

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18640 of Barry S. Jackson pursuant to 11 DCMR § 3104.1 for a special exception under § 223 of the Zoning Regulations to allow a two-story rear addition and a two-story garage addition to a row dwelling not meeting the zoning requirements for lot occupancy under § 403.2 or rear yard requirements under § 404.1 in the R-4 District at 761 10th Street, S.E. (Square 950, Lot 94).

HEARING DATE: October 29, 2013
DECISION DATE: December 17, 2013

DECISION AND ORDER

This self-certified application was submitted on July 29, 2013 by Barry S. Jackson (the “Applicant”), the owner 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 and a two-story garage addition to a row dwelling not meeting the zoning requirements for lot occupancy under § 403.2 or rear yard requirements under § 404.1 in the R-4 District at 761 10th Street, S.E. (Square 950, Lot 94) (the “Subject Property”). Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 30, 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 6; Advisory Neighborhood Commission (“ANC”) 6B, the ANC in which the subject property is located; and Single Member District/ANC 6B04. Pursuant to § 3113.13, the Office of Zoning mailed letters on August 22, 2013 providing notice of the hearing to the Applicant, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice of hearing was published in the *D.C. Register* on August 23, 2013 (60 DCR 12214).

Party Status. The Applicant and ANC 6B were automatically parties to this proceeding.

Applicant’s Case. The Applicant provided evidence and testimony describing the proposed addition and asserted that the application satisfied the requirements for special exception relief. The Applicant also presented a sun study to display the potential impact of the additions on

BZA APPLICATION NO. 18640
PAGE NO. 2

neighboring properties. (Exhibit 29.) After considering the concerns of adjacent property owners and ANC 6B, the Applicant made revisions to the proposed addition as shown in plans dated October 14, 2013 (Exhibit 27) and as further amended in the Applicant's submission dated December 10, 2013, which included an updated sun study. (Exhibit 35.)

OP Report. By memorandum dated October 22, 2013, the Office of Planning recommended approval of the application. OP concluded that the proposed additions would not have undue impacts on neighboring properties and that the Applicant met all the requirements for special exception relief. (Exhibit 31.)

DDOT Report. By memorandum dated September 19, 2013, the District Department of Transportation indicated no objection to granting the relief requested. (Exhibit 22.)

ANC Report. By letter dated October 17, 2013, ANC 6B indicated that it discussed the application at its properly noticed meeting on October 8, 2013. With a quorum present, the ANC voted 9-0-1 in support of the requested relief, provided that the Applicant set back the rear addition by 30 inches, raise the east facing windows of the garage addition, and reposition the garage addition's staircase away from northern the property line. The ANC explained that the requested revisions would address the privacy concerns of neighboring property owners. (Exhibit 30.)

Persons in opposition. Adjacent property owners, Yuan Liu of 757 10th Street, S.E. and Nancy Kronstat of 755 10th Street, S.E., filed a letter in opposition expressing their concerns about a loss of light, air and privacy resulting from the proposed additions. (Exhibit 23.) Both persons in opposition also gave testimony during the hearing, focusing on their concerns about the proposed addition blocking air and light at the rear of their properties.

Persons in support. The owners of 753 10th Street, S.E. filed a letter in support of the application. (Exhibit 25.) A property owner in the Capitol Hill neighborhood also filed a letter in support. (Exhibit 24.)

FINDINGS OF FACT

1. The property is located at the west side of the street at 761 10th Street, S.E. between G Street and I Street (Square 950, Lot 94). The Subject Property is an irregularly shaped lot, with the northern portion of the rear yard extending approximately 20 feet further west than the southern portion.
2. The Subject Property is improved with a one-family, two-story row dwelling and a rear detached one-story garage. The dwelling consists of two row dwellings that have been consolidated into one structure.

BZA APPLICATION NO. 18640

PAGE NO. 3

3. The Subject Property is zoned R-4 and located within the Capitol Hill Historic District.
4. The existing lot coverage is 1967.9 square feet, which is 53.1% of the total lot occupancy. The maximum lot occupancy allowed in the R-4 District is 60% by matter of right (11 DCMR § 403.2) and 70% by special exception. (11 DCMR § 223.3.)
5. The Subject Property has a rear yard measuring 31.1 feet at its narrowest and 51.1 feet at its widest.
6. The adjacent properties include a two-story flat to the north and a two-story semi-detached dwelling to the south. The Subject Property abuts a public alley to the west. The rear yard of a garden apartment building is located across the public alley to the west.
7. The Applicant proposed to construct a two-story addition to the rear of the dwelling (the rear addition) with a cellar and a roof deck. The Applicant also proposed to replace the existing one-story detached garage with a two story addition (the garage addition).
8. The rear addition would be 23 feet tall, generally aligning with the height of the existing structure. The addition would expand about 20 feet into the rear yard and would span the width of the lot. The addition would abut the dwelling at 755-757 10th Street on the second floor, but would extend no further west than that structure. The south side of the second floor addition would have a roof deck, accessible by roof hatch.
9. The garage addition would measure 20 feet in height and accommodate two cars on the ground level with a fully conditioned second floor, including a bathroom and kitchenette. The garage addition would be connected to the existing dwelling with a covered walkway, measuring 30 feet wide and eight feet tall. The walkway would span the southern edge of the property.
10. The second story of the garage addition would be accessible by a staircase leading to French doors, facing east. Additionally, there would be two windows on the east side of the garage with sill heights over five feet.
11. The proposed additions would be visible from the public alley to the west and slightly visible through the open court to the south.
12. The proposed additions would be constructed of high quality, historically appropriate materials. The materials and massing of the additions would be in keeping with the general scale and aesthetic of the block.
13. The dwelling would remain a one-family dwelling. Both one-family dwellings and flats are permitted in the R-4 District. (11 DCMR § 330.1.)

BZA APPLICATION NO. 18640

PAGE NO. 4

14. After hearing the concerns of the residents to the north and ANC 6B, the Applicant created revised plans dated October 14, 2013. The revised design raised the east-facing windows of the garage addition and repositioned the garage addition's staircase away from northern the property line, as requested in ANC 6B's written report.
15. In light of continued concerns from adjacent property owners, the Applicant revised the design a second time and detailed the changes in a submission dated December 10, 2013. The revisions included setting back the rear addition so that the wall would be flush with the adjacent structure to the north. The Applicant also removed several features from the original plan, including a balcony on the second story of the rear addition and a spiral staircase with access to the rear addition's roof deck. Finally, the Applicant also lowered the proposed height of the garage addition from 26 feet to 20 feet.
16. The Applicant's submission dated December 10, 2013 included a sun study, analyzing the impact of the proposed revisions on the property to the north. The study showed that the proposed additions, when compared to the existing structures, will have minimal impact on the availability of sunlight to neighboring properties.
17. The proposed additions would increase the lot occupancy to 70%, the maximum allowable by special exception in the R-4 District. (11 DCMR § 223.3.)
18. The proposed additions would decrease the depth of the rear yard by 20 feet. The resulting rear yard would measure 30.6 feet at its widest point and, for the northern portion of the Subject Property, no rear yard would be provided. Structures in the R-4 District are required to have a rear yard with a minimum depth of 20 feet. (11 DCMR § 404.1.)
19. 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.) The R-4 District is not an apartment house district as contemplated under the General Residence (R-5) District, since the conversion of existing structures is controlled by a minimum lot area per family requirement. (11 DCMR § 330.3.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 223 of the Zoning Regulations to allow construction of a two-story rear addition and a two-story garage addition to a row dwelling not meeting the zoning requirements for lot occupancy under § 403.2 or rear yard requirements under § 404.1 in the R-4 District at 761 10th Street, S.E. (Square 950, Lot 94). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) 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

BZA APPLICATION NO. 18640

PAGE NO. 5

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.)

Because the proposed additions does not meet the zoning requirements for lot occupancy under § 403.2 or rear yard requirements under § 404.1, the Applicant must satisfy the requirements of § 223 to be granted special exception relief.

Pursuant to § 223, an addition to a one-family dwelling may be permitted as a special exception, despite not meeting certain zoning requirements, subject to the enumerated 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. Specifically, the light and air available to neighboring properties must not be unduly affected (§ 223.2(a)), the privacy of use and enjoyment of neighboring properties must not be unduly compromised (§ 223.2(b)), and the addition, together with the original building, as viewed from the street, alley, or other public way, must not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage (§ 223.2(c)). Additionally, the lot occupancy of all new and existing structures on the lot must not exceed 70% in the R-4 District. (§ 223.3).

Based on the findings of fact, the Board concludes that the request for special exception relief satisfies the requirements of § 223. The Board credits the testimony of the Applicant and OP in finding that the proposed additions will not unduly affect the light or air available to neighboring properties. Though some shadows will be cast onto the neighboring patio and balcony areas to the north, the Board finds that these affects do not amount to an undue impact. The effects of the additions on access to light will be relatively minor when compared to existing conditions, as demonstrated by the sun studies submitted by the Applicant.

Based on the findings of fact, the Board also finds that the proposed additions will not compromise the privacy or the enjoyment of use of neighboring properties. The Applicant has addressed concerns about privacy by making certain revisions to the plans as requested by ANC 6B, such as raising the windows on the second story of the garage addition and repositioning the garage addition's staircase farther away from the property line. The revisions adequately ensure that the additions will not detract from the privacy or enjoyment of use experienced by neighboring property owners.

The Board finds that the proposed additions will not visually intrude on the character, scale, or pattern of the neighboring houses. The additions will be visible from the public alley to the west and may be slightly visible through the side yard to the south and will be constructed of high quality materials that are appropriate to maintain the character of the neighborhood. Finally, the proposed lot occupancy for the project will be 70%, which is the maximum permitted in the R-4 District by § 223.3. Accordingly, the Board finds that the Applicant has met the burden of proof for the requirements in § 223.

BZA APPLICATION NO. 18640
PAGE NO. 6

Further, the Board concludes that the proposed additions will be in harmony with the general intent and purpose of the Zoning Regulations and will not adversely affect the use of neighboring properties, as required by § 3104.1. The Board finds that the proposed additions will be in harmony with the zoning plan. The row dwelling will continue to be used as a one-family dwelling and, as the Zoning Regulations indicate, the “primary purpose of the R-4 District is the stabilization of remaining one-family dwellings.” (11 DCMR § 330.2.) The Board also finds that the additions will not adversely affect the use of neighboring properties, for the reasons discussed in the context of the § 223 requirements. Therefore, the Board concludes that the proposed additions meet the requirements for special exception relief under § 3104.1.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) In this case, as discussed above, the Board concurs with OP’s recommendation to approve the application.

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) (2012 Repl.)).) In this case, ANC 6B voted in support of the requested relief, provided that the Applicant make several revisions to the plans to address concerns about air, light and privacy raised by neighbors. The Applicant subsequently incorporated all of the changes requested by the ANC, as shown in revised plans dated October 14, 2013 and in the Applicant’s submission dated December 10, 2013. Therefore, the Board’s decision to approve the application, as revised, is consistent with ANC 6B’s recommendation to the support special exception relief.

Based on these findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with regard to the request for special exception relief under § 223 to allow construction of a two-story rear addition and a two-story garage addition to a row dwelling not meeting the zoning requirements for lot occupancy under § 403.2 or rear yard requirements under § 404.1 in the R-4 District at 761 10th Street, S.E. (Square 950, Lot 94). Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT to** Exhibit 9 (Plans) as revised by Exhibit 27 (Revised Plans).

VOTE: 3-0-2 (Lloyd J. Jordan and S. Kathryn Allen to Approve; Marcie I. Cohen to Approve (by absentee ballot); Jeffrey L. Hinkle not participating, not voting; 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:  _____ *for*

SARA A. BARDIN
Director, Office of Zoning

BZA APPLICATION NO. 18640
PAGE NO. 7

FINAL DATE OF ORDER: May 27, 2014

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.