

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**



**Application No. 20467 of Geoff Anderson and Harriet Tregoning**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and, under Subtitle E § 5201 and Subtitle E § 205.5, from the rear addition requirements of Subtitle E § 205.4, to construct a two-story with cellar rear addition to an existing two-story with cellar attached principal dwelling in the RF-1 zone at premises 232 10th Street, SE (Square 969, Lot 83).

**HEARING DATE:** July 28, 2021

**DECISION DATE:** July 28, 2021

**DECISION AND ORDER**

This self-certified application was filed on February 8, 2021 by Geoff Anderson and Harriet Tregoning, the owners of the property that is the subject of the application (“Applicants”). Following a public hearing, the Board voted to approve the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated March 2, 2021, the Office of Zoning, pursuant to Subtitle Y §§ 400.4 and 402.1, provided notice of the application and of the public hearing to the Applicants, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 6 as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 6B, the ANC in which the subject property is located, Single Member District ANC 6B05, the owners of all property within 200 feet of the subject property, and, by memorandum dated May 13, 2021, the Deputy State Historic Preservation Officer.<sup>1</sup> (Exhibits 22-33, 44.) Notice was published in the *District of Columbia Register* on March 12, 2021 (68 DCR 2682) as well as through the calendar on the Office of Zoning website. Pursuant to Subtitle Y § 402.3, notice of the public hearing was also posted at the subject property. (Exhibit 66.)

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<sup>1</sup> The hearing was initially scheduled for May 26, but was postponed twice at the Applicants’ request. (Exhibits 37 and 55.)

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Party Status. Pursuant to Subtitle Y § 403.5, the Applicants and ANC 6B were automatically parties in this proceeding. At the public hearing, the Board granted requests for party status in support of the application from James Sherry and Elizabeth Kidder, the owners of an abutting dwelling (“Party in Support”),<sup>2</sup> and in opposition to the application from Tara Billingsley and John Robert Ball at 228 10<sup>th</sup> Street (“Opposition Party”). The Board denied a request for party status in opposition from Ellen Opper-Weiner. Requests for party status in opposition from Gregory L. Rohde and Maureen O’Leary and from Gregory R. Corr were deemed withdrawn under Subtitle Y § 404.10 because those individuals did not appear at the hearing. A request for party status in opposition from Concerned Homeowners South of 232 10<sup>th</sup> Street SE (Michael David-Fox, Katherine David-Fox, Gerald A. Role, and Susan Eads Role) was withdrawn. (Exhibit 86.)

Applicants’ Case. At the hearing, the Applicants provided evidence and testimony in support of the application from Jennifer Fowler, the architect for the proposed project, and Geoff Anderson. The Applicants originally proposed to enlarge their row dwelling with a three-story rear addition and a rooftop addition with a roof deck. The plans were subsequently revised twice to decrease the size of the planned expansion, without requiring a change in the zoning relief requested. (Exhibits 8, 45, 57.)

OP Report. By memorandum dated July 15, 2021, OP recommended approval of the application. (Exhibit 68.)

DDOT. By memorandum dated June 11, 2021, DDOT stated that it had no objection to the approval of the application. (Exhibit 52.)

ANC. On July 26, 2021, ANC 6B filed with the Board a report in which it stated that it had met on July 13, 2021 at a properly noticed public meeting with a quorum present and had voted to support the revised application. (Exhibit 78.) ANC SMD 6B05 Commissioner Steve Holtzman testified at the public hearing in support of the application.

Party in Support. The Party in Support commented favorably on the Applicants’ revision of its proposed addition, especially the elimination of the planned third floor, and stated the need for the Applicants to reach agreements with neighbors to address issues such as construction hours and noise abatement, as well as the consequences of the planned reduction in size of a dogleg between the two dwellings owned by the Applicants and the Party in Support. (Exhibit 84.)

Party in Opposition. The Opposition Party raised concerns with the impact of the proposed project on the light available to nearby properties and complained that approval of the application would establish a negative precedent for the enlargement of buildings over the objections of neighbors. (Exhibit 76.)

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<sup>2</sup> The Party in Support initially filed a request for party status in opposition (Exhibit 39) but subsequently switched to support the application after the proposal was revised.

Persons In Support. The Board received a letter in support of the application, as finally revised, from the owner of a residence abutting the Applicants' property.

Persons in Opposition. The Board received letters and heard testimony in opposition to the proposed project from neighbors living in proximity to the subject property. In general, the persons in opposition objected to the size of the planned addition relative to neighboring dwellings and argued that approval of the application would result in adverse impacts on nearby properties, especially with respect to light, privacy, and neighborhood character.

### **FINDINGS OF FACT**

1. The property that is the subject of this application is an interior lot on the east side of 10<sup>th</sup> Street, SE with an address of 232 10<sup>th</sup> Street, SE (Square 969, Lot 83).
2. The subject property is rectangular, with a width of 18 feet and a depth of 100.875 feet. (Exhibit 2.) The lot area is 1,815.75 square feet.
3. The rear lot line of the subject property abuts a public alley, 30 feet wide, extending north-south through the interior of the square. Another public alley, 15 feet wide, extends east-west across the square. The two alleys intersect approximately 18 feet to the north of the subject property.
4. The subject property was improved with an attached principal dwelling, two stories with a cellar. The dwelling was previously enlarged with a two-story enclosed rear sunroom addition as well as a rear deck addition, approximately nine feet deep and seven feet above grade.
5. A one-story accessory garage structure was constructed in the rear of the subject property, adjacent to the alley.
6. The Applicants proposed to construct a two-story (plus cellar) rear addition to the dwelling after removing the existing sunroom and deck additions. The accessory structure will also be removed.
7. The Applicants' new rear addition will extend 10 feet from the existing rear wall of their dwelling on the upper floors and will extend the cellar 14 feet to the east. On the first floor, the addition will provide a landing, four feet deep, with stairs down to grade in the rear yard.
8. As a result of the new construction and the removal of some existing improvements, the lot occupancy at the subject property will be 62.3 percent (at the cellar level), a reduction from the existing 68.7 percent lot occupancy. The upper floors of the addition will have a lot occupancy of 58.3 percent.

9. The Applicants' dwelling is attached to similar dwellings on the abutting properties to the north and south. The abutting dwelling to the north has a two-story covered porch addition, approximately nine feet deep, at the rear. The abutting dwelling to the south has a two-story enclosed rear addition that is also approximately nine feet deep.
10. On the first and second floors, the Applicants' addition will extend 19 feet from the rear wall of the abutting dwelling to the north and 10 feet from the rear wall of the abutting dwelling to the south.
11. The rear wall of the upper floors of the addition will be 42 feet from the rear lot line of the subject property. The rear yard setback will be 38 feet at the cellar level, where a minimum of 20 feet is required. (Subtitle E § 306.)
12. The side walls (north and south) of the rear addition will not have any windows. The rear (east) wall will have windows on the second floor and a French door with sidelights and transoms on the first floor.
13. The Applicants will retain the existing privacy fences along the side lot lines of the subject property.
14. The height of the planned addition will be 27 feet, the same as the roof of the Applicants' existing dwelling.
15. The subject property is located in the Capitol Hill Historic District. The Historic Preservation Review Board approved the Applicants' proposal on its consent agenda in July 2021.
16. Properties in the same square as the subject property are generally improved with attached residential buildings, some with accessory structures accessible from the public alley. The buildings south of the subject property, especially those in the eastern portion of the square fronting on 11<sup>th</sup> Street, are generally smaller and more similar in size and configuration than the properties to the north.
17. The subject property is located in a Residential Flat zone, RF-1. The RF zones are residential zones, which 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.)
18. 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.)

19. 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 (2) dwelling units are permitted. (Subtitle E § 300.1.)

### **CONCLUSIONS OF LAW AND OPINION**

Pursuant to 11 DCMR Subtitle X, Chapter 9, the Applicants seek special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and, under Subtitle E § 5201 and Subtitle E § 205.5, from the rear addition requirements of Subtitle E § 205.4. The Board is authorized under § 8(g)(2) 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 (Subtitle X § 901.2).

Under Subtitle E § 5201.4, an application for special exception relief under Subtitle D § 5201 must demonstrate that the proposed addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. Specifically, (a) the light and air available to neighboring properties must not be unduly affected; (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised; and (c) the proposed addition, together with the original building, 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 street or alley frontage. Under Subtitle E § 205.5, the rear wall of a row building may be constructed to extend farther than 10 feet 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 subject to Subtitle E § 5201 if applicable.

The Applicants seek a special exception, under Subtitle E § 5201, from the 60 percent lot occupancy requirements of Subtitle E § 304.1 to permit a lot occupancy of 62.3 percent. Pursuant to Subtitle E § 5201.1(a), the Board may allow up to 70 percent lot occupancy by special exception. The Applicants also seek a special exception, under Subtitle E § 5201 and Subtitle E § 205.5, from the 10-foot rear addition requirements of Subtitle E § 205.4 to permit a rear wall that will extend more than 10 feet beyond the rear wall of a residential building on an adjoining lot. Based on the findings of fact, the Board concludes that the application, as finally revised, satisfies the requirements for the requested special exceptions.

The Applicants' project entails a new rear addition, two stories above a cellar, with a landing on the first floor with stairs to grade, and the removal of several existing improvements (a smaller two-story rear addition, a rear deck, and a one-story accessory structure in the rear yard). The

project will result in a reduction of more than six percent in the lot occupancy of the subject property. The upper floors of new rear addition will extend 10 feet from the existing rear wall of the Applicants' dwelling, 10 feet from the existing rear wall of the dwelling on the adjoining lot to the south, and 19 feet beyond the rear wall of the dwelling on the adjoining lot to the north.<sup>3</sup> At the cellar level, the rear wall of the Applicants' planned addition will extend 14 to 23 feet beyond the adjacent buildings' rear walls.

The Board agrees with the Applicants and the Office of Planning that the new rear addition will not unduly affect the light and air available to neighboring properties. The Applicants submitted shadow studies demonstrating that the light and air impacts of the addition will not be significant, especially considering the distance between the Applicants' property and most of the neighboring dwellings as well as the density permitted in the RF-1 zone. The addition will provide a rear yard in excess of the minimum requirement; the rear setback, in conjunction with the width of the abutting rear alley and the rear yards of neighboring dwellings to the east, will provide a significant distance between the new rear addition and the neighboring properties. Given the east-west configuration of the subject property, the new addition will not unduly affect the light or air available to the adjoining property to the south. The Board was not persuaded by the assertions of the Opposition Party that approval of the application would result in undue impacts on the light available at their dwelling. As a matter of right, the RF-1 zone permits attached dwellings (that is, residential buildings without side yards) to a height of 35 feet and three stories, with a lot occupancy of 60 percent. The Applicants' rear addition will be two stories and will provide a significant rear yard. The Opposition Party's dwelling is more than 30 feet to the north of the Applicants' property, separated by another dwelling, which has a two-story rear porch addition, and a public alley. As demonstrated in the shadow studies submitted by the Applicants, the light impacts of the planned rear addition on the Opposition Party's dwelling will not be undue.

The Board concludes that the privacy of use and enjoyment of neighboring properties will not be unduly compromised by the approval of the requested zoning relief. The new addition will not have any windows in its side façades, thereby preventing views directly into nearby properties to the north or south. The windows in the rear wall of the new addition will be at a significant distance from neighboring properties to the east. The enclosed addition, with a small landing intended mainly to provide access to the rear yard, will replace a larger unenclosed deck addition. The Applicants will retain privacy fences along the side lot lines of the subject property.

The proposed rear addition will not be visible from 10<sup>th</sup> Street. The Board concludes that the addition, together with the original building, as viewed from the abutting alley, will not substantially visually intrude on the character, scale, and pattern of houses along the alley frontage. The new two-story addition will not increase the height of the Applicants' existing two-story dwelling. The application demonstrated that some properties with frontage on the alley currently

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<sup>3</sup> The three adjoining dwellings appear similarly sized at present. However, the Applicants' dwelling and the adjoining dwelling to the south have enclosed rear additions while the adjoining dwelling to the north has a two-story unenclosed rear porch addition. The Applicants' existing rear wall extends nine feet beyond the dwelling to the north and aligns with the rear wall of the dwelling to the south.

have rear additions and some have accessory structures. The Applicants' addition will be consistent with the varied context and will not be visually intrusive, especially considering its distance (almost 40 feet) from the alley. Noting that HPRB found the proposal consistent with the historic district, the Board concludes that the planned addition will not result in a visual intrusion on the character, scale, or pattern of neighboring patterns as viewed from the alley.

Subtitle X Chapter 9. The Board concludes that approval of the requested special exceptions 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 the neighboring property in accordance with the Zoning Regulations and Zoning Map, as is required for approval of the application under Subtitle X § 901.2. Approval of the requested special exceptions will maintain the residential use of the property, consistent with the purpose of the Residential Flat zones and specifically with the purpose of the RF-1 zone to provide for areas predominantly developed with row houses on small lots within which no more than two dwellings are permitted. Approval of the application is also consistent with the intent of the RF zones to recognize and reinforce the importance of neighborhood character, 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.

For the reasons discussed above, the Board concludes that approval of the special exceptions will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Zoning Map. The Board notes OP's testimony in support of the application as well as DDOT's conclusion that the proposed action would not have adverse impacts on the District's transportation network. The Board was not persuaded by testimony in opposition to the application based on matters outside the scope of this application, including unsupported, generalized allegations about non-resident owners.

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.

Under Section 13(d) of the Advisory Neighborhood Commission Act of 1975, the Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl.)) In this case, ANC 6B submitted a letter stating that its decision to support the application was "predicated on the combined result" of the Applicants' revisions to their proposal "in response to widespread opposition of neighbors" – specifically a "substantial reduction in massing" as a result of "scaling back the extent of 1<sup>st</sup> and 2<sup>nd</sup> floor and basement expansions," which related directly to proposed lot occupancy and rear yard, and "the removal of a planned 3<sup>rd</sup> floor which was otherwise available to the Applicant as a matter of right." The ANC asked the Board to "take official note of the assertion" of the Applicants, made in a public meeting of the ANC's planning and zoning committee, "that they have no intention of adding, at some later date, a third floor of any kind to the structure," stating that ANC 6B "relied heavily on this assertion in giving its support." ANC 6B asserted that the "extensive, sustained, and unanimous opposition by neighbors to the initial plan needs to be recognized," and noted that the ANC also received comments in continued opposition to the

Applicants' proposal by neighbors. According to the ANC, "[a]nticipated adverse impacts on light and air were a major aspect of neighbors' opposition to this application." However, the ANC acknowledged that the application, as finally revised, "mitigated most of these [light and air] impacts."

The Board credits the unique vantage point that ANC 6B holds with respect to the impacts of the requested special exceptions on the ANC's constituents as residents of dwellings in the vicinity of the Applicants' property. The Board notes the basis for the ANC's support for the application as ultimately revised but makes no findings with respect to neighbors' opposition to any other proposals not included in this application. As the ANC noted, a third-floor addition might be undertaken at the subject property as a matter of right so long as the addition satisfies all applicable development standards. The Board's jurisdiction in deliberating on a request for a special exception is limited to the requirements stated in the applicable provisions of the Zoning Regulations, and in this case, for the reasons discussed above, the Board concluded that the application, as finally revised, satisfied those requirements.<sup>4</sup>

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and, under Subtitle E § 5201 and Subtitle E § 205.5, from the rear addition requirements of Subtitle E § 205.4, to construct a two-story with cellar rear addition to an existing two-story with cellar attached principal dwelling in the RF-1 zone at 232 10th Street, SE (Square 969, Lot 83). Accordingly, it is **ORDERED** that the application is **APPROVED** consistent with the plans shown in Exhibit 56, dated June 30, 2021.

**VOTE: 4-0-1** (Lorna L. John, Carl H. Blake, Chrishaun S. Smith and Anthony J. Hood voting to **APPROVE**; Frederick L. Hill not participating)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

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<sup>4</sup> The Board notes the request of ANC 6B that the Board "ask[] the Applicant to enter into a construction agreement with nearby neighbors sharing the alley in question prior to beginning work." The Board encourages applicants to enter into construction management agreements with affected neighbors whenever possible; however, the Board declines to require an agreement as a condition of approval because construction agreements address matters outside the scope of the Board's jurisdiction when considering a request for zoning relief.



**FINAL DATE OF ORDER:** July 29, 2022

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.