

[DRAFT]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19633A of VI 3629 T Street LLC, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance to the relief approved by BZA Order No. 19633 to include a special exception under Subtitle D § 5201 from the front setback requirements of Subtitle D § 1205.2, to construct a three-story rear addition to an existing principal dwelling unit in the R-20 Zone at premises 3629 T Street N.W. (Square 1296, Lot 804) (the “Subject Property”).

HEARING DATE (Case No 19633):	December 6, 2017
DECISION DATE (Case No. 19633):	December 13, 2017
ORDER ISSUANCE DATE (Case No. 19633):	December 14, 2017

MODIFICATION HEARING DATE:	May 9, 2018
MODIFICATION DECISION DATE	May 9, 2018

DECISION AND ORDER

On March 1, 2018, the Applicant submitted an Application for a minor modification to the relief approved by BZA Order No. 19633. On March 15, 2018, the request was changed to a request for a modification of significance (the “Modification of Significance”, “Modification” or the “Application”). Following a public hearing, the Board of Zoning Adjustment voted to approve the Application for a modification of significance.

The original application (No. 19633) (the “Original Application”) was granted pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear addition requirements of Subtitle D § 1206.4, to construct a three-story rear addition to an existing principal dwelling unit in the R-20 Zone at premises 3629 T Street N.W. (Square 1296, Lot 804).

BACKGROUND

On December 13, 2017 in Application No. 19633, the Board of Zoning Adjustment (“Board” or “BZA”) approved the self-certified request by VI 3629 T Street LLC (the “Applicant”) for a special exception pursuant to D § 5201 from the rear addition requirements of D § 1206.4, to construct a three-story rear addition. The Board issued a Summary Order No. 19633 (the

“Original Order” or the “Summary Order”) on December 14, 2017, granting approval pursuant to the approved plans (the “Approved Plans”) in Exhibits 41A and 42 in Case No. 19633.

After the Summary Order was issued, the Applicant was informed by Department of Consumer and Regulatory Affairs (“DCRA”) that the front vestibule—which was included in the BZA-Approved Plans—required front setback relief. Subtitle D § 1205.2 requires states: “a front setback consistent with at least one (1) of the immediately adjacent properties on either side shall be provided in the R-20 zone.” The Subject Property and the adjacent property have the same setback and the proposed vestibule slightly decreases the Subject Property’s front setback by approximately four feet (4 ft.); accordingly, the Applicant needed additional relief as the proposed front setback would be inconsistent with the only adjacent property.

The Applicant originally requested a minor modification to the Summary Order pursuant to 11-Y DCMR § 703.3, as it was only requesting that the Board amend the Summary Order to include front setback relief, as the standard for review for the relief from the front setback requirements is identical to the standard for review for the rear setback requirements which were approved in the Summary Order and the Applicant was not proposing to change the Approved Plans which included the subject vestibule. The Office of Zoning advised the Applicant to instead apply for a Modification of Significance pursuant to Y § 704.

MODIFICATION OF SIGNIFICANCE

Application. On March 15, 2018, the Applicant submitted its Application for a Modification of Significance to the relief approved by Summary Order No. 19633 to include a special exception under Subtitle D § 5201 from the front setback requirements of Subtitle D § 1205.2. The Applicant is not proposing to alter the Approved Plans plans, only adding an area of relief that was not included in the Original Application. The Application indicated that the proposed Modification of Significance meets the burden of proof for both the modification and the associated special exception relief.

Notice of Application and Notice of Public Hearing. By memoranda dated March 22, 2018, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 2; Advisory Neighborhood Commission (“ANC”) 2E, the ANC for the area within which the Subject Property is located; ANC 2E, the ANC adjacent to the area where the Subject Property is located; and the single-member district ANC 2E-15, and the owners of all property within 200 feet of the Subject Property. The public hearing took place on May 9, 2018.

Party Status

The Applicant and ANC 2E were automatically parties in this proceeding. There were no additional requests for party status.

Applicant’s Case. The Applicant provided ample evidence and testimony demonstrating that proposed Modification to include front setback relief satisfied the applicable requirements of the Zoning Regulations under 11-Y DCMR § 704 and 11-D DCMR § 5201.

OP Report. In its memoranda dated April 27, 2017, the Office of Planning recommended approval of the requested relief. In its report, the Office of Planning determined that the Modification request met the standards of D § 5201 as the light and air available to the only adjacent property at 3627 T Street would not be affected with any significant shadowing, the privacy and use of enjoyment of the only adjacent property would not be unduly compromised, and the issue of the altered front façade was discussed at the public hearing for the project as a whole. Specifically, that the Board discussed that plans would not be out of character with the residential street and acknowledged that the changes the applicant made in the Original Application made it more compatible with the street frontage.

DDOT Report. By memoranda dated April 26, 2018, DDOT indicated it had no objection to the approval of the Modification, noting that the proposal will have no adverse impacts on travel conditions of the District's transportation network.

ANC Report. ANC 2E, an automatic party to this proceeding, submitted a report. In its report, dated May 8, 2018, the ANC voted 8-0-0 to advise the Board of Zoning Adjustment to deny requested Modification because it does not support vestibules. The Applicant presented the same plans to the ANC during the first hearing. The ANC chose to neither support nor deny the Original Application.

Persons in Support. The Board received a letter in support from Sarah Lamb, the owner of the only adjacent property at 3627 T Street, NW.

Persons in Opposition. The Board received seven (7) letters in opposition. None of the letters were from owners within a two-hundred-foot (200 ft.) radius of the Subject Property.

FINDINGS OF FACT

The Subject Property and Nearby Properties

1. The Subject Property is located at 3629 T Street, NW (Square 1296, Lot 395).
2. The Subject Property is a small rectangular record lot measuring 2,300 square feet in land area.
3. The Subject Property is located in the R-20 Zone District.
4. The Subject Property is currently improved with an attached row dwelling which houses a principal dwelling unit.
5. Abutting the Subject Property to the east is a row dwelling.
6. Abutting the Subject Property to the north and west are improved public alleys.

7. Abutting the Subject Property to the south is T Street, NW.

The Requested Modification and Special Exception

8. The Application originally requested minor modification in order to modify the Original Order.
9. The Applicant amended the requested relief and applied for a modification of significance pursuant to Y § 704.
10. The scope of a hearing for a modification of significance shall be limited to the impact of the modification on the subject of the original application and shall not permit the Board to revisit its original decision.
11. The Applicant did not alter the original—and existing—plans in any way and requested the Modification in order to construct what was previously approved by the Board in the original hearing. At that hearing, the Board determined that the project, which included the vestibule that is the subject of this modification, would not substantially visually intrude upon the character, scale, and pattern of houses along T Street.
12. As part of the modification, the Applicant demonstrated how the proposal continued to meet the standards of Subtitle X, Chapter 9 and the criteria of Subtitle E §§ 5201.3 through 5201.6.
13. The Applicant is permitted to request special exception relief for “yards” pursuant to D § 5201.
14. The Original Application was reviewed under the same standards (D§ 5201) as the special exception relief requested in the Modification, as the Applicant was requesting relief “yards” in the Original Application (rear yard setback).
15. The Applicant proposes to construct a small entryway vestibule which included in the Approved Plans in the Original Application.
16. The zoning regulations (D § 1205.2) require the front setback to match one (1) of the immediately adjacent properties. The entryway vestibule alters the front setback from 26 ft. 2.4 in., to 21 ft. 10.4 in. As the only adjacent property has a front setback of 26 ft. 2.4 in. the Applicant must ask for relief for the 4 ft. 4 in. deviation.
17. The requested Modification and vestibule will not alter the light and air available to the only neighboring property at 3627 T Street, NW. The vestibule is only on a portion of the Building on the side closest to the alley, not the adjacent property.

18. The Applicant provided evidence in the form of testimony, plans, and elevations demonstrating that because the vestibule would have no windows facing the only adjacent property, the privacy and use of enjoyment of neighboring properties shall not be unduly compromised
19. The 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 T Street.
20. The Applicant provided photographs demonstrating the diversity of character, scale, pattern, and setbacks in the surrounding area.
21. The lot occupancy of the proposed building is forty-five percent (45%), which is less than seventy percent (70%) lot occupancy permitted by special exception.
22. The Applicant provided ample graphical representations such as plans, photographs, elevations, shadow studies, and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways. (See Exhibits 5A1-5A2, 27A, and 41).
23. The R-20 is intended to retain and reinforce the unique mix of housing types including detached, semi-detached and attached dwellings and permit attached row houses on small lots and includes areas where attached houses are mingled with detached houses and semi-detached houses. Accordingly, the proposal is in harmony with the general purpose and intent of the zoning regulations and zoning maps, as the Applicant is providing an addition to an existing row dwelling in a neighborhood with a mix of dwelling types.
24. The difference in impact between the existing front façade and proposed is only four feet and four inches (4 ft. 4 in.) and is only on the side of the Subject Property closest to the alley, not the adjacent property. Accordingly, the proposal does not tend to affect adversely, the use of neighboring property.

The BZA Hearing

25. A full public hearing took place on May 9, 2018.
26. Counsel for the Applicant presented evidence to the Board that the Application met the criteria for the modification of significance and the general and specific special exception requirements for front setback relief.
27. ANC Commissioner, Ed Solomon, testified on behalf of the ANC. In his testimony Mr. Solomon testified that all vestibules are illegal if they were built after September 6, 2016.
28. One member of the public, Gail Juppenlatz, testified in opposition. Ms. Juppenlatz does not reside within two-hundred feet (200 ft.) of the Subject Property. Ms. Juppenlatz

testified that the vestibule would intrude upon the character, scale, and pattern of houses along the street.

29. No persons testified in support of the Modification.

30. On May 9, 2018, after a full public hearing, the Board closed the record and voted to approve the Application for a Modification of Significance.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests a modification of significance pursuant to Subtitle Y § 704. Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence requires a public hearing and is a modification of significance. The Applicant's request complies with 11 DCMR Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance.

In the current case, the Applicant submitted a Modification for an additional area of special exception relief under D § 5201—from the front setback requirements of D § 1205.2. Since additional relief was requested, the Board finds that it meets the definition of a modification of significance.

Pursuant to Subtitle Y § 704.6, a public hearing on a request for a modification of significance shall be focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification. Pursuant to Subtitle Y § 704.7, the scope of a hearing conducted pursuant to Subtitle Y § 704.1 is limited to the impact of the modification on the subject of the original application and does not permit the Board to revisit its original decision. Pursuant to Subtitle Y § 704.8, a decision on a request for modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application. Finally, pursuant to Subtitle Y § 704.9, the filing of any modification request under this section does not act to toll the expiration of the underlying order and the grant of any such modification does not extend the validity of any such order.

As part of the Modification, the Applicant requests special exception relief pursuant to D § 5201 from the front setback requirements of D § 1205.2.

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant applications for modifications of significance and special exceptions, as provided in the Zoning Regulations, 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 in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11-Y DCMR § 704 and 11-X DCMR § 901.2.)

Burden of Proof

Pursuant to Subtitle D § 5201 a special exception from the front setback requirements may be granted if the Application meets both the general and specific special exception requirements.

The specific requirements of Subtitle D §§ 5201.3-5201.6 are as follows:

5201.3 (a) The light and air available to neighboring properties shall not be unduly affected;

The Applicant presented evidence in the form of elevations, renderings, and shadow studies. The evidence demonstrated that the proposed vestibule and related relief would not unduly affect the light and air available to the neighboring property. (Fact 17).

The only adjacent neighbor, Sarah Lamb, owner of 3627 T Street, NW, submitted a letter in support of the Project and Modification. The letter indicated that the proposed front vestibule would not impact the light and air available to her property. (Exhibit 8).

The ANC report did not specifically address whether the vestibule would unduly affect the light and air available to the neighboring property. (Exhibit 40).

In its report, the Office of Planning found that the light and air available to neighboring properties would not be unduly affected by the requested modification and relief as the proposed vestibule would be located closest to the alley and not the abutting residence. (Exhibit 34).

The Board credits the report provided by Office of Planning, the letter submitted by the shadow study, and renderings provided by the Applicant and finds that the proposed vestibule will not unduly affect the light and air available to neighboring properties.

5201.3 (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The Applicant provided evidence in the form of testimony, plans, and elevations demonstrating that because the vestibule would have no windows facing the only adjacent property, the privacy and use of enjoyment of neighboring properties shall not be unduly compromised. (Facts 17-18).

The only adjacent neighbor, Sarah Lamb, owner of 3627 T Street, NW, submitted a letter in support of the Project and modification. The letter indicated that the proposed front vestibule would not impact the light and air available to her property. (Exhibit 8).

The ANC report did not specifically address whether the privacy and use of enjoyment of neighboring properties would be unduly compromised. (Exhibit 40).

In its report, the Office of Planning found that the privacy and use of enjoyment of adjacent neighbors should not be unduly compromised by the front vestibule and related front setback relief. (Exhibit 34).

The Board credits the testimony of the Applicant and the Office of Planning and finds that the privacy and use of enjoyment of neighboring properties will not be compromised by the proposed vestibule and front setback relief.

5201.3(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;

The 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 T Street. This requirement was discussed at length at the Original Hearing where the Board determined that the Approved Plans and project, which included the vestibule that is the subject of this modification, would not substantially visually intrude upon the character, scale, and pattern of houses along T Street. (Facts 11-15).

The ANC Report noted that the ANC did not support a vestibule but provided no explanation as to how the requested relief failed to meet the requirements of D § 5201. The ANC Commissioner testified that all vestibules constructed after the 2016 Zoning Regulations went into effect were illegal. (Fact 28). The Board disagrees with this point, as vestibules are not prohibited pursuant to the Zoning Regulations, only front additions not meeting the front setback requirements of the applicable zone.

Ms. Juppenlatz who testified in opposition asserted that the proposed vestibule would be out of character with the neighborhood. (Fact 29).

The OP Report found that the proposed vestibule would not visually intrude upon the character, scale, and pattern of houses along T Street.

The Board credits the Applicant's photographic evidence as well as the ANC report in its determination that the proposed vestibule and related relief will not substantially visually intrude upon the character, scale, and pattern of houses along T Street. As demonstrated by the photographs, there are a variety of front setbacks and entryway vestibules on this block of T Street and the surrounding blocks. (Fact 21, Exhibit 41, pp. 9, 15-19, 22-24).

5201.3 (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 provided graphical representations such as plans, photographs, elevations, and shadow studies, and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways. (Fact 23; Exhibits 5A1-5A2, 27A, and 41).

5201.3 (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 the proposed building is forty-five percent (45%), which is less than seventy percent (70%) lot occupancy. (Fact 22.)

Neither the ANC, the Party Opponents, nor the persons in opposition asserted that the lot occupancy was more than seventy percent (70%).

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 Board is not requiring any special treatment.

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

The Applicant did not request to permit the introduction or expansion of a nonconforming use as a special exception.

5201.6 This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.

The Applicant did not request to permit the introduction or expansion of nonconforming height or number of stories as a special exception.

General Special Exception Requirements

The Application must also satisfy the general special exception criteria of Subtitle X § 901.2 which states that the Board is authorized to grant special exception relief 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 Maps;” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.”

As discussed below, the Application meets the general special exception criteria.

In harmony with the general purpose and intent of the zoning regulations

The R-20 is intended to retain and reinforce the unique mix of housing types including detached, semi-detached and attached dwellings and permit attached row houses on small lots and includes areas where attached houses are mingled with detached houses and semi-detached houses. (Fact 24.)

The Board finds that the zoning regulations specifically permit special exceptions and the purpose of the Board is to review such cases. The Applicant is proposing a modest update to a row dwelling. There are a variety of entryways and front setbacks in the area and on this block of T Street. Accordingly, the proposal is in harmony with the general purpose and intent of the zoning regulations and zoning maps, as the Applicant is providing an addition to an existing row dwelling in a neighborhood with a mix of dwelling types.

Will not tend to affect adversely the use of neighboring property.

The second prong of the general special exception requirements is that the requested relief will not tend to affect adversely the use of neighboring property.

The only directly adjacent property is 3627 T Street, NW. The owner of that property provided a letter in support of the Original Application and the Modification of Significance. (Exhibit 8). All other properties are separated from the Subject Property by streets or alleys. Accordingly, the Board finds that the proposed vestibule will not affect adversely the use of neighboring properties.

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The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP’s recommendation that the application should be approved.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001).) 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). In this case, ANC 2E submitted a resolution in opposition to the modification. However, the resolution did not address the legal issues related to the requested Modification and special exception relief.

Based on the case record, the testimony at the hearing, the additional submissions by the Applicant, and the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a Modification of Significance to the Original Order to include special exception relief pursuant to 11-D DCMR § 5201, for relief from the front setback requirements of 11-D DCMR § 1205.2

Accordingly, it is **ORDERED** that the Application for modification of significance is **GRANTED**.

VOTE: 4-1-0 (Carlton Hart, Lesylee M. White, Lorna John, and Peter May to APPROVE; Frederick L. Hill to DENY).