



## MEMORANDUM

**TO:** District Board of Zoning Adjustment

**FROM:** Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

**DATE:** June 7, 2011

**SUBJECT:** BZA Application #18221 – Request for area variance relief from § 406 (closed court) and § 2001.3 (expansion of a non-conforming structure) to accommodate a one-story addition to an existing row dwelling at 123 10<sup>th</sup> Street SE.

### **I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) **recommends approval** of this application for a one-story addition to an existing row dwelling requiring the following relief:

- § 406.1, area variance from closed court requirements (deficient by 1.5' in width and 301 square feet in lot area)
- § 2001.3, area variance from addition to a non-conforming structure

OP notes that the subject lot is currently non-conforming to lot occupancy, lot width, and lot area, but the proposal would not alter these non-conforming conditions.

### **II. AREA AND SITE DESCRIPTION**

Address:	123 10 <sup>th</sup> Street S.E.
Legal Description:	Square 943, Lot 808 (hereinafter, the “Property”)
Ward/ANC:	6/6B
Lot Characteristics:	The lot is rectangular in shape and measures 13.8' in width by 100.875' in depth, totaling 1,392 square feet in lot area. The lot fronts 10 <sup>th</sup> Street to the east and an improved 15' wide public alley to the west.
Zoning:	R-4: permits row dwellings and flats
Existing Development:	The Property is developed with a two-story row dwelling. A detached rear garage borders the alley.
Historic District:	N/A
Adjacent Properties:	To the Property’s north and south are two-story row dwellings. To the Property’s west, across the alley, is the rear yard of a residential row dwelling.
Surrounding Neighborhood Character:	The Square, and neighborhood more generally, is largely characterized by row dwellings zoned R-4.

### **III. PROJECT DESCRIPTION IN BRIEF**

Applicant:	David King and Betsy Damos
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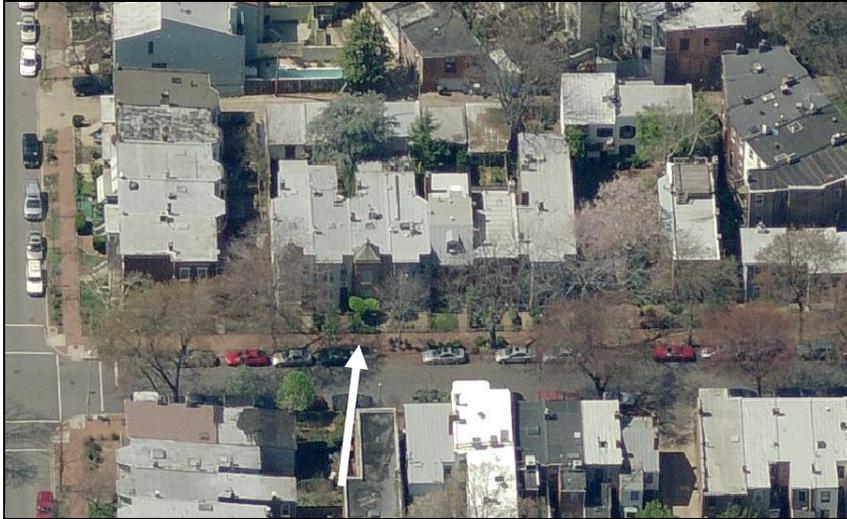


<p>Proposal:</p>	<p>The application proposes to construct a minor one-story addition which would expand an existing dining room by approximately 26 square feet. The addition would extend approximately 3.5' to the south lot line within a portion of existing non-conforming open court space. The addition would create a non-conforming closed court.</p> <p>The application details how the project has progressed through the regulatory process. According to the application, the Applicant originally believed that no zoning relief would be required based on discussions with DCRA. In January 2011, the Applicant was notified that the proposal would in fact require special exception relief pursuant to § 223 for non-conforming lot occupancy (§ 403), closed court (§ 406), and expansion of a non-conforming structure (§ 2001.3). The Applicant then proceeded with interior demolition work, anticipating that the minor building expansion proposed would receive timely special exception zoning approval. A March 22, 2011 DCRA zoning certification letter confirmed the need for special exception relief. However, OP's review in early May 2011 identified inaccuracies in the underlying lot occupancy calculation. As a result, the Applicant was informed that variance rather than special exception relief would be required. DCRA reissued a zoning certification letter on May 23, 2011, which stated that the proposal needed area variance relief from §§ 406 and 2001.3.</p> <p>Although the requested relief has changed, the proposed addition has remained the same as originally submitted.</p>
<p>Relief Sought:</p>	<p>§ 406, area variance from the closed court requirements                  § 2001.3, area variance for addition to an existing non-conforming structure</p>

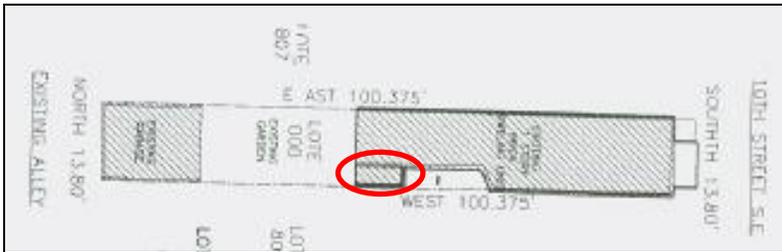
**IV. IMAGES AND MAPS**



**Aerial view of the Property (highlighted)**



View of the subject block looking west across 10<sup>th</sup> Street SE (Property identified)



Plat (provided by Applicant) with location of addition highlighted

**V. RELIEF REQUESTED**

The following table, which reflects information supplied by the Applicant, summarizes certain zoning requirements for the project and the relief requested.

R-4 Zone	Regulation	Existing	Proposed <sup>1</sup>	Relief
Lot area (square feet) § 401	1,800 min.	1,392	1,392	Existing non-conformity; no change proposed
Lot width (ft.) § 401	18' min.	13.8'	13.8'	Existing non-conformity; no change proposed
Lot occupancy (percentage) § 403	60% max. 70% by special exception	73%	73%	Existing non-conformity; no change proposed <sup>2</sup>
Closed court § 406	Min. 5' width Min. 350 sq. ft. area	-	3.5' width 49 sq. ft. area	Relief required: closed court width would be 1.5' deficient and the square feet area would be 301 sq. ft. deficient

Area Variances: §§ 406 and 2001.3

The area variance requirements pursuant to § 3103 to be met are as follows:

<sup>1</sup> Information provided by Applicant.

<sup>2</sup> Because the addition would expand into existing non-conforming open court space which already counts toward the lot occupancy calculation, the Zoning Administrator has determined that no specific relief from the lot occupancy limitations (§ 403) is required.

**1. Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?**

The Property exhibits a confluence of several exceptional conditions. First, regulatory inconsistencies and associated Applicant reliance have led to an exceptional situation of a partly completed home renovation and expansion. The application details how the Applicant proceeded with permitted interior demolition of the existing building based on a DCRA review indicating that special exception relief was required for the addition. The Applicant was later informed that area variance relief from §§ 406 and 2001.3 would be required, which is a higher burden for zoning relief. By that time, the Applicant already had demolished the interior of the dwelling and been living in less than ideal conditions. Second, the need for closed-court relief arises from the Applicant's desire for the addition to occupy only a portion of the existing court space which would retain a measure of light and air on the Property's south side. The Applicant could have pursued strategies of a larger addition, which would fill-in the court space, to avoid the creation of a closed court. Third, the application references constrained dining room space in the house as a driver of the addition proposal. The limited space likely is a byproduct of a combination of the narrow lot width (13.8'), small lot area (1,392 square feet), and the existing nearly century old dwelling design which included an approximately 3.5' wide open court. The application states that the existing dining space is effectively only 5' wide by 7.5' and is not consistent with modern living standards.

**2. Does the extraordinary or exceptional situation impose a practical difficulty which is unnecessarily burdensome to the applicant?**

The exceptional situation imposes a practical difficulty which is unnecessarily burdensome to the Applicant.

• § 406 – closed court

The Applicant proposes an addition which would occupy a portion of existing open court space and creates a new non-conforming closed court. The late discovery of the need for variances has placed the Applicant in a precarious (due to the interior demolition) and unanticipated position which would be unnecessarily burdensome to the Applicant should relief be denied. Additionally, the Applicant's desire to construct a minor addition and to retain light and air along the dwelling's south side creates a practical difficulty in complying with the zoning regulations. It is likely that a larger addition which fully occupied the existing court could avert the need for closed court relief; however, such a proposal would have no clear benefit for the owner or the adjacent neighbor to the south.

• § 2001.3 – addition to a non-conforming structure

The exceptional conditions create a practical difficulty for the Applicant to comply with § 2001.3. Section 2001.3 states that "Enlargements or additions may be made to the structure, provided:

- (a) The structure shall conform to percentage of lot occupancy requirements, except as provided in § 2001.13.
- (b) The addition or enlargement itself shall:
  - (1) Conform to use and structure requirements; and
  - (2) Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined."

Based on the initial DCRA review, the Applicant understood that the lot occupancy calculation was 66% and that the small addition would therefore be subject to special exception review. The Applicant then commenced interior demolition. However, it was later determined that the existing lot occupancy on the

Property was 73% and area variance relief, rather than special exception relief, would be required from § 2001.3.

The existing building does not conform to lot occupancy requirements (as referenced in § 2001.3(a)). The Applicant's proposal, however, would not change the lot occupancy figure because the addition would expand into an existing non-conforming open court already counted in the lot occupancy calculation. The Zoning Administrator also has determined that the Applicant would not need relief from the lot occupancy requirement (§ 403) specifically. Strict compliance with § 2001.3(a) would create a practical difficulty for providing the approximately 26 square feet addition. Expansion into the rear yard would result in increased lot occupancy. As such, extending into the open court is the most compliant zoning option for lot occupancy purposes to accommodate the addition.

Further, although the proposal would create a new non-conforming closed court contrary to § 2001.3(b)(2), the Applicant requires closed court relief to accommodate a less intrusive addition within an already existing non-conforming open court.

**3. Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?**

Granting the variance relief should not cause substantial detriment to the public good. The addition would be restrained in size and have little impact on neighbors. Further, relief could be granted without substantial detriment to the intent, purpose, and integrity Zoning Regulations and Map.

**VI. COMMUNITY COMMENTS**

ANC 6B will be considering the proposal's revised relief on June 7, 2011. The Applicant has provided letters of support signed by adjacent neighbors to the south (125 10<sup>th</sup> Street) and north (121 10<sup>th</sup> Street). OP has not received any letters from neighbors in opposition to the proposal.

JLS/pg  
Paul Goldstein, case manager