

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19211 of Kathryn Johnston, pursuant to 11 DCMR § 3104.1¹, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the court width requirements under § 406, and the nonconforming structure requirements under § 2001.3, to construct a second-story addition to an existing one-family dwelling in the R-4 District at premises 629 L Street, N.E. (Square 856, Lot 166).

HEARING DATES: March 22 and April 5, 2016²
DECISION DATE: April 5, 2016

DECISION AND ORDER

Kathryn Johnston, the property owner of the subject premises (the “Owner” or the “Applicant”), filed an application with the Board of Zoning Adjustment (the “Board”) on December 1, 2015, for a special exception under § 223 of the Zoning Regulations to construct a second-story addition to an existing one-family dwelling, wherein the completed project will not conform to the requirements of §§ 403.2, 406, and 2001.3 of the Zoning Regulations. For the reasons explained below, the Board voted to approve the application.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.) In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy

¹ This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final paragraph and final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was heard and decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (“the 2016 Regulations”). The repeal of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order. Pursuant to Subtitle A § 104 of the 2016 Regulations, the construction authorized by this Order is vested as to the area requirements contained in 1958 Regulations as of September 5, 2016.

² The application was originally scheduled for the Public Hearing of March 22, 2016 and was postponed to April 5, 2016 for the Applicant to meet the posting requirements. (Exhibit 30.)

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applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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, Advisory Neighborhood Commission (“ANC”) 6C, 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. (Exhibits 34 and 34.)

ANC Report. In its report dated February 11, 2016, ANC 6C indicated that, at a regularly scheduled monthly meeting on February 11, 2016, with a quorum present, the ANC voted 5-0-0 in opposition to the project. The ANC indicated that the “proposed addition has the potential for significant adverse impacts on the light, air, and privacy of the properties on either side, especially 627 L Street, which has several windows facing toward the existing narrow, nonconforming court.” The ANC noted that, at the time of its decision, no neighbors had submitted letters of support to the public record. In addition, the ANC raised concerns regarding the lack of a name and stamp of a D.C.-licensed architect or structural engineer on the plans, as well as the design’s noncompliance with the fire-rating requirements found within the D.C. Building Code. (Exhibit 21.)

Requests for Party Status. ANC 6C was automatically a party to this proceeding. No other requests for party status were submitted in this case.

Persons in Support. The Board received letters in support of the application signed by the residents of 621 L Street, N.E., 625 L Street, N.E., 627 L Street, N.E. (adjacent property owner), 631 L Street, N.E. (adjacent property owner), 635 L Street, N.E., and 644 L Street, N.E. (Exhibits 28 and 32.) At the April 5, 2016 public hearing, no witnesses appeared to testify in support or opposition.

OP Report. OP submitted a report, dated March 15, 2016, recommending approval of the application. OP specifically noted that “[l]ight and air available to the adjacent properties would not be unduly impacted. The proposed addition extends 12 feet to the rear, which would be in line with the adjacent addition at 631 L Street. The open court would remain between the proposed addition and the adjacent property at 627 L Street for access to light and air.” (Exhibit 26.)

DDOT Report. The District Department of Transportation (“DDOT”) submitted a report stating that it had no objection to the application. (Exhibit 29.)

FINDINGS OF FACT

The Site and Surrounding Area

1. The Subject Property is located at 629 L Street, N.E. (Square 856, Lot 166) in the R-4 District.

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2. The Subject Property is improved with a three-story, one-family row dwelling.
3. The Subject Property is adjacent to row dwellings, with 627 L Street, N.E. to the west and 631 L Street, N.E. to the east. Across the street to the north is a block of row dwellings. The Subject Property abuts an alley to the south.
4. The surrounding neighborhood consists of row dwellings and small apartment buildings.

The Proposed Addition

5. The Applicant requests to construct a two-story addition to the rear of the existing three-story structure. The use of the Subject Property will not change, as the structure on the property will remain a one-family dwelling.
6. The proposed addition will extend 12 feet beyond the existing rear of the structure. The east side of the proposed addition will be constructed along the party wall with the adjacent dwelling at 631 L Street, N.E. and will not extend beyond that structure.
7. The proposed addition will extend the existing open court on the west side to the second story of the structure. The proposed addition will not have windows on the west side facing the adjacent dwelling at 627 L Street, N.E.
8. Based on the concerns raised by ANC 6C in its report, the Applicant submitted revised architectural plans dated May 10, 2016, which do not impact the zoning relief requested. (Exhibit 37.)

Zoning Relief

9. Subsection 403.2 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 52.7% to 64.7%. Therefore, the proposal requires relief from the requirements of § 403.2.
10. Section 406 of the Zoning Regulations requires that an open court in the R-4 zone have a minimum width equal to four inches per foot of the height of the court, but not less than six feet. The existing structure has a nonconforming open court with a width of four feet, and the proposed addition will extend the nonconforming open court. The proposed addition therefore requires relief from the requirements of § 406.
11. Subsection 2001.3 of the Zoning Regulations prohibits additions that extend or increase existing nonconformities. Based on the proposal to extend the nonconforming open court, the project requires relief from the requirement of § 2001.3.

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The Impact of the Addition

12. The proposed addition will not be visible from the street; however, it will be visible from the rear alley at the south of the property. Viewed from the alley, the rear addition would be consistent with the context of the surrounding dwellings.
13. The proposed addition would not extend beyond the adjacent structure at 631 L Street, N.E. and would not impact the light, air, or privacy of that neighbor.
14. The proposed addition will preserve the existing open court on the side adjacent to 627 L Street, N.E., which will adequately preserve the adjacent neighbor's access to light and air.
15. The proposed addition will not have windows on the west side and, therefore, the addition will not impact the privacy of the adjacent neighbor to the west.
16. The owner of 627 L Street, N.E. submitted a letter in support of the application.
17. ANC 6C submitted a report indicating that it voted to oppose the application. The ANC raised concerns regarding the impact of the addition on air, light, and privacy, as well as concerns about the lack of input from neighbors in the public record. The ANC specifically identified the property at 627 L Street, N.E. as being significantly impacted by the proposed addition.
18. The ANC also noted issues relating to building code requirements for fire-rated wall assembly and the failure of the Applicant to have the plans stamped by a D.C. licensed structural engineer. The concerns related to the building code and structural engineer stamp not related to the zoning relief requested in this application.
19. The Applicant's agent from the firm Case Design/Remodeling testified that they would revise the plans to address the ANC's issues regarding the building code and would comply with all Department of Consumer and Regulatory Affairs ("DCRA") requirements as they continue with the process of obtaining a building permit. (Hearing Transcript of April 5, 2016, p. 51.)
20. The Applicant submitted revised plans dated May 10, 2016. (Exhibit 37.)

CONCLUSIONS OF LAW

The Applicant requests special exception relief under § 223 of the Zoning Regulations to construct a second-story addition to an existing one-family dwelling, not meeting the lot occupancy requirements under § 403.2, the court width requirements under § 406, and the nonconforming structure requirements under § 2001.3, in the R-4 District at premises 629 L Street, N.E. (Square 856, Lot 166). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-

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641.07(g)(2) (2008) 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.)

In addition to meeting the general special exception standard, the Applicant must satisfy the “specific conditions” of § 223 to be granted special exception relief. Pursuant to § 223, an addition to a one-family dwelling may be permitted as a special exception, despite not meeting certain zoning requirements, subject to the enumerated 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. Specifically, the light and air available to neighboring properties must not be unduly affected (§ 223.2(a)), the privacy of use and enjoyment of neighboring properties must not be unduly compromised (§ 223.2(b)), and the addition, together with the original building, must not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage (§ 223.2(c)).

Based on the Findings of Fact, the Board concludes that the request for special exception relief satisfies the requirements of § 223. The Board finds that the proposed addition would not have an adverse impact on the light and air of adjacent properties. (Findings of Fact 13 and 14.) As there will be no windows on the west side of the addition, the privacy of use and enjoyment of neighboring properties will not be significantly affected. (Findings of Fact 13 and 15.) The Board finds that the addition will not be viewed from the street and shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. The Board also concurs with OP’s analysis that, viewed from the alley to the south of the Subject Property, the rear addition would be consistent with the context of the surrounding dwellings.

Subsection 223.3 requires that the lot occupancy of the dwelling, together with the addition, shall not exceed 70% in the R-4 District. With the proposed addition, the lot occupancy will be 64.7%; therefore, this condition will be met.

For these same reasons, the Board also finds that the proposed addition will not adversely affect the use of neighboring properties as required by § 3104.1. Further, the Board finds that the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Board concludes that the Applicant meets the requirements of § 3104.1.

Great Weight

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, for the reasons discussed, the Board concurs with OP’s recommendation to approve the application, as reflected in its report under Exhibit 26.

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The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC in its written report. (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.)).) On February 11, 2016, ANC 6C voted 5-0-0 in opposition to the project, based on concerns about impacts on air, light, and privacy, as well as concerns about the lack of letters in support of the application from neighbors in the public record. ANC 6C also raised concerns regarding the lack of a name and stamp of a D.C.-licensed architect or structural engineer on the plans, as well as the design’s noncompliance with the D.C. Building Code, specifically with the fire rating requirements. (Exhibit 21.)

The Board considered the ANC’s concerns regarding impacts on air, light, and privacy, but concluded that the Applicant has met the requirements of § 223 for the reasons discussed in the above Findings of Fact and Conclusions of Law. Specifically, the Board was persuaded that the proposed addition will not impact the light and air of the adjacent properties because the addition would not extend beyond the adjacent structure to the east at 631 L Street, N.E. and will preserve the open court to the west, adjacent to 627 L Street, N.E. The Board was persuaded that the addition will not have a significant impact on the privacy of adjacent neighbors because the addition will not extend beyond the structure to the east and will not have windows on the side facing west. The Board also notes that, after the ANC’s meeting and decision, the Applicant submitted six letters to the public record in support of the project from nearby residents, including both adjacent neighbors. (Exhibits 28 and 32.) The Board was persuaded by the evidence provided by the Applicant that the addition would not impact light, air, or privacy of surrounding neighbors and concludes that special exception relief should be granted.

As to the concerns related to the D.C. Building Code requirements and the stamp of the structural engineer, the Board finds that these issues are not related to the zoning relief requested, and therefore, are not legally relevant to the decision to grant or deny the application at hand. See *Concerned Citizens of Brentwood v. District of Columbia Board of Zoning Adjustment*, 634 A.2d 1234, 1241 (1993) (The “great weight requirement extends only to ‘issues and concerns that are legally relevant.’” *Bakers Local 118 v. District of Columbia Board of Zoning Adjustment*, 437 A.2d 176, 179 (D.C. 1981) (Exhibit 21.) Nonetheless, the Board notes that the Applicant’s agent testified that they would revise the plans to address these issues and that they will comply with DCRA’s requirements.

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 a second-story addition to an existing one-family dwelling.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED ARCHITECTURAL DRAWINGS AT EXHIBIT 37.**

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VOTE: 5-0-0 (Marnique Y. Heath, Anita Butani D'Souza , Frederick L. Hill, Jeffrey L. Hinkle, and Peter G. May to APPROVE).

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: January 9, 2017

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,

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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.