

BOARD OF ZONING ADJUSTMENT
SPECIAL EXCEPTION APPLICATION - § 223

APPLICANT'S PREHEARING STATEMENT
APPLICATION NO. 18960

Matthew and Mark Medvene (Applicant)
2807 Sherman Avenue, NW; Square 2886, Lot 337
Expedited Review Pursuant to 11 DCMR § 3118

I. Introduction.

Mark Medvene and his son Matthew Medvene (the “Applicant”) are the owners of the property and improvements located at 2807 Sherman Avenue, NW, Square 2886, Lot 337 (the “Subject Property”). The previously existing improvements consisted of a two-story row structure flat (the “Building”). The Applicant has partially constructed an addition to the Building, adding a third story. The Property, however, has a current lot occupancy of seventy percent (70%), ten percent (10%) over the maximum permitted lot occupancy, and the addition therefore requires special exception relief pursuant to §223. Specifically, the proposed work requires §223 relief from the lot occupancy requirements of § 403, the side yard requirements under §405, the open court width requirements of §406, and the addition to nonconforming buildings over lot occupancy requirement of §2001.3(a). Filed in conjunction with this Prehearing Statement is a self-certification Form 135. The zoning memorandum filed originally was not accurate, so the Applicant has opted to self-certify the required relief. Also being filed today are slightly revised architectural plans, is a site plan showing the change in footprint between the existing and proposed bay area structure, and some additional photos showing the bay structure as built so far, as well as more photos showing the relationship between 2807 and 2809 Sherman.

The Applicant requested expedited review of this request pursuant to 11 DCMR § 3118; however, the owner of the property adjacent to the north at 2809 Sherman Avenue, has filed a party status opposition request.

II. Description of the Property and the Proposed Addition.

The Property is located at 2807 Sherman Avenue, NW (Square 2886, Lot 337) in the R-4 zone district. The Building is a row structure (flat) in a group of three pairs of semi-detached and

row houses on this block of Sherman Street, located between Girard Street and Gresham Place. The proposed addition consists of an addition of a third floor, with the same footprint as currently exists, but for a small difference in the area of the existing bay area on the north side of the Property. The Property's current -- and proposed -- lot occupancy is technically seventy percent (70%). The calculation of that lot occupancy includes the area of the two open courts on the north side of the Property, which is counted in the Building Area calculation because the courts are less than five (5) feet in width. In the area of the bay on the north side, the addition will only add one story to the bay area, with a stairway to the roof above that.

The building to the north of the Property, at 2809 Sherman Avenue, also underwent an addition in the last few years to add a third story, a partial fourth story, and a large pergola structure. The pergola and fourth story both appear to safely exceed the forty (40) foot height limit for the R-4 zone. The Applicant researched the addition at 2809 Sherman as part of his investigation into what type of addition he would be able to construct at 2807, but was not able to find permits or Board approvals for the work at 2809 Sherman, despite the fact that that property is at or near 100% lot occupancy. During the permit process, the Applicant's contractor proceeded with construction while the Applicant was led to believe permits were obtained. When the Applicant discovered that he did not have a permit, he hired counsel and removed portions of the construction exceeding the allowable height. Work is stopped now, and currently the proposed addition is constructed essentially as proposed in this Application.

The top of the roof of the Building, with the proposed addition, is a few feet lower than the roof of the building at 2809 Sherman to the north. The extension of the bay area to the second story of the structure is on the north side of the Property, adjacent to 2809 Sherman. This bay area only has windows facing directly forward and backward, and not onto the neighboring property to the north. The building to the south of the Subject Property has no windows being affected by the proposed addition, and will not otherwise be seen from the inside of that structure. This owner has submitted a letter in support of the Application.

III. 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).

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 addition is within the maximum permitted height, and does not propose expanding the existing lot occupancy but for a *de minimus* amount on the side bay area (an area which is already counted in lot occupancy, so there is no increase in lot occupancy). The Building, with the proposed addition, is still lower in height than the adjacent property to the north at 2809 Sherman. It will not affect the building to the south. The addition is therefore 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 neighbor will remove an existing legally conforming rear deck on the Property, in order to reach the 70% lot occupancy limit. The Property to the north, at 2809 Sherman, is at or near 100% lot occupancy.

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."*

On the north side, the Applicant is proposing to extend his existing bay window up through the second floor, with an open stairwell above that to the roof. The neighbor at 2809 Sherman has not articulated how this bay expansion materially affects its existing light and air or privacy. The windows on the bay face east and west; not north in the direction of 2809 Sherman. The construction of a third floor, to a height of forty (40) feet, is permitted as a matter-of-right and relief is not requested for height (it's not available under §223). If the open space on the north side of the Building were not counted in the building area (i.e., if it was five feet wide or more), only open court relief would be necessary.

The neighbor's building to the north previously had an addition constructed, although it appears to have a fourth story and a height over forty (40) feet. It is a bit disingenuous for that owner to do have such an addition (permits for which we could not locate) for a property that is already at or near 100% lot occupancy, and then to turn around and claim that Mr. Medvene's addition is out of character with the neighborhood, in an attempt to deny the Applicant an addition that is more modest than the one previously constructed at 2809.¹

The neighbor also cites fear of fire, which is ironic since the Applicant has converted the Building from the fire trap that it was prior to his ownership. In contrast to the previously existing condition of the Building, the renovated Building and Addition will be required to fully comply with all D.C. Building Codes regarding fire safety and all other construction regulations. The restoration of the Building *removes* the fire hazard that the neighbor to the north rightly feared prior to the Applicant's ownership of 2807.

¹ It's more disappointing to the Applicant because this neighbor was initially supportive of the project, for the reason that the previously existing house at 2807 Sherman was a vacated, blighted structure for many years. The Applicant's restoration has greatly improved the appearance and safety of the Subject Property, which has in turn improved property values of the adjacent properties.

At any rate, other than the third-story addition in the existing footprint, this proposal amounts to adding one story to the existing bay area, which does not substantially impact that neighbor's light and air, privacy, or safety. The third-story addition could be built as a matter-of-right by just moving the north side of the Building back to a five-foot width. So the difference between a matter-of-right addition, and the proposed addition, is a mere two feet of side yard. The difference in light and air to any windows at 2809 Sherman due to that two feet of width is negligible, and certainly not in the nature of a substantially adverse affect.

For these reasons, the proposed addition satisfies the special exception requirements as provided above.

Section 223.3 *"The lot occupancy of all new and existing structures on the lot shall not exceed seventy percent (70%) in the R-3 District..."*

The existing and proposed lot occupancy is 70%.

IV. 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,



Martin P. Sullivan, Esq.