

BOARD OF ZONING ADJUSTMENT
SPECIAL EXCEPTION APPLICATION

APPLICANT'S STATEMENT

Lee Wells and Malcolm Haith
1834 Ontario Place, N.W. (Square 2583, Lot 351).

I. INTRODUCTION AND NATURE OF RELIEF SOUGHT

Lee Wells and Malcolm Haith (collectively known as the “Applicant”) are the owners of the property located at 1834 Ontario Place, N.W., Square 2583, Lot 351 (the “Property”), which is zoned RF-1. The current improvements on the Property consist of a three-story plus cellar, one-family row dwelling with a porch (the “Building”). The Applicant is requesting the following relief:

1. Relief from the Prohibition Against Altering Architectural Elements.

The Applicant is proposing to remove the existing porch roof and rebuild a portion of the porch roof. Subtitle E § 206.1(a) states: “A roof top architectural element original to the building such as cornices, *porch roofs*, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size.” (Emphasis added). Accordingly, the Applicant is requesting special exception relief in order to remove the porch roof pursuant to 11-E DCMR § 5203.3, which permits relief from the restrictions of 11-E DCMR §206.1(a).

The Applicant was originally granted zoning approval from DCRA to remove the Building’s porch roof. On October 24, 2017, Building Permit No. B1705868 was issued to the Applicant, and following discussions specifically addressing the porch roof, the zoning division signed off on the removal of the porch roof, and the approved Building Permit plans showed removal of the porch roof (the same plans now before the Board). On February 27, 2018, DCRA issued a Stop Work Order on the Property, and threatened to revoke the Building Permit, now claiming that they should not have approved the removal of the porch roof and it was the Applicant’s sole liability to correct the situation, despite having, in good faith, applied for and received approval to remove the porch roof.

2. Relief from the Maximum Lot Occupancy Restrictions.

The Applicant is also proposing to construct a small two-story addition (the "Addition") at the rear of the Building and an accessory garage (the "Garage") at the rear of the Property and convert the Building to a flat (2-unit building). The proposed Garage will increase the lot occupancy of the Property to sixty-six percent (66%). The maximum permitted lot occupancy in the RF-1 Zone is sixty percent (60%). Accordingly, the Applicant is requesting special exception relief pursuant to 11-E DCMR § 5201 which permits relief from the maximum lot occupancy restrictions of the RF-1 Zone set forth in 11-E DCMR § 304.1.

3. Relief from the Size Restrictions of Accessory Structures in Required Rear Yards.

The minimum rear yard requirement for the RF-1 Zone is twenty feet (20 ft.). While the distance from the rear wall of the principal Building to the rear property line is forty-point-eight feet (40.8 ft.), the proposed Garage will be setback fifteen point thirty-five feet (15.35 ft.) from the rear wall of the principal Building. Since the Garage is less than twenty feet (20 ft.) from the rear wall of the principal Building it is technically in the required rear yard. Subtitle E § 5004.2 states: "An accessory building shall be permitted in a required rear yard of a principal building pursuant to the following conditions: (a) the accessory building is less than ten feet (10 ft.) in height; and (b) the accessory building is less than one hundred square feet (100 sq. ft.) in gross floor area." The proposed Garage measures 18.9 ft. x 21 ft. (396.9 sq. ft.) and is thirteen feet and eight inches (13 ft. 8 in.) in height; accordingly, the Applicant is requesting special exception relief pursuant to 11-E DCMR § 5201, which permits relief from the size restrictions on accessory structures located in the required rear yard.

II. DESCRIPTION OF THE PROPERTY AND THE PROJECT

The Property is located at 1834 Ontario Place, N.W., and is in the RF-1 zone district. The Property is surrounded by other row dwellings to the east and west. Abutting the Property to the north is Ontario Place, N.W. Abutting the Property to the south is a public alley.

The subject property (1834 Ontario), the two properties to the west (1836 and 1848 Ontario), and the property to the east (1832 Ontario), were constructed together in 1909. Although they were constructed together, they were designed differently; as demonstrated by the photographs, the properties on either side of the subject Property have large bay windows. The

other property in this group, 1840 Ontario Place, was designed in a similar style as the subject Property—with two dormers on the third story, no bay projections, and with porch roofs matching the other properties. The building at 1840 Ontario Place has since removed the original porch roof. The porch roof on the Subject Building is not structurally sound and has become a safety hazard. Accordingly, the Applicant is proposing to remove the old porch roof, and a portion of the roof will be replaced.

The Applicant is also proposing to construct a one-story Garage at the rear of the Property. Almost every other property on this side of Ontario Place has a garage that abuts the public alley. The proposed Garage will be comparable in size to the existing garages on the alley. The Garage will be setback twelve feet (12 ft.) from the centerline of the alley—which is fifteen feet (15 ft.) in width. The Applicant has provided a map and photographs of the surrounding area, and separate plans for the Garage.

III. THE APPLICATION SATISFIES SPECIAL EXCEPTION REQUIREMENTS OF SUBTITLE 11-X DCMR § 901.2, 11-E DCMR § 5203.3 AND 11-E DCMR § 5201.

A. Overview.

Pursuant to 11-X DCMR § 901.2, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, subject also, in this case, to the specific requirements for relief under 11-E DCMR § 5203.3 and 11-E DCMR § 5201.

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

B. Requirements of 11-X DCMR § 901.2.

The granting of a special exception in this case “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning

Maps ...” (11-X DCMR § 901.2). Given the nature of the proposed Garage and new porch roof, the Building’s mass, height, and architectural design will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the homes to the east or west, as both properties have accessory garages at the rear of the properties. As discussed above, the subject Property was constructed with three other properties. The property at 1840 Ontario Place was designed to match the style of the subject Property; the building at 1840 Ontario no longer has a porch roof. There is a diversity of character and design on this block of Ontario Place, and the properties to the west of 1840 Ontario Place do not have porches or porch roofs. Further, the Applicant is proposing to rebuild a portion of the porch. The proposed alterations and Garage will not adversely affect the properties to north or south of Building, as they are separated from the Building by Ontario Place and a public alley, respectively.

C. Requirements of Subtitle 11-E DCMR § 5203.3.

Subtitle E § 206(a) states that “a roof top architectural element original to the building such as cornices, porch roofs, a turret, tower or dormers, shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size.” Subtitle E § 206.2 continues that “in an RF zone district, relief from the design requirements of Subtitle E § 206.1 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle Y Chapter 9, subject to the conditions of Subtitle E § 5203.3.”

The Applicant is proposing to remove a porch roof original to the Building. The Applicant is therefore requesting relief pursuant to Subtitle E § 5203.3, which states that a special exception to the requirements of Subtitle E § 206 shall be subject to the conditions of Subtitle E § 5203.1(b), (c), and (d).

The Application satisfies the requirements of E § 5203.1 as follows:

(b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;

The Applicant is proposing to remove the porch roof and replace it with a smaller porch roof. This shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code.

(c) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator;

The Applicant is proposing to remove the porch roof and replace it with a smaller porch roof. This shall not interfere with the operation of an existing or permitted solar energy system on the adjacent properties.

(d) A roof top architectural element original to the house such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;

This provision, seems to have been included in error, as E § 5203.3 provides relief from this exact provision of E § 206; i.e. it's a circular provision that requires one to comply with the restriction in order to get relief from the restriction. The Applicant is simply proposing to remove a dilapidated porch roof and replace it with a smaller porch roof. The proposal safely meets the general special exception requirements of 11-X DCMR § 901.2.

D. Requirements of Subtitle 11-E DCMR § 5201.

The Applicant is requesting relief pursuant to 11-E DCMR § 5201, from the maximum lot occupancy restrictions of 11-E DCMR § 304.1 and the maximum accessory structure size requirements of 11-E DCMR § 5004.2. The proposal in this application satisfies the requirements of Subtitle E § 5201, as follows:

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

- (a) The light and air available to neighboring properties shall not be unduly affected;*
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*
- (c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; and*

(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*

(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%).*

(a) The light and air available to the neighboring properties will not be unduly affected, as the adjacent properties have garages of approximately the same size and height.

(b) The privacy of use and enjoyment of neighboring property will not be unduly compromised by the Garage, as the Garage will not have any east-facing or west-facing windows. The Garage is setback twelve feet (12 ft.) from the centerline of the alley and will not compromise the privacy of the property to the south. The property directly to the south is separated by an alley and also has an accessory garage abutting the shared public alley.

(c) & (d) The proposed Garage will not visually intrude upon the character, scale, or pattern of houses and accessory structures on the alley. As demonstrated by the photographs submitted with this Application, the subject property is one of the only properties on this block without an accessory structure at the rear of the property.

(e) The principal Building and the Garage will have a total lot occupancy of sixty-six percent (66%).

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

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

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

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

Section 5201.6 *“This section may not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.”*

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

IV. CONCLUSION.

For the reasons stated above, this Application meets the requirements for special exception approval by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,



Martin Sullivan
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Date: April 18, 2018