

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

Application of Kamyar Khodabandeh BZA No. 19046

**APPLICANT'S HEARING STATEMENT
July 21, 2015**

This Hearing Statement ("Statement") outlines the existing and proposed use of the property and the manner in which the application ("Application") complies with the specific tests and burden of proof for the special exception sought in this application before the Board of Zoning Adjustment (BZA)

NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR § 3104.1 for a special exception under § 223.1 to allow a one story addition to an existing nonconforming structure not in compliance with the minimum side yard setback requirement for its underlying R-4 Zone District, as further set forth under §§ 2001.3 (b) (2) and 405.9

SUMMARY OF APPLICATION

The applicant seeks a special exception pursuant to 11 DCMR § 3104.1 to allow under § 223.1, the construction an additional one story atop the existing single family detached dwelling located on the subject property which currently does not comply with the minimum required side yard setback for its underlying R-4 zone district.

The existing structure, which is conforming with respect to the maximum allowable percentage of lot occupancy, will occupy approximately thirty-one percent (31%) of the lot area, which less than the maximum forty percent (40%) permitted for a single family dwelling in the underlying R-4 zone district, and well below the seventy percent (70%) limit set forth under § 223.3 to allow application for special exception relief under § 223.1

JURISDICTION OF THE BOARD

The application is properly before the BZA. The Board is authorized to grant the requested special exception under § 8 of the Zoning Act, DC Official Code § 6-641.07 (g) (2) (2001), as further set forth in 11 DCMR § 3104.1

PROPERTY LOCATION AND DESCRIPTION

The property is located at 1511 28th Street SE, east of Pennsylvania Avenue in The Hillcrest neighborhood of the District in Square 5581 Lot 0027 (the “Property” or “Subject Property”). The Subject Property is an interior lot, improved with a one-story, plus cellar detached structure to be used and occupied as a one-family dwelling. The existing building was constructed prior to May 12, 1958

The Subject Property is approximately two thousand nine hundred and forty-four point twenty-five square feet (2,944.25 ft²) in lot area. The lot is 25 feet wide and is approximately one hundred and seventeen square feet in depth.

The immediate neighborhood or vicinity consists of a mixture of single family detached and semi-detached dwellings, and medium to large multiple-unit dwellings or apartments; and in close proximity to neighborhood commercial uses located in the neighborhood commercial zone district strips on Pennsylvania Avenue. Hence neither the existing building nor the proposed addition on Subject Property is incompatible with the prevailing character of the neighborhood.

The Subject Property abuts at its rear an unimproved and inaccessible fifteen feet (15ft.) public alley. Although the existing building is deemed a one-story building, as determined from the point of measurement, it is two stories at the rear due to a near nine feet (9 ft.) drop in elevation. Hence the proposed second floor addition as measured from the measuring point as defined, which is the subject of the application before the Board, constitutes a third floor when viewed from the rear.

The existing improvement occupies approximately thirty-one percent 31% of the Subject Property. The element of the nonconformity of structure is with respect to side yards. Whereas § 405.9 requires that detached single family dwellings setback from both side lot lines a minimum distance of eight feet (8 ft.), the existing side yard setbacks are zero feet (0 ft.) and two and one-half feet (2.5 ft.) at the west and east side lot lines respectively, excluding roof eave overhangs, which are permitted projections into required yards as set forth under § 2502.2

The application before the Board seeks to legitimize by retaining a second story atop an existing first floor, constructed by a previous owner of the property apparently without a building permit

The proposed construction extends the nonconformity of side yard vertically because the existing side yard setbacks do not comply with the provisions set forth under § 405.8 which would otherwise have allowed such vertical extension, provided the pre-1958 structure set back a minimum of five feet (ft.), notwithstanding that the subject property conforms to the prescribed percentage of lot occupancy for its underlying R-4 zone

district and is well under the 50% threshold set forth under § 223.3 to permit consideration of the instant application for special exception as additionally specified by other applicable provisions of § 223.

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

The Applicant requests approval from the Board of Zoning adjustment (BZA) of a special exception under § 223 to allow an addition to the existing single family dwelling, which , will not be in compliance with the required side yard, and will vertically extend on the existing nonconformity of side yard and lot occupancy under §§ 405.9 and 2001.3 respectively.

The proposed extension is intended to create sleeping rooms above the existing first floor and is limited to a one story addition. The applicant proposes to also renovate and reconfigure the interior of the existing building, including the cellar in entirety.

The property is zoned R-4, wherein § 405.9 restricts a single family detached dwelling to a minimum side yard setback of eight feet (8 ft.), as stipulated under § 405.1.

The Board is authorized to approve additions to a one-family dwelling under § 223 where such additions may not comply with the requirements set forth in §§ 401, 403, 404, 405, 406, and 2001.3. The subject application seeks deviation from the provisions of §§ 405.9, and 2001.3.

Approval of an addition under § 223 are subject to the following provisions:

- 223.2 The addition or accessory structure shall not have a substantially adverse affect on the use or 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.

- 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 or seventy percent (70%) in the R-3, R-4, and R-5 Districts.
- 223.4 The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties.
- 223.5 This section may not be used to permit the introduction or expansion of a nonconforming use.

The applicant submits that the proposed addition complies with the standards and requirements of § 223.2 as follows:

- (a) The proposed addition, while a vertical extension, is an unobtrusive second story addition which does not expand on the existing nonconformity of side yard. Whereas the adjoining property to the north is improved by a detached single family dwelling, the adjoining property to the south is a semi-detached dwelling with the open side yard where it shares common division line with the subject property of application.

The distance between the face of the existing building on subject property and the next adjoining building which abuts it to the south is approximately 12.5 ft., excluding the bay window projection and roofed open porch at the cellar floor level. The bay window projection is approximately 1.5 feet. from the property lot line, thereby approximately 11 feet. from the face of closest wall of the adjacent building.

The separation distance between the two faces of the adjoining buildings across common property boundary line is approximately 10 feet

It can be reasonably concluded that the Zoning Regulations contemplates such distances as outlined above as meeting the minimum for light and air, given that § 405.8 would otherwise allow both a vertical and horizontal extension of nonconforming side yards of pre-1958 buildings or structures, provided that the existing side yard is at least five feet (5 ft.). The adjoining building is an existing two-story structure, and the proposed second floor for subject property only matches the elevation.

For the foregoing reasons, applicant contends the light and air available to neighboring properties are not unduly affected.

- (b) The adjoining building to the South of the subject property is a one-story building. The proposed second story addition overlooks the roof of that building and will therefore not unduly compromise the privacy of use and enjoyment of that neighboring property.

Two Lots East and diagonally across the subject property are two large apartment buildings which tower over the improvement and the proposed second floor addition. The building located on the subject property does not expand on the existing distance between the two faces of the buildings, resulting in no net change that can be deemed to unduly compromise that existing condition.

- (c) As aforementioned, the site slopes drastically towards the rear of the property to an unimproved and inaccessible public alley such that as viewed from the street, the proposed addition constitutes a second story. The improvement upon the subject property has no public view from the alley. The neighborhood is an admixture of detached two-story one-family buildings and large apartment buildings which tower over the smaller one-family dwellings. The proposed addition is in scale with the immediately adjoining buildings and will not substantially intrude upon the character, scale and pattern of houses along the street frontage.
- (d) The architectural plans, renderings, plat and other graphic illustrations, including photographs of neighborhood properties adjacent to the property of application confirm the compatibility of scale and pattern of the proposed addition to the prevailing character of the neighborhood.

Section 223.3 – The Subject Property is located within the R-4 Zone District, and the maximum proposed lot occupancy at approximately 31% is well under the 70% limit set forth under this section for the underlying zone.

Section 223.4 – The proposed second floor has been designed to match the existing exterior and in compatibility with the eclectic array of building designs on the street and the neighborhood. Applicant is not averse to any special treatment the Board deems fit.

Section 223.5 - The current use of the Subject Property is residential one-family dwelling, a conforming use in the underlying R-4 zone. No change in use is contemplated or proposed.

CONCLUSION

The Board is authorized to grant a special exception, in excerpt, where in its judgment, the relief 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 properties.....”

The Applicant submits that the instant application complies with all conditions for the granting of the requested special exception set forth in § 223 as outlined above and respectfully requests that the application be granted.