

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18250 of Raymundo B. Madrid, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing one-family semi-detached dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements (§ 403), the side yard requirements (§ 405), and the open court requirements (§ 406) in the R-4-B District at premises 509 Q Street, N.W. (Square 477, Lot 28).

HEARING DATES: September 27, 2011, October 18, 2011 and November 1, 2011
DECISION DATE: November 8, 2011

DECISION AND ORDER

Raymundo B. Madrid, the property owner (“Owner” or “Applicant”) of the subject premises, filed an application with the Board of Zoning Adjustment (“Board”) on May 11, 2011 for a special exception under 11 DCMR § 223 to construct an addition to his residence¹ where the addition will not conform to the maximum lot occupancy requirements, or the minimum side yard and open court requirements of the Zoning Regulations. Following three days of public hearings, the Board voted to approve the special exception.

PRELIMINARY MATTERS

Self-Certification

Paul Wilson, an architect retained by the Applicant, submitted a “self-certification” form with the Board which describes the zoning relief that is requested; i.e., lot occupancy (§ 403) and side yard relief (§ 405). (Exhibit 5.) Mr. Wilson testified that the Zoning Administrator provided advice regarding the specific relief that was required. However, at the suggestion of the District’s Office of Planning (“OP”), the application was amended also to include relief under § 406, governing open court width requirements.

¹ As will be explained in the Findings of Fact, the Applicant proposes to construct two additions to his home.

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”) 2C, and 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 22.)

ANC Report

In its report dated July 13, 2011, ANC 2C indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to support the special exception. (Exhibit 34.) The ANC issued a second report dated November 7, 2011. (Exhibit 45.) The ANC indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted again to support the special exception, noting that the Applicant had revised his original plans to accommodate concerns of the neighboring property owner at 507 Q Street, N.W.

ANC 2C was automatically a party to this proceeding.

Request for Party Status

The Board received a request for party status from Catherine Moore. (“Ms. Moore” or “the Opposition Party”). (Exhibit 26.) Ms. Moore is the owner of neighboring property to the east at 507 Q Street, N.W. (“the Moore property”). The request for party status was granted, with no objections from the Applicant. Ms. Moore opposed the application at the public hearing, asserting, among other things, that the additions would unduly affect the natural light to her home and yard, as well as the privacy, aesthetics and security at her home.

Ms. Moore was assisted by James Philips, an architect. Mr. Philips prepared a sun study (Exhibit 33, Tab B) which purports to show that Ms. Moore’s natural light would be significantly reduced by the proposed project. Mr. Philips also prepared a “zoning analysis”, in which he concluded that: (1) the proposed side addition would convert the Applicant’s home into a row dwelling; and (2) the proposed rear addition is an “accessory building” that is subject to use and area restrictions. (Exhibit 26 and Exhibit 33, Tab A.) Mr. Philips participated in presenting Ms. Moore’s case in opposition. He also cross-examined the Applicant and the Applicant’s architect, Paul Wilson.

Other Persons in Support/Opposition

There were no other persons in support or in opposition.

Government Reports

OP Reports

OP reviewed the special exception application and, prior to the public hearing, prepared a written report recommending approval of the application. (Exhibit 24.) Among other things, OP concluded that the proposed additions would not unduly affect light and air to neighboring properties. In addition, Arlova Jackson, the OP representative who prepared the report, testified at the public hearing in support of the application. After reviewing the submissions made during the hearing, Ms. Jackson stated that her opinion still remained the same.

At the Board's request, OP also submitted a Supplemental Report regarding the issues raised by the Opposition Party's "zoning analysis". OP concluded that the proposed project would not convert the building into a row dwelling, and that the proposed rear addition was not an "accessory building" because the addition would be sufficiently connected to the existing building by a walkway. (Exhibit 31, Supplemental Report.)

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is a one-family semi-detached dwelling located at 509 Q Street, N.W., (Square 477, Lot 28) in the R-4 Zone District. As such it has one side yard and a lot line on the other side.
2. The neighborhood is characterized by low to moderate density residential uses, including one-family attached and semi-detached dwellings.

The Proposed Project

3. The applicant proposes to build a two-story rear addition and a second story side addition to his residence.
4. The second story side addition to the west of the property will accommodate a driveway opening and expansion of the second story
5. The proposed side addition will eliminate the 8.1-foot side yard to the west.
6. The rear addition will consist mainly of an open deck and new stairs at the first and second levels. It will be comparable in height to that of surrounding structures and will be immediately adjacent to open yards of properties to the west and the north. The rear addition will be connected to the existing building by a one-story open walkway along the eastern property line. The proposed walkway will be open, nine feet in height, and will include a

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seven-foot tall privacy screen that is similar to existing privacy fences along the eastern property line.

7. The application included a site plan, floor plans, side and front elevations, rear elevations, photographs, and sun studies showing light impacts on neighboring properties.

The Zoning Relief

8. Section 403 of the Zoning Regulations allows a maximum lot occupancy of 40% in the R-4 Zone. Because the proposed additions will increase the lot occupancy from 24% to 60%, relief is required under this section.
9. Section 405 of the Zoning Regulations requires a minimum side yard of eight feet in the R-4 Zone. Because the existing 8.1-foot side yard will be eliminated, relief is required under this section.²
10. Section 406 of the Zoning Regulations requires a minimum open court width of 8.5 feet in the R-4 Zone. Because the project will result in an open court width of only 8.1 feet, relief is also required under this section.

The Impact of the Addition

11. The Board credits and adopts OP's finding that the proposed additions will not significantly decrease the amount of light and air received at neighboring properties. (Exhibit 24.)
12. The light and air available to the Moore property will not be unduly affected by the rear addition or the open walkway. The Applicant redesigned the project to address Ms. Moore's concerns and to have one story replace the two-story section of the addition along her property line. This reconfiguration will allow more air and afternoon light into Ms. Moore's back yard. Also, the Applicant's proposal includes a white, bright and reflective fence with a lattice top that permits additional light and airflow onto the Moore property. (Exhibit 30.) The sun studies show that the existing main house already casts shadows, and the additions will not unduly impact the Moore property. (Exhibit 32.)
13. The light and air available to the property owner to the west will not be unduly affected by the side addition. The proposed side addition will be located only at the second story, across from a portion of the adjacent property which has no second floor windows to begin with.
14. The privacy of adjacent homes will not be unduly compromised by the project. The rear addition will be located adjacent to rear yards of the structures to the east that face 5th Street, N.W. The privacy of these structures should not be impacted, as no windows are proposed

² The Opposition Party claimed that this relief was not needed because the elimination of the remaining side yard converted this structure into a row dwelling, which is a matter-of-right use in an R-4 Zone. As will be discussed in Conclusions of Law, the Board considers the argument to be irrelevant to the merits of this case.

along the portions of the addition which fronts these structures. Likewise, the privacy of properties to the west will also be protected, as no windows are proposed at this portion of the side addition. The Moore property to the east will also retain its privacy: the connecting walkway will be largely shielded by existing and proposed privacy fences along the eastern property line.

15. The Board received no persuasive evidence that the proposed additions will result in any security problems that may exist at the Moore property.
16. The Board credits and adopts OP's finding that, as viewed from the street, alley, or public way, the proposed additions will not visually intrude upon the character or scale and pattern of homes along the street frontage. Except for the side addition, the project will not be visible from Q Street, and the property does not have frontage on or abut any other public rights of way. The side addition will be visible from Q Street but will be compatible with the rest of the block. The side addition will be clad in brick along the street frontage and maintain the same height as the existing building, similar to the height of other two-story buildings along the block.

CONCLUSIONS OF LAW

Preliminary Issues

The Opposition Party contends that this application is not properly before the Board for two reasons: First, she argues that the requested side yard relief was unnecessary. Second, she contends that the proposed rear construction is not an addition, but is an accessory structure that requires additional zoning relief. For the reasons that follow, the Board concludes that neither issue is relevant to its consideration of this self-certified application.

The Need for Side Yard Relief

The Opposition Party correctly points out that a row dwelling, which is a one-family dwelling without side yards, is permitted as a matter of right in the R-4 Zone. It therefore contends that the proposed elimination of the existing side yard is permitted as a matter of right. OP and the Applicant point to past Board precedent that suggest otherwise. In any event, the Opposition Party does not explain the relevance of its argument to the Board's consideration of the merits of this self-certified application, and the Board concludes there in none.

The role of an opposition party is limited to raising arguments that go to the prerequisites or merits of an application for zoning relief; not arguments that such relief is necessary. That latter question is solely for the Board to raise and consider, as it did when it dismissed *Application No. 17906 of Se Y. Jeong* (2009) and *Application No. 18044 of Rock Creek Market, LLC* (2010). It would defeat the entire purpose of the self-certification process if the Board were obliged to

analyze the need for zoning relief whenever an opposition party questioned it.³ The Board's decision to dismiss under these circumstances is solely within its discretion and is based upon principles of judicial efficiency. Thus, the Board may in its discretion continue to hear a case even when there is serious doubt about whether the relief is needed particularly where, as here, other zoning relief is also being sought. Therefore, even though the Board in this case did ask for submissions on the question of whether side yard relief was necessary, in the end it sees no reasons why it should not go on to reach the merits of that request.

Whether the Rear Construction is an Accessory Structure

The Opposition Party argues that what the Applicant characterized as a rear addition is actually an accessory structure. Section 223 allows the Board to apply the more lenient special exception test for certain types of zoning relief that would otherwise require variances for "an addition to a one-family dwelling or flat ... *or a new or enlarged accessory structure* on the same lot as a one-family dwelling or flat." (11 DCMR § 223.1 (emphasis added).) Therefore, whether the rear construction is a new accessory structure is irrelevant to whether the application is properly before the Board or whether the elements of a § 223 special exception have been met.

The Opposition Party apparently believes that if this were an accessory structure more zoning relief would be required than has been requested. However, that is similarly irrelevant. In response to the identical argument made in *Application No. 16974 of Tudor Place Foundation, Inc.*, (2004) the Board responded:

Assuming that the opposition is correct ... the most that can be said is that the applicant will need variance relief. That fact alone does not require the Board to deny a special exception. ... Our inquiry is limited to the narrow question of whether the Applicant met its burden under the general and specific special exception criteria.

Accord Application No. 17537 of Victor Tabb (2007) ("The question of whether an applicant should be requesting variance relief is not germane to the question of whether a special exception should be granted").

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

³ This is different from the scenario when a self-certification or Zoning Administrator's memorandum erroneously claims that one of the prerequisites to seeking § 223 relief is met. For example, in *Application No. 17810 of Michael Reitz*, Order No. 17810-A (2010) the Board was obliged to consider a witness' claim that the Zoning Administrator's referral memorandum miscalculated the proposed lot occupancy as being less than the 70% maximum for which § 223 relief can be granted.

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11 DCMR §§ 223 and 3104.1 to construct an addition to a one-family dwelling in an R-4 District, where the addition will not comply with the lot occupancy requirements of § 403, the side yard requirements of § 405, and the open court width requirements of § 406.

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 lot occupancy and side yard requirements, 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. The light and air available to neighboring properties will not be unduly affected. As stated in the Findings of Fact, the proposed additions will not significantly affect light and air at the neighboring properties. (See, Findings of Fact 11-13.)

The light and air at the Moore property will be affected, but only minimally. (Finding of Fact 12.) The fact that the porches and yard will be subjected to slightly more shade at particular times of the year is not a substantially adverse impact that requires denial of this application.

223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. Nor will the privacy of use and enjoyment of neighboring properties be significantly affected by the proposed additions. (Finding of Fact 14.)

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 additions will cause no visual intrusion as viewed from the street. (Finding of Fact 16.)

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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-4 Zone. (Finding of Fact 1.) The proposed additions will increase the lot occupancy from 24% to 60%. (Finding of Fact 8.) Therefore, this condition will be met.

223.4 The Board may require special treatment in the way of design screening, exterior or interior lighting, building materials or other features for the protection of adjacent and nearby properties. The Board agrees with OP that no special treatment is required. (Exhibit 24.)

223.5 This section may not be used to permit the introduction or expansion of a nonconforming use. This provision is inapplicable.

The Board is required under § 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 finds 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 additions that do not comply with the lot occupancy, side yard or open court requirements in an R-4-B Zone.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application for a special exception is **GRANTED, SUBJECT** to the approved plans, as shown on Exhibit No. 23 of the record.

VOTE: 4-0-1 (Nicole C. Sorg, Jeffrey L. Hinkle, Meridith H. Moldenhauer, and Lloyd J. Jordan to Approve; No Zoning Commission member participating)

Vote taken on November 8, 2011.

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

A majority of the Board members approved the issuance of this Decision and Order.

ATTESTED:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: **MAY 10 2012**

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

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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 **MAY 10 2012**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, 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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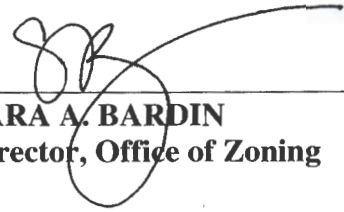
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