

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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) in the R-3 District at premises 3302 Prospect Street, N.W. (Square 1205, Lot 822).

HEARING DATE: December 15, 2009
DECISION DATE: January 12, 2010

DECISION AND ORDER

Samia El-Baroudy, the property owner (the “Applicant”) of the subject premises, filed an application with the Board of Zoning Adjustment (“Board”) on September 18, 2009 for a special exception under § 223 to construct an addition to her residence, where the addition will not conform to area requirements of the Zoning Regulations. The Board held a public hearing on December 15, 2009, and deliberated at a public meeting on January 12, 2010. After deliberations, the Board voted to approve the application.

PRELIMINARY MATTERS

The Application

The application was filed on September 18, 2009. (Exhibit 1). The Applicant originally sought special exception relief under § 223, then amended her application to seek variance relief from the lot occupancy, rear yard and nonconforming structure provisions. A second amendment sought relief only under § 223.

Self-Certification

The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2. (Exhibits 4, 16, and 28). The different self-certification forms reflect the changes in the relief sought above, changes in the plans, and changes in the lot occupancy calculations in the chart

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annexed to the self-certification form.¹

Authorization

The Applicant authorized Jason Evans to act as her agent during the proceedings before the Board. (Exhibit 5). Mr. Evans is a contractor with Case Design/Remodeling, Inc. He appeared before the Board on the Applicant's behalf.

Notice of Public Hearing

Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent to the Applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission ("ANC") 2E, and the District of Columbia Office of Planning ("OP"). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibit 32).

ANC Report

In its report dated November 5, 2009, ANC 2E indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to oppose the application. (Exhibit 27). The ANC raised two chief concerns: (1) that "the property is already eight square feet beyond zoning requirements"; and (2) that the project would have a "negative" impact on the adjoining property owner's light, air and view.

Request for Party Status

ANC 2E was automatically a party to this proceeding. The Board received a request for party status from Michael Haar (the "Neighbor" or "Mr. Haar"), the owner of adjacent property at 3304 Prospect Street. (Exhibit 26). The request for party status was granted without opposition from the Applicant, and the Neighbor opposed the application at the public hearing. He asserted, among other things, that the addition would adversely impact upon his privacy and light and air, and claimed that the rear of his property would be "hemmed in" on both sides.

Other Persons in Support/Opposition

At the public hearing, the Applicant submitted a letter in support from her neighbor to the east, Edward Hull, at 3300 Prospect Street. (Exhibit 37). In addition, another neighbor, Ms. Sulyporn Kulsrethsiri, testified in support of the application.

The Board received a letter in opposition from Jeremiah J. de Michaelis, a nearby property owner who asserted that the proposed addition would block sunlight into the rear garden of his

¹ The lot occupancy calculations were erroneously noted in the "floor area ratio" (FAR) portion of the chart.

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residence at 1217 33rd Street. (Exhibit 25). However, Mr. de Michaelis later rescinded this letter. (Exhibit 33).

Government Reports

OP Report

OP prepared a written report² recommending approval of the application based upon a review of the application and a site visit to the property. The report also contained a photo depicting the view from 33rd Street, a photo indicating the depth of buildings along Prospect Street, and an axonometric drawing depicting the proposed bulk of the addition as compared to neighboring buildings. (T., p. 49). The axonometric drawing was provided to OP by the Applicant and showed the proposed addition at 3302 Prospect Street, the east wall of 3300 Prospect Street, and the existing rear porch at 3304 Prospect Street. (Exhibit 29).

The Board also heard testimony from Daniel Emerine, the OP representative who prepared the report. Mr. Emerine testified, among other things, that although the proposed addition would have “some” impact on Mr. Haar’s light, there would be no “undue” impact on the light available to him. (T., p. 50). Mr. Emerine also testified there would be no “undue” compromise to Mr. Haar’s privacy or the use and enjoyment of his property (T., p. 50), nor would there be a “substantial visual intrusion” to the character, scale or pattern of houses along 33rd Street. (T., p. 53). Mr. Haar was given the opportunity to submit a written statement responding to OP’s testimony and report. However, he declined the opportunity to do so. (T., p. 88).

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 3302 Prospect Street, NW, Square 1205, Lot 822, in the R-3 zone district. Lot 822 is a rectangular shaped lot and is nonconforming, in that it is approximately 1,368 square feet in area and 18 feet in width. The minimum required lot size in the zone is 2,000 square feet and the minimum width is 20 feet. *See*, 11 DCMR § 401.3. (Exhibits 28 and 29).
2. The subject property is surrounded by similar dwellings. The south face of the 3300 block of Prospect Street includes 15 row dwellings similar to the subject property, on similarly-sized lots. (Exhibit 29).

² OP asked the Board to waive the requirement under § 3114.2 providing that the report be submitted seven days prior to the public hearing. Following a brief recess, during which the opposition party was allowed to review the report, the Board decided to waive the seven day rule and allow the OP report into the record.

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3. The dwelling to the west at 3304 Prospect Street, NW is a two-story row dwelling with an existing screened-porch at the rear. This property, and other properties on the block, are all south facing.

The Proposal

4. The Applicant proposes to construct a two-story rear addition with dimensions of approximately six feet by 18 feet. The addition would fill in an existing non-conforming open court on the east side of the building and extend the building's depth by approximately 6 feet.
5. The proposed addition will not include any side-facing windows. The windows will all be rear facing, and the Board has received no communications from the neighbors to the rear regarding the proposed addition.
6. The proposed addition will maintain the required 20-foot rear yard.

Zoning Relief

7. Section 403 of the Zoning Regulations permits a maximum lot occupancy of 60 percent in the R-3 zone. The dwelling with the addition will have a lot occupancy of 69.8 percent. (Chart appended to Exhibit 28).
8. Section 401 of the Zoning Regulations requires a minimum area of 2,000 square feet and a minimum width of 20 feet. The existing lot is 1,368 square feet in area and is 18 feet wide. (Chart appended to Exhibit 28).
9. As specified above, the dwelling and proposed addition will not comply with applicable area requirements under §§ 403 and 401 of the Zoning Regulations. However, § 223 of the Zoning Regulations allows for special exception relief for an addition to a one-family dwelling, where there is non-compliance with §§ 403 and 401. Thus, the Applicant seeks relief under § 223 of the Zoning Regulations.

The Impact of the Addition

10. The elevation plans, photographs, and site plan show the relationship of the addition to adjacent buildings, and also show views from the public right-of-ways (Exhibits 24, 28 and 6, submitted by the Applicant, and Exhibit 29 photographs contained in the OP Report).
11. The proposed addition will not be visible from Prospect Street, and will be only partially visible from the rear at 33rd Street. Extending the property back only six feet will not be inconsistent with other properties on the block which extend back along the rear building line, some of which extend further back than the proposed addition.

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12. The design, materials, and colors will be compatible with the neighborhood. (Exhibit 29).
13. The addition will increase the perceptible bulk of the subject dwelling and, with the exception of the property owned by Mr. Haar, the dwelling will appear somewhat larger than most of its neighbors. However, notwithstanding this fact, an addition of this small scale will be unlikely to substantially visually intrude upon the character, scale, and pattern of houses along 33rd Street.
14. The proposed addition will not unduly affect the light and air available to neighboring properties, including Mr. Haar's property. The proposed addition may cast some additional shadows during the morning on the inner portions at the rear of Mr. Haar's property, and might extend the period when the morning sun will not reach the second-floor windows of that property. However, Mr. Haar's screened porch extends a short distance beyond the rear wall of the proposed addition, and all of the potentially impacted windows at his property face south. (Exhibit 29).

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The Applicant is seeking a special exception pursuant to 11 DCMR §§ 223 and 3104.1 to construct an addition to a one-family dwelling in an R-3 District, where the dwelling with addition will not comply with the lot occupancy requirements of § 403, and the lot itself does not meet the minimum area requirements of § 401.

The Board can grant a special exception where, in its judgment, two general tests are met. In addition, when there are specific conditions for granting a special exception, as is the case here, the Board must find that those conditions are satisfied.

The general tests. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map". 11 DCMR § 3104.1. As to the first test, the proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood.

Since the second test is nearly identical to the criteria for the special conditions under § 223, it will be discussed in the section below entitled "The 'special conditions' for an addition under § 223.1".

The specific conditions for an addition under § 223.1. Under Section 223.1 of the Zoning Regulations, the Board may permit an addition to a single family dwelling where it does not

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comply with applicable area requirements, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

223.2(a) The light and air available to neighboring properties shall not be unduly affected. The Board concludes that the light and air to neighboring properties will not be unduly affected. There is no evidence to suggest that the property owner to the rear has any objections to the addition or that his light and air will be affected at all. Nor is there evidence that the light and air available to Mr. Hull, the neighbor to the east, will be unduly affected.

There is evidence to suggest that the proposed addition will have some effect on available light and air to Mr. Haar, the neighbor to the west. However, the Board agrees with OP that Mr. Haar's light and air will not be "unduly" affected. (Finding of Fact 14). Although the Board agrees with OP that shadows studies can be useful in resolving this issue, none are required in order for an applicant to meet his or her burden of proof. *Application No. 17442 of Maria Creighton-Cabezas* (2006), *affirmed, Steinberg v. District of Columbia Bd. of Zoning Adjustment*, 935 A.2d 383 (D.C. 2007).

Nevertheless, Mr. Haar contends that a shadow line currently exists, and that this condition will only be made worse once the addition is built. Although a photo in the record shows a shadow line extending towards Mr. Haar's property, the Board does not believe that a relatively small addition such as the one proposed will significantly extend the shadow line.

223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. Based upon the evidence of record, the Board is not persuaded that the Neighbors' privacy will be diminished in any significant way. The proposed addition will not include any side-facing windows. Instead, the windows will all be rear facing. In addition, the proposed addition will maintain the required 20-foot rear yard. (Findings of Fact 5 and 6). As to Mr. Haar's property, none of his 2nd floor windows are opposite the wall of the proposed addition.

223.2(c). The addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. The proposed addition will cause no visual intrusion as viewed from Prospect Street or 33rd Street. As viewed from the street, the addition will not visually intrude upon the character, scale or pattern of homes along the street frontage of either street. (Findings of Fact 11-13).

As noted, the proposed addition will not be seen at all from Prospect Street, and will only be partially seen from 33rd Street. The rendering in the OP Report provides a comparison between the existing view from 33rd Street and the view resulting from what is proposed. (Exhibit 29). Based upon that, the Board is convinced that the addition will not have a

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substantial visual impact. The Board acknowledges that the rear additions on the 33rd Street properties exhibit a pattern of graduated increases in size, and that the proposed two-story addition may appear larger than the other additions. However, the proposed addition will be subject to design review by the D.C. Historic Preservation Office. Assuming those design standards are met, the Board finds that the proposed rear addition will not be inconsistent with the character, scale, and pattern of the houses along 33rd street.

223.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts. The subject property is in the R-3 zone. (Finding of Fact 1). The proposed addition will increase the lot occupancy from 61.9 percent to 69.8 percent. (Finding of Fact 8). Therefore, this condition will be met.

The Board is required under Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)), to give “great weight” to the issues and concerns raised in the affected ANC’s recommendations. The ANC raises two chief concerns: (1) The “property is already eight square feet beyond zoning requirements; and (2) the proposed addition would have a “negative” impact on the adjoining property owner’s light, air, and view.

With respect to the first ANC issue, the fact that the property is already non-conforming is not dispositive. It is true that the existing lot occupancy slightly exceeds the amount allowed in the zone, and it is also true that the Applicant needs zoning relief in order to extend this non-conformity. However, that is exactly what § 223 authorizes the Board to grant as a special exception rather than as a variance, which is normally the case. As long as the expansion meets the criteria set forth in that provision, the Board must grant the relief. Regarding the second issue, the ANC concurs with Mr. Haar, the opposition party, that the addition will negatively impact his light, air, and view. For reasons discussed above, the Board does not find this advice to be persuasive.

In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04 (2001) to give “great weight” to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP’s advice - that the Board approve the application - to be persuasive.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the requirements of the R-3 zone.

It is therefore **ORDERED** that this application, pursuant to Exhibit No. 24 (Revised Plans), is hereby **GRANTED**.

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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,

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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 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:

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ATTESTED BY:


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