

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19446 of Max Karasik, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2 to allow construction of a third-floor addition above an existing two-story principal dwelling in the RF-1 Zone at premises 646 6th Street, N.E. (Square 834, Lot 89).¹

HEARING DATE: March 8, 2017² and April 5, 2017
DECISION DATE: April 19, 2017

DECISION AND ORDER

This self-certified application was submitted on December 22, 2016 on behalf of Max Karasik, the owner of the property that is the subject of the application (the “Applicant”). The application, as subsequently amended, requested special exception relief to allow a third-story addition to a two-story attached principal dwelling, not meeting requirements for lot occupancy or enlargement of a nonconforming structure in the RF-1 district at 646 6th Street, N.E. (Square 834, Lot 89). After a public hearing, the Board of Zoning Adjustment (“Board”) voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated January 4, 2017, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6 as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the subject property is located; and Single Member District/ANC 6C05. Pursuant to 11 DCMR Subtitle Y § 402.1, on January 4, 2017 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, the Councilmember for Ward 6, ANC 6C, and

¹ The caption has been modified to reflect a change in the relief initially requested. As originally filed, the application also requested a special exception to allow removal of a rooftop architectural element, required by Subtitle E § 206.1, and a special exception from the building height requirements of Subtitle E § 5203.3. The Applicant subsequently withdrew the request for relief from Subtitle E § 206.1 (see Exhibit 42) and did not pursue the request for height relief from the requirements of Subtitle E § 5203.3 (see Exhibits 44, 46).

² The hearing was postponed from March 8, 2017 to April 5, 2017 at the Applicant’s request.

BZA APPLICATION NO. 19446
PAGE NO. 2

the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on January 13, 2017 (64 DCR 334).

Party Status. The Applicant and ANC 6C were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Robert Lyons, the owner of the residence abutting the subject property to the south.

Applicant's Case. The Applicant provided evidence and testimony about the planned addition, and asserted that the proposal would satisfy all requirements for approval of the requested zoning relief.

OP Report. By memorandum dated February 24, 2017, the Office of Planning recommended approval of both special exceptions initially requested by the Applicant. (Exhibit 33.) In a supplemental report dated March 24, 2017, OP recommended approval of the revised application. (Exhibit 54.)

DDOT. By memorandum dated February 22, 2017, the District Department of Transportation indicated no objection to approval of the initial application. (Exhibit 37.)

ANC Report. By letter dated February 13, 2017, ANC 6C indicated that, at a properly noticed public meeting on February 8, 2017 with a quorum present, the ANC voted to support the original application without stating any issues or concerns.

Party in Opposition. The party in opposition contended that the Applicant's proposed addition would cause a loss of light and air to his property, and would negatively affect the character of the street. He also objected to removal of the mansard roof, in the Applicant's initial design, and contended that the planned setback of the third-floor addition in the revised design would be insufficient to avoid changing the appearance and character of the property.

Persons in support. The Board received letters from persons in support of the application indicating that those persons had seen the Applicant's plans and had no objection to the proposed addition.

Persons in opposition. The Board received letters from persons in opposition to the application. The persons in opposition objected that the Applicant's proposed addition would be out of character with other residences in the neighborhood, citing especially the Applicant's initial plan to alter the building's historic façade and asserting that the planned setback, as proposed in the amended application, would not be sufficient to minimize the visibility of the addition.

FINDINGS OF FACT

1. The subject property is located on the west side of 6th Street, N.E. near its intersection with G Street (Square 834, Lot 89).

BZA APPLICATION NO. 19446
PAGE NO. 3

2. The subject property is irregularly shaped but generally rectangular, with approximately 18.33 feet of frontage on 6th Street. The lot is approximately 11.67 feet wide at the rear (west), where the parcel abuts a public alley; an alley also extends along the northern property line for a distance of approximately 25 feet from the rear lot line. The lot is approximately 97 feet deep.
3. The subject property is improved with a two-story attached building used as a principal dwelling. A one-story accessory structure, located in the rear yard, is used as a garage.
4. The subject property is nonconforming with respect to lot occupancy, since the existing lot occupancy is 68.2 percent where a maximum of 60 percent is permitted as a matter of right. (Subtitle E § 304.1.) At 1,622 square feet, the subject property is also nonconforming with respect to lot area, since a minimum of 1,800 square feet is required. (Subtitle E § 201.1.)
5. The rear yard, at 39.5 feet, exceeds the applicable minimum requirement of 20 feet. (Subtitle E § 306.1.)
6. The Applicant plans to construct a new third floor at the residence containing approximately 694 square feet of space, sufficient to add another bedroom, a family room, bathroom, and office to the residence. The addition will be set back three feet, four inches from the face of the existing building, and will maintain the face of the existing mansard roof intact. The addition will rise approximately five feet, five inches above the mansard roof, increasing building height from 29.6 feet to 35 feet.
7. The planned addition will not increase the existing lot occupancy or decrease the existing rear yard. The addition will extend an existing open court of the south side of the subject property.
8. The Applicant submitted a sun study illustrating the expected impacts of the planned addition with respect to shadows created by the new construction on nearby properties. (Exhibit 45.)
9. The Applicant's attached dwelling abuts similar attached dwellings on each of the adjoining lots to the north and south. The subject property is at a distance of approximately 100 feet from the closest residences to the west, which are separated from the Applicant's residence by rear yards and a public alley.
10. The Applicant's new third-floor addition will extend approximately five feet, five inches above the existing roof of the residence on the abutting property to the north (648 6th Street, N.E.). The northern wall of the addition will not have any windows.
11. The residence on the abutting property to the south (644 6th Street, N.E.) has a partial third-floor addition that is set back approximately nine feet from the face of the building, where

BZA APPLICATION NO. 19446
PAGE NO. 4

a small patio is located. The roof of the Applicant's planned third-floor addition will be approximately one foot lower than the existing roof of the third floor at the abutting property.

12. The new third-floor addition will not extend beyond the rear wall of the Applicant's residence or beyond the rear walls of the two abutting residences.
13. The attached dwellings in the 600 block of 6th Street, N.E. are characterized by a variety of façade designs and elements, including circular bays with turrets, Victorian bay front houses, and mansard roofs of different styles and heights. The surrounding neighborhood is primarily residential, characterized especially by one- and two-family dwellings in attached buildings.
14. The subject property is located in an RF-1 zone, where applicable zoning provisions are intended, among other things, 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. (Subtitle E § 100.3(a).)
15. The purpose of the RF-1 zone is to provide for areas predominantly developed with attached 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 Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the requirements for enlargement of a nonconforming structure under Subtitle C § 202.2 to allow a third-floor addition above an existing two-story principal dwelling in the RF-1 Zone at 646 6th Street, N.E. (Square 834, Lot 89). 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 §§ 5201.1 and 5201.2, the Board may approve, as a special exception under Subtitle X, chapter 9, relief from specific development standards applicable to residential buildings in the RF-1 zone, including lot occupancy and the limitations on the enlargement of or an addition to a nonconforming structure, subject to certain requirements. Pursuant to Subtitle E § 5201.3, an applicant for a special exception must demonstrate that the addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. In particular, the applicant must demonstrate that the addition will not unduly affect the light and air

BZA APPLICATION NO. 19446
PAGE NO. 5

available to neighboring properties, or unduly compromise the privacy of use and enjoyment of neighboring properties. The planned addition, as viewed from a street, alley, and other public way, must not substantially visually intrude on the character, scale, and pattern of houses along the street frontage.

Based on the findings of fact, the Board concludes that the application satisfies the requirements for special exception relief in accordance with Subtitle E § 5201 and Subtitle X, chapter 9. Consistent with Subtitle E § 5201.3(d), the Applicant has provided graphical representations, including plans, photographs, and drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways.

The Applicant's proposal will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. The relatively small addition will not alter the existing lot occupancy or rear yard of the Applicant's residence, and will maintain an existing open court, so that the light and air available to neighboring properties will not be unduly affected by the new third floor. The sun study submitted by the Applicant demonstrated that the new construction will not have significant impacts on the shadows created on neighboring properties, since the impact on daylight will be limited to shadows cast into the rear yard of the abutting property to the north during the morning hours. The Office of Planning concluded that the addition would have "no impact" on light available to neighboring properties. (Transcript of April 5, 2017 at 181.) Similarly, the privacy of use and enjoyment of neighboring properties will not be unduly compromised by the third-floor addition, which will abut an existing third floor on the south side, will not have any windows on the north side, and will be located a considerable distance from the nearest neighbors to the west while the east side will face the street.

The planned addition, as viewed from 6th Street and from the rear alley, will not substantially visually intrude on the character, scale, and pattern of houses along the street frontage. The Applicant's revised design will maintain the face of the existing mansard roof and will set the front of the addition back more than three feet away from the face of the existing building, thereby minimizing views of the new third floor from the street and preserving the appearance of the existing residence. The Applicant's addition will be similar in size to an existing third-floor addition on an adjoining property. The remainder of the block is characterized by a variety of housing styles, which will not be greatly affected by the Applicant's planned addition. The new addition will not alter the character of the existing residence as seen from the alley, since the existing residences are similar but not uniform in size and architectural style.

In accordance with Subtitle X § 901.2, the Board 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 discussed above, the Board does not find that the new third-floor addition will create any adverse impacts on the use of neighboring property. Approval of the requested special exception will be in harmony with the purpose of the RF-1 zone, and consistent with the intention of provisions applicable in the RF-1 zone to recognize and

BZA APPLICATION NO. 19446
PAGE NO. 6

reinforce the importance of neighborhood character, 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.

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 concurs 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 6C expressed support for the Applicant’s proposal without stating any issues and concerns to which the Board can give great weight.

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 Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2 to allow a third-floor addition above an existing two-story principal dwelling in the RF-1 Zone at 646 6th Street, N.E. (Square 834, Lot 89). Accordingly, it is **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 43 – REVISED ARCHITECTURAL PLANS.**

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Robert E. Miller to APPROVE; 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 A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: August 20, 2018

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.