

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17442 of Maria R. Creighton-Cabezas, pursuant to 11 DCMR § 3104.1, for a special exception to allow a three-story rear addition to an existing single-family detached dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements (§ 403), rear yard requirements (§ 404) and side yard requirements (§ 405) in the R-1-B District at premises 4508 Van Ness Street, NW (Square 1560, Lot 28).

HEARING DATE: March 7, 2006
DECISION DATE: May 2, 2006

DECISION AND ORDER

Maria R. Creighton-Cabezas, the property owner (the owner or the applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on September 25, 2005 for a special exception under § 223 to construct an addition to her residence, where the addition will not conform to area requirements of the Zoning Regulations. The Board held a public hearing on March 7, 2006, and deliberated at a public meeting on May 2, 2006. After deliberations, the Board voted to approve the application, as revised.

Preliminary Matters

Zoning Referral On or about October 3, 2005, the DC Department of Consumer and Regulatory Affairs (DCRA) referred the applicant to this Board to obtain zoning relief (Exhibit 2).

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, the Advisory Neighborhood Commission (ANC) 3E, 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 February 12, 2006, ANC 3E indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted not to oppose the special exception (Exhibit 21).

Request for Party Status ANC 3E was automatically a party to this proceeding. The Board received a request for party status from Paul and Helen Steinberg (the Neighbors), the owners and residents of adjacent property at 4512 Van Ness Street, NW (Exhibit 22). Dr. Steinberg is a psychiatrist who treats patients in his home. The request for party status was granted without opposition from the applicant, and the Neighbors opposed the application at the public hearing. They asserted, among other things, that the addition would adversely impact upon their privacy and light and air, and submitted photographs of the morning light at the two properties (Exhibit 31). Dr. Steinberg also asserted that the addition would negatively impact the privacy and light and air of his home occupation use.

Other Persons in Support/Opposition The Board received several letters in support of the application (Exhibit 20). It also received a petition (signed by three neighbors) on Dr. Steinberg's letterhead "objecting" to the application (Exhibit 27), and a letter in opposition from neighboring property owners Colman and Mavourneen McCarthy (Exhibit 23 and attachment to Exhibit 22). The Board also received statements from nearby property owners indicating their "neutrality" regarding the application (Exhibits 20, 24, 26). Mr. McCarthy testified in opposition to the application and stated, among other things, that his view of the park would be diminished.

Government Reports

OP Report OP prepared a written report requesting more information and recommending a design change (Exhibit 28). In its report, OP stated that the proposed attic level would cause the addition to appear as a four-story structure which would be out of character with nearby homes. While OP suggested that the attic level be eliminated or modified, it also concluded that the addition would not unduly affect light and air or unduly compromise the use and enjoyment of neighboring properties. Steve Rice, the OP representative who prepared the report, testified at the hearing. He concluded that the revised design would lower the attic and maintain the character of the neighborhood.

Post-Hearing Submissions

The Board held the record open to accept the following submissions: (1) the applicant's revised plans eliminating the attic level, including an elevation drawing identifying the western portion of the proposed addition and the existing building, and a site plan identifying the proposed bay window, and the relationship of the addition to the Neighbors' property (Exhibit 35); a statement in opposition to the revised plans from the Neighbors and their architect, Don Hawkins (Exhibit 37), and a response from the applicant (Exhibit 36). In her response, the applicant also requested that the architect's statement be struck from the record. The Board declined to do so, finding that the architect's statement was filed on behalf of a party in opposition.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 4508 Van Ness Street, NW, Square 1560, Lot 29 in the R-1-B zone. Lot 29 is a triangular shaped lot and is nonconforming, in that it is approximately 2,425 square feet in area; the minimum required lot size in the zone is 5,000 square feet, *See*, 11 DCMR 401.3 (Exhibits 25, 28).
2. The lot is improved with a three-story detached, single-family dwelling that is surrounded by similar dwellings. The subject dwelling is a three-story, two-bedroom house with an unfinished attic, and is the smallest dwelling on the block (Exhibits 5, 28).
3. The property is bounded by Van Ness Street to the north, 45th Street to the west, Friendship Park to the south and the east, and the Neighbors' property to the west (Exhibit 28).

The Proposal

4. The applicant originally proposed to construct a three-story rear addition, including a dining room, two bedrooms, and home office space in the attic (Exhibits 5, 28).
5. The revised proposal eliminated the attic extension and replaced the bay window on the first floor with a standard window (Exhibits 35, 36).
6. The applicant submitted an original and revised set of plans and elevations, a survey plat, and photographs of the property (Exhibits 3, 6, 7, 8, and 35).

Zoning Relief

7. Section 403 of the Zoning Regulations permits a maximum lot occupancy of 40% in the zone. The dwelling with addition will have a lot occupancy of 41%.
8. Section 404 of the Zoning Regulations requires a minimum rear yard of 25 feet in the zone. The dwelling with addition will have a rear yard with an average size of 11 feet.
9. Section 405 of the Zoning Regulations requires a minimum side yard of eight feet in the zone. The dwelling with addition will have one side yard of five feet and the other will be one foot wide.
10. As specified above, the dwelling and proposed addition will not comply with applicable area requirements under §§ 403, 404, and 405 of the Zoning Regulations.

The Impact of the Addition

11. The elevation plans, photographs, and site plan show the relationship of the addition to adjacent buildings, and also show views from the public rights-of-ways (Exhibits 3, 6, 7, 8, and 35).

12. The proposed addition will be visible from the rear and western side, but the design, materials, and colors will be compatible with the neighborhood (Exhibit 5).

13. The Board credits and adopts OP's finding that, as originally proposed, the three-story addition would have appeared as four stories when viewed from Friendship Park, the Neighbors' property and the Van Ness Street public right-of-way. Due to the slope of the land, the attic level would have appeared as a visible fourth level that would not have been in character with the neighborhood (Exhibit 28).

14. The Board finds that the proposed addition, as revised, will not be out of character with the neighborhood. By eliminating the attic level, the dwelling will not give the appearance of having a fourth story. The Board also credits OP's testimony to this effect (Tr. at 120-122).

15. The Board credits and adopts OP's finding that the proposed addition will have some effect on the Neighbor's views from its eastside windows, and may decrease the amount of direct sun to these windows. However, the proposed addition will not unduly affect light and air availability (Exhibit 28).

16. The proposed addition is approximately half the length of the Neighbors' adjacent dwelling, which includes an addition and deck. Because the length of the proposed addition is substantially shorter than the Neighbors' addition and deck, the proposed addition will not diminish the Neighbors' views from their deck or negatively impact upon their privacy (Exhibit 5).

17. The proposed addition will have no adverse impacts on Friendship Park or on homes to the north, which are across the street from the applicant's property (Exhibit 5).

18. Although the Neighbors claim the addition will impact Dr. Steinberg's home office use as a result of a diminution of light and air, the Board did not find the evidence supporting this claim persuasive.

19. The impact of the proposed addition on the adjacent property's light and air would be minimal due to the travel patterns of the sun.

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 lot occupancy requirements of § 403, the rear yard requirements of § 404 or 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.

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, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

223.2(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. Although the proposed addition will have some effect on available light and air, it will not significantly affect the light and air to neighboring properties (See, Findings of Fact 15-18).

223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. Nor will the privacy of use and enjoyment of neighboring properties be significantly affected by the proposed addition. Only the Neighbors’ property is adjacent to the proposed rear addition. Based upon the evidence of record, including the shorter length of the proposed addition than the Neighbor’s

and the travel patterns of the sun, the Board is not persuaded that the Neighbors' privacy will be diminished in any significant way. (Findings of Fact 16, 17, and 18).

223.2(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 proposed addition will cause no visual intrusion as viewed from the street. As viewed from the street or alley, the addition, as revised, will not visually intrude upon the character, scale or pattern of homes along the street frontage (Findings of Fact 11, 12, and 14).

223.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts. The subject property is in the R-1-B zone (Finding of Fact 1). The proposed addition, will increase the lot occupancy from 40% to 41% (Finding of Fact 7). Therefore, this condition will be met.

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. The ANC advised that the addition would not adversely impact the neighborhood and voted not to oppose the application. 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 also finds OP's advice to be persuasive.

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 construction of an addition that does not comply with the requirements of the R-1-B zone.

Therefore, it is hereby **ORDERED** that the application for a special exception is **GRANTED**.

VOTE: **3-0-2** (Geoffrey H. Griffis, Ruthanne G. Miller, and John A. Mann II in favor of the motion to grant; Curtis L. Etherly, Jr. being necessarily absent; and no Zoning Commission member having participated in the application)

Vote taken on May 2, 2006

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 *J*

FINAL DATE OF ORDER: SEPTEMBER 29, 2006

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.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17442

As Director of the Office of Zoning, I hereby certify and attest that on **SEPTEMBER 29, 2006**, 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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TWR