

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18294 of Paul and Emily Thornell, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of an addition to an existing one-family semi-detached dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements under § 403, in the R-2 District at premises 3011 Ordway Street, N.W. (Square 2067, Lot 76).

HEARING DATE: January 17, 2012

DECISION DATE: February 7, 2012

DECISION AND ORDER

Paul and Emily Thornell, the property owners (the “Applicant”) of the subject premises, filed an application with the Board of Zoning Adjustment (“Board”) on August 18, 2011 for a special exception under § 223 to construct an addition to their residence where the addition will not conform to the lot occupancy requirements of § 403. Following a hearing on January 17, 2012, the Board voted to approve the special exception at its public meeting of February 7, 2012.

Preliminary Matters

V.W. Fowlkes, an architect retained by the Applicant, submitted a "self-certification" form with the Board which described the zoning relief that was requested. (Exhibit 4.) On October 4, 2011, Mr. Fowlkes filed additional information amending the application to ask for rear yard relief. (Exhibit 18.)¹

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”) 3C, 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.)

¹ The case was advertised with a request for rear yard relief. At the public hearing, the Applicant’s representative noted that the Office of Planning had informed the Applicant that the rear yard relief was not necessary, as the irregularly shaped lot had a rear yard with a mean horizontal distance in excess of the required 20 feet. The Board agreed with the Office of Planning and the Applicant and determined that rear yard relief was not required for the proposed addition.

ANC Report

In its report dated October 17, 2011, ANC 3C indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC adopted a resolution of no objection to the special exception noting that the “proposed addition is small in scale and does not intrude upon the character, scale and pattern of houses along the street frontage.” (Exhibit 34.) The ANC report was not filed with the Board in a timely manner, but the Board waived the 14-day filing requirement and accepted the ANC’s resolution.

Request for Party Status

ANC 3C was automatically a party to this proceeding. The Board received a request for party status from Susan and Matthew Finston, the owners of the property located at 3514 30th Street, N.W. (“the Finstons’ property”). (Exhibit 26.) The request for party status was granted and the Finstons opposed the application at the public hearing, asserting that they were concerned that the addition would damage the alley, cause disruption during the construction process, adversely impact their privacy and light and air, and the proposed addition would reduce the value of their property. At the public hearing and in a post-hearing submission, Ms. Finston provided pictures and testimony regarding the potential impacts that the addition would have on her property, including the loss of privacy, and loss of green space in the neighborhood. (Hearing Transcript of January 17, 2012, p. 142-145; Exhibits 35, 38.)

Other Persons in Support/Opposition. The Board received several letters in support of the application, including a letter of support from the owner of the adjacent property 3009 Ordway Street. (Exhibits 8, 32, and 33.) The Board also received one letter in opposition from the owners of property located at 3512 30th Street, N.W. (Exhibit 38) who claimed that the proposed addition would be out of scale with other homes in the area and would result in loss of light and enjoyment of their property. The Board also received a letter from the owners of the property located at 3516 30th Street, N.W. who raised questions and concerns regarding the impact of construction on the alley, the location of construction staging, and the loss of trees. (Exhibit 24.)

OP Report

OP reviewed the special exception application and prepared a written report recommending approval of the application. (Exhibit 28.) The OP report concluded that the proposed additions would not unduly affect light and air to neighboring properties. In addition, Paul Goldstein, the OP representative who prepared the report, testified at the public hearing in support of the application. Mr. Goldstein also testified that it was OP’s conclusion that the proposed rear yard is conforming and that no rear yard relief is required.

The OP report also noted that the Historic Preservation Review Board Commission approved the project in concept at its October 27, 2011 Public Meeting and granted final approval to staff. (Exhibit 28.)

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is a one-family, semi-detached dwelling located at 3011 Ordway Street, N.W., (Square 2067, Lot 76) in the Cleveland Park neighborhood of Ward 3 and the Cleveland Park Historic District. The property is located in the R-2 Zone District and is irregularly shaped with a significant change in grade, approximately 24 feet, from the front of the property (along Ordway Street) to the rear of the property (and an adjacent alley to the north). The property is improved with a two-story, semi-detached dwelling with a cellar. (Exhibit 28.)
2. To the east of the property is an adjoining two-story, semi-detached dwelling. To the west is a two-story, semi-detached dwelling separated by a side yard. To the south (across Ordway Street) are one-family detached and semi-detached dwellings located in the R-1-B Zone District. Commercial uses focused on Connecticut Avenue are located approximately one and one-half blocks to the east of the property. (Exhibit 28.)
3. To the north of the property, across the 15-foot wide alley, are the rear yards of the properties located at 3512, 3514, and 3516 30th Street, N.W. As previously noted, the Finstons (granted party status in opposition to the application) own the property located at 3514 30th Street, N.W. (Exhibit 28.)

The Requested Relief

4. The Applicant proposes to construct a two-story dwelling plus rear cellar addition to the existing two-story semi-detached dwelling. The proposed addition requires the removal of a portion of the existing dwelling and elevated rear deck. The proposed addition is approximately 18 feet wide and 31 feet deep. In addition, a narrow two-level elevated porch extends an additional 14 feet in depth along the eastern property line. The height of the addition, measured from the dwelling's front finished grade to the addition's ceiling is 21 feet, six inches. The addition's roof will be below the pitched roof of the existing dwelling. The proposed addition will result in a measured rear yard of 26 feet, eight inches on the western edge of the rear lot line and 13 feet, nine inches on the eastern edge of the rear lot line, which creates a measured rear yard of 20 feet, two inches (which satisfies the matter-of-right requirements in the R-2 Zone District). (Exhibit 28.)
5. The addition would not include any windows along the shared party wall with the 3009 Ordway Street neighbor, thereby not adversely impacting the privacy of that property owner. (Exhibit 3.)
6. The property to the west (3013 Ordway Street) has a rear addition that extends approximately 20 feet past the proposed addition that is the subject of this application. The Finstons' property is located to the north and east of the subject property, shadows would only be cast late in the day and the proposed addition will not likely cast a shadow on the Finstons'

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property as any shadow that extends as far as the Finstons' property will likely be from the existing structure on the 3013 Ordway property. (T., p. 119-120.)

7. While the proposed addition would be visible from property owners to the north of the alley, the proposed addition will replace an existing wood deck with an addition that does not overpower the existing house and retains elements of the house's materials. (Exhibit 3.)
8. Section 403 of the Zoning Regulations permits a maximum lot occupancy of 40% in the R-2 Zone District. The proposed addition will increase the lot occupancy from 38.6% to 43.5%, which is equal to 99 square feet of additional area. Therefore, the proposed addition will not comply with the lot occupancy requirements of § 403.

The Impact of the Addition

9. With his application, the Applicant submitted photos, elevation plans, sections, and site plans showing the relationship of the addition to adjacent buildings and views from the public ways including the adjacent alley to the north. (Exhibits 9, 25, 29, 30, and 31.)
10. The home of the Finstons is not immediately adjacent to the subject property. In order for the sun to affect the Finston's property, the shading would have to project at least 50 feet and the likelihood of this occurrence is small. Further, the home located at 3013 30th Street N.W., would intervene with any effect of light and air that would emanate from the Applicant's property.
11. The Board credits and adopts OP's finding that the proposed addition will not significantly decrease the amount of light and air received at neighboring properties due to the fact that the addition will be below the height of the dwelling's existing roof pitch, the addition will have an approximately seven-foot-wide side yard to the west and a conforming rear yard. (Exhibit 28.)
12. The Board agrees with the conclusion of the Applicant and the OP that the addition will not cause an undue impact to the privacy of use and enjoyment of neighboring properties. As noted above, the addition will have no windows along the shared property line and that property owner supports the application. The windows facing west have been reduced in size and are separated from the adjacent property by a side yard of approximately seven feet. The Board also finds that the neighbors to the north of the adjacent alley also will not be unduly impacted in the use and enjoyment of their homes due to the provisions of the required rear yard and the 15 foot-wide public alley.
13. The Board credits and adopts OP's finding that, as viewed from the street, alley, or public way, the proposed addition will not visually intrude upon the character or scale and pattern of homes along the Ordway Street frontage. The Board notes that the amount of relief requested by the Applicant from the lot occupancy requirement is quite small, approximately 99 square feet, and the impact of this additional lot coverage will not unduly impact or affect the use and enjoyment of neighboring properties, including the Finston's property.

CONCLUSIONS OF LAW

The Special Exception

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-2 District, where the addition will not comply with the lot occupancy requirements of § 403. As stated in § 3104.1 of the Zoning Regulations (Title 11 DCMR), the Board “is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) ... to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions 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 Maps, subject in each case to the special conditions specified in this title.” In this case, the “special conditions” are those specified in §§ 223.2 through 223.5.

As noted by the Court of Appeals:

In evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought. “The applicant has the burden of showing that the proposal complies with the regulation; but once that showing has been made, the Board ordinarily must grant the application.” *National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n. 1 (D.C. 2000) (quoting *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C. 1995)).

Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment, 802, A.2d 359, 363 (D.C. 2002)

| In this case, the Board concludes that the Applicant has satisfied the two general tests stated in § 3104.1 and the specific conditions contained in § 223.

As to the general tests, the Board concludes that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood. With respect to whether the special exception will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, the Board concludes that this standard is satisfied if the specific conditions of § 223 are met. These 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 § 223.1 of the Zoning Regulations, an addition to a one-family dwelling shall be permitted even though it does not comply with applicable area requirements, such as the lot occupancy and rear yard requirements

if approved by the Board as a special exception, 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 Finding of Fact No. 10, the proposed addition will not significantly affect light and air to the adjacent 3009 and 3013 Ordway Street properties. Similarly, the proposed addition will not unduly affect the light and air that is provided to the properties located across the alley to the north, including the property owned by the Finstons.

223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. As discussed in Finding of Fact No. 11, the privacy of use and enjoyment of neighboring properties will not be unduly compromised by the proposed addition.

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. As noted in Finding of Fact No. 12, the proposed addition will cause no visual intrusion as viewed from Ordway Street or from the properties north of the adjacent alley.

223.2(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevations and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways. The Applicant provided appropriate materials for the Board to understand the relationship between the proposed addition and the surrounding properties.

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-2 District. The proposed addition will increase the lot occupancy from 36.8% to 43.5%. 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 concludes that no special treatment is required in order to screen the proposed addition. The Board notes that the Historic Preservation Review Board has granted conceptual design approval to this project.

223.5 This section may not be used to permit the introduction or expansion of a nonconforming use. The proposed addition will not introduce or expand a nonconforming use.

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975,

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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.

The Board acknowledges the arguments made by Ms. Finston and the owners of the properties located at 3512 and 3516 30th Street, N.W. regarding the potential impact that the addition will have on their homes. However, the Board does not find that the potential impacts of the proposed addition on these property owners rises to the level of requiring the Board to deny this special exception request. The Board finds that the Applicant has satisfied all of the special exception requirements necessary to grant approval of this application.

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 lot occupancy in an R-2 District.

Therefore, for the reasons stated above, the application for a special exception is **GRANTED, SUBJECT** to the approved plans, as shown on Exhibit 25.

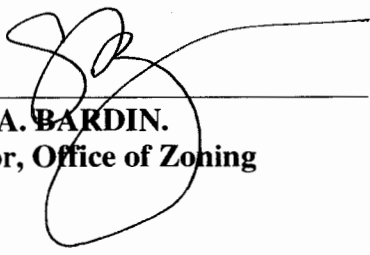
VOTE: 5-0-0 (Meridith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle, and Marcie I. Cohen to Grant)

Vote taken on February 7, 2012

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

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

ATTESTED BY: _____


SARA A. BARDIN.
Director, Office of Zoning

FINAL DATE OF ORDER: JUL 05 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.

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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 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 JUL 05 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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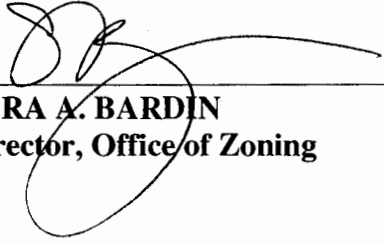
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