

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18938 of Gina Eppolito and Frances Slakey, pursuant to 11 DCMR § 3104.1, for a special exception under § 223 to allow a two story rear addition with cellar, not meeting the lot occupancy requirements of § 403, the open court requirements of § 406, and the nonconforming structure requirements of § 2001.3, at a one-family dwelling in the CAP/R-4 District at premises 325 5th Street, S.E. (Square 820, Lot 17).

HEARING DATE: April 21, 2015¹
DECISION DATE: April 21, 2015

DECISION AND ORDER

Gina Eppolito and Frances Slakey, the property owners of the subject premises (the “Owner” or the “Applicant”), filed an application with the Board of Zoning Adjustment (the “Board”) on December 9, 2014, for a special exception under § 223 of the Zoning Regulations to construct a two story rear addition to their residence, wherein the completed project will not conform to the requirements of §§ 403, 406, and 2001.3 of the Zoning Regulations. For the reasons explained below, the Board voted to approve the revised application, subject to specified conditions.

PRELIMINARY MATTERS

The Application. The application was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 4), and the Applicant was represented by her architect, Jennifer Fowler. (Exhibit 11.) In addition to the required architectural plans, elevations, site plan, and photographs, the Applicant submitted a sun study to assess the impact of the proposed addition on the light and air at the adjacent 323 5th Street property. (Exhibit 42.) The sun study compares light received with the existing footprint of the dwelling (as if it were enclosed) and the proposed dwelling with the addition. (Transcript of Hearing of April 21, 2015 (Tr.), p. 54-56.)

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent to the Applicant, all owners of property within 200 feet of the subject site, the Advisory

¹ The matter originally appeared on the Expedited Review Calendar of February 3, 2015. However, upon learning of opposition to the application, the Applicant requested that the matter be removed from the Expedited Calendar and continued to another date. As such, the Board continued the matter for a public hearing on April 21, 2015. (11 DCMR § 3113.)

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Neighborhood Commission (“ANC”) 6B, and the District of Columbia Office of Planning (“OP”). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibit 40.)

ANC Report. In its report dated April 20, 2015, ANC 6B indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to support the special exception application. (Exhibit 49.)

Requests for Party Status. ANC 6B was automatically a party to this proceeding. The Board received and granted requests for party status in opposition from Robert Shelton (Exhibit 26) and Mark (Clarence) Flynn (Exhibit 27), both of whom own and reside at 323 5th Street, S.E., the adjacent row dwelling to the north. They each assert, among other things, that the proposed addition will limit access to light and air, and will affect the general ambiance at the rear of their home. The two requests for party status were consolidated by the Board, and Mr. Shelton and Mr. Flynn will hereinafter be referred to collectively as “the Opposition Party” or the “Opposition”.

The Opposition submitted filings in support of its position (Exhibit 46), and was represented during the proceedings by Claude Bailey, Esq. (Exhibit 48.) The Opposition Party claims in those filings, among other things, that the scale and massing of the proposed addition is not compatible with the block, and will result in a 22-foot long “mass of masonry” along their property line. (Exhibit 46.)

Other Persons in Support/Opposition. No persons appeared at the hearing to testify in support of the application, or in opposition to the application. However, the Board received letters in support of the application from several nearby neighbors, including the other abutting property owner. (Exhibits 33-39.)

OP Report. OP prepared a written report supporting the application. (Exhibit 45.) OP noted that, although the proposed addition would result in additional shadows being cast on the Opposition’s rear yard, the impact would be of limited duration on a daily and an annual basis, and that the proposed addition would not unduly affect light and air to any neighboring properties. (Exhibit 45.) The report concluded that the Applicant’s shadow studies demonstrate that, while some additional shadow would likely be cast on the rear of yard of the lot to the north, the impact would be of limited duration on both a daily and annual basis, and should not unduly impact the light and air available to the north-adjacent property. Further, the proposed addition could lessen an intrusion on privacy at the first floor level, as an open porch would be replaced by a wall that would screen reciprocal views between the Applicant’s and the neighbor’s property. Steve Cochran, the OP representative who prepared the report, also testified at the hearing. Mr. Cochran suggested at the hearing that the Applicant might install a “green screen wall” on the north side of the addition, so as to mitigate the impact of the addition on their neighbor to the north. (Tr., April 21, 2015, p. 28.)

Architect of the Capitol (“AOC”) Report. Pursuant to § 1202 of the Zoning Regulations, the AOC reviewed the application to determine that the proposed relief would not be inconsistent with the intent of the Capitol Hill Overlay (CAP). The AOC conducted its review and determined that it had no objection to the application. (Exhibit 29.)

District of Columbia Department of Transportation (“DDOT”) Report. DDOT submitted a report stating that it had no objection to the application. (Exhibit 28.)

District Department of Housing and Community Development (“DHCD”) Report. DHCD submitted a report recommending approval of the application. (Exhibit 32.)

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 325 5th Street, S.E. in the R-4 District and the Capitol Hill Overlay (CAP).
2. The neighborhood consists mostly of row dwellings, with some apartment houses.
3. The lot is improved with a two-story one-family row dwelling with a two-story rear open porch addition.
4. The row dwelling to the south, located at 331 5th Street, S.E., is approximately two feet deeper than the Applicant’s row dwelling. (Exhibit 45, OP Report, p. 3 Drawing.)
5. The row dwelling to the north, located at 323 5th Street, S.E. (the Opposition property), is approximately 12 feet shallower than the Applicant’s row dwelling. (Exhibit 45, OP Report, p. 3 Drawing.)

The Addition

6. The Applicant proposes to demolish the existing two-story rear open porch addition and build an enclosed first floor addition and, above that, a new covered porch.
7. The Applicant proffered that it would eliminate the planned windows on the north wall of the addition.
8. Following the public hearing, the Applicant revised its plans to change the material of the addition from brick to siding. The purpose of this revision was to differentiate the addition from the original brick wall. (Exhibit 54.)
9. Following the public hearing, the Applicant revised its plans to change the second floor deck guardrail from a solid brick wall to an open guardrail. The purpose of this revision was to

alleviate concerns of the Opposition Party regarding the height of the wall. (Exhibit 54.)

10. Following the public hearing, the Applicant revised its plans to add a wall trellis on the face of the addition of the north wall. The trellis will allow plants to be grown on the surface of the wall in order to soften its appearance. (Exhibit 54.)

Zoning Relief

11. Section 403 of the Zoning Regulations requires that each structure in an R-4 zone have maximum lot occupancy of 60%. The proposed addition will increase the existing lot occupancy from 60.8% to 63.6%. Therefore, the proposal requires relief from the requirements of § 403.
12. Section 406 of the Zoning Regulations requires that an open court in an R-4 zone have a minimum width of six feet. The existing open court width is only 4½ feet and the proposed addition will result in an open court width that varies between 4½ feet and five feet. Therefore, the proposal requires relief from the requirements of § 406.
13. Subsection 2001.3 of the Zoning Regulations prohibits additions that extend or increase existing nonconformities. Both the existing lot occupancy of 60.8% and the existing open court width of 4½ feet are nonconforming. Therefore, the proposal requires relief from the requirement of § 2001.3.

The Impact of the Addition

14. The architectural plans and elevations, photographs, and site plan filed with the application show the proposed addition and its surroundings. (Exhibits 6, 7, and 44.)
15. The proposed addition will not be visible from the street. Nor is there an alley from which the proposed addition will be visible.
16. The Applicant filed revised site plans (Exhibit 43) and revised architectural plans (Exhibit 53) to correct certain measurements in the original drawings that understated the length of the planned addition relative to the adjacent property at 523 5th Street. The proposed addition will extend the length of the dwelling 21 feet 11 inches beyond the rear of the adjacent property at 523 5th Street, owned by the Opposition Party.
17. Because an open porch at the first floor level of the addition will be replaced by a wall that will screen reciprocal views, there will likely be less intrusion on the privacy of adjacent property owners as a result of the proposed addition.
18. As conditioned in this Order, the elimination of windows on the north side of the proposed addition will mitigate any impacts to the privacy of the Opposition Party.

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19. As conditioned in this Order, the trellis wall (constructed of siding instead of masonry) on the north side of the addition, will soften the appearance as viewed by the Opposition Party.
20. The Applicant's sun study demonstrated that there would only be slight increases to the shadow cast on the rear of the property to the north that would be of limited duration on both a daily and annual basis. (Exhibit 45.)

CONCLUSIONS OF LAW

The Applicant is seeking a special exception pursuant to 11 DCMR §§ 223 and 3104.1 to construct an addition to a one-family dwelling in a CAP/R-4 District, where the proposal will not comply with the lot occupancy requirements, the open court requirements, and the nonconforming structure requirements. (§§ 403, 406 and 2001.3.)

As stated in § 3104.1 of the Zoning Regulations (Title 11 DCMR), the Board "is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) ... to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions 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 Maps, subject in each case to the special conditions specified in this title." In this case, the "special conditions" are those specified in §§ 223.2 through 223.5.

As noted by the Court of Appeals:

In evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought. "The applicant has the burden of showing that the proposal complies with the regulation; but once that showing has been made, the Board ordinarily must grant the application." *National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n. 1 (D.C.2000) (quoting *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C.1995)).

Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment, 802 A.2d 359, 363 (D.C. 2002).

In this case, the Board concludes that the Applicant has satisfied the two general tests stated in § 3104.1 and the specific conditions contained in § 223.

As to the general test, the Board concludes that the requested special exception will "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." (11 DCMR § 3104.1.) The proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood. With respect to whether the special exception will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, the Board concludes that this standard is satisfied

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if the specific conditions of § 223 are met. These will be discussed in the section below entitled “The ‘special conditions’ for an addition under § 223.1”.

The “special conditions” for an addition under § 223.1

Under § 223.1 of the Zoning Regulations, an addition to a one-family dwelling shall be permitted even though it does not comply with applicable area requirements if approved by the Board as a special exception, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

223.2(a). The light and air available to neighboring properties shall not be unduly affected. The Applicant’s sun study (Ex. 42) conclusively demonstrated that the proposed addition would only have an intermittent and negligible impact on the light and air of adjacent properties. (Finding of Fact 20.) The Office of Planning concurred with that analysis. (Exhibit 45.)

223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. With the elimination of the proposed windows, the privacy of use and enjoyment of neighboring properties will not be significantly affected. As conditioned by this Order, there will be no windows from which to view the abutting property owners to the north. (Finding of Fact 18.) In fact, the demolition of the “open porch” at the ground level and its replacement with an enclosed addition may increase the amount of privacy for neighbors, at least at the ground level. (Finding of Fact 17.) Furthermore, the installation of the trellis wall, also a condition of this Order, will mitigate the visual impact of a solid wall. (Finding of Fact 19.)

223.2(c). The addition, 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. As OP also noted, the addition will not be viewed from the street and the dwelling has no alley access. (Finding of Fact 15).

223.3. The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts. The subject property is in the R-4 zone (Finding of Fact 1). With the proposed addition, the lot occupancy will be less than 70%. (Finding of Fact 11.) Therefore, this condition will be met.

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. In this instance, the ANC 6B’s report stated its support for the Application, without identifying any issues or concerns. Nevertheless, the Board interprets the ANC’s vote of support as its

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recommendation that the Application be granted. For the reasons stated above, the Board finds that advice to be persuasive.

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 reasons discussed in this Decision and Order, the Board finds OP’s advice also to be persuasive.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the issuance of a building permit authorizing the construction of a two story rear addition with cellar.

Therefore, for the reasons stated above, the application for a special exception is **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7, AS AMENDED BY REVISED PLANS AS SHOWN ON EXHIBIT 53, AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Applicant, in consultation with the party in opposition, shall provide suitable screening on the first floor that is acceptable to the Office of Planning.
2. There will be no windows on the north wall of the addition.

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

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

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

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 15, 2015

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

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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.