

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18290 of Steve and Elizabeth Allenbach, pursuant to 11 DCMR § 3104.1, for a special exception to allow additions to an existing one-family row dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements (§ 403) and rear yard requirements (§ 404)¹ in the R-4 District at premises 1414 A Street, N.E. (Square 1056, Lot 28).

HEARING DATE: December 20, 2011

DECISION DATE: January 10, 2012

DECISION AND ORDER

Steve and Elizabeth Allenbach, the property owners of the subject premises (“the Owner” or “the Applicant”), filed an application with the Board of Zoning Adjustment (“Board”) on February 9, 2011 for a special exception under § 223 to construct additions to their residence, where the completed project will not conform to lot occupancy requirements and rear yard requirements of the Zoning Regulations. The Board held a public hearing on December 20, 2011, and deliberated at a public meeting on January 10, 2012. After deliberations, the Board voted to approve the application, as revised.

PRELIMINARY MATTERS

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, Advisory Neighborhood Commission (“ANC”) 6A, 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 25.)

¹ As will be explained further, the Board granted the Applicant’s request to amend the application to include rear yard relief.

ANC Report

In its report dated November 12, 2011, ANC 6A indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to support the special exception application. (Exhibit 23.) The ANC concluded that the proposed additions would not unduly impact the light, air, or privacy of adjacent properties, and would not intrude upon the character, scale, and pattern of houses along the A Street frontage.

Request for Party Status

There were no requests for party status.

Persons in Support

Latrece J. Wade, the owner of the adjacent property at 4412 A Street, N.E., reviewed the Applicant's initial proposed plans and submitted a letter in support of the application. (Attachment to Exhibit 4, Burden of Proof.) Ms. Wade did not testify at the public hearing.

Persons in Opposition

Letters The Board received three letters in opposition to the application from neighboring property owners Sharon Davis, Valerie Mills, and Troy Etulain. (Exhibits 26, 27, and 29, respectively.)

- Ms. Davis resides at 1433 Ames Street, one block behind the Allenbachs. She expressed concerns regarding historic preservation and aesthetic issues, and construction-related problems such as rodent infestation, the residual effects of dust and chemicals, and construction noise.
- Ms. Mills resides three houses north of the Allenbachs at 1420 A Street. The concerns she expressed were similar to those expressed by Ms. Davis, except Ms. Mills additionally expressed that the proposed project would negatively affect her re-sale values.
- Ms. Etulain resides next door to the Allenbachs at 1416 A Street. Her primary concerns related to the diminution of light into her home and obstruction of her view of the sky.

None of the three neighbors participated in the public hearing.

Testimony in Opposition Neighboring property owner Bonnie Holod, an architect, testified in opposition to the project. However, Ms. Holod did not request party status. Nor did she request to be qualified as an expert of any type. Ms. Holod resides at 1409 Ames Place, N.E., to the north of the alley at the rear of the Allenbachs' property. She testified that she would lose sunlight approximately 2½ months of the year as a result of the proposed additions. As will be discussed further, it appears that Ms. Holod was satisfied with the Applicant's final revisions to the project.

Government Reports

OP Report

OP prepared a written report in support of the application dated December 13, 2011. (Exhibit 28.) In its report, OP concluded that the light and air available to neighboring properties would not be unduly affected by the additions, and the privacy of use and enjoyment of neighboring properties would not be unduly compromised. OP also noted that the application also requires rear yard relief under § 404 of the Regulations, in that the minimum rear yard is deficient by six feet, five inches. Paul Goldstein, the OP representative who prepared the report, testified at the hearing. Mr. Goldstein noted the support of the Capitol Hill Restoration Society for the project, and concluded that the proposed third-floor “pop-up” was not a “substantial” visual intrusion along the A Street frontage. (Hearing Transcript of December 20, 2011, p. 51.)

Closing of the Record

The Board completed the public testimony on December 20, 2011 and closed the record, except to allow: (1) additional renderings from the Applicant of the streetscape along A Street; (2) additional evidence addressing sunlight and air issues, (3) the letter of support from the Capitol Hill Restoration Society that was referenced by OP, and (4) the revised sheet A-4 of the Applicant’s plans.

Post-Hearing Submissions

Submissions from the Applicant

The Applicant made significant changes to the plans in response to concerns raised by the Board and the neighboring property owners. These changes are shown in the revised plans dated December 29, 2011 contained in Post-Hearing Exhibit 36, and are summarized in Post-Hearing Exhibit 34, in particular: (1) The wall of the front addition will be set back three feet from the existing front wall to reduce the visual impact of the addition on the A Street streetscape. (See Exhibit 34, Attachment A, Image #1 showing the existing streetscape on A Street, and Image #2 showing a three dimensional perspective view of the proposed front addition, and Sheet A-9 of the revised plans showing a larger elevation view of the proposed front addition); (2) In response to the concerns of Ms. Holod, the rear wall of the third floor addition will be set back six, feet six inches. As a result, the third floor addition rests atop the original brick structure, and the resulting rear addition, as revised, is only two stories; and (3) In response to OP’s suggestion, the Applicant also seeks rear yard relief under § 404 of the Zoning Regulations. This is shown in the final revised plans at Exhibit 36.

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Submissions from Ms. Holod²

Ms. Holod submitted a letter explaining that she had performed solar lighting studies, with diagrams attached. (Exhibit 36, plus five pages of Attachments depicting the solar studies.) Based upon the solar studies, Ms. Holod concluded that she would support the proposal represented on the Applicant's revised plans dated December 29, 2011. (Exhibit 35.) In particular, Ms. Holod supports the height reduction of the rear addition from three stories to two stories, supports the limited rear yard encroachment of the rear addition if the Board approves rear yard relief, and supports the third story "pop-up" in the front so long as the dimensions are limited to those in the final revised plans.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 1414 A Street, N.E., Square 1056, Lot 28, in the R-4 Zone District.
2. The lot is improved with a two-story one-family row dwelling, with cellar, and an attached single level rear garage with a roof deck.
3. The property fronts on A Street to the south and a 10-foot wide public alley to the north.
4. To the east and west are abutting two-story row dwellings. To the north, across the public alley are the rear yards of row dwellings. To the south, across A Street from the property, are multi-family residential buildings.
5. The block is primarily a block of two-story row dwellings. However, across the street from the property is the "Car Barn Condominium", which consists of much larger three-story structures. Photographs of the Car Barn are contained in Exhibit 34, Attachment B, Images 1 & 2, and Exhibit 30.

The Proposal

6. The Applicant originally proposed to construct a third story addition above the existing two-story row dwelling, as well as a three-story rear addition.
7. The first revision eliminated the garage and shrunk the rear deck in order to decrease the lot

² While Ms. Holod did not have party status, she did testify at the public hearing and her post-hearing submissions were relevant to the issues that were raised. Therefore, the Board accepted Ms. Holod's post-hearing submissions even though the Board did not explicitly call for them at the close of the public hearing.

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occupancy to 70%.³

8. Final revisions of the plans were made following the public hearing in response to concerns of the Board and concerns of Ms. Solod.
9. Following the hearing, the Applicant submitted a final revised set of plans and elevations, a survey plat, and photographs of the property, the streetscape and the nearby Car Barn Condominium. (Exhibit 36.)
10. While the Applicant did not submit a solar study, the Board received solar studies from Ms. Holod, one of the neighboring property owners.

Zoning Relief

11. Section 403 of the Zoning Regulations permits a maximum lot occupancy of 60% in the zone. The dwelling with additions will have a lot occupancy of 70%.
12. Section 404 of the Zoning Regulations requires a minimum rear yard of 20 feet in the zone. The dwelling with additions will have a rear yard of approximately 13 feet, seven inches.
13. As specified above, the dwelling and proposed additions will not comply with applicable area requirements under §§ 403 and 404 of the Zoning Regulations.

The Impact of the Additions

14. The elevation plans, photographs, and site plan show the relationship of the additions to adjacent buildings, and also show views from the public right-of-ways.
15. The third floor addition will be visible from A Street and the rear alley. However, the façade materials and treatments will match the existing brick dwelling and have a reduced visual impact on the streetscape. Also, the existing cornice line, which is a prominent feature on the block, will remain intact.
16. As revised with the three-foot setback, the third floor front addition will have a reduced visual impact on the streetscape.
17. As revised from three stories to two stories, the Board finds that the proposed rear addition will have some effect on light and air at neighboring properties, including light and air at Ms. Holod's property. However, the impact will not be substantial. The revised two-story rear addition will significantly reduce the amount of shadows cast on Ms. Holod's property, as

³ The original self-certified application, although styled as a § 223 special exception case, would have required variance relief because the lot occupancy exceeded 70%. *See*, 11 DCMR § 223.3.

compared with the three-story rear addition of the original proposal. (Exhibit 35, Solar Study submitted by Ms. Holod⁴.)

18. The additions will have no windows along the shared property lines to the east and west, and the neighbor to the north is separated from the property by a 10-foot wide alley.

CONCLUSIONS OF LAW

The Applicant is seeking a special exception pursuant to 11 DCMR §§ 223 and 3104.1 to construct additions to a one-family dwelling in an R-4 Zone District, where the proposal will not comply with the lot occupancy requirements of § 403 and the rear yard requirements of § 404. As stated in § 3104.1 of the Zoning Regulations (Title 11 DCMR), the Board “is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) ... to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions 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, subject in each case to the special conditions specified in this title.” In this case, the “special conditions” are those specified in §§ 223.2 through 223.5. As noted by the Court of Appeals:

In evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought. ‘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 Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n. 1 (D.C.2000) (quoting *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C.1995)).

Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment, 802 A.2d 359, 363 (D.C., 2002).

In this case, the Board concludes that the Applicant has satisfied the two general tests stated in § 3104.1 and the specific conditions contained in § 223.

As to the general test, the Board concludes that the requested special exception will “be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.” (11 DCMR § 3104.1.) The proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood. With respect to whether the special exception will not tend to affect adversely, the use of neighboring property in accordance

⁴ Ms. Holod’s study concludes that, as proposed in the final plans, a shadow will be cast on a portion of her first floor for less than two hours per day, during only one winter month of the year around the winter solstice.

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with the Zoning Regulations and Zoning Maps, the Board concludes that this standard is satisfied if the specific conditions of § 223 are met. These will be discussed in the section below entitled “The ‘special conditions’ for an addition under § 223.1.”

The “special conditions” for an addition under § 223.1

Under § 223.1 of the Zoning Regulations, an addition to a one-family dwelling shall be permitted even though it does not comply with applicable area requirements if approved by the Board as a special exception, 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. As OP found, the Board concludes that the light and air at neighboring properties will not be unduly affected. The solar study shows that, as revised, the rear addition will have only a minimal impact on light and air at the Holod property; and Ms. Holod is in accord with this view. (See, Exhibit 35 and Finding of Fact 17.)

223.2(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. Nor will the privacy of use and enjoyment of neighboring properties be significantly affected by the proposed rear addition. Based upon the evidence of record, the Board is not persuaded that the privacy of neighboring property owners will be diminished in any significant way. (Finding of Fact 18.)

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. As scaled back in the final plans (setback and reduction in size), the third floor “pop-up” will not substantially visually intrude upon the character, scale, or pattern of homes along the street frontage. (Findings of Fact 14, 15, and 16.)

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-4 Zone District. (Finding of Fact 1.) With the proposed additions, the lot occupancy will be 70%. (Finding of Fact 11.) Therefore, this condition will be met.

Neighboring property owners submitted letters regarding construction-related problems, historic preservation concerns, and re-sale values. Construction issues are not relevant to a special exception application under § 223, which is only concerned with the impact of the proposed addition. As to historic preservation, it is the Mayor, not the BZA, who is required to review the impact of the proposed alteration to a structure in a historic district or to a landmark pursuant to § 6 of the Historic Landmark and Historic District Protection Act of 1978 (the “Preservation Act”); (D.C. Law 2-144), as amended); D.C. Official Code § 6-1105. If either of those circumstances

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applies to this property, the impact of the proposed addition will be analyzed by the Mayor under the preservation act. As to resale value, the Board is not persuaded that any loss of resale value will result. First, letters contained no empirical data to back the assertion. Second, the § 223 criteria are intended to protect the light and privacy of neighboring properties and ensure that an addition is compatible with its surroundings. Having found that the proposed addition meets this test, the Board concludes that no adverse impact to property values will result.

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A), to give “great weight” to the issues and concerns raised in the affected ANC’s recommendations. For the reasons stated in this Decision and Order, the Board finds the ANC’s 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 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 additions that do not comply with area requirements of the R-4 Zone District.

Therefore, for the reasons stated above, the application for a special exception is **GRANTED**, **SUBJECT** to the approved plans, as shown on Exhibit 36 of the record.

VOTE: **4-0-1** (Lloyd J. Jordan, Nicole C. Sorg, Meridith H. Moldenhauer, and Anthony J. Hood to Approve; Jeffrey L. Hinkle not present, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this Decision and Order.

ATTESTED BY:  _____ for
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: August 2, 2012

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.