

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18126 of Paul T. Atang, pursuant to 11 DCMR § 3104.1, to allow the construction of a second story addition to an existing one-family detached dwelling under § 223, not meeting the rear yard (§ 404), side yard (§ 405), and nonconforming structure (§ 2001.3)¹ requirements in the R-5-A District at premises 2411 10th Street, N.E. (Square 3869, Lot 24).

HEARING DATE: November 2, 2010

DECISION DATE: November 2, 2010

DECISION AND ORDER

This application was filed by Paul T. Atang (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The application requests special exception relief pursuant to 11 DCMR § 223 because of two existing nonconformities – rear yard and side yard -- the latter of which is being extended, thus also triggering the need for relief from § 2001.3(b). The special exception would permit the addition of a second story to an existing one-family dwelling on the subject property.

The Board of Zoning Adjustment (“Board”) held a public hearing on the application on November 2, 2010, and, at the conclusion of the hearing, voted 4-0-1 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 15, 2010, 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, Advisory Neighborhood Commission (“ANC”) 5B, the ANC within which the subject property is located, Single Member District 5B03, and the Councilmember for Ward 5. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register*, and on August 18, 2010, sent such notice to the Applicant, ANC 5B, and all owners of property within 200 feet of the subject property.

¹Relief pursuant to 11 DCMR § 2001.3 was not originally advertised, but was found to be necessary at the hearing, and therefore was added here.

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Request for Party Status. ANC 5B was automatically a party to this application. No other persons requested party status.

Applicant's Case. The Applicant and his architect appeared at the hearing, and, after answering questions from the Board, acquiesced in the Board's invitation to "rest on the record."

Government Reports. OP submitted a report to the Board dated October 26, 2010, recommending approval of the application, with one condition. OP opined that the application fulfilled all the provisions of § 223, but noted that the requested second story addition is largely already constructed, and that the construction on-the-ground does not precisely conform to the plans. For example, the OP report states that the plans show "a third window at the front of the dwelling on the second floor, whereas a site inspection showed that a door was installed in its place." (Exhibit 24, at 2.) OP therefore recommended a condition that the construction be consistent with the plans submitted to the Board.

ANC Report. ANC 5B filed two similarly worded reports, both dated October 26, 2010, and both in opposition to the application. (Exhibits 25 and 26.) Both reports state that "the house as it is being constructed is not in keeping with the character of the neighborhood." Neither report, however, sets forth the information necessary for the Board to accord it great weight or to participate as a party during the hearing. (11 DCMR § 3115.)

Persons in Support or Opposition. The Board received six form letters in support of the application. (Exhibit 22.)

FINDING S OF FACT

The subject property and the surrounding neighborhood

1. The subject property is located at address 2411 10th Street, N.E., (Square 3869, Lot 24), in an R-5-A Zone District.
2. The subject lot is a right triangle, with the right angle at its southwest corner. Its west side measures approximately 56 feet, its south side, approximately 100 feet, and its north side, approximately 114 feet, for an area of 2,789 square feet.
3. The subject lot fronts on 10th Street, N.E., along its west side and abuts a 15-foot wide dead-end public alley to the north.
4. The subject property is improved with a two-story one-family detached dwelling, built in 1916, and nonconforming for rear yard and both side yards.
5. There is an adjacent lot to the south of the subject property that is improved with a one-family detached dwelling.

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6. The subject dwelling and the adjacent dwelling to the south are separated from nearby dwellings on a triangular “island” of land surrounded by 10th Street to the west, the rear alley to the north, and a high wall enclosing a large surface parking lot servicing a shopping center, to the east.
7. Tenth Street extends southward for one lot beyond the subject property and then dead-ends at the high wall enclosing the surface parking lot.
8. Square 3869 contains detached dwellings, and the surrounding neighborhood generally reflects a mix of low scale residential uses, including a series of row dwellings across 10th Street, as well as commercial uses along nearby Rhode Island Avenue.

The Applicant’s proposal and the need for relief

9. The Applicant proposes to add a second story² on the same footprint as the existing building.
10. The approximately 30% lot occupancy of the dwelling will not be increased by the addition.
11. The rear yard to be provided will be 18.5 feet in depth, when a minimum depth of 20 feet is required in this R-5-A Zone, necessitating relief from 11 DCMR § 404, pursuant to § 223.
12. The southern side yard will be approximately three feet wide, and the northern side yard will be, at certain points, approximately 1.9 feet wide, when a minimum width of eight feet is required, necessitating relief from 11 DCMR § 405, pursuant to § 223.
13. The calculation of the required width of a side yard in an R-5-A Zone District is based on the height of the building. (11 DCMR § 405.9.) Both side yards here are nonconforming, but since the height of the building is being increased, the degree of nonconformity is being increased as well, necessitating relief from 11 DCMR § 2001.3(b)(2), pursuant to § 223.

The special exception criteria

14. With the addition, the height of the building will be 31.5 feet, significantly lower than the 40 feet permitted in the zone. (11 DCMR § 400.)
15. Although the northern side yard of the subject dwelling is very narrow at two discrete points due to the angled rear lot line, it steadily widens from the rear of the building toward the front, and it also abuts the 15-foot wide rear alley.

²It is unclear from the plans whether the addition would actually be a “second” story or a “third” story because it is unclear whether the partially below-grade story is a cellar or a basement. If a cellar, it would not count as a story and the addition would be the “second story.” If a basement, it would count as a story and the addition would be the “third story.” (See, 11 DCMR § 199.1, definitions of “Cellar” and “Story.”) Either way, no relief is triggered because the R-5-A Zone permits three stories, and the final height of the building is below the maximum 40 feet allowed. (11 DCMR § 400.1.)

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16. On the other side of the alley are the rear yards of dwellings fronting on Bryant Street, N.E.
17. The southern side yard of the subject dwelling abuts the side yard of the adjacent dwelling. With the two side yards, there are several feet of distance between the two dwellings.
18. The rear yard tapers to a point, forming its own, smaller right triangle, with its shortest side comprised of the rear of the dwelling. The other two sides abut the rear alley and the rear yard of the dwelling to the south.
19. The addition has three windows on its south side, two toward the front of the building, and a small window at the rear of the building. This is the only side of the addition which will be in any proximity to any other dwelling, and the owner of the dwelling to the south has submitted a letter in support of the application. (See, Exhibit 22.)
20. Although the dwelling immediately to the south of the subject dwelling is presently one story, there are other two- and/or three-story dwellings in the same Square and in the neighborhood.
21. The style and materials of the addition are harmonious with the original dwelling.

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.

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)).

This application proposes a second story constructed on the same footprint as the existing dwelling, which has been on the subject property since 1916. The addition will add some height and bulk to the building, but will not extend its footprint, so its walls will be no closer than they are now to the adjoining property to the south. Although the south wall of the addition will contain three windows, they are separated from the adjacent dwelling by several feet and will

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overlook nothing but the roof of that dwelling, which is currently one story. The property owner to the south has submitted a letter of support for the application and the Board concludes that the addition will cause no adverse impacts to the privacy, light, or air of the dwelling to the south.

As for the other two sides of the property – the western and northern legs of this triangular lot – they abut, respectively, a street, and a 15-foot wide public alley flanked on its other side by rear yards of other dwellings. Therefore, the addition will not be close to any dwellings other than the one immediately to the south, and it will have no negative effects on other properties.

The addition is compatible with the original dwelling, and the size of the dwelling, with the addition, is compatible with the surrounding neighborhood. The property will continue to be used as a one-family dwelling, a matter-of-right use in this R-5-A Zone District. Therefore, the Board further concludes that granting the relief requested is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by 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. OP was in support of granting the special exception, and the Board agrees with its position. Although neither of ANC 5B’s letters contained the information necessary to enable the Board to accord them great weight, the Board addresses the ANC’s concerns below, one of which was shared by OP.

ANC 5B opposed the application and stated that community members believe “the modifications to 2411 10th Street, NE are not in keeping with the continuity of the neighborhood,” laying particular emphasis on the fact that there are now three doors on the front of the building. (Exhibits 25 and 26.) As OP also pointed out, the addition, which is already substantially constructed, has a door on its front side, whereas the plans show a window in this spot. OP has requested that the Board condition this order to ensure that the addition is built according to the plans at Exhibit 8, page A-3 of which depicts the window where the door has been built. Pursuant to 11 DCMR § 3125.7, an approval of an application includes an approval of the plans submitted to the Board. In other words, this order binds the Applicant to construct the addition, or, in this case, change the addition, to comport with the plans. Therefore, the Applicant must remove the door on the second story front façade and replace it with a window. This change should alleviate one of the concerns of the ANC.

As far as the ANC’s concern that the addition is not in keeping with the character of the neighborhood, the Board disagrees. The use remains a one-family detached dwelling, like many others in the neighborhood, and, at two stories, or even three, it is not substantially larger than many of these other dwellings. The addition matches the dwelling and does not visually intrude on the character, scale, and pattern of houses along 10th Street, or in the neighborhood. (*See*, 11 DCMR § 223.2(c).)

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, for relief for side yard (§ 405), rear yard (§ 404), and an addition to a nonconforming structure (§ 2001.3(b)(2)). Accordingly, it is **ORDERED** that the application, pursuant to Exhibit 8, Plans, is hereby **GRANTED, SUBJECT** to the **CONDITION** that the Applicant must remove the door on the second story front façade and replace it with a window as shown on the plans submitted with the application and approved by the Board.

VOTE: 4-0-1 (Meridith H. Moldenhauer, Nicole C. Sorg, Jeffrey L. Hinkle, and Konrad W. Schlater to Approve; 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: FEB 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.

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PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITION IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

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As Director of the Office of Zoning, I hereby certify and attest that on FEB 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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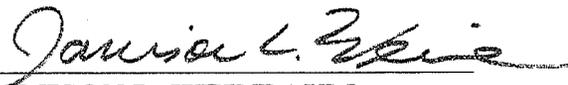
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