GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17102 of Robert and Jennifer Beylickjian, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a two-story rear addition to a single-family detached dwelling under § 223 of the Zoning Regulations, not meeting the side yard requirements (§ 405) in the R-1-B District at premises 3415 McKinley Street, N.W. (Square 1997, Lot 76).

HEARING DATE: January 20, 2004
DECISION DATE: February 3, 2004

DECISION AND ORDER

Robert and Jennifer Beylickjian, the property owner (the owner or the applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on October 23, 2003 for a special exception under § 223 to construct an addition to their residence[1] where the addition would not conform to the minimum side yard requirements of § 405 of the Zoning Regulations. Following a hearing on January 20, 2004, the Board voted to approve the special exception.

Preliminary Matters

Self-Certification Stephen Gell, Esq., an attorney retained by the applicant, submitted a "self-certification" form with the Board which describes the zoning relief that is requested (Exhibit 19).

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (ANC) 3/4G, 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.

ANC Report In its report dated November 28, 2003, ANC 3/4G indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to support the special exception (Exhibit 20).

Request for Party Status The Board received a request for party status from a neighboring property owner, Mary Conroy (Exhibit 22). Ms. Conroy resides at the adjacent property located at 3419 McKinley Street (the Conroy property). The request for party status was granted and Ms. Conroy opposed the application at the public hearing. Most of her concerns pertained to problems that she claims to have experienced during the construction of the addition, or problems she expected during future maintenance of the subject property. However, Ms. Conroy also asserted that the new addition would adversely impact upon her privacy and light and air.

[1] As will be explained in the Findings of Fact, most of the addition was constructed prior to the public hearing.

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Other Persons in Support/Opposition No other persons appeared in support or in opposition to the application.

OP Report OP's report supported the special exception. In addition, Karen Thomas, the OP representative who prepared the report, testified at the public hearing in support of the application.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is a single-family dwelling that was built prior to 1958 and is located at 3415 McKinley Street, N.W., Square 1997.

2. The Square is bounded by Northampton Street to the north, Broad Branch Road to the west, McKinley Street to the south, and Nevada Avenue to the west. The surrounding area is also zoned R-1-B and is developed with single-family detached dwellings.

3. Plats and surveys filed at the Office of the Surveyor beginning in 1925 show the existing side yard as measuring approximately 5 feet. Minimum side yards of 8 feet are now required in the R-1-B zone. However, § 405.8 of the Regulations specifically allows an addition that continues a 5 feet side yard where a building – such as this one -- was constructed prior to 1958.

The Application

4. The applicants purchased the property in 1999 and took steps to build a two-story addition that extended the existing side yard. Based upon the plats showing a 5 feet side yard and the owner's proposal to continue the existing side yard, the owners obtained a building permit to construct the addition.

5. After the addition was well under construction, a wall check by a private surveyor revealed that the existing wall was only 2.9 feet from the side lot line. The District of Columbia Building and Land Regulation Administration (BLRA) issued a stop work order to halt construction of the addition when it discovered that the side yard was less than 5 feet. Although BLRA later permitted the owners to secure the project and make it weather tight, the construction stopped. This application was filed for relief from the side yard requirement so the owner could complete the addition.

The Impact of the Addition

6. With their application, the owner submitted photographs of the property and elevation plans. He also submitted a site plan showing the relationship of the addition to adjacent buildings and views from the public ways.

7. The site plan indicates a very deep rear yard (over 50 feet between the rear of the dwelling and the rear lot line) and a comparatively large amount of open space. The photographs of the property depict large, mature trees on the property, also suggesting the existence of open space and light and air. Side elevations indicate that the addition is only 29 feet tall and the roof pitch line, shape, and massing of the addition is in character with the existing dwelling.

8. There is a consistent distance of approximately 12 feet between the subject property and the Conroy property. The two properties are separated by a wooden fence that is lined by maintained landscaping on both sides of it.

9. The addition is not visible from the street due to its location at the rear of the dwelling, and the existing vegetation along the side yard of the property.

CONCLUSIONS OF LAW

The Special Exception

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant is seeking a special exception pursuant to 11 DCMR § § 223 and 3104.1 to construct an addition to a one-family dwelling in an R-1-B District, where the addition will not comply with the side yard requirements of § 405.

The Board may grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are granted.

The general tests. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. As to the first test, the proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood. Because of the roof and other design features, when completed, the addition will blend in with the residence and those residences at nearby properties. While the addition will result in a taller structure, the height will not exceed the maximum allowed in the zone. Since the second test is nearly identical to the criteria for the special conditions under § 223, it will be discussed in the section below entitled "The 'special conditions' for an addition under § 223.1".

The "special conditions" for an addition under § 223.1. Under Section 223.1 of the Zoning Regulations, the Board may permit an addition to a single family dwelling where it does not comply with applicable area requirements, such as the side yard requirement, subject to its not having a substantially adverse effect 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.

Light and air to neighboring properties will not be unduly affected. As stated in the Findings of Fact, the addition is only 29 feet tall. Also, since the addition aligns the original structure, it extends the length of the house and not the width. As such, the addition results in no decrease to the existing side yard, whether it is measured correctly at 2.76 feet or, incorrectly, at 5 feet. Even though the length of the residence was extended, the remaining rear yard is over 50 feet deep, allowing for significant light and air at the property. Finally, while Ms. Conroy claims that her light and air will be diminished by the addition, she presented no evidence to this effect and specifically testified that she had noticed no impact to date.

b. The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The privacy of neighboring properties will not be effected by the addition. As explained, the Conroy property is approximately 12 feet from the subject property and there is also a wooden fence separating the two properties (Finding of Fact 8).

c. The addition, 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. The addition to the subject property does not deviate from the pattern of development in the area with respect to its scale or design. Due to its location at the rear of the dwelling and vegetation along the side yards, the addition is not visible from the street (Finding of Fact 9). Thus, the addition causes no visual intrusion as viewed from the street.

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. For the reasons stated in this Decision and Order, the Board finds the ANC's advice to be persuasive.

In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

For the reasons stated above, the Board concludes that the applicant have satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the side yard requirements an R-1-B zone.

Therefore, for the reasons stated above, the application for a special exception is **GRANTED**.

VOTE: 3-0-2 (David A. Zaidain, Geoffrey H. Griffis, and Ruthane A. Miller, in favor of the motion to grant, none opposed, Curtis L. Etherly, Jr. being necessarily absent, and no Zoning Commission member having participated in the application)

Vote taken on February 3, 2004

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: April 19, 2004

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, 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 PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. 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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE

ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. SG/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 17102

As Director of the Office of Zoning, I hereby certify and attest that on APR 19 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY: 

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rsn