropriate in the RF-1 zone provided the Board determines that no undue adverse impacts will result from the conversion, as the Board has done (see discussion of

specific special exception requirements above and discussion of the general special exception requirements below); and

- The Project will otherwise comply with the RF-1 zone's development standards;
- The Application will not tend to adversely affect the use of the neighboring properties because:
 - The Project only proposes to add one additional dwelling unit to the two permitted as a matter of right,
 - The Project's addition to the Building remains within matter-of-right development standards of the RF-1 zone;
 - The revised plans incorporate the OP Report's design suggestions to make the Project more aesthetically compatible with the surrounding neighborhood;
 - The Applicant has agreed to provide two parking spaces at the Property's rear accessible from the alley and DDOT determined that the Application would not have any adverse impacts on the District's transportation network;
 - The Applicant has agreed to install permeable pavers on the driveway, walkway, and patio surface to alleviate flooding; and
 - The Project will not significantly interfere with the solar panel on the property across the alley because those solar panels are separated from the Building by both the alley and that property's rear yard, a distance OP estimated was approximately 70-80 feet; (FF 9, 11, 13-19); and
- The Project complies with the specific special exception standards of Subtitle U § 320.2 as discussed above.

GREAT WEIGHT TO RECOMMENDATIONS OF OP

7. 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)).
8. The Board finds OP's recommendation to approve the Application persuasive based on OP's determinations that the Project would comply with the residential conversion regulations and would not adversely impact any of the neighboring properties.

GREAT WEIGHT TO WRITTEN REPORT OF THE ANC

9. 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).

10. The Board finds persuasive the ANC Report’s issues and concerns with the Project’s impacts on parking and stormwater management/flooding and concludes that the Applicant has satisfactorily addressed these by agreeing to the ANC Report’s conditions. (FF 15.)
11. Although the ANC Report’s issue and concern with affordable housing may be potentially legally relevant, the Board is not persuaded that the ANC Report’s proposed \$15,000 contribution to a Ward 4 affordable housing provider is necessary to mitigate the Project’s alleged adverse impact on affordable housing because:
 - The Zoning Commission, in addressing affordable housing through establishing the Inclusionary Zoning program, applied the IZ requirements in the RF-1 zone only to conversions to apartment houses that have at least four units, more than the Project’s proposed three units (Subtitle U § 320.2(b));
 - The ANC Report did not establish how the Project, by adding one additional dwelling unit more than allowed by right, would directly cause an undue adverse impact on the provision of affordable housing by “tend[ing] to affect adversely the use of neighboring properties”; and
 - The ANC Report did not demonstrate how its proposed financial contribution would directly mitigate the alleged adverse impact on affordable housing on the neighboring properties.
12. The Board concludes the following issues and concerns raised by the ANC Report are not legally relevant to the Board’s review of the Application:
 - Construction management, because these concerns are regulated by the Construction Codes; and
 - Lead testing of water lines, because these concerns are regulated by the Construction Codes and environmental regulations.

DECISION

Based on the case record, the testimony at the hearing, and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has satisfied the burden of proof for:

- A special exception under Subtitle U § 320.2

to authorize the conversion of a detached principal dwelling unit into a three-unit apartment house at Lot 98 in Square 3231, and therefore **GRANTS** the Application subject to the following **CONDITION**:

1. The Project shall be constructed in accordance with the plans³ submitted as Exhibit 46 in the record, as required by Subtitle Y §§ 604.9 and 604.10.

³ **Self-Certification.** The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. (Exhibit 3.) 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

VOTE (November 18, 2020): 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Michael G. Turnbull 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.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 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.

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.

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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.