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 the construction of a three-story rear addition to a single-family semi-detached dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy (§ 403) and side yard requirements (§ 405) in the R-3 District at premises 1812 35th Street, NW (Square S-1296, Lot 27[1]).

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

DECISION AND ORDER

The 1812 35th Street Associates LLC, the property owner (the owner or the applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on March 21, 2005, for a special exception under § 223 to construct an addition to a residential dwelling[2] where the addition would not conform to the lot occupancy requirements or minimum side yard requirements of sections 403 and 405 of the Zoning Regulations. Following a hearing on June 7, 2005, the Board voted to deny the special exception.

Preliminary Matters

Zoning Referral On or about March 2, 2005, the Zoning Review Branch of the Department of Consumer and Regulatory Affairs (DCRA) referred the applicant to this Board for zoning relief (Exhibit 4).

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) 2E, 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. (Exhibit 29).

ANC Report In its report dated May 13, 2005, ANC 2E indicated that, at a regularly scheduled monthly meeting with a quorum present, it voted to oppose the special exception (Exhibit 24). In its report, the ANC noted its concern that "the property owner to the north" would suffer adverse impacts relating to light and air.

Request for Party Status ANC 2E was automatically a party to this proceeding. The Board received requests for party status from three neighboring property owners, Deidre Stancioff, Robert Robelus, and Richard Schmidt (Exhibits 27, 22, and 25). The Board also received a

[1] The subject property is actually located at Lot 802 (See, Exhibits 4 and 39).
[2] As will be explained in the Findings of Fact, construction began prior to the public hearing.

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request for party status from Amy and David Monk, former property owners in the neighborhood. (Exhibit 28). The Board granted opposition party status to Ms. Stancioff and Mr. Robelus, but denied the requests from Mr. Schmidt and the Monks, neither of whom were present at the hearing. Both Ms. Stancioff and Mr. Robelus were represented by Laurie B. Horvitz, Esq. Ms. Stancioff resides at 1814 35th Street (the Stancioff property), an adjacent property to the north, and Mr. Robelus resides at 1818 35th Street (the Robelus property).

Other Persons in Opposition The Board also received letters in opposition from two other nearby property owners (Exhibits 21 and 23).

Office of Planning (OP) Report OP reviewed the special exception application and prepared a written report recommending denial of the special exception (Exhibit 30). Among other things, OP concluded that the light available to abutting properties would be adversely affected by the addition, and that the new front facade of the structure would result in a significant visual intrusion upon the street frontage.

Applicant's Case The applicant presented testimony by Angel F. Clarens, who was qualified as an expert in architecture. Mr. Clarens maintained that the application met the test for a special exception under § 223 of the Zoning Regulations.

FINDINGS OF FACT

The Site and Surrounding Area

The subject property is an existing single-family dwelling located at 1812 35th Street, NW in the R-3 zone. The lot of the subject property is approximately 2,400 square feet in size and was improved with a one and one-half story masonry dwelling that was built around 1910. The property slopes away from 35th Street with several large trees in the rear yard, surrounded by a wooden stockade fence that is approximately six feet tall.

On the north side of the property, the dwelling is situated on the side lot line. On the south side of the property, the dwelling has a nonconforming side yard setback that is between two and one-half and three feet along the southern property boundary.

Development to the north, south, and west consists mostly of two-story detached, semi-detached, and row dwellings of frame or masonry construction. To the east across 35th Street are a two-story apartment building, and two buildings occupied by the Filmore Arts Academy, and a former public school building now occupied by the Corcoran Gallery of Art and Design College.

Background

The applicant purchased the property in 2003 after a fire had destroyed the interior of the original dwelling. Later, the applicant obtained building permits from DCRA to repair the fire damage and to construct one and one-half additional floors above the existing dwelling as a matter-of-right. The construction was largely completed by the time of the public hearing,

resulting in a three-story renovated dwelling that expanded twenty-seven and one-half feet further into the rear yard.

According to the applicant, the building permits were issued by DCRA based upon the structure's classification as a row dwelling, a dwelling without side yards that is permitted as-of-right in the R-3 zone.

However, DCRA later concluded that the subject dwelling is a semi-detached dwelling, not a row dwelling. Although the dwelling has one wall in line at the northern property boundary, it also has a side yard along its southern boundary. As a result, DCRA concluded that the property was subject to the side yard and lot occupancy limitations for a semi-detached dwelling, and referred the applicant to the Board for special exception relief (Exhibit 4)[3].

The Requested Relief

1. Applicant seeks special exception relief to continue the nonconforming side yard along its southern property boundary (3 feet.).

2. Applicant also seeks special exception relief to expand its lot occupancy from 26.5 % to approximately 43.75%, which exceeds the 40 % lot occupancy permissible in the zone.

The Impact of the Addition

The applicant submitted photographs of the property and elevation plans with his application. He also submitted a site plan showing the relationship of the addition to adjacent buildings and views from the public ways (See, Exhibits 5 and 7).

1. At OP's request, the applicant's architect prepared shadow diagrams depicting the original dwelling, the dwelling with the existing addition, and the dwelling with an addition that is the maximum size permitted under the Zoning Regulations (See Exhibits 8 and 9 appended to OP's report).

2. The renovated dwelling does not affect the privacy of neighboring property owners to the north or the south. The addition wall along the shared northern boundary with the Stancioff property does not include windows. The primary view from the addition to the south is over the neighboring residence rather than into it; and, views into the southern property's rear yard are limited to its western end by a rear addition and the angle of view.

3. The Board credits and adopts OP's finding that the front facade of the renovated dwelling significantly intrudes upon the 35th Street frontage in terms of its architectural character and scale Vertical articulation of the second and third floors negates the roofline of the original building and reflects few characteristics of more typical building facades along the street (See

[3] Ms. Stancioff also filed an appeal of the building permits issued by DCRA. However, that appeal is not relevant to this proceeding.

photographs and elevations at Exhibits 5, 7, and 19, and diagrams/views appended to OP Report at Exhibit 30)

4. The dwelling is in an eclectic neighborhood, However, the other homes are holistic in character. This one, in contrast, does not connect to itself.

5. The Board received no evidence that the renovated dwelling adversely affects the light and air available to neighboring properties to the south or to those properties on the opposite side of the street.

6. The Board credits and adopts OP's finding that the addition significantly decreases the amount of light received by properties to the north. Based upon the applicant's own shadow studies, OP found that the renovated dwelling covers more of adjacent rear yards for a longer period of the day from early fall through the winter. In particular, OP noted that the Stancioff property would remain in shadow most of the day during the fall and winter season.

7. The Board credits and adopts OP's finding that the shadows also affect the utility of the rear yards to the north.

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 retain an addition to a one-family dwelling in an R-3 District, where the addition will not comply with the side yard requirements of § 405 or the lot occupancy requirements of § 403.

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 also met. As will be explained more fully, the Board concludes that the special conditions under § 223 have not been met and the special exception must therefore be denied.

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 Board concludes that the renovated dwelling with an addition is in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Map. The addition does not change the residential use of the dwelling and is allowable in the R-3 zone.

However, the second test has not been met. 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. The Board concludes that light and air to neighboring properties will be unduly affected by the proposed addition. As stated above, the addition substantially decreases the amount of light received by properties to the north, especially the Stancioff property (Finding of Fact 15). While the reduction in light may be limited to the fall and winter months, the Board cannot overlook such an adverse impact for even a portion of the year.

b. The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The Board does not find that the privacy of neighboring properties will be affected by the addition. Although the addition is separated from the Stancioff property by only a few feet, it has no windows along its northern wall which borders on the property. As to the southern neighbors, the views from the addition are limited (Finding of Fact 12).

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. This condition has not been met. While the property is located in an eclectic neighborhood, the front façade of the renovated dwelling is vastly out of character and scale with the frontage along 35th Street (Finding of Fact 13).

Thus, the applicant has not satisfied the criteria under sub-sections (a) or (c) of § 223.1. As a result, it does not meet either the special conditions of § 223 or the general test that a special exception not adversely affect neighboring properties.

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. ANC 2E opposed the special exception relief for both side yard and lot occupancy relief. For the reasons stated in this Decision and Order, the Board concurs with the ANC's recommendation..

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 also finds OP's advice to be persuasive.

For the reasons stated above, the Board concludes that the applicant has not 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 lot occupancy and side yard requirements in an R-3 zone.

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

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne A. Miller, Curtis L. Etherly, Jr., and John A. Mann II, being in favor of the motion to deny, and no Zoning Commission member having participated in the application)

Vote taken on June 28, 2005

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

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

FINAL DATE OF ORDER: SEP 13 2005

PURSUANT TO 11 DCMR 3125.9, "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6."

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As Director of the Office of Zoning, I hereby certify and attest that on SEP 13 2005 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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