

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18169 of Kyle and Laura Yost, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a special exception under § 223 to allow a rear addition and enlarged accessory garage serving an existing one-family semi-detached dwelling, not meeting requirements pertaining to lot width and lot area (§ 401), lot occupancy (§ 403), side yard (§ 405), width of open court (§ 406), and enlargement of nonconforming structures (§ 2001.3), and a variance from alley center line garage setback requirements under § 2300.2(b) in the R-3 District at premises 3411 Prospect Street, N.W. (Square 1221, Lot 831).¹

HEARING DATE: February 15, 2011
DECISION DATE: March 8, 2011

DECISION AND ORDER

This self-certified application was submitted on December 2, 2010 by Kyle and Laura Yost (collectively, the “Applicant”), the owners 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 two-story rear addition to a one-family semi-detached dwelling that does not meet zoning requirements related to lot width, lot area, lot occupancy, side yard, width of open court, or enlargement of nonconforming structures, as well as an area variance from the alley center line setback requirement under § 2300.2(b) to reconstruct and extend an accessory garage less than 12 feet from the center line of an alley in the R-3 District at 3411 Prospect Street, N.W. (Square 1221, Lot 831). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated December 6, 2010, the

¹ The caption of this case has been amended to reflect the aspects in which the Applicant’s property does not currently conform to the requirements of the Zoning Regulations. The correction does not affect the relief requested in the application, as special exception relief under § 223 may encompass all the existing nonconforming aspects of the Applicant’s property.

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Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 2; Advisory Neighborhood Commission (“ANC”) 2E, the ANC in which the subject property is located; and Single Member District/ANC 2E05. Pursuant to 11 DCMR § 3112.14, on December 10, 2010 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 2E, and the owners of all property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on December 10, 2010 (57 DCR 11732).

Party Status. The Applicant and ANC 2E were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Clarke Thomason and Hollin Dwiggin, who reside in a semi-detached dwelling that abuts the subject property to the west.

Applicant’s Case. The Applicant provided evidence and testimony describing the proposed rear addition and enlarged garage, and asserted that the application satisfied all requirements for approval of the requested zoning relief. The Applicant described changes to the planned design from an earlier proposal, which was modified by altering the slope of the roof to address concerns about storm water runoff raised by the owner of the abutting dwelling to the east, and was reduced in size (from 10 feet to seven feet deep), with fewer windows, in response to concerns raised by the owner of the neighboring property to the west (the party in opposition in this proceeding). According to the Applicant, a rear addition smaller than the proposed seven feet would not be practical.

Party in Opposition. The party in opposition asserted that any construction in the Applicant’s rear yard would adversely affect the use of their property, especially the landscaped areas of the rear yard. According to the party in opposition, “the area restrictions in the zoning regulations are critical in protecting their privacy in the rear yard and in allowing them to landscape their garden with trees and flowering shrubs.” (Exhibit 24.) The party in opposition also objected that the Applicant’s planned addition would rise 24 feet in height and extend 11 feet beyond the rear yard of their house, and would, combined with the building further to the west, “vastly reduc[e] light and air on their garden” and “negatively impact their use and enjoyment of their property” as well as impair the value of their property. (Exhibit 24.) According to a light study submitted by the party in opposition, which was prepared by a landscape designer, the Applicant’s rear addition would cast a moving shadow on the back wall of the neighboring house in an area that is already shaded, thereby reducing available light, causing more shade for current plantings, and restricting the type of plantings that can be used. The landscape designer also noted that a new wall, built as part of the addition, would be visible from the neighboring rear yard, and would present a design challenge.

The party in opposition challenged the Applicant’s request for variance relief, arguing that the Applicant had not demonstrated that the existing garage was too small to be functional, and that the proposed garage extension would create a hazardous situation in the alley.

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OP Report. By memorandum dated February 8, 2011, OP recommended approval of the application based on OP's conclusion that the Applicant's proposal would satisfy the requirements for zoning relief. According to OP, the District Department of Transportation, the Department of Public Works, and the Department of Fire and Emergency Medical Services all indicated that they had no objections to approval of the application.

Commission of Fine Arts. By memorandum dated October 22, 2010, the U.S. Commission of Fine Arts ("CFA") indicated no objection to the concept design for the Applicant's planned rear addition or for alterations and reconstruction of the garage, provided that there would be "no damage to root zone of rear yard Magnolia tree." (Exhibit 34.) The CFA recommended extension of the garage to the north to align with other garages in the alley.

ANC Report. By letter dated January 14, 2011,² ANC 2E indicated that, at a regular monthly public meeting, held January 3, 2011 with a quorum present, the ANC voted 4-2 to adopt a resolution to oppose the application. The resolution indicated that ANC 2E did not support approval of the requested special exception due to the ANC's "concerns about the impact of increased density in the Historic District; the precedent this could set for future cases; and in the interest of preserving open space." (Exhibit 23.)

Persons in Support or in Opposition. The Board heard testimony in support of the application from the owner of the dwelling that is attached to the Applicant's dwelling on the east, who stated that the planned addition would provide adequate space for the Applicant and would increase privacy for nearby neighbors, for example, by blocking the view of the party in opposition's rear yard from the person in support's dwelling. The witness also stated that the Applicant's plan to enlarge the garage closer to the alley center line would not hinder access in the alley, because the Applicant's expanded garage would not intrude into the alley further than an existing telephone pole and other nearby garages. The Board also received letters in support from some owners of nearby properties, including the owner of the garage abutting the Applicant's garage, behind the property owned by the party in opposition. (Exhibits 31, 32, and 33.) The Board received letters in opposition to the application from owners of other nearby properties as well as from the Citizens Association of Georgetown. The letters in opposition generally asserted that the Applicant's planned addition would reduce open space, light, air, and views for neighbors, and objected that the expanded garage would intrude into public space. (Exhibits 27, 29, and 30.)

FINDINGS OF FACT

The Subject Property

1. The subject property is an interior lot located on the north side of Prospect Street, N.W.

² The ANC submitted a corrected version of the letter dated February 2, 2011.

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(Square 1221, Lot 831).

2. The subject property is improved with a one-family semi-detached dwelling that is two stories in height and has a cellar. The dwelling, which was constructed in the 1840s, is attached to a similar dwelling on the lot to the east. Both dwellings were enlarged with two-story rear additions built in the early 20th century, although the addition to the abutting property was one room deeper than the addition at the subject property. The Applicant's dwelling is separated from a semi-detached dwelling on the west by a narrow side yard approximately two feet wide.
3. The subject property is a relatively long, narrow rectangular parcel approximately 17.5 feet wide and 120 feet deep. The lot is located in the R-3 Zone District, and is nonconforming with respect to lot width, lot area, lot occupancy, side yard, and open court width. The lot width is 17 feet, six inches, where a minimum of 30 feet is required; the lot area is 2,105 square feet, where a minimum of 3,000 square feet is required; the existing lot occupancy is 50%, where a maximum of 40% is permitted; and the side yard on the west side of the property is two feet, four inches, where a minimum of eight feet is required. (*See* 11 DCMR §§ 401.3, 403.2, 405.2, and 405.9.) An open court on the east side of the dwelling is three feet, eight inches wide, where a minimum of six feet is required. (*See* 11 DCMR § 406.1.) The subject property has a rear yard of 77 feet, eight inches, where a minimum of 20 feet is required. (*See* 11 DCMR § 404.1.)
4. An accessory garage is located in the rear yard of the subject property and is accessible from a public alley that abuts the property along the rear lot line. The alley is approximately 10 feet wide where it intersects with 34th and 35th Streets, but widens in the middle of the square. The Applicant's garage is at a distance of approximately 18 feet from the garage located across the alley.
5. The garage, which was built in the 1920s, is set back approximately five feet, eight inches from the rear property line, and approximately 10 feet, eight inches from the center line of the alley. A telephone pole is located in the alley approximately four feet from the eastern edge of the Applicant's garage, which abuts similar garages on both sides.
6. Two mature magnolia trees are located in the rear yard near the accessory garage. The tree closer to the garage is approximately three feet from its rear wall.
7. The majority of lots in the immediate vicinity of the subject property are developed with row or semi-detached dwellings.

The Applicant's Project

8. The Applicant proposes to construct a two-story rear addition, approximately 15 feet wide and eight feet deep, and to enlarge the accessory garage at the rear of the property. The

rear addition – shaped roughly like an upside-down L – will enclose the area currently forming an open court on the eastern side of the dwelling and create new living space at the rear of the dwelling. The addition will increase the building’s footprint by 175 square feet, to approximately 730 square feet, as compared to the existing 561 square feet. The addition will extend approximately seven feet into the rear yard beyond the rear wall of the semi-detached dwelling to the west. The addition will have no windows on its western façade. New French doors will lead to a new patio at the rear on the first floor.

9. The Applicant will retain the existing rear wall of the garage (the southern wall, facing the house) so as not to disturb the existing magnolia trees. The remainder of the garage will be removed and rebuilt, with the northern wall extended one foot, eight inches closer to the rear property line (and the alley) so as to enlarge the parking area inside the garage. The enlarged garage will be approximately 17.5 feet wide; 21 feet, two inches long on the western side, and 25 feet, eight inches long on the eastern side, where a door and stairs leading to the parking area are located. As enlarged, the garage will be set back approximately four feet from the rear property line and nine feet from the center line of the abutting alley.
10. The planned rear addition and enlarged garage will increase lot occupancy from the existing 50% to 60%. The rear yard will be reduced from 77 feet, eight inches to 69 feet, five inches, while the open area between the house and the garage will be reduced by eight feet from approximately 53 feet to approximately 45 feet. The Applicant’s project will eliminate the nonconforming open court at the subject property, and will not affect the property’s nonconforming side yard, which will remain two feet, four inches.
11. The Applicant submitted shadow studies undertaken by their architect, which illustrated that during the winter, the planned rear addition will not create any new shadows on neighboring properties, beyond those created by the Applicant’s existing dwelling. During the spring and fall the addition will create a small amount of shadow during morning hours on a trellis located in the neighboring property to the west.

Harmony with Zoning

12. The R-3 District is designed essentially for row dwellings mingled with one-family detached and semi-detached dwellings, and is intended to maintain a family-life environment. (11 DCMR § 320.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 223 of the Zoning Regulations to allow enlargement of an accessory garage and construction of a two-story rear addition to a one-family semi-detached dwelling that does not meet zoning requirements related to lot width, lot area, lot

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occupancy, side yard, open court width, or enlargement of a nonconforming structure in the R-3 District at 3411 Prospect Street, N.W. (Square 1221, Lot 831).³ 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. (*See* 11 DCMR § 3104.1.)

Pursuant to § 223, an addition to a one-family dwelling or flat may be permitted as a special exception, even when the dwelling does not meet all other zoning requirements, subject to certain conditions. These conditions include that the addition must 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 must not be unduly affected, the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and the addition, together with the original building, as viewed from the street, alley, and other public way, must 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 Board finds that the proposed rear addition will not unduly affect light or air available to neighboring properties, especially in light of the relatively small size of the addition and the large rear yard at the subject property. The Board notes that the addition will create some shadow on the abutting property to the west during morning hours from March to September, but does not find that the degree of increased shade will unduly affect light or air on the neighboring property or have a substantially adverse effect on the use or enjoyment of the abutting property. The planned addition will create only a limited degree of additional shade on the neighboring property, in an area that already experiences shade from the neighbor's own trellis. The rear addition will not occupy a large portion of the rear yard at the

³ The Board notes that § 223 provides for special exception approval for “an addition to a one-family dwelling ... or a new or enlarged accessory structure on the same lot ... even though the addition or accessory structure does not comply with all the requirements of §§ 401, 403, 404, 405, 406, and 2001.3...”. In this case, the Applicant’s self-certified application stated that “special exception relief [under § 223] is required for the proposed addition [i.e. the planned rear addition to the dwelling], and variance relief is required for the proposed alteration to the Garage.” (Exhibit 5.) The existing garage, like the Applicant’s dwelling, is located on property that does not meet zoning requirements pertaining to lot width and area (§ 401), lot occupancy (§ 403), or side yard (§ 405), and the planned expansion of the garage would not meet the requirements of § 2001.3 for the enlargement of nonconforming structures. While the Applicant did not explicitly request relief under § 223 for the planned garage expansion, the Board concludes that the analysis and grounds for approval of the garage expansion are the same as for the planned rear addition to the dwelling. The garage expansion will extend the existing garage by less than two feet toward the rear of the Applicant’s lot, and will not affect light or air or otherwise create a substantially adverse effect on the use or enjoyment of any abutting or adjacent property, compromise the privacy of use and enjoyment of any neighboring property, or visually intrude on the existing character, scale, or pattern of houses. Accordingly, the special exception relief approved in this order encompasses both aspects of the Applicant’s project, the rear addition and the enlarged accessory garage.

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subject property, which will remain in excess of the minimum required by the Zoning Regulations.

The Board also concludes that the rear addition will not compromise the privacy of use or enjoyment of neighboring properties. The addition will be attached to the dwelling to the east, and will have no windows on its western façade. The addition will not be visible from Prospect Street and thus will not visually intrude on the character, scale, or pattern of houses along the street frontage. The addition may be visible from the rear alley, but its appearance will not differ greatly from that of the existing dwelling, but will maintain the residential appearance of the property.

The Board concludes that the planned rear addition satisfies the requirements of § 223 and 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 Board also concludes that the rear addition planned by the Applicant will be in harmony with the general purpose and intent of the Zoning Regulations by promoting the residential use of the property, consistent with the family-life environment favored by the R-3 zoning designation of the subject property, and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations.

The Applicant also seeks an area variance from the setback requirement under § 2300.2(b) to extend an accessory garage less than 12 feet from the center line of the alley abutting the subject property. The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (*See* 11 DCMR § 3103.2.)

The Board finds that the accessory garage is faced with exceptional circumstances associated with its small size and with the presence of two mature magnolia trees near the rear wall. The CFA expressed no objection to the Applicant’s plan to reconstruct and enlarge the garage, provided that the project would not cause damage to the root zone of the trees. The Applicant proposes to retain the existing rear wall of the garage so as to avoid damage to the trees. The Applicant also proposes to enlarge the parking area within the garage, which is more than 80 years old and shorter in length than garages typically built now. Because the need to retain the rear wall precludes expansion of the garage into the rear yard toward the dwelling, the Applicant plans to enlarge the garage by building a new entrance closer to the alley than the existing entrance. Thus the new garage will have its entrance closer to the center line of the alley; the setback will be reduced by less than two feet, from 10 feet, eight inches to nine feet.

The strict application of the Zoning Regulations to the garage entrance would result in peculiar and exceptional practical difficulties to the Applicant by precluding construction of a suitably deep garage that would avoid damage to the existing trees, in keeping with the CFA recommendation. Compliance with the 12-foot setback requirement would result in a garage only 11 feet deep, while the Zoning Regulations require a minimum of 19 feet and the Applicant proposes to provide approximately 20 feet. In concluding that the Applicant has satisfied the exceptional circumstances and practical difficulty criteria for variance relief, the Board notes the relatively small degree of variance relief requested by the Applicant. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990) (Board may consider whether a requested variance is *de minimus* in nature and whether for that reason a correspondingly lesser burden of proof rests on the applicant).

The Board finds that approval of the requested variance would not substantially impair the intent, purpose, or integrity of the zone plan. The variance will assist in creating off-street parking to serve the Applicant's residence; will align the entrance of the Applicant's garage with neighboring garages, in keeping with the CFA recommendation; and will not create any new obstruction in the alley, given the location of the existing telephone pole near the garage entrance.

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 2E adopted a resolution indicating that the ANC did not support approval of the requested special exception due to the ANC's "concerns about the impact of increased density in the Historic District; the precedent this could set for future cases; and in the interest of preserving open space." The Board fully credits the unique vantage point that ANC 2E holds with respect to the impact of the Applicant's project on the ANCs' constituents. However, the ANC did not offer any persuasive advice, based on the requirements set forth in the Zoning Regulations, that would cause the Board to conclude that the application should be denied. With regard to the ANC's concerns about increased density and preservation of open space, the Board notes that the Applicant's proposed rear addition and garage expansion will fall within the parameters permitted by the Zoning Regulations with respect to lot occupancy, minimum rear yard, and other area requirements. Nor was the Board persuaded that approval of the zoning relief requested by the Applicant would set a precedent for future cases. As the Applicant notes, "[i]n evaluating requests for special exceptions, the Board 'is limited to a determination whether the exception sought meets the requirements' of the particular regulation on which the application is based. The applicant has the burden of showing that the proposal complies with the regulation; but once that showing has been made, 'the Board ordinarily must grant [the] application.'" *National Cathedral Neighborhood Association v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000), quoting *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C. 1995).

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 to allow enlargement of an accessory garage and construction of a two-story rear addition to a one-family semi-detached dwelling that does not meet zoning requirements related to lot width, lot area, lot occupancy, side yard, width of open court, or enlargement of nonconforming structures, as well as an area variance from the alley center line setback requirement under § 2300.2(b) to extend the accessory garage less than 12 feet from the center line of an alley in the R-3 District at 3411 Prospect Street, N.W. (Square 1221, Lot 831). Accordingly, it is **ORDERED** that the application, pursuant to Exhibit No. 9, Plans, is hereby **GRANTED**.

VOTE: 3-0-2 (Meridith H. Moldenhauer and Jeffrey L. Hinkle to Approve;
Anthony J. Hood to Approve by absentee ballot; Nicole C. Sorg
and one Board member (vacant) not 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: AUG 16 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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on August 16, 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 or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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