

BOARD OF ZONING ADJUSTMENT
SPECIAL EXCEPTION APPLICATION

APPLICANT'S STATEMENT of 1151 Oates St NE LLC

1151 Oates Street, NE; Square 4064 Lot 804

I. INTRODUCTION AND NATURE OF RELIEF SOUGHT

1151 Oates St NE LLC (the "Applicant") is the owner of the property located at 1151 Oates Street, N.E. (Square 4064, Lot 804) (the "Property"), which is zoned RF-1. The improvements on the Property consist of a two-story (plus cellar), flat (2-units) (the "Building"). The Applicant proposes to construct a third-story addition to the Building and three-story addition at the rear of the Building (the "Addition") and convert it to three (3) residential dwelling units. Accordingly, the Applicant requests special exception approval for the conversion pursuant to Subtitle U § 320.2. The Applicant is requesting waivers from both U § 320.2(e) (10-ft. rule) and U § 320.2(h) (architectural elements), as discussed below.

The Addition will also extend an existing nonconforming side yard; accordingly, the Applicant is also requesting relief pursuant to 11-E DCMR § 5201 from the side yard requirements of 11-E DCMR § 307.4 and the prohibition against expanding nonconforming structures of 11-C DCMR § 202.2.

II. BACKGROUND.

A. Description of the Property and Surrounding Area.

The Property is located at 1151 Oates Street, N.E. and is in the RF-1 zone district. Abutting the Property to the west is a multi-family residential building with five (5) units. To the east of the Property is a one-family dwelling. Abutting the Property to the north and south are Oates Street and a public alley, respectively. The area is characterized by a variety of residential uses, including one-family dwellings, flats, and a mix of apartment buildings.

B. Proposed Addition and Required Relief.

The Applicant is proposing to construct a third-story addition to the Building and a three-story addition at the rear of the Building which will extend the Building footprint by fifteen feet (15 ft.). The third story will increase the building height from twenty-four feet (24 ft.) to thirty-

three feet (33 ft.). The third story addition is not setback from the front façade of the existing building and will necessitate the removal of an existing cornice element. Accordingly, the Applicant is requesting a waiver from the prohibition against removing a rooftop architectural element original to the house, such as a cornice.

The Applicant is also requesting a waiver from the ten-foot rule (U-320.2(e)), as the proposed Addition extends fifteen feet (15 ft.) past the furthest rear wall of the adjacent building to the east. Even with the Addition, the lot occupancy will be limited to only twenty-nine percent (29%). The proposed project includes three (3) parking spaces.

Subtitle E, Section 307.4 states: "In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased and provided further, that the width of the existing side yard shall be a minimum of two feet (2 ft.)." The existing side yard is less than two feet (2 ft.) in width and the Addition will extend this non-conformity. Accordingly, the Applicant is requesting relief pursuant to 11-E DCMR § 5201 from the side yard requirements of 11-E DCMR § 307.4 and the prohibition against extending an existing nonconformity, pursuant to 11-C DCMR § 202.2.

III. THE APPLICATION SATISFIES SPECIAL EXCEPTION REQUIREMENTS OF SUBTITLE U § 320.2.

A. Overview.

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, 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 Subtitle U § 320.2 of the Zoning Regulations.

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 Subtitle X § 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 DCMR Subtitle X § 901.2).

Given the nature of the Addition, the Building's mass and height will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps, as the lot occupancy is limited to only twenty-nine percent (29%), and the Building is within the height and story limit of the RF-1 Zone. The proposed Addition will not tend to affect adversely the use of neighboring properties to the north and south, as they are separated by Oates Street and a public alley, respectively.

The Addition will not impact the adjacent apartment building to the west, as the Addition will not extend more than ten feet (10 ft.) beyond that adjacent building. The Addition will not adversely impact the use of the neighboring property to the east, as the Applicant is not proposing any windows on the proposed east façade of the addition and, as the shadow studies will demonstrate, the additional five feet (5 ft.) will not create a substantial negative impact on the light and air available to that property.

C. Requirements of Subtitle U § 320.2.

The proposal in this Application satisfies the requirements of 11 DCMR Subtitle U § 320.2(a) through 320.2(l) as follows:

Section 320.2(a) *“The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);*

The Applicant is proposing to increase the height to thirty-three feet (33 ft.). The Applicant has submitted photographs of the Property and architectural plans along with its Application.

Section 320.2(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;*

The proposed Addition will increase the number of units from two (2) units to three (3) units. Therefore, Inclusionary Zoning and the set aside requirements of Subtitle C § 1003.6 do not apply.

Section 320.2(c) *There must be an existing residential building on the property at the time of filing an application for a building permit;*

There is an existing residential structure on the Property at the time of filing an application for a building permit.

Section 320.2(d) *There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;*

The proposed structure includes three (3) units, requiring a minimum of 2,700 square feet of land. The Property has 3,750 square feet of land, therefore satisfying the minimum requirement.

Section 320.2(e) *An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on the adjacent property;*

The Applicant is requesting a waiver from this subsection, as the Addition will extend fifteen feet (15 ft.) past the adjacent building to the east.

Section 320.2(f) *Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition;*

The Addition, including roof structures and penthouses, will not block or impede the function of a chimney or other external vent on the adjacent property.

Section 320.2(g) *Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system;*

The Addition will not interfere with the operation of an existing or permitted solar energy system on any adjacent property. To the Applicant's knowledge, there are no such systems on adjacent property.

Section 320.2(h) *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 shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;*

The Applicant is requesting a waiver from this provision as the third story will not be setback from the front façade of the Building and the Applicant is proposing to remove an existing cornice.

Section 320.2(i) *Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

- (1) The light and air available to neighboring properties shall not be unduly affected;*

The light and air available to neighboring properties will not be unduly affected. The proposed Addition will not extend more than ten feet (10 ft.) past the building to the west. While the Addition will extend fifteen feet (15 ft.) beyond the adjacent building to the east, the shadow studies will demonstrate that due to the location of the properties relative to the sun, the shadow produced by the additional five feet (5 ft.) will be negligible.

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

The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The proposed Addition will not have windows on the east façade. The windows on the west façade are spaced as to not compromise the privacy and use of enjoyment of the tenants in the apartment building to the west of the Property.

(3) The conversion and any associated additions, 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 or alley;

The conversion and any associated additions, as viewed from the street, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street. While the Addition is not setback from the front façade, the proposed changes are not out of character, scale or pattern of the houses along this block of Oates Street, as the houses on Oates Street vary in character, scale and pattern, as demonstrated by photographs submitted with this Application. Furthermore, in the architect's view, the existing Building façade does not contain significant architectural elements, and the proposed re-design will be more aesthetically pleasing than the current situation.

Section 320.2(j) *In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;*

The Applicant has submitted detailed plans showing the relationship of the proposed Addition to the neighboring properties and the public ways.

Section 320.2(k) *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 or nearby properties, or to maintain the general character of a block;*

No special treatment is necessary because the Addition will maintain ample open space, will be a size and scale appropriate for the site, and will have a design consistent with the neighborhood.

Section 320.2(l) *The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i)."*

The Applicant is requesting a waiver from both U § 320.2(e) and U § 320(h). The Applicant meets the waiver requirements, as the proposed addition is not in conflict with U § 320(i).

Section 320(i) states: *Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

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

The light and air available to neighboring properties will not be unduly affected. The proposed Addition will not extend more than ten feet past the Building to the west. While the Addition will extend fifteen feet (15 ft.) beyond the adjacent building to the east, the shadow studies will demonstrate that due to the location of the properties relative to the sun, the shadow produced by the additional five feet (5 ft.) will be negligible.

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

The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The proposed Addition will not have windows on the east façade. The windows on the west façade are spaced as to not compromise the privacy and use of enjoyment of the tenants in the apartment building to the west of the Property.

(3) The conversion and any associated additions, 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 or alley;

The conversion and any associated additions, as viewed from the street, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street. While the Addition is not setback from the front façade, the proposed changes are not out of character, scale or pattern of the houses along this block of Oates Street, as the houses on Oates Street vary in character, scale and pattern, as demonstrated by photographs submitted with this Application.

IV. THE APPLICATION SATISFIES SPECIAL EXCEPTION REQUIREMENTS OF SUBTITLE U § 5201

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) As discussed above, the light and air available to the neighboring property will not be unduly affected. The proposed Addition will not extend more than ten feet past the Building to the west. While the Addition will extend fifteen feet (15 ft.) beyond the adjacent building to the east, the shadow studies will demonstrate that due to the location of the properties relative to the sun, the shadow produced by the additional five feet (5 ft.) will be negligible.

(b) The privacy of use and enjoyment of neighboring property will not be unduly compromised. The proposed Addition will not have windows on the east façade. The windows on the west façade are spaced as to not compromise the privacy and use of enjoyment of the tenants in the apartment building to the west of the Property.

(c) & (d) The proposed Addition will not visually intrude upon the character, scale, or pattern of houses on Oates Street. While the Addition is not setback from the front façade, the proposed changes are not out of character, scale or pattern of the houses along this block of Oates Street, as the houses on Oates Street vary in character, scale and pattern, as demonstrated by photographs submitted with this Application.

(e) The proposed building will have a lot occupancy of only twenty nine percent (29%) and is well below the seventy percent (70%) lot occupancy requirement for special exception relief in the RF-1 zone district.

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.

V. 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,



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Date: May 9, 2018