GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18393 of Marina Martin, pursuant to 11 DCMR §§ 3104.1 and 1202.1, for a special exception under § 223 to allow a rear deck addition to an existing flat (two-family) row dwelling, not meeting the requirements for lot occupancy (§ 403), lot area (§ 401) or nonconforming structures (§ 2001.3) in the CAP/R-4 District at premises 149 D Street, S.E. (Square 734, Lot 74).[1]

HEARING DATE: September 11, 2012
DECISION DATE: October 23, 2012

DECISION AND ORDER

This application was submitted on April 17, 2012 by Marina Martin (the "Applicant"), the owner of the property that is the subject of the application. In accordance with a memorandum from the Zoning Administrator, dated March 21, 2012, the application requests a special exception under § 223 of the Zoning Regulations to allow construction of "a 2nd level rear deck addition to an existing flat which will exceed the maximum allowed lot occupancy from § 403.2 in the CAP/R-4 residential Zone District." Following a public hearing, the Board voted to grant the requested special exception.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 20, 2012, the Office of Zoning provided notice of the application to the Office of Planning ("OP") and to the Historic Preservation Office; the District Department of Transportation ("DDOT"); the Councilmember for Ward 6; Advisory Neighborhood Commission ("ANC") 6B, the ANC in which the subject property is located; Single Member District/ANC 6B01; and the Architect of the Capitol. Pursuant to 11 DCMR § 3112.14, on June 1, 2012 the Office of Zoning mailed letters providing

[1] Consistent with the referral provided to the Applicant by the Zoning Administrator, this case was advertised as a request for a special exception under § 223 to allow an addition to a dwelling not meeting the requirement for lot occupancy under § 403.2. Based on the report filed in this case by the Office of Planning, and because the subject property is nonconforming with respect to lot area, the Board considered the application as a request for a special exception under § 223 to allow an addition to a dwelling not meeting requirements for lot occupancy under § 403.2, lot area under § 401, or the enlargement of a nonconforming structure under § 2001.3. The caption has been modified accordingly.

notice of the hearing to the Applicant, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on June 1, 2012 (59 DCR 6281).

Party Status. The Applicant and ANC 6B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Lydia Hofer, the owner and resident of a row dwelling adjoining the subject property at 151 D Street, S.E.

Applicant's Case. The Applicant described plans to replace a small, deteriorated wood stair at the rear of the dwelling with a new deck and spiral stair from the second level to grade. According to the Applicant, the new deck would not unduly affect light and air available to neighboring properties or unduly compromise the privacy of use and enjoyment of those properties because of its size and design. The Applicant also asserted that the rear deck addition would not visually intrude on the character, scale, or pattern of houses, since "from most vantage points along C Street S.E. and the public alley, the proposed deck will not be visible at all." (Exhibit 3.)

Party in opposition. The party in opposition asserted that the Applicant's proposed construction would have "a deleterious and unique effect upon Ms. Hofer's privacy as well as her use and enjoyment of her property." According to the party in opposition, the Applicant's existing deck "is nothing more than a small landing allowing for ingress and egress," and its replacement with a new deck, as planned by the Applicant, would "adversely affect the light and air available to Ms. Hofer's property." The party in opposition also contended that the scale and materials of the proposed construction would be "architecturally inconsistent with the exterior" of the Applicant's and surrounding dwellings and "would visually intrude upon the character, scale and pattern of the houses located in the immediate vicinity including the home of Ms. Hofer." (Exhibit 24.)

Government Reports. By memorandum dated August 30, 2012, OP recommended approval of the application based on OP's conclusion that the proposed deck addition would be consistent with zoning requirements.

By memorandum dated August 24, 2012, the DDOT indicated "no objection to [the] special exception sought by the Applicant." (Exhibit 25.)

By memorandum dated June 20, 2012, the Architect of the Capitol indicated its finding that "the proposed relief for 2nd level deck to an existing dwelling at 149 D Street, S.E. that does not meet the lot occupancy requirements under DCMR 11 §§ 403 and 223 is not inconsistent with the intent of the CAP/R4 District (Overlay) and would not adversely affect the health, safety, and general welfare of the U.S. Capitol precinct and area adjacent to this jurisdiction and is not inconsistent with the goals and mandates of the United States Congress as stated in DCMR 11 § 1200.1." (Exhibit 22.)

ANC Report. By letter dated July 14, 2012, ANC 6B indicated that, at a regularly scheduled meeting on July 10, 2012 with a quorum present, the ANC voted 8-0-0 in support of the application. According to the letter, "ANC 6B took this action after reviewing the applicant's documentation, and it believes the project's impact on light, air, and privacy will be negligible." (Exhibit 23.)

Persons in support. The Applicant provided copies of several letters in support of the project that were submitted to ANC 6B by neighbors living near the subject property on D Street or North Carolina Avenue.

FINDINGS OF FACT

The Subject Property

1. The subject property is an interior lot on the south side of D Street, S.E., near its intersection with 2nd Street (Square 734, Lot 74). The property abuts a 20-foot-wide public alley located in the interior of Square 734, which terminates at the western lot line of the subject property. The Applicant's property is subject to an easement, 12 feet wide, across the rear of the lot that provides access to the alley for several adjoining to the east.

2. The subject property is improved with a three-story row dwelling that was constructed around 1968 and is configured as a flat.[2] A wooden staircase provides access to the second level (i.e. the upper dwelling), while the lower dwelling opens onto a patio, approximately 200 square feet, enclosed by a stockade fence. The remainder of the rear yard is paved and used for parking.

3. The subject property is generally rectangular, with an angled rear property line. The lot is approximately 18 feet wide, but is nonconforming with respect to lot area. (The existing lot area is 1,768 square feet where a minimum of 1,800 square feet is required pursuant to 11 DCMR § 401.3.) Existing lot occupancy is 56% where a maximum of 60% is permitted as a matter of right. (11 DCMR § 403.2.) The existing rear yard is approximately 41.8 feet where a minimum of 20 feet is required. (11 DCMR § 404.1.)

4. The majority of lots in the immediate vicinity of the subject property are developed with row dwellings or semi-detached one-family-dwellings, although a five-story apartment building

[2] In finding that the use of the subject property is a flat, and thus is eligible for consideration under § 223, the Board credits the testimony of the Applicant that she and her husband live in the upper unit and rent the lower level of the building to tenants, and that a certificate of occupancy was issued to authorize the use of the property as a two-family dwelling. The Applicant also submitted into the record a copy of an inspection report for one- and two-family dwellings for the subject property made in connection with the basic business license issued to the Applicant in 2010 for a two-family rental unit at the subject property. Notwithstanding the Board's finding, the party in opposition may pursue appropriate enforcement action to address her allegations that the Applicant's property is currently devoted to some use other than a flat.

and several two- or four-story commercial building are also located nearby.

5. The abutting property to the east (the residence of the party in opposition) has a bay window at the rear of the dwelling on the second level. A privacy fence, similar to the fence at the subject property, separates the rear yard from the parking pad at the rear of the lot. The abutting property to the west also contains a parking area at the rear of the lot as well as a patio in the rear yard.

The Applicant's Project

6. The Applicant proposes to remove the existing wood stoop and steps from the second floor to grade, and replace that with a new deck, also at the second level, with a metal spiral stair to grade. As part of the project, an existing rear door on the second level will be removed, and the opening will be filled with masonry to match the existing dwelling. An existing bay window on the second level of the dwelling will be removed, and a new wood patio door will installed in the former opening of the bay window to provide access to the deck.

7. The new deck will extend approximately 18 feet across the width of the dwelling on the second level, using a painted steel frame, treated wood floor joists, and a composite deck. Stainless steel posts will support a handrail with cable guard rails. The deck, approximately eight feet in depth, will rise approximately nine feet above grade to a total height of 13 feet at the top of the railing. A spiral stair will be located at the eastern edge of the deck, and a frosted safety glass privacy screen, seven feet high and the same depth as the deck, will be installed instead of a railing on the eastern side to screen views of the bay window of the neighboring property to the east. The deck will not extend beyond the existing privacy fence. (Exhibits 6 and 33.)

8. Any lighting installed on the new deck will be down-lighting that will not cause light to spill over onto adjacent properties.

9. The planned decks will result in lot occupancy of 64%, and will decrease the rear yard to approximately 31 feet.

Harmony with Zoning

10. 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.)

11. The Capitol Interest (CAP) Overlay District was established to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to

that jurisdiction. (11 DCMR § 1200.1.) In an application for a special exception, the Board must consider, *inter alia*, whether the proposed development is compatible with the present and proposed development of the neighborhood. (11 DCMR § 1202.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 223 to allow construction a second-level rear deck addition to an existing two-family row dwelling not meeting the requirements for maximum lot occupancy under § 403.2, minimum lot area under § 401, or enlargement of a nonconforming structure under § 2001.3 in the CAP/R-4 Zone District at 149 D Street, S.E. (Square 734, Lot 74). 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 the specified area requirements identified in that section, 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 because the planned deck addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. The Board credits the testimony of the Applicant and OP that the requested special exception will not unduly affect the light and air available to neighboring properties. The deck will be a relatively small addition, projecting approximately eight feet into the rear yard of the subject property, and will employ steel post supports and a railing that will allow the passage of light and air through the structure. The deck structure will not occupy a large portion of the rear yard, which will remain in excess of the minimum required by the Zoning Regulations.

The deck addition, as shown in the Applicant's revised drawings, will not unduly compromise the privacy of use and enjoyment of neighboring properties, because a privacy screen will shield views into and from the abutting property. The Board also concludes that the proposed deck will not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage. The deck addition will be visible only from the alley at the rear of abutting lots, and will not alter the residential use or appearance of the subject property. The

Board credits the testimony of OP that the deck will employ "a contemporary residential design" and that the "Historic Preservation staff expressed no concerns with the proposed deck." (Exhibit 26.)

The Board concludes that the planned rear deck 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 deck 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, and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations. The Board credits the report submitted in this case by the Architect of the Capitol in concluding that the requested special exception is consistent with the Capitol Interest Overlay District and compatible with the present and proposed development of the neighborhood.

The Board is required to give "great weight" to the recommendation of OP. In this case, the Board concurs with the recommendation of OP to grant the requested special exception as consistent with the requirements of the Zoning Regulations. The Board is also 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 6B recommended approval of the requested special exception based on the ANC's conclusion that the Applicant's project would have a "negligible" impact on light, air, and privacy. The Board concurs with the recommendation of ANC 6B, which did not raise any issues or concerns with the Applicant's proposal.

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-level rear deck addition to an existing two-family dwelling not meeting the requirements for maximum lot occupancy under § 403.2, minimum lot area under § 401, or enlargement of a nonconforming structure under § 2001.3 in the CAP/R-4 District at 149 D Street, S.E. (Square 734, Lot 74). Accordingly, it is **ORDERED** that the application is **GRANTED**, subject to plans - Exhibit No. 6, as revised by Exhibit No. 33 in the record.

VOTE: **4-0-1** (Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Michael G. Turnbull voting to APPROVE; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

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

FINAL DATE OF ORDER: March 8, 2013

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

BZA APPLICATION NO. 18393

As Director of the Office of Zoning, I hereby certify and attest that on March 8, 2013, 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:

Kim Jones
118 11th Street, S.E.
Washington, D.C. 20003

Chairperson
Advisory Neighborhood Commission 6B
921 Pennsylvania Ave., S.E., Suite 305
Washington, D.C. 20003

Single Member District Commissioner 6B-01
Advisory Neighborhood Commission 6B
#8 - 4th Street SE
Washington, D.C. 20003

Tommy Wells, Councilmember
Ward Six
1350 Pennsylvania Avenue, N.W., Suite 408
Washington, D.C. 20004

Marina Martin
149 D Street, S.E.
Washington, D.C. 20003

Mark G. Griffin, Esq.
Griffin & Murphy, LLP
1912 Sunderland Place, N.W.
Washington, D.C. 20036-1608

Lydia Hofer
151 D Street, S.E.
Washington, D.C. 20003

Melinda Bolling, Esq.
General Counsel
Office of General Counsel
Dept. of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024

ATTESTED BY: _____

SARA A. BARDIN
Director, Office of Zoning