

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17438 of Braden P. and Conner W. Herman, pursuant to 11 DCMR § 3104.1, for a special exception to allow a two-story addition to a row dwelling under Section 223, not meeting the percentage of lot occupancy or court width provisions of §§ 403 and 406 at premises 628 East Capitol Street, N.E. (Square 868, Lot 805) in the R-4 District.

Hearing Dates: February 28, 2006, May 16, 2006 and September 5, 2006

Decision Dates: February 28, 2006, May 16, 2006 and October 3, 2006

DECISION AND ORDER

Braden P. and Conner W. Herman, the owners of Lot 805 in Square 868, filed a self-certified application with the Board of Zoning Adjustment (the “Board”) on September 23, 2005, pursuant to 11 DCMR § 3104.1 for a special exception under Section 223 to construct a two-story-plus-basement addition to a row dwelling at premises 628 East Capitol Street, N.E. (Square 868, Lot 805). The public hearing was conducted on September 5, 2006. On October 3, 2006 the Board granted the application by a vote of 5-0-0.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. The application was filed on September 23, 2005. By memoranda dated September 26, 2005, the Office of Zoning provided notice that the application had been filed, to the D.C. Office of Planning; Advisory Neighborhood Commission (“ANC”) 6C, the ANC for the area within which the subject property is located; the ANC Commissioner for the affected single-member district; and the Ward 6 Councilmember.

The Board scheduled a public hearing on the application for February 28, 2006. On February 10, 2006, the applicant submitted a letter to the Board requesting a postponement of the hearing. The letter stated that the applicant wished to hire an expert firm to conduct a daylighting impact study to evaluate the light and air effects of the proposed addition on the abutting row dwelling at 626 East Capitol Street, N.E. (also “626”), a study that had been requested by the owners of 626, ANC 6C and the Office of Planning (“OP”). The postponement would also allow additional time for the applicants to discuss potential design modifications with the abutting neighbors at 626 East Capitol Street, N.E.

At its meeting of February 28, 2006 the Board granted the postponement and established a new hearing date of May 16, 2006.

On May 15, 2006 the applicant submitted a letter to the Board requesting a second postponement. The reason for the requested delay was to allow ANC 6C and the Capitol Hill Restoration Society time to evaluate the daylighting impact study, which had been completed.

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At its meeting of May 16, 2006, the Board agreed to a further postponement, setting the hearing date as September 5, 2006.

On May 18, 2006 the applicant submitted to the Board a revised design for the proposed addition ("Scheme B"). The revision created a side setback on the second story level with the goal of allowing increased light and air to reach the row dwelling at 626 East Capitol Street, N.E. The applicant also transmitted to the record the completed daylighting impact study.

On August 20, 2006 the applicant submitted an affidavit of posting, indicating that one (1) zoning poster was posted on the site.

The applicant submitted its pre-hearing submission on August 22, 2006. The public hearing was conducted and completed on September 5, 2006.

Public Agency Reports. The Office of Planning submitted its report dated August 29, 2006, recommending approval of the application. OP noted that the applicant had developed a revised design ("Scheme B") to increase light and air to the neighboring property at 626 East Capitol Street, N.E. OP addressed the special exception criteria in § 223, concluding that the proposed addition complied with the criteria. OP also cited the results of the daylighting impact study by EMO Energy Solutions, Inc. as documenting that there will be very minor effects on the light and air available to 626 East Capitol as a result of the proposed addition. At the invitation of the Board at the public hearing, OP submitted a supplemental report dated September 19, 2006. In that report the Office of Planning reaffirmed its recommendation for approval, taking into account the opposition party's daylighting impact study and expert testimony by Tanteri + Associates, LLC. OP noted that the impact on light to the neighboring property from the Scheme B addition "is within the character of a row house form of development and does not rise to the level of unreasonable impact."

The Historic Preservation Review Board ("HPRB") granted conceptual design approval to the proposed addition at its April 2006 meeting. The Staff Report dated December 15, 2005 stated that ". . . the proposed addition can be considered compatible with the character of the historic district in terms of its overall size, height, massing and materials, and is consistent with other previously-approved rear additions."

Advisory Neighborhood Commission Report. By letter dated July 5, 2006, ANC 6C advised the Board that it had voted 7-0 to take "no position" on the application. The letter stated that the applicant had met several times with the ANC, but that the ANC did not have the technical resources or expertise to evaluate the applicant's and the opponent's daylighting impact studies, and accordingly deferred to the Board's resources and expertise.

Request for Party Status. The owners of the row dwelling at 626 East Capitol Street, N.E., which abuts the subject property, filed a request for party status in opposition on February 14, 2006. The owners, Madison and Solveig McCulloch, were represented by George R. Keys, Jr. of the law firm of Jordan & Keys, LLP. At its February 28 meeting, the Board granted the McCulloch's request for party status. ANC 6C was automatically a party in the case.

The party in opposition contended that the proposed addition would adversely affect views of sky, greenery and sunlight access through the affected side windows. The current view from the McCulloch's living room windows is substantial green space and sky. The McCullochs contended that the proposed addition would result in a tunnel significantly impairing these features..

The party in opposition presented the expert testimony of Tanteri + Associates, LLC who conducted a "Daylight Reduction Analysis" and testified that sunlight reduction to 626 East Capitol would occur primarily on the 2nd level (bedrooms and bathroom) and northern most windows on the 1st level (kitchen), during morning hours, with the most significant reduction occurring during the summer period. The analysis concluded that the proposed addition would significantly reduce the skylight and sunlight available to the windows on the McCulloch's property.

Persons in Support. The property owners at 627 East Capitol Street, S.E. (across the street) and at 630 East Capitol Street, N.E. (abutting the subject property across the east-west alley) submitted letters in support of the application.

Persons in Opposition. Other than the party in opposition, there were no persons in opposition to the application.

Applicant's Representation. Representing the applicant was the law firm of Arnold & Porter LLP. At the public hearing the applicant presented testimony from expert witnesses and exhibits depicting the details of the proposed project.

FINDINGS OF FACT

1. The subject property is located at 628 East Capitol Street, N.E. (Square 868, Lot 805) on the north frontage of East Capitol Street in the Capitol Hill neighborhood. The subject lot is improved with a two-story-plus-basement, brick row dwelling and a carriage house oriented to the rear alley. The rear alley is 30 feet wide, and the east-west alley that abuts the subject property on the east side is 15 feet wide.
2. Lot 805 is 22.44 feet wide and 128.08 feet deep, with a land area of 2,869 square feet (rounded). The rear yard is 78 feet deep, and the existing lot occupancy is 62.6 percent.
3. The subject Square 868, bounded by East Capitol, A, 6th and 7th Streets, N.E., is developed predominantly with two- to four-story row dwellings, many of which have garages or carriage houses on the alley. There are also a number of small apartment houses and conversions to apartments on this block.
4. The subject property is zoned R-4 and is also within the boundaries of the Capitol Hill Historic District.

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5. The proposed project will remove the existing two-and-one-half story frame addition and replace it with a two-and-one-half story brick addition. The proposed addition will relocate the kitchen and family room from the basement to the main level and enlarge them. On the second floor the addition will accommodate two bedrooms. The basement addition will consist of a guest bedroom, mechanical equipment and a rear entryway with stairs up to ground level, as well as a stairway to the rear yard, covered by an areaway. There are steps behind the addition that go down to the garden level and a patio to be created there. A new brick fence with architectural detailing will be constructed along the side alley.
6. On May 18, 2006 the applicant submitted a revised design intended to allow more light and air to reach the neighbor's house and windows at 626 East Capitol Street, N.E.
7. The revised plan allows more light and air to reach the adjacent side of the house at 626 East Capitol Street. This is accomplished by creating a five-foot]side setback at the 2nd floor level on the side of the property abutting 626, which has a small courtyard adjacent to the property line and some side windows. This side setback also mimics an existing 2nd floor setback that allows greater light and air penetration than the original design plan.
8. The requested special exception under § 223.1 is needed because the proposed addition does not comply with the R-4 lot occupancy limitation of 60 percent in 11 DCMR § 403 and does not comply with the width of open court requirement in § 406. The proposed lot occupancy is 69.9 percent, which is within the 70 percent maximum lot occupancy allowed as part of the special exception under § 223.3. The proposed lot occupancy is consistent with the intent of § 223 to allow reasonable additions to dwellings within certain guidelines, such as the 70 percent lot occupancy limitation.
9. The lack of compliance with the court width requirement is minor -- five feet provided vs. six feet required -- and results from the second-story court that was created in Scheme B to allow more light and air to reach 626 East Capitol Street, N.E. Also, the side setback as proposed mimics an existing side setback that exists on the frame addition to be demolished.
10. Regarding § 223.2(c), the visual effect on the character, pattern and scale of houses as viewed from the street frontage will be neutral or positive. The existing townhouse is fully in scale with the context of two to four story buildings in the vicinity. The front of the townhouse will not change, and the addition will be seen only in partial view looking down the north-south alley. Thus, the scale and rhythm of townhouses along the East Capitol Street frontage will be unchanged.
11. The brick addition is in keeping with the character of the Capitol Hill Historic District, is more attractive than the existing frame addition, and will be an aesthetic improvement to the immediate neighborhood. The Historic Preservation Review Board ("HPRB") granted Concept Design Approval in April 2006, indicating that the proposed addition is

compatible with the character of the Capitol Hill Historic District and the immediate vicinity.

12. Subsection 223.2 requires that the proposed addition not have a “substantially adverse effect” on the use and enjoyment of abutting or adjacent properties, especially as to the light, air and privacy of neighboring properties. The applicant’s testimony and evidence on this issue, with which this Board concurs, are summarized in numbers 13 to 21, following.
13. The houses across the east-west alley are separated by a carriage house and a 30-foot alley from the subject property, and the house across the north-south alley also has ample spacing from the proposed addition. The proposed addition will not affect the light, air or privacy of these houses. The primary property potentially affected is the abutting row dwelling at 626 East Capitol Street, N.E. There will be some effects on the light and air of 626 East Capitol, but these effects will be minor and acceptable in the context of the relatively dense urban development pattern typical of R-4 Districts.
14. On May 18, 2006 the applicant transmitted to the Board an expert study entitled, *Daylighting Impact Study & Analysis* by EMO Energy Solutions, Inc. (“EMO”), and later a supplemental “Cloudy Day” study. This analysis was requested by the neighbors at 626 and by the Office of Planning. These studies concluded that:

Scheme B for the renovation of 628 E. Capitol St. NE has no negative daylighting impact on 626 E. Capitol St. NE. Furthermore, during the afternoon periods light levels in some spaces increase due to the reflection off of the white painted west facing wall of 628. The only impact, if any at all, appears to occur in the early morning, during the summer season, in the kitchen at 626 E. Capitol Street. This is not a negative impact since the daylight during the specific time in question is still over seven times that recommended by the [Illuminating Engineering Society of North America]. Additionally, any reduction in unwanted direct sunlight will improve the daylighting in the space in question by reducing the contrast between light and dark, thereby reducing glare. The notching design of ‘Scheme B’ increases the daylight magnitude for the Dining Room, Bathroom, Middle Bedroom, and second floor Office as compared to ‘Scheme A.’

15. The existing seven-foot-high fence along the property line with 626 means that the basement and first floor windows already have significant loss of sunlight and views.
16. The subject townhouse and its neighbors are situated on the north frontage of East Capitol Street, N.E., so that the light reaching the rear yards in question is primarily indirect, northern light rather than direct sunlight. This ameliorates the effects of the proposed addition on light reaching the neighbor’s windows. Similarly, the supplemental Cloudy Day study performed by EMO shows that the effects of the addition on the

neighbor's light and air are actually less on cloudy days than on sunny days. Such very limited effects do not constitute "substantially adverse effect" under § 223.2.

17. The proposed addition extends only 8' - 8" feet deeper at the rear than the existing frame addition. This is a very small extension in the context of 128-foot-deep lots and creates only a modest effect on light reaching the neighbor's windows. The townhouse at 626 East Capitol actually extends 16 feet deeper into its rear yard along its west property line than the existing structure at 628 East Capitol Street.
18. The property at 626 East Capitol has a five-foot court along its side property line with 628 East Capitol at the rear of the house, providing separation from the applicant's proposed addition. This is a standard and typical court providing light and air to urban townhouse windows. The applicant's land use expert testified at the public hearing that row dwellings are typically narrow, deep buildings attached at the sides. Consequently, a major challenge is to allow adequate natural light to reach interior rooms. Historically, a successful technique has been to create a narrow side court at the rear to allow for some windows on the side walls of two abutting houses. In effect, one court serves two houses. He submitted a map of Square 868 to the record (Exhibit 44), marked in color to show more than 15 instances of deep, narrow courtyards in this square alone similar to the court created by the proposed addition. This is a normal, rather than an adverse, condition in the Capitol Hill neighborhood and other congested townhouse neighborhoods.
19. The neighbor at 626 proposed at the public hearing that the addition be designed with a side court at 628 East Capitol along the common property line to create a double court. The Board agrees with the applicant that this concept would offer little value. The narrow space created next to the fenced property line would be essentially unusable. Also, the lack of building construction along the property line would force the addition to project deeper into the rear yard, using up valuable green space of a more useable type. The utility and traffic flow of interior rooms would also be adversely affected. Finally, provision of a side court on one townhouse of an abutting pair of houses is the more typical pattern on Capitol Hill, and the existing court is adequate for both properties.
20. As to any loss of privacy for the residents at 626, there will be no side windows facing 626 on the ground floor level of the addition. The two new side windows on the second floor mimic the location of existing second floor windows and will be separated from 626 by 10 feet. Accordingly, there will be no adverse privacy effect on the neighbors' use and enjoyment of their property.
21. The proposed addition and special exception will be fully in harmony with the purpose and intent of the Zoning Regulations and Zoning Map. The proposed addition will simply extend the depth of an existing row dwelling. The existing use is a matter-of-right use and is therefore a preferred use in the R-4 District. This application is also consistent with the intent of the Zoning Commission in adopting § 223 by Zoning Commission Order No. 840, effective March 13, 1998, which stated in part: "The purpose of the

amendments is to provide a legal basis for making reasonable additions to single-family dwellings where the strict tests associated with an area variance are unattainable. The overall goal of the proposal is to provide a degree of flexibility regarding additions, while retaining essential controls related to effects on neighboring properties and neighborhood character.”

CONCLUSIONS OF LAW

The Applicant seeks a special exception under Section 223 pursuant to 11 DCMR § 3104.1 to allow construction of a two-story-plus-basement addition on the rear of a row dwelling in the R-4 District. The Board is authorized to grant special exceptions where, in the Board’s judgment, a special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Map and would not tend to adversely affect the use of neighboring property. Section 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2). Pursuant to Section 223, the Board may permit an addition to a one-family dwelling or a flat that does not comply with normal requirements pertaining to minimum lot dimensions, lot occupancy, rear and side yards, courts and nonconforming structures, subject to the conditions enumerated in Section 223. The Applicant’s property, with the proposed addition, seeks special exception relief from requirements pertaining to lot occupancy and width of open court.

Lot Occupancy. The maximum permitted lot occupancy in the R-4 District is 60 percent, whereas the application proposes a lot occupancy of 69.9 percent. The special exception criteria in § 223.3, however, allow a lot occupancy of up to 70 percent with the approval of the Board.

Width of Open Court. The applicant’s proposed side setback of the second story of the addition creates an open court with a width of five feet, whereas a minimum width of six feet is required.

The Board concludes that the Applicant demonstrated compliance with the criteria in Section 223. As required by § 223.3, the lot occupancy of the property will be within the seventy percent (70%) allowed with Board approval. As to § 223.4, the Board sees no need to impose special design treatment beyond the features proffered by the Applicant and the proposed design. No nonconforming use is introduced by this special exception (§ 223.5).

The party in opposition contends that the applicant has failed to satisfy the requirement in § 223.2 that the “the addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property . . .” The Board disagrees. The only neighboring building affected in any direct way is the abutting row dwelling on the west, at 626 East Capitol Street, N.E. The Board concludes that the Applicant’s daylighting impact study demonstrated that the effects of the addition on the light and air available to the east-side windows of 626 will be partial and minor. The existing side court along the common property line will continue to provide interior light and air access in a manner that is quite common on Capitol Hill and in other row house neighborhoods. The Applicant’s map of Square 868 in Exhibit 44 demonstrated that in just this subject square there exist more than 15 comparable courts serving two abutting residential dwellings.

The Applicant's daylighting expert used a methodology that determined how much light entered each relevant room of 626 in terms of lumens, based on the angle of the sun at different times of the day and of the year. This study also accounted for reflections off of surfaces. The methodology of the opposing party's expert examined the view shed looking out through the side windows at 626 and accounted for how much of the previous sky view and view of open space would be obstructed by the Applicant's addition. The Board is of the opinion that the methodology of the Applicant's expert better addressed the question of overall potential adverse effect on the light and air reaching 626. That study found very minor effects on light and air access for 626. The Office of Planning, in its supplemental report, compared both daylighting impact studies and reaffirmed its recommendation for approval of the special exception. The Board also notes that the party in opposition's study did not account for the fact that the existing seven-foot-high fence along the property line already obscures part of the light reaching relevant basement and ground floor windows at 626.

As to any adverse effect on privacy, the only windows on the addition facing 626 will be on the 2nd story of the addition and will have ten feet of space from the side wall and windows of 626. Additionally, the position of the two new windows will be similar to the positioning of existing second floor windows. The Board concludes that the two new windows do not create privacy issues.

The Board further concludes, as required by § 223.2(c), that the addition will not create a visual intrusion on the character, scale and pattern of houses along the north frontage of East Capitol Street, N.E. in this vicinity, as viewed from the street. Moreover, the Historic Preservation Review Board has granted concept approval of the proposed addition, indicating that the property with the addition will be in keeping with the character, scale, materials and massing of the Capitol Hill Historic District.

The Board concludes that the project is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps.

Great Weight to Office of Planning and ANC 6C

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04. Great weight means an acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning recommended approval of the application, and the Board agrees with OP's analysis and recommendation.

ANC 6C voted unanimously to take "no position" on the application, leaving it to the Board and its support resources to analyze the two daylighting impact studies. The Board acknowledges receipt of the ANC's letter, which raises no substantive issues.

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Based on the above record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for approval of an addition as a special exception under Section 223 in the R-4 District.

It is therefore **ORDERED** that the Application is **GRANTED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II,
Curtis L. Etherly, Jr. and Gregory N. Jeffries (by absentee ballot)
to approve)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: **MAR 29 2007**

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.

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.

SG

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on **MARCH 29, 2007**, 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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