

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18886 of Niloufar Hoorazor, pursuant to 11 DCMR § 3104.1 for a special exception under § 223 to allow a two-story addition to an existing one-family detached dwelling, not meeting requirements for lot occupancy under § 403.2, side yard under § 405.8, and enlargement of a nonconforming structure under § 2001.3, in the R-1-B District at premises 2709 36th Street, N.W. (Square 1938, Lot 811).

HEARING DATES: March 31, 2015
DECISION DATE: May 5, 2015

DECISION AND ORDER

This self-certified application was submitted on September 23, 2014 by Niloufar Hoorazor (the “Applicant”), the owner of the property that is the subject of the application. The application requested a special exception to allow a two-story addition to a one-family detached dwelling, not meeting requirements for lot occupancy, rear yard, or enlargement of a nonconforming structure in the R-1-B zone at 2709 36th Street, N.W. (Square 1938, Lot 811). Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 29, 2014, 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”) 3C, the ANC in which the subject property is located; and Single Member District/ANC 3C08. Pursuant to 11 DCMR § 3112.14, on October 3, 2014 the Office of Zoning mailed letters providing notice to the Applicant, ANC 3C, and the owners of all property within 200 feet of the subject property, of the Applicant’s request for expedited review of the application, which was scheduled for the public meeting on November 18, 2014. The Applicant subsequently requested removal of the application from the expedited review calendar and, as announced at the Board’s public meeting on November 18, 2014, the application was scheduled for public hearing on January 27, 2015.¹ At the Applicant’s request, the public hearing was later rescheduled to March 31, 2015.

¹ The affected single member district, ANC 3C08, also requested a public hearing on the application. (Exhibit 28.)

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Party Status. The Applicant and ANC 3C were automatically parties in this proceeding. The Board denied a request for party status from the Massachusetts Avenue Heights Citizens Association but granted party status in opposition to the application to a group of residents living near the subject property, represented by Paul Cunningham.

Applicant's Case. The Applicant provided evidence and testimony describing the enlargement of the dwelling at the subject property. According to the Applicant, the addition would be relatively small compared to the size of a dwelling that would be permitted on the lot as a matter of right, it required only *de minimis* zoning relief, and satisfied the requirements for special exception approval under § 223.

OP Report. By memorandum dated March 24, 2015, the Office of Planning recommended approval of the requested zoning relief, noting that the planned addition would not meet requirements for lot occupancy, side yard, or the enlargement of a nonconforming structure.

DDOT. By memorandum dated December 10, 2014, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 37.)

ANC Report. At a public meeting on December 15, 2014, with a quorum present, ANC 3C voted 5-0 (with one abstention) to adopt a resolution recommending denial of the application. Citing photographs submitted by neighbors and an absence of graphical representations or other illustrations from the Applicant to represent the relationship of the Applicant's addition to adjacent buildings and views from public ways, the ANC concluded that the addition would have a substantially adverse effect on the use and enjoyment of abutting and adjacent properties.² (Exhibit 38.)

Party in opposition. The party in opposition disputed the timing of when the Applicant learned that the northern side yard did not comply with zoning requirements and asserted that the Applicant sought to minimize light and air impacts of the addition because it was already built. According to the party in opposition, the Applicant's addition would adversely affect the light and intrude on the privacy of nearby dwellings, and was not in conformity with other dwellings in the neighborhood.

Persons in opposition. The Board received letters and heard testimony from persons in opposition to the application, who generally cited the increased lot occupancy at the subject property, the Applicant's alleged failure to comply with Zoning Regulations, and privacy impacts of the new addition, especially considering the number and size of its windows.

² The ANC's resolution also challenged the Applicant's actions with respect to a retaining wall on the subject property and a tree in the public space. These matters are outside the scope of the Board's deliberations on the self-certified application for special exception relief under § 223 for the new addition.

FINDINGS OF FACT

1. The subject property is an interior lot located on the east side of 36th Street, N.W. approximately midway between Edmunds and Fulton Streets (Square 1938, Lot 811).
2. The subject property is a rectangular parcel approximately 60 feet wide and 107.5 feet deep, with a lot area of 6,450 square feet.
3. The subject property is improved with a one-family detached dwelling built around 1917, before the Zoning Regulations became effective. A driveway, accessible from 36th Street, is located along the southern property line.
4. The side yard on the north side of the dwelling is nonconforming at 4.92 feet wide. The minimum setback requirement generally is eight feet, although an addition may be made to a dwelling with a side yard less than eight feet wide so long as the dwelling was in existence on or before May 12, 1958, the existing side yard is at least five feet wide, and the addition would not decrease the width of the existing side yard. (See 11 DCMR §§ 405.8, 405.9.)
5. Because the northern side yard is less than five feet in width, that area (approximately 277 square feet) must be included as building area in the calculation of lot occupancy. (See the definition of "building area." 11 DCMR § 199.1.)
6. The southern side yard is approximately 19 feet wide.
7. The existing rear yard is approximately 35 feet, where a minimum depth of 25 feet is required by the Zoning Regulations. (11 DCMR § 404.1.) A public alley 15 feet wide abuts the subject property along its rear lot line, thereby increasing the distance between the Applicant's dwelling and the rear yards of properties to the east of the alley.
8. Properties in the vicinity of the subject property are also improved with one-family detached dwellings, two or three stories in height. Nearby houses were constructed in a variety of styles. Most appear generally similar in size, although several are considerably larger than the Applicant's dwelling.
9. The property abutting the subject property to the north is improved with a detached one-family dwelling. Its southern side yard, adjoining the subject property, is nonconforming at approximately 4.8 feet wide. An accessory garage, located at the rear of the abutting lot, is situated along the common property line and has two windows facing the rear yard of the subject property.
10. The property abutting to the south contains a retaining wall built six inches from the property line in common with the Applicant's property, extending at a height of more than 13 feet along the edge of the Applicant's rear yard. The retaining wall, and landscaping

installed near it, diminish the views into the abutting property from the Applicant's property.

11. The Applicant proposes to construct a two-story addition on the east (rear) and south sides of the dwelling.
12. A property survey dated September 9, 2013 indicated that the northern side yard was at least five feet in width and therefore compliant with current zoning requirements. The Applicant obtained a building permit on September 11, 2013 and began construction of the addition, which is now substantially completed.³ A wall test conducted by the Office of the Surveyor, recorded January 8, 2014, indicated that the existing side yard on the northern edge of the subject property was less than five feet in width, and thus, that the addition could not be built as a matter of right.
13. Including the new addition, the Applicant's dwelling has a building footprint of approximately 2,541 square feet, covering 40% of the lot. Because the area of the northern side yard must be included in the calculation, the addition will increase lot occupancy at the subject property to 44%.
14. The addition will be approximately rectangular and will enlarge the dwelling at the rear and on the south. The outer wall of the new addition will be set back eight feet, two inches on the northern portion of the lot, where the existing house has a side yard of slightly less than five feet. The southern portion will be set back at least eight feet from the southern property line. At the rear, the addition will be set back 28 feet, four inches from the rear lot line.
15. The addition will have windows on each of its three sides. The northern side wall will contain a large window near a similar, smaller window in the existing dwelling; both windows will be visible from the patio of the neighboring dwelling. Another window, on the south side of the second floor of the planned addition, will be visible from the patio of the dwelling to the south. The addition will also have windows on the ground level on the south side, which will be separated from the adjoining property by the Applicant's driveway and some plantings.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under § 223 of the Zoning Regulations to allow a two-story addition to a one-family detached dwelling, not meeting requirements for lot occupancy, rear yard, or enlargement of a nonconforming structure in the R-1-B zone at 2709 36th Street,

³ The Applicant also received a demolition permit on May 24, 2013 for interior demolition of non-load bearing walls, and a building permit on October 25, 2013 for removal of load-bearing walls. Building permits were issued to replace existing concrete slabs (on May 30, 2013) and for interior renovations (on June 6, 2013). The building permit issued September 11, 2013 authorized the planned addition and interior renovations pertaining to mechanical, electrical, and plumbing systems.

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N.W. (Square 1938, Lot 811). 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 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 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 new addition will not unduly affect the light and air available to neighboring properties due to its size and location. The addition will comply with the minimum eight-foot requirement for side yard setback on both sides of the Applicant's dwelling. The rear yard of the enlarged dwelling will remain compliant with zoning requirements, with a setback in excess of the minimum requirement of 25 feet. The 15-foot-wide alley at the rear of the subject property will provide additional distance between the Applicant's dwelling and the residences to the east, which are all located at least 70 feet from the rear of the enlarged dwelling. But for the nonconforming northern side yard of the existing dwelling, which requires the inclusion of that area in the calculation of lot occupancy, the Applicant's dwelling, with the enlargement, would comply with the maximum lot occupancy allowed as a matter of right. Including the side yard area, the lot occupancy of the enlarged dwelling will remain within the maximum of 50% allowed by special exception in accordance with § 223.

Due to the design of the planned addition, which will maintain the setback of the existing dwelling on the upper floors, the enlarged dwelling will remain smaller than a building constructed to the maximum dimensions permitted as a matter of right on the property. The Applicant and the party in opposition both submitted studies to illustrate the impacts on light to neighboring properties associated with the dwelling on the subject property, considering the dwelling before construction began on the addition, the dwelling with the planned addition, and a building built to the maximum dimensions permitted as a matter of right (see Exhibits 68 and 72). While the addition will diminish the light available to the abutting property to the north somewhat, the Board does not find that light or air would be unduly affected, or that the addition would have a substantially adverse effect on the use or enjoyment of the neighboring dwelling or property. Rather, the new construction will not significantly alter the shadow impacts of the existing dwelling, and will be those typically associated with dwellings built in compliance with

matter-of-right area requirements. The addition will be set back eight feet from the northern property line, and will not alter the existing condition of the nonconforming side yard.

The Board also concludes that the addition will not unduly compromise the privacy of use and enjoyment of neighboring properties. While the planned addition will have several relatively large windows, most of them are situated on the eastern façade, overlooking the Applicant's own rear yard, and will be located a considerable distance from the neighboring properties to the east, across the alley. The addition will also have windows facing the abutting property to the south, where the side yard on the Applicant's property will exceed the minimum zoning requirement. The dwelling on the property abutting to the south also has windows that face the Applicant's property, with extensive plantings along the retaining wall that block views between the two residences.

The addition will have one window that will face the abutting property to the north. That window will be set back more than eight feet from the common property line, compliant with the zoning requirement. The new window will be located near a window in the existing house, which is set back less than five feet from the property line. The abutting property to the north also has a nonconforming side yard, and the dwelling on that property has windows that face the Applicant's property, in addition to the windows in the accessory structure located along the property line in common with the Applicant's lot. The Applicant testified that landscaping will be installed in the northern side yard area to mitigate any privacy concerns associated with the new addition. The Board conditions its approval of the application on the installation of a decorative screening, preferably selected with the cooperation of the resident of the abutting dwelling, to mitigate any adverse impacts on privacy associated with the new addition.

The new addition, together with the original building, will not substantially visually intrude on the character, scale, and pattern of houses along the street frontage. A one-story portion of the addition will be visible from the street frontage, but the new addition will be most visible from the public alley at the rear of the subject property. When viewed from the alley, the addition will appear relatively large due to the change in grade on the lot, which slopes toward the alley, and the relatively large windows will be visible. However, the building will remain a one-family dwelling in appearance as well as in use, and will comply with restrictions imposed by the Zoning Regulations with respect to height and number of stories. The subject property is located in a neighborhood where residences have been constructed in a variety of styles. As the Office of Planning noted, the "architectural style of the buildings along this portion of 36th Street and the neighborhood in general is varied with no consistent pattern..." where some houses "are of a comparable size" and some "have been renovated and exhibit modern elements." (Exhibit 45.) An aerial view of the vicinity of the subject property shows the variety of styles and sizes of nearby houses. (See Exhibit 54.) The Zoning Regulations do not require "conformity" with the neighborhood, as asserted by the party in opposition.

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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 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) (2012 Repl.)).) In this case, ANC 3C voted to recommend denial of the application, finding that the new addition would have a substantially adverse effect on the use and enjoyment of nearby properties after examining photographs submitted by neighbors. For the reasons discussed above, the Board does not concur with the ANC’s finding of adverse impacts. The ANC also cited an absence of graphical representations by the Applicant and other instances in which the Applicant had not followed the necessary procedure to obtain zoning relief. The Board regrets that the application was not submitted until after the new construction was substantially completed. However, the Applicant began construction after obtaining a building permit, albeit one later determined to have been based on a survey eventually found to be in error. That error, and the belatedly discovered need for zoning relief, had no bearing on the Board’s deliberations in this proceeding. The Board considered the planned addition and found that the Applicant satisfied the requirements for special exception approval, without regard for the timing of the application.

The Board concludes that the new addition will satisfy 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 addition will be in harmony with the general purpose and intent of the Zoning Regulations because the new construction 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.

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 to allow a two-story addition to a one-family detached dwelling, not meeting requirements for lot occupancy, rear yard, or enlargement of a nonconforming structure in the R-1-B zone at 2709 36th Street, N.W. (Square 1938, Lot 811). Accordingly, it is **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 11 AND THE FOLLOWING CONDITION:**

1. The Applicant shall install decorative screening to mitigate any potential privacy impacts created by the new addition on the abutting property to the north. The Applicant shall select the screening in cooperation with the resident of that property, or install an acceptable screening selected in good faith.

VOTE: 4-0-1 (Lloyd J. Jordan, Anthony J. Hood, Marnique Y. Heath, and Jeffrey L. Hinkle to Approve; one Board seat vacant).

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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: October 9, 2015

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 CONDITION 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.

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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.