

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17535, of Ann Goodman pursuant to 11 DCMR § 3104.1, for a special exception under § 223 of the Zoning Regulations, to allow a covered walkway addition not meeting the rear yard requirements (§ 404) in the R-3 District, at premises 3254 O Street, N.W. (Square 1230, Lot 125)

HEARING DATE: November 14, 2006

DECISION DATE: December 5, 2006

DECISION AND ORDER

Ann Goodman (“the owner” or “the applicant”) of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on June 28, 2006 for special exception relief under § 223 of the Zoning Regulations (11 DCMR). The owner proposes to construct a covered walkway addition which will connect her dwelling to the accessory garage located at the rear of the property and, which will result in noncompliance with the rear yard requirements under the Regulations. Prior to the public hearing on November 14, 2006, the owner amended her application to also include relief from the open court requirements of the Regulations. The Board deliberated at a public meeting on December 5, 2006, and decided that relief was required from the rear yard requirements, but not from the open court requirements. The Board then voted to grant the application for the addition.

PRELIMINARY MATTERS

Zoning Referral On or about June 26, 2006, the DC Department of Consumer and Regulatory Affairs (DCRA) referred the applicant to this Board to obtain zoning relief. DCRA noted that the proposed corridor between the main structure and the accessory garage required relief from the minimum rear yard setback under the Regulations (Exhibit 4).

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) 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 20).

ANC Report In its report dated November 6, 2006, ANC 3E indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to oppose the special exception (Exhibit 26). The ANC expressed its concern that the proposed walkway connecting the structures would change the status of the property from a detached dwelling to a row house, and thereby adversely impact the Georgetown community as a result of an increase in allowable density.

Requests for Party Status ANC 2E was automatically a party to this proceeding. The Board also received two requests for party status from nearby property owners Robert Laycock/Thomas Vogt (Exhibit 22), and Mary Carter (Exhibit 23). The Board granted both requests for party status, and these parties agreed to join together as one party (the Neighbors). At the public hearing, the Neighbors claimed that the applicant's true intent was to circumvent the zoning laws and add an apartment above the garage. The Neighbors also stated that the walkway would be visible from their properties and would destroy the historic quality of the Georgetown community (Exhibits 22 and 23).

Other Persons in Support/Opposition Sixteen neighboring property owners signed a Petition in opposition (Attachment to ANC Report, Exhibit 26), and three neighboring property owners testified in opposition, including one adjacent property owner who testified that the walkway would destroy his privacy and light and air. Barbara Zartman, who represented the Georgetown Citizens Association, also testified. She stated that the walkway would provide no protection from the elements; and, that it would therefore serve no apparent purpose.

Government Reports

OP Report OP prepared a written report recommending approval of the special exception (Exhibit 24). In its report, OP stated that the proposed walkway would convert the west side yard into a 5-foot wide open court, necessitating relief from the 6 foot minimum open court provision. OP also stated that the connecting walkway would convert the detached one family dwelling and detached garage into a consolidated single structure that OP would consider to be a row dwelling because the rear portion of the structure would have no side yards. Steve Mordfin, the OP representative who prepared the report, testified at the hearing that because the walkway would be set back significantly from each of the lot lines, it would be in harmony with the general purpose and intent of the Zoning Regulations, and would not adversely affect the use of neighboring property owners. OP further opined that while this configuration is not entirely within the character of a typical row dwelling development it will not impair the intent, purpose and integrity of the zone plan embodied in the Zoning Regulations and Map.

Closing of the Record

The Board closed the administrative record at the conclusion of the public hearing on November 14, 2006.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 3254 O Street, N.W., Lot 125 of Square 1230 in the R-3 zone district and within the Georgetown Historic District. The property is 5,400 square feet in area, and has a minimum lot width of 36 feet.

2. The lot is improved with a two-story single-family detached dwelling and a detached garage which is located in the rear yard. The dwelling was constructed in approximately 1860¹. The 756 square foot garage is accessible to a private alley. The garage is set back 6 feet from the alley and extends the full width of the lot at the rear of the property.

3. The surrounding area is primarily residential, including small apartment buildings and row dwellings. All surrounding properties are located within the R-3 zone district and the Georgetown Historic District.

The Proposal

5. The applicant proposes to construct a corridor connecting the dwelling and the detached garage (Exhibits 2, 7). As proposed, the corridor will be a 67 foot long porte-cochere² located down the center of the 36 foot wide property (Exhibit 3). The porte-cochere will be three feet wide and have columns that are approximately 7 feet in height. It will not have any exterior walls, but will be covered with a tin roof and have ivy arches around its perimeters (Exhibit 7, T. at 58, 60).

6. As proposed, the walkway will be set back 17.2 feet from the west lot line and 15.25 feet from the east lot line.

7. As proposed, the walkway will connect the dwelling with the garage and result in one building with a lot occupancy of 39.6% at the property, which is still within the matter of right limits for dwellings in the R-3 zone (Exhibits 3, 24, T. at 64). The footprint of the dwelling and garage will remain the same.

Application and Zoning Relief Sought

8. The owner filed an application for a special exception on June 28, 2006 (Exhibit 1). The Zoning Administrator referred the owner to this Board for a special exception under § 223 of the Regulations (Exhibit 4). Section 404 of the Zoning Regulations requires a minimum rear yard of 25 feet in the zone. Because the proposed walkway will eliminate the rear yard, the Zoning Administrator determined that relief was needed from the rear yard requirements (Exhibit 4).

10. OP reviewed the application and concluded that the owner also needed relief from the open court requirements. OP reasoned that construction of the walkway would convert the side yards into open courts, resulting in a western open court of 5 feet (Exhibit 24). Because section 406.1 of the Regulations requires a minimum open court width of 6 feet, OP suggested that the owner obtain open court relief as well as relief from the rear yard requirements. As a result, the owner amended her application to also include relief from the open court requirements of the Zoning Regulations (Exhibit 19).

¹ OP states in its report that the house was constructed in 1900. (OP Report at 2) However, the Board credits the 1860 date provided by the applicant. (November 14, 2006 Transcript, hereafter "T." at 54).

² The applicant testified that the porte-cochere, hereafter referred to as a walkway, will "keep the rain and weather off." (T. at 41).

The Impact of the Covered Walkway

11. The elevation plans (Exhibit 7), photographs (Exhibit 6), and plats (Exhibits 2 and 28) show the relationship of the walkway to adjacent buildings, and also depict views from the public rights-of-ways. The proposed walkway will not be visible from O Street, Potomac Street, or 33rd Street (Exhibit 24) (OP Report at 5).

12. The light and air to adjoining property owners will not be unduly affected by the walkway (OP Report at 4 & 5). Moreover, Ms. Carter confirmed during the hearing that her access to light and air will not be impacted by the proposed walkway (T. at 87).

13. The privacy of use and enjoyment of neighboring properties will not be unduly compromised, as much of the rear yard is screened and buffered from adjacent properties by fencing and plantings (OP Report at 5). The walkway will be well screened by trees at the property (T. p. 44) and will not be visible from any public way or from adjoining properties (T. p. 69, 74).

CONCLUSIONS OF LAW

The Required Relief

As a threshold matter, the Board concludes that no relief is required from the open court requirements. As will be explained below, the Board finds that relief is required only from the rear yard requirements. Relief will not be required from the open court requirements because an open court will not be created as a result of the proposed project.

OP has suggested that construction of the walkway will convert the western side yard to an open court. The Board disagrees. Under the Zoning Regulations, a “court” is defined as: “an unoccupied space, not a court niche, open to the sky, on the same lot with a building, which is bounded on two (2) or more sides by the exterior walls of the building or by two (2) or more exterior walls, lot lines, or yards.” While the proposed walkway will have a tin roof supported by columns, it will not have any exterior walls. Thus, construction of the walkway will not result in creation of a court.

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-3 Zone District, where the addition will not comply with the rear yard requirements of § 404.

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

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 walkway will not change the residential use of the dwelling. The Board concurs with the Office of Planning that while the resulting configuration is unusual, it will not impair the intent, purpose and integrity of the zone plan embodied in the Zoning Regulations and Map.

Since the second test is nearly identical to the criteria for the requirements under § 223, it will be addressed in the following section:

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 (Finding of Fact 12).

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. The walkway will be screened and buffered by plantings and fences, and will be set back from the side lot lines at significant distances. (Findings of Fact 13).

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 not be visible from the street (Findings of Fact 11).

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-3 zone (Finding of Fact 1). After construction of the walkway, the lot occupancy of the building on the property will be 39.6 % (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 does not have a concern, with the walkway itself, but rather with possible future ramifications that may arise from an increased allowable lot area stemming from connecting the detached dwelling to the detached garage. The ANC, like OP, believed that there would be a change in status from a detached dwelling to a row dwelling if this application were to be

approved-which would result in an increased permissible lot area from 40% to 60%. This Board does not reach that issue in this case because it is not germane to the special exception analysis that is before it. The only issue before the Board is whether the addition to a single family dwelling satisfies the criteria set forth in §§ 223 and 3104 of the regulations. The ANC's concerns regarding adverse impacts do not arise out of the application before us, but out of speculation of unknown impacts from potential future additions.³ Having concluded that this addition to a single family dwelling will not cause adverse impacts to neighboring property and otherwise meets the requirements of §§ 223 and 3104 of the regulations, the Board is obliged to grant the application.

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. The Board concurs with OP that special exception relief is warranted and has addressed OP's issues and concerns as noted throughout this decision.

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 a walkway that would result in non-compliance with the rear yard requirements of the R-3 zone.

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

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann, II, and Anthony J. Hood, all in favor of the motion to grant the application; Curtis L. Etherly, Jr. not participating on the case.)

Vote taken on December 5, 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

FINAL DATE OF ORDER: July 2, 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

³ Applicant noted at the hearing that she had no intent to pursue other construction.

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. 17535

As Director of the Office of Zoning, I hereby certify and attest that on July 2, 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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