

**BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF  
NILOUFAR HOORAZAR**

**BZA APPLICATION NO. 18886  
HEARING DATE: MARCH 31, 2015**

**PREHEARING STATEMENT OF THE APPLICANT**

**I. NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Niloufar Hoorazor (the “Applicant”), the owner of property located at 2709 36<sup>th</sup> Street N.W., Lot 811 in Square 1938 (the “Property”) in support of the application for special exception review pursuant to 11 DCMR §223. The Applicant seeks special exception relief under §223 to allow an addition to a single-family home in the R-1 District at the Property.

**II. EXHIBITS IN SUPPORT OF THE APPLICATION**

- Exhibit A:** **Photographs of Side Yard**
- Exhibit B:** **Lot Occupancy Diagram**
- Exhibit C:** **Photographs of Neighbor to the North**
- Exhibit D:** **Photographs of Neighbor to the South**
- Exhibit E:** **Potential Matter of Right Massing**
- Exhibit F:** **Character of Street Frontage**
- Exhibit G:** **View from Alley**

**III. SPECIAL EXCEPITON RELIEF AND STANDARD OF REVIEW**

The Applicant seeks special exception relief under §223 to allow a lot occupancy of 44% and extension of an existing nonconforming side yard to allow an addition to a single-family home in the R-1 District at the Property. Under D.C. Code §6-641.07(g)(2) and 11 DCMR §3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing

an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

#### **IV. APPLICANT MEETS BURDEN OF PROOF FOR SPECIAL EXCEPTION**

The Applicant meets the burden of proof for special exception relief under §223. Under §223, an addition to a one-family dwelling is permitted even though the addition does not comply with all of the area requirements, including lot occupancy (§403), side yard (§405), and nonconforming structure requirements (§2001.3), provided that the lot occupancy of new and existing structures shall not exceed 50% in the R-1 District. Furthermore, Approval of the special exception is subject to the Board’s determination that the addition does not substantially adversely affect the use or enjoyment of abutting property owners.

##### *a. Lot Occupancy*

Under 403.1, the permitted lot occupancy for a single-family home in the R-1 Zone District is 40%. The percentage of lot occupancy is that portion of a lot that is occupied by “building area.” The lot area at the Property is 6,450 square feet. The structure, with the new addition, has a footprint of roughly 2,541 square feet and physically occupies 40% of the lot on the first story. However, “building area” includes not just the structures, but also all side yards measuring less than five feet in width. 11 DCMR §199.1. The Applicant’s initial survey for purposes of obtaining the building permit indicated that the side yard was just over 5 feet, and thus was not included in lot occupancy stated in the building permit application. However, the wall test, conducted as required by the Department of Consumer and Regulatory Affairs following construction of the majority of the addition, showed the side yard was instead 4.94 feet, which is 0.06 feet under 5 feet and thus required to be included in the lot occupancy

calculation. *See* Photographs of Side Yard at **Exhibit A**. The side yard, at 277 square feet, brings the total lot occupancy to 44%. *See* Lot Occupancy Diagram at **Supplemental Statement at Exhibit A**.

Therefore, the Applicant has filed for special exception relief under §223, by which the Board may permit lot occupancy of all new and existing structures of up to 50% lot occupancy in the R-1 District.

The lot occupancy on the second and third story, following the addition, complies with the lot occupancy requirement as a matter-of-right. The second story occupies roughly 1,742 square feet, for a lot occupancy of 27%. The decrease, relative to the first story, is due to a stepped setback from 16-26 feet off the south side yard facing 2707 36<sup>th</sup> Street. The third story occupies roughly 1,034 square feet, for a lot occupancy of approximately 16%. *See* Diagram Showing Lot Occupancy 2<sup>nd</sup> & 3<sup>rd</sup> Floor at **Exhibit B**.

*b. Side Yard*

Under §405, the side yard requirement for a single-family home in the R-1 District is 8 feet. The existing side yard, at 4.94 feet, is an existing nonconforming side yard. *See* **Exhibit A**. However, , an existing nonconforming side yard may be extended or added to so long as the side yard is 5 feet or greater. § 405.8. The Applicant's initial survey for purposes of obtaining the building permit indicated that the side yard was just over 5 feet, and thus the Applicant believed that the side yard could be extended as a matter of right. As described above, the wall test revealed that the side yard is actually 4.94 feet, . 0.06 feet under the minimum of 5 feet required to permit the extension of the nonconforming side yard; thus the Applicant has filed for special exception relief under §223. It is important to note, that the new construction on the north non-conforming side yard is set back 8 feet from the property line as required under the applicable regulations for new construction. It is the southern side yard that was ultimately revealed to be less than 5 feet, although no change to the existing 4.94 foot side yard setback was proposed or constructed. As such, the side yard relief being requested is *de minimis* is an existing non-conforming condition, with all new construction complying with zoning requirements.

*c. No Substantial Adverse Effect*

Despite statements to the contrary from the ANC and adjacent neighbors, the addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or

property. The newly constructed addition does not adversely impact light or air available to adjacent properties. As stated above, the second and third floors are reduced providing more light and air than a matter of right project. *See Exhibit E, Potential Matter of Right Massing.* Moreover, the new construction did not create a non-conforming condition necessitating relief; it was the existing condition of the home that was nonconforming by .06 feet (less than one inch). The non-conforming condition is not being and has not been changed; however, the .72 inch deficiency in the existing side yard width requires special exception relief in order to comply with the Zoning Regulations.

The extension of the nonconforming side yard on the north does not unduly impact neighbors. The addition does not create an adverse impact on the light and air available to the neighboring properties. The properties to the north are separated by picket fencing and a common wall. Furthermore, the northern properties are divided by trees and foliage providing additional privacy, which helps prevent any impact on the existing privacy that the neighboring property owners already enjoy. *See Photographs of Neighbor to the North at Exhibit C.* The wall on the north side of the property is the original wall; thus no change and no adverse effect.

The neighbor to the south, with a large garage structure built to the Property line and wall of mature trees, is likewise unaffected by the addition. *See Photographs of Neighbor to the South at Exhibit D.* The large retaining wall surrounding 2707 36<sup>th</sup> Street, provides substantial privacy and elevates the rear yard thus the Applicant's project creates no adverse effect or negative impact on light and air.

The neighbors to the rear, as a result of the Applicant having a more-than-compliant rear yard of 29 feet and separation by a 15-foot alley, are also unaffected by the addition. The addition does not visually intrude upon the character and pattern of the houses along 36<sup>th</sup> Street NW or the neighborhood. The neighborhood is comprised of many varying architectural styles and designs. The alterations made to the property are consistent with its colonial style and structure.

Furthermore, the single-family home with the addition is far smaller than what is permitted as a matter of right if the house were demolished and built new. The R-1 District permits 40% lot occupancy, 3 stories, and 40 feet of height. At a lot are of 6,450 square feet, a house with 40% lot occupancy and 3

stories could occupy 2,580 square feet on each story for a total of 7,740 square feet. The Applicant chose not to demolish the house and pursue the larger house as a matter-of-right in part due to a desire to preserve the existing house and avoid wasteful demolition. Had the Applicant been provided the accurate side yard width and lot occupancy calculations prior to construction, the Applicant would have likely exercised her option to demolish and would have built to the full extent of a matter-of-right envelope. The result would have been a larger home, with a smaller side yard on the south, and a larger 2<sup>nd</sup> and 3<sup>rd</sup> floor. *See* Photograph of Potential MOR Design at **Exhibit E**.

The addition together with the original building is not substantially visually intrude upon the character, scale and pattern of homes along the subject street frontage. The Property has been elegantly improved. From the street frontage the addition is minor and the design blends well with the variations of architectural designs in the area. *See* Photograph at **Exhibit F**. From the alley, the larger corner properties and rear walls obstruct the view of the subject property and addition. *See* Photograph at **Exhibit G**. Additionally, as provided by section 223.2(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 addition complies with the pattern of houses along the subject street frontage. Many houses in the area have large alley walls comparable to the scale and pattern proposed here.

## **V. VAGUE & UNSUPPORTED OPPOSITION**

The Applicant is aware that there is opposition to the Application. The opposition, articulated primarily by the Massachusetts Avenue Heights Citizens Association (“MAHCA”), cites impacts to “light and privacy as a result of the mass of the subject addition,” “aesthetic and economic effects resulting from the design” of the project, and visual incompatibility when viewed from the street and alley. The MAHCA also contends that it was improper for the Applicant to rely on a survey, that ultimately differed from the wall test’s court measurement by a few inches and, as a result, required the zoning relief

now sought. The Applicant relied on the information provided to her in designing and constructing the home. There was simply no nefarious intent nor any attempt to circumvent the Zoning Regulations. See Request for Party Status from Massachusetts Avenue Citizens Association at Case Log, Exhibit 40. Furthermore, the Applicant has reached out on multiple occasions but no meeting has been granted by the opposition.

The neighbor at 2709 36<sup>th</sup> Place, outside the 200 foot radius, filed a letter in opposition without a substantive argument, but rather simply stating that “development must take place within the framework of the zoning regulations and not in disregard thereof.” *See Letter from Mr. Loeffler in Opposition at Case Log, Exhibit 41.* The Board is keenly aware that special exception relief is within the regulatory framework and the request here for a 4% deviation is minor, especially in light of the building footprint complying with lot occupancy.

The height of the house and side yard on the southern property line is permitted as a matter of right and thus not germane to Board’s decision regarding the special exception relief requested. Under §400, up to 40 feet of height 3 stories and are permitted in the R-1 Zone District. The house is less than 40 feet and is 3 stories. Under the story definition, “[t]he number of stories shall be counted at the point from which the height of the building is measured” and building height is measured from the front of the building. 11 DCMR §199.1. At the front of the building, the ceiling of the partially underground level is a less than four feet above grade and thus a cellar for purposes of determining the number of stories under §400. The side yard along the southern property line exceeds the 8 feet minimum side yard requirement and thus is also permitted as a matter of right. In this instance, where the height, number of stories, and southern side yard are permitted as a matter of right, contentions of substantial adverse effect due to the height of the structure, number of stories, or southern side yard are not only unfounded but also are not pertinent to the Board’s decision.

Furthermore, the concerns raised by the opposition are unsubstantiated or irrelevant to the requested special exception relief. The “mass of the subject addition” is permitted as a matter-of-right. In fact, as described above, the Applicant could demolish the existing house and build a new structure with a

much larger mass as matter of right. The objections raised due to “aesthetic and economic effects resulting from the design” of the project are unsubstantiated and untrue. In fact, while not in an historic district, the Applicant has carefully designed the project to reuse the existing structure, respect its historic features, and compliment the other houses nearby. This approach was chosen in lieu of complete demolition and new construction in a more modern architectural style. Moreover, the neighbor to the south, who demands that “development must take place within the framework of the zoning regulations and not in disregard thereof” and objects outright to all zoning relief, ignores the clear standard by which special exception is to be approved by the Board.

For these reasons, the addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property.

## **I. COMMUNITY OUTREACH**

Following the submission the Initial Application, the Applicant has done considerable community outreach. The Applicant presented to the ANC 3C Planning & Zoning Committee and the full ANC 3C. The focus of the meeting and the ANC’s opposition was based on the timing of the request (post start of construction) and not the elements of the 232 standard. The ANC resolution inappropriately concentrates on the “whereas... construction of the addition is already substantially complete.” Again, our Applicant’s intention was to proceed as a matter of right in compliance with the Zoning Regulations; her reliance on a professional survey that deviated by less than one inch from the wall test performed post-construction was a reasonable, albeit costly, mistake. The relief requested would ameliorate the *de minimis* degree of noncompliance and result in absolutely no visual change from the existing north side yard. The alternative, which is patently unreasonable, would be to require the removal of a substantial portion of the addition to the southern, compliant portion of the home, to make up for the .72 inch deficiency in the northern side yard. This is an absurd result.

Furthermore, the ANC’s attention to the alleged retaining wall or “elevated platform” is misguided. Mr. Paul Cunningham, president of the opposition and neighbor to the south, construction the

+/-10ft height retaining wall on or about 2005. The substantial height of the existing neighboring retaining wall eliminates any adverse impact by the Applicant's project. The front elevation and curb cut have not changed. The driveway and patio on the south are constructed with pervious pavers to improve the existing storm water run-off.

## II. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for special exception relief. We look forward to presenting our case to the Board on March 31, 2015.

Respectfully submitted,

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