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June 21, 2005

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Via Hand Delivery

Mr. Geoffrey Griffis, Chair
Board of Zoning Adjustment
441 Fourth Street, NW
Suite 210
Washington, D.C. 20001

RE: BZA Application No. 17327, 1812 35th Street, N.W.

Dear Mr. Chairman and Members of the Board:

Pursuant to a request of the Board, Parties Deidre Stancioff and Robert Robelus hereby submit an original and twenty (20) copies of a proposed order in the above-referenced matter. Ms. Stancioff and Mr. Robelus oppose the Application. The case is scheduled for decision on June 28, 2005.

Sincerely,

Laurie B. Horvitz, Esq.

Enclosure

cc: Mr. George Keys, Esq. (via facsimile and mail)
Advisory Neighborhood Commission 2E (via facsimile and mail)
D.C. Office of Planning (via facsimile and mail)

BZA
Case No. 17327
Exhibit No. 39

Board of Zoning Adjustment
District of Columbia
CASE NO. 17327
EXHIBIT NO. 39

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17327 of 1812 35th Street Assoc. LLC, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing single-family dwelling under section 223, not meeting the lot occupancy (section 403) and side yard (section 405) requirements in the R-3 District at premises 1812 35th Street, N.W. (Square S-1296, and Lot 802[1]).

HEARING DATE: June 7, 2005
DECISION DATE: June 28, 2005

DECISION AND ORDER

This Application was filed on March 21, 2005 by the owner of the property that is the subject of the application, 1812 35th Street Assoc. LLC ("Applicant"). The Applicant was directed by the Zoning Administrator ("ZA") of the Department of Consumer and Regulatory Affairs ("DCRA") to file for relief with the Board of Zoning Adjustment ("Board" or "BZA") after an adjacent property owner challenged ongoing renovations to the one-family semi-detached dwelling. The application requests special exception relief pursuant to 11 DCMR § 223 to authorize a lot occupancy greater than that permitted in the R-3 district for one-family semi-detached dwellings and to increase the nonconformity of a side yard.

The Board held a public hearing on the application on June 7, 2005, at which certain preliminary matters were dispensed with.

PRELIMINARY MATTERS

Requests for Party Status ANC 2E was automatically a party to this proceeding. Neighbors Deidre Stancioff and Robert Robelus were granted party status based upon a finding that their properties would be impacted in a unique and significantly different manner from other neighbors. They were represented at the hearing by Laurie B. Horvitz, Esq. The applications for party status of two other neighbors were denied. Neither of those other applicants for party status was present at the hearing.

ANC Report By letter dated May 13, 2005, ANC 2E indicated that, at a regularly scheduled and properly noted meeting on May 3, 2004, at which a quorum was present, the ANC voted to oppose the special exception requested in the application.

Office of Planning Report By memorandum dated May 31, 2005, the Office of Planning ("OP") recommended disapproval of the application. OP opined that the application does not meet the standards of 11 DCMR § 223.1. In part, OP concluded that light available to

[1] The Applicant cited an incorrect Lot number in its Application. The property at issue is located at Lot 802, not Lot 27.

neighboring dwellings to the north would be substantially adversely affected by the renovated structure. OP expressed concerns about the effect of the proposed construction upon the utility of rear yards to the north. OP further opined that the new front façade would be a significant visual intrusion upon the 35th Street frontage in terms of its architectural character and scale. In summation, OP recommended that the applicant consider reducing the height of the addition, particularly the portion that extends beyond the original dwelling and consider redesigning the front facade. A member of the OP attended the hearing to present the report and recommendations and to answer questions from the Board and all parties. See 11 DCMR § 3114.4.

FINDINGS OF FACT

The subject property and surrounding area

1. The property that is the subject of this application ("subject property") is located in an R-3 zone district at 1812 35th Street, N.W., in Square 1296S, Lot 802.

2. Development to the north, south, and west mostly consists of two-story frame and masonry detached-, semi-detached, and row dwellings. There is also one 3-story semi-detached dwelling in the southern corner of the square at the intersection with S Street.

3. To the east across 35th Street are a 2-story apartment building, and two buildings occupied by the Filmore Arts Academy (a D.C. public school), and a former public school building now occupied by the Cocoran Art & Design College.

4. The properties surrounding the subject property are all within a Residence (R-3) zone district.

5. The lot of the subject property is approximately 2,400 square feet in size and was improved prior to the recent construction with a 1 ½-story masonry dwelling (circa 1910) ("existing structure").

6. On the south side of the subject property, the existing structure had a nonconforming side yard setback of approximately 2 and 1/2 feet along the southern property boundary.

7. On the north side of the subject property, the existing structure was situated on the side lot line.

8. The existing structure sustained fire damage and, thereafter, the subject property was purchased by the Applicant in 2003.

9. The Applicant has commenced renovations of the dwelling by adding a three story addition, plus basement, to the rear of the existing structure, and by adding second and third stories to the existing structure ("renovated structure"). At the time of the hearing, the exterior work associated with such renovations was largely completed.

10. The height of the renovated structure is at least 33 feet above grade level.

11. The renovated structure expands the nonconforming side yard setback by constructing additional floors above the existing structure near the southern boundary of the subject property.

12. R-3 zoning limits semi-detached dwellings to forty (40) percent lot occupancy. 11 DCMR § 403.2.

13. R-3 zoning includes nonconforming side yards which are less than five (5) feet wide when computing the lot occupancy of semi-detached dwellings. 11 DCMR § 199 (definition of "Building area").

14. For purposes of lot occupancy, the square footage of the renovated structure is approximately 1,050 square feet.

15. The renovated structure has a lot occupancy of approximately 43.75% and exceeds the permissible lot occupancy by approximately 90 square feet.

16. The three-story addition which has been constructed in the rear yard directly on the northern lot line of the subject property is approximately 27.5 feet deep, 12 feet wide and at least 33 feet high. It has no windows on the northern side of the addition and the Applicant intends to install concrete siding along that portion of the renovated structure.

17. The surrounding dwellings include several nineteenth century structures, including the adjacent home of Deidre Stancioff ("Stancioff") at 1814 35th Street, N.W.

Zoning and construction history

18. Applicant submitted to DCRA several building permit applications in which the scope of the work expanded over time. In or about August 12, 2004, the Applicant filed for a permit to construct the renovated structure. In that filing, the Applicant did not disclose that its proposed lot occupancy would exceed forty (40) percent.

19. On October 5, 2004, the DCRA Zoning Review Branch issued a plan correction list stating, in part: "Existing structure has a non-conforming side yard, proposed addition over existing footprint cannot be allowed.

Structure is a semi-detached dwelling and the Max lot Occupancy is 40%. You need to modify proposed work to bring into Compliance or seek Relief thru the BZA to build proposed work."

20. On October 16, 2004, another plan correction list was issued by DCRA which stated, in part: "Proposed lot occupancy is 44% BZA relief require. Note: the Nonconforming Side Side 2.5ft X 30.8ft is included in the lot Occupancy."

21. Thereafter, the Applicant revised its plans by adding a trellis between the subject property and the adjacent home to the south.

22. This revision was intended as a way to get around the zoning limitations associated with semi-detached dwellings and, thereby, to avoid the BZA review process.

23. Building Permit #B476431 was issued on November 8, 2004.

24. Soon after construction commenced, Stancioff began questioning the Applicant and DCRA regarding the renovated structure's compliance with the zoning laws, including the lot occupancy requirements.

25. DCRA instructed the Applicant to file for a special exception and threatened to issue a stop work order if the application was not filed.

26. On or about February 8, 2005, the Applicant and/or counsel for the Applicant met with DCRA officials regarding the need for a special exception application.

27. At or about this time, the exterior walls for the first and second floors of the rear addition were only partially built. Early efforts to construct the third floor had just commenced.

28. When the application was not forthcoming, Stancioff filed an appeal of the related building permits for the subject property. That appeal has been docketed as Case Number 17310 and was filed on February 22, 2005.

29. In a memorandum to the Board of Zoning Adjustment dated March 2, 2005, the DCRA Zoning Review Branch stated that the new construction by the Applicant required special exception relief pursuant to Section 223.1.

30. The Application for special exception was filed on March 21, 2005.

31. The Applicant has proceeded to build the renovated structure and the exterior of that structure was largely constructed at the time of the BZA hearing.

Proximity and relationship of renovated structure to adjacent properties

32. The northern side of the renovated structure sits on the lot line with Stancioff's property.

33. Stancioff's home is situated four feet from the boundary line with the subject property. Thus, her home is four feet from portions of the renovated structure.

34. Stancioff's rear garden is immediately adjacent to the 27.5 foot deep, 12 foot wide and at least 33 foot high rear addition.

35. Stancioff's bedroom window is on the rear wall of her home on the southern end of that wall.

36. Robert Robelus' home is adjacent to Stancioff's at 1818 35th Street, N.W. He can see the addition from his property and from his rear deck.

37. The neighbor to the south of the subject property is owned by Richard Schmidt. Windows in the renovated structure face Mr. Schmidt's property. Certain third floor windows on the renovated structure allow views into the western end of Mr. Schmidt's yard. Mr. Schmidt's home includes window(s) which face the subject property.

Shadow studies

38. In response to a request by the OP, the Applicant submitted shadow studies regarding the likely effect of the renovated structure upon available light to neighboring properties. A separate series of shadow studies purportedly depict shadows from the existing structure.

39. As a result of the renovated structure, there would be increased shadows upon the properties to the north of the subject property, particularly Stancioff's property.

40. Such increased shadows would primarily affect Stancioff's rear yard. During certain times of year, portions of the rear yard would be shadowed during most daylight hours.

41. In the shadow studies, the Applicant also roughly depicts which specific portions in the rear of the renovated structure exceed the forty (40) percent lot occupancy requirements. There would be increased shadows created

from those specific portions of the renovated structure upon the properties to the north of the subject property, particularly Stancioff's rear yard.

CONCLUSIONS OF LAW

The Applicant seeks a special exception under 11 DCMR § 223 to allow a lot occupancy of 43.75 percent and to extend a nonconforming side yard setback. As a semi-detached dwelling in an R-3 zone district, the Applicant may not exceed forty (40) percent of lot occupancy without a special exception from the Board and may not expand a nonconforming side yard. 11 DCMR §§ 403.2, 405.2, 405.8, 405.9, 2001.3. The Applicant bears the burden of proof. 11 DCMR § 3119.2.

The OP also has identified the need for a special exception based upon the minimum lot area and minimum lot width of the subject property. Due to the property's small dimensions, it does not meet the minimum lot area and lot width for semi-detached dwellings in R-3 districts. 11 DCMR § 401.3.

Pursuant to the zoning regulations, the Board must give "great weight" to the written report of the ANCE 2E, which opposed the special exception. 11 DCMR § 3115.2. Similarly, the Board is required under D.C. Code § 6-623.04 (2001) to give "great weight" to the OP recommendations. For the reasons stated in this Decision and Order and the record herein, the Board finds the OP's advice to be persuasive.

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 and nearby properties. 11 DCMR § 223.4.

The Board's opinions are based upon the findings of fact and the evidence of record, even if such evidence is not specifically cited in this order.

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 Maps." 11 DCMR § 3104.1; See D.C. Code § 6-641.07(g)(2) (2001). According to the OP, the addition would not meet either of these general standards.

The Board finds that the general tests are not met because the addition will adversely affect the use of neighboring properties to the north, particularly Stancioff's property. More specifically, the location and dimensions of the Applicant's addition on Stancioff's property line creates a visual intrusion of significant and undue magnitude. The design offers no visual amenities and

includes a proposed exterior of uninterrupted concrete siding. It would dramatically intrude upon the enjoyment and utility of the rear garden, and the views thereof. The addition would also adversely affect Mr. Robelus' enjoyment and use of his rear yard and deck. Both Parties in Opposition testified regarding the overwhelming visual effect of the almost completed rear addition to the use of their respective rear yards. Stancioff further testified that she cannot see the sky when she looks southward out of her bedroom window. Photographs illustrate the validity of these concerns. The structure's size and location is overbearing and impairs unduly the use and enjoyment of the neighbors' properties. Additionally, the adverse effect of the addition upon the light of adjacent properties is discussed below.

Under these circumstances, the addition is not in harmony with the general purpose and intent of the zoning laws. Such purposes include the prevention of overcrowding of land. 11 DCMR § 101.1. See also § 223.1 (which seeks to protect the use and enjoyment of neighboring properties).

The "special conditions" for an addition under § 223.1 Each special exception permitted must also meet all the conditions enumerated in the particular section pertaining to it. In this case, the Applicant had to meet the requirements of both § 3104.1 and § 223 of the zoning regulations. The zoning regulations only permit special exceptions when the Board finds that the addition would 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, 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 to adjacent buildings and views from public ways

11 DCMR § 223.

Effect on Light

The Board concludes that the addition would unduly affect the light available to the neighboring properties to the north, including the properties owned by the Parties in Opposition to the special exception application. This finding is consistent with the OP recommendations and reasoning. In forming this conclusion, the Board reviewed the photographs and other graphical evidence submitted by the Applicant and by the Parties in Opposition, and considered their testimony. Both Parties in Opposition testified regarding the uses of their rear yards. Stancioff described the many hours that she devotes almost daily to her garden and the deleterious effects on her plants of limited sunlight. She described her other uses of the rear yard, including areas designated for outdoor seating. Moreover, her rear windows face into this cultivated area. Mr. Robelus similarly described his rear deck and the location of that deck to the Applicant's three-story addition. The adverse affects on light are clearly more pronounced for Stancioff due to the proximity and significant size of the addition to her property. As noted above, the Applicant's three-story structure sits directly on the lot line.

The evidence included shadow studies which established the increased presence of shadows to the northern properties, especially the rear yard of Stancioff. During certain months of the year, portions of her back yard would be shadowed during most daylight hours.

With respect to the light available to the northern neighbors, the Applicant sought to compare the shadows cast by the renovated structure to the shadows cast by other theoretical construction projects. According to the Applicant, such theoretical models were based upon structures that could have been built as a matter of right on the site. The Applicant asserted that the impact of the renovated structure could not be "unduly" adverse to the neighbors if such theoretical construction projects would have produced even greater shadows. The Board rejects this analysis. Notably, the Applicant did not cite any authority in support of this interpretation of the zoning laws. Moreover, one of the theoretical projects was absurdly configured in order to maximize the shadows upon the neighboring property.

Notably, Section 223 of the regulations instructs the Board to examine the effect of the "addition" upon the light of neighbors. In the instant case, the Board finds that the three-story rear addition would have an unduly adverse effect upon the light available to Stancioff's property, particularly her rear yard. As an additional basis for its opinions, the Board also finds that the rear portions of the renovated structure which exceed the permissible lot occupancy of forty (40) percent also would have an unduly adverse effect upon the light available to Stancioff's yard.

The shadows cast on yards to the north would be sufficient to affect the utility of such yards. This concern was persuasively addressed by the OP. Notably, Stancioff's lot is small and, under such circumstances, she could not relocate a

garden or other uses of her rear yard to any other section of her property. The Board finds that a significant section of her limited back yard is adversely affected by the addition. Under these circumstances, the Applicant has failed to meet the standard set forth in section 223.2(a) for a special exception.

Effect on use or enjoyment

In the instant case, the Board finds that the addition will adversely affect the use and enjoyment of the properties owned by the two Parties in Opposition due to the structure's huge size, concrete-sided composition and location directly on the lot line with Stancioff's property. However, the addition does not include any windows on the northern side of the structure and, therefore, does not create any significant privacy issues for the Parties in Oppostion.

Visual intrusion of addition

As the OP explained in its report, the addition also creates a significant visual intrusion upon the 35th Street frontage in terms of its architectural character and scale. Notably, the street includes several homes that date from the Nineteenth Century, including Stancioff's house. These smaller homes create a charm and historic quality to the street. The Board was not persuaded by several photographs that the Applicant submitted at the hearing of properties on other streets within the neighborhood. Instead, the Board has placed greater weight upon graphic depictions of homes that are proximate to the subject property.

The OP's analysis focused primarily upon the new front façade and roof line. Two architects also testified at the hearing regarding the architectural and aesthetic qualities of the addition along the street frontage. Both architects criticized the exceedingly high chimney. Architect Peter Stancioff further testified that the character, scale and pattern of the addition was inconsistent with the neighboring structures on 35th Street. He provided the Board with a persuasive analysis of the eclectic, yet compatible styles along the street front. The Board reviewed numerous photographs in the record.

Although the architecture along the street already is diverse, the Board finds that the Applicant's addition would deviate substantially from the visual character and scale of the neighborhood. This finding is based upon the height of the structure, the disproportionately high chimney, the failure of the façade to integrate old and new sections of the home effectively, the use of a contemporary front window on the upper floor, the slope of the new roof relative to the older roof, and the oversized scale of the back addition.

Contrary to the findings of the OP, the Board also finds that the addition visually intrudes upon views from the back alley. Stancioff submitted a photograph from that alley that illustrates and supports this finding. This opinion is based upon the height and shape of the rear addition.

Accordingly, it is therefore **ORDERED** that the application is **DENIED.**

VOTE:

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

ATTESTED BY: _____

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.