

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18641 of Aung Hla and Myint Myint San pursuant to 11 DCMR § 3104.1 for a special exception under § 223 of the Zoning Regulations to allow an addition to an existing semi-detached row dwelling not meeting requirements for lot occupancy (§ 403.2), open court (§ 406.1), or enlargement of a nonconforming structure (§ 2001.3) in the CAP/R-4 District at premises 404 Independence Avenue, S.E. (Square 818, Lot 807).

HEARING DATE: October 29, 2013
DECISION DATE: October 29, 2013

DECISION AND ORDER

This self-certified application was submitted on July 30, 2013 by Aung Hla and Myint Myint San (the "Applicant"), the owner 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 a two-story rear addition to a one-family semi-detached row dwelling not meeting the zoning requirements for lot occupancy under § 403.2, open court under § 406.1, or enlargement of a nonconforming structure under § 2001.3 in the Capitol Interest ("CAP") Overlay District of the R-4 Zone at 404 Independence Avenue, S.E. (Square 818, Lot 807) (the "Subject Property"). Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 1, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation (DDOT); the Councilmember for Ward 6; Advisory Neighborhood Commission ("ANC") 6B, the ANC in which the subject property is located; Single Member District/ANC 6B02; and the Architect of the Capitol ("AOC"). Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters on August 22, 2013 providing notice of the hearing to the Applicant, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice of the hearing was published in the *D.C. Register* on August 23, 2013 (60 DCR 12214).

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Board of Zoning Adjustment
District of Columbia
CASE NO.18641
EXHIBIT NO.38

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Party Status. The Applicant and ANC 6B were automatically parties to this proceeding. The Board granted a request for party status in opposition to Elizabeth and Brandon Prelogar, owners of the adjacent property to the west, 402 Independence Avenue, S.E.

Applicant's Case. The Applicant provided evidence and testimony describing the proposed project – to demolish an existing portion of the structure and construct a two-story rear addition – and asserted that the application satisfied all requirements for special exception zoning relief. The Applicant, after consulting with the party in opposition, offered to modify the project, as shown in the revised plans dated October 15, 2013. (Exhibit 29.) In the revisions, the Applicant proposed to decrease the height of the second story addition using a gabled roof design. The design of the slanted roof was intended to give the adjacent neighbors increased access to light and air in their rear yard. With the revised plan, the Applicant provided a sun study, which compared the shadows cast by the existing structure and to those cast by the proposed addition. The study indicated that access to light for the neighboring properties would not be impacted by the proposed addition (Exhibit 30.)

OP Report. By memorandum dated October 22, 2013, the OP recommended approval of the application. OP's analysis concluded that the Applicant had met all the requirements for special exception relief. (Exhibit 33.)

DDOT Report. By memorandum dated September 18, 2013, DDOT indicated no objection to approval of the special exception. (Exhibit 23.)

ANC Report. By letter dated October 17, 2013, ANC 6B indicated that it discussed the application at its regularly scheduled, properly noticed meeting on October 8, 2013, and with a quorum present, voted 7-2-1 to oppose the application. The ANC explained that, as proposed, the addition would have undue impacts on light and air at 402 Independence Avenue S.E. The ANC also indicated it would be inclined to support the request if the Applicant significantly revised the design of the second floor addition so as to improve the neighboring property's access to air and light. (Exhibit 32.)

Architect of the Capitol Report. By letter dated October 8, 2013, the Architect of the Capitol indicated that the application is not inconsistent with the intent of the CAP/R-4 District and would not adversely affect the health, safety, and general welfare of the U.S. Capitol Precinct and area adjacent to this jurisdiction. The AOC found that granting special exception relief would not be inconsistent with the goals and mandates of the United States Congress as stated in 11 DCMR § 1200.1. (Exhibit 24.)

Party in opposition. The party in opposition contended that the proposed addition would have a substantial negative impact on their access to light and air, especially in the rear patio of their property. The party in opposition also stated that the proposed addition would intrude on the sense of openness in their rear yard and hinder their enjoyment of the property. The party in opposition acknowledged that the revised plans dated October 15, 2013 addressed their concerns

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to some degree, but maintained the same objections to the addition's potential to obstruct light, air, and open space.

Persons in support. No persons appeared to testify in support of the Applicant. The owner of the adjacent property at 408 Independence Avenue S.E. filed a letter in support, along with a petition of support from five neighboring residents. (Exhibit 26.)

FINDINGS OF FACT

1. The property is an interior, L-shaped lot located on the north side of the street at 404 Independence Avenue, S.E. between 4th Street S.E. and 5th Street S.E. (Square 818, Lot 807) (the "Subject Property").
2. The Subject Property is improved with a semi-detached one-family dwelling with two-story and one-story rear additions.
3. The Subject Property is zoned R-4. The Subject Property has also been included in the Capitol Interest Overlay District.
4. The existing lot occupancy of the Subject Property is 934.6 square feet or 55%. The maximum lot occupancy allowed in an R-4 Zone District is 40% by matter of right (11 DCMR § 403.2) and 70% by special exception (11 DCMR § 223.3). The existing structure is set back from the rear property line by 18.25 feet to 43.6 feet.
5. The adjacent properties include an apartment building to the east and a three-story row dwelling to the west. The Subject Property has no rear alley access to the north.
6. The Subject Property is nonconforming in terms of lot area and side yard. The Subject Property measures 1,694 square feet. The Zoning Regulations require a minimum lot area of 1,800 square feet for row dwellings in the R-4 District (11 DCMR § 401.3). The Subject Property provides a 2.3 foot side yard to the East. Subsection 405.2 provides that in an "R-4 District a one-family semi-detached dwelling shall be subject to the side yard requirements of an R-2 District." Subsection 405.9 requires an eight foot wide side yard in an R-2 District.
7. The Applicant proposed to partially demolish the existing two-story addition and to completely demolish the existing one-story addition. The Applicant proposed to construct a new two-story addition that would add 2.4 feet to the depth of the structure and increase the width of the dwelling to the full width of the Subject Property.
8. The proposed addition would convert the semi-detached row dwelling into a row dwelling and convert the nonconforming 2.3 foot side yard on the eastern side into an open court, which would be 2.3 feet wide at its narrowest and 6.5 feet at its widest. The proposed addition would also create a 1.5 foot open court on the western side of the Subject Property.

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A one-family dwelling in the R-4 Zone District is required to have open courts measuring not less than six feet. (11 DCMR § 406.1).

9. The proposed addition would increase the Subject Property's lot occupancy to 1,185.8 square feet or 70%, which is the maximum lot occupancy approvable in the R-4 District by § 223.3.
10. In the Applicant's revised plans dated October 15, 2013, the rear 13 feet of the proposed addition would include a gabled roof on the second story which would decrease the height of the wall to 15.6 feet. The portions of the addition without a slanted roof would measure 20 feet tall. The addition would be set back from the western property line by 1.6 feet thereby increasing the side yard's nonconformity.
11. A sun study provided by the Applicant demonstrated that the proposed addition would not cast shadows onto neighboring properties beyond those generated by the apartment building to the east. As shown in the study, access to light on adjacent properties would not be substantially impacted by the proposed addition.
12. The addition will include two windows on the east, which will be set back seven to ten feet from the property line, three windows facing north, and no windows facing west.
13. The addition would be visible through the open court off of Independence Avenue.
14. The addition will be constructed of high quality materials that are historically appropriate for the surrounding neighborhood.
15. 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.) The R-4 District is not an apartment house district as contemplated under the General Residence (R-5) Districts, since the conversion of existing structures is controlled by a minimum lot area per family requirement. (11 DCMR § 330.3.)
16. The Capitol Interest Overlay District is established to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction in a manner consistent with the goals and mandates of the United States Congress in title V of the Legislative Branch Appropriations Act, 1976, (Master Plan for Future Development of the Capitol Grounds and Related Areas), approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288) and in accordance with the master plan promulgated under the Act. (11 DCMR § 1200.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 223 of the Zoning Regulations to allow

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construction of a two-story rear addition to a one-family semi-detached row dwelling not meeting the zoning requirements for lot occupancy under § 403.2, open court under § 406.1, or enlargement of a nonconforming structure under § 2001.3 in the Capitol Interest (“CAP”) Overlay District of the R-4 Zone at 404 Independence Avenue, S.E. (Square 818, Lot 807). 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.)

Because the proposed addition does not meet the zoning requirements for lot occupancy, open court, or enlargement of a nonconforming structure, the Applicant must satisfy the requirements of § 223 to be granted special exception relief. Additionally, because the Subject Property falls within the CAP Overlay District, the Applicant must meet the requirements of § 1202.

Pursuant to § 223, an addition to a one-family dwelling may be permitted as a special exception, despite not meeting certain zoning requirements, subject to the enumerated conditions. These conditions include that the addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. Specifically, the light and air available to neighboring properties must not be unduly affected (§ 223.2(a)), the privacy of use and enjoyment of neighboring properties must not be unduly compromised (§ 223.2(b)), and the addition, together with the original building, must not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage (§ 223.2(c)).

Based on the findings of fact, the Board concludes that the request for special exception relief, as represented by the October 15, 2013 revised plan, satisfies the requirements of § 223. The Board credits the testimony of the Applicant and the Office of Planning and finds that the proposed addition will not unduly affect the light and air available to adjacent properties. As shown in the sun study provided by the Applicant, the proposed addition will create only minimal impacts on the neighboring properties’ access to light. The revised design, including a sloping gabled roof, serves to further preserve the adjacent properties’ access to light and air.

Based on the testimony of the Applicant and OP, the Board also finds that the proposed rear addition will not compromise the privacy or enjoyment of neighboring properties. The proposed addition ensures privacy, as the windows facing east would be over seven feet away from the property line and as no windows overlook the property to the west. The design also provides for a gabled roof that allows for neighbors’ continued sense of open space and enjoyment of their rear yard. The Board finds that the proposed addition will not visually intrude on the character, scale or pattern of houses along the street frontage. The addition would be visible through the open court off of Independence Avenue and will be constructed of high quality materials that are historically appropriate for the surrounding neighborhood. Accordingly, the Board concludes that the proposed addition satisfies the requirements of § 223.

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Pursuant to § 1202.1, a special exception within the CAP Overlay District must be consistent with the present and proposed development of the neighborhood, the mandates of Title V of the Legislative Branch Appropriation Act, 1976, approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288), and the master plan promulgated under the Act. Title V of the Act authorizes funds to enable the Architect of the Capitol to develop a master plan for the future development of the grounds of the U.S. Capitol, and accordingly, § 1202.3 requires the Board to submit an application for a special exception within the CAP Overlay District to the AOC for review and report. The Board received a letter from the AOC stating that the relief requested in this application would not be inconsistent with the intent of the CAP/R-4 District nor with the goals and mandates of the United States Congress as stated in the Zoning Regulations. Therefore, the Board finds that the application satisfies the requirements of § 1202.1.

For these same reasons, the Board also finds that the proposed addition will not adversely affect the use of neighboring properties as required by § 3104.1. Further, the Board finds that the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The R-4 Zone District is intended to stabilize remaining one-family dwellings and would even permit a more intense use, such as the conversion of the row dwelling into a dwelling for two or more families. As discussed, the proposed addition is also not inconsistent with the Zoning Plan and Map for the CAP Overlay District. The Board concludes that the Applicant meets the requirements of § 3104.1.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) In this case, for the reasons discussed, the Board concurs with OP’s recommendation to approve the application.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC in its written report. (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) (2012 Repl.)).) On October 8, 2013, ANC 6B voted 7-2-1 to oppose the application, based on neighbors’ concerns about access to air and light. In their report, ANC 6B indicated willingness to support the application if significant changes were made to the Applicant’s proposal to address the issues raised at the meeting. Based on suggestions by the ANC, the Applicant revised his plans by redesigning the second floor to allow his neighbors increased access to air and light, as shown in the plans dated October 15, 2013. The Board concludes that the revised plans properly address the addition’s potential impact on neighboring properties and that special exception relief should be granted.

Based on the findings of fact and conclusions of law, the Board finds that the Applicant has satisfied the burden of proof with regard to the request for special exception relief under § 223 to allow construction of a two-story rear addition to a one-family semi-detached row dwelling not meeting the zoning requirements for lot occupancy under § 403.2, open court under § 406.1, or enlargement of a nonconforming structure under § 2001.3 in the Capitol Interest Overlay District of the R-4 Zone at 404 Independence Avenue, S.E. (Square 818, Lot 807). Accordingly, it is

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ORDERED that the application is **GRANTED, SUBJECT** to the Revised Plans as shown on Exhibit 29.

VOTE: **3-0-2** (Lloyd J. Jordan, Marcie I. Cohen, and S. Kathryn Allen to Approve;
Jeffrey L. Hinkle not present, not voting; one Board seat vacant.)

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

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

ATTESTED BY:  _____ *for*
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 23, 2014

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 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.