

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 18065 of Shomarka Keita**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223 to allow a second-story rear addition to an existing one-family row dwelling, not meeting lot occupancy (§ 403), court (§ 406), rear yard (§ 404), and nonconforming structure (§ 2001.3) requirements, in the R-4 District at premises 1925 2nd Street, N.W. (Square 3114, Lot 83).

**HEARING DATE:** June 8, 2010  
**DECISION DATE:** July 13, 2010

**DECISION AND ORDER**

This self-certified application was submitted on March 18, 2010 by Shomarka Keita (the “Applicant”), the owner of the property that is the subject of the application. The application requests a special exception under § 223 of the Zoning Regulations to allow construction of a second-story rear addition to an existing one-family row dwelling that does not meet zoning requirements with respect to lot occupancy, open court width, rear yard, or enlargement of a nonconforming structure, in the R-4 District at 1925 2<sup>nd</sup> Street, N.W. (Square 3114, Lot 83). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to grant the requested special exception.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated March 22, 2010, the Office of Zoning (“OZ”) provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 5; Advisory Neighborhood Commission (“ANC”) 5C, the ANC in which the subject property is located; and ANC Single Member District 5C04. Pursuant to 11 DCMR § 3112.14, on April 1, 2010, OZ mailed letters providing notice of the hearing to the Applicant, ANC 5C, and the owners of all property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on April 2, 2010 (57 DCR 2952).

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Party Status. The Applicant and ANC 5C were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Kathleen Rand Reed, who resides in the row dwelling abutting the subject property to the south and was also representing Ella Walker, the owner and occupant of the row dwelling at 1929 2<sup>nd</sup> Street, N.W.

Applicant's Case. The Applicant provided evidence and testimony describing the planned rear addition and asserted that the application satisfied all requirements for approval of the requested special exception.

Party in opposition. The party in opposition claimed that the Applicant's addition would block light and air to neighboring properties, as well as the views from those properties, and would impair the privacy of the nearby dwellings.

OP Report. By memorandum dated June 1, 2010, OP recommended approval of the application based on OP's conclusion that the Applicant's project met the standards for approval under § 223. According to OP, the project will be consistent with the intent of the Zoning Regulations, as the project would maintain a row dwelling in the R-4 Zone District and would not adversely impact neighboring properties.

ANC Report. The Board did not receive a report from ANC 5C in this proceeding.

Persons in support. The Board heard testimony and received a letter in support of the application, and also received copies of a "Notification to the Zoning Board" from "homeowners in the LeDroit-Bloomingtondale community," which affirmed a lack of opposition to the Applicant's addition, described as an extension of the back porch that would not extend beyond the dimensions of the porch or the sides of the house. (Exhibits 24, 25, 39, 40, 41 and 43.)

Persons in opposition. The Board received letters in opposition to the application from some residents living near the subject property, as well as copies of a document, "Bloomingtondale Neighbors' Statement to the Board of Zoning Adjustment," which indicated the neighbors' opposition to the Applicant's addition on the grounds of its "illegality" and its interruption of "neighbors' air, light, space and view." (Exhibits 32, 33, 34, 36, 37, 38, and 42.)

**FINDINGS OF FACT**

**The Subject Property**

1. The subject property is located on the east side of 2<sup>nd</sup> Street, N.W., between Thomas Street and U Street, N.W., (Square 3114, Lot 83). The subject property is an interior lot located close to the corner of 2<sup>nd</sup> and Thomas Streets. The rear yards of the subject property and the four immediately adjacent neighboring lots abut a lot that fronts onto Thomas Street.

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2. The subject property is located in the R-4 Zone District. The subject property is improved with a row dwelling, as are the majority of lots in the immediate vicinity. The subject property is nonconforming with respect to lot area, lot width, lot occupancy, rear yard, and width of open court.
3. The Applicant's row dwelling is a two-story plus basement building used as a one-family dwelling. The north side of the row dwelling extends 50 feet, while the south side extends approximately 42 feet, creating an open court approximately 3.25 feet wide and 7.75 feet deep.
4. A one-story porch extends from the rear of the row dwelling, creating a rear yard approximately 19.33 feet deep. A rear yard of at least 20 feet is required in the R-4 Zone District. (11 DCMR § 404.1.)
5. The lot is rectangular, approximately 15 feet wide and 81 feet deep, with an area of approximately 1,212 square feet. The R-4 District requires a lot area of at least 1,800 square feet and minimum lot width of 18 feet. (11 DCMR § 401.3.)
6. The existing lot occupancy at the subject property is approximately 66%, and will not change as a result of the proposed rear addition. The 60% maximum lot occupancy generally permitted for row dwellings in the R-4 District may be increased to 70% if approved by the Board as a special exception. (11 DCMR §§ 403.2, 223.)

### **The Applicant's Project**

7. The Applicant proposes to add a second-floor rear addition above the existing porch. The porch is approximately 10.5 feet wide and five feet deep, with an area of approximately 52 square feet, and will remain unenclosed. The new second-floor room, which will have the same dimensions and area as the first-floor porch, will likely be used as a bedroom.
8. The addition will not enlarge the existing building footprint, extend into the rear yard, or increase the height of the building.
9. The addition will have one window facing east, but not have windows on its north or south façades. The adjacent property to the rear of the subject property does not have any windows on the façade facing the Applicant's dwelling. The addition will be located 4.6 feet from the adjacent property to the south, which does not have any windows on its façade that faces the subject property.
10. The proposed two-story rear addition will increase the width of the open court along the south property line from 3.25 feet to 4.58 feet. The R-4 District requires a minimum width of six feet for an open court at a one-family dwelling. (11 DCMR § 406.1.)

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11. The Applicant began work on the rear addition before obtaining the necessary building permit. The construction has been the subject of enforcement action by the Department of Consumer and Regulatory Affairs.

**Harmony with Zoning**

12. The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) The primary purpose of the R-4 District is the stabilization of remaining one-family dwellings. (11 DCMR § 330.2.)

**CONCLUSIONS OF LAW AND OPINION**

The Applicant requests special exception relief under § 223 to allow a second-story rear addition to a one-family row dwelling that does not meet requirements related to lot occupancy, court width, rear yard, or the enlargement of a nonconforming structure in the R-4 District at 1925 2<sup>nd</sup> Street, N.W. (Square 3114, Lot 83). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception 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 Map, subject to specific conditions. (11 DCMR § 3104.1.)

Pursuant to § 223, an addition to a one-family dwelling may be permitted as a special exception, even when the dwelling does not meet certain zoning requirements, subject to specific conditions. These conditions include that the addition may not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular the light and air available to neighboring properties may not be unduly affected, the privacy of use and enjoyment of neighboring properties may not be unduly compromised, and the addition, together with the original building, as viewed from the street, alley, and other public way, may not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

Based on the findings of fact, the Board finds that the requested special exception satisfies the requirements of §§ 223 and 3104.1. The rear addition will be relatively modest in scale and will not create a significant departure from the established building pattern in the area. The addition will maintain the existing rear yard, which is an open area 19 feet deep, and will not increase the height of the row dwelling. Thus, the Board concludes that the addition is unlikely to result in a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, or affect light and air available to neighboring properties. The addition will be visible from Thomas Street, but, as a small rear addition that will not alter the existing one-family

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residential use of the row dwelling, the project will not create a substantial visual intrusion on the character, scale, or pattern of houses in the area. Nor is the addition likely to compromise the privacy of use and enjoyment of neighboring properties, since the addition will not have side windows overlooking abutting properties and its sole rear window will not face any windows on the adjacent dwelling. The Board was not persuaded by the testimony of the party in opposition that the Applicant's rear addition would create a substantially adverse effect on the use or enjoyment of, or light, air, and privacy available to, any nearby dwellings.

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. 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)).

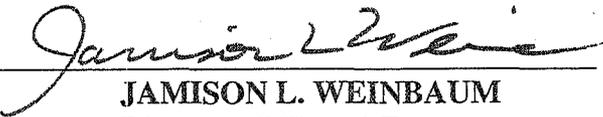
In this case, ANC 5C did not submit a report or participate at the hearing and thus did not express any issues or concerns to which the Board can give great weight.

The Board does not condone any illegal construction undertaken by the Applicant without first obtaining the necessary permits. However, the Board's discretion in reviewing an application for a special exception under § 223 is limited to a determination of whether an applicant has complied with the requirements of §§ 223 and 3104.1 of the Zoning Regulations. If an applicant meets its burden, the Board ordinarily must grant the application. *See, e.g., Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *Washington Ethical Society v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 18-19 (D.C. 1980); *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981); *Gladden v. District of Columbia Bd. of Zoning Adjustment*, 659 A.2d 249, 255 (D.C. 1995). The scope of the Board's authority is defined by statute. *See* D.C. Official Code § 6-641.07 (2008). Where permitted by the Zoning Regulations, the Board may grant a special exception "subject to appropriate principles, standards, rules, conditions, and safeguards *set forth in the regulations.*" D.C. Official Code § 6-641.07(d) (2008) (emphasis added). The Board does not have the power to amend any regulation. D.C. Official Code § 6-641.07(e) (2008). Accordingly, the Board must deliberate on the merits of the instant application relative to the requirements specified in §§ 223 and 3104.1. Because these requirements do not address prior illegal acts by an applicant, the Board lacks the legal authority to dismiss or deny an application for a special exception solely on the ground that an applicant began construction illegally before obtaining the necessary zoning approval and permit.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under § 223 of the Zoning Regulations to allow construction of a second-story rear addition to an existing one-family row dwelling that does not meet zoning requirements with respect to lot occupancy, open court width, rear yard, or enlargement of a nonconforming structure, in the R-4 District at 1925 2<sup>nd</sup> Street, N.W. (Square 3114, Lot 83). Accordingly, it is **ORDERED** that the application (pursuant to Exhibit 50, Revised Plans) is hereby **GRANTED**.

**VOTE:**        **3-0-2**        (Meridith H. Moldenhauer, Shane L. Dettman, and Nicole C. Sorg to Approve; Konrad W. Schlater not present, not voting; No other Board member (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:**   **JAN 18 2011**  

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

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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



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As Director of the Office of Zoning, I hereby certify and attest that on JAN 18 2011, 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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BOARD OF ZONING ADJUSTMENT  
District of Columbia

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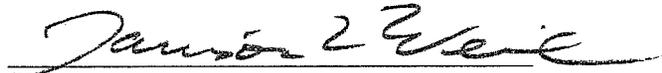
EXHIBIT NO. 58

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