GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Order No. 18462-A of Application No. 18462 of Karen Sayre, pursuant to 11 DCMR § 3104.1, for a special exception to allow additions to an existing two-family flat under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements (§ 403), rear yard requirements (§ 404), and nonconforming structure limitations (§ 2001.3) in the R-4 District at premises 13 15th Street, S.E. (Square 1058, Lot 47).

HEARING DATE: November 7, 2012
DECISION DATES: October 23, 2012 (Expedited Review) and November 7, 2012

CORRECTED DECISION AND ORDER[1]

Karen Sayre, the property owner of the subject premises ("the Owner" or "the Applicant"), filed an application with the Board of Zoning Adjustment ("Board") on August 14, 2012 for a special exception under § 223 to construct additions to her 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 November 7, 2012. After deliberating, the Board voted, to approve the application.

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") 6B, 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.)

Pursuant to 11 DCMR § 3181, this application was tentatively placed on the Board's expedited review calendar on October 23, 2012 for decision without hearing as a result of the Applicant's

[1] This order corrects BZA Order No. 18462, dated March 14, 2013, which incorrectly cites the square and lot number as "Square 1056, Lot 28." The correct cite is Square 1058, Lot 47. The change has been made to the caption and body of this corrected order. In all other respects, the substance of the March 14th Order remains unaltered.

waiver of her right to a hearing.

Once called, the Board noted that a party had filed in opposition. The Board requested that the application be removed from the expedited review calendar and scheduled for a public hearing pursuant to 11 DCMR § 3118.6(a). At the Board's request, staff scheduled the application for hearing at 1:00 p.m. on November 7, 2012. Notice of the newly scheduled hearing date was posted in the Office of Zoning pursuant to 11 DCMR § 3118.5(b).

The Applicant retained the services of George Keys for legal representation. (Exhibit 29.) At the public hearing, the Board granted expert witness status to Will Teass, as an expert in architecture.

Pre-hearing Submissions

The Applicant made changes to the original application in response to concerns raised by OP and the ANC. These changes are shown in the revised plans dated October 8, 2012. The front wall of the third floor addition, fronting on 15th Street, S.E. was sloped back from the existing front wall to reduce the visual impact of the addition on the 15th Street streetscape.

The Applicant also submitted a copy of the structural report prepared by FMC & Associates ("FMC"), dated June 6, 2012. (Exhibit 29.) In its report, FMC noted that no significant cracks or settlement in load bearing masonry walls were found. No representative of FMC testified at the public hearing.

Request for Party Status

The owner of the adjacent row dwelling at 15 15th Street, S.E., which abuts the subject property to the south, filed a request for party status in opposition on October 9, 2012. At its November 7 public hearing, the Board granted Mr. Adam's request for party status.

ANC Report

In its report dated October 11, 2012, ANC 6B indicated that, at a regularly scheduled and properly noticed monthly meeting with a quorum present, the ANC voted to support the special exception application. (Exhibit 22.) The ANC concluded that the proposed additions would have a negligible impact on light, air and privacy. No representative of the ANC testified at the public hearing.

Persons in Support

Holly and Isaac Brown, the owner of the adjacent property at 11 15th Street, S.E., reviewed the Applicant's initial proposed plans and submitted a letter in support of the application. (Exhibit 6.) Mr. and Mrs. Brown did not testify at the public hearing.

John Adam, the owner of the adjacent property at 15 15th Street, S.E., reviewed the Applicant's initial proposed plans and submitted a letter in support of the application. (Exhibit 7.) Mr. Adam later withdrew his support and filed a request for party status in opposition. During his testimony, Mr. Adam stressed that his letter did not state his unconditional support, but rather represented his views at the moment it was written based upon the knowledge that he had at the time.

Persons in Opposition

Letters. The Board received two letters in opposition to the application from neighboring property owners John Adam (Exhibits 26 and 28) and Nathalie Large-Odier. (Exhibits 28.)

- Mr. Adam resides at 15 15th Street, S.E., the adjacent neighbor to the south of the Applicant. He expressed concerns regarding the stability of party wall and the impact on the street view. Mr. Adam requested party status and participated in the public hearing.
- Ms. Large-Odier resides three houses south of the Applicant at 19 15th Street, S.E. She raised concerns about the impact of the addition on the street view. She did not participate in the public hearing.

Testimony in Opposition. Neighboring property owner, John Adam, testified in opposition to the project. Mr. Adam resides at 15 15th Street, S.E., to the south of the Applicant's property. Mr. Adam raised a number of concerns, including increased noise, intrusions on privacy and light, and additional stress on the shared party wall. Mr. Adam also testified that he was not informed of the ANC public meetings.

Government Reports

OP Report

OP prepared a written report in support of the application dated October 16, 2012. (Exhibit 23.) 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 2.7 feet. Arthur Jackson, the OP representative who prepared the report, testified at the hearing.

DDOT Report

DDOT prepared a written report dated October 18, 2012. (Exhibit 24.) In its report, DDOT concluded that the proposed project will have no adverse impacts on the travel conditions of the District's transportation network. No representative of DDOT testified at the public hearing.

Closing of the Record

The Board completed the public testimony on November 7, 2012 and closed the record. (Exhibit 32.)

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 13 15th Street, S.E., Square 1058, Lot 47, in the R-4 Zone District.

2. The lot is improved with a two-story, two-family flat row dwelling. The subject property does not have a basement.

3. The property fronts on 15th Street, S.E. to the east and a 10-foot wide public alley to the west.

4. To the north and south are abutting two-story row dwellings. To the west, across the public alley are the rear yards of row dwellings. To the east, across A Street, S.E. from the property, is a school.

5. The block is primarily a block of two-story row dwellings with raised basements. Two neighboring buildings on the west side of 15th Street, S.E., north of the subject property are three stories. Across the street from the property is the "Center City Public Charter School", which consists of a much larger three-story structure.

The Proposal

6. The Applicant proposes to construct a third story addition and roof deck above the existing two-story flat.

7. The Applicant also proposes to construct a circular stairway that would lead from the second floor of the existing structure, the main floor of the top unit to the ground.

Zoning Relief

8. Section 403 of the Zoning Regulations permits a maximum lot occupancy of 60% in the zone. The dwelling currently has nonconforming lot occupancy of 68% and with the additions will have a lot occupancy of 70%.

9. Subsection 2001.3 (a) prohibits the expansion of a structure that is nonconforming as to lot occupancy.

10. 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 17.3 feet.

11. As specified above, the dwelling and proposed additions will not comply with the applicable area requirements under §§ 403 and 404 of the Zoning Regulations or with the prohibition against the enlargement of a structure with nonconforming lot occupancy of § 2001.3(a).

<u>The Impact of the Additions</u>

12. The plans, elevations, photographs, and site plan show the relationship of the additions to adjacent buildings, and also show views from the public right-of-ways.

13. The third floor addition will be visible from 15th Street, S.E. and the rear alley. However, the façade materials and treatments will read as a mansard roof 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.

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

15. The shading study shows that the addition will have a minimal impact to the neighbor to the north. Most of the shadows created by the addition are cast on the roof of the adjacent northern structure.

16. The roof deck is setback from the edge of the roof at the south and west sides.

17. The addition will have no windows on the along the shared property lines to the north and south, and the neighbor to the west is separated by a 10-foot wide alley.

18. Any sound resulting from the use of the addition will be noninvasive and consistent with what could be reasonably expected from living in a residential environment.

CONCLUSIONS OF LAW

The Applicant is seeking a special exception pursuant to 11 DCMR §§ 223 and 3104.1 to construct additions to a two-family flat in an R-4 Zone District, where the proposal will not comply with the lot occupancy requirements of § 403, the rear yard requirements of § 404, and the restriction on the enlargement of nonconforming structures of § 2001.3 (a). 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 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."

<u>The "special conditions" for an addition under § 223.1</u>

Under § 223.1 of the Zoning Regulations, an addition to a two-family flat 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) <u>The light and air available to neighboring properties shall not be unduly affected</u>. As OP found, the Board concludes that the light and air at neighboring properties will not be unduly affected. The solar study shows that the addition will have only a minimal impact on light and air at the adjacent property. (See, Exhibit 9 and Finding of Fact 15.)
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> 223.2(b) <u>The privacy of use and enjoyment of neighboring properties shall not be unduly compromised</u>. 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 16 and 17.) Nor will the sounds attributable to the use of the addition prove different in kind that what could be anticipated in living in a residential environment. (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. 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 5 and 6.)

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 8.) Therefore, this condition will be met.

Neighboring property owners submitted letters regarding structural integrity of the party wall, construction-related problems, and the impact on the street view. The structural integrity of the party wall and construction issues are not relevant to a special exception application under § 223, which is only concerned with the impact of the proposed addition.

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.[2]

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, subject to Exhibit 9 - Plans, is hereby **GRANTED**.

VOTE: **4-0-1** (Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Robert E. Miller to Approve; one Board seat vacant.)

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[2] Mr. Adam claims that he did not receive notice from the ANC, but did not refute that the ANC's meeting was "properly noticed" as stated in the ANC report. The notice provisions for ANC meetings are stated in § 14 (c) of the Advisory Neighborhood Commission Act of 1975; D.C. Official Code § 109.11(c) and can be satisfied without mailed notice to residents.

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: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 30, 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.