

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Applicant’s Statement in Support of Special Exception Approval**

**David K. Barth and Lisa K. Kays**

**1832 15<sup>th</sup> Street, NW; Square 191, Lot 56.**

**I. INTRODUCTION.**

This Statement is submitted on behalf of David K. Barth and Lisa K. Kays (the “Applicant”), owners of the property located at 1832 15th Street, NW (Square 191, Lot 56) (the “Subject Property”). Since the original filing of the application, the Applicant has hired a new architect and new counsel. Therefore, the plans have been revised, although the general massing is similar. There are also additional areas of relief which should have been requested originally and are included now with this amended application. Also, the rear second-story deck has been removed from the plans. The Subject Property is improved with a three-story<sup>1</sup>, single-family principal dwelling unit (the “Building”) and a one-story accessory building (the “Accessory Building”), currently used as a garage. The Applicant is proposing to construct a three-story addition at the rear of the Building (the “Addition”) and a second story addition on top of the existing Accessory Building (the “Accessory Addition”) (collectively the “Project”). The Project will require the following areas of approval:

**1. Special Exception Approval Pursuant to E § 5201 (Lot Occupancy, Rear Yard, Center Alley-line Setback, and Extending a Non-Conforming Aspect)**

- Lot Occupancy (E § 404.1): The Applicant is proposing to increase the lot occupancy from fifty-six-point-five percent (56.5%) to sixty-nine-point-seven five

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<sup>1</sup> There are only three (3) levels total. The lower-level, which is partially below-grade, is considered a basement which counts as the first story.

percent (69.75%). If the Accessory Building were razed, the remaining lot occupancy percentage would be approximately fifty percent (50%). Accordingly, the Applicant is requesting special exception approval pursuant to E § 5201.<sup>2</sup>

- Rear Yard (E § 205.4): The Applicant is proposing a rear addition to the existing Building which will extend the Building thirteen-point-two-five feet (13.25 ft.) past the neighboring properties' rear walls, which is only three-point-two-five feet (3.25 ft.) more than what is permitted as matter-of-right. Accordingly, the Applicant is requesting special exception approval pursuant to E § 5201.<sup>3</sup>
- Alley Center Line Setback (E § 5004.1): An accessory structure abutting an alley must be set back at least twelve feet (12 ft.) from the center line of the alley. The existing Accessory Building is setback five feet (5 ft.) from the center line of the alley—seven feet (7 ft.) shy of the requirement and the Accessory Addition will be on the same footprint as the existing Accessory Building, so it will also be setback five feet (5 ft.) from the center line of the alley. Accordingly, the Applicant is requesting special exception approval pursuant to E § 5201.
- Extending a Non-Conforming Aspect of the Structure (C § 202.2): Due to the second story addition to the Accessory Building, the Applicant is increasing an existing non-conforming aspect of the structure, the center alley-line setback.

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<sup>2</sup> 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%) (11-E DCMR 5201.3(e)).

<sup>3</sup> A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle E §§ 5201.3 through 5201.6. (11-E DCMR 205.5)

Accordingly, the Applicant is requesting special exception approval pursuant to E § 5201.

**II. JURISDICTION OF THE BOARD.**

The Board has jurisdiction to grant the special exception approval requested pursuant to Subtitle E § 5201 from the lot occupancy requirements of E § 404.1; the rear yard requirements of E § 205.4; the alley center line setback requirement of E § 5004.1; and the prohibition against extending a nonconforming aspect of a structure of C § 202.2.

**III. BACKGROUND.**

**A. Description of the Property and Surrounding Area.**

The Subject Property is located in the RF-2 Zone and in the Greater U Street Historic District. It is an interior rectangular lot measuring one hundred feet (100 ft.) in length, eighteen-point-twenty-four-feet (18.24 ft.) in width and 1,824 square feet in land area. The Subject Property is improved with a three-story Building used as a single-family principal dwelling and an Accessory Building. The Building was constructed in 1870, predating the Zoning Regulations. Abutting the Subject Property to the north and south are other row dwellings with accessory buildings.

**B. Proposed Project.**

The Applicant is proposing to construct three-story addition at the rear of the Building and a second story addition on top of the existing Accessory Building.

The proposed three-story Addition will extend the rear of the principal Building by thirteen-point-two-five feet (13.25 ft.) As the Building is currently in line with the neighboring properties, the Addition will also extend thirteen-point-two-five feet (13.25 ft.) past the rear walls of the neighboring buildings to the north and south., only three-point-two-five feet (3.25 ft.) more

than what is permitted as matter-of-right. Accordingly, the Applicant must request special exception relief from the rear yard requirements of E §205.4

The Accessory Addition will be used for uses incidental to the principal dwelling unit. The existing first floor of the Accessory Building will continue to be used as a garage. Accordingly, the Applicant is maintaining the existing parking space. The Accessory Building will still only have a total footprint of about 363 square feet. The proposed height of the Accessory Building will be limited to just under twenty feet (20 ft.). The Project will increase the total lot occupancy from fifty-six-point-five percent (56.5%) to sixty-nine-point-seven five percent (69.75%).

#### **IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION APPROVAL.**

##### **A. Overview.**

Pursuant to 11-X DCMR § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception approval 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 approval pursuant to 11-E DCMR § 5201 (via E § 5007.1) 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. General Special Exception 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 DCMR Subtitle X § 901.2).

1. Project will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

The Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Subject Property is located in the RF-2 Zone which provides “for areas developed primarily with row dwellings, but within which there have been limited conversions of dwellings or other buildings into more than two (2) dwelling units.” (E § 100.2) The Regulations specifically permit special exception approval for the expansion of an accessory structure to accommodate a residential unit. The Applicant is not proposing to add another residential unit and is therefore proposing a less intense use than is permitted by the Regulations. Accordingly, the proposed Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

2. Project will not tend to affect adversely, the Use of Neighboring Property in accordance with the Zoning Regulations and Zoning Maps.

As described more fully below, the Project will not impact the light and air or privacy of the neighboring properties. The Project will also not adversely affect the use of neighboring properties as residential properties as the Applicant is proposing a modest rear Addition which will extend the Building thirteen-point-two-five feet (13.25 ft.) past the neighboring properties’ rear walls, which is only three-point-two-five feet (3.25 ft.) more than what is permitted as matter-of-right. In BZA Case No. 20077, the Board argued that two-point-one-five feet (2.15 ft.) past the 10 feet was “*de minimis*.”<sup>4</sup> The Accessory Building will still be under twenty-feet (20 ft.) even after

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<sup>4</sup>Zoning Commission Chair Hood, “Well, you know these cases I've seen many of them and, I always hate after the fact zoning. But anyway, we are where we are. I can throw a whole lot of other things into it about the 10-foot rule,

the proposed Accessory Addition. As the Applicant is maintaining only one principal dwelling unit, the proposed use is less intense than what is permitted as matter-of-right (two (2) principal dwelling units) and will therefore not result in a noticeable increase in noise or be otherwise disruptive to the neighboring properties.

**C. Requirements of 11-E DCMR § 5201.**

The proposal in this Application satisfies the requirements of 11-E DCMR § 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;**

The Project will not unduly affect the light and air available to the neighboring properties. The Addition has been located at the rear of the Building in order to minimize potential impacts on light and air. The Accessory Addition is limited to one story and will be located at the rear of the Subject Property abutting the alley. The proposed height of the Accessory Building will be limited to under twenty feet (20 ft.). Moreover, the Applicant is proposing a modest rear Addition which will extend the Building thirteen-point-two-five feet (13.25 ft.) past the neighboring properties' rear walls, which is only three-point-two-five feet (3.25 ft.) more than what is permitted as matter-of-right. Moreover, the proposed height from the rear is approximately twenty-four feet (24 ft.). As the Applicant will demonstrate via shadow studies, the difference in shadow between a matter-of-right Addition and the proposed Addition is not likely to have a substantially adverse effect on the use or enjoyment of the adjacent properties by unduly affecting their light and air.

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the special exception. I could put all that in there, but I think the whether it's three feet, two and a half or whatever, whatever that number is, to me I think it's *de minimis*.” (BZA Public Hearing Transcript, September 25, 2019).

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

The privacy of use and enjoyment of any neighboring properties will not be unduly compromised by the proposed Project. The Project has been carefully designed to let light into the proposed additions without impacting the privacy of the neighboring properties. The Applicant is not proposing any windows on the north or south of the Addition or the Accessory Addition. Any new windows on the Addition are limited to the rear and will only face the existing Accessory Building. Any new windows on the Accessory Addition are limited to the east and west facades and will face the principal Building and the alley, respectively. Even with the proposed rear Addition to the principal Building, the Applicant is maintaining a conforming rear yard measuring thirty-point-three feet (30.3 ft.). The rear yard will also be enclosed by a six-foot (6 ft.) wooden fence which should increase the level of privacy of the neighboring properties. The Applicant is not proposing to increase the overall height of the principal Building. Moreover, the abutting properties and the existing Building already have accessory buildings along the alley which will help further shield the proposed Addition from the alley. Accordingly, the level of privacy of use and enjoyment of any neighboring properties shall not be unduly compromised by the Project.

**(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**

The Project, together with the existing Building, will not visually intrude upon the character, scale, or pattern of the houses along 15<sup>th</sup> Street or the accessory structures on the alley. There are accessory buildings directly abutting the Subject Property's Accessory Building to the north and south. The Applicant is proposing a modest rear Addition which will extend the Building thirteen-point-two-five feet (13.25 ft.) past the neighboring properties' rear walls, which is only

three-point-two-five feet (3.25 ft.) more than what is permitted as matter-of-right. The Addition will not be visible from 15<sup>th</sup> Street. The Applicant is not proposing to alter the front façade. The Accessory Addition is only one story and the Accessory Building will still have a total height of under twenty feet (20 ft.). As shown by the renderings included with this application, the neighboring buildings also have accessory buildings that directly abut the Accessory Building. The Subject Property is located in the Greater U Street Historic District and is subject to review by HPRB. Accordingly, the Project has been designed with historic guidelines in mind and should not impact the character, scale, or pattern of the houses along 15<sup>th</sup> Street or the accessory structures along the alley.

**(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 has provided plans, photographs, elevations and section drawings sufficient to represent the relationship of the proposed additions to the adjacent buildings and views from public ways.

**(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 all new and existing structures will have a total lot occupancy of sixty-nine-point-seven five percent (69.75%).

**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 5201.5 “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 outlined in this Applicant's Statement, the Applicant respectfully requests the special exception approval as detailed above.

Respectfully Submitted,

*Martin P Sullivan*

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Martin Sullivan  
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Date: December 4, 2019