GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17405 of MacArthur Laverock, L.L.C., on behalf of Cathie E. and Philip C. Guzzetta, pursuant to 11 DCMR § 3104.1, for a special exception to permit an addition to a single-family detached dwelling under § 223, not meeting the rear yard requirements (§ 404) in the R-5-A District at premise 4598 Laverock Place, N.W. (Square 1356, Lot 36).

HEARING DATE: December 13, 2005
DECISION DATE: January 10, 2006

DECISION AND ORDER

This application was filed on July 29, 2005 by MacArthur Laverock, L.L.C., on behalf of Cathie E. and Philip C. Guzzetta (collectively "Applicant"), respectively the builder and owners of the property that is the subject of this application ("subject property"). The application requests a special exception to retain an already-constructed second-story rear deck, which was apparently constructed encroaching into the Applicant's required rear yard due to a misunderstanding of the Zoning Regulations and the permitting process. In Case No.17193, the Board of Zoning Adjustment ("Board" or "BZA") recently granted the Applicant a variance to reduce its rear yard from the required 20 feet to 12 feet. With the addition of the second-story deck, the rear yard is further reduced to 4 feet, and therefore, the Applicant requests a special exception pursuant to § 223 to retain the deck.

The Board held and completed a hearing on the application on December 13, 2005, but kept the record open for a further submission from the Applicant, setting a decision date for January 10, 2006. On that date, at a public meeting, the Board voted 5-0-0 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 1, 2005, the Office of Zoning ("OZ") gave notice of the application to the District of Columbia Office of Planning ("OP"), the District of Columbia Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 3D, the ANC within which the subject property is located, Single Member District 3D08, and the Council Member for Ward 3. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and on September 27, 2005, mailed notice of the hearing to the Applicant, ANC 3D, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 3D, automatically a party in this proceeding, was opposed to the granting of the special exception. There were no other requests for party status.

Applicant's Case. The Applicant addressed the history of the subject property, including the recent granting of the rear yard variance, the special exception tests, and the question of the planting of an evergreen buffer. Mrs. Guzzetta testified on behalf of the Applicant and stated that, when purchasing the dwelling, she was unaware of any violation of the Zoning Regulations, and that the rear deck on her dwelling does not affect the air, light, or privacy of her neighbors.

Government Reports. The Office of Planning submitted a report to the Board dated December 13, 2005, which, although late, was accepted by the Board. OP recommended approval of the application, opining that it readily met all the special exception criteria.

ANC Report. ANC 3D submitted a report to the Board dated November 29, 2005. The ANC recommended denial of the special exception and removal of the second-story deck for the following reasons: (1) the plans submitted in the variance case (No. 17193) and the plans built are not the same, contrary to 11 DCMR § 3125.8, (2) the encroachment of the deck into the rear yard exceeds the variance approved in Order No. 17193, (3) no additional relief was sought prior to building the deck, (4) the agreed-upon evergreen buffer at the rear lot line was not installed, but was substituted with a wooden fence instead, (5) there is no proven hardship in this case, and (6) "granting a four foot rear yard setback would establish a precedent that would render rear yards meaningless" and would substantially impair the intent and integrity of the Zoning Regulations and Map.

Persons in Support or Opposition. There were several letters in support of the application from the adjacent neighbors, who would presumably be most affected by the deck on the subject property.

FINDINGS OF FACT

The subject property and the background of the application.

1. The subject property is located at 4598 Laverock Place, N.W., in Square 1356, Lot 36. The property is split-zoned, with approximately 93% of it, including the dwelling located on it, within an R-5-A zone district, and approximately 7% of it within an R-1-B zone district.

2. The surrounding area is developed with a variety of residential uses, including row dwellings, single-family detached dwellings, semi-detached dwellings, and apartment houses.

3. Immediately behind, and abutting the rear property line of the subject property, are the grounds of Riverside Hospital, a psychiatric facility and residential treatment center, which provides "comprehensive behavioral healthcare" to its patients.

4. The subject property is improved with a recently-constructed single-family detached dwelling, which was constructed pursuant to a rear yard variance granted by Board Order No. 17193 in 2004. The variance permitted a rear yard of 12 feet, as opposed to the required 20 feet. *See,* 11 DCMR § 404.

5. The rear yard variance was requested to allow the dwelling on the subject property to be further set back from the Laverock Place frontage. This was done at the request of the Canal View Homeowners' Association, in order to bring the front of the dwelling in line with other dwellings fronting on Laverock Place, a private street. The further set back was also desirable because the first four feet within the property line along Laverock Place are taken up by the curb and sidewalk.

6. The dwelling was one of 3 new dwellings constructed simultaneously. The other 2 new dwellings included matter-of-right rear decks.

7. Following construction of the dwelling on the subject property in accordance with the variance granted and, apparently, due to a misunderstanding of the Zoning Regulations and the permitting process, an 8 by 16 foot second-story rear deck was added, which is approximately 10 feet above the rear grade of the property.

8. After construction of the dwelling and addition of the rear deck, the Guzzettas purchased the dwelling, unaware that the construction of the rear deck was not in accordance with the Zoning Regulations.

9. The rear deck projects into the 12-foot rear yard permitted by the variance, further reducing it to 4 feet, and necessitating this special exception application. *See,* 11 DCMR § 199.1, definition of "Yard" and § 2502.1.

10. Plans approved by Order No. 17193 showed "an evergreen buffer" to be planted between the subject rear yard and the grounds of Riverside Hospital. Instead of this buffer, the builder installed a sight-tight wooden fence.[1]

11. The hospital welcomed the buffer, but opposed its planting on any part of its property. Due to the nature of its business, it needs to have clear lines of sight to all of its property at all times.[2]

12. The property line between Riverside Hospital's grounds and the subject rear yard is now demarcated by both the wooden fence at the rear property line of the subject

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[1]The planting of the evergreen buffer was shown on the plans approved by Order No. 17193, but was not included as a condition in that Order.

[2]The hospital states that the buffer cannot be constructed (*i.e.*, planted) on its property, but the Applicant contends that the hospital's concerns go even further. According to the Applicant, the hospital does not want any of the canopy branches extending onto its property, further inhibiting the Applicant's ability to provide the evergreen buffer.

property, and a tall, chain-link fence which surrounds the Hospital's grounds and is set into its property by several feet. In between these two fences is an open, grassy area several feet in width.

13. ANC 3D filed a letter of complaint of non-compliance with Order No. 17193 with the Office of Zoning claiming that the rear deck improperly infringed on the already-diminished rear yard and that no evergreen buffer had been planted.

14. The Office of Zoning sent a letter to the Applicant stating that, in order to come into full compliance with Order No. 17193, the evergreen buffer had to be installed, and the rear deck either had to be removed or the Applicant had to apply to the Board for relief to retain it.

The special exception relief.

15. The lot occupancy of the subject dwelling, including the rear deck, is 29%, well below the 70% permitted by 11 DCMR § 223.

16. The deck is a roofless, open air structure with approximately 128 square feet of floor space. It projects from approximately the center of the rear of the subject dwelling.

17. The deck is attached to the rear of the dwelling and supported underneath by two tall and narrow wooden supports. Other than these supports, the area beneath the deck is open.

18. The deck projects to within approximately 4 feet of the fence at the rear line of the subject property, which is itself several feet away from the chain-link fence surrounding the Riverside Hospital grounds.

19. The hospital building itself is approximately 105 feet away from the deck.

20. The deck is located approximately 80 feet from the nearest dwelling to the southeast and approximately 60 feet from the nearest dwelling to the southwest, which is also screened by a row of tall trees and thickly planted vegetation.

21. The Guzzettas sometimes use a detachable bamboo screen on the deck to protect their privacy and that of their neighbors.

22. The deck is not visible from Laverock Place and is only minimally visible from MacArthur Boulevard.

23. The deck is in harmony with the subject dwelling and with other dwellings in the neighborhood, at least some of which have similar decks.

24. The builder installed the wooden fence at the rear property line of the subject property to meet the intent of the original agreement to install an evergreen buffer. This was apparently because of the lack of space on the subject property to plant such a buffer without encroaching on the hospital's property.

25. The fence is attractive and harmonizes with the subject dwelling, as well as with the neighboring dwelling, behind which it continues.

CONCLUSIONS OF LAW

The Board is authorized by § 8 of the 1938 Zoning Act (52 Stat. 797, 800; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions, as provided in the Zoning Regulations, where, in its judgment, 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 Regulations and Maps. *See,* 11 DCMR § 3104.1. Certain special exception applications must also meet the conditions enumerated in the particular section pertaining to them. In this case, the application had to meet both the requirements of § 3104.1 and § 223 of the Zoning Regulations.

The Board concludes that this application meets all the requirements of both § 3104.1 and § 223. The rear deck in question is part of the residential use of the dwelling and does not introduce any incompatible use to the area. The deck is small and relatively unobtrusive and is not visible from the street on which the dwelling fronts. It projects over the subject rear yard, but is approximately 60 feet from the nearest building. Therefore, it has little or no effect on the light, air, or privacy of use and enjoyment of neighboring properties. In fact, the owners of these nearby properties are all in support of the application. The deck is an attractive addition to the dwelling and is in harmony with the general purpose and intent of the Zoning Regulations and Maps.

The owner of the land on which Riverside Hospital is situated originally requested a buffer between its property and the subject property. The hospital, however, although it welcomed the installation of an evergreen buffer, did not seek or require it, and, in fact, was concerned that such a buffer might actually impede its ability to properly observe its property at all times. There was nothing in the record of this proceeding from either the hospital or the owner of the underlying property stating concerns with loss of privacy due to the Applicant's home or the rear deck.

The Board concludes that it is unnecessary to install an evergreen buffer. The wooden fence which was installed in its stead is attractive and blends with the rear of the subject property and that of its neighbor. There appears to be insufficient space to allow for the planting of the originally-intended buffer, and the Board concludes that the existing situation – with the wooden fence, the open grassy area, and the chain-link fence – provides a sufficient partition between the subject property and the hospital grounds.

The Board is required to give "great weight" to both the issues and concerns raised by the affected ANC and to the recommendation of the Office of Planning. *See,* D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning recommended granting the application, finding that it met all the special exception requirements, and the Board agrees.

The ANC, however, recommended denial of the application for five reasons. The Board disagrees with the ANC's reasoning and recommendation. The ANC's first three reasons were that the dwelling, with its rear deck addition, was not built according to the plans approved by Order No. 17193, that the encroachment of the deck into the rear yard exceeds the distance approved in the variance granted in Order No. 17193, and that no relief was sought to permit this additional encroachment. With respect to these three issues, the Board agrees with the Applicant that the ANC is focusing on "enforcement issues" and not on the special exception criteria that need to be addressed in this case.

These three reasons, however, set forth the very problems that the Applicant is now attempting to remedy by coming before the Board and requesting the appropriate relief. Indeed, the Applicant was told to do so by the Office of Zoning. *See,* Finding of Fact No. 14.
The ANC's fourth reason in support of its recommendation of denial is that the evergreen buffer was not installed. This argument also goes to compliance with the previous order. However, to the extent that it addresses the privacy factor of the special exception test, the Board finds that an attractive wooden fence has been installed that meets any privacy concerns in this case. The record indicates that there may not be enough space to allow the installation of a planted evergreen buffer and that the property most affected by the lack of the evergreen buffer – Riverside Hospital – is not seeking such a buffer or raising any privacy concerns related to this application.

The ANC's fifth reason is that there is no proven hardship in this case. Hardship, however, is not an element of a special exception analysis, therefore none has to be proved. The provisions of § 223 focus on the prevention of adverse impacts on nearby properties and do not require the showing of a practical difficulty or an undue hardship, as would be necessary in a variance analysis.

Finally, the ANC expressed concern that granting this special exception would set precedent and "render rear yard setbacks meaningless." This concern appears to be related to the ANC's view that the builder overbuilt this site in general. The ANC suggests that granting the special exception may lead to a lesser standard for rear yard set backs for other homes and thereby result in future overcrowding. The decision in this case does not set a precedent for rear yard setbacks generally. It simply addresses the criteria of the special exception test as set forth in § 223 and finds that they have been met. Each application before the Board is decided on its own facts pursuant to the standards set forth in the regulations. If the applicant meets the special exception criteria, the Board ordinarily must grant the application. *See, e.g., First Baptist Church of Washington v. D.C. Board of Zoning Adjustment,* 432 A.2d 695, 698 (D.C. 1981).

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof for a special exception to permit an addition to a single-family detached dwelling under §223. Accordingly, it is therefore **ORDERED** that the application be **GRANTED.**

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II, Curtis L. Etherly, Jr. and Michael G. Turnbull to grant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT.
Each concurring Board member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JUN 14 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, 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 PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR

BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17405

As Director of the Office of Zoning, I hereby certify and attest that on JUN 14 2006, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

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TWR