

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18000 of Christopher and Jean Whaley, pursuant to 11 DCMR §§ 3104.1 and 1202.1, for a special exception to allow a two-story rear addition to a one-family semi-detached dwelling located in the Capitol Interest (CAP) Overlay/R-4 District under § 223, not meeting the lot occupancy (§ 403), side yard (§ 405), and nonconforming structure provision (§ 2001.3) at premises 321 6th Street, S.E. (Square 844, Lot 810).¹

HEARING DATE: November 24, 2009
DECISION DATE: November 24, 2009

DECISION AND ORDER

This application was filed on August 19, 2009, by Christopher and Jean Whaley (collectively “Applicant”), the owners of the property that is the subject of this application (“subject property”).

The Board held a hearing on the application on November 24, 2009, and, at the close of the hearing, deliberated on the application, and decided to grant it, by a vote of 4-0-1.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 20, 2009, 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”) 6B, the ANC within which the subject property is located, Single Member District 6B02, and the Council Member for Ward 6. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register*, and on September 16, 2009, provided such notice to the Applicant, ANC 6B, and all owners of property within 200 feet of the subject property. On November 10, 2009, OZ provided notice of the hearing date to the Architect of the Capitol (“AOC”), as required by 11 DCMR § 1202.

¹ The original application included an alternative request for three area variances. The Board treated the request for a special exception as the proper request and the caption therefore reflects just that form of zoning relief.

BZA APPLICATION NO. 18000
PAGE NO. 2

Requests for Party Status. ANC 6B was automatically a party to this application and filed a letter of support with the Board. There were three requests for opposition party status from nearby neighbors, and one neighbor declined to oppose or support the application, but she “designated” one of the neighbors requesting opposition party status to represent her “opinion on [the] matter.” Exhibit No. 26. The requests for party status opposed the application on several grounds: negative impacts on light, air, views, privacy of use and enjoyment of neighboring properties, allegedly too-great size, height, and massing, concern for alleged lack of harmony of the proposed addition with the historic neighborhood, and concern for the integrity of the attached mirror-image structure. The neighbor immediately to the north of the subject property and the neighbor residing in the attached dwelling were both granted party status. The other party status request was denied, but the neighbor residing in the attached dwelling spoke on behalf of the other party status requestor and the neighbor who had declined to take a position.

Applicant’s Case. The Applicant gave a brief statement concerning the proposed project, but the Applicant’s architect and land use and zoning expert presented the bulk of the case. Both of these experts testified as to how the application met the special exception and variance tests. The architect also presented the results of a shadow study she had performed.

Government Reports. The Office of Planning filed a report with the Board on November 17, 2009, recommending approval of the application as a special exception pursuant to 11 DCMR §§ 223 and 1202. The OP report concluded that there is a sufficient side yard and rear yard separation between the proposed addition and its closest neighbors, and that the neighbor immediately to the north has a three-story rear addition, whereas the proposed addition will be only two stories. The report also indicated that the proposed addition will not have any windows on its south side, nor will it be more than minimally visible from a street. OP therefore found that the proposed addition will not unduly affect light, air, privacy, use, or enjoyment, nor will it visually intrude upon the character of the area, and that the provisions of both §§ 223 and 1202 are met.

The report and recommendation from the Historic Preservation Review Board (“HPRB”) staff, dated March 26, 2009, was appended to the OP report. The HPRB staff report explained how the design of the proposed addition had been revised to incorporate changes suggested by the staff, and that the newly-revised design was a fair improvement. The report spoke approvingly of the reduced height achieved by the removal of the originally-proposed third story, as well as the reduced massing due to the exchange, on the second story, of a bedroom for an uncovered deck. The report concluded that “[t]he revised plan is compatible with the historic house and with the character of the Capitol Hill Historic District.” Exhibit No. 33, Attachment.

ANC Report. ANC 6B filed a letter on November 16, 2009, stating that, at a properly-noticed regularly-held meeting, held on November 10, 2009, with a quorum present, the ANC voted unanimously to recommend approval of the application. The letter states that the ANC “believes the project’s impact on air, light, and privacy are negligible.” Exhibit No. 30.

BZA APPLICATION NO. 18000
PAGE NO. 3

Persons in Support or Opposition. No persons (*i.e.*, not “parties”) appeared in support or in opposition.

FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. The subject property is located at address 321 6th Street SE, Square 844, Lot 810, in the R-4 zone district, as well as in the Capitol Interest (“CAP”) Overlay District and the Capitol Hill Historic District.
2. The subject property is of a rectangular shape fronting on the west side of 6th Street SE, with a width of 19 feet and a length of 105.08 feet.
3. There is no alley access at the rear of the property.
4. The subject lot is nonconforming as to lot width and area for a semi-detached dwelling, with a width of 19 feet, where 30 feet is required, and an area of 1,996 square feet, where 3,000 square feet is required. 11 DCMR § 401.
5. The property is improved with a one-family semi-detached dwelling, constructed in the mid-nineteenth century, which is attached to a dwelling that presents essentially its mirror image.
6. The subject dwelling is of frame construction, 34 feet long and 11 feet wide, with two full stories and a one-story rear addition.
7. The dwelling is nonconforming as to lot occupancy, with a lot occupancy of 47.6% where 40% is permitted, and as to side yard, with a side yard of one foot, eight inches, where at least eight feet is required. 11 DCMR §§ 403 & 405.
8. The surrounding neighborhood is predominantly residential, including some multi-family buildings. The west side of 6th Street is residential, while the east side is residential at its southern half and commercial at its northern half, including across the street from the subject property.

The Applicant’s Proposal

9. The Applicant proposes to remove the existing one-story rear addition and replace it with a two-story rear addition that will extend 4 feet further into the rear yard than the current one-story addition.
10. The addition will add approximately 100 square feet to the dwelling’s first floor and approximately 400 square feet to the second floor, and will increase the lot occupancy of the dwelling to approximately 56.8%.

BZA APPLICATION NO. 18000

PAGE NO. 4

11. The party wall between the dwelling and the attached dwelling to the south is not currently fireproof, but will be fireproofed when the new addition is constructed.

Consistency with the Special Exception Criteria

12. The new addition will have a sloping roof, which, at its highest point, will be significantly lower than the roof of the existing dwelling.
13. The new addition will be barely visible from 6th Street.
14. The first 10 feet of the rear addition, closest to the existing dwelling, will leave a side yard of two feet, two inches, between its northern wall and the northern lot line, and the rest of the new addition is stepped further away from the northern lot line, leaving a side yard of six feet, two inches.
15. The neighboring dwelling to the north has a three-story rear addition, of more solid massing than the Applicant's proposed addition, the southern wall of which abuts a side yard approximately eight feet wide.
16. The proposed addition will not have any windows on its southern wall and a six-foot high privacy fence encloses the perimeter of the subject property.
17. The rear yard of the subject property abuts the rear yards of properties fronting on 5th Street, and the new addition will be separated from the rear yards of those properties by at least 36 feet of open rear yard space on the subject property.
18. The last eight feet, six inches of the second story of the addition will be an open deck, reducing the overall massing of the addition.
19. The deck will allow views of the adjacent rear yards, but no more so than would a window, and no more so than the northern neighbor's second-floor side veranda, which overlooks the rear yard of the subject property.
20. The neighboring dwelling to the north has 18 windows on its southern wall, all of which look toward, or into, the subject property.
21. The proposed wood frame addition harmonizes with the dwelling and will be clad in wood siding on all sides, to match the exterior of the dwelling.
22. The design of the addition is traditional, and, barely visible from the street, it does not overwhelm the dwelling itself, therefore it does not visually intrude on the character of the houses along 6th Street.
23. The height, area, and bulk of the addition are well within those contemplated in the CAP Overlay District. *See*, 11 DCMR §§ 1200, 1202, & 1203.

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 and § 1202.

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, “[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*, 305 A.2d 516, 518 (D.C. 1973)).

The detached dwelling on the subject property is a use permitted in this R-4 zone. The proposed addition itself does not need zoning relief for its height or bulk, but relief is needed because its already nonconforming lot occupancy and side yards will be enlarged by the proposed addition. The dwelling’s lot occupancy will increase from 47.6% to 56.8% and the side yard, which will be extended in length, will be at most six feet, two inches in width, where eight feet is required. 11 DCMR §§ 403 and 405.

Ordinarily, the enlargement of an area nonconformity requires the grant of a variance from § 2001.3. However, § 223 permits such enlargements to one-family dwellings, provided that certain criteria are met. In addition, § 1202 of the Capitol Interest Overlay District requires the Board to apply additional criteria when reviewing any special exception for a property mapped within the district. The Board concludes that the application meets all of the applicable requirements.

Section 223 requires that the proposed addition not “unduly affect” the light and air available to neighboring properties, nor “unduly compromise” their privacy of use and enjoyment, § 223.2 (a) & (b). These requirements are echoed in § 3104.1’s mandate that granting of the special exception not tend to affect adversely the use of neighboring property.

The proposed addition has undergone several revisions to ensure that it does not “unduly affect” light and air or “unduly compromise” privacy of use and enjoyment of both adjacent properties. The originally-proposed third floor of the addition has been removed and an originally-proposed bedroom at the rear of the second floor has been changed into an open-air deck. Both of these changes reduce the massing of the addition and any shadows it may cast. There is a separation of between two feet, two inches and six feet, two inches between the addition and the property to

BZA APPLICATION NO. 18000

PAGE NO. 6

the north, plus an approximately 8-foot wide side yard on that neighboring property. Beyond the rear wall of the addition is an open rear yard of 36 feet, two inches -- 16 feet longer than the 20-foot rear yard required. 11 DCMR § 404.1. The rear yard abuts the rear yards of two dwellings that front on 5th Street, amounting to a total open area of significantly more than 36 feet. The south wall of the proposed addition, newly fireproofed, will continue to share the property line with the north wall of the one-story addition of the attached dwelling, and will continue just four feet past the rear wall of the attached dwelling's addition.

No windows will be placed on the south wall of the proposed addition, mitigating any privacy concerns in this regard. The proposed rear deck will permit views into neighboring rear yards, but no more so than a window would, and no more so than permitted from the second-story veranda along the south wall of the adjacent neighbor to the north.

Section 223 also requires that the addition not “visually intrude upon the character, scale, and pattern of houses along the ... street.” § 223.2(c). This is certainly true here. The proposed addition is just barely visible from the street and there is no alley from which it can be seen. The wood frame dwelling is modest in scale, and the addition follows suit. It is lower in height than the dwelling and remains tucked behind it. While any rear addition, by virtue of its existence, would have some effect on the neighbors' views from the *rear portions* of their homes, this addition causes *no* “undue” or “substantial” adverse effects on neighboring properties.

Subsections 1202.1 (b) and (c) stipulate that a special exception within the CAP Overlay District must be consistent with the mandates of Title V of the Legislative Branch Appropriation Act, 1976, approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288), (the “Act”), and the master plan promulgated under the Act. Title V of the Act authorized funds to enable the AOC to develop a master plan for the future development of the grounds of the U.S. Capitol. The Board received a letter from the AOC stating that the relief requested in this application would not be inconsistent with the intent of the CAP/R-4 District nor with the goals and mandates of the United States Congress as stated in the Zoning Regulations. Exhibit No. 31.

With its traditional design, modest proportions, and matching wood-framing and wood-clad exterior, the proposed addition is compatible with the present and proposed development of its neighborhood. § 1202.1 (a). The height, size, and bulk of the addition are consistent with the goals for development within the CAP Overlay District and the addition improves the subject dwelling, thereby improving the housing stock available on Capitol Hill. *See*, § 1202.1 (b) & (c).

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by 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. ANC 6B unanimously voted to support the application, whether it be adjudged a special exception or variances. OP recommended approval of the application as a special exception

BZA APPLICATION NO. 18000

PAGE NO. 7

request pursuant to §§ 3104, 223, and 1202, and that is how the Board treated it. The Board agrees with the recommendations of the ANC and OP.

For all the reasons above, the Board concludes that the Applicant satisfied the burden of proof necessary for a special exception under § 3104, pursuant to §§ 223 and 1202. Accordingly, it is **ORDERED** that the application, pursuant to Exhibit No. 11, Plans, is hereby **GRANTED**.²

VOTE: **4-0-1** (Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer, and Anthony J. Hood to grant; a fifth Board Member not participating or 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: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 19 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

²All applications granted by the Board include approval of the plans submitted with the application. 11 DCMR § 3125.7. In this case, it appears that, at the time of the hearing, deliberation, and vote to grant the application, plans showing a roof slope somewhat reduced from that shown in the plans in this record were before the Historic Preservation Review Board staff for approval. It is/was a possibility that "final permit drawings" would show this reduced roof slope. See, Hearing Transcript of November 24, 2009, at 156-160. Therefore, the Board hereby grants the Applicant flexibility to amend the final plans to comport with the reduced roof slope recommended by the HPRB staff, if necessary, as long as this does not cause the need for further zoning relief.

BZA APPLICATION NO. 18000

PAGE NO. 8

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
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BZA APPLICATION NO. 18000

As Director of the Office of Zoning, I hereby certify and attest that on MAR 19 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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BZA APPLICATION NO. 18000
PAGE NO. 2

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TWR