

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18063 of Zachary and Lydia Plotz, *et al.*, pursuant to 11 DCMR § 3104.1, for a special exception under § 223 to allow a rear deck addition to an existing flat (two-family) row dwelling, not meeting lot width (§ 401.3), lot area (§ 401.3), rear yard (§ 404), or court (§ 406) requirements, in the R-4 District at premises 3420 13th Street, N.W. (Square 2838, Lot 25).

HEARING DATES: May 18, 2010 and July 13, 2010
DECISION DATE: September 14, 2010

DECISION AND ORDER

This application was submitted on March 15, 2010 by Zachary Plotz, Lydia Plotz, Micah Andrew Haskell-Hoehl, and Jessica Lemke (collectively, the “Applicants”), the owners of the property that is the subject of the application. The application requests a special exception under § 223 of the Zoning Regulations to allow construction of three rear deck additions to a two-family row dwelling that does not meet zoning requirements related to lot area, lot width, rear yard, or open court width in the R-4 District at 3420 13th Street, N.W. (Square 2838, Lot 25). Following a public hearing, the Board of Zoning Adjustment (“Board” or “BZA”) voted to grant the requested special exception.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 17, 2010, the Office of Zoning (“OZ”) provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 1; Advisory Neighborhood Commission (“ANC”) 1A, the ANC in which the subject property is located; and Single Member District/ANC 1A06. Pursuant to 11 DCMR § 3112.14, on March 19, 2010, OZ mailed letters providing notice of the hearing to the Applicant, ANC 5C, and the owners of all property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on March 26, 2010 (57 DCR 2623).

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Party Status. The Applicants and ANC 1A were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Wendy Acosta and Jason Noker, who reside in a row dwelling on Monroe Street that abuts the subject property at the rear.

Applicant's Case. The Applicants provided evidence and testimony describing the proposed rear decks, and asserted that the application satisfied all requirements for approval of the requested special exception. The Applicants planned to reduce the size of three rear decks that already existed at the subject property, which had been constructed illegally by a prior owner,¹ and instead proposed a revised design for three smaller decks known as "BZA 5."

Party in opposition. The party in opposition asserted that no decks should be permitted on the subject property, citing concerns that rear decks would impair the security, privacy, enjoyment, and property values of neighboring properties. The party in opposition also suggested some changes to the Applicants' proposal that would reduce the size of the planned decks and increase the distance between the decks and nearby residences, resulting in decks that would create fewer objectionable impacts on the use of neighboring properties.

OP Report. By memorandum dated May 11, 2010, OP recommended denial of the application based on OP's conclusion that the Applicants' initial proposal would negatively impact the light, air, privacy, and security of adjacent residents. By supplemental report dated July 6, 2010, OP indicated its support for the Applicants' revised request known as BZA 5, which proposed decks that would be smaller than the existing decks, with lower lot occupancy and increased rear yard and court width at the subject property. According to OP, the BZA 5 option, with appropriate screening, would not create substantial adverse impacts on neighboring properties.

¹ The Board does not condone any illegal construction undertaken by the prior owner without first obtaining the necessary permits. However, the Board's discretion in reviewing an application for a special exception under § 223 is limited to a determination of whether an applicant has complied with the requirements of §§ 223 and 3104.1 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). The scope of the Board's authority is defined by statute. See D.C. Official Code § 6-641.07 (2008). Where permitted by the Zoning Regulations, the Board may grant a special exception "subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the regulations." D.C. Official Code § 6-641.07(d) (2008) (emphasis added). The Board does not have the power to amend any regulation. D.C. Official Code § 6-641.07(e) (2008). Accordingly, the Board must deliberate on the merits of the instant application relative to the requirements specified in §§ 223 and 3104.1. Because these requirements do not address prior illegal acts by an applicant or previous owner of the subject property, the Board lacks the legal authority to dismiss or deny an application for a special exception solely on the ground that construction was undertaken illegally without receiving the necessary zoning approvals and permits. Accordingly, in this proceeding, the Board deliberated on the Applicants' proposed design, BZA 5, relative to the requirements set forth in § 223, without regard to the existing decks at the subject property, which were not the subject of the application.

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ANC Report. By letter dated May 12, 2010, ANC 1A indicated that, at a regularly scheduled meeting on the same date, the ANC voted to oppose the application. By letter dated June 9, 2010, ANC 1A reiterated its opposition to the existing decks, citing concerns involving safety, aesthetics, and process raised by neighbors, but indicated its support of modifications to the existing decks necessary to address the neighbors' concerns.

Persons in opposition. The Board received letters in opposition to the application from some residents living near the subject property. The letters stated generally that the existing decks should be removed and replaced, if at all, with fewer than three smaller decks, citing concerns about privacy, property values, safety, and noise.

FINDINGS OF FACT

The Subject Property

1. The subject property is located on the west side of 13th Street, N.W., an interior lot near the corner of 13th and Monroe Streets (Square 2838, Lot 25).
2. The subject property is improved with a row dwelling that is three stories in height and has a basement. The dwelling is presently used as two flats, which are owned as condominiums by the Applicants. A prior owner of the row dwelling constructed three rear decks on the property, one each on floor, without obtaining a permit.
3. The subject property is generally rectangular, with an angled rear property line. The lot is located in the R-4 Zone District, and is nonconforming with respect to lot width, lot area, rear yard, and open court width. The lot width is 17 feet, where a minimum of 18 feet is required; the lot area is 1,368 square feet, where a minimum of 1,800 square feet is required; and the rear yard (with the existing illegal deck) has been eliminated, where a minimum of 20 feet is required. An open court on the south side of the row dwelling is four feet wide, where a minimum of 10 feet is required. (See 11 DCMR §§ 401.3, 404.1, and 406.1.)
4. The majority of lots in the immediate vicinity of the subject property are developed with row or semi-detached dwellings. The rear yards of the subject property and some neighboring properties abut properties that front onto Monroe Street. The abutting properties are also row dwellings, some divided into flats, with small, nonconforming rear yards. Several nearby properties are improved with rear or roof decks.

The Applicant's Project

5. The Applicant proposes to construct three rear decks of equal size, one on each floor of the row dwelling, in accordance with the design known as BZA 5. (Exhibit 54, dated

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August 3, 2010.) The decks will be rectangular, slightly less than seven feet deep and 11 feet wide, with an area of approximately 75 square feet.

6. The planned decks will result in lot occupancy of 58.5% and create an open court on the south side of the property that will be five feet, four inches wide. The rear yard will range from approximately two feet to approximately six feet, six inches with a mean distance to the rear property line of four feet, four inches.
7. The Applicants submitted drawings showing that the sight lines from windows in the closest abutting property on Monroe Street, which overlook the rear of the subject property, will not encompass substantial views of the Applicants' proposed decks. The window with potentially the greatest view of the planned decks is made of glass blocks. The Board credits the Applicants' testimony that the decks will be removed from the cone of vision of an occupant in the adjacent dwelling to the rear such that the decks will not be visible or accessible from existing windows in any abutting residence.
8. The rear of the Applicants' row dwelling (without any deck) is located approximately 13 feet, six inches from the closest abutting property on Monroe Street. The Applicants proposed to install screening on the decks if desired by the neighbors so as to minimize effects on privacy, light, and air resulting from the decks.

Harmony with Zoning

9. The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) The primary purpose of the R-4 District is the stabilization of remaining one-family dwellings. (11 DCMR § 330.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 223 to allow construction of a three-story rear deck addition to a two-family (flat) row dwelling that does not meet zoning requirements related to lot area, lot width, rear yard, or open court width in the R-4 District at 3420 13th Street, N.W. (Square 2838, Lot 25). 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 DCMR § 3104.1.)

Pursuant to § 223, an addition to a one-family dwelling or flat may be permitted as a special exception, even when the dwelling does not meet all other zoning requirements, subject to

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certain conditions. These conditions include that the addition may not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular the light and air available to neighboring properties may not be unduly affected, the privacy of use and enjoyment of neighboring properties may not be unduly compromised, and the addition, together with the original building, as viewed from the street, alley, and other public way, may not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

Based on the findings of fact, the Board finds that the requested special exception satisfies the requirements of §§ 223 and 3104.1. The Board credits the Applicants' testimony that the proposed rear addition will result in the smallest decks that would provide useful space for the residents of the subject property without impinging on the privacy of neighbors or otherwise creating adverse impacts on the use of neighboring property. The Board also credits the testimony of OP that the proposed design for the decks, BZA 5, will not substantially impact the light or air or unduly compromise the privacy, security, or enjoyment of neighboring properties, given the size and locations of the planned additions, which will not be in close proximity to windows in the abutting residences.²

The Board concludes that the deck additions are unlikely to result in a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, or affect light and air available to neighboring properties. The decks will be visible from Monroe Street, but, as small rear additions that will not alter the existing two-family residential use of the row dwelling, the decks will not create a substantial visual intrusion on the character, scale, or pattern of houses in the area. Nor is the addition likely to compromise the privacy of use and enjoyment of neighboring properties. In an urban environment, privacy of use is relative. With the reduced deck and line of sight diagrams, the Board finds no substantial impairment on privacy or enjoyment. The Board credits the Applicants' evidence indicating that the windows in neighboring properties will not encompass substantial views of the planned decks. While use of the decks may create some noise or other impacts on neighboring properties, the Board does not find that the planned decks will create any substantially adverse effects. The rear yards of the subject property and nearby properties are relatively enclosed due to the proximity of the dwellings, the relatively small lots, and lack of alley access in the rear. The Board concludes that the rear deck addition planned by the Applicants will be in harmony with the general purpose and intent of the Zoning Regulations by promoting the residential use of the property, and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations.

The Board is required to give "great weight" to the issues and concerns raised by the affected

² The Board appreciates the Applicants' submission of an additional revised design, designated BZA 5A (Exhibit 51), which would have resulted in slightly smaller decks due to a "shaved" corner defined by a diagonal side on otherwise rectangular decks. The Board concludes that BZA 5 is optimal because that design will require only two posts in the rear yard, and therefore will create less of a visual intrusion and have a smaller impact on light and air than would result from the three posts required for the irregular shape proposed in the design designated BZA 5A.

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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)) (the “ANC Act”). In this case, ANC 1A submitted two letters indicating the ANC’s opposition to the application; the second letter cited “concerns raised by neighbors involving safety, aesthetics, and process.” (Exhibit 43.) However, the Board is unable to give great weight to the ANC’s report because both letters failed to provide several items of information required by § 3115.1 of the Zoning Regulations, including an indication of whether proper notice was given and a quorum was present at the meetings, and the votes of the ANC members on any motions to adopt a report to the Board.³ The Board notes that the “concerns raised by neighbors” and cited by the ANC were also raised by the party in opposition to the application, and thus have been fully considered by the Board in its deliberations on this matter. However, for the reasons stated above, the Board did not find those arguments to be persuasive.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicants have satisfied the burden of proof with respect to the request for a special exception under § 223 of the Zoning Regulations to allow construction of three rear deck additions, in accordance with the design designated BZA 5 (Exhibit 54) on a two-family row dwelling that does not meet zoning requirements related to lot area, lot width, rear yard, or open court width in the R-4 District at 3420 13th Street, N.W. (Square 2838, Lot 25). Accordingly, it is **ORDERED** that the application, pursuant to Exhibit 54, Revised Plans, is hereby **GRANTED**.

VOTE: **3-0-2** (Meridith H. Moldenhauer, Nicole C. Sorg, and Anthony J. Hood
(by absentee ballot) to Approve; Jeffrey L. Hinkle not
participating; No other Board member (vacant) participating)

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

³ Pursuant to § 3115.1, the written report of the ANC must identify the relevant application and the person authorized by the ANC to present its report on the application, and must contain the signature of the ANC chairperson or vice-chairperson. The written report must also indicate when the ANC held a public meeting to consider the application, whether the ANC gave proper notice of the meeting, the number of members that constitute a quorum and the number of members present at the meeting, the issues and concerns of the ANC about the application as related to the relevant standards of the Zoning Regulations, any recommendation by the ANC as to the disposition of the application, and the vote on a motion to adopt the report to the Board. This information is necessary in order for the Board to know that the report reflects official actions of the ANC made in accordance with the ANC Act.

FINAL DATE OF ORDER: March 4, 2011

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.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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MAR 04 2011

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:

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