

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18586 of Mary McGrath, as amended, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a special exception under § 223 to allow additions to an existing one-family detached dwelling not meeting requirements for side yard (§ 405) or enlargement of a nonconforming structure (§ 2001.3) in the WH/R-1-B District at premises 4351 Klinge Street, N.W. (Square 1625, Lot 802).¹

HEARING DATES: June 28 and July 16, 2013
DECISION DATE: July 16, 2013

DECISION AND ORDER

This self-certified application was submitted on April 18, 2013 by Mary McGrath (the “Applicant”), the owner of the property that is the subject of the application. The application, as finally amended, requests a special exception under § 223 of the Zoning Regulations to allow construction of a rear addition to a one-family detached dwelling not meeting the zoning requirement for side yard, and a front porch addition not meeting the requirement for the

¹ The caption of this case has been amended to reflect the relief finally requested in this application. The Applicant originally sought expedited review of a request for special exception relief under § 223 “to allow completion of a rear addition to an existing single-family dwelling...not meeting the side yard requirements...” By letter dated June 3, 2013, the Applicant sought to amend the application to request “additional special exception relief under Section 223 from the front yard setback requirements of the Wesley Heights Overlay District (‘WHOD’) (Section 1543.4) to allow ... [a] one-story screened front porch not meeting the requirements of Section 2001.3(b) for a non-conforming structure.” (Exhibit 27.) At a public meeting on June 28, 2013, the Board concluded that the application required special exception relief under § 223 for the rear addition and an area variance from the front yard setback requirement of § 1543.4 for the front porch addition, and set the application for hearing on July 16, 2013. At the public hearing, the Board determined to consider the application solely as a special exception under § 223 for additions not meeting requirements for side yard under § 405 or the enlargement of a nonconforming structure under § 2001.3. While a special exception under § 223 is not appropriate to grant relief from the front yard setback requirement under § 1543.4 (because § 1543.4 is not expressly listed in § 223), in this case the Applicant’s project was found not to require a variance from § 1543.4 because the proposed front porch would extend the existing nonconforming front yard but would not increase the nonconformity or create any new nonconformity. For the same reason, it was unnecessary for the Applicant to request relief from § 405, since the nonconforming side yard will only be extended, but not enlarged.

BZA APPLICATION NO. 18586
PAGE NO. 2

enlargement of a nonconforming structure under § 2001.3 due to an extension of a nonconforming front yard setback in the Wesley Heights Overlay District of the R-1-B Zone at 4351 Klingle Street, N.W. (Square 1625, Lot 802). Following a public hearing, the Board voted to approve the application subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 22, 2013, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3D, the ANC in which the subject property is located; and Single Member District/ANC 3D08. Pursuant to 11 DCMR § 3112.14, on April 22, 2013 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 3D, and the owners of all property within 200 feet of the subject property.

Party Status. The Applicant and ANC 3D were automatically parties in this proceeding. The Board granted requests for party status in opposition to the application from Andrew Heimert and Angel Clarens, who are residents of Klingle Street directly across from the subject property.

Applicant’s Case. The Applicant provided evidence and testimony describing the proposed construction – a two-story rear addition and a one-story front porch addition – and asserted that the application satisfied all requirements for approval of the requested zoning relief. The Applicant obtained a building permit (Permit No. B1201767) in March 2013 authorizing “new rear addition 2 story interior alterations at all levels including new kitchen and bathrooms new lighting and mechanical zones.” After beginning construction, the Applicant determined that the western side yard was 3.85 feet, “not the 6.0 feet originally measured or the minimum of 5.0 feet required under Section 405.8.” (Exhibit 4.) In addition, after the permit was issued the Zoning Administrator determined that the front porch addition would constitute an extension of an existing nonconforming front-yard setback that required zoning relief.

In this application, the Applicant sought zoning relief to allow both the rear addition and the front porch addition to the dwelling. After consultation with some residents living in the vicinity of the subject property, the Applicant proposed five conditions of approval, which the Board adopts in this order.

OP Report. By memorandum dated June 18, 2013, OP recommended approval of the application based on OP’s conclusion that the Applicant’s proposal would satisfy the requirements for

BZA APPLICATION NO. 18586
PAGE NO. 3

zoning relief. By supplemental report, dated July 9, 2013, OP also recommended approval of a variance from the front yard setback requirement of the Wesley Heights Overlay District to allow the front porch proposed by the Applicant.

DDOT. By memorandum dated May 9, 2013, DDOT indicated no objection to approval of the requested special exception. (Exhibit 25.)

ANC Report. By letter dated June 18, 2013, ANC 3D indicated that, at a properly noticed public meeting, held June 5, 2013 with a quorum present, the ANC voted 8-1-0 to support the application. The letter states that the ANC “specifically considered and voted to support” relief from requirements applicable both to the side yard and to the front yard under the Wesley Heights Overlay District, based on the ANC’s determination “that the relief was minor and can be granted without any adverse impact to neighboring property and in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.” The ANC also concluded that the front yard relief requested by the Applicant “was in keeping with the purposes of the Wesley Heights Overlay District to ‘preserve and enhance the low density of Wesley Heights’ while allowing a ‘reasonable opportunity’ for the Applicant to expand her dwelling well within the more restrictive lot occupancy and [floor area ratio] requirements of the overlay.” (Exhibit 31.)

Parties in opposition. The parties in opposition initially objected that the planned front porch addition would intrude on the open space required by the Wesley Heights Overlay District, thereby changing the open character of the street. Subsequently, the parties in opposition stated their support for the porch addition as redesigned by the Applicant to minimize its visual impact.

Persons in support. The Board received letters in support of the application from persons living in the vicinity of the subject property, who commented generally that the Applicant’s project was “very minor” and in keeping with the character of the neighborhood and would not create any objectionable conditions for neighboring property.

Persons in opposition. The Board also received letters and heard testimony in opposition to the application from persons living in the vicinity of the subject property. The persons in opposition generally cited the importance of the Wesley Heights Overlay District, especially the “openness” and “relatively uniform streetscapes” of the neighborhood.

FINDINGS OF FACT

The Subject Property

1. The subject property is an interior lot located on the north side of the street at 4351

BZA APPLICATION NO. 18586
PAGE NO. 4

Klinge Street, N.W. between New Mexico Avenue and 44th Street (Square 1625, Lot 802). The property fronts a right of way that is 90 feet wide.

2. The subject property is improved with a two-story one-family detached dwelling built in 1923. Public alleys abut the subject property along the rear lot line and a portion of the western property line.
3. The subject property is a rectangular parcel 50 feet wide and 135 feet deep, with an area of 6,750 square feet. Existing lot occupancy is 24.66%. The rear yard is 75 feet deep, while the side yards are 8.1 feet on the east and 3.85 feet on the west. A minimum of eight feet for each side yard is required pursuant to § 405.9.
4. The lot is zoned R-1-B. Since 1992, the subject property has been included within the Wesley Height Overlay District. (*See* Z.C. Order No. 718, Case No. 90-5, effective September 11, 1992.)
5. The Wesley Heights Overlay District requires that all residential buildings must have a front yard setback not less than “the average setback of all structures on the same side of the street in the block where the building in question is located.” (11 DCMR § 1543.4.) In the case of the subject property, the required front yard setback is a minimum of 20 feet. The required minimum front yard setback for properties across the street from the subject property is 44 feet.
6. The existing dwelling on the subject property is irregularly shaped. A portion on the western side, approximately 12 feet by 12 feet, extends the front of the dwelling into the front yard. That portion, which contains the front door to the house, is set back approximately 13 feet from the front property line.
7. An accessory garage building, serving the abutting property to the west, is located near the northwest corner of the Applicant’s dwelling. The residence on that lot is located almost 49 feet to the west of the Applicant’s dwelling.

The Applicant’s Project

8. The Applicant proposes to construct a two-story addition along the rear and east side of the dwelling, providing approximately 444 square feet of space. The rear addition will extend 7.75 feet into the rear yard and will maintain the existing side yards of 8.1 feet on the east and 3.85 on the west.

9. The Applicant also proposes to construct a new one-story porch addition of approximately 310 square feet onto the front of the house. The porch will extend from the existing portion of the house that projects into the front yard of the property approximately 26 feet across the remainder of the house, creating a uniform setback of 13 feet from the front property line. The porch will maintain the same side yard setback of 8.1 feet on the eastern edge of the house.
10. As finally designed, the porch will not be enclosed with screens, and will utilize uniform open railings on the front and side. The porch roof will contain skylights providing a total transparent area of not less than 112 square feet. (The Applicant plans to provide four skylights, each approximately 3.5 feet by 8 feet, in the roof of the porch, although the final configuration and number of skylights might vary depending on product availability and building code requirements.) Stairs to reach the porch will be located on the left side.
11. The new construction will increase lot occupancy at the subject property to 29.92 percent (2,019.45 square feet), within the maximum of 30% (2,025 square feet) permitted as a matter of right pursuant to §1543.2. The rear addition will extend but not increase the non-conforming side yard on the western side, which will remain 3.85 feet. The rear yard will be reduced to 67.25 feet, in excess of the minimum requirement of 25 feet.

Harmony with Zoning

12. The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes. (11 DCMR § 200.1.) Zoning provisions applicable in the R-1 Zone are intended to stabilize the residential areas and to promote a suitable environment for family life. (11 DCMR § 200.2.)
13. The Wesley Heights (WH) Overlay District was established to preserve and enhance the low density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area. (11 DCMR § 1541.1.) The purposes of the overlay district include to preserve in general the current density of neighborhood; (b) allow reasonable opportunities for owners to expand their dwellings; and (c) preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood. (11 DCMR § 1541.3.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 223 of the Zoning Regulations to allow construction of a rear addition to a one-family detached dwelling not meeting the zoning requirement for side yard and a front porch addition not meeting the requirement for the enlargement of a nonconforming structure under § 2001.3 due to an extension of a nonconforming front yard setback in the Wesley Heights Overlay District of the R-1-B zone at 4351 Klingle Street, N.W. (Square 1625, Lot 802). 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, despite not meeting all 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 credits the testimony of the Applicant and the Office of Planning that the proposed additions will not unduly affect light or air available to neighboring properties, or compromise the privacy of use or enjoyment of neighboring properties. The rear addition will extend an existing nonconforming side yard, but the closest structure will be an accessory garage; the closest residence will be at a distance of almost 50 feet from the rear addition. The front porch will be located at a similar distance from the neighboring dwelling, and separated by the right of way and required front yard setback from residences across the street.

The additions will not visually intrude on the character, scale, or pattern of houses along the street frontage. The two-story rear addition will be partially visible from the street frontage, but will not have a detrimental effect on the character, scale, or pattern of houses along the street frontage due primarily to its size and location. The front porch addition will extend the foremost

BZA APPLICATION NO. 18586
PAGE NO. 7

projection of the existing dwelling across the width of the dwelling to create a uniform front façade, but will not further encroach into the front yard of the Applicant's dwelling. As designed, and subject to the conditions proposed by the Applicant and adopted in this order, the visual impact of the front porch will be minimized through measures such as skylights, open railings, and the absence of screens or other enclosures.

The Board concludes that the planned additions satisfy the requirements of § 223 and are 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 additions planned by the Applicant will be in harmony with the general purpose and intent of the Zoning Regulations because they will be consistent with the intent of the R-1 District to protect quiet residential areas developed with one-family detached dwellings and to stabilize the residential areas and promote a suitable environment for family life. The additions will preserve and enhance the low density character of the Wesley Heights Overlay District, and will be consistent with the purposes of the overlay to preserve the current density of neighborhood, allow reasonable opportunities for owners to expand their dwellings; and preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be approved.

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 3D voted to support the Applicant's request for zoning relief for both the rear and porch additions, on grounds that the requested relief was minor and could be granted without adverse impacts to neighboring property, in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, including the Wesley Heights Overlay District. For the reasons discussed above, the Board concurs with the ANC's recommendation.

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 rear addition to a one-family detached dwelling not meeting the zoning requirement for side yard and a front porch addition not meeting the requirement for the enlargement of a nonconforming structure under § 2001.3 due to an extension of a nonconforming front yard setback in the Wesley Heights Overlay District of the

BZA APPLICATION NO. 18586
PAGE NO. 8

R-1-B Zone at 4351 Klinge Street, N.W. (Square 1625, Lot 802). Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT TO** the following **CONDITIONS**:

1. The front porch shall be developed as shown on the Revised Plan in the record as Exhibit 40, provided that the Applicant shall have flexibility in the final number, size, and configuration of the required skylights so long as the total transparent area of the skylights is not less than 112 square feet. The rear addition shall be developed in accordance with the plans in the record as Exhibits 7 and 17.
2. The Applicant shall not enclose the front porch in any manner, with screens, windows, or solid or other opaque materials.
3. The Applicant shall not remove, reduce in size, or block the approved skylights.
4. The Applicant shall not modify the roof of the front porch, or use the roof as a deck, porch, or other occupied spaces.
5. Approval of the requested front yard setback relief for the front porch under the specific circumstances of this application and the Revised Plan shall not establish a precedent or otherwise be the basis for further zoning relief to enclose, expand, modify, enlarge, or in any other manner modify the approved front porch.

VOTE: **4-0-1** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Anthony J. Hood voting to approve; one Board seat vacant.)

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

The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 16, 2013

BZA APPLICATION NO. 18586
PAGE NO. 9

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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS 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

BZA APPLICATION NO. 18586
PAGE NO. 10

PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.