

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19728 of Patrick and Becky McGeehan, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the nonconforming structure requirements of Subtitle C § 202.2, from the rear yard requirements of Subtitle E § 306.1, and from the lot occupancy requirements of Subtitle E § 304.1, to construct a two-story addition to an existing one-story rear addition to an attached principal dwelling unit in the RF-1 Zone at premises 121 Tennessee Avenue, N.E. (Square 1012, Lot 20).

HEARING DATES: April 18 and May 30, 2018
DECISION DATE: July 11, 2018

DECISION AND ORDER

On February 8, 2018, Patrick and Becky McGeehan, the property owners of the subject premises (the “**Applicant**”) submitted an application for special exception relief to permit construction of a two-story addition to an existing one-story rear addition to an attached principal dwelling unit in the RF-1 Zone at premises 121 Tennessee Avenue, N.E. (Square 1012, Lot 20) (the “**Property**”). Following a public hearing, the Board of Zoning Adjustment (the “**Board**”) voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated February 26, 2018, the Office of Zoning sent notice of the application to the Office of Planning (“**OP**”); the District Department of Transportation (“**DDOT**”); the Councilmember for Ward Six; Advisory Neighborhood Commission (“**ANC**”) 6A, the ANC for the area within which the Subject Property is located; the single-member district ANC 6A04; the Applicant; and the owners of all property within 200 feet of the Subject Property. Notice was published in the *D.C. Register* on March 9, 2018. (65 DCR 2417.) The Board scheduled the hearing for April 18, 2018, but on April 11, 2018 the Board postponed the hearing to May 30, 2018.

Party Status. Pursuant to Subtitle Y § 404.3, requests for party status must be submitted at least 14 days prior to the public hearing date – by April 4, 2018 in this case. Over a month later, on May 14, 2018, the Board received four requests for party status in opposition. Two were from the

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immediate abutting neighbors: Allison Boyer at 123 Tennessee Avenue, N.E. (Exhibits 42, 42A) and Michel Daley at 119 Tennessee Avenue, N.E. (Exhibits 45, 45A) (collectively the “**Abutting Opponents**”). The other two were from non-abutting neighbors; Sigmund Cohen of 125 Tennessee Avenue, N.E. (Exhibits 43, 43A) and Ronald Hudson of 137 Tennessee Avenue, N.E. (Exhibit 44), collectively the “**Nonabutting Opponents**”. All four of these requesters received notice of the April 18 hearing by mail on February 26, 2018. (Exhibits 8 and 24.) At its May 30, 2018 public hearing, the Board determined that these requests were all untimely, but found that the Abutting Opponents had demonstrated good cause to be granted a waiver under Subtitle Y § 101.9 from the timely filing requirement, and so granted them party status in opposition as a single party in opposition. The Board instead determined that the Nonabutting Opponents did not qualify for party status on the grounds of untimely filing as well as for failure to demonstrate how they were “likely to be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.” (Subtitle Y §§ 404.1(i)(5) and 404.13.)

OP Report. In its report dated April 6, 2018, OP analyzed the Application against the requirements for the requested special exception relief and recommended approval of the requested relief. (Exhibit 34.)

DDOT Report. By report dated March 29, 2018, DDOT indicated it had no objection to the approval of the Application, noting that the proposal will have no adverse impacts on travel conditions of the District’s transportation network. (Exhibit 32.)

ANC Report. ANC 6A, an automatic party to this proceeding pursuant to Subtitle Y § 403.6(b) as the affected ANC, submitted a May 11, 2018 written report in support of the Application. (Exhibit 40.)

Persons in Support. The Board received five letters in support of the application from neighbors. (Exhibits 27, 46-49.) The Abutting Opponents had initially submitted letters in support, but later filed letters withdrawing that support. (Exhibits 26, withdrawn by 50, and 33, withdrawn by 39.) Capitol Hill Restoration Society (“**CHRS**”) originally submitted a letter in support for the application (Exhibit 37); however, CHRS subsequently withdrew its support based on the objections of adjacent neighbors and chose to instead take no position. (Exhibit 63.)

Persons in Opposition. The Abutting and Nonabutting Opponents also submitted various letters in opposition to the record. (Exhibits 41, 52, 55-57, and 61.) The Board heard testimony in opposition from the Nonabutting Opponents at the public hearing on May 30, 2018.

FINDINGS OF FACT

1. The Property is located at 121 Tennessee Avenue, N.E. (Square 1012, Lot 20).
2. The Property is zoned RF-1 and is located within the Capitol Hill Historic District.

3. The Property is an irregularly-shaped lot measuring 1,145 square feet in lot area.
4. The Property runs from Tennessee Avenue, N.E. on the northwest to a ten-foot public alley on the southeast. (Exhibit 3)
5. The Property is currently improved with a three-story residential row dwelling (the “**Building**”) that has a height of 33.5 feet.
6. The Property has an existing nonconforming lot occupancy of 65.9% beyond the maximum 60% lot occupancy allowed in the RF-1 Zone by Subtitle E § 304.1.
7. The Building has an existing nonconforming rear yard of 17.73 feet that is less than the 20 feet required in the RF-1 Zone by Subtitle E § 306.1.
8. The Building is built from lot line to lot line, except that it has an existing cellar and first story rear dog-leg extension. The existing extension is 11 feet, 11 inches deep and is built along the shared property line to the northwest. The existing extension is set back from the southwestern lot line by six feet, seven inches.
9. Abutting the Property to the northeast is an attached dwelling at address 123 Tennessee Avenue, N.E., which has a one-story rear extension that aligns with the rear wall of the Building’s rear dog-leg extension.
10. Abutting the Property to the southwest is an attached dwelling at 119 Tennessee Avenue, N.E., which has a one-story rear extension that extends further into the rear yard than the rear wall of the Building’s rear dog-leg extension.
11. The block of Tennessee Avenue, N.E. in which the Property is located is a mix of two-story and three-story dwellings.
12. Many of the buildings fronting on the public alley at the rear of the Property have rear extensions, a majority of which are two stories tall, with several one-story rear additions and one three-story rear addition in the Square. (Exhibit 60.)
13. The Applicant submitted an aerial photo and birds’ eye diagram of the block as well as photos illustrating the size and number of rear extensions facing onto the rear alley. (Exhibits 6 and 7.)

The Proposal

14. The Applicant requested special exception relief to construct a two-story addition on top of the Building’s existing rear cellar and first floor dog-leg extension (the “**Addition**”).

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15. The Addition which would maintain the existing height of the Building of 33.5 feet and so would not be visible from Tennessee Avenue N.E. or other public street. The Addition would only be visible from the rear alley.
16. The Addition would extend the rear of the second and third stories by 11 feet, 11 inches on the northeastern side of the lot. The Addition would follow the dogleg of the existing cellar and first floor rear extension and so be set back from the southwestern lot line by at least five feet.
17. The Addition would add an open trellis at the top of the first floor over the open space between the rear dog-leg extension and the southwestern lot line.
18. The Addition would have no windows along the shared northeast property line, but on the south side setback from the southwest lot line would have windows on the second and third stories.
19. The Applicant submitted an initial shadow study showing the impact of the Addition at noon and 3 p.m. on March 20, June 21, and September 21; (Exhibit 29;) a revised shadow study adding in 9 a.m. on those dates, as well as December 21 at 7:30 a.m., 11:30 p.m., and 2:30 p.m.; (Exhibit 54;) and a final shadow study comparing the existing shadows with those caused by the Addition at 9 a.m., noon, and 3 p.m. on March 21, June 21, and September 21, and at 7:30 a.m., 11:30 a.m., and 2:30 p.m. on December 21. (Exhibit 58.)
20. The shadow studies illustrate that the Addition, when compared with the existing structure, would create some additional shadows on the property to the north during certain periods. Specifically, the studies show that there will be additional shadowing on March and September 21 at noon on the abutting neighbor to the north's rear wall closest to the Property and additional shadowing on those same days at 3 p.m. on the top and roof of the neighbor to the north's one-story rear extension. The studies show that on June 21, the Addition has no impact on the shadows cast to adjacent properties until 3 p.m., when there is some additional shadowing on the abutting neighbor to the north's rear yard and, again, on the roof of the one-story rear extension. Finally, the studies show that on December 21, the Addition would create additional shadows on the rear wall of the abutting property to the north at 11:30 a.m. but would otherwise have no additional impacts. (Exhibit 58.)
21. OP asserted that the Addition "would be partly obscured by existing mature trees." (Exhibit 34.)
22. At the public hearing, neighbors raised concerns related to the impacts of the construction of the Addition on their properties. In response, the Board requested that the Applicant submit a proposed construction management plan.

The Requested Zoning Relief

23. The Application requested relief from the 20-foot minimum rear yard required in the RF-1 Zone by Subtitle E § 306.1 to authorize the Addition's extension of the second and third stories to match the 17.73-foot rear yard of the existing dog-leg extension.
24. The Application requested relief from the maximum 60% lot occupancy required in the RF-1 Zone by Subtitle E § 304.1 to authorize the Addition's extension of the second and third stories to match the existing dog-leg extension as well as the first-floor trellis between the dog-leg and the south lot line, bringing the existing 65.9% lot occupancy to 66.7%.
25. The Application requested relief from Subtitle C § 202.2's prohibition on increasing an existing nonconformity to authorize the Addition's nonconforming rear yard and lot occupancy.
26. Relief from the requirements of Subtitle E §§ 304.1 and 306.1 and of Subtitle C § 202.2 is available as a special exception under Subtitle E § 5201 and Subtitle X § 902.2.

CONCLUSIONS OF LAW

Section 8 of the Zoning Act, 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 (i) will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, (ii) will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and (iii) complies with the special conditions specified in the Zoning Regulations.

For the relief requested by the Application, the "specific conditions" are those of Subtitle E § 5201. Relief under this section is limited to projects that:

- (i) are an addition to a residential building, a new or enlarged accessory structure to a residential building, or a reduction in the minimum setback requirements of an alley lot; (Subtitle E § 5201.1;) and
- (ii) do not authorize the introduction or expansion of either a nonconforming use or the introduction or expansion of nonconforming height or number of stories or a lot occupancy exceeding 70%. (Subtitle E §§ 5201.3(e), 5201.5, and 5201.6.)

An applicant must demonstrate – 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. (Subtitle E § 5201.3(d)) – 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

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- (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.)

Relief granted by the Board 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)).

Based on the Findings of Fact, the Board concludes that the request for special exception relief satisfies the requirements of Subtitle E § 5201. The Application meets the eligibility requirement of Subtitle E § 5201.2(a) as an addition to a residential building and complies with Subtitle E §§ 5201.3(e), 5201.5, and 5201.6 as it does not propose to introduce or expand a nonconforming use or height or a lot occupancy over 70%. The Board concludes that the Applicant complied with Subtitle E § 5201.3(d) by providing sufficient plans, photographs, and elevations to demonstrate that it met the criteria of Subtitle E § 5201.3(a), (b), and (c), as discussed in turn.

Subtitle E § 5201.3(a) – Light and Air

The Board concludes that the Applicant has demonstrated that the Addition will not unduly affect the light and air available to neighboring properties because the Addition does not intrude into the existing 17.73-foot rear yard nor expand the existing footprint of the Building. Based on the shadow studies provided by the Applicant, the Board recognizes that the Addition would create additional shadowing on the adjacent properties, but concludes that these additional shadows, when compared with the existing scenario, will not have an undue impact on the light available to the neighbors because the increased shadowing would not be substantial or constant. The Board particularly analyzed the shadow studies related to the impact on the abutting neighbor to the northeast, specifically on the rear wall, rear extension and deck on that extension. Although the shadow studies showed that the Addition would cast some additional shadows on different portions of that neighbor's property, the Board concluded that the additional shadowing would not rise to the level of an undue burden on the abutting northeast owner because the additional shadowing changed over the course of a day and as to which portions of the building were affected. The shadow studies showed that these additional shadows would only occur during limited times of the day and limited times of the year, specifically on March and September 21 at noon and at 3 p.m.; on June 21 only at 3 p.m.; and on December 21 at noon. The Board therefore concludes that these transitory additional shadows would not have a substantial adverse impact on the light and air available to the neighboring properties.

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Subtitle E § 5201.3(b) – Privacy of Use and Enjoyment

The Board concludes that the Applicant demonstrated that the Addition would not unduly compromise the privacy of use and enjoyment of neighboring properties because the Addition will not reduce the existing rear yard of the Property, and as discussed above, would not cause undue shadowing that would limit the use of the neighboring buildings and rear yards. The Board concludes that the absence of any windows on the northwest side of the Addition reduces the potential for privacy impacts on that adjacent neighbor. For the neighbor to the southeast, the Board concludes that the windows on the southeastern side of the Addition will not unduly compromise the privacy of the neighbor to the southeast because these new windows will be setback at least five feet from the shared lot line.

Although the potential impact of the construction of the Addition falls outside the scope of the Board's review of a special exception application, the Board asked the Applicant to coordinate with the neighbors on a construction management plan. The Applicant submitted an initial plan and a revision that responded to certain issues raised by neighbors. (Exhibits 65 and 68.) Since construction impacts are outside of the Board's review, it has not adopted this proposed plan as a condition of this Order, but expects the parties to continue to coordinate on these issues.

Subtitle E § 5201.3(c) – Visual Intrusion

Finally, the Board concludes that the Applicant demonstrated that the 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 Tennessee Avenue, N.E. as it will only be visible from the public alley at the rear of the Property. As to the view from the public alley, the Board concludes that the Addition would not be out of character with the rear extensions that are common among the properties that abut the public alley and that the Addition would be partly obscured by existing mature trees as noted in OP's report. One of the neighbors across the alley submitted a letter in support of the Application. (Exhibit 27.)

Subtitle X § 901.2 – General Special Exception Standards

Pursuant to Subtitle X § 901.2(a), the Board concludes that granting the requested special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because the Application is consistent with the purposes of the RF-1 zone to "[r]ecognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city." (Subtitle E § 100.1.) The Applicant would construct a rear addition to an existing attached residential building with one dwelling unit, thus preserving the existing housing stock while allowing a family to improve and expand its dwelling unit to accommodate its needs as it ages in place. The Addition maintains the character of the RF-1 zone because the attached dwelling contributes to the unique mix of housing types and retains the residential character of the area.

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Pursuant to Subtitle X § 901.2(b), the Board concludes that the Addition would not adversely affect the use of neighboring properties. As discussed above in the analysis of the special exception standards of Subtitle E § 5201, the 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.

Great Weight to OP and ANC

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2018 Repl.)) The Board finds OP’s report persuasive, given that it provided an in-depth analysis of how the Application met each of the requirements for the requested special exception relief. As discussed above, the Board concurs with OP’s recommendation that the Application be approved. (Exhibit 34.)

The Board is required under § 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)(2018 Repl.)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 6A. 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. 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).” As discussed above, the Board concurs with ANC 6A’s written report recommending that the Application be approved and notes the ANC did not raise any issues or concerns that the Board should address. (Exhibit 40.)

DECISION

Based on these Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, from the rear yard requirements of Subtitle E § 306.1, and from the nonconforming structure requirements of Subtitle C § 202.2 to construct a two-story addition to an existing one-story rear addition to an attached principal dwelling unit in the RF-1 Zone. 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.

Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7 AS REVISED BY EXHIBIT 28.**

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VOTE: 5-0-0 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Peter A. Shapiro (by absentee ballot) to APPROVE).

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 K. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 29, 2019

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 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.