

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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STATEMENT OF JEFF ALPHER AND HALEY KAUFMAN IN SUPPORT OF
SECTION 223 SPECIAL EXCEPTION RELIEF

Jeff Alpher and Haley Kaufman ("Applicants") the owners of the property and improvements located at 2938 Macomb Street, N.W., Square 2084, Lot 825 (the "Property"), seek relief under §223 of the District of Columbia Zoning Regulations to construct a rear and side covered porch addition to their one-family detached dwelling. As set forth more fully below, the addition requires relief under §223 because the addition of the porch results in a lot occupancy that exceeds the amount allowed by the regulations by 132.5 square feet or 2.6 % and a side yard of 3 feet where 8 feet is required. The 3-foot side yard is a continuation of the existing nonconforming side yard of the one-family dwelling. Accordingly, Applicants seek relief under §223 for an addition that that does not comply with the maximum lot occupancy requirement (§403.2) and the minimum side yard setback requirement (§405.9). While the Zoning Administrator did not so certify in his February 29, 2012, Memorandum, it appears that relief is also required under §223 because the addition does not comply with §2001.3 governing additions to nonconforming structures devoted to conforming uses. As set forth above, the addition increases the lot occupancy of the existing nonconforming structure to 2.6% above the allowed amount and extends the existing nonconforming side yard.

I. Description of the Property and Surrounding Neighborhood.

The Property is located in an R-1-B Zone District on the 2900 block of Macomb Street, N.W in the Cleveland Park neighborhood. The R-1-B District consists predominantly of one-family detached dwellings. A number of detached dwellings on this block of Macomb Street have side yards that are less than the required 8-foot side yard.

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The property has a lot area of 5,156.25 square feet, greater than the minimum lot area for the R-1-B zone of 5,000 square feet (11 DCMR 401.3). It is improved with a one-family dwelling built in 1922, with additions made in more recent decades by prior owners. The property currently has a lot occupancy of 31.2 %, where 40% is required (11 DCMR 403.2) and a rear yard of approximately 37 feet, where 25 feet is required (11 DCMR 404.1).

On each side of the property is a one-family dwelling with porches and/or deck in the rear. The Applicants' property has a nonconforming 3- foot side yard on its west side. However, the distance between the subject dwelling and the neighboring dwelling to the west is 11.34 feet. Applicants' property has an 8-foot side yard on its east side and a distance of 18.5 feet between its dwelling and its neighbor's dwelling to the east.

On the west side of the property is a detached dwelling with two (2) stories of covered porches in the rear. On the east side of the property is a detached dwelling with a deck extending off the main level of the structure in the rear. The porches and decks of both these dwellings extend well beyond the Applicants' dwelling. There is a moderate slope down from the street along the body of the dwelling and a severe slope down starting approximately 10 feet from the rear of the current structure. Applicants' property and the neighboring properties back up to a ravine and woods. Their neighbor to the rear is the 21- acre Tregaron Estate .

II. The Application Meets the Special Exception Requirements of Section 223.

Section 223 provides zoning relief for additions to one-family dwellings or flats (R-1) and for new or enlarged accessory structures as a special exception. As set forth below, this application meets all the requirements, and accordingly, relief should be granted.

223.1 *An addition to a one-family dwelling or flat, in those Residence Districts where a flat is permitted, or a new or enlarged accessory structure on the same lot as a one-family dwelling or flat, shall be permitted even though the addition or accessory structure does not comply with all of the requirements of §§ 401, 403, 404, 405, 406, and 2001.3 shall be permitted as a special exception if approved by the Board of Zoning Adjustment under §3104, subject to the provisions of this section.*

Pursuant to §3104.1 of the Zoning Regulations, the Board is authorized to grant special exception relief 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 reviewing applications for a special exception under the Zoning Regulations, the Board’s discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat’l Cathedral Neighborhood Ass’n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000). In satisfying the specific provisions of §223 the general requirements of §3104 are met.

According to the computations of the Zoning Administrator, the proposed addition to this detached dwelling will result in a deviation of 2.6 % from lot occupancy (§403) and a deviation of 5 feet from the side yard set back requirement (§405.9).¹ Accordingly, the deviations fall within the provisions of the regulations encompassed by §223. Special exception relief should be granted because the proposal in this application meets the requirements of §223 as follows:

Section 223.2 *The addition or accessory structure shall not have a substantially adverse affect on the use of enjoyment of any abutting or adjacent dwelling or property, in particular:*

- (a) *The light and air available to neighboring properties shall not be unduly affected:*

¹ The Zoning Administrator’s “Notes and Computations” denote (Max. 60%) in the Allowed Lot Occupancy column. That appears to be a clerical error as the allowed percentage of lot occupancy in the R-1-B zone is 40 % (§403).

The addition in this case is a covered porch that will be similar in height to the deck and porches of the neighboring properties. The floor of the proposed covered porch will be at the same level as the main floor of the structure and will be located relative to the rear projections of these neighbors minimizing the impact of the proposed addition on those properties. While Applicants are seeking 5 feet in side yard setback relief, from the 8 feet required on the west side, there will be 11.34 feet between Applicants' structure and the neighboring structure on that side. There will be 18.5 feet between Applicants' structure and the neighboring structure on the east side. Accordingly, the light and air available to the neighboring properties to the east and west will not be unduly affected.

Finally, the dwelling with the proposed addition will still exceed the rear yard requirements of the R-1-B zone (404.1), providing 37 feet, where 25 feet is required, and will not affect the air and light of the property to the rear, as the property to the rear consists of the woodlands and fields of the Tregaron Estate.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The privacy of use and enjoyment of the neighboring properties to the west and east will not be unduly compromised because the covered porch addition will be separated from the porches and decks of these properties by 11.34 feet to the west and by 18.5 feet to the east. Its height and rear projection will be similar to the neighboring porches and deck. To the rear are woodlands and fields, and therefore no privacy concerns.

(c) The addition or accessory structure, 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 covered porch will be minimally visible from Macomb Street and, therefore, will not visually intrude upon the character, scale and pattern of houses on that street. The Historic Preservation Review Board approved the concept design, finding no impact on the character of the house or the historic district and the Commission on Fine Arts also had no

objection. *See* attached Historic Preservation Review Board Staff Report and Recommendation for the January 26, 2011 meeting.

- (c) *In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.*

Attached are photographs showing the relationship of the proposed covered porch to adjacent buildings and a view from the public way.

Section 223.3 *The lot occupancy of all new and existing structures on the lot shall not exceed fifty percent (50%) in the R-1 and R-2 Districts...*

Upon construction of the covered porch addition, the total increase in lot occupancy will be 558.6 square feet, resulting in a lot occupancy of 42.6 %, well under the maximum permitted lot occupancy of 50% allowed for the R-1-Districts under §223.

IV. Conclusion.

Section 223 was enacted by the Zoning Commission to enable homeowners to make modest improvements of this type to their homes. For the reasons stated above, this application

meets the requirements for special exception approval by the Board, pursuant to §223 and §3104.1, and the Applicants respectfully request that the Board grant the requested relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ruthanne G. Miller", is written over a horizontal line.

Ruthanne G Miller, Esq.
Sullivan & Barros, LLP