

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



Application No. 20629 of Jennifer May, 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 rear yard requirements of Subtitle E § 5004.1(a) to allow a two-story accessory structure (garage with roof deck) to an existing three-story attached principal dwelling with cellar in the RF-1 zone at 745 10th Street, SE (Square 950, Lot 75).

HEARING DATE: February 16, 2022

DECISION DATE: February 16, 2022

DECISION AND ORDER

This self-certified application was filed October 25, 2021 by Jennifer May (the “Applicant”), the owner 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 November 9, 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 6 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, the Historic Preservation Office, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on November 12, 2021 (68 DCR 011978) and was published on the Office of Zoning website.

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 adjacent to the Applicant’s property. (Exhibit 21.)

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Applicant's Case. The Applicant provided evidence and testimony in support of the application from Stephen Santos, the project architect. The Applicant requested approval of an increase in lot occupancy and relief from the rear yard requirements to allow a two-story accessory structure in the rear yard of an existing three-story attached principal dwelling.

OP Report. By report dated February 4, 2022, the Office of Planning recommended approval of the application. (Exhibit 22.)

DDOT Report. By memorandum dated February 4, 2022, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 23.)

ANC Report. By letter dated February 8, 2022, ANC 6B stated that, at a regularly scheduled meeting on February 8, 2022, with a quorum present, the ANC voted to support the Applicant's request for zoning relief. (Exhibit 31.)

Party in Opposition. The party in opposition, Robert McCulloch, Jr. and Margaret McCulloch ("Opposing Party"), provided evidence and testimony in opposition to the application. 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, and privacy, and that the Applicant's proposed 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. The Board also received a letter from the zoning committee of the Capitol Hill Restoration Society, which supported the request for special exception for lot occupancy and rear yard relief contingent upon receipt of letters of support from adjacent neighbors. (Exhibit 19.)

Persons in opposition. The Board received letters 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 accessory structure would negatively impact the light, air, and privacy available and visually intrude upon the unique charm, character, look, and feel of their historic building.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the west side of 10th Street, SE, between G Street, SE and I Street, SE, with an address of 745 10th Street, SE (Square 950, Lot 75).
2. The subject property is a rectangular lot, approximately 13.75 feet wide and approximately 100.875 feet deep. The lot area is 1,387 square feet.
3. The subject property abuts a public alley, 30 feet wide, along the rear (west) lot line.

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4. The subject property is improved with a three-story row building, with a cellar, that is used as a principal dwelling. The existing dwelling has a rear deck addition with stairs down to grade.
5. The subject property has a lot occupancy of 48 percent.
6. The subject property has a rear yard of approximately 40 feet.
7. The subject property is separated from the alley by a wooden gate that provides access to the rear of the lot.
8. The Applicant proposed to build a new accessory structure at the rear of the lot. The two-story accessory structure will be built to both side lot lines and to the rear lot line, extending 13.75 feet wide and 22.17 feet deep, and creating a building area of approximately 305 square feet.
9. The accessory structure will be 22 feet and two stories in height, including a parapet wall of approximately three feet, eight inches.
10. The ground floor of the accessory structure will be used as a garage, providing one vehicle parking space. The second floor will be used as living space for the existing dwelling and not as a separate dwelling.
11. The accessory structure will have a spiral staircase located in the rear yard to provide access to the second story and to a deck on the roof of the new accessory building.
12. The accessory structure will have a garage door to provide vehicle access from the alley. The second floor will have three windows on its west façade overlooking the alley.
13. The east façade (facing the Applicant's rear yard) will have glass patio doors and windows on both floors.
14. The new accessory structure will not have any windows on its side façades (facing north and south).
15. The Applicant did not propose any changes to the exterior of the existing dwelling.
16. Construction of the new accessory structure will increase the lot occupancy of the subject property to 70 percent where a maximum of 60 percent is permitted as a matter of right. (Subtitle E § 304.1.)
17. The new accessory structure will be located at a distance of 17 feet, 11.25 inches from the existing dwelling as measured from the deck addition.
18. The abutting property to the south of the subject property (at 747 10th Street SE) is improved with an apartment house built in 1912 and now owned by the Opposing Party.

The three-story building occupies approximately 75 percent of its lot and contains nine apartments (two per above-grade floor and three in the cellar). The apartment house has porch additions, approximately eight feet deep, on the first through third floors at the rear of the building. Each porch is shared by residents of the two units on each floor. The rear yard of the apartment house contains patio furniture and other features for communal use by the building's residents.

19. The apartment house is higher than the Applicant's dwelling (although both buildings contain three stories) and extends at least 10 feet beyond the rear wall of the Applicant's dwelling.
20. The Applicant's new accessory structure will abut the rear yard, rear porches, and a portion of the side wall of the existing apartment house. The spiral staircase will be located adjacent to the brick wall of the apartment building's north side façade.
21. The adjacent property to the north of the subject property (at 743 10th Street SE) is improved with a principal row dwelling. A one-story accessory garage structure is located in the rear yard adjacent to the alley.
22. A wooden privacy fence was installed along the side lot line shared by the subject property and the abutting property to the north, extending from the dwellings and the existing accessory structure.
23. The south side lot line of the subject property also contains a wooden privacy fence separating the two rear yards.
24. Properties to the west, directly across the alley from the subject property, contain row buildings, many with one- or two-story accessory structures in their rear yards abutting the alley.
25. 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.)

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26. 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.)
27. A rear yard of at least 20 feet is required in the RF-1 zone. (Subtitle E § 306.1.)

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 rear yard requirements of Subtitle E § 5004.1(a) to allow a two-story accessory structure in the required rear yard of an existing attached principal dwelling in the RF-1 zone at 745 10th Street SE (Square 950, Lot 75). 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 § 5201.2, the Board may grant relief from certain development standards, including lot occupancy and rear yard requirements, to allow 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 §§ 5201.2(a), 5202.4(e).) In accordance with Subtitle E § 5201.4, the proposed 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 accessory structure, 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 to allow the location of an accessory structure in a required rear yard. The Applicant's proposed accessory structure will increase lot occupancy at the subject property to 70 percent, which the Board may permit by special exception. In an RF zone, an accessory building other than a shed may be located within a rear yard, provided that (a) the accessory building is not located in a required rear yard and (b) the accessory structure will be set back at least 7.5 feet from the centerline of any alley. In this case, the subject property abuts an alley that is 30 feet wide and therefore the planned accessory structure will be set back at least 15 feet from the alley centerline. However, the accessory building will be partially located within the required rear yard at the subject property, as the distance between the existing dwelling and the accessory structure will be almost 18 feet where a minimum of 20 feet

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is required. The project will otherwise meet the development standards applicable in the RF-1 zone. The planned accessory structure will meet matter-of-right standards with respect to height, building area, and side yard. (*See Subtitle E § 5000.*)

The Board concludes that the Applicant's project will not unduly affect the light and air available to neighboring properties. As already noted, the planned accessory structure will comply with matter-of-right development standards except for lot occupancy and location within a required rear yard. The Opposing Party objected to the creation of a 22-foot-long wall along the entirety of the rear yard of the apartment house. However, the RF-1 zone allows the location of an accessory structure in the rear of the lot, accessible from the public alley, and does not require side yards. The Board concludes that the new construction will not unduly affect the air available to any neighboring property given the relatively small size of the new accessory structure and its location at the rear of the Applicant's lot, separated from nearby dwellings by rear yards and the adjacent public alley. The new accessory structure will encroach by slightly more than two feet in to the required rear yard and will increase lot occupancy at the subject property by 22 percent, but the Board does not find that relief from those development standards will result in adverse impacts due to light and air on any nearby property under the circumstances of this application. The size and location of the planned accessory structure will limit its impacts on the light available to nearby properties. The Applicant provided photographs to show existing shadowing from the subject property as well as a shadow study (Exhibit 35A) comparing the existing situation, a matter-of-right accessory structure, and the proposed project. The shadow study demonstrated that the new construction will not create extensive shadow impacts. Because of the east-west orientation of the subject property, the new accessory structure will not affect the light available to the apartment house on the abutting property to the south. The new accessory structure will not create undue light impacts on the abutting property to the north, given that the Applicant's project will comply with applicable limits on height and building area and will not significantly affect existing shadow patterns resulting from privacy fences, vegetation, the existing accessory structure in the abutting lot, and the height of the neighboring apartment house. The new accessory structure will not affect the light available to properties to the west, which are separated from the subject property by the public alley.

The Board concludes that approval of the requested zoning relief will not unduly compromise the privacy of use and enjoyment of any neighboring properties. The accessory structure will not contain windows on its north or south sides. The windows on the second floor will provide views of the alley to the west. On the east, the new accessory structure will provide views primarily of the Applicant's rear yard and dwelling. Any views from the accessory structure toward nearby row dwellings to the north will be indirect and obstructed by privacy fences and vegetation in the rear yards of the neighboring dwellings. The apartment house does not have windows on its north façade, precluding views from the accessory structure into that portion of the abutting building to the south.

The Opposing Party contended that approval of the application would unduly compromise the privacy of residents of the apartment house, especially because the roof deck of the new accessory structure will provide direct views of the rear yard, porches, and west-facing windows of the

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apartment house. The Board does not agree that approval of the application will result in any undue privacy impacts, noting that the RF-1 zone permits a two-story accessory structure, with a roof deck, as a matter of right and does not require side yards. The Opposing Party did not demonstrate that approval of the requested zoning relief, to allow an increase in lot occupancy and a two-foot encroachment in the required rear yard, would unduly compromise the privacy of use and enjoyment of the apartment house, especially considering the communal use and outdoor nature of the porches and rear yard. The Board notes that the new accessory structure will have a parapet wall more than 3.5 feet high, which will block views to and from the lower level of the roof deck, and that the Office of Planning did not recommend any measures as necessary to avoid potential adverse impacts related to privacy.¹

The Board concludes that 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. The accessory structure will not be visible from 10th Street but will be visible from the public alley. The Applicant submitted photographs showing that many nearby properties contain accessory structures, including several with two stories, along the abutting public alley.

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 accessory structure will continue the use of the subject property as a principal dwelling and will comply with applicable development standards other than an increase in lot occupancy and encroachment into a required rear 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, 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. 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 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

¹ 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.

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. The Board 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 rear yard requirements of Subtitle E § 5004.1(a) to allow a two-story accessory structure in the required rear yard of an existing attached principal dwelling in the RF-1 zone at 745 10th Street SE (Square 950, Lot 75). Accordingly, it is **ORDERED** that the application is **GRANTED** in conformance with plans shown at Exhibit 17A, dated January 26, 2022.

VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl 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: February 17, 2023

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 UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS 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.