

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17956 of Hamid Reza Ossareh, pursuant to 11 DCMR § 3104.1, for a special exception to allow a two-story rear addition to an existing one-family detached dwelling under § 223, not meeting lot area (§ 401) and lot occupancy (§ 403) requirements in the R-2 District, at premises 4355 Fessenden Street, N.W. (Square 1655, Lot 22).¹

HEARING DATES: September 8, 2009, November 24, 2009²
DECISION DATE: November 24, 2009

DECISION AND ORDER

This self-certified application was submitted on April 14, 2009 by Hamid Reza Ossareh (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The application requests special exception relief pursuant to 11 DCMR § 223, in order to enable the Applicant to construct a two-story rear addition to his one-family dwelling. The subject property is nonconforming for lot area and the addition will put the lot occupancy of the dwelling over the maximum permitted in this R-2 zone.

The Board of Zoning Adjustment (“Board” or “BZA”) scheduled a hearing on the application for September 8, 2009, which was continued to, and completed on, November 24, 2009. At the close of the hearing, the Board voted 4-0-1 to grant the application, subject to two conditions, one of which was voted on separately.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 14, 2009, the Office of

¹Previously known as “Lot 803” in Square 1655.

²The hearing on this application was originally scheduled for September 8, 2009. On that date, the Board of Zoning Adjustment granted the Applicant’s request to continue the hearing and also granted the opponent party status requests of two neighbors. In trying to re-schedule the hearing, there was some question of when all parties would be able to attend, so the Board tentatively scheduled the hearing for October 20, 2009, with an alternative date of November 24, 2009. On September 10, 2009, one of the party opponents informed the Office of Zoning that she would be unavailable on October 20th, but could be present at the hearing if it took place on November 24th. Therefore, at a September 15, 2009 special public meeting, the Board announced that the hearing was re-scheduled to November 24, 2009.

BZA APPLICATION NO. 17956
PAGE NO. 2

Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 3E, the ANC within which the subject property is located, Single Member District 3E03, and the Councilmember for Ward 3. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register*, and, on June 8, 2009, sent such notice to the Applicant, ANC 3E, and all owners of property within 200 feet of the subject property.

Requests for Party Status. Two neighbors requested, and were granted, opponent party status by the Board. They acted as one consolidated party and alleged that the Applicant’s planned addition would negatively impact the sunlight and airflow to their properties, and their privacy, thus reducing their property values. They also averred that the addition would exacerbate drainage problems because the increased building footprint would reduce pervious surface area on the subject property. They allege, as their “overriding concern,” that the addition is out of proportion with other structures in the neighborhood because it is, in their opinion, too massive, particularly on the subject property, which is the smallest lot in the Square and is located on a corner.

Applicant’s Case. The Applicant’s architect presented the case and explained how the special exception test was met.

Government Reports. The Office of Planning filed a report with the Board on November 17, 2009, recommending approval of the special exception request. Exhibit No. 31. OP points out that the subject property is a corner lot, bounded by streets to the south and west. To the north, the required rear yard will be provided and, to the east, the required side yard will be provided, therefore, OP opines that neighboring structures’ light and air should not be negatively impacted. OP also determined that the privacy of use and enjoyment of neighboring properties should not be compromised by the proposed addition, but cautioned the Applicant to be sure that windows on the addition were not placed directly opposite windows on the neighboring dwelling to the east. OP also recommended that the Applicant use a semi-transparent or frosted glass on the second-story window of the addition facing the eastern property line, as it is a bathroom window. The addition will be visible from 44th Street, N.W., but will be of the same height and stucco/siding exterior as the main dwelling, therefore OP concluded that the addition would not visually intrude on the character of the houses along the adjacent public ways.

No other government agencies filed reports with the Board.

ANC Report. ANC 3E filed a report with the Board on August 7, 2009, recommending denial of the special exception relief. The ANC report states that the proposed addition would negatively impact sunlight to the one-story rear addition of the adjacent dwelling to the east and would reduce airflow “through the backyards of the adjacent houses to the east.” Exhibit No. 22, at 2. The ANC also avers that the windows on the addition will impact the eastern neighbor’s privacy and that the overall bulk of the addition will “materially affect the visual aspect of the home in

BZA APPLICATION NO. 17956
PAGE NO. 3

the context of the neighborhood.” *Id.*, at 3. Lastly, the ANC lists several “anomalies” in the plans and supporting materials submitted by the Applicant, which it requests be cleared up.

FINDINGS OF FACT

The Property and the Surrounding Neighborhood

1. The subject property is located at address 4355 Fessenden Street, N.W., at the corner of Fessenden Street, N.W. and 44th Street, N.W., in an R-2 zone district, and in Square 1655, Lot 22.
2. The property is rectangular in shape, with a width of 40 feet, and a length of 70 feet, for a lot area of 2,800 square feet, but the minimum lot area required in this R-2 zone for a detached dwelling is 4,000 square feet, so zoning relief is necessary. 11 DCMR § 401.
3. The property is bounded by Fessenden Street to the south, but between the southern property line and Fessenden Street is an area of public space approximately 33 feet wide.
4. The property is bounded by 44th Street to the west, but between the western property line and 44th Street is an area of public space approximately 18 feet wide.
5. The property is improved with a two-story detached one-family dwelling, with a one-story attached garage at its rear.
6. The dwelling on the property occupies approximately 39.6% of the lot, including the area covered by an open-sided front porch.
7. The property is set within a neighborhood of one-family detached and semi-detached dwellings.

The Applicant’s Proposal

8. The Applicant proposes to demolish the rear attached garage and remove the existing paved driveway leading to it from 44th Street, and replace the garage and part of the current driveway area with a two-story rear addition.
9. The addition would increase the lot occupancy of the dwelling to 49.6%, where only 40% is permitted in this R-2 zone, necessitating zoning relief. 11 DCMR § 403.
10. The addition would not intrude into the required 20-foot rear yard, nor into the required eight-foot eastern side yard.³ 11 DCMR §§ 404 & 405, respectively.

³No side yard is required on the western side of the dwelling or its addition because the property is a corner lot. 11 DCMR § 405.5.

BZA APPLICATION NO. 17956

PAGE NO. 4

11. The addition will be 27 feet, one inch high, and will extend approximately 17.25 feet from the rear of the dwelling, but will also include a dormer punched through the existing roof and facing onto Fessenden Street.
12. The addition will have three windows and a door on its west side, facing 44th Street, four windows and French doors on its north side, facing the rear yard, and two windows on its east side, one on each story, facing the eastern property line and the adjacent neighbor.
13. Once the addition is constructed, the Applicant plans to construct a new driveway leading from 44th Street to a parking pad in the property's rear yard.

The Special Exception Relief

14. Special exception relief, pursuant to 11 DCMR § 223, is necessary to permit the construction of the proposed addition on this too-small lot, which will result in a lot occupancy greater than the 40% permitted in this R-2 District.
15. The one-family detached dwelling on the property is a matter-of-right use. 11 DCMR §§ 300.3(a) & 201.1(a).
16. The proposed addition is modest in size and its footprint will not intrude into the required side or rear yards, allowing light and air to reach neighboring properties.
17. As the property is a corner lot, there will be no impact on privacy to the west and south. The rear wall of the addition will be 20.17 feet from the rear property line, which then abuts the rear yard of the neighbor to the north.
18. The addition will be set back approximately 10.42 feet from the eastern property line, in excess of two feet than what is required, and the windows on the eastern wall will be placed so as not to be directly opposite those in the adjacent dwelling.
19. The height of the addition will be slightly lower than the existing dwelling and will not be visible from Fessenden Street, except for the new dormer, which will come through the existing roof, not adding any height or significant bulk to the existing dwelling.
20. The addition will be visible from 44th Street, but will not overwhelm the original dwelling and will be clad in a matching stucco/siding exterior.
21. Roof drains on the addition will be connected to the main public storm line to help avoid an overflow of surface water and other drainage issues.
22. The area of the removed driveway will be landscaped, as will the ground area around the addition.

BZA APPLICATION NO. 17956
PAGE NO. 5

23. The proposed new driveway and rear parking pad will replace the attached rear garage and the curb cut and use of public space will need to be approved by the appropriate District agencies.

CONCLUSIONS OF LAW

Special Exception Relief

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 Applicant 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 determining whether the proposed exception satisfies the ... requirements” of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

Section 3104 has two requirements. The first is that granting the special exception will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps. This requirement is met as the one-family detached dwelling is a matter-of-right use. Section 3104’s second requirement, that the special exception relief will not adversely affect the use of neighboring property, is essentially the same as that of § 223.2, which states that the addition shall not have a substantially adverse effect on the use or enjoyment of neighboring properties.

The proposed addition will not have a substantially adverse effect on neighboring properties. The addition will put the dwelling’s lot occupancy over the maximum permitted 40%, but will be within the 50% lot occupancy permitted by § 223. The addition will also retain the minimum required rear yard and more than the minimum required side yard. The Zoning Regulations state the minimum measurements for required yard length or width in order to protect the light and air reaching dwellings, and these measurements are presumed to be sufficient to do so. The height of the addition will also be well under the 40 feet permitted in this zone and is slightly lower than the existing dwelling. The addition will add some massing to the existing dwelling, but is not so massive as to substantially affect the light and air reaching neighboring dwellings.

Nor will the proposed addition unduly compromise the privacy of use and enjoyment of neighboring properties. Again, there will be a significant open space of 10 feet between the

BZA APPLICATION NO. 17956
PAGE NO. 6

eastern wall of the addition and the property line, and this, coupled with the abutting side yard of the eastern neighbor leaves a sufficient separation between the addition and this closest neighbor. That distance is enough to avoid an undue compromise of the neighbor's privacy. The Applicant has also agreed to place his windows in such a way so as to avoid looking directly into the neighbor's dwelling and will use a semi-transparent glass for the second-story window overlooking the eastern property line.

One issue brought up by the opposition was past problems with water drainage in the area. The addition will be equipped with roof drains to collect and channel rain water. The drains will be connected to the main public storm line, avoiding surface water overflow and pooling and any water-collecting or channeling devices installed on the addition will be directed away from the adjacent neighbor to the east.

The addition will not be visible from Fessenden Street, N.W. Its eastern and western walls are set in slightly from the eastern and western walls of the existing dwelling, so it is tucked in behind the existing structure. The highest point of the addition's roof is slightly lower than the roof of the existing structure, and so is not visible from the front of the dwelling. The addition will be visible from 44th Street, N.W., but is not out of proportion with the existing structure or with other additions in the area. It will be sheathed in a stucco/siding exterior, matching the exterior of the dwelling, and it will not visually intrude on the character, scale or pattern of houses along either adjacent street, or in the neighborhood in general.

The proposed addition is modest in scale and character and will enhance the visual aspects and usefulness of this corner dwelling. The Board concludes that it meets all the requirements of both § 3104 and § 223.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2008 Repl.). 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. OP recommended approval of the special exception relief, and the Board agrees with this recommendation.

ANC 3E recommended denial of the relief. The ANC report alleged that the addition would reduce the sunlight reaching the eastern neighbor's rear addition and would block the airflow through the several backyards of the houses to the east of the subject property. The amount of direct sunlight reaching the neighbor to the east may be affected by the addition, but it will not be "unduly affected." § 223.2(a). Moreover, the addition is set far enough away from the eastern neighbor so as to have little effect on ambient light reaching the neighbor's dwelling. The ANC's statement concerning airflow to backyards to adjacent houses to the east seems to

BZA APPLICATION NO. 17956
PAGE NO. 7

presume that air only flows from west to east, and it would be almost impossible to judge what effect, if any, this addition might have on distant back yards.

The ANC also claims that the eastern-facing windows in the addition will compromise the neighbor's privacy and that the bulk of the addition is "too much" for this small corner lot. The addition's windows will be, at a minimum, over 10 feet from the neighbor's dwelling, and will be placed so as not to provide a direct line-of-sight into the latter. The addition's second-story window will be of semi-transparent glass, further protecting the neighbor's, and the Applicant's, privacy. As to the bulk of the addition, it will not overwhelm the existing dwelling, it maintains a 20-foot rear yard, and it is situated next to an 18-foot swath of open public space, and then a street right-of-way. The subject lot may be smaller than others in the area, but even so, there will be retained a large amount of open space around the addition, and it is not so massive as to look out-of-character with the neighborhood. Therefore, the Board does not find the ANC's advice to be persuasive.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to a special exception pursuant to §§ 3104 and 223 for relief from the lot area and lot occupancy requirements of §§ 401 and 403, respectively. Accordingly, this application, pursuant to Exhibit No. 21, Plans, is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. Gutters, downspouts, or other water collection or channeling devices installed on the addition shall be directed away from the adjacent property to the east of the subject property.
2. The second-story window on the eastern wall of the addition shall be of frosted, or other semi-transparent or translucent glass, to ensure privacy.

**VOTE TO APPROVE THE
APPLICATION AND TO
IMPOSE CONDITION**

NUMBER 1:

4-0-1

(Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer and Anthony J. Hood to Approve; No fifth Board Member participating or voting.)

**VOTE TO IMPOSE
CONDITION**

NUMBER 2:

3-1-1

(Marc D. Loud, Shane L. Dettman and Anthony J. Hood to impose condition #2; Meridith H. Moldenhauer to Deny. No fifth Board Member participating or voting.)

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

Anthony J. Hood to impose condition #2;
Meridith H. Moldenhauer to Deny. No fifth
Board Member participating or voting.)

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

A majority of Board members approved the issuance of this order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

MAR 26 2010

FINAL DATE OF ORDER: _____

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 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.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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,

BZA APPLICATION NO. 17956
PAGE NO. 9

PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT
BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17956

MAR 26 2010

As Director of the Office of Zoning, I hereby certify and attest that on _____, 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:

Faramarz Sabouri
4113 Denfeld Avenue
Kensington, Maryland 20895

Sandra Rosenhouse
4351 Fessenden Street, N.W.
Washington, D.C. 20016

Hamid Reza Ossareh
6017 Cairn Terrace
Bethesda, Maryland 20817

Chairperson
Advisory Neighborhood Commission 3E
5425 Western Avenue, N.W.
Washington, D.C. 20015

Richard G. Graham
5007 44th Street, N.W.
Washington, D.C. 20016

Single Member District Commissioner 3E03
Advisory Neighborhood Commission 3E
5425 Western Avenue, N.W.
Washington, D.C. 20015

Mary Cheh, Councilmember
Ward Three
1350 Pennsylvania Avenue, N.W., Suite 108
Washington, D.C. 20004

Melinda Bolling, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, DC 20024

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov