

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17537-A of Victor Tabbs, pursuant to 11 DCMR § 3104.1, for a special exception under § 223 to construct an addition that would convert a row dwelling into a flat not meeting the percentage of lot occupancy in the R-4 district at premises 740 13th Street, S.E. (Square 1045, Lot 97).

HEARING DATES: November 21, 2006 and December 12, 2006

DECISION DATE: January 23, 2007

RECONSIDERATION DATES: September 4, 2007, October 2, 2007, October 23, 2007, November 20, 2007

ORDER DENYING RECONSIDERATION

By order dated July 27, 2007, the Board approved an application submitted July 11, 2006 by Victor Tabbs (“Applicant”) for a special exception under § 223 of the Zoning Regulations to allow construction of a three-story-plus-cellar addition to a single-family dwelling in the R-4 district at 740 13th Street, S.E. (Square 1045, Lot 97). Parties in the proceeding were the Applicant and Advisory Neighborhood Commission (“ANC”) 6B, which opposed the application due to concerns that the addition would adversely affect the light, air, and privacy of neighboring property owners.

On August 6, 2007, ANC 6B submitted a motion for reconsideration of the Board’s decision and for an immediate stay of the order. The motion reiterated the ANC’s opposition to approval of the special exception requested by the Applicant, arguing that the Board incorrectly decided that the proposed addition would not exceed the maximum permitted number of stories and thus did not require a variance, and that the proposed addition would not impair the light, use, privacy, and enjoyment of the adjacent properties. According to the ANC, a shadow study included with the motion demonstrated that the proposed addition would cause a “major detriment” to the neighboring properties.

On September 4, 2007, the Applicant submitted a response in opposition to the motion for reconsideration. The Applicant disputed the accuracy of the ANC’s shadow study, and asserted that the Board’s decision to grant the requested special exception had been correct.

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At a public meeting on September 4, 2007, the Board granted the motion for reconsideration in part. The Board declined to stay the effectiveness of its Order or to reconsider its decision with respect to the ANC's allegation that a variance was required, but scheduled a public hearing on the limited issue of whether the shadow study submitted by the ANC demonstrated that the proposed addition would cause adverse impacts to neighboring properties with respect to light and air.

At the limited public hearing, held on October 2, 2007, the Board heard testimony from the ANC and from the Applicant. By memorandum dated November 6, 2007, submitted in response to a request for information from the Board, the Office of Planning ("OP") reiterated its recommendation of approval of the application. After reviewing the additional submissions by the ANC, OP continued to believe that the addition would not "unduly affect the light or air available" to the abutting property or "compromise the privacy of use and enjoyment of neighboring properties."

CONCLUSIONS OF LAW

The ANC submitted a timely request for reconsideration of the Board's order in this proceeding. A motion for reconsideration must state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. 11 DCMR § 3126.4.

The Board was not persuaded that the motion and additional evidence submitted by ANC 6B provided sufficient grounds to cause the Board to reconsider its decision to grant the special exception requested by the Applicant. The Board credits the recommendation of the Office of Planning in concluding that the proposed addition, without the parapet originally proposed by the Applicant, will not unduly affect the light, air, and privacy available to neighboring properties.

Pursuant to 11 DCMR § 223.4, in this Order the Board adopts the conditions recommended by the Office of Planning in its supplemental report, concerning the elimination of a parapet and two nonconforming courts initially proposed by the Applicant, to ensure that the addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent properties.

Accordingly, it is therefore **ORDERED** that the motion for reconsideration is **DENIED** and the application for a special exception under § 223, to construct a three-story addition not meeting lot occupancy requirements in the R-4 district at 740 13th Street, S.E. (Square 1045, Lot 97), is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The addition shall be constructed without a parapet.
2. The addition shall be constructed to the property lines on both sides of the subject property so as to eliminate any courts potentially created by the exterior walls of the addition.

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VOTE: 3-1-1 (Curtis L. Etherly, Jr., Gregory N. Jeffries, and Shane L. Dettman voting in favor; Ruthanne G. Miller opposed; one Board member not participating, not voting).

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 10 2008

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.

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.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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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.

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As Director of the Office of Zoning, I hereby certify and attest that on March 13, 2008, 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:

Victor Tabbs
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Chairperson
Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Single Member District Commissioner 6B07
Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue, S.E.
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Matthew LeGrant, Acting Zoning Administrator
Dept. of Consumer and Regulatory Affairs
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Washington, D.C. 20002

Tommy Wells, City Councilmember
Ward Six
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ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR