GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17810-A of Michael Reitz, pursuant to 11 DCMR § 3104.1, for a special exception to allow a garage addition to an existing one-family dwelling under section 223, not meeting the lot occupancy (§ 403) and nonconforming structure (§ 2001.3)[1] requirements in the D/R-5-B District at premises 1505 Harvard Street, N.W. (Square 2577, Lot 42).

HEARING DATE:	September 16, 2008
DECISION DATE:	October 21, 2008
DATE OF REMAND FROM D.C. COURT OF APPEALS:	October 19, 2009
DATE OF BOARD CONSIDERATION AFTER REMAND:	May 11, 2010
DATE OF POST-REMAND LIMITED HEARING:	June 15, 2010
DATE OF DECISION AFTER POST-REMAND LIMITED HEARING:	July 20, 2010

DECISION AND ORDER AFTER REMAND[2]

On April 8, 2008, this application was filed by Michael Reitz ("Applicant"), the owner of the property that is the subject of this application ("subject property"). The Applicant requested a special exception pursuant to 11 DCMR § 223 to permit construction of a garage addition to his

[1]The caption was changed from the original, which stated that rear yard relief was necessary pursuant to § 404, to reflect the correct relief – pursuant to § 2001.3. The rear yard involved in the application is nonconforming, but this nonconformity is not being increased and the proposed addition is not encroaching on the rear yard. Therefore, the proper relief is pursuant to § 2001.3 to permit the enlargement of a structure nonconforming for rear yard and lot occupancy. In any event, both the lot occupancy and the nonconforming structure relief are subsumed under § 223.

[2]Although this order is being issued after a remand from the District of Columbia Court of Appeals, the original order, which was appealed, was a Summary Order, with no Findings of Fact or separate Conclusions of Law. Therefore, this order will contain Findings of Fact and Conclusions of Law in the first instance.

one-family dwelling on the subject property. The special exception was necessary because the dwelling is nonconforming for rear yard, and with the addition, would exceed the maximum lot occupancy of 60% permitted in this R-5-B zone district. According to the calculations of the Zoning Administrator ("ZA"), the lot occupancy of the dwelling, with the garage addition, would be approximately 69%, just one percent less than the 70% maximum permitted by § 223.

The Board of Zoning Adjustment ("Board") held a properly-noticed public hearing on the application on September 16, 2008 and set a decision date of October 21, 2008. At the hearing, Mr. John Moore, a neighbor, brought up the question of whether an easement ran along the subject property's rear lot line, and within its rear yard (as well as those of adjacent properties) and if so, what effect it would have on the lot area, and correlatively, on the lot occupancy of the subject one-family dwelling. The issue was important because, depending on its resolution, the final lot occupancy could have ended up being more than 70%, eliminating § 223 as an avenue of relief, and necessitating that the Applicant file for area variance relief.

At the close of the hearing, the Board kept the record open for more information on the existence of the easement, but no conclusive evidence as to its existence was presented to the Board prior to its October 21, 2008 decision date. On the evidence in the record at the time, the Board declined to make a determination one way or the other as to the easement's existence, and instead, decided to rely on the referral by the ZA to the effect that the lot occupancy was less than 70%. During its deliberations, the Board mentioned, and partially relied on, Board precedent in *Appeal No. 17631 of ANC 3E and Todd Boley*, 55 DCR 3136 (2007), wherein the Board decided that the land area within a known easement was included in the calculation of lot area. In *Boley*, therefore, the existence of the easement did not reduce the lot area, and, accordingly did not increase the lot occupancy of the building(s) at issue in that case. The Board went on to deliberate on the merits of the § 223 application. The Board concluded that the general requirements of 11 DCMR § 3104 and the specific conditions of § 223 were met, and therefore granted the application. Because the decision was not adverse to a party, the Board's written decision contained no findings of facts or conclusions of law, as is permitted by §10 of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-509 (e).

Mr. Moore appealed the Board's order (Exhibit 45) to the District of Columbia Court of Appeals ("Court of Appeals" or "Court"). (Exhibit 49.) Prior to any appeal proceedings, however, the Board moved the Court to remand the case to the Board for further administrative proceedings, to enable the Board to make a more conclusive determination as to the existence of the easement and its effect, if any, on the calculation of the lot area/lot occupancy. (Exhibit 50, Second Attachment.) The Court remanded the case to the Board "for actions consistent with [the Board's] motion" requesting remand.[3] (Exhibit 50.)

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[3]In its motion, the Board stated that it wished to "reexamine its position that it could not rule upon the factual issue presented and either explain the basis for that determination or alternatively make findings of fact regarding the existence of a right of way and determine the legal consequence of any such easement on its ability to consider the special exception." (Exhibit 50, Second Attachment, at 2.)

After the Court remanded the case to the Board, the Board set a date to consider the proper course of action to take with respect to the application and the outstanding easement issues. At a special public meeting on May 11, 2010, the Board allowed testimony from the Applicant and Mr. Moore. Mr. Moore was not present at the special public meeting, but the attorney who had represented him at the Court of Appeals was present. The Board decided that a further, limited hearing was necessary, which was set for June 15, 2010. At the limited hearing on that date, Mr. Moore appeared and was granted party status, and he and the Applicant presented cases concerning the existence and effect of, the easement.

After the limited hearing, the Board set a decision date of July 20, 2010, at which time, the Board, at a properly-noticed public meeting, concluded that the easement exists, and that its land area is included in the calculation of lot area. Consequently, the lot occupancy of the Applicant's dwelling remained below 70%, retaining his eligibility for special exception relief pursuant to § 223. The Board, therefore, decided to affirm its earlier grant of relief pursuant to § 223 by a vote of 3-0-2.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 9, 2008, the Office of Zoning ("OZ") sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the subject property is located, Single Member District 1B07, and the Councilmember for Ward 1. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register*, and on June 9, 2008, sent such notice to the Applicant, ANC 1B,[4] and all owners of property within 200 feet of the subject property.

After the application was remanded from the Court of Appeals, it was scheduled to be deliberated at the Board's special public meeting on May 11, 2010. OZ provided notice of the planned May 11th deliberation, via courtesy calls, to the Applicant, Mr. John Moore, the neighbor who had appealed, and the attorney who had represented Mr. Moore at the Court of Appeals. The Applicant and Mr. Moore's attorney attended the May 11th special public meeting, at which they were informed by the Board that a limited public hearing would be held on June 15, 2010. Therefore, pursuant to 11 DCMR § 3105.13, proper notice of the date of the limited hearing was afforded to the interested parties.

Request for Party Status. ANC 1B was automatically a party to this application and filed a letter of support with the Board dated September 9, 2009. (Exhibit 24.) The ANC did not participate in the case after it was remanded to the Board.

[4]The letter dated June 9, 2008 notifying ANC 1B of the hearing was apparently addressed with the wrong zip code, and was followed up by a second notice letter to the ANC dated June 24, 2008, which was addressed correctly.

There were three party status requests made prior to the first hearing on the application. Three neighbors, Ms. Kathleen Clark, and Mr. and Mrs. Ziv, filed requests for opposition party status, but none of them appeared at the hearing on September 16, 2008. The Board denied their party status requests. Mr. John Moore, whose rear lot line abuts that of the subject property, also requested opposition party status, but withdrew that request at the first hearing. He, however, appealed the Board's decision to the Court of Appeals, and re-requested party status after the case was remanded. The Board granted his request during the limited hearing held on June 15, 2010, and post-remand, he participated as a party-opponent.

The Applicant's Case. At the September 16, 2008 hearing on the application, the Applicant presented his case and testified as to the proposed construction and how it met the special exception tests. At the post-remand limited hearing held on June 15, 2010, the Applicant again presented his own case. He did not make a case for or against the existence of the easement, but appeared to argue that if it did exist, it would be a private easement, and that it was gated and locked, and already encroached upon by structures and trees.

Government Reports. OP submitted three reports to the Board, all recommending approval of the special exception relief. In its first report, dated September 9, 2008, OP addressed the provisions of § 223, but did not discuss the possibility of the existence of the easement. (Exhibit 26.) In its second, or Supplemental, Report, dated October 10, 2008, and therefore written after the hearing, OP stated that there was no indication of an easement in the records of the Office of the Recorder of Deeds. (Exhibit 36.) Attached to the second report is a memorandum from the D.C. Department of Fire and Emergency Services ("FEMS") which states that, after reviewing documentation submitted by OP, FEMS concludes that "[t]he [A]pplicant's private driveway is not a part of public way or public alley, and the D.C. Fire Department has sufficient alternate access on 15th St. and Columbia Rd., N.W." (Exhibit 36, Attachment.)

OP's third report, entitled "Addendum to Supplemental Report," dated October 17, 2008, states that OP had received documentation of the existence of the easement from the neighbor, Mr. Moore. The OP report discussed the fact that some past maps showed the easement and some did not, but that the plat prepared by the Surveyor in 2008 did not. OP did not make a determination as to whether the easement exists, but pointed out that if it does, the lot area and the lot occupancy involved in the application could change. OP also noted that "[t]he existence of the right of way has no bearing on the issue of FEMS access." (Exhibit 43.)

ANC Report. ANC 1B filed a letter with the Board on September 9, 2008, stating that, at a properly-noticed public meeting with a quorum present, the ANC voted unanimously to support the application for special exception. The letter notes that the ANC had not received any comments from the residents of Square 2577, but that the "two-story addition appears to be consistent in height and design with the three row properties to the east, and should have minimal impact on the large apartment structure to its west." (Exhibit 24.)

FINDINGS OF FACT

The subject property and the surrounding neighborhood

1. The subject property is located at address 1505 Harvard Street, N.W. (Square 2577, Lot 42), in a D/R-5-B zone district.

2. The subject property is a rectangle on three sides, with an angled rear lot line. Its western lot line is 35.74 feet long, while its eastern lot line is 61.62 feet long, resulting in an angled rear lot line of 46.78 feet long, while the front lot line, parallel to Harvard Street, is only 38.96 feet long.

3. The area of the subject property is approximately 1,896 square feet, and its lot width is 38.96 feet. There is no minimum lot area or minimum lot width prescribed in this R-5-B zone district. (11 DCMR § 401.3.)

4. The property is improved with an existing two-story, one-family row dwelling attached to the row dwelling to the east.

5. Between the western wall of the subject dwelling and the western lot line of the subject lot, and therefore in the side yard of the subject dwelling, is a concrete-paved driveway, 16.75 feet wide, which extends from Harvard Street toward the rear of the lot.

6. Based upon the entire land area of the property, the lot occupancy of the subject dwelling is approximately 48.9%, less than the 60% maximum permitted in this R-5-B zone. (11 DCMR § 403.2.)

7. The rear yard of the subject dwelling goes from a depth of three feet, along the western lot line, to a depth of 19.3 feet, along the eastern lot line. Due to the angled rear lot line and the placement of the dwelling, the average rear yard depth is approximately 9.66 feet. This is less than the minimum of 15 feet required, but no part of the addition will be in the rear yard, so the rear yard dimensions will not change as a result of the proposed construction. (11 DCMR § 404.1.)

8. The property immediately to the west of the subject property is developed with a six-story multiple dwelling, The Copperfield Condominium building. Running along the eastern lot line of the condominium building, and therefore adjacent to the Applicant's driveway, is a thick brick wall, approximately eight feet tall. This brick wall stands approximately eight feet away from the eastern wall of the condominium building. The top of the brick wall is attached to the condominium's eastern wall by a series of what appear to be metal beams, and under these beams, and therefore between the brick wall and the condominium building's wall, is space for vehicle parking.

9. The rest of Square 2577 is developed with row dwellings, fronting on Harvard Street to the south, like the subject property, or fronting on Columbia Road, to the north.

10. The rear yards of the dwellings fronting on Columbia Road abut the rear yards of the dwellings fronting on Harvard Street, with no rear alley in between to separate them.

11. The surrounding neighborhood is characterized by a mix of one-family row dwellings, multiple dwellings, and institutional uses, such as places of worship.

<u>The Applicant's proposal</u>

12. The Applicant proposes to construct an attached two-story garage addition to the existing row dwelling, which would replace the existing driveway.

13. The addition would be 16.75 feet wide by 25 feet deep, for an area of 420 square feet. At 16.75 feet wide, the addition would extend from the subject dwelling to the brick wall on the eastern property line of the adjacent condominium building, blocking access from Harvard Street to the rear yard of the subject property.

14. The addition will be 22 feet tall, and will contain a garage on the first floor and a storage/work area on the second floor.

15. Assuming that the entire land area of the lot is counted, the lot occupancy of the subject dwelling with the addition is increased to 69.6%, more than the 60% permitted, necessitating zoning relief. (11 DCMR § 403.2.)

16. The front of the addition will be flush with the front wall of the dwelling, and the rear wall of the addition will sit three feet before the end of the western lot line and will be parallel to Harvard Street.

<u>The existence of an easement</u>

17. The subject lot is currently shown on the Surveyor's records as record Lot 42 in Square 2577. In January of 1914 it was part of Lots 36 and 37 in "Meridian Hill" Block 20. A drawing of those lots is shown in Exhibit 37.

18. Lots 36 and 37 were the subject of a conveyance described in a deed recorded January 22, 1914. (Exhibit 37, page 2.) That deed made the conveyance "[s]ubject to a right of way for alley purposes over the Northerly 4 feet of said lots." Later that year, the two lots were subdivided to create Lots 40, 41, and 42, and Block 20 became Square 2577.

19. The language in the deed is sufficient to create the type of servitude on the land known as an easement.

20. Three deeds from October, 1917, detail the transfers of Lots 42, 41, and 40 in Square 2577 and each deed specifies that the said Lot is transferred "subject to right of way for alley purposes over Northerly four feet of said lot." (Exhibit 54, Second Attachment.)

21. No known subsequent deeds of transfer specifically reference this easement, but none of these deeds expressly terminates it.

22. Therefore, a four-foot-wide easement currently runs along the rear lot line of the subject property.

23. The easement runs from the western lot line of the subject lot, through the rear yards of the two lots to its east, and terminates at 15th Street, the north-south street which forms the eastern boundary of Square 2577.

24. The easement has been used to provide access to 15th Street from the rear yards of most of the one-family dwellings on Square 2577 – both those facing Harvard Street and Columbia Road.

25. Abutting neighbors, as well as workmen, when necessary, use the easement.

26. The easement does not provide, nor does it appear that it was meant to provide, any access from these dwellings' rear yards to Harvard Street.

27. Although the 1914 documentation of the easement states that it is for "alley purposes," at only four feet wide, its uses would be limited to pedestrians and conveyances which could fit in its four-foot width.

28. Both ends of the easement strip, at 15th Street, and at the western property line of the subject property, are gated, and all along the sides of the strip, on both sides, there appear to be fences, walls, and/or sheds.

29. If the portion of land on the subject lot and within the easement strip is excluded from the calculation of lot area, the lot occupancy of the Applicant's dwelling with the proposed addition would be approximately 75.8%, rendering this application ineligible for special exception relief pursuant to § 223, which is only available if the lot occupancy requested by an application is 70% or less. (11 DCMR § 223.3.)

<u>The special exception relief</u>

30. The western wall of the proposed addition will be set against the approximately eight-foot-tall brick wall on the eastern lot line of the condominium building. This brick wall is at least a car length away from the condominium building wall; thus, the addition will be at least that distance from the condo building.

31. The addition will be only two stories high, whereas the condo building is six stories high.

32. The side of the addition facing the condo building will be of split-faced decorative block and will have no windows.

33. At 22 feet high, the addition will be the same height as the subject dwelling to which it will be attached, and its front will be flush with the front of the dwelling.

34. The front façade of the addition will be clad in brick veneer. It will have a garage door and a street door on the ground level, and one central bay window on the second level, as well as an interesting, shaped roof line, to match the character, scale and pattern of houses along the Harvard Street frontage.

35. The rear façade of the addition will be covered in vinyl siding and will have no windows, with only a door at the ground level.

36. One small outdoor light will be positioned next to the street door on the front façade and next to the ground level door on the rear façade.

37. The addition will be used to store a vehicle in its first floor garage, replacing the vehicle storage provided by the driveway. The second story will be used as a storage room/work room. Neither use will cause undue noise or odors.

CONCLUSIONS OF LAW

Introduction

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 for the relief requested are met. In reviewing an application for special exception relief, the 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*, 305 A.2d 516, 518 (D.C. 1973)).

In this case, before addressing the special exception tests, the Board must first address the preliminary issue of what effect, if any, the existence of the easement has on the calculation of lot area. If the land within the easement is not included in the lot area calculation, the lot occupancy of the Applicant's dwelling plus addition is 75.8%, more than the 70% permitted by § 223, making § 223 relief unavailable. If, however, the land within the easement is included in

the lot area calculation, the lot occupancy of the Applicant's dwelling plus addition is 69.6%, and § 223 relief is available.

<u>The Existence and Effect of the Easement/Right-of-Way</u>

As set forth in the Findings of Fact, the Board has now determined that a four-foot-wide easement was established in 1914 running along the rear lot line of the subject lot and that the easement has never been terminated. The easement continues through the two rear yards to the east and terminates at 15th Street, providing a rear means of access to 15th Street to many of the residents of Square 2577.

Now that the existence of the easement has been definitively ascertained, the Board must determine whether its land area is included in the calculation of the subject lot area. There is no dispositive case on the question in this jurisdiction, but there appear to be two major schools of thought represented in the case law of this, and other, jurisdictions. One school of thought holds that the trier of fact should determine whether the right-of-way is "private" or "public" in nature, and, generally, if the former, its land area would be included in lot area calculations, but if the latter, its land area would be excluded from such calculations. *See, e.g., Mishkin v. City of Allentown Zoning Board,* 51 Pa. D & C.2d 441, 444 (1971). (The court stated: "[w]e regard the board's decision that there is a distinction between public and private 'streets' for the purposes of deciding whether the 'net land area' requirement was met in this case is sound."); *Metzenbaum v. City of Carmel-by-the-Sea,* 234 Cal.App.2d 62, 44 Cal. Rptr. 75 (1965), relied on by this Board in *Appeal No. 17631 of ANC 3E and Todd Boley* (2008).

This private vs. public test was applied by this Board in *Appeal No. 17631 of ANC 3E and Todd Boley* (2008), and turns on whether the easement is considered "private" or "public." To make this determination, courts look to factual aspects of the easement and its use, such as whether it was properly dedicated and accepted by a municipality (*MacCorkle v. City of Charleston,* 105 W.Va. 395, 142 S.E. 841 (Sup. Ct. App. W. Va. 1928); *Watson v. Carver,* 27 App. D.C. 555, 559-560 (Ct. App. D.C. 1906)), how the easement actually functions, *i.e.*, how it is used and by whom (*Kohler v. Martin,* 916 P.2d 910, 913-914 (Ct. App. Utah 1996); *Loveladies Property Owners Ass'n. v. Barnegat City Service Co.,* 159 A.2d 417, 422-423 (N.J. Supr. App. Div. 1960)), and regardless of who uses it, who actually has a right to use it (*Mishkin,* 51 Pa. D.& C. at 444). Courts also look at the easement's physical attributes, such as its width (*Preston v. Siebert,* 21 App. D.C. 405, 413 (1903)), whether it connects other public or private ways, (*Watson,* 27 App. D.C. at 559-560), and whether it is gated or "signed" as private (*Kohler v. Martin,* 916 P.2d 910, 913-914 (Ct. App. Utah 1996); *Johnson v. Texas,* 773 S.W. 721, 723 (Ct. App. Tex. 1989)).

The second school of thought looks directly to the definition of "lot" in the applicable regulations. For example, in *Loveladies Property Owners Ass'n. Inc. v. Barnegat City Service Co.,* 159 A.2d 417 (N.J. Supr. App. Div. 1960), the court held that easements that created a private street could not be considered part of a zoning lot, which was defined as "a parcel of land

on which a main building and its accessory buildings are or may be placed, together with the required open spaces." The court held that the easements in question were not land on which buildings "may be placed" as they were private access easements. The court also held that the easements could not be considered as part of "the required open spaces" included in the definition of "lot" because the "open space" reference plainly meant the front, rear, and side yards, which are aesthetically and functionally different from a right-of-way available for the passage of pedestrians.

Another case which takes the same approach and came to the same conclusion is *Sommers v. Mayor and City Council of Baltimore*, 135 A.2d 625 (Ct. App. Md. 1957). The definition of "lot" being interpreted in that case was, in pertinent part, as follows: "a parcel of land now or hereafter laid out and occupied by one building and the accessory buildings … including such open spaces as are required." The *Sommers* court specifically stated that whether the easement in question was public or private was irrelevant. What it found relevant was that the easement did not fit within the definition of "lot" because it was not "a parcel of land laid out and occupied by one building and the accessory buildings," nor, apparently, a required open space. And, because it did not fit within the definition of lot, the land area within the easement was not included in the calculation of lot area.

The definition of "lot" at 11 DCMR § 199.1 appears to contain the same elements as these cases: "The land bounded by definite lines that, when occupied by a building or structure and accessory buildings, includes the open spaces required under this title."

Nevertheless, the Board sees no reason to depart from its past precedent that applied the private vs. public distinction in favor of a test that requires it to interpret the laws of property rather than the Zoning Regulations. Jurisdictional considerations aside, any determination of the right of a property owner to encroach upon an easement area would invariably embroil the Board in private disputes wholly unrelated to zoning. For example, in this very case the Applicant proposed to encroach upon an easement that the opposition claims may not be built upon.

In addition, the application of the buildable area test would result in inconsistent treatment of limitations on construction, depending upon whether the limitation is public or private. Thus, land area located in "open spaces required under" the Zoning Regulations would count towards lot occupancy, but open spaces required by private agreements would not. In contrast, the private vs. public test treats public areas created by private agreement the same way as public space is treated; neither are included within the computation of lot occupancy.

Applying the private vs. public test to this easement, the Board concludes it is a private easement that should be included in the calculation of lot area and therefore, lot occupancy. After considering relevant factors, such as the users of the easement, the uses it has been put to, its narrow width, the existence of a gate, and its non-through nature, the Board concludes that it is a "private" easement primarily used by, and intended for the use and benefit of, the residents of Square 2577, and particularly those whose properties abut it. Use by all abutting property

owners, and not merely by one property owner, does not change what would otherwise be a private easement into a public one. *Kohler v. Martin*, 916 P.2d at 913. ("It is well established that mere use of the roadway by adjoining property owners (and public invitees thereof) does not create a public thoroughfare.")

The Board, therefore, concludes that the portion of land within the easement running along the rear lot line of the subject property is included in the calculation of the lot area of the subject lot. Therefore, the lot occupancy of the Applicant's dwelling, including the proposed addition, is 69.6%, within the 70% permitted by § 223. The Board will now proceed to address the applicable special exception tests set forth in §§ 223 and 3104.

<u>The Special Exception</u>

Section 3104 mandates that, to be granted a special exception, construction proposed by an application must not tend to adversely affect the use of neighboring property. This mandate is echoed in § 223.2(a), which states that such construction shall not unduly affect the light and air to neighboring properties, and in § 223.2(b), which states that such construction shall not unduly compromise the use and enjoyment of neighboring properties.

The special exception requested by this application is for a two-story addition to a one-family row dwelling. This addition will be the same height as the dwelling to which it is attached. On the other side of the addition is a six-story multiple dwelling, but the western wall of the addition will not be set against the eastern wall of the multiple dwelling. Instead, the two walls will be separated by an open space of approximately eight feet – a space used for parking by residents of the multiple dwelling and enclosed by a one-story, thick brick wall to the east and an open-work roof.

Due to the existence of the brick wall enclosing the parking space, the addition will have little or no effect on the light and air available to the first floor of the multiple dwelling and the second story of the addition will be set away from the second floor of the multiple dwelling by approximately eight feet, a sufficient space to allow light and air to the second floor condo. The balconies to some of the condos will be facing the addition, but there will be open space of approximately six feet between them and the wall of the addition. These balconies also begin at the front wall of the condo building and extend back, away from Harvard Street. Because the condo building's front wall is set several feet closer to Harvard Street than the front wall of the addition, any impact on light and air will be minimized.

Due to the angled rear lot line of the subject lot, the rear of the addition will be set from three to approximately eight feet from the rear of the lot. Adjacent to this open space is the rear yard of the abutting property which fronts on Columbia Road. The rear wall of the addition is therefore set at a sufficient distance from the rear wall of the closest neighbor's dwelling to allow sufficient light and air to reach this neighbor.

The only window on the entire addition faces the street. With no windows on the rear or side of the addition, no neighbors' privacy of use or enjoyment is compromised. The street-facing window is a bay window, adding architectural interest to the otherwise simple front. The front of the addition is flush with the front wall of the dwelling, and does not visually intrude upon the character, scale and pattern of houses along Harvard Street. As for other issues, because the addition will be replacing a driveway with a garage, there will be no increase in impermeable ground surface area and no net loss of off-street parking.

The addition, and the lot occupancy relief requested, are in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and meet the necessary provisions of §§ 3104 and 223, therefore, the special exception must be granted. *First Washington Baptist Church*, at 701.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the OP. 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. Both OP and ANC 1B recommended the granting of this application and the Board agrees with this recommendation.

For all the reasons stated above, the Board concludes that the application satisfies the burden of proof for a special exception under § 3104, pursuant to § 223, to construct an addition to a one-family dwelling at the subject property. Accordingly, it is hereby **ORDERED** that the application, pursuant to Exhibit No. 7, Plans, be **GRANTED.**

VOTE TO GRANT RELIEF AT OCTOBER 21, 2008 DECISION MEETING:	**5-0-0**	(Ruthanne G. Miller, Shane L. Dettman, Marc D. Loud, Mary Oates Walker, and Anthony J. Hood to Grant)
VOTE TO AFFIRM GRANT OF RELIEF AT JULY 20, 2010 DECISION MEETING:	**3-0-2**	(Meridith H. Moldenhauer, Shane L. Dettman, and Michael G. Turnbull to Grant; Nicole C. Sorg not present, not voting; No other Board members (vacant) participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of Board members approved the issuance of this order.

ATTESTED BY: _____
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: NOV 24 2010

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 PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17810-A

As Director of the Office of Zoning, I hereby certify and attest that on NOV 24 2010, 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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ATTESTED BY: Jamison L. Weinbaum
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Director, Office of Zoning