

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 20243 of 532 Taylor LLC, pursuant to 11 DCMR Subtitle X, Chapters 9, for a special exception under the RF-use requirements of Subtitle U § 320.2, to permit the conversion of a flat into a three-unit apartment house in the RF-1 zone at premises 532 Taylor Street, N.W. (Square 3231, Lot 86).

HEARING DATE: July 8, 2020¹
DECISION DATE: July 15, 2020

DECISION AND ORDER

This self-certified application was submitted on January 20, 2020 on behalf of 532 Taylor LLC, the owner of the property that is the subject of the application (the “**Applicant**”). Following a public hearing, the Board voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated February 19, 2020, the Office of Zoning provided notice of the application and of the public hearing to the Applicant, the Office of Planning (“**OP**”), the District Department of Transportation (“**DDOT**”), the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 4 as well as the Chairman and the four at-large members of the D.C. Council, Advisory Neighborhood Commission (“**ANC**”) 4C, the ANC in which the subject property is located, Single Member District ANC 4C08, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on February 14, 2020 (67 DCR 1497) and July 3, 2020 (67 DCR 8062).

Party Status. The Applicant and ANC 4C were automatically parties in this proceeding. There were no requests for party status.

Applicant’s Case. The Applicant provided evidence and testimony in support of the application from Joel Heisey and Sima Tessema.

¹ This application was originally scheduled for public hearing on April 8, 2020 but was rescheduled for a virtual public hearing on July 8, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

OP Report. By memorandum dated March 27, 2020, the Office of Planning recommended approval of the zoning relief requested by the Applicant. (Exhibit 35.)

DDOT Report. By memorandum dated March 26, 2020, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 36.)

ANC Report. By letters dated June 10, 2020, ANC 4C indicated that, at a public meeting with a quorum present, the ANC voted to oppose the application because the Applicant had not agreed to make a \$15,000 contribution to the Housing Production Trust Fund. (Exhibits 43, 45.)

Persons in Support. The Board received letters indicating support of the application from the owners of the properties abutting the Applicant's property. (Exhibits 27, 28.)

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the south side of Taylor Street, N.W. between New Hampshire Avenue and 5th Street, N.W. (Square 3231, Lot 86).
2. The subject property is rectangular, 19 feet wide and 142.5 feet deep. The lot area is 2,707.5 square feet.
3. The subject property was improved with a two-story attached principal dwelling built circa 1913.
4. Building Permit No. B1906226 was issued August 12, 2019, authorizing the conversion of the attached dwelling to a two-unit flat and the construction of two additions to the building, a new third floor and a three-story rear addition.
5. The Applicant now plans to convert the building to a three-unit apartment house. No exterior changes were proposed from the building plans approved for the two-unit flat; all modifications would be limited to reconfiguration of the interior living spaces.
6. After the construction of the permitted additions, the building height will be 34.9 feet. Lot occupancy will be 51.6% (1,397 square feet). A two-story deck addition to the Applicant's building will extend four feet from the rear wall.
7. The Applicant's building is located in a block of similar attached dwellings. The building on one abutting property extends six feet past the Applicant's building. The Applicant's building extends 10 feet beyond the rear of the structure on the other abutting lot.
8. Two parking spaces will be provided at the rear of the property, accessible from a public alley, 15 feet wide, that abuts the subject property along the rear lot line.

9. The character of the neighborhood in the vicinity of the subject property is predominantly moderate-density residential with attached row dwellings. Properties to the south, separated from the subject property by the public alley, are of similar size. Many buildings in the square have been enlarged, and several have accessory garages along the alley.
10. The permitted additions to the Applicant's building did not affect the functioning of any chimney or external vent located on any adjacent property.
11. The adjoining properties do not contain any solar installations. No solar energy systems have been permitted for those properties.
12. The subject property is located in a Residential Flat zone, RF-1.
13. The Residential Flat (RF) zones are residential zones that provide for areas developed primarily with row dwellings, but within which there have been limited conversions of dwellings or other buildings into more than two dwelling units. (Subtitle E § 100.1.) The RF zones are designed to be mapped in areas identified as low-, moderate- or medium-density residential areas suitable for residential life and supporting uses. (Subtitle E § 100.2.)
14. The provisions of the RF zones are intended to: (a) recognize 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; (b) allow for limited compatible non-residential uses; (c) allow for the matter-of-right development of existing lots of record; (d) establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones; (e) allow for the limited conversion of rowhouse and other structures for flats; and (f) prohibit the conversion of flats and row houses for apartment buildings as anticipated in the RA zone. (Subtitle E § 100.3.)
15. The purpose of the RF-1 zone is to provide for areas predominantly developed with row houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 300.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under the RF-use requirements of Subtitle U § 320.2 to allow the conversion of a two-unit flat into a three-unit apartment house in the RF-1 zone at 532 Taylor Street, N.W. (Square 3231, Lot 86). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) 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. (*See* 11 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle U § 320.2, the Board may approve, by special exception, the conversion of an existing residential building in the RF-1 zone to an apartment house subject to certain requirements. These requirements include that the residential building must have been in existence before May 12, 1958, the maximum height of the residential building and any additions must not exceed 35 feet,² the property must contain at least 900 square feet of land area per dwelling unit, an addition must not extend further than 10 feet past the furthest rear wall of any principal residential building on an adjacent property, an addition must not block or impede the functioning of a chimney or other external vent on any adjacent property, an addition must not significantly interfere with the operation of an existing solar energy system of at least 2kW on any adjacent property, no rooftop architectural element original to the house may be removed or significantly altered, and any addition to the building must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, considering especially that the light and air available to neighboring properties must not be unduly affected, the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and the conversion and all additions, as viewed from the street, alley, and other public way, must not substantially visually intrude on the character, scale, and pattern of houses along the subject street or alley.

Based on the findings of fact, the Board concludes that the application satisfies the requirements for special exception approval consistent with Subtitle U § 320.2. The Applicant did not request any waivers of the requirements for approval and demonstrated compliance with the applicable requirements such as the minimum lot area per unit and the lack of impact on any nearby chimneys or solar energy installations. No enlargement of the building is planned other than the additions that were already permitted. The Board concludes that the permitted additions will not have a substantially adverse effect on the use or enjoyment of any nearby property, noting that the new construction complies with development standards applicable in the RF-1 zone. The Board credits the testimony of OP that the proposed conversion will not itself impact the visual character of the neighborhood, and that the permitted additions will have limited visibility from the street and alley given the size of the lot and the setbacks incorporated into the design of the additions.

The Board also concludes that approval of the requested 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, as is required for approval of the application under Subtitle X § 901.2. The Applicant's project is consistent with the character of the Residential Flat (RF) zones as residential zones that provide for areas developed primarily with row dwellings, within which there have been limited conversions of dwellings into more than two dwelling units, and with the design of the RF zones for areas identified as low-, moderate- or medium-density residential areas suitable for residential life and supporting uses. Approval of the requested special exception is consistent with the intent of the RF zones to recognize 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.

² The Board may approve an increase to 40 feet, subject to additional requirements.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board agrees with OP’s recommendation that the application should be approved in this case.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 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)(3)(A) (2012 Repl.)).) In this case, ANC 4C submitted letters indicating its opposition to the application because the Applicant had not agreed to make a \$15,000 contribution to the Housing Production Trust Fund. The ANC sought to impose numerous conditions in return for its support of the application, addressing matters that were already included in the Applicant’s proposal (provision of two parking spaces), were not supported by evidence of potential adverse impacts (exterior lighting and pervious paving), were outside the Board’s purview in this proceeding (e.g. relating to the construction process, testing water pipes for lead, and the Housing Production Trust Fund), or were not relevant to the application (compensation for neighbors with solar panels, when none were identified).

ANC 4C recognized “that some of these conditions are not within the purview of the BZA to enforce” but nonetheless made its vote on an application to the Board dependent on such a condition. The Board has given great weight to the issues and concerns stated by ANC 4C but does not find its lack of support for the application persuasive. The Board is required to accord “great weight” only to the issues and concerns of the affected ANC that are legally relevant to the application at issue. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), *citing Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 180 (D.C. 1981) (the “great weight” requirement extends only to “issues and concerns that are legally relevant”). The Board’s authority in this proceeding does not extend to requiring an applicant to make a donation to the Housing Production Trust Fund, which is not related to any of the requirements set forth in the Zoning Regulations for approval of a special exception under the RF-use requirements of Subtitle U § 320.2 to allow the conversion of a residential building into an apartment house in the RF-1 zone. The Board may not impose conditions outside the scope of its zoning jurisdiction. *President and Directors of Georgetown College v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 68, 77 (D.C. 2003) (implicit in the Board’s power to grant special exceptions is the authority to place reasonable conditions on such approval to ensure, by imposing requirements on an applicant, that so far as reasonably possible, objectionable conditions such as those enumerated in the zoning regulations will be avoided; conditions of approval should not involve the Board in matters in which a zoning body lacks any specialized competence, far removed from the Board’s expertise and area of responsibility).

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under the RF-use requirements of Subtitle U § 320.2 to allow the conversion of a flat into a three-unit apartment house in the RF-1 zone at 532 Taylor Street, N.W. (Square 3231, Lot 86). Accordingly, it is **ORDERED** that the application is **GRANTED**.

VOTE: 3-0-2 (Carlton E. Hart, Lorna L. John, and Peter G. May voting to **APPROVE**; Frederick L. Hill not participating; one Board seat vacant)

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 M. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 30, 2020

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

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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.