

BOARD OF ZONING ADJUSTMENT
SPECIAL EXCEPTION APPLICATION - § 223
APPLICANT'S STATEMENT

Christian Creech (Applicant)
1400 Montello Avenue, NE; Square 4059, Lot 29
Expedited Review Pursuant to § 3113

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I. Introduction.

Christian Creech (the "Applicant") is the owner of the property and improvements located at 1400 Montello Avenue, NE, Square 4059, Lot 29 (the "Property"), located in the R-4 zone district. The Applicant hereby requests special exception approval pursuant to 11 DCMR § 223 to approve the unfinished construction of an addition to the one-family semi-detached dwelling on the Property (the "Building"). The Applicant is also requesting an expedited review pursuant to § 3113.

The Applicant purchased the Property in 2011, at which time the House already had an addition (the "Old Addition"), the footprint of which is indicated on the Surveyor's Plat attached in this Application. Upon the Applicant's purchase, the Property has a lot occupancy of approximately fifty-eight percent (58%), which was made up of the original building (built prior to 1958), the Old Addition (age unknown), and the accessory garage (also built prior to 1958) in the rear of the Property.

After purchase the Applicant undertook a complete renovation of the Building, which eventually included replacing the Old Addition because of structural insufficiencies, and adding a small addition on the rear west corner of the second floor of the reconstructed Old Addition (collectively, the "New Addition"). The Applicant is seeking § 223 relief for the approval of the New Addition. The Applicant originally received a permit for the renovation of the Old Addition and undertook that rehabilitation. Upon a later review of a revised permit application by DCRA, the Applicant found that zoning relief was required, even though the footprint of the New Addition was the same as that of the Old Addition. The Property, excluding the footprint of the Old Addition (and New Addition) has a lot occupancy of forty-nine point eight percent (49.8%). With the New Addition, the lot occupancy percentage is approximately fifty-eight percent (58%). The New Addition, constructed on the existing foundation of the Old Addition, has a nonconforming court on the north side of the house and a lot occupancy percentage exceeding

the maximum 40%. Also, the Property's lot area is slightly under the minimum required lot size of 3,000 square feet.

The Applicant is therefore requesting Special Exception relief to complete the construction of the New Addition, pursuant to 11 DCMR § 223 for additions to one-family dwellings – specifically for relief from minimum required lot area (§ 401), maximum permitted lot occupancy (§ 403), minimum area and width of an open court (§406), as well as the restriction against additions to structures nonconforming as to lot occupancy (§ 2001.3).

II. Description of the Property and Surrounding Neighborhood.

The Property is located in the R-4 zone district - in the Trinidad neighborhood – at the corner of Oates Street, NE and Montello Avenue, NE. (see Map in Exhibit A). The Property has a lot area of 2,970 square feet, which is thirty feet (30 ft.) short of the 3,000 square feet required for one-family semi-detached dwellings in the R-4 zone under § 401.3. The Property, including the original building, the Old Addition, and the garage, had a lot occupancy of 49.8%. The maximum permitted lot occupancy for a semi-detached dwelling in the R-4 zone is forty percent (40%). The Building also has a small nonconforming court on the opposite side of the House from the addition.

The Building is located at the northwest corner of Oates Street NE and Montello Avenue NE. The New Addition is on rear of the Building and toward the Oates Street side of the Property. The only property which abuts the subject Property is 1402 Montello Avenue, NE, to the north. The only expansion from the Old Addition to the New Addition is an approximate 8' x 8' second floor addition along the Oates Street side of the Property. There is an accessory garage in the rear yard and a fifteen (15)-foot public alley to the west. The closest house to the west is approximately fifty (50) feet away from the New Addition, across the public alley. The closest house to the south is approximately seventy (70) feet from the New Addition, across Oates Street.

III. Description of the New Addition.

The New Addition is essentially a reconstruction of the Old Addition, with a small addition to that on the second floor at the rear corner of the Building along Oates Street. It is not

known when the Old Addition was originally constructed, or if it was built prior to 1958. Therefore, the Applicant is requesting approval for the entire New Addition, including the portion that is replacing the Old Addition, as well as modification included in the New Addition.

IV. The Application Satisfies Special Exception Requirements of Sections 3104.1 and 223.

A. Overview. Pursuant to Section 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, subject also, in this case, to the specific requirements for relief under § 223 of the Zoning Regulations.

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). This application provides evidence sufficient to show that the Applicant has satisfied the relevant zoning requirements of Sections 3104.1 and 223, as described herein and, therefore, supports a decision granting the application.

B. Requirements of Section 3104.1.

The granting of a special exception in this case “*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...*”. (11 DCMR § 3104.1.)

The New Addition 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. The New Addition replaces the apparently long-standing Old Addition, with an additional portion on the rear west corner of the second floor of the Building, along the Oates Street side of the Property. The New Addition, on two sides, is a considerable distance from the nearest properties (fifty feet and seventy feet, respectively).

The neighboring home to north abuts the Building, except for the nonconforming court area in the area of the Old Addition and the New Addition. The New Addition in this area merely reproduces what had existed in this area for many years, although it is not clear if the Old Addition was originally built prior to 1958.

The lot occupancy with the New Addition is fifty-eight percent (58%); twelve percent (12%) under the maximum permitted lot occupancy under § 223.

C. Requirements of Section 223.

The proposal in this application satisfies the requirements of Sections 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;*
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*
- (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; and*
- (d) 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."*

The New Addition will not have a substantially adverse effect on the use or enjoyment of neighboring properties. This New Addition has existed in this same footprint for many years; the small portion added borders a fairly wide street; there is a significant distance between the New Addition and adjacent houses to the rear and the Oates Street side; and the Building already borders the building to the north, separated by a 2.4 foot court for light.

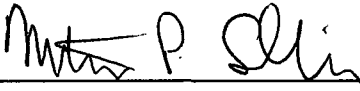
Section 223.3 *"The lot occupancy of all new and existing structures on the lot shall not exceed seventy percent (70%) in the R-4 District..."*

The percentage of lot occupancy, including the Building with the New Addition, and the accessory garage, will be 58%.

V. Conclusion.

For the reasons stated above, this application meets the requirements for special exception approval by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin P. Sullivan", is written over a horizontal line.

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP
September 25, 2012