

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19674 of Kimberly Ziegler, as amended,¹ pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2, to construct a rear and third-story addition to an existing dwelling unit in the RF-1 Zone at premises 1139 6th Street, N.E. (Square 855, Lot 236).

HEARING DATES: February 14, February 21, and April 25, 2018²
DECISION DATE: April 25, 2018

DECISION AND ORDER

Kimberly Ziegler (the “Applicant”) filed an application with the Board of Zoning Adjustment (the “Board” or “BZA”) on November 10, 2017, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2, to construct a rear and third-story addition to an existing dwelling unit in the RF-1 Zone at premises 1139 6th Street, N.E. (Square 855, Lot 236) (the “Subject Property”). For the reasons explained below, the Board voted to approve the application.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. (Exhibits 66 (Final Revised) and 58 (Notes and Computations); Exhibits 20 and 47 (Prior Revised); Exhibit 19 (Original).) In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. 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 application for which additional or different zoning relief is needed.

¹ The original application included a request for relief to modify the existing rooftop architectural elements under Subtitle E § 206.1, which was withdrawn by the Applicant based on revised plans. The Applicant also added relief for nonconforming structure under Subtitle C § 202.2, based on the recommendation of the Office of Planning. The Applicant submitted a revised self-certification form to the record at the Board’s request. (Exhibit 66.) The caption has been revised accordingly.

² The hearing was originally scheduled for February 14, 2018, but postponed at the Applicant’s request to February 21, 2018 and April 25, 2018.

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Notice of Application and Notice of Hearing. By memoranda dated December 27, 2017, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 6C, the ANC within which the Property is located, the Single Member District 6C06 representative, the Councilmember for Ward Six, and the At-Large Councilmembers and the Council Chair. A public hearing was scheduled for February 14, 2018. Pursuant to 11-Y DCMR § 402.1(a), the Office of Zoning published notice of the hearing on the application in the *D.C. Register*. (64 DCR 12437.) On December 27, 2017, OZ sent notice of the public hearing to the Applicant, ANC 6C, and all owners of property within 200 feet of the Subject Property.

Request for Party Status. The parties to this case were the Applicant and ANC 6C. There were no requests for party status.

OP Report. OP submitted a report dated April 13, 2018, recommending approval of the amended request for special exception relief. (Exhibit 63.) OP also indicated that relief under the nonconforming structure provisions of Subtitle C § 202.2 appears necessary. The Applicant further amended the application to include that relief. (Exhibit 66.)

DDOT Report. DDOT submitted a timely report indicating that it had no objection to the approval of the application. (Exhibit 45.)

ANC Report. ANC 6C submitted a written report, dated April 23, 2018, indicating that at a duly noticed and scheduled public meeting on April 11, 2018, at which a quorum was present, it voted 5-1 to oppose the application. (Exhibit 64.) The ANC raised concerns about the proposed third-story addition’s visibility from street frontage, finding that it does not meet the requirement of 11-E DCMR § 5201.3(c) that an addition “not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage.” Specifically, the ANC determined that the addition would have a substantial adverse visual impact, on the basis that the addition would disrupt the consistent pattern of the rowhouses along the block. The ANC points out that the Subject Property “stands in a series of nearly identical rowhouses constructed as a group. Numbers 1135 through 1141 all retain their original pyramidal turrets. None of these houses - indeed, none of the houses along the entire block face from Morton Place to Orleans Place - have any rooftop additions, let alone a third story visible from the public right-of-way.” (Exhibit 64.)

Persons in Support. Five neighbors, including both adjacent property owners, signed letters stating that they have no objection to the proposed project. (Exhibit 13.)

Persons in Opposition. The Board received no letters nor testimony from persons in opposition to the application.

FINDINGS OF FACT

The Property and the Surrounding Neighborhood

1. The property is located at premises 1139 6th Street, N.E. (Square 855, Lot 236) (the “Subject Property”).
2. The Subject Property is currently improved with a two-story attached building with one dwelling unit. (Exhibits 59 and 61.)
3. The Subject Property is in the RF-1 Zone. The surrounding neighborhood is developed primarily with attached dwellings.
4. The Subject Property is located in the middle of a block of attached dwellings that were constructed as a group. (Exhibit 64.) The interior dwellings each have a pyramidal turret situated on top of a pyramidal bay. The end dwellings were built with a conical turret atop a round bay, one of which no longer exists. (Exhibits 7, 8, and 63.)

Project Description

5. The Applicant proposes to construct a third-story and rear addition to the existing structure on the Subject Property. (Exhibits 59 and 61.)
6. The Applicant originally proposed to modify existing rooftop architectural elements by removing the existing turret to construct a new cornice and turret on the third floor. (Exhibits 5 and 14.)
7. The architectural plans were subsequently revised to preserve the original architectural elements in the design, set back the third-story addition by three feet, and reduce the building height to 30 feet. (Exhibit 50; BZA Hearing Transcript of April 25, 2018 (“Tr.”), p. 190.)
8. The proposed three-story rear addition would extend six feet beyond the existing rear wall of the structure. (Exhibit 48.)
9. With the proposed rear addition, the Subject Property would have a rear yard of 24 feet, eight inches. (Exhibit 58.)
10. The footprint of the existing structure has a lot occupancy of 61.66%. (Exhibit 58.) The proposed addition would increase the lot occupancy to 69.16%. (Exhibit 58.)

Zoning Relief

11. Pursuant to Subtitle E § 304.1, the maximum lot occupancy permitted in the RF-1 Zone is 60%; therefore, zoning relief from this provision is required.
12. Because the lot occupancy of the existing structure exceeds the matter-of-right limit, and the proposed addition would increase that nonconformity, the proposal also requires relief under Subtitle C § 202.2. This provision requires that any enlargement or addition to a nonconforming structure “[n]either increase or extend any existing, nonconforming aspect of the structure.” (11-C DCMR § 202.2(b).)
13. Relief from both provisions is available as a special exception under Subtitle E § 5201.1, as evaluated under the criteria of Subtitle E §§ 5201.3 through 5201.6.

Impact of the Proposal

14. The proposed rear addition would extend six feet beyond the rear wall of the adjacent property to the south. The adjacent property to the north has an existing addition that extends further than the proposed addition on the Subject Property. (Exhibit 48.)
15. The rear addition would not cause a substantial impact on light and air available to adjacent properties, as it would extend the structure by only six feet and would allow for a rear yard of at least 24 feet.
16. The rear addition has no windows on the side and no balconies or decks that would interfere with neighbor’s privacy. (Exhibit 49.)
17. Both adjacent property owners submitted signed letters for the record stating that they have no objection to the proposed project. (Exhibit 13.)
18. As demonstrated in the Applicant’s renderings, the third-floor addition is visible from street frontage, but is minimally visible when viewed from the side. (Exhibit 54 (front view); Exhibits 52, 53, and 56 (side views).)
19. The design preserves the existing turret and cornice, which are consistent with the patterns of houses on the block. OP testified that the “design is maintaining the integrity of the original architectural features.” (Tr., pp. 196-97.)
20. The third-floor addition is within the matter-of-right height limitation in the RF-1 Zone. (Exhibit 50; Tr., p. 190.)

21. The six-foot rear addition would be visible from the alley, but the proposed rear addition would not substantially intrude on the character of the block. The proposed rear addition would be in keeping with the designs of similar rear additions on the block. (Exhibit 55.)
22. Pursuant to Subtitle E § 300.1, the purpose and intent of the RF-1 Zone is “provide for areas predominantly developed with attached row houses on small lots within which no more than two (2) dwelling units are permitted.”

CONCLUSIONS OF LAW

The Applicant requests special exception relief under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2, to construct a rear and third-story addition to an existing attached dwelling unit in the RF-1 Zone at premises 1139 6th Street, N.E. (Square 855, Lot 236). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant 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. (11-X DCMR § 901.2.)

In addition to meeting the general special exception standard, the Applicant must satisfy the “specific conditions” of Subtitle E § 5201 to be granted special exception relief. Specifically, an applicant must show that: (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. (Subtitle E § 5201.3.) In order to demonstrate compliance with paragraphs (a), (b) and (c), an applicant must provide 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. (11-E DCMR § 5201.3(d).) Finally, the Board may approve lot occupancy of all new and existing structures on the lot up to a maximum of 70% for attached residential buildings in the RF-1 Zone. (11-E DCMR § 5201.3(e).)

Based on the findings of fact, the Board concludes that the request for special exception relief satisfies the requirements of Subtitle E § 5201. The Board finds that the Applicant has provided sufficient plans, photographs, and elevations to meet the requirement of Subtitle E § 5201.3(d), and finds that the addition would not increase the lot occupancy above 70%; therefore, the requirement of Subtitle E § 5201.3(e) is met. The Board will address the criteria of Subtitle E § 5201.3 (a), (b), and (c) in turn.

First, the Board finds that the Applicant has demonstrated that the light and air available to neighboring properties shall not be unduly affected. The proposed three-story rear addition would

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extend the rear of the structure by only six feet. The proposed addition would extend six feet beyond the adjacent property to the south, but would not extend as far as the rear wall of the adjacent property to the north. The rear addition would provide a rear yard with a depth of over 24 feet. Based on the modest nature of the extension, the rear addition is unlikely to have a significant impact on the light and air available to those adjacent properties. In addition, the Board finds that the privacy of use and enjoyment of neighboring properties shall not be unduly compromised by the addition. The Board finds that there are no windows on the side of the addition and that there are no balconies or decks that would cause privacy impacts on adjacent neighbors. Further, the Board credits the letters of no objection submitted by neighbors, including both adjacent property owners, in finding that the use and enjoyment of neighboring properties will not be unduly compromised.

The Board finds that the addition, 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 from the rear alley. ANC 6C raised concerns regarding this criterion in its written report, opining that the proposed addition would disrupt the consistent pattern of the attached dwellings along the block. Concerning the impact of the addition as viewed from street frontage, the Board considered the renderings provided by the Applicant, the recommendation of OP, and the concerns raised by the ANC. Though the third-floor addition is visible from street frontage, the Board finds that the third-story is set back sufficiently so that the addition does not substantially intrude on the visual character of the block. Further, the Board finds that the preservation of the turret and cornice prevents the pattern of houses from being significantly disrupted. In making this finding, the Board credits OP's testimony that the design maintains the integrity of the original architectural features and notes that the height of the addition is within the matter-of-right limitation. For these reasons, the Board found that the Applicant's proposal, as revised to preserve the existing architectural elements, does not intrude on the character of the neighborhood. Finally, the Board finds that the rear addition, as viewed from the rear alley, would not substantially intrude on the character of the block. Supporting this finding, the Board notes that the proposed addition is shallower than the adjacent rear addition to the north. Based on the renderings provided by the Applicant, the rear addition will be in keeping with the designs of similar rear additions on the block. The Board therefore concludes that the proposed addition will be in keeping with the character, scale, and pattern of houses in the neighborhood.

For these same reasons, the Board concludes that the request for special exception relief meets the general special exception standards in Subtitle X § 901.2. The Board finds that granting a special exception in this case would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps as required by Subtitle X § 901.2(a). Further, the Board concludes that the proposed addition would not adversely affect the use of neighboring properties, as required by Subtitle X § 901.2(b). As discussed in the analysis of the special exception standard of Subtitle E § 5201, the proposed addition would not have an adverse impact on light and air available to adjacent properties, privacy of use and enjoyment of adjacent properties, or the visual character of the street frontage or public alley.

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The Board concludes that the Applicant has met its burden of proof for the special exception requested.

Great Weight to ANC and OP

Section 13 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)(A)) (2014 ed.) requires that the Board's written orders give "great weight" to the issues and concerns raised in the written recommendations of the affected ANC. To give "great weight" the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns.

In this case, ANC 6C submitted a written report recommending denial of the application. (Exhibit 64.) The ANC specifically raised concerns related to the visual impact of the third-story addition on the character and scale of houses on the block. The ANC found that the addition would disrupt the consistent pattern of the attached dwellings along the block. The Board considered this concern, but ultimately determined that the addition would not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage, as the turret and cornices would be preserved and the third-story addition would be set back from the front of the façade to decrease its visibility. As discussed in more detail above, the Board was not persuaded to deny the application on these grounds.

The Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP's recommendation. For reasons stated in this Order, the Board concurs with OP's recommendation to approve the relief requested. Also, based on the recommendation of OP, the Board encouraged the Applicant to use a darker color for the front face of the third-story addition; however, the Board did not find that the proposed addition would create an adverse impact that would require this recommendation be adopted as a condition of the Board's Order.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 49, 61, and 62 – REVISED A1-1 (PROPOSED FLOOR PLANS), A6-1 PROPOSED FRONT ELEVATION, AND A6-2 PROPOSED REAR ELEVATION** respectively.)

VOTE: 4-0-1 (Carlton E. Hart, Lesylleé M. White, Lorna L. John and Robert E. Miller to APPROVE; Frederick L. Hill not participating.)

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: December 19, 2018

PURSUANT TO 11 DCMR 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 11 DCMR 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 11 DCMR 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.

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

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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.