

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17765 of Alfred R. and Melba May, pursuant to 11 DCMR § 3104.1, for a special exception to allow a third story¹ addition to an existing one-family dwelling under § 223, not meeting the lot area (401), lot width (401), lot occupancy (403), and side yard (405) requirements, in the R-2 District at premises 4850 Jay Street, N.E. (Square 5152, Lot 1).

HEARING DATE: May 20, 2008
DECISION DATE: May 20, 2008 (Bench Decision)

DECISION AND ORDER

This application was submitted by Alfred and Melba May, (“Applicants”), the owners of the property at 4850 Jay Street, N.E., which is the subject of this application (“subject property”). At the direction of the Zoning Administrator (“ZA”), the Applicants came before the Board of Zoning Adjustment (“BZA” or “Board”) requesting a special exception pursuant to 11 DCMR § 223 in order to construct a third floor addition to a semi-detached one-family dwelling which is nonconforming as to lot width, lot area, lot occupancy, and side yard.

The Board heard the application on May 20, 2008 and at the end of the hearing, voted 4-0-1 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated December 11, 2007, the Office of Zoning (“OZ”) provided notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation, Advisory

¹This application was advertised for a “second story addition,” but because the basement level of the subject dwelling is 6 feet, 6 inches high at the highest point of the rear-sloping grade of the property, the basement counts as a story, making this a two-story dwelling, the addition to which would be a third story. See, 11 DCMR § 199, definitions of “Basement,” “Cellar,” and “Story.”

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Neighborhood Commission (“ANC”) 7C, the ANC within which the subject property is located, the Single Member District member for district 7C01, and the Councilmember for Ward 7. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing in the *D.C. Register*, and sent such notice to the Applicants, ANC 7C, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 7C was automatically a party to this application. The Board granted the party status request of the immediately adjacent neighbor to the west. The neighbor opposed the application because of potential impacts during construction, and because she claimed that the addition of another story on the Applicants’ dwelling would obstruct both her view of the street corner at 49th and Jay Streets, and the breeze which now reaches her home.

Applicants’ Case. The Applicants described the proposed addition and explained how the project met the special exception criteria.

Government Reports. The Office of Planning filed a report with the Board on May 13, 2008 recommending approval of the application. OP determined that the application met the special exception criteria, but recommended careful placement of windows on the west side of the addition to minimize any potential impact on the privacy of the dwelling to the west.

ANC Report. There was no ANC report filed in this case, nor did a representative of ANC 7C attend the hearing.

FINDINGS OF FACT

1. The subject property is a corner lot located at address 4850 Jay Street, N.E., in an R-2 zone district, at Square 5152, Lot 1.
2. The surrounding neighborhood includes a variety of residential dwelling types, including one-family detached and semi-detached dwellings, flats, and multi-family residential uses.
3. The subject property is a regular rectangle which pre-dates the Zoning Regulations and is 115 feet long by 20.05 feet wide, giving it a lot area of approximately 2,306 square feet.
4. The property is improved with a one-family semi-detached dwelling, the eastern wall of which is situated on the eastern lot line, abutting an approximately 15-foot wide open public space area along 49th Street.

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5. The minimum lot area for a semi-detached dwelling in an R-2 zone is 3,000 square feet, and the minimum lot width is 30 feet, therefore, the subject dwelling is nonconforming as to both measurements. *See*, 11 DCMR § 401.
6. The 47% lot occupancy of the existing dwelling, although nonconforming in this R-2 zone district, will not be changed by the addition. *See* 11 DCMR §§ 403 and 2001.3(a).
7. The existing dwelling has no eastern side yard, nor is one needed because a one-family semi-detached dwelling, by definition, has only one side yard. *See*, 11 DCMR § 199.1, definition of “Dwelling, one-family, semi-detached.” The dwelling also has a nonconforming western side yard of approximately 3 feet, 10 inches, when 8 feet is the minimum required. 11 DCMR § 405.9.
8. The addition of the third story will increase the height of the dwelling to just under 24 feet, well under the 40 feet permitted in the zone. *See*, 11 DCMR § 400.
9. The existing dwelling has a front setback of approximately 16 feet, 10 inches, and a rear yard of approximately 36.2 feet.
10. Because the existing dwelling is on a corner lot and is bounded to the rear by a 15-foot wide public alley, the only abutting property is the lot to the west, which is improved with a one-family detached dwelling.
11. Although there is no precise measurement in the record of the eastern side yard width of the adjacent lot to the west, there appears to be approximately 15 feet between the eastern wall of the adjacent dwelling and the western wall of the subject dwelling. *See*, Exhibit No. 22, at 2 (OP Report).
12. The eastern side yard of the adjacent lot to the west is wide enough to be used as vehicle parking by the neighbor, who states, in her Party Status application, that her dwelling is “20 feet away from the subject property.” *See*, Exhibit No. 21.²
13. The nearest building on the other side of the rear alley is approximately 57 feet from the rear of the subject dwelling.

²The neighbor contradicted this statement at the hearing, stating that “[t]here’s less than 14 feet from his house to mine.” Hearing Transcript at 48, lines 17-18. Considering all the evidence in the record, particularly OP’s Report and the photos presented, showing automobiles parked in the neighbor’s eastern side yard, the Board finds, as stated in Finding of Fact No. 11, that there is approximately 15 feet between the Applicant’s dwelling and that of the neighbor to the west.

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14. The proposed addition has only two windows along its west side, both located near the front, in order to minimize any impact on privacy to the adjacent dwelling to the west.
15. The proposed addition will replicate the size and shape of the existing two stories on which it will be placed and will be covered with a board and batten finish, be topped by a low-profile, flat, pitched roof similar to others in the neighborhood.

CONCLUSIONS OF LAW

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief 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. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicants also had to meet the requirements of § 223.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

This application meets all the requirements of both §§ 223 and 3104. The addition of the proposed third story will not have an "undue" impact on the light and air of the adjacent neighbor to the west. See, 11 DCMR § 223.2(a). Although the western neighbor claimed that the breeze reaching her home, and the view from her home, would be affected, there is sufficient distance between the eastern wall of her property and the western wall of the subject property that any such impact should be minimal. The Applicants have also taken care to place only two windows on the western wall of the addition, both near the front, in order to ensure that the privacy of the adjacent dwelling to the west will not be compromised. The addition will be compatible with the existing dwelling and with the neighborhood and will not visually intrude upon the character of houses along the Jay or 49th Street frontages. The addition does not increase the footprint or lot occupancy of the existing dwelling, which has a front setback of approximately 16 feet, 10 inches, and a

rear yard of approximately 36.2 feet, providing ample open space around the dwelling. The existing semi-detached dwelling is a matter-of-right use in this R-2 zone district and the proposed third story addition is in harmony with the general purpose and intent of the Zoning Regulations and will not adversely affect neighboring property.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. 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 approval of the application, and the Board agrees with this recommendation. ANC 7C did not file a report with the Board or participate in the case in any way.

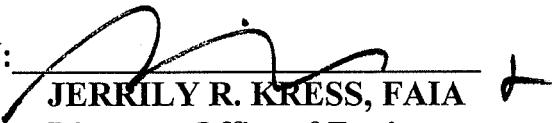
For all the reasons stated above, the Board concludes that the Applicants have satisfied the burden of proof for a special exception pursuant to §§ 3104 and 223. Accordingly, it is hereby **ORDERED** that the application (pursuant to Exhibit No. 7 – plans) is **GRANTED**.

VOTE: **4-0-1** (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull, to grant. No fifth member participating or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member has approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: **JUL 03 2008**

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN

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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.

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.

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As Director of the Office of Zoning, I hereby certify and attest that on **JULY 3, 2008**, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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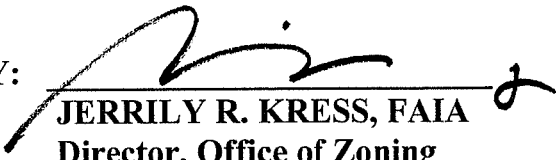
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TWR