GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17419 of Bradford Deel, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a rear deck addition to an existing single-family detached dwelling under § 223 of the Zoning Regulations, not meeting the rear yard requirements (§ 404) in the R-1-B District at premises 5528 MacArthur Boulevard. (Square 1445, Lot 64).

HEARING DATE: January 10, 2006
DECISION DATE: January 17, 2006

DECISION AND ORDER

Bradford Deel, the property owner (the owner or the applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on August 23, 2005 for a special exception under § 223 to construct a rear deck addition where the addition will not conform to the minimum rear yard requirements of § 404 of the Zoning Regulations[1]. Following a hearing on January 10, 2006, the Board voted to approve the special exception.

Preliminary Matters

Agent The owner authorized his architect, Michael Alan Finn, to act as his agent in connection with the application (Exhibit 16).

Zoning Referral The special exception application was referred to the Board by the Zoning Review Branch of the DC Department of Consumer and Regulatory Affairs (DCRA) (Exhibit 2).

Notice of Public Hearing Pursuant to 11 DCMR 3113.13, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (ANC) 3D, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 27). The property was posted on January 9, 2006, one day before the public hearing scheduled on January 10, 2006. Although section 3113.14 of the Regulations requires that the property be posted at least 15 days in advance of the hearing,

[1] The original application also requested lot occupancy relief under § 403 of the Regulations. However, as will be explained in the Findings of Fact, the owner reduced the size of the proposed deck and eliminated the need for this relief.

the Board waived this requirement after finding that community members and the ANC had received actual notice of the pending application.

ANC Report In its report dated December 21, 2005, ANC 3D indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to oppose the special exception (Exhibit 23). It cited the following reasons: (a) the proposed deck will infringe upon the privacy of an adjacent property owner; (b) the proposed deck is larger than others in the neighborhood and not in keeping with the character of the area; (c) the proposed deck will negatively impact on the alley and neighboring back yard views; and (d) the proposed deck will effect drainage from an infiltration trench at the rear yard at the property. The ANC urged that, at a minimum, the Board should seek review by the District Department of Health relating to alleged adverse impacts on the storm water management system. Rachel Thompson testified on behalf of the ANC at the public hearing and submitted a copy of her testimony in writing (Exhibit 29).

Request for Party Status ANC 3D was automatically a party to this proceeding. The Board received a request for party status from Michael Leaveck, owner of the adjacent property located at 5304 Macomb Street (Exhibit 22). Because Mr. Leaveck failed to appear at the public hearing and because the reasons for his opposition were also voiced by the ANC and other neighbors, the Board denied Mr. Leaveck's request for party status. However, the substance of his request for party status was accepted as a statement in opposition to the application.

Other Persons in Opposition The Board also received a letter in opposition from Caroline Quandt, a neighboring property owner who wrote on her own behalf and on behalf of four other neighboring property owners, including Mr. Leaveck. Ms. Quandt's submission also contained photographs of properties in the neighborhood and a copy of a "Declaration of Easement" which granted the District access to the infiltration trench at the property (Exhibit 30).

Government Reports

OP Report OP reviewed the special exception application and prepared a written report recommending approval of the application (Exhibit 25). In addition, Maxine Brown-Roberts, the OP representative who prepared the report, testified at the public hearing in support of the application.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is a single-family detached dwelling located at 5528 MacArthur Boulevard, NW (Square 1445, Lot 64) on an "L-shaped" lot in the R-1-B zone.

2. It is located near the intersection of Massachusetts Avenue and Macomb Street in the Palisades area. The area is generally developed with single-family homes (Exhibits 6, 25). The rear of the dwelling faces a public alley that is approximately 15 feet wide (Exhibit 4).

The Proposal and the Requested Relief

3. The applicant proposes to build an uncovered deck at the rear of the dwelling that will be approximately ten feet above grade and will have a three-foot high railing (Exhibit 25).

4. The original proposal was for a deck that was 1,470 square feet in size. It would have resulted in a total lot occupancy of 47% and a rear yard of only five feet (Exhibit 2, Notes and Computations sheet).

5. In response to objections from the ANC, the applicant met with OP and prepared revised plans to reduce the size of the deck (T., p. 165). As revised, the proposed deck will be 636 square feet in size and will result in a total lot occupancy of 34% and a rear yard of 13 feet (Exhibits 24, 25).

6. Section 403 of the Zoning Regulations allows a maximum lot occupancy of 40% in the R-1-B zone. Because the deck, as revised, will result in a total lot occupancy of only 34%, the special exception relief for lot occupancy is not required (Exhibits 24, 25).

7. Section 404 of the Zoning Regulations requires a minimum rear yard of twenty-five feet in the R-1-B zone. Because the revised deck will result in a rear yard of only 13 feet, the proposed addition will not comply with applicable area requirements under § 404. Therefore, the applicant still requires relief from the rear yard requirements.

The Impact of the Deck

8. With his application, the owner submitted elevation plans, a site plan and survey, and photographs showing views from Macomb Street, Macarthur Boulevard and the public alley (Exhibits 7, 3, and 5).

9. The Board credits and adopts OP's finding that the proposed deck will not compromise the light and air available to neighboring properties (Exhibit 25). This finding is based upon the following facts:

(a) The dwelling to the west of the property fronts on Macomb Street. Because the proposed deck will be setback six feet from the side of the Macomb Street house, it will not look directly into its yard. The Macomb Street house has a deck that is approximately ten feet above grade, and is enclosed by fencing that is over six feet high. The area below the Macomb Street deck is enclosed. The Macomb Street house will be screened by evergreen trees – over six feet high -- the applicant proposes to plant along the eastern property line.

(b) The proposed deck will not cast any shadows on the dwelling to the east of the property or affect its available air.

10. The Board credits and adopts OP's finding that the privacy of use and enjoyment of neighboring properties will not be unduly compromised by the proposed deck (Exhibit 25). This finding is based upon the following facts:

(a) The house to the east has an open back yard -- it does not have a deck or fencing – and will be visible from the proposed deck. However, this property will be adequately screened by the evergreen trees referenced in the previous finding of fact. Also, the proposed deck will be setback six feet from the side of the house to the east, and therefore, will not look directly into its yard.

(b) The house to the west of the site is perpendicular to the subject dwelling and, therefore, only a portion of the deck will be visible.

(c) The houses to the south, across the alley, are between 75 and 100 feet away from the edge of the proposed deck. In addition, these properties have large trees in their rear yards that will provide privacy, particularly in the warmer months when the deck will be in use.

11. The Board credits and adopts OP's finding that the proposed deck and original dwelling will not visually intrude upon the character, scale or pattern of homes along the street frontage (Exhibit 25). This finding is based upon the following facts:

(a) The proposed deck will not be visible from either MacArthur Boulevard or Macomb Street.

(b) The proposed deck will be visible from the alley at the rear of the house. However, it will be compatible with the surrounding area to the rear. The proposed deck will be of wood construction and will be painted to match the color of the house. Therefore, it will be similar in character and scale to decks on other houses along the alley because of its size, material and location.

12. The owner and ANC agree that the District has a stormwater management easement granting access to a portion of the owner's property where an infiltration trench is located.[2] The ANC maintains that there are drainage problems at the property and that the proposed deck will intensify these problems. The ANC also maintains that the proposed deck violates the terms of the easement.

13. The applicant's structural engineer examined the plans for the proposed deck and prepared a report (See, Report of Neubauer Consulting Engineers, appended to Exhibit 25). According to this report, the footings for the proposed deck can be arranged to avoid disruption of the storm water facilities at the property. The applicant's architect testified that the proposed deck will not negatively impact the stormwater filtration and runoff at the property. The Board credits the engineer's report and the testimony from the architect that the proposed deck will not adversely affect the infiltration trench at the property.

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[2] As explained at the outset, the Board also received a copy of a document purporting to govern the easement (See, Exhibit 30)

14. The Board received no persuasive evidence that the proposed deck will result in the intensification of any drainage problems that may exist at the property.

CONCLUSIONS OF LAW

The Special Exception

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant is seeking a special exception pursuant to 11 DCMR § 223 and 3104.1 to construct an addition to a one-family dwelling in an R-1-B District, where the addition will not comply with the rear yard requirements of § 404.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are granted.

The general tests. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. As to the first test, the proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood.

Since the second test is nearly identical to the criteria for the special conditions under § 223, it will be discussed in the section below entitled "The 'special conditions' for an addition under § 223.1".

The "special conditions" for an addition under § 223.1. Under Section 223.1 of the Zoning Regulations, the Board may permit an addition to a single family dwelling where it does not comply with applicable area requirements, such as the yard requirement, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

> 223.2(a) The light and air available to neighboring properties shall not be unduly affected. Light and air to neighboring properties will not be unduly affected. As stated in the Findings of Fact, the proposed deck will not significantly affect light and air at neighboring properties (See, Findings of Fact 8 and 9).
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> 223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The privacy of use and enjoyment of neighboring properties will not be significantly affected by the proposed deck. Visibility from the deck will be limited and neighboring properties will be adequately screened from view.
> (See, Findings of Fact 8 and 10).

223.2(c). The addition, together with the original building, 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 frontage. The proposed deck will cause no visual intrusion as viewed from the street. As set forth above, the proposed deck will not be visible from MacArthur Boulevard or Macomb Street, and will be visible only from the alley to the rear of the property. Moreover, the evidence indicates that there are similar decks in the neighborhood and the proposed deck will be compatible with the character of the neighborhood (Findings of Fact 8 and 11).
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223.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts. The subject property is in the R-1-B zone (Finding of Fact 1). The proposed deck, as revised, will increase the lot occupancy, but only to 34%. (Finding of Fact 5). Therefore, this condition will be met.

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. For the reasons stated in this Decision and Order, the Board does not find the ANC's advice to be persuasive.

In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the rear yard requirements an R-1-B zone.

Therefore, for the reasons stated above, the application for a special exception is granted.

VOTE: **4-1-0** (Geoffrey H. Griffis, Curtis L Etherly, Jr., Ruthanne G. Miller and John A. Mann II in favor of the motion to grant; John Parsons opposed to the motion by absentee ballot)

Vote taken on January 17, 2006

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

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

FINAL DATE OF ORDER: JUL 11 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. 17419

As Director of the Office of Zoning, I hereby certify and attest that on JUL 11 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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Director, Office of Zoning

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