

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19147 of Symi Rom-Rymer, pursuant to 11 DCMR § 3104.1¹ for a special exception under § 223 to allow a one-story rear addition to an existing three-story, one-family semi-detached dwelling, not meeting requirements for lot occupancy under § 403.2, in the R-2 District at premises 3097 Ordway Street, N.W. (Square 2067, Lot 121)

HEARING DATE: February 23, 2016
DECISION DATE: February 23, 2016

DECISION AND ORDER

This application was submitted on September 23, 2015 by Symi Rom-Rymer (the “Applicant”), the owner of the property that is the subject of the application. The application requested a special exception to allow a one-story rear addition to a one-family semi-detached dwelling, not meeting requirements for lot occupancy under § 403.2 in the R-2 zone at 3097 Ordway Street, N.W. (Square 2067, Lot 121). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 6, 2015, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3C, the ANC in which the subject property is located; and Single Member District/ANC 3C05. Pursuant to 11 DCMR § 3112.14, on October 8, 2015 the Office of Zoning mailed letters providing notice to the Applicant, ANC 3C, and the owners of all property within 200 feet of the subject property of the Applicant’s request for expedited review of the application, which was tentatively scheduled for the public meeting on December 15, 2015.

¹ This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text. The repeal and replacement of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order.

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When ANC 3C filed a submission in opposition to the application, a public hearing was scheduled on February 23, 2016. (See 11 DCMR § 3118.7(a); Hearing Transcript of January 26, 2016, p. 7.)

Party Status. The Applicant and ANC 3C were automatically parties in this proceeding. There were no requests for party status in support of or in opposition to the application.

Applicant's Case. The Applicant provided evidence and testimony describing plans to enlarge the one-family dwelling with a one-story rear addition intended for use as a guest room.

OP Report. By memorandum dated December 8, 2015, the Office of Planning recommended approval of the requested zoning relief. (Exhibit 26.)

DDOT. By memorandum dated January 5, 2015, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 27.)

ANC Report. At a public meeting on January 19, 2015, with a quorum present, ANC 3C approved a resolution objecting to the Applicant's proposal and urging "the owners to reconfigure their addition to meet the maximum lot occupancy requirements." (Exhibit 29.)

FINDINGS OF FACT

The Subject Property

1. The subject property is an interior lot located on the north side of Ordway Street, N.W. near its intersection with 34th Street (Square 2067, Lot 121).
2. The subject property is a rectangular parcel 33.25 feet wide and 100 feet deep, with a lot area of 3,325 square feet.
3. The subject property is improved with a three-story, semi-detached one-family dwelling, without a basement. Its side yard, on the west side of the lot, is approximately 8.75 feet wide. A rear deck addition has a ramp providing access to the rear yard, which slopes steeply away from the dwelling. A chimney projection, six feet wide and two feet deep, is located at the center of the rear wall of the dwelling between two windows.
4. The existing lot occupancy of the subject property is 33%, where a maximum of 40% is permitted as a matter of right. (11 DCMR § 403.2.)
5. The Applicant proposes to replace the deck with a new one-story rear addition featuring brick veneer to resemble the existing masonry of the dwelling as well as siding, casement windows, and a door providing access to the side yard. The windows will be installed on the west and north exterior walls of the addition, facing the side and rear yards. The east wall of the addition will be a new face-on-line two-hour fire-rated wall.

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6. The planned addition will be approximately 23 feet wide and 15.5 feet deep. Its construction will increase lot occupancy to 44% and reduce the rear yard to approximately 24 feet.
7. Properties in the vicinity of the subject property are improved primarily with one-family detached dwellings to the north, west, and south, as well as other one-family semi-detached dwellings to the east.
8. The property abutting the subject property to the east is improved with another one-family dwelling that is attached to the Applicant's dwelling. In conjunction with the construction of the new addition, the Applicant will replace in kind the face-on-line privacy wall that currently separates the two properties.
9. The property abutting the subject property to the west is improved with a one-family dwelling that fronts onto 34th Street, so that its rear yard abuts the side yard of the subject property. The two residences are separated by landscaping, including a row of trees, a driveway serving the abutting property, and a brick screen wall as well as a slight change in grade toward 34th Street. The rear yards of the properties to the north and west are also separated from the subject property by a change in grade.
10. The R-2 District consists of those areas that have been developed with one-family semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. (11 DCMR § 300.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under § 223 of the Zoning Regulations to allow a one-story rear addition to a one-family semi-detached dwelling, not meeting requirements for lot occupancy under § 403.2 in the R-2 zone at 3097 Ordway Street, N.W. (Square 2067, Lot 121). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) to grant special exceptions, as provided in the Zoning Regulations, 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 in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR § 3104.1.)

Pursuant to § 223, an addition to a one-family dwelling may be permitted as a special exception, despite not meeting specified zoning requirements, including lot occupancy, subject to certain conditions. These conditions include that the addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular the light and air available to neighboring properties must not be unduly affected, the privacy of use and

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enjoyment of neighboring properties must not be unduly compromised, and the addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

Based on the findings of fact, the Board finds that the requested special exception satisfies the requirements of §§ 223 and 3104.1. The proposed addition will not unduly affect light or air available to neighboring properties, or compromise the privacy of use or enjoyment of neighboring properties. The new addition will not unduly affect the light and air available to neighboring properties due to its relatively small size and location. The addition will comply with the applicable side yard requirement, and the rear yard of the enlarged dwelling will remain compliant with zoning requirements. Similarly, the distance between the new construction and the surrounding dwellings will avoid any compromise of the privacy of use or enjoyment of the neighboring properties. The new addition will create an enclosed room where an open deck is now located, and will not include any windows facing the attached residence or its yard. Instead, the new addition will replicate an existing screening wall that now separates the Applicant's property from the neighboring attached dwelling. The rear addition will not affect the landscaping that now exists on the subject property.

The Board does not find that the new addition, together with the original building, will substantially visually intrude on the character, scale, and pattern of houses along the street frontage. The one-story addition will be constructed at the rear of the dwelling, largely invisible from the street.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be approved.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)).) In this case, ANC 3C adopted a resolution objecting to the Applicant's current proposal and urging a reconfiguration of the addition "to meet the maximum lot occupancy requirements," explaining that "the ANC strives to maintain the openness of rear yards and the light, air, and privacy of residents who use rear yards for recreation, as well as to preserve open green space between closely situated houses." (Exhibit 29.) For the reasons discussed above, the Board does not find ANC's recommendations to be persuasive. The Applicant provided drawings of various options for a rear addition that would not require zoning relief, and asserted that none would be suitable to provide a guest room since the new construction would be limited to 223 square feet and the layout would be hindered by the existing chimney projection and the slope of the rear yard to both the north and east. The Board agrees. An addition spanning the width of the existing dwelling would allow a room 9.5 feet deep, with an interior depth of only 6.5 feet, inconsistent with its purpose as a guest room. Other designs, which would align an outer wall of the addition with either the eastern property line or

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the western edge of the dwelling, or would center the addition along the rear wall of the existing dwelling, would create unusable outdoor space at either side, or both sides, of the new addition, besides resulting in a room too small for its intended purpose. The ANC did not proffer a different design but asserted that the Applicant's "large guest room" was proposed because "the size room per lot occupancy restrictions would be smaller than they desire." In fact, the Applicant demonstrated that the proposed design, requiring an increase in lot occupancy four percent beyond the limit allowed without zoning relief, represented the smallest addition that would create a viable guest room. In light of the various options submitted by the Applicant to illustrate the limits imposed by the maximum lot occupancy permitted as a matter of right, the Board does not agree with ANC 3C, and finds instead that the application satisfies the requirements for special exception approval of an increase in lot occupancy in accordance with § 223. As noted by the Applicant, in reviewing an application for a special exception, the Board's discretion is limited to determining whether the proposed relief satisfies the relevant zoning requirements, and if the prerequisites are satisfied, the Board ordinarily must grant the application. *See, e.g., Nat'l Cathedral Neighborhood Ass'n v. District of Columbia Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

The Board concludes that the new addition will satisfy the requirements of § 223 and is unlikely to result in a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, or affect light and air available to neighboring properties. The Board also concludes that the addition will be in harmony with the general purpose and intent of the Zoning Regulations because the new construction will be consistent with the intent of the R-2 District to protect areas developed with one-family semi-detached dwellings.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception to allow a one-story rear addition to a one-family semi-detached dwelling, not meeting requirements for lot occupancy, in the R-2 zone at 3097 Ordway Street, N.W. (Square 2067, Lot 121). Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 8 – ARCHITECTURAL PLANS AND ELEVATIONS, AS REVISED BY EXHIBIT 12 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: 3-0-2 (Frederick L. Hill, Marnique Y. Heath, and Marcie I. Cohen to APPROVE; Jeffrey L. Hinkle, not participating; 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: November 7, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

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.