

Application No. 18886 for Niloufar Hoorazor, pursuant to 11 DCMR §3104.1 for a special exception under §223, for lot occupancy (§403.2) and side yard (§405.8) to allow the Applicant to construct a two-story addition¹ onto an existing single family dwelling in the R-1-B District at premises 2709 36th Street, N.W. (Lot 811, Square 1938).

HEARING DATE: March 31, 2015

DECISION DATE: May 5, 2015

DECISION AND ORDER

On September 23, 2014, Niloufar Hoorazor (the "Applicant"), the owner of 2709 36th Street, N.W. (Lot 811, Square 1938), filed a self-certified application with the Board of Zoning Adjustment (the "Board") for a special exception under 11 DCMR §223 to allow an addition to her residence where the addition does not conform to the maximum lot occupancy requirements, or the minimum side yard requirements of the Zoning Regulations. The Board held a public hearing on the application on March 31, 2014 and voted to approve the special exception on May 5, 2015.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2.

Notice of Public Hearing. Pursuant to 11 DCMR §3113.1, notice of the hearing was sent to the Applicant, all individuals and entities owning property within 200 feet of the Property, Advisory Neighborhood Commission ("ANC") 3C, and the Office of Planning ("OP"). The Applicant posted placards at the subject property regarding the application and public hearing, and timely submitted an affidavit to the Board to this effect.

Applicant's Case. The Applicant was represented by Meridith H. Moldenhauer Esq., of Griffin, Murphy, Moldenhauer & Wiggins, LLP. The Applicant, Niloufar Hoorazor, testified on her own behalf.

Office of Planning (OP) Report. OP reviewed the special exception application and by a report dated, March 24, 2015, recommended approval of the special exception relief for lot occupancy and side yards. See OP Report at Exhibit 45. Among other things, OP concluded that the proposed addition should not unduly block the light and air available to the neighboring properties. Additionally, Maxine Brown-Roberts, the OP representative who prepared the report, testified at the public hearing in support of the application.

DDOT Report. By memorandum dated December 10, 2014, DDOT indicated that "DDOT has no objection to the approval of the requested special exception." See DDOT Report at Exhibit 37.

¹As explained in further detail below, a wall check error resulted in the Applicant needing special exception relief for a completed addition.

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ANC Report. The Property is located within the area served by ANC 3C, which is automatically a party to this application. ANC 3C filed a letter and resolution, dated December 15, 2014, indicating that ANC 3C, at a scheduled and public meeting on December 15, 2014, which was properly advertised and where a quorum was present, voted 5-0, with one abstention, recommending denial of the application. *See*, ANC Report at Exhibit 38. ANC 3C08 Commissioner, Catherine May, was present at the Hearing, in opposition to the Applicant's request. The primary objection to the application stems from the retroactive nature of the relief requested and less evidence or statements regarding the special exception standard.

Party in Opposition. The Board received a request for party status from the Massachusetts Avenue Heights Citizens Association (MAHCA). *See*, Request for Party Status at Exhibit 40. The request for party status was granted. Paul Cunningham, president of MAHCA, and Malia Brink, zoning committee chair for MAHCA, spoke on behalf of the organization. MAHCA opposed the application at the public hearing, asserting, among other things, that the addition would unduly affect the light and air, as well as the privacy, of neighboring properties.

Persons in Opposition. Paul Cunningham also testified as a person in opposition citing the addition's impact to light, air, and privacy on his property. Francis Glowacki also testified in opposition to the application, asserting that the addition invaded the addition his privacy. Letters of opposition were submitted from Gail McKee and John Wood Bolton.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The Property is located at 2709 36th Street NW and is located in Northwest Washington D.C.
2. The property contains approximately 6,450 square feet of lot area.
3. The property was built around 1917. It is a colonial style single-family brick dwelling.
4. Square 1938 is bounded by Fulton Street to the north, 35th Place to the east, Edmunds Street to the south, and 36th Street to the west.
5. Square 1938 consist of large single-family homes from the same period and a few religious institutions.
6. The Property is located within the R-1-B District.
7. The R-1 District "is designed to protect quieter residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes." 11 DCMR §200.1. R-1-B provides for higher density than R-1-A. *See*, 11 DCMR §200.3.
8. The Property is not located within any historic district, and the existing building on the Property is not listed on the D.C. Inventory of Historic Sites.

The Applicant's Project

9. The Applicant built an addition to the east and southern side of her dwelling.
10. Numerous building permits were issued relying on the September 9, 2013 survey of the Property.
11. The Applicant constructed the addition pursuant to the issued permits.
12. May 24, 2013: Demolition permit issued for interior demolition of non-load bearing walls.
13. May 30, 2013: Building permit issued for replacing existing concrete slabs.
14. June 6, 2013: Building permit issued for interior renovations.
15. July 22, 2013: Building permit issued for replacing existing privacy wood fence.
16. September 11, 2013: Building permit issued for new addition and interior renovations, including mechanical, electrical and plumbing systems.
17. October 25, 2013: Building permit issued for removal of load bearing walls.
18. The construction increased the building envelop from approximately 2,451 square feet to approximately 3,509 square feet.
19. Construction pursuant to building permits increased the grade on the south side yard by no more than three feet and created a wall abutting the southern neighbor's existing retaining wall.
20. The September 9, 2013 survey indicated that the northern side yard was 5 feet wide and complied with §405.8, upon which the permit plans were based.
21. A wall check was performed by DCRA in the normal course of construction and indicated that the northern side yard is noncompliant.
22. The northern side yard is 4.94 feet, 0.06 feet short of the required 5 feet.
23. Because the nonconforming side yard must be included in the lot occupancy calculation the nonconforming side yard increased lot occupancy from 39% to 44%.
24. The majority of the addition is on the eastern and southern sides of the Property; not the northern, noncompliant side, which gives rise to the relief requested.

The Zoning Relief Requested

Special Exceptions (§223)

25. Section 223 provides relief based on satisfying specific criteria under which additional structures to single-family dwellings may be permitted where lot occupancy does not exceed 50% in an R-1 District.
26. Section 223.1 provides that 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 §§223.3-223.5.

Lot Occupancy (§403)

27. Under §403.1, the permitted lot occupancy for a single-family home in the R-1 Zone District is 40%.
28. Lot occupancy is the portion of a lot which is covered with buildings or structures, including "building area".
29. For the purposes of calculating lot occupancy, "building area" includes side yards that are less than 5 feet.
30. The lot area at the Property is 6,450 square feet.
31. The structure, with the addition, has a footprint of approximately 2,541 square feet and physically occupies 40% of the lot on the first floor.
32. The initial survey of the property indicated that the side yard was just over 5 feet and not included in the lot occupancy calculation.
33. A wall test conducted after a majority of the addition was constructed showed that the side yard was 4.94 feet and thus required to be included in the lot occupancy calculation.
34. The nonconforming portion of the side yard is 277 square feet.
35. The inclusion of the side yard in the lot occupancy calculation increased the lot occupancy from 39% to 44%.
36. The second floor does not need a special exception.

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- 37. The second floor has a lot occupancy of only 27%.
- 38. The third floor does not need a special exception.
- 39. The third floor has a lot occupancy of approximately 16%.

Side Yard (§405)

- 40. Pursuant to §405, the side yard for a single-family home in the R-1 District should be at least 8 feet.
- 41. The existing side yard at the Property is 4.94 feet.
- 42. The existing side yard is a nonconforming side yard.
- 43. An existing nonconforming side yard may be extended so long as the side yard is 5 feet or greater.
- 44. The existing side yard is 0.06 feet under the minimum 5 feet required to permit an extension of a nonconforming side yard.

The Impact of the Addition

- 45. The Board credits and adopts OP's findings that the addition does not significantly decrease the amount of light and air received at neighboring properties. (Exhibit 45)
- 46. The light and air available to the McKee property is not unduly affected by the addition. The addition was constructed primarily on the eastern and southern portion of the Applicant's property, away from the McKee property. The shadow studies show that the pre-existing house already cast a shadow, and the addition does not unduly impact the McKee property.
- 47. The light and air available to the Cunningham property, the property to the south, does not unduly affected by the addition. The side yard between the building and the Cunningham property is between 8.13 feet and 11.09 feet; this exceeds the 8-foot minimum requirement. Additionally, the second floor and third floor are set back even more than 8.13 feet, as such, it is unlikely to unduly block the light and air to their residence.
- 48. The light and air available to the property owners to the east and across the rear yard alley are not unduly affected by the addition. The addition is over 60 feet away from the properties located on the lots across the alley in the rear.

49. The privacy of adjacent homes is not unduly compromised by the project. The views onto the adjacent properties are minimal and will be reduced by vegetation proposed by the Applicant along the property line. The windows on the McKee property are not aligned with those on the subject property. The Cunningham property has a wall exceeding 13 feet with vegetation on top, thereby preserving their privacy. The privacy of use and enjoyment of all neighboring properties will not be unduly affected.
50. The Board credits and adopts OP's finding that, as viewed from the street, alley, or public way, the addition does not visually intrude upon the character, scale or pattern of homes along the street frontage.

CONCLUSIONS OF LAW

Standard of Review

The Board is authorized under §8 of the Zoning Act of 1938, approved June 20, 1939 (52 Stat. 797,799, as amended; D.C. Official Code §6-641.07(g)(2)(2001), to grant special exceptions as provided in the Zoning Regulations. The Applicant is seeking special exception relief, under §223, from the lot occupancy requirements of §403, and special exception relief for the existing noncomplying side yard not satisfying §405.8.

The Board can grant a special exception where, in its judgment, two general tests are met, and the special conditions for the particular exception are granted. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps" (11 DCMR §3104.1) Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map." (11 DCMR §3104.1) As to the first test, the addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood. The second test will be discussed in the section below entitled "Special Exception Relief".

Special Exception Relief

Under §223.1 of the Zoning Regulations, the Board may approve an addition to a one-family dwelling that does not comply with all of the requirements for lot occupancy and side yard as long as the addition does not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent property. In particular, the Board must consider the following:

- (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 or other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; and

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- (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 such drawing sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways. §223.2

Additionally, the lot occupancy of all new and existing structures on the lot shall not exceed fifty percent (50%) in the R-1. §223.3.

In this case, the Applicant requests relief from §403 of the Zoning Regulations, which limits the lot occupancy of a single-family dwelling in a R-1 District to 40%, and from §405.8, which states that an addition to a building existing before May 12, 1958, with a side yard less than 8 feet can be made only if the side yard is at least 5 feet wide. The Applicant testified that an error concerning the width of the side yard resulted with her needing a special exception. The Applicant, relying on a recent survey of her property, applied for building permits believing that her side yard was at least 5 feet wide. A wall check completed after commencement of construction found that her side yard was 4.94 feet; .06 inches short of 5 feet. The Applicant has submitted evidence to the record demonstrating that the addition does not have a substantially adverse affect on the use and enjoyment of adjacent property. Specifically, the Applicant has provided a shadow study demonstrating that the addition has not substantially decreased the amount of direct sunlight received by neighboring properties. Additionally, addressing the neighbor's concerns regarding privacy, the Applicant has provided a landscape design plan, demonstrating how mature trees will provide a buffer between the Applicant's property and neighboring properties. As evidence of the air space between the Applicant's home and that of her neighbors, the Applicant has provide numerous photographs and testified to the distance depicted in the images.

The Board, for the reasons discussed below, finds that the Applicant's addition satisfies the requirements of §223 as her addition does not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent property, and the lot occupancy including the addition is less than 50%.

1) §223.2(a) The light and air available to neighboring properties

The Board concludes that the Applicant's addition does not unduly affect the light and air available to the neighboring properties. The Board has reviewed images of the property and finds that there is substantial air space between the Applicant's property and that of neighboring properties. The Board notes that the nonconforming side yard is an existing condition on the northern side of the home and that the majority of the addition was along the eastern and southern portion of the home. Lastly, upon review of the shadow study presented by the Applicant and the Opposing Persons, the Board concludes that no significant change in the amount of light available to neighbors has occurred as a result of the addition.

2) §223.2(b) The privacy of use and enjoyment of neighboring properties

The Board concludes that the Applicant's addition does not have a substantial impact on the privacy of use and enjoyment of neighboring properties. The Board upon reviewing the plans

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and pictures of the addition finds that the Applicant's property is adequately separated by walls and foliage from neighboring properties. The Board concludes that the addition of mature trees to the rear of the property will increase the privacy already enjoyed by the neighbors while creating another buffer between the Applicant's property and neighboring properties. The Board also finds that the addition of a mature tree to the north of the property sufficiently addresses the privacy concern of the neighbor to the north, Ms. McKee. The Board finds that the new addition, patio, grade and tree boxes on the southern side do not have a substantial impact on the privacy of use and enjoyment of Mr. Cunningham's property.

- 3) §223.2(c) The addition, together with the original building, as viewed from the street, alley, and or other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage

The Board concludes that the addition does not visually intrude upon the character and pattern of houses along 36th Street N.W. or the neighborhood. The Board finds that the addition is not readily visible from 36th Street N.W. The Board also reiterates its finding that the landscaping provided by the Applicant will limit the view of the property from the rear alley.

- 4) §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 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 Board has reviewed the following documents submitted by the Applicant:

1. Plat Map
2. Baist Atlas Map;
3. Zoning Map;
4. Wall Test Report;
5. Wall Test Survey;
6. Architectural Plans and Photographs; and
7. Applicant's Photos and Measurements
8. Shadow Study
9. Landscaping Proposal

Board has also reviewed photos and a shadow study submitted by the Applicant and persons in opposition. Upon reviewing all the items submitted, the Board concludes that the Applicant has sufficiently represented the relationship between the addition and neighboring properties, along with the impact of the addition on views from public ways.

Lastly, the Board has reviewed the plans and notes that the lot occupancy with the addition is 44%, well within the 50% of lot occupancy allowed under §223 relief. Furthermore, the Board notes that the actual footprint of the building with the addition is 40%.

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CONCLUSION

The Board is required under §13 of the Advisory Neighborhood Commission Act of 1975, 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 reasons stated in this Decision and Order, the Board finds the ANC’s advice to be unpersuasive.

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.

Based upon the record before the Board, and having given great weight to the ANC, OP, and DDOT reports filed in this case, the Board concludes that the Applicant has met the burden of proof for variance relief pursuant to 11 DCMR §3103.2 from the zoning regulations regarding requirements regarding special exception relief under §223, for lot occupancy (§403.2) and side yard (§405.8), to allow the Applicant to construct a two-story addition to an existing single family dwelling in the R-1-B District at premises 2709 36th Street, N.W. (Lot 811, Square 1938).

Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED**

VOTE: 4-0-1 (Marnique Y. Heath, Lloyd L. Jordan, Jeffrey L. Hinkle, and Anthony Hood to APPROVE; one Board position vacant, not voting)

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

Each concurring Board member has approved the issuance of this order.

ATTESTED BY: _____

SARA BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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 _____, 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 ANC's and SMD's 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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ATTESTED BY: _____

SARA BARDIN
DIRECTOR, OFFICE OF ZONING