

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17799 of Chy H. Yang, pursuant to 11 DCMR § 3104.1, for a special exception under § 223 in order to construct a rear addition to an existing one-family row dwelling which does not comply with § 406, in the R-4 District at premises 1121 Lamont Street, N.W. (Square 2842, Lot 64).¹

HEARING DATE: September 16, 2008
DECISION DATES: January 13, 2009, April 7, 2009

DECISION AND ORDER

This application was filed with the Board of Zoning Adjustment (“BZA” or “Board”) on March 12, 2008, by Chy H. Yang (“Applicant”), an owner of the property that is the subject of the application (“subject property”).² The Applicant filed this application in order to obtain permission to retain an-already-constructed rear addition to his residence. The application was filed requesting two variances at the direction of the Zoning Administrator, but was later amended to instead request a special exception pursuant to 11 DCMR § 223.

The Board held a hearing on the application on September 16, 2008, but kept the record open pending receipt of certain further requested information, and scheduled a decision for January 13, 2009. On January 13, 2009, the Board still felt in need of more specific plans, and after requesting these from the Applicant, postponed the decision to April 7, 2009. At its public meeting on April 7th, the Board decided to grant the application by a vote of 3-0-2.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 14, 2008, the Office of Zoning (“OZ”) gave notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation, Advisory Neighborhood Commission (“ANC”)

¹The caption has been changed from that advertised to reflect the relief finally requested.

²Mr. Rajat Vajpeyi is a co-owner of the subject property and testified at the hearing in favor of the application, but is not named on the application.

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1A, the ANC within which the subject property is located, Single Member District 1A06, and the Councilmember for Ward 1. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the D.C. Register and on June 9, 2008, mailed such notice to the Applicant, ANC 1A, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 1A was automatically a party to this application. The immediate neighbor, Mr. Charles Greene, whose dwelling, at 1119 Lamont Street, shares a party wall with the subject dwelling, applied for, and was granted, party status. Mr. Greene had been attempting to have the Applicant's addition removed for some time before this application came before the Board, and was particularly concerned about the addition's pitched roof, which he indicated had directed heavy rains onto his back deck and into his basement well, causing basement flooding.

Applicant's Case. The Applicant and the co-owner of the subject property testified about the addition and its history, as well as about the need for zoning relief. They explained that they never had an opportunity to make a complete presentation to ANC 1A, but that they had been working closely with the neighbor at 1119 Lamont Street in order to change their design and prevent the overflow of water onto his property.

Government Reports. The Office of Planning filed a report with the Board on September 9, 2008 recommending approval of the special exception relief requested. Exhibit No. 37. OP explained the somewhat convoluted history of this addition and that its roof overhang had originally invaded the neighbor's air space by about 7 inches, but that this condition had been rectified. OP also mentioned the drainage problem cited by the neighbor, but indicated that the Applicant had installed a gutter with drain spout leading away from the dwellings to try to alleviate water problems. After addressing the provisions of § 223, OP opined that they had all been met, and therefore recommended approval of the special exception.

ANC Report. ANC 1A filed a resolution on April 3, 2009 with the Board recommending approval of the Applicant's special exception request. Exhibit No. 44. The resolution notes that the Applicant modified his design to reduce the impacts on the neighbor, Mr. Greene, and that the Applicant has paid the fines and obtained the permits necessary to allow the addition to stand. This April 3rd resolution does not include any of the information required by 11 DCMR § 3115 to enable the Board to accord it great weight³.

³ANC 1A had filed a report with the Board on September 9, 2008, consisting of a cover letter and the first ANC resolution concerning this application. The cover letter states that at a properly-noticed meeting with a quorum present, the ANC voted 5-2-2 to recommend denial of the then-requested variance[s]. The resolution partially sets forth the controversial community and zoning history of the Applicant's construction of his addition, and recommends that the Board deny the variance[s] the Applicant sought at the time. The Applicant, however, was not given an opportunity to fully address the ANC with reference to the originally-requested variance[s].

The first ANC report addresses variances when the relief ultimately requested by the Applicant and acted upon by the Board was for a special exception pursuant to § 223. Further, the second ANC resolution, recommending approval of the special exception, was later in time than the first resolution. In any event, it is the practice of this

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Persons in Support or Opposition. Council Member Graham filed a letter with the Board dated September 8, 2008 recommending denial of the variance[s] originally requested by the application. Exhibit No. 28. For almost two years before the date of this letter, the Council Member's office had been in contact with the neighbor, Mr. Greene, and with the ZA, as well as with other individuals at the Department of Consumer and Regulatory Affairs ("DCRA") concerning the possibly improper/illegal nature of the construction of the Applicant's addition. See, Attachments to Exhibit No. 28.

FINDINGS OF FACT

The subject property and the surrounding neighborhood

1. The subject property is located at address 1121 Lamont Street, N.W. in an R-4 zone district.
2. The subject property is improved with a three-story row dwelling located in the middle of the 1100 block of Lamont Street.
3. The front portion of the subject row dwelling shares a party wall with the adjacent row dwellings on either side.
4. The rear portion of the subject row dwelling is set back from the eastern side lot line approximately four feet, creating a court with a width of four feet.
5. The addition occupies a space that had been an open court. The addition extends from the rear of the dwelling toward the rear lot line. It also wraps around the corner and extends the footprint of the dwelling to the side lot line for a length of approximately eight feet into the formerly open court, making it a closed court.
6. The adjacent row dwelling to the east, at 1119 Lamont Street, also has an open court of approximately four feet in width facing the subject row dwelling, leaving an open space of approximately eight feet in width between the middle portions of the two dwellings.
7. The rear of the subject row dwelling is accessed from a paved 15-foot wide public alley.
8. The neighborhood surrounding the subject property is characterized by row dwellings, some of which have rear additions similar to the Applicant's.

The Applicant's addition and its history

9. The subject property is a fairly standard rectangle with a total square footage of
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Board to address all of the issues presented to it regardless of the source. Since "great weight" only requires that the Board recognize and address all relevant issues raised by an affected ANC, this order will meet that requirement regardless of whether the formal prerequisites of "great weight" have been met.

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approximately 2,114 square feet.

10. Before the addition that is the subject of this application, the subject row dwelling was approximately 65 feet long and 16.7 feet wide, narrowing to 12 feet, 6 inches wide with the court.
11. The subject addition fills in the 4 foot-wide court for a length of approximately 8 feet and extends the length of the dwelling to the rear by approximately 2 feet, 5 inches.
12. With the addition, the lot occupancy of the subject dwelling is 52%.
13. In the summer of 2004, the Applicant began building the subject addition.
14. On September 10, 2004, DCRA issued to the Applicant Building Permit No. B466430 allowing him to:

Extend back patio (patio currently enclosed). Add on window.
Extend area approx. 47.26 sq. ft. No soil disturbance/excavation
work. No mechanical/plumbing construction. (Exhibit No. 45,
Attachment #5.)
15. On September 20, 2004, DCRA issued a Stop Work Order (“SWO”), citing a violation of the Building Code, 12 DCMR § 107.2.1 (1999). Exhibit No. 24.
16. On May 24, 2005, another SWO was issued, citing “illegal construction at rear of building” and stating that the building was “not in compliance with Zoning Regulations.” The SWO refers to the “courtyard,” but the rest of the sentence is illegible in the record. Exhibit No. 24.⁴
17. Apparently, although not included in the record, the Zoning Administrator (“ZA”) sent a letter to the Applicant dated October 16, 2006, informing the Applicant that his rear addition was not in conformance with approved plans and that it created illegal open and closed courts requiring a variance from the BZA.
18. The Applicant filed an application with DCRA dated June 6, 2007, stating that the application was:

to obtain a variance (BZA) for permit # B466430. Original permit
was for addition to back of house. Extension is to left side of the

⁴The Applicant contended at the hearing that the construction was in accordance with the approved plans, but that DCRA had erroneously approved plans which violated the Zoning Regulations. Hearing Transcript (January 13, 2009) at 282-283.

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house. Extension will be one level. Current issue is the enclosed inner courtyard, thus I'm seeking a BZA variance. (Exhibit No. 9.)⁵

19. By letter dated June 7, 2007, the Applicant informed the ZA that he was seeking a BZA variance for the non-complying open and closed courts. Exhibit No. 3.
20. Based on the Applicant's representations that he would seek a variance from the Board, DCRA suspended its enforcement efforts.
21. By March 5, 2008, however, no variance application had been filed, nor had the Applicant taken any other corrective measures, therefore by letter of the same date, DCRA informed the Applicant that it was "no longer willing to suspend enforcement efforts and intends to move forward with corrective actions." Exhibit No. 23.
22. On March 12, 2008, the Applicant filed this application with the Board requesting variance relief from 11 DCMR § 406.⁶
23. Although a variance would normally be required in these circumstances, § 223 of the Zoning Regulations authorizes the Board to grant special exceptions to permit additions to one- or two-family dwelling that do not comply with § 406 (and other listed sections), provided certain conditions are met.
24. On April 18, 2008, the Applicant requested to amend his BZA application from a variance request to a request for a special exception pursuant to § 223.

The need for relief

25. The Applicant's wraparound addition created a new closed court along the side of the dwelling and a new open court above it.
26. The width of the open court is approximately four feet, whereas, per 11 DCMR 406.1, based on the height of the addition, its required width is 8.3 feet, hence the need for zoning relief.
27. The width of the closed court is approximately four feet, whereas, per 11 DCMR § 406.1, based on the height of the addition, its required width is 8.3 feet, hence the need for zoning relief.

⁵It is unclear why the Applicant filed "seeking a BZA variance" with DCRA instead of with the Board or the Office of Zoning.

⁶At some point between the beginning of construction and the Board proceedings, it was discovered that the roof overhang of the Applicant's addition invaded the neighbor's air space at 1119 Lamont Street by approximately seven inches. This issue was acknowledged by the Applicant and apparently rectified by removing the overhang, and was not before the Board.

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28. The area of the closed court will be approximately 66 square feet where a minimum of 350 square feet is required per 11 DCMR § 406, necessitating zoning relief.

The special exception relief

29. The addition is only one floor and is small, with a total area of approximately 51.7 square feet.

30. The portion of the addition that runs along the side of the Applicant's dwelling is four feet from the closest wall of the neighbor's dwelling and for most of the length of the Applicant's dwelling, there is an open area of eight feet between the two dwellings.

31. Even with the addition, the rear yard behind the Applicant's dwelling is approximately 25 feet in length.

32. There is no window on the wall of the addition facing the adjacent neighbor's dwelling at 1119 Lamont Street.

33. The addition cannot be seen from the street, but can be seen from the alley.

34. The style of the addition matches the character of other rear additions that have been added to the row dwellings along Lamont Street.

35. The pitched roof and roof overhang which were directing water flow onto the back porch of the adjacent dwelling at 1119 Lamont Street have been removed and replaced with a flat roof with no overhang.

36. The flat roof has been fitted, along its perimeter, with both a 6 inch by 10 inch wall and an aluminum gutter leading to an aluminum downspout, relocated away from the adjacent dwelling at 1119 Lamont Street.

37. The downspout drains water to the rear alley through a plastic hose.

CONCLUSIONS OF LAW

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 223.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements

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for the relief requested are met. In reviewing an application for special exception relief, “[t]he Board’s discretion ... is limited to determining whether the proposed exception satisfies the ... requirements” of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305A.2d 516, 518 (D.C. 1973)). Therefore, notwithstanding the somewhat confused history of the construction of the Applicant’s addition, if it now meets the special exception requirements, special exception relief must be granted.

The proposed development meets all the requirements of §§ 3104 and 223. The Applicant’s addition is to a one-family dwelling. In its final iteration, the addition does not have a substantially adverse effect on the use or enjoyment of adjacent properties. The addition is quite modest, only one story tall, and will have little effect on the light and air available to neighboring properties. With no window on the side wall facing the closest neighbor, there is no effect on the neighbor’s privacy. The addition is not visible from the street and does not in any way change the character of the street frontage or the neighborhood.

The addition’s original pitched, overhanging roof impacted the neighbor at 1119 Lamont Street, but that situation has been rectified with a new flat roof design fitted with a 6 inch by 10 inch perimeter wall to prevent spillage of water off the roof. The roof is also fitted with appropriate gutters and downspouts directing water away from 1119 Lamont Street. In a letter dated March 17, 2009, the neighbor at 1119 Lamont, who had been granted party status, characterized the new flat-roofed plans (Exhibit No. 43) “as a solution to the water issue.” Exhibit No. 45.

The R-4 district was established for areas “developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families,” 11 DCMR § 330.1. The principal purpose of the R-4 District is “the stabilization of remaining one-family dwellings,” 11 DCMR § 330.2. The special exception relief here is in harmony with this purpose as it enhances the use of a one-family row dwelling in an R-4 district.

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means 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. As explained above, there is no ANC report to which the Board can properly give great weight; however, this order has nonetheless addressed the relevant issues and concerns raised by the affected ANC. The Office of Planning recommended granting the special exception relief herein, and the Board agrees.

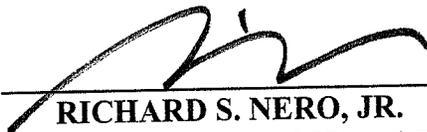
For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a special exception pursuant to §§ 3104 and 223. Accordingly, it is hereby **ORDERED** that this application (pursuant to Exhibit No. 43, plans) be **GRANTED**.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman, and Mary Oates Walker to grant;
Two Mayoral appointees (vacant) not participating, not voting)

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

A majority of Board members has approved the issuance of this order.

ATTESTED BY:



RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: AUG 25 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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

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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 AUG 25 2009, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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Chairperson
Advisory Neighborhood Commission 1A
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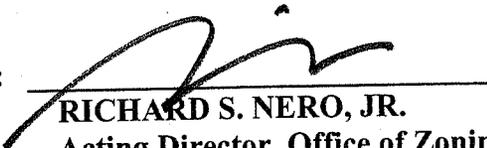
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ATTESTED BY:


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