

BOARD OF ZONING ADJUSTMENT
SPECIAL EXCEPTION APPLICATION - § 223

PREHEARING STATEMENT

Nam Dinh Pham and Bonnie Pierce (“Applicant”)
2903 44th Street, NW; Square 1620, Lot 85
§223 Special Exception Relief from Rear Yard Setback Requirement

I. Introduction.

Nam Dinh Pham and his wife, Bonnie Pierce (collectively, the “Applicant”) are the owners and residents of the property and improvements located at 2903 44th Street, NW, Square 1620, Lot 85 (the “Subject Property”). The Subject Property is located at the northeast corner of Garfield and 44th Street, NW, in the WH/R-1-A zone district. In addition to the R-1-A zoning requirements, the Wesley Heights Overlay provides additional restrictions related to lot occupancy and front yard setback. The Applicant is requesting § 223 Special Exception relief from the rear yard set back requirements of § 404.1, to close in an existing deck on top of a garage. (See photos attached as Exhibit A.)

II. Description of the Property and the Proposed Addition.

The Subject Property is improved with a one-family dwelling constructed in or around 1927 (the “House”). A previous owner of the Subject Property was granted variance relief in 1974 to construct an addition which currently occupies a portion of the required rear yard setback. In *this* Application, the Applicant is proposing to close in a 8’ x 19’ existing deck on top of the structure approved in 1974, and to add approximately two (2) feet to the height of that existing structure (the “Addition”).

Neither the proposed Addition, nor the portion of the House located in the rear yard, includes any windows which face east to the adjacent property at 4343 Garfield Street, NW. In fact, the existing open roof deck will be closed off from that adjacent property, and an existing window that currently faces directly east will be eliminated. The Addition is being constructed adjacent to the existing conforming portion of the House, in an area where the conforming house is two stories higher than the height of the proposed Addition. The house at 4343 Garfield Street is set well forward (south) on its lot, in front of the House and all other houses on this block of

Garfield Street. So the house at 4343 Garfield is located mostly to the southeast of the Applicant's House. (See map attached as Exhibit B.)

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 Map and will not tend to affect adversely, the use of neighboring property...". (11 DCMR § 3104.1.)

The proposed Addition consists of closing in a 19' x 8' deck, which is currently adjacent to the main house and located in the rear yard setback area. The roof of the existing structure will also be raised by two feet. Neither of these proposals has any affect on the neighboring property at 4343 Garfield, other than to improve the condition and appearance of the existing garage addition, and to significantly improve the current privacy situation between the Subject Property and the 4343 Garfield property. The Applicant has had several neighbors express support for this proposal. It is a very small addition which does not increase the footprint on the Subject Property. The Applicant has adjusted their plans in several ways in response to concerns from the neighbor at 4343 Garfield, the adjacent property to the rear. These adjustments were detailed in a letter to ANC 3D, which is included herein as Exhibit C to this Statement. Even without these adjustments, there is nothing in this proposal that would negatively affect the adjacent neighbor's use of his property. Nevertheless, the Applicant made such changes in the hope of satisfying the

adjacent neighbor's concerns. Despite the fact that this neighbor has expressed to the Applicant that there is nothing they can do to win his approval, they intend to follow through on the proposed changes.

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."*

(a) The Addition will not unduly affect the light and air available to the neighboring property to the east, for several reasons. First and foremost, the proposed Addition is very small in size, comprising just the enclosing of an existing deck on top of the garage. The area of the enclosed deck is adjacent to the existing House, which rises two stories above the proposed Addition. Second, the neighboring property is located to the southeast of the Subject Property's House and Addition, which means that the Addition, and in fact the House, could not materially interfere with the direction of the sunlight on the house at 4343 Garfield. The house at 4343 Garfield is set well forward on its property, well beyond the required 35-foot front yard setback. This location, well in front of every other house on the street, provides 4343 Garfield exceptional sunlight exposure, which, as it appears from viewing their relative locations, the proposed

Addition will not impact in any way. Additionally, the proposed Addition is already well screened by three large trees, two of which were planted by the neighbor at 4343 Garfield. The Applicant's certified arborist has opined that the construction of the proposed Addition will not damage these trees (See Arborist Report attached as Exhibit D).

(b) Instead of negatively impacting the neighbor's privacy, the proposed Addition will greatly improve that neighbor's privacy in relation to the Subject Property. Not only will the existing deck be closed in and become part of the interior of the House, but an existing full-sized window which directly faces the neighbor's house will be eliminated. There will be no windows on the east side of the existing or proposed Addition. The only new windows will be those which face Garfield Street; not the neighbor's property.

(c) The Addition, together with the existing House, does not visually intrude upon the character, scale, or pattern of houses on Garfield Street. The Addition is small in nature, and the House and the Addition are set well back from the neighboring house at 4343 Garfield, which extends about 25 feet into the required front yard setback area.

Section 223.3 *"The lot occupancy of all new and existing structures on the lot shall not exceed fifty percent (50%) in the R-1 and R-2 Districts..."*

The proposed lot occupancy, according to the Zoning Administrator's memorandum for this Application, is 22%, well within the 30% maximum permitted lot occupancy in the Wesley Heights Overlay.

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.

Exhibit A

Photographs of the Subject Property, in the area of the proposed Addition, showing:

- 1) The area of the proposed Addition
- 2) The east-facing window being eliminated.
- 3) View of the area of the proposed Addition from Garfield Street in front of 4343 Garfield St.



View from front end of driveway on Garfield Street



View from inside the subject house to 4343 Garfield, through window which will be eliminated

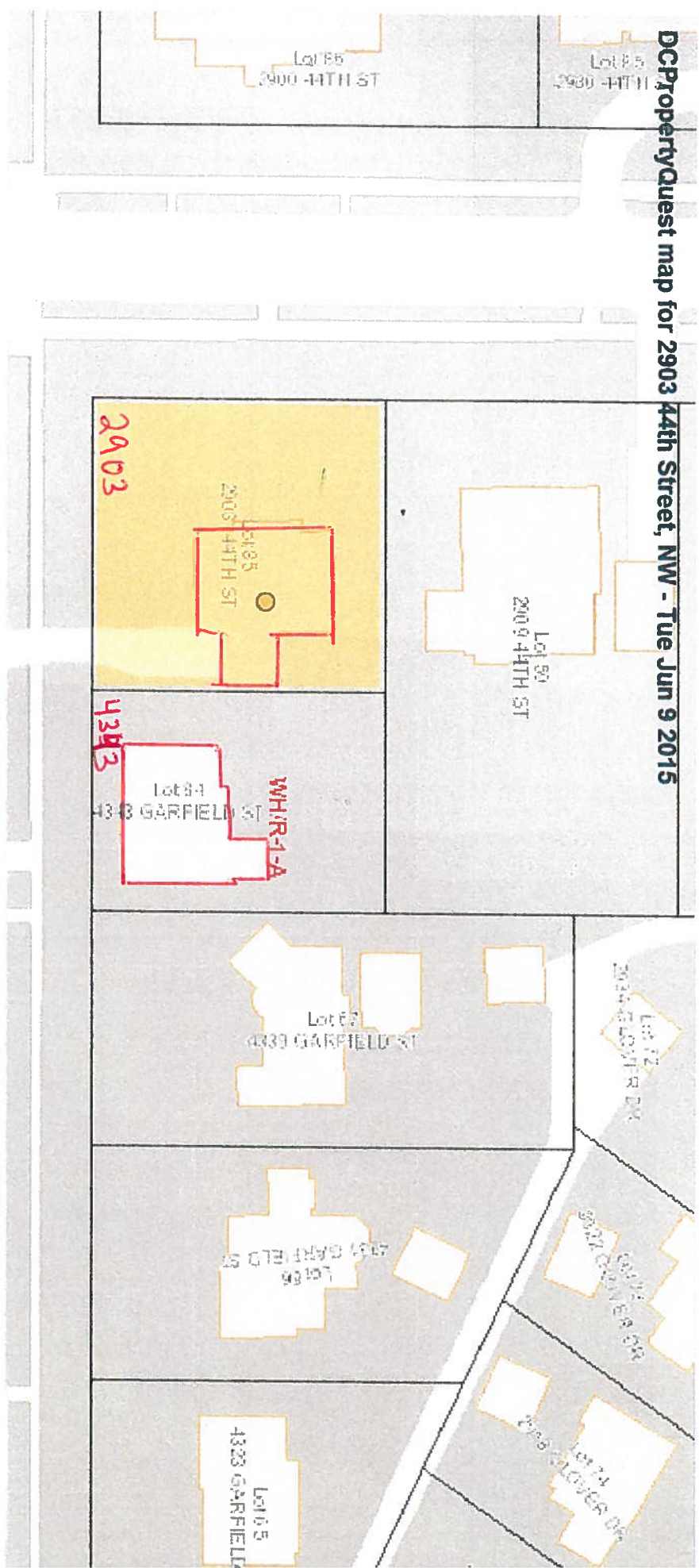


View from Garfield in front of 4343 Garfield

Exhibit B

Map Showing Relative House Footprints

DCPropertyQuest map for 2903 44th Street, NW - Tue Jun 9 2015



S

Exhibit C

Copy of a Letter from the Applicant to the ANC detailing interactions and compromises with the neighbor at 4343 Garfield Street, NW.

Via Electronic Mail

May 27, 2015

Advisory Neighborhood Commission 3d
P.O. Box 40846 Palisades Station
Washington, D.C. 20016

Re: **BZA Case 18970 – Special Exception Relief under §223 to Allow for the Construction of an Addition to a One-Family Detached Dwelling Located at 2903 44th Street, N.W.**

Dear Committee Members:

I. **Introduction.**

In preparation for the meeting on June 3, 2015 to consider our application referenced above, we wanted to share with you the steps we have taken to address the concerns that have been expressed by our neighbor, Mr. Christopher Cahill, who lives adjacent to us at 4343 Garfield Street, N.W., Washington, D.C.

As described in our application, there is currently a room (i.e. our family room) on the floor above our garage which opens up onto a front porch facing the driveway and Garfield Street. We seek permission to enclose this small porch (i.e. 8 feet by 20 feet) and raise the floor and roof approximately 2 to 3 feet in order to make the floor of the family room level with the rest of the house.

II. **Background.**

Prior to purchasing the home, the prior owner had obtained permission to expand the garage to its current configuration. The wall on the east side of the family room and garage sits on the property line and faces Mr. Cahill's home. Mr. Cahill purchased and moved into his home around the same time we had purchased our home in 2011. Mr. Cahill did not like the look of the side of our house and he asked us whether he could design the side of our house so that the appearance was to his satisfaction. As neighbors, we were pleased to allow him to make these improvements since we felt it was the neighborly thing to do. Mr. Cahill proceeded to change the facade of the wall on the garage by adding trim, molding and fake windows to the side of our house. As part of his design and work, Mr. Cahill installed a fence along our property line that caused the then existing water drain – which previously had diverted rainfall down our driveway – to be moved so water would flow into his property.

III. Actions Taken to Address Concerns.

As documented, all of our neighbors have submitted statements of support for our plan to enclose the front porch with the exception of Mr. Cahill. After we filed the above application, Mr. Cahill submitted a letter to the Board of Zoning ("BZA") in March 2015 noting concerns he had with the proposed enclosure, and concluded that: "We do not totally object to the concept of a renovation/addition of this scope but feel that at this time we are lacking enough information on details such as final architectural details, drainage plans, site plans and landscape plans to give our support at this time."

Once informed of his concerns, we met with him in several occasions to provide him with as much information as he desired and to discuss how we could address his concerns. Our representative Alan Kinney then met with Mr. Cahill to follow up on these discussions. As a result of the foregoing, modified drawings were prepared and submitted by Mr. Kinney on March 21, 2015 which addressed the issues raised by Mr. Cahill summarized as follows.

1. *Location of the HVAC units.*

One of the concerns expressed by Mr. Cahill to us was that the HVAC units were going to be located on the roof of the renovated addition, and would either be visible to him and/or would create noise. The revised plans moved the location of the HVAC units so as to eliminate this concern.

2. *Landing in Front.*

The original drawings proposed the construction of a landing in front of the porch, to which Mr. Cahill expressed his objection apparently out of concern that he would have to view us barbecuing and entertaining on the landing. The revised plans removed the landing in deference to Mr. Cahill's objection.

3. *The Wall.*

In his letter, Mr. Cahill expressed concern about what he thought would be a "large blank wall" with "vinyl siding" after the renovation work was performed. This was never our intention, and in the revised drawings we provided more detail regarding the wall and how it would look upon completion. In that regard, please note the conclusion from the Office of Planning in its Recommendations at page 3 stating that: "The style, materials of Hardiplank cement siding, azek trim boards and railing, window-type match windows of the main residence, scale, etc. is in keeping with the main residence and thus is consistent with the established character of the immediate area."

Moreover, the new wall will have the same trim, sidings and appearance that currently exists – which is the design and appearance that Mr. Cahill installed in 2011 on the outside wall of our garage which we allowed him to do. Thus, there should be no reason for Mr. Cahill to object to the addition based upon aesthetics and appearance. Please also note the “large blank wall” described by Mr. Cahill is in fact a very small wall (i.e., 8 feet and 8 feet.)

4. *Water Drainage.*

Mr. Cahill expressed concerned that the new roof trust would have the water flowing onto his property. As noted previously, it was his construction on our property that relocated the drainage pipe to divert the water onto his property when it had previously flowed down our driveway.

In any event, in the revised drawings the roof was redesigned so it has a slight “v” shape with the roof sloping towards our front and back yards, ensuring that the water flows onto our property. Moreover, the redesigned drawings show the installation of a new water pipe that will drain water from our back yard into our front driveway and away from Mr. Cahill’s property.

5. *Light.*

Mr. Cahill expressed concerned that closing in the porch would “impact and block the western sun exposure into [his] yard.” However, if you look closely at the proposed enclosure in comparison to the structure that already exists, it is evident that any decreased exposure is very minimal and would only occur for the short time when the sun lines up at the exact angle. This was confirmed by the Recommendation from the Office of Planning stating that: “The proposed new addition would likely not substantially affect the light and air available to [Mr. Cahill’s property] more so then the existing addition.”

6. *The Trees.*

There are three trees on Mr. Cahill’s property immediately adjacent to our property line. Two of those three trees were planted on the property line by Mr. Cahill in 2011. As a result (you will see from the pictures), the branches from the three trees intrude onto our property and although we have always had the right to trim those branches we have previously left them alone so as not to upset Mr. Cahill.

Mr. Cahill concluded in his letter that the addition would require the removal of these three trees. With all due respect to Mr. Cahill, we have confirmed with our contractors that the work for the addition will not require the removal of the trees and in fact, the work can be performed without having to even enter upon Mr. Cahill’s property. This is consistent with the Recommendation of the Office of Planning, which concluded that: “Several large trees along the

eastern property boundary line likely **would not** be impacted by the addition, but one tree may need protection." [Emphasis Added]. Nevertheless, in response to Mr. Cahill's continuing concern that trimming the branches would harm the trees, we took it upon ourselves to hire a professional Arborist to review the matter. He inspected the property and trees and has issued the enclosed report dated May 26, 2015, wherein the Arborist has confirmed based upon his expertise that the minor trimming of the branches that hang over our property will not damage the trees.

We will, of course, instruct our contractors to take whatever action is necessary during the construction to protect the tree that the Office of Planning indicated "may need protection" during construction. But again, our contractors have confirmed that they do not need to enter Mr. Cahill's property to complete the work and other than trimming the branches that hang over our property the trees will not be touched.

III. Conclusion

After submitting the revised drawings, one of our representatives attempted to discuss with Mr. Cahill how the new drawings addressed his concerns and to answer any further questions he might have. Unfortunately, Mr. Cahill declined to have any further discussions with our representative and simply stated that there was nothing we could do to resolve his concerns and he was simply opposed to the addition. This uncooperative attitude was most puzzling and contrary to his written statement that he did not "totally object to the concept of a renovation/addition" but simply wanted more information in order to reach a final opinion. That is what we have done and what our representative attempted to do, but was rebuffed in that overture.

In any event, as described above we hope it is apparent that we have made every effort to be responsive to our neighbor's concern and in fact have satisfied and addressed each of the issues Mr. Cahill has identified.

We look forward to answering any questions you have may have at the meeting.

Yours Truly,

Mr. Nam Pham



Ms. Bonnie Pierce

Enc:



Exhibit D

Arborist Report



Nova Arborist Tree Care
Serving metropolitan DC area trees since 2010
1050 30th St NW, Washington, DC 20007
Ph: 202-549-5519 Email: Service@NovaArborist.com

May 26, 2015

FOR:

Nam Pham
2903 44th St NW
Washington, DC 20016

SUBJECT: Tree impact assessment.

To whom it concerns,

I have inspected the neighboring trees at the above address, and reviewed the renovation plan with Nam. In order to make room for the planned renovation, several of the lower limbs on the 3 trees pictured below will have to be pruned or removed.

This will not have a negative impact on the health of the trees, as the removal of these limbs will be a very small percentage of the total canopy. There will be enough live canopy left to maintain the current state of health of these trees.

Please feel free to contact me if you have further questions.



Pat Patterson, Nova Arborist Tree Care
ISA Certified Arborist, #SO-5403A
Cell Phone: 571-299-0973