

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18009-A of Application of Samia El-Baroudy, Motion for Minor Modification of Approved Plans in Order No. 18009, pursuant to 11 DCMR § 3129. The original application was approved on January 12, 2010, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing one-family row dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements (§ 403) and lot area requirements (§ 401) in the R-3 District at premises 3302 Prospect Street, N.W. (Square 1205, Lot 822).¹

HEARING DATE (original application):	December 15, 2009
DECISION DATE (original application):	January 12, 2010
FINAL ORDER ISSUANCE DATE (Order No. 18009):	August 30, 2010
MODIFICATION DECISION DATE:	July 12, 2011

**SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION OF
APPROVED PLANS AND AMENDED RELIEF**

Background

On January 12, 2010, the Board of Zoning Adjustment ("Board" or "BZA") approved Application No. 18009, filed pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing one-family row dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements (§ 403) and lot area requirements (§ 401) in the R-3 District at premises 3302 Prospect Street, N.W. (Square 1205, Lot 822). BZA Order No. 18009 approving the application was issued on August 30, 2010. (Exhibit 38.)

Motion for Minor Modification of Approved Plans

On June 1, 2011, Samia El-Baroudy (the "Applicant") filed a motion for minor modification of the approved plans in BZA Order No. 18009, pursuant to 11 DCMR § 3129. The record indicates that the request for modification was served on the parties to the case. (Exhibit 40.)

¹ In this motion for minor modifications to approved plans, by virtue of the changes in the plans, the Applicant is also seeking additional areas of relief pursuant to § 223 from the minimum rear yard (§ 404) and minimum court width and minimum court area requirements (§ 406). By granting the motion, the Board approved not only the modified plans, but also the amended relief. The amended caption would thus read: **Application No. 18009 of Samia El-Baroudy**, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing one-family row dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements (§ 403) and lot area requirements (§ 401), the minimum rear yard (§ 404), and minimum court width and minimum court area requirements (§ 406) in the R-3 District at premises 3302 Prospect Street, N.W. (Square 1205, Lot 822).

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Sufficient notice of this motion for minor modification of plans was provided to the Office of Planning (“OP”) and Advisory Neighborhood Commission (“ANC”) 2E, the affected ANC. The other party to the case was the Applicant’s neighbor, Mr. Michael Haar, the owner of 3304. Prospect Street, N.W. Mr. Haar had been a party in opposition, as had the ANC. (Exhibit 38.)

The Applicant has requested modifications to the project plans and additional relief pursuant to § 223 of the Zoning Regulations that was not included in the original application. The original application requested relief pursuant to § 223 only from lot occupancy and lot area requirements. Specifically, the Board approved a two-story plus basement rear addition, requiring relief to permit a lot occupancy of 69.8%, which is 9.8% above what is permitted by right in the R-3 Zone District.

In this motion, the Applicant indicated that the request for modifications arose from the differences among the plans approved by the Board in Order No. 18009 (Exhibit 24 – Revised Plans) and the subsequently prepared supplemental plans. Those differences result from the required changes that were made to the BZA-approved plans so as to adhere to subsequent reviews by the Commission of Fine Arts (“CFA”) and the Historic Preservation Office (“HPO”), both of which reviewed the project after the Board granted its initial approval, and made several recommendations. Based on the changes in the plans resulting from the CFA and HPO’s review, the Applicant also is now requesting additional areas of relief pursuant to § 223 from the minimum rear yard (§404), and the minimum court width and minimum court area requirements (§406).² (Exhibit 40.)

The Applicant requires additional relief under 11 DCMR § 223 for rear yard, court width, and court area, and a reduction in relief is required from lot occupancy. However, although the areas of relief will expand, the project modifications, based on those recommended by CFA and HPO, will result in a decrease in the construction coverage than what was initially approved by the Board. According to the Office of Planning (“OP”), the Applicant requested the following modifications to the approved application, so as to be consistent with the CFA’s recommendations and the approval of the HPO, to wit:

1. Decrease the lot occupancy from 69.8% to 67.98% (where a maximum of 70% is permitted);
2. Reduce the rear yard from 20 feet to 19.1 feet (where a minimum of 20 feet is required);
3. Reduce the width of an open court from six feet to 3.9 feet (where a minimum of six feet is required); and
4. Reduce the area of an open court from 350 square feet to 110 square feet.

² On March 18, 2011, the CFA recommended approval of a rear building addition, subject to the following recommendations:

1. The addition is reduced to one-story with basement;
2. The open court is filled-in only where it is not visible from the street (33rd Street, N.W.); and
3. The dimensions of the rear addition are 7.9 feet by 12.11 feet, so as to align with the rear addition on the property to the west.

(See, Exhibit 40.)

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(Exhibit 41.)

The record indicates that the Advisory Neighborhood Commission (“ANC”) 2E was served with the modification request. (*See*, Exhibit 40.) ANC 2E, which was a party to the underlying case, and thus was required to be served with any modification request to which it was a party, did not submit a report or respond to the motion. The Applicant stated that there was no opposition to the plans from any neighbors and that the two adjacent neighbors to the east and west of the house were supportive of the addition plan. (Exhibit 40.)

OP submitted a report indicating that it recommends approval of the proposed modifications and is not opposed to considering these as minor modifications pursuant to § 3129 of the Zoning Regulations. OP stated that normally OP would not consider an application for new relief to be a minor modification case; however, in this instance OP did consider this a minor modification case, since the requested changes are minor and directly result from building design modifications required by the CFA and HPO. Also, OP pointed out that the modified rear addition actually will reduce the impact on the adjoining property to the west by reducing the lot occupancy and building height from two stories to one, thus diminishing any impact the proposed addition would have on either light and air or use and enjoyment. (Exhibit 41.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for modifications of approved plans. Section 3129.6 of the Zoning Regulations authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.6.)

Based upon the record before the Board and having given great weight to the OP report³ filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR § 3104, specifically that approval of the proposed modifications 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 in accordance with the Zoning Regulations and Zoning Maps.

No new requests for party status were received. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board finds no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board’s justification for approving the original application, as amended, to add relief pursuant to § 223 from the minimum rear yard (§ 404) and minimum court width and minimum court area requirements (§ 406).

³Neither the ANC nor the neighbor-party filed any comments on the motion.

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VOTE: **3-1-1** (Shane L. Dettman and Marc D. Loud to Approve; Anthony J. Hood to approve by absentee ballot; Meridith H. Moldenhauer opposed; No other Board member (vacant) participating)

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

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

FINAL DATE OF ORDER: **AUG 30 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,

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on AUG 30 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:

Jason T. Evans
4701 Sangamore Road, #P-40
Bethesda, Maryland 20817

Samia El-Baroudy
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Washington, D.C. 20007

Chairperson
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007

Single Member District Commissioner 2E05
Advisory Neighborhood Commission 2E
1045 31st Street, N.W., #502
Washington, D.C. 20007

Michael Haar
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ATTESTED BY:


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