

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



**Application No. 20615 of Thomas Picarsic and Katherine Kuzma**, pursuant to 11 DCMR Subtitle X § 901, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and from the side yard requirements of Subtitle E § 207.4 to allow a two-story rear addition and a two-story accessory structure to an existing two-story semi-detached principal dwelling in the RF-1 zone at 751 10th Street, SE (Square 950, Lot 84).

**HEARING DATE:** February 9, 2022

**DECISION DATE:** February 9, 2022

**DECISION AND ORDER**

This self-certified application was filed September 24, 2021 by Thomas Picarsic and Katherine Kuzma (collectively, the “Applicant”), the owners of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by letters, dated October 20, 2021, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 6B, the ANC in which the subject property is located, and Single Member District ANC 6B04, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 5 as well as the Chairman of the Council and three at-large members of the D.C. Council, the Department of Consumer and Regulatory Affairs, the Office of the Attorney General, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on November 5, 2021 (68 DCR 11725).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 6B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Robert McCulloch, Jr. and Margaret McCulloch, the owners of an apartment house on a lot adjoining the Applicant’s property. (Exhibit 53.)

Applicant’s Case. The Applicant provided evidence and testimony in support of the application from Jennifer Fowler, the project architect. The Applicant requested approval of an increase in lot

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occupancy and relief from the side yard requirements to allow a two-story rear addition to an existing two-story semi-detached principal dwelling and a two-story accessory structure in the rear yard.

OP Report. By report dated January 28, 2022, the Office of Planning recommended approval of the application. (Exhibit 36.)

DDOT Report. By memorandum dated January 26, 2022, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 35.)

ANC Report. By letter dated January 19, 2022, ANC 6B stated that, at a regularly scheduled meeting on January 11, 2022, with a quorum present, the ANC voted to support the Applicant's request for zoning relief. (Exhibit 37.)

Party in Opposition. The party in opposition, Robert McCulloch, Jr. and Margaret McCulloch ("Opposing Party"), provided evidence and testimony in opposition to the application along with Stephen DuPont as an expert in architecture. The Opposing Party argued that the approval of the requested zoning relief would adversely affect the use and enjoyment of their property especially with respect to light, air, privacy, and that the Applicant's proposed rear addition and accessory building would substantially visually intrude upon the unique charm, character, look, and feel of their historic building.

Persons in support. The Board received letters in support of the application from persons living near the subject property.

Persons in opposition. The Board received letters and heard testimony from persons in opposition to the application, especially from tenants of the abutting property, owned by the Opposing Party, who asserted that the Applicant's planned addition at the subject property would negatively impact the light, air, and privacy available and visually intrude upon the unique charm, character, look, and feel of their historic building. The Board also received a letter from the zoning committee of the Capitol Hill Restoration Society, which opposed the request for side yard relief because the planned rear addition appeared to restrict light and air to window wells on an adjoining building.<sup>1</sup> (Exhibit 38.)

## **FINDINGS OF FACT**

1. The property that is the subject of this application is an interior lot on the west side of 10<sup>th</sup> Street, SE, between G Street, SE and I Street, SE, with an address of 751 10<sup>th</sup> Street, SE (Square 950, Lot 84).
2. The subject property is a rectangular lot, approximately 19.75 feet wide and approximately 100.87 feet deep. The lot area is 1,992 square feet.

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<sup>1</sup> The zoning committee supported the Applicant's request for lot occupancy to construct the two-story accessory garage. (Exhibit 38.)

3. The subject property abuts a public alley, 30 feet wide, along the rear (west) lot line.
4. The subject property is improved with a semi-detached principal dwelling built in 1874.
5. The dwelling is two stories and 22 feet in height, with a rear portion that is one story.
6. The subject property has a lot occupancy of 42.3 percent.
7. The subject property has a rear yard of 48.66 feet.
8. The rear yard contains a parking pad accessible from the alley as well as a tree, other plantings, and a shed.
9. The Applicant's existing semi-detached dwelling has a side yard along the north lot line. The front portion, 1.9 feet deep, extends approximately 24 feet, four inches from the front lot line. The rear portion of the existing building is approximately five feet narrower than the front portion, resulting in a side setback 6.5 feet deep.
10. Privacy fences, six feet tall, extend along both side lot lines of the subject property.
11. The Applicant proposed to enlarge the existing dwelling with a two-story rear addition and to build a new two-story accessory structure at the rear of the lot.
12. The Applicant's addition will be built to both side lot lines, eliminating the existing side yard.
13. The rear addition will create two new courts on the northern side of the Applicant's dwelling. The eastern court will extend approximately 24 feet, four inches along the north lot line from the front lot line to the east wall of the new addition. The eastern court will vary in width from 1.9 feet (the area formerly the side yard) to 6.8 feet (an area bounded by the existing dwelling, the new addition, and the north lot line). The other court will be created further west, bounded by the north lot line and the new addition on the other three sides.
14. The two courts provided in the rear addition will correspond to two existing courts or wells on the adjacent building to the north, which are six feet wide. The Applicant's western court will be six feet wide and three feet deep. The eastern court will include a portion more than seven feet wide and almost seven feet deep opposite the eastern well of the apartment house.
15. The rear addition will be 22 feet and two stories in height.
16. The rear wall of the addition to the Applicant's dwelling will extend two feet, six inches beyond its existing rear wall. The rear addition will reduce the rear yard at the subject property to 46.16 feet, where a minimum of 20 feet is required. (Subtitle E § 306.1.)

17. The addition will not contain windows on its south or north elevations.
18. The Applicant also proposed to construct a two-story accessory structure that will be built to the rear and both side lot lines, 19.9 feet wide and 20 feet deep.
19. The accessory structure will be 22 feet and two stories in height. The ground floor will provide one parking space and a stair to living space on the second floor.
20. The accessory structure will have a garage door to provide vehicle access from the alley as well as glass folding doors for access to the interior of the Applicant's lot. The second floor will have windows on both the east and west façades.
21. As a result of the new construction the lot occupancy of the subject property will increase to 68.3 percent where a maximum of 60 percent is permitted as a matter of right. (Subtitle E § 304.1.)
22. The abutting property to the north of the subject property is improved with an apartment house built in 1912. The building contains nine apartments, including some in a below-grade level.
23. The apartment house is three stories and approximately 35 feet in height.
24. The apartment house extends approximately 70 feet deep. A three-story covered porch addition, approximately 11 feet deep, extends from the rear wall of the apartment house.
25. The apartment house was built without side yards and encroaches by five inches onto the subject property.
26. The apartment house has a solid brick party wall on its south side, facing the subject property. The party wall has no windows except in the two wells. Both wells have windows on all three sides at every level of the apartment house.
27. The apartment house also has two courts, serving as light wells, on its north façade. One court on the north side of the building, closer to 10<sup>th</sup> Street, is enclosed by a three-story attached building on the adjoining lot to the north.
28. After construction of the Applicant's planned addition, the rear wall of the abutting apartment house will extend approximately 15 feet deeper than the Applicant's dwelling.
29. The property immediately to the south (753 10<sup>th</sup> Street, SE) of the subject property contains a two-story semi-detached dwelling. The rear portion of the dwelling is one story with a roof deck at the second-floor level.
30. The rear wall of the Applicant's addition will align with the rear wall of the abutting dwelling at the first floor. The addition will extend approximately eight feet beyond the

- rear wall of the abutting dwelling on the second floor, creating a wall along the second-story roof deck.
31. Properties to the west, directly across the alley from the subject property, contain row buildings with accessory structures in their rear yards.
  32. The proposed accessory structure will be similar in massing and design as other accessory structures on the alley. The existing accessory buildings have one or two stories, where many contain garages on the first floor and living space on the second floor.
  33. After construction of the addition, the rear wall of the Applicant's dwelling will be approximately 130 feet from rear walls of the dwellings to the west. The Applicant's accessory structure will be approximately 86 feet away from the rear walls of the houses to the west.
  34. The subject property is located in a Residential Flat (RF) zone, RF-1. The Residential Flat 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 two or more 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.) 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.)
  35. 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 special exceptions, pursuant to 11 DCMR Subtitle X § 901 and Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1 and from the side yard requirements of Subtitle E § 207.4 to allow a two-story rear addition and a two-story accessory structure to an existing two-story semi-detached principal dwelling in the RF-1 zone at 751 10<sup>th</sup> Street, SE (Square 950, Lot 84). 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 E § 5201, the Board may grant relief from certain development standards, including lot occupancy and side yard requirements, for an addition to a principal residential building on a non-alley lot, as well as for a new accessory structure to a residential building with one principal dwelling on a non-alley lot. The relief may be granted as a special exception subject to the general criteria of Subtitle X, Chapter 9 as well as the requirements stated in Subtitle E § 5201. The Board is authorized to approve lot occupancy of all new and existing structures on a lot up to a maximum of 70 percent. (Subtitle E §§ 5201.1 and 5201.2.) In accordance with Subtitle E § 5201.4, the proposed addition and accessory structure must 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 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 frontage and alley.

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning, the Board concludes that the application satisfies the requirements for approval of the requested special exceptions to allow an increase in lot occupancy and the elimination of a non-conforming side yard.<sup>2</sup> The project will otherwise meet the development standards applicable in the RF-1 zone. The rear addition will be 22 feet in height, less than the 35 feet permitted as a matter-of-right (Subtitle E § 303.1) and will maintain a rear yard of 46.16 feet, more than the 20 feet required. (Subtitle E § 306.1.) Likewise, the proposed accessory structure will not be located within the required rear yard, and its building area will not exceed 450 square feet.<sup>3</sup> (Subtitle E §§ 5003.1, 5004.1.) The accessory structure will be set back more than 7.5 feet from the centerline of the abutting alley (Subtitle E § 5004.1) and will meet matter-of-right standards with respect to height, where 22 feet and two stories are permitted. (Subtitle E § 5002.1.)

The Board concludes that the project will not unduly affect the light and air available to neighboring properties, noting that the new construction will comply with matter-of-right development standards with respect to height and rear yard. The elimination of the non-conforming side yard will not significantly affect the light and air available to the apartment house

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<sup>2</sup> In the RF-1 zone, one side yard is required for a semi-detached building but no side yards are required for a row building. (Subtitle E § 207.1.) Generally, if a side yard is provided, it must be at least five feet. (Subtitle E § 207.2.) In the case of a building with a nonconforming side yard, such as the Applicant's existing dwelling, an extension or addition may be made to the building so long as (a) the width of the existing side yard is not reduced or eliminated and (b) the width of the side yard adjacent to the addition will be at least three feet. (Subtitle E § 207.4.)

<sup>3</sup> The building area of an accessory structure in the RF-1 zone must not exceed the greater of 30 percent of the required rear yard or 450 square feet. At 20 feet in length and 19.9 feet in width, the Applicant's accessory garage would have a building area of 398 square feet. The rear yard at the subject property is 46.16 feet, where the required minimum is 20 feet. Thirty percent of the required rear yard (19.9 feet wide by 20 feet deep) would be approximately 119 square feet.

to the north, given that the existing side yard is less than two feet wide,<sup>4</sup> the south façade of the apartment house lacks windows except in two narrow window wells, and the light and air presently available through the windows in the lower levels of the wells are partially obstructed by an existing privacy fence. The Applicant's design for the rear addition mitigated any potential adverse impacts related to light and air by creating courts on the subject property mirroring the wells in the adjacent apartment house, thereby preserving the effectiveness of the wells. The Applicant provided photographs to show existing shadowing from the subject property onto the lower windows of the apartment house as well as a sun study (Exhibit 28) comparing the existing situation, a matter-of-right addition, and the proposed project. The Board agrees with the Applicant and OP that little to no significant change in shadowing will occur on windows in the adjacent apartment house, including in the units partially below grade, because of the lower height of the planned addition, less than the limit permitted as a matter of right, and the courts incorporated into the rear addition to maintain light and air available via the apartment house wells.

The Board also finds that the new accessory structure will not have a significant impact on the light and air available to neighboring properties. The accessory structure will not exceed the permitted height limits or encroach into the rear yard required at the subject property and therefore will avoid the creation of any undue impacts on the properties abutting to the north and south. The accessory structure will not affect the light and air available to properties to the west, given the significant distance between the accessory structure and the dwellings to the west, which are separated by a public alley and the rear yards and accessory structures on those properties.

Likewise, in terms of lot occupancy, the Board agrees with the Applicant and OP that the project will not unduly affect the light and air available to neighboring properties. The rear addition and new accessory structure will increase the lot occupancy of the subject property to 68.3 percent, less than the maximum of 70 percent allowed by special exception. The Applicant's rear addition will have a lower height than the apartment house to the north and will not extend as far into the rear yard as that building. The rear wall of the Applicant's addition will align with the rear wall of the dwelling to the south at the first floor, and will extend approximately eight feet beyond the rear wall on the second floor. Due to the east-west orientation of the lots and the limited extension of the Applicant's rear addition beyond the rear wall of the adjoining dwelling to the south, the Board does not find that the rear addition will significantly or adversely affect the light and air available to the neighboring properties.

The Board concludes that the Applicant's project will not unduly compromise the privacy of use and enjoyment of neighboring properties. The rear addition will not contain windows on the side elevations, including in the new courts corresponding to the wells in the apartment house. The windows on the second floor of the accessory structure will provide views primarily of the Applicant's rear yard. The Board was not persuaded by testimony from the Opposing Party that views from the accessory structure would unduly compromise the privacy of residents using the rear porches at the apartment house, considering that an accessory structure may have two stories as a matter of right and that, in this case, any views from the accessory structure will be impeded by the existing privacy fences along the side lot line as well as trees and other vegetation. The

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<sup>4</sup> The encroachment of the apartment house onto the subject property reduced the actual separation of the two buildings to approximately 18 inches.

Board notes that the Office of Planning did not recommend any measures as necessary to avoid potential adverse impacts related to privacy.<sup>5</sup>

The Board concludes that the rear addition and the accessory structure, together with the original building, as viewed from the street, alley, and other public way, will not substantially visually intrude on the character, scale, and pattern of houses along the street frontage and alley. Neither the two-story addition nor the accessory structure will be visible from 10<sup>th</sup> Street but both will be visible from the public alley near the subject property. The Applicant submitted photographs that corroborated their testimony, as well as the OP report, describing the building types currently in existence along the alley. The proposed accessory structure is similar in massing and design to existing accessory structures on the west side of the alley. The Board was not persuaded by the Opposing Party that approval of the application would be out of character with the neighborhood because neither the addition nor the accessory structure will be readily visible from the street or otherwise affect the appearance of the Applicant's property.

The Board concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as is required for approval of the application under Subtitle X § 901.2. The proposed addition and accessory structure will comply with applicable development standards other than the increase in lot occupancy and elimination of a nonconforming side yard, which are permitted by special exception. Approval of the requested zoning relief will be consistent with the intention of the RF zones to recognize and reinforce the importance of neighborhood character, walkable neighborhoods, preservation of housing stock, and improvements to the overall environment to the overall housing mix and health of the city. The approval will enhance the residential use of the subject property consistent 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 dwelling units are permitted.

For the reasons already discussed, the Board concludes that approval of the requested special exceptions will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is also required for approval of the application under Subtitle X § 901.2. The use of neighboring property will not be adversely affected as discussed in connection with the requirements of Subtitle E § 5201 above.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (Section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.).) For the reasons discussed above, the Board agrees with OP's recommendation that the application should be approved.

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.); see also Subtitle Y § 406.2. In this case, ANC 6B submitted a report in support of the application noting changes made between the Applicant's initial and revised filings that sought to mitigate the impact on light

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<sup>5</sup> Pursuant to Subtitle E § 5201.5, the Board 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.



and air on the residents to the north of the subject property. The Board concurs with the ANC's advice and notes that ANC 6B did not state any issues or concerns about the approval of the zoning relief requested by the Applicant.

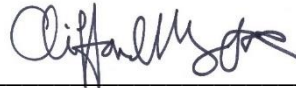
Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions, pursuant to Subtitle X § 901 and Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1 and from the side yard requirements of Subtitle E § 207.4 to allow a two-story rear addition and a new two-story accessory structure to an existing two-story semi-detached principal dwelling in the RF-1 zone at 751 10<sup>th</sup> Street, SE (Square 950, Lot 84). Accordingly, it is **ORDERED** that the application is **GRANTED** in conformance with plans shown at Exhibit 27, dated January 7, 2022.

**VOTE: 5-0-0** (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to APPROVE)

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

**FINAL DATE OF ORDER:** November 2, 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.