

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19512 of 1262 Holbrook Terr, LLC, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the alteration of a roof top architectural element requirement of Subtitle E § 206.1, and under the residential conversion requirements of Subtitle U § 320.2, to construct a rear addition and third-story addition to convert a one-family dwelling into a three-unit apartment house in the RF-1 Zone at premises 1262 Holbrook Terrace, N.E. (Square 4055, Lot 48).

HEARING DATE: June 21, 2017
DECISION DATE: July 26, 2017

DECISION AND ORDER

This self-certified application was submitted on April 20, 2017 by 1262 Holbrook Terr, LLC, the owner of the property that is the subject of the application (the “Applicant”). The Applicant requests special exception approval pursuant to 11-U DCMR § 320.2 of the Zoning Regulations to convert a single-family dwelling into a three-unit residential building, and special exception approval pursuant to 11-E DCMR § 206.1 for relief from the prohibition against altering rooftop architectural elements. Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated April 21, 2017, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 5; Advisory Neighborhood Commission (“ANC”) 5D, the ANC for the area within which the subject property is located; and the single-member district ANC 5D-02. Pursuant to 11-Y DCMR § 402.1, on April 21, 2017, the Office of Zoning mailed notice of the hearings to the Applicant, ANC 5D, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on May 5, 2017 (64 DCR 18).

¹ The Applicant amended the application (Exhibit 37 – Updated Self-Certification) by adding to the original request a special exception for roof top or upper floor addition under Subtitle E § 206.1.

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Party Status. The Applicant and ANC 5D were automatically parties in this proceeding. There were no requests for party status.

Applicant's Case. The Applicant provided evidence and testimony to show that the application satisfied all requirements for approval of the requested zoning relief.

OP Report. By a report dated June 9, 2017, the Office of Planning recommended approval of both the special exception for a conversion pursuant to 11-U DCMR § 320.2 and the special exception for altering an architectural element pursuant to 11-E DCMR § 206. The Office of Planning noted that while the Applicant had not yet requested relief pursuant to 11-E DCMR § 206 at the time of its report, it would be willing to support the relief. (Exhibit 34.)

DDOT Report. By memoranda dated June 9, 2017, DDOT indicated it had no objection to the approval of the application, noting that the proposal will have no adverse impacts on travel conditions of the District's transportation network. (Exhibit 33.)

ANC Report. At a regular public meeting on June 13, 2017, with a quorum present, the ANC voted 4-3-0 to oppose the application. The ANC indicated that its opposition was based on concerns regarding: (1) parking; (2) impacts to adjacent properties; (3) notification; and (4) infrastructure. The ANC Chair attended the hearing on June 21, 2017 and requested that the Applicant return to the July ANC meeting so that the ANC and community could have more time to review the application. The Applicant attended the ANC meeting on July 11, 2017, where the ANC declined to vote on the Application, as its position had not changed.

Persons in Opposition. Vonetta Dumas submitted a letter of opposition on behalf of the Holbrook Terrace Alliance. (Exhibit 44.)

Persons in Support. The Board received three letters of support: one from the adjacent neighbor at 1264 Holbrook Terrace, Marc Hyman; one from the adjacent neighbor at 1260 Holbrook Terrace, Isiah Foskey; and one from a community member, Jeffrey DeRoche. (Exhibits 38, 42, and 43).

FINDINGS OF FACT

1. The property is located 1262 Holbrook Terrace, N.E. (Square 4055, Lot 48).
2. The property is improved with a principal dwelling that was constructed circa 1910.
3. The subject property has a lot area of 4,039 square feet and a lot width of 22.5 feet.
4. Abutting the property to the north is an apartment building.
5. The property to the south is currently being converted to a three-unit residential building (pursuant to BZA Order No. 19173).

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6. Abutting the property to the east and west are a public alley and Holbrook Terrace, respectively.
7. The property is located in the RF-1 zone district.
8. The Applicant is proposing to convert the home to a three-unit residential building.
9. Accordingly, the Applicant requested special exception relief pursuant to 11-U DCMR § 320.2.
10. The Applicant is proposing to construct a third-story addition to the building and a three-story addition at the rear of the building. The third-story addition will be set back ten feet from the front façade. The addition will be 34 feet and two inches in height, which is permitted as a matter of right.
11. At 4,039 square feet, the lot area of the subject property exceeds the minimum lot area requirement of 2,700 square feet (i.e. 900 square feet per dwelling unit) as required pursuant to 11-U DCMR § 320.2(d).
12. No adjacent property has a solar system installed on its roof.
13. The addition will not block or impede any chimneys.
14. The proposed addition extends only nine and a half inches past the rear wall of the building to the south and only three feet and nine inches past the rear wall of the building to the north.
15. The Applicant is providing three parking spaces that can be accessed through a rear alley.
16. The new construction will increase lot occupancy at the subject property from 19% to 43.72%. Sixty percent lot occupancy is permitted as a matter-of-right.
17. The Applicant is proposing to reconstruct the existing front porch and replace the existing vinyl material on the dormer and second floor façade with brick. The Applicant is also adding a railing to the roof and switching the location of the door and window.
18. Accordingly, the Applicant amended the application to special exception relief pursuant to 11-E DCMR § 206.1, in order to alter the architectural elements original to the building. (Exhibit 37.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief pursuant to 11-E DCMR § 206.1 and 11-U DCMR § 320.2 of the Zoning Regulations in order to update the front façade, restore the porch, construct

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a third-story addition and a rear addition to the existing building, and to convert the single-family dwelling to a three-unit residential building. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) 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-X DCMR § 901.2.)

The Board's discretion in reviewing an application for a special exception is limited to a determination of whether an applicant has complied with the requirements of 11-E DCMR § 206.1, 11-U DCMR § 320.2, and 11-X DCMR § 901.2 of the Zoning Regulations. If an applicant meets its burden, the Board ordinarily must grant the application. *See, e.g. Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *Washington Ethical Society v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 18-19 (D.C. 1980); *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981); *Gladden v. District of Columbia Bd. of Zoning Adjustment*, 659 A.2d 249, 255 (D.C. 1995).

Pursuant to 11-E DCMR § 206.1, "a roof top architectural element original to the building such as a turret, tower or dormers, shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size." Subtitle E § 206.2 continues that "in an RF zone district, relief from the design requirements of Subtitle E § 206.1 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle Y Chapter 9, subject to the conditions of Subtitle E § 5203.3." The Applicant is proposing to replace the existing two-window dormer with a larger three-window dormer, replace the vinyl material on the dormer and second floor façade with brick, replace the porch, add a railing to the porch roof, and switch the location of the window and the door. The Applicant is therefore requesting relief pursuant to 11-E DCMR § 5203.3, which states that a special exception to the requirements of 11-E DCMR § 206 shall be subject to the conditions of 11-E DCMR § 5203.1(b), (c), and (d). These conditions include: (b) Any addition, including a roof structure or penthouse, shall not block or impede functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition; (c) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator; and (d) A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size.

Based on the findings of fact, the Board concludes that the request for special exception relief, as represented by the submitted plans, testimony, and evidence, satisfies the requirements of 11-E DCMR § 206.1. The Board credits the testimony of the Applicant and the Office of Planning and finds that the proposed addition and conversion meets the enumerated conditions. As represented by the submitted plans, the addition shall not block or impede the functioning of any chimney or

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other external vent on the adjacent properties, the addition shall not interfere with the operation of an existing or permitted solar energy system on the adjacent properties, and, while the Applicant is proposing to alter architectural elements original to the building, as detailed above, the addition meets the general special exception requirements of 11-X DCMR § 901.2, and that is what the Applicant has assumed is the basis of the special exception test for this request, since it is clear that the Zoning Commission intended to provide for special exception relief in this situation.

Pursuant to 11-U DCMR § 320.2, a conversion of a single-family dwelling to a multi-unit dwelling may be permitted as a special exception, subject to the enumerated conditions. These conditions include: (a) The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.); (b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the [inclusionary zoning set-aside requirements]; (c) There must be an existing residential building on the property at the time of filing an application for a building permit; (d) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit; (e) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on the adjacent property; (f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of an operative chimney or other external vent on an adjacent property required by any municipal code; (g) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing or permitted solar energy system (of at least 2kW) on an adjacent property; (h) A roof top architectural element original to the house such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size; (i) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular: (1) The light and air available to neighboring properties shall not be unduly affected; (2) the privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and (3) the conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street or alley; (j) In demonstrating compliance with 11-U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways; (k) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block; (l) The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with 11-U DCMR § 320.2(i).

Based on the findings of fact, the Board concludes that the request for special exception relief, as represented by the submitted plans, testimony, and evidence, satisfies the requirements of 11-U DCMR § 320.2. The Board credits the testimony of the Applicant and the Office of Planning and finds that the proposed addition and conversion meet the enumerated conditions. As evidenced by

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the plans, the proposed addition will not exceed 35 feet in height. The Inclusionary Zoning set-aside requirements do not apply, as the Applicant is not proposing more than three units. There is an existing residential building on the property and the Applicant has over 2,700 square feet of land area. The addition will not extend more than ten feet past the adjacent properties to the north and south, and will not interfere with any adjacent chimney, adjacent vents, or solar panels. The Applicant has requested relief from the prohibition against altering architectural elements original to the building, and the Board is permitted to grant that waiver and relief, as discussed above.

The light and air available to neighboring properties will not be unduly affected. The addition is intended to match the mass and height of the buildings on the adjacent properties. The addition will extend only nine and a half inches past the farthest rear wall of the building to the south and three feet and nine inches past the farthest rear wall of the building to the north.

The proposed addition will not have a material impact on the light and air to any abutting or adjacent property, and will not compromise the privacy or enjoyment of any abutting or adjacent property. The proposed addition includes three windows on the north side of the building. The windows are set back five feet from the shared property line and the building to the north is set back at least five feet from the shared property line, leaving about ten feet of space between the two buildings. No new windows are proposed on the south-facing side of the rear addition. Further, the Applicant is providing a six-foot high fence around the perimeter of the property. The Applicant has received letters in support of the application from both adjacent property owners.

The Board finds also that the proposed addition, along with the original structure, will not visually intrude on the character, scale, or pattern of houses along the street frontage.

For these same reasons, the Board finds that the proposed addition will not adversely affect the use of neighboring properties as required by 11-X DCMR § 901.2. Further, the Board finds that the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs 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) (2001)).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted). In this case, ANC 5D voted 4-3-0 to recommend denial of the Application, asserting four main concerns: (1) Parking; (2) Impacts to Adjacent Properties; (3) Lack of Notification; and (4) Neighborhood Infrastructure. At the decision meeting on July 26, 2017, the Board discussed these concerns at length.

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Parking

According to the ANC Resolution in Opposition (Exhibit 41A), the ANC was concerned about the “potential parking burden posed by the density of the proposed project, in combination with other developmental projects in progress directly adjacent to the proposed development.” The Board determined that the Applicant took steps to mitigate this concern, noting that the Applicant is providing three legal parking spaces, more than is required for a three-unit building in the RF-1 Zone. Further, the Board noted that there would be enough room to double park cars, potentially creating enough space to park six cars.

Impacts to Adjacent Properties

The ANC was also concerned about the “adverse effect on the use or enjoyment of any abutting or adjacent properties, in particular ... the light and air available to the neighboring property of 1260 Holbrook Terrace, N.E. apartment building ... and the privacy of use and enjoyment of neighboring property given the close proximity of the window placement between adjacent property (1260 Holbrook Terrace, N.E.) and the newly proposed development.” The Board noted that while the project may not have been received well by all neighbors, the owners of the adjacent buildings at 1260 Holbrook Terrace, N.E. and 1264 Holbrook Terrace, N.E. submitted letters of support into the record. (Exhibits 38 and 42.) Further, the Board found that the proposed project would be of a similar size and scale to the adjacent properties. While the proposed addition includes three windows on the north side of the Building, the windows are set back five feet from the shared property line, and the building to the north (1260 Holbrook Terrace) is set back at least five feet from the shared property line, leaving about ten feet of space between the two buildings.

Notification

In its report, the ANC also notes that “some residents who reside within 200 feet indicated that they did not receive written notification from the DC Office of Zoning regarding this proposed development.” The Board pointed to List of Names and Mailing Addresses of Property Owners within 200 Feet (Exhibit 3), noting that the Office of Zoning mailed out neighbor notifications. The Board also stated that the Single Member District Commissioner held several community meetings with the Applicant and community. In addition, community members were given notice of the project at the ANC meeting on June 13, 2017, and the property was posted, as shown in the Affidavit of Posting. (Exhibit 40.) Further, the Board’s decision was delayed until July to accommodate the ANC’s request to give the community more time to review the project. Accordingly, the Board finds that adequate notice was given.

Neighborhood Infrastructure

Lastly, the ANC raised concerns regarding “the effect of the proposed development on the sewage, gas, and electrical infrastructure for the block.” A project’s impact on existing utilities is not legally relevant to the grant to the Board’s consideration of a special exception.

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Based on the case record, the testimony at the hearing, and 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 under 11-E DCMR § 206 and 11-U DCMR § 320.2, to allow for an addition to and conversion of the subject property from a single-family dwelling to a three-unit residential building. It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 4 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter G. May (by absentee ballot) 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: July 13, 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

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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.