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VIA IZIS

March 22, 2016

Marnique Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

**Re: Application No. 17535-A — 3254 O Street NW (Square 1230, Lots 125 and 825)
Applicant's Prehearing Statement**

Chairperson Heath and Honorable Members of the Board:

On behalf of Mary Goodman, please find enclosed the Prehearing Statement for the above-referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on April 5, 2016.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP


By: Meredith H. Moldenhauer

CC (via email): Jeff Jones, SMD 2E03
Stephen Mordfin, Office of Planning

Board of Zoning Adjustment
District of Columbia
CASE NO. 17535A
EXHIBIT NO. 28

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF
MARY GOODMAN**

**APPLICATION NO. 17535-A
HEARING: APRIL 5, 2016**

PREHEARING STATEMENT OF THE APPLICANT

This Prehearing Statement is submitted on behalf of Mary Goodman (the “Applicant”), the owner of the property known as 3254 O Street NW (Square 1230, Lots 125 and 825) (the “Property”), in support of her application, pursuant to 11 DCMR § 3104.1, for special exception relief under § 223 of the Zoning Regulations to permit an addition to a one-family dwelling not meeting rear yard requirements (§ 404.1)¹, and under § 202.10 to add an accessory apartment to an existing one-family dwelling.

I. ATTACHMENTS

Tab A: *BZA Order No. 18232 of Herbert J. Sanborn, Jr.*
Tab B: *BZA Order No. 16992 of David P. and Jana Frankel*

II. DESCRIPTION OF THE PROPERTY AND THE PROJECT

As discussed in the Applicant’s initial submission, the Property consists of two lots comprising a total land area of approximately 5,533 square feet. The Property is improved with a two-story, one-family dwelling and a one-story accessory garage, which abuts a 22-foot private alley. The property is zoned R-3, is located within the Georgetown Historic District, and is within the jurisdiction of the Commission of Fine Arts.

¹ The initial application did not request relief under § 223. However, in a meeting on March 11, 2016, the Zoning Administrator informed the Applicant that relief was also needed for the required rear yard based on the Board’s approval of a previous proposal for the Property in *BZA Application No. 17535*. Accordingly, the Applicant will submit a revised self-certification along with this Prehearing Statement.

The Applicant proposes to: (1) construct a meaningful connection between the existing one-family dwelling and the existing accessory garage, resulting in a single principal structure for zoning purposes; and (2) construct a second-story addition to the existing garage to be used as an accessory apartment (collectively, the "Project").

III. THE APPLICANT MEETS THE BURDEN OF PROOF FOR SPECIAL EXCEPTION RELIEF

The Applicant requests special exception relief under §§ 223 and 202.10. As described in the initial submission, supplemented in this Prehearing Statement, and as will be further demonstrated at the public hearing, the application satisfies the requirements for the relief requested.

A. The Application Satisfies Section 223 for Enlargement of the Existing One-Family Dwelling

The Applicant has added a request for relief under § 223 from the minimum rear yard requirements of § 404.1 to enlarge the existing one-family dwelling. As proposed, the Project will provide no rear yard. The Project meets the requirements of § 223 and will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, as follows.

223.2(a) No Undue Effect on Light and Air

The Project will not adversely impact light or air available to neighboring properties. The adjacent properties to the east and west are well shaded by trees and, accordingly, the proposed addition to the existing rear garage will not unduly affect these properties.

223.2(b) No Undue Compromise of Privacy of Use and Enjoyment

The Project will not unduly compromise the privacy and use of enjoyment of neighboring properties. The adjacent properties to the east and west are all separated from the Property by fences. Further, the east and west facades of the addition will not have any windows, and the south façade — which faces the alley and other properties to the rear — will be only modestly fenestrated. Moreover, all of the properties that back up to the alley are barricaded by rear garages, blocking views into those properties.

223.2(c) No Visual Intrusion upon the Character, Scale and Pattern of Houses along the Subject Street Frontage

The proposed addition will not visually intrude upon the character of O Street NW, because the addition will not be visible from O Street NW. Moreover, the addition has been sensitively designed to reflect the character of other two-story alley structures in the neighborhood and thus complements the view of houses as viewed from the alley. As such, the Applicant contends the proposed project does not visually intrude upon character, scale or pattern of houses along O Street NW as viewed from the street, alley or other public way.

223.3 Lot Occupancy Not to Exceed 70% in the R-3 District

Under the proposed Project, the Property will have a lot occupancy of 43.5% and thus will comply with this requirement.

B. The Application Satisfies Section 202.10 for an Accessory Apartment Addition

The Applicant requests relief under § 202.10 to add an accessory apartment to the rear of the principal structure, above the existing garage. As discussed in detail in the initial submission, the Project meets all of the requirements of § 202.10, including the requirements for a waiver under § 202.10(i). The Applicant's initial submission requested a waiver of the conditions of § 202.10(d) which prohibit any increase in lot occupancy and gross floor area. In addition, the

Applicant hereby requests that the Board also waive the requirement that the one-family dwelling be detached. The Board has previously held that § 202.10(i) permits waiver of this requirement. *See BZA Order No. 18232 of Herbert J. Sanborn, Jr. (2011)*, attached at **Tab A**. As discussed in the initial submission, the Project satisfies the requirements for waiver under § 202.10(i) because the Property will remain owner-occupied; the Project will not change the single family residential appearance and character of the R-3 District; and the Applicant requests only two waivers, as permitted.

IV. RESPONSE TO THE REPORT FILED BY ANC 2E

Since filing the application, the Applicant has presented the Project to Advisory Neighborhood Commission (“ANC”) 2E. The ANC 2E subsequently submitted a report requesting that the Board defer consideration of the application pending the resolution of a legal dispute involving the private alley to the rear of the Property. *See BZA Exhibit 27*. Alternatively, the ANC asks the Board to deny the Applicant’s waiver request.²

First, contrary to the ANC’s statement, the legal dispute regarding the private alley to the rear of the Property is not relevant to the Board’s consideration of this application. The decisions of the D.C. Court of Appeals are clear that, in reviewing a special exception application, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (internal citations omitted). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.* Nothing in §§ 3104, 223, or 202.10 requires that the Applicant have a right of access to the rear alley. Thus,

² The ANC did not consider the Applicant’s request for waiver of the requirement that the dwelling be detached, nor the Applicant’s additional request for relief under § 223. However, the Project plans have not changed since the Applicant presented before the ANC.

for the Board to defer decision on this application based on the referenced legal contest would effectively read a new requirement into these provisions in contravention of binding judicial precedent.

Second, the Board should reject the ANC 2E's request to deny the waiver under § 202.10(i). ANC 2E asserts that the "expanded garage will clearly conflict with the intent of § 202.10 to maintain a single-family residential appearance and character in the neighborhood." (Internal quotations removed). As shown on plan sheet A304 of BZA Exhibit 8, the rear addition is sensitively designed to read as a two-story garage. Accordingly, while this addition will be visible from Potomac and 33rd Streets, it will appear to be a two-story garage similar to others in the immediate vicinity, and therefore shall continue to maintain the single-family residential appearance and character of the R-3 Zone District.

In response to ANC 2E's concern about the status of the Property as a row dwelling, the Applicant notes that as a row dwelling is permitted as a matter of right in the R-3 Zone District and has no impact on the single-family appearance or character of the Zone. 11 DCMR § 320.3(b). Furthermore, the property will still be persevered as a detached structure from the street. Moreover, the Applicant has requested relief from § 202.10 which permits accessory apartments in detached dwellings, as discussed above. Lastly, the ANC questions whether relief is needed for rear yard and court requirements. As noted above, the Applicant has met with the Zoning Administrator to confirm the necessary relief and has amended the application accordingly.

The Applicant notes that the Board has previously concluded that, § 202.10 "was developed to maintain and expand the existing housing stock and to ensure a greater variety of housing types, opportunities and choices." *BZA Order No. 16992 of David P. and Jana Frankel*

(2003), attached at **Tab B**. The Project will further these goals and merits approval for all the reasons discussed in the initial submission and above.

V. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Ann Goodman, the Applicant
2. Richard Markus, Architect
3. Any other witnesses as deemed necessary

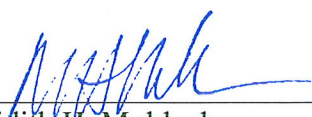
VI. CONCLUSION

For the reasons stated above, and for the reasons discussed in the initial submission, the Applicant hereby submits that this application meets the requirements for the relief requested.

We look forward to presenting our case to the Board on April 5, 2016.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



Meredith H. Moldenhauer
1912 Sunderland Place, N.W.
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TAB A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18232 of Herbert J. Sanborn, Jr., pursuant to 11 DCMR § 3104.1, for a special exception under § 202.10 to allow an accessory apartment in an existing one-family semi-detached dwelling in the R-3 District at premises 1679 35th Street, N.W. (Square 1294, Lot 805).

HEARING DATE: July 12, 2011

DECISION DATE: July 12, 2011

DECISION AND ORDER

This application was submitted April 12, 2011 by Herbert J. Sanborn, Jr. (“Applicant”), the owner of the property that is the subject of the application. In accordance with a letter to the Applicant from the Office of the Zoning Administrator, the application was filed pursuant to 11 DCMR § 3104.1 for a special exception under § 202.10 to allow an accessory apartment in an existing one-family semi-detached dwelling located in the R-3 District at 1679 35th Street, N.W. (Square 1294, Lot 805).¹ Following a public hearing, the Board of Zoning Adjustment (“Board”) voted 5-0-0 on July 12, 2011 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated April 18, 2011, the Office of Zoning (“OZ”) sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 2; Advisory Neighborhood Commission (“ANC”) 2E, the ANC for the area within which the subject property is located; and the single-member district ANC 2E01.

A public hearing was scheduled for July 12, 2011. Pursuant to 11 DCMR § 3113.13, OZ, on

¹ The referral letter from the Zoning Administrator, dated March 23, 2011, states that the Applicant’s request for a certificate of occupancy “to use the subject premises as an ‘Accessory Apartment’ has been denied due to the need for Board of Zoning Adjustment approval.” The letter instructed the Applicant “to obtain a special exception under the provisions of DCMR Title 11, § 202.10, (a), (3) to establish your use in the R-3 zone.” (Exhibit 6.)

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April 27, 2011 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 2E. Notice was published in the *D.C. Register* on April 29, 2011 (58 DCR 3756) and on May 20, 2011 (58 DCR 4307).

Requests for Party Status. In addition to the Applicant, ANC 2E was automatically a party in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant provided testimony and evidence describing his plan to establish an accessory apartment in his dwelling. According to the Applicant, the property was "already divided up and was formerly rented to students" when he purchased it 13 years ago. (Exhibit 4.) The Applicant stated that creation of an accessory apartment in the dwelling would provide needed income for the continued owner occupancy and care of the residence and would help reinforce the residential character of the neighborhood.

Government Reports. By report dated July 1, 2011 and through testimony at the public hearing, OP recommended approval of the requested special exception subject to the condition that the Applicant must secure a building permit for the accessory use in accordance with all applicable requirements. (Exhibit 25.)

ANC Report. By letter dated June 9, 2011, ANC 2E indicated that, at a regular, duly noticed monthly public meeting held May 31, 2011 with a quorum present, the ANC voted unanimously to adopt a resolution in opposition to the application. (Exhibit 23.)

Persons in support. The Applicant presented letters in support of the application from several neighbors living in the 1600 block of 35th Street. (Exhibit 26.)

Person in opposition. The Board received a letter and heard testimony from one person in opposition to the application. The witness, who owns but does not live in a two-family dwelling near the subject property, testified that conditions on the block have deteriorated in recent years due to overcrowding, and asserted that the creation of an additional apartment would cause "the block [to] sink further into noise, litter and rats." (Exhibit 24.)

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is a rectangular parcel located on the east side of 35th Street, N.W., midblock between Reservoir Road and R Street (Square 1294, Lot 805). The lot is approximately 30 feet wide and 155 feet deep, and has an area of 4,635 square feet.
2. The subject property is improved with a two-story frame dwelling located along the northern property line, approximately 20 feet wide and 46.5 feet deep. The Board credits the

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testimony of the Office of Planning that, according to “D.C. land records, the gross dwelling floor area is 2,688 square feet....” (Exhibit 25.) The one-family dwelling is set back approximately 9.5 feet from the street frontage along 35th Street, and has a side yard approximately 10 feet wide along the southern property line. The property also contains a one-story accessory garage, currently used as an artist studio, but within which no commercial activity occurs.² The accessory building is approximately 18 feet wide and 60 feet deep, and abuts a public alley along the northern and eastern (rear) property lines. The accessory building has a side yard approximately 12 feet wide along the southern property line, and its western edge is located approximately 48.5 feet from the rear of the dwelling. A parking pad with space for one vehicle is located at the rear of the subject property.

3. Properties in the vicinity of the subject property are improved primarily with two- and three-story row, semi-detached, and detached dwellings, and the surrounding neighborhood character is predominately moderate-density residential. A large two-story detached dwelling is located on a large lot across the alley to the east, and a public high school, the Duke Ellington School of the Arts, is located to the west across 35th Street.

The Applicant’s Project

4. The Applicant proposes to establish an accessory apartment of 450 square feet (i.e. approximately 18% of the gross floor area of the house) on the second floor of the existing dwelling.³ The Applicant will continue to reside in the dwelling, using the entire first floor and a portion of the second floor as the principal dwelling. The one-bedroom accessory apartment will be created in the rear portion of the second floor, with access to the apartment provided through an existing side door. No external changes to the dwelling are planned.

Harmony with Zoning

5. The subject property is zoned R-3. The R-3 District is “designed essentially for row dwellings,” with areas where “row dwellings are mingled with one-family detached dwelling, one-family semi-detached dwellings, and groups of three (3) or more row dwellings. To maintain a family-life environment, permitted related uses are the same” in the R-3 District as in the most restrictive zone, R-1. (11 DCMR § 320.1.)

² The Board previously granted an application for a variance from §§ 2300.3 and 2001.2 for the replacement of an existing accessory garage with an artist studio at the subject property. See Application No. 16391, order issued December 1, 1998.

³ The Applicant testified that the accessory apartment would occupy 25% of the gross floor area of the house, but did not indicate the building’s total gross floor area. The OP report states that the proposed accessory apartment “would occupy approximately 18% of the dwelling gross floor area” but also that “[a]ccording [to] the DC land records, the gross dwelling floor area is 2,688 square feet....” (Exhibit 25.) In that case, the projected size of the accessory apartment would comprise 16.74% of the gross floor area of the house (450 divided by 2,688). In any event, the Board finds that the planned accessory apartment will not exceed 25% of the gross floor area of the dwelling.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under § 202.10 to allow an accessory apartment in an existing one-family semi-detached dwelling located in the R-3 District at 1679 35th Street, N.W. (Square 1294, Lot 805). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) 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 § 202.10, an accessory apartment may be added within an existing one-family detached dwelling if approved by the Board as a special exception under § 3104, subject to certain requirements. As set forth in paragraphs (a) through (h), the requirements for approval in the R-3 Zone include that the lot must have an area of at least 4,000 square feet; the house must have at least 2,000 square feet of gross floor area, exclusive of garage space; the accessory apartment may not occupy more than 25% of the gross floor area of the house; the accessory apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area, and garage space may not be converted; any additional entrance created to the house must not be located on a wall of the house that faces a street; either the principal dwelling or the accessory apartment must be owner-occupied; the aggregate number of persons who may occupy the house – both the principal dwelling and the accessory apartment – must not exceed six; and an accessory apartment may not be added where a home occupation is already located on the premises.

The Applicant asserted that all requirements of § 202.10 would be satisfied by the planned accessory apartment, and that no waiver from any requirement was needed. The Board notes, however, that § 202.10 states that an accessory apartment may be added “within a one-family *detached* dwelling” (emphasis added), while the Applicant’s property contains a one-family semi-detached dwelling. Pursuant to § 202.10(i), the Board may modify or waive up to two of the requirements “specified in paragraphs (a) through (h) of this subsection” (except for the owner-occupancy requirement), subject to certain limitations. The reference to “one-family detached dwelling” occurs in the introductory provision of § 202.10, not as a requirement listed in paragraphs (a) through (h). However, § 202.10(i)(3) specifies that “[a]ny request to modify more than two (2) of the requirements *of this subsection* shall be deemed a request for a use variance” (emphasis added), which implies that the Board may consider, as a special exception, a request for a waiver of any requirement of § 202.10, not only those requirements listed in paragraphs (a) through (h).⁴ This interpretation is consistent with the limit on the Board’s

⁴ Subsection 201.10 (i) reads as follows, with the relevant references to the “paragraphs” and the “subsection” italicized:

- (i) The Board may modify or waive not more than two (2) of the requirements specified in *paragraphs (a) through (h)* of this subsection; provided, that the following occurs:

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authority stated in § 202.10(i)(2): the Board cannot approve any modification or waiver that would conflict with the intent of § 202 to permit accessory uses while maintaining a one-family residential appearance and character in the R-1, R-2, and R-3 Districts. The R-3 District is intended to have a one-family residential character and a family-life environment, whether a given area within an R-3 Zone is characterized by detached dwellings, one-family semi-detached dwellings, or row dwellings. The type of dwelling – whether detached, semi-detached, or row – does not determine its use; each type may be devoted to the same one-family residential use.⁵ The Board concludes that a request to waive the “detached dwelling” requirement may be approved as a special exception and does not require a use variance so long as an application requests a waiver or modification of no more than two requirements of § 202.10 in total.

In this case, the proposed accessory apartment will comply with the requirements of § 202.10 without needing any waiver except for the requirement of a “detached dwelling.” As described in the findings of fact, the subject property has a lot area of 4,635 square feet, in excess of the minimum requirement of 4,000 square feet in the R-3 Zone. The gross floor area of the house, exclusive of garage space, is at 2,688 square feet, which exceeds the minimum requirement of 2,000 square feet. The proposed accessory apartment, at 450 square feet, will occupy less than the permitted maximum of 25% of the gross floor area of the house. The accessory apartment will be created only through internal conversion of the existing dwelling, without any additional lot occupancy or gross floor area; garage space will not be converted, and no additional entrance will be created to the house. (The accessory apartment will be accessed through an existing door on the south side of the dwelling, not facing the street.) The Applicant, *i.e.* the owner of the subject property, will continue to reside in the principal dwelling, and no more than six persons will occupy the house in total. No home occupation is currently located on the premises.⁶

The Board concludes that the requested special exception can be granted consistent with the requirements of § 202.10, and that a waiver of the detached dwelling requirement can be

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- (1) The owner-occupancy requirement of paragraph (f) shall not be waived;
 - (2) Any modification(s) approved shall not conflict with the intent of this section to maintain a single-family residential appearance and character in the R-1, R-2, and R-3 Districts; and
 - (3) Any request to modify more than two (2) of the requirements *of this subsection* shall be deemed a request for a use variance.

⁵ Approval of a waiver of the “detached dwelling” requirement allows an applicant to establish an accessory apartment that will comply with all other requirements of § 202.10; the accessory apartment does not alter the principal use of the property, which remains one-family residential. The approval does not allow the conversion of the applicant’s property into a two-family flat, a different principal use from one-family residential.

⁶ The Board notes the testimony of the Office of Planning that, if the Board “considers the applicant’s use of the artist studio on the property to be a ‘home occupation,’ the proposed apartment use would require waiver” of that requirement. In light of the Board’s finding that there is no commercial activity occurring in the artist studio (finding of fact no. 2), the Board concludes that the Applicant’s use of the accessory building does not constitute a home occupation.

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approved consistent with the requirements of § 202.10(i). The waiver will not cause any conflict with the intent of § 202 to maintain a single-family residential appearance or character, especially since the external appearance of the residence will not change, the principal dwelling will remain owner-occupied, and the number of persons living in the residence will be limited to six.

For the same reasons, the Board concludes that, consistent with § 3104.1, the requested 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. Creation of the accessory apartment will not alter the appearance or character of the Applicant's dwelling, but will maintain its principal use as a one-family dwelling in accordance with the requirements of the R-3 Zone District. The Board was not persuaded by the person in opposition to the application that the proposed accessory apartment would have any deleterious effect on overcrowding, noise, litter, or rats, in part because the Applicant's dwelling will not be enlarged for purpose of creating the apartment, the principal dwelling will remain owner-occupied, the total number of persons occupying the house will not exceed six, and no home occupation is located on the premises. The Board concludes that approval of the requested special exception will not tend to adversely affect the use of neighboring property. The Board is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP's recommendations. The Board concurs with OP's recommendation that the requested zoning relief should be granted, but declines to adopt OP's proposed condition, which would require the Applicant to "secure a building permit for the accessory use in accordance with all applicable requirements," as outside the purview of the Zoning Regulations.

Section 13(b) (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)(3)(A)) requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, ANC 2E's opposition to the application cited "[t]wo exhaustive zoning reviews ... under way currently that affect" the requested special exception: (i) "the zoning rewrite, which ... will include neighborhood zoning ... that will set out in detail rules tailored to fit the neighborhood for dealing with accessory apartments..." and (ii) a "review under way at the Zoning Commission, where the issue of students living off campus in our community is a major concern...." The ANC stated that, "[u]ntil those key issues are resolved, [ANC 2E] cannot recommend an exception in the current case that would risk exacerbating a situation that is already very serious now, and in need of remedy, in our community." (Exhibit 23.) The Board does not find that the issues and concerns raised by ANC 2E warrant the denial of the requested special exception. The Board may not deny a request for zoning relief on the ground that the future results of proceedings undertaken by the Zoning Commission might affect an applicant's proposal. In evaluating a request for a special exception, "the Board is limited to a determination whether the exception sought meets the requirements of the particular regulation on which the application is based. 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

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grant the application.” *See, e.g., President and Directors of Georgetown College v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 68; *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C. 1995).

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues and concerns of ANC 2E, the Board concludes that the requested zoning relief can be approved so that the Applicant’s project is not likely to become objectionable to adjoining and nearby property. For the reasons stated above, the Board concludes that the Applicant has satisfied the requirements for a special exception under § 202.10 to allow an accessory apartment in an existing one-family semi-detached dwelling located in the R-3 District at 1679 35th Street, N.W. (Square 1294, Lot 805). Accordingly, it is hereby **ORDERED** that the application, pursuant to Exhibit 9 (Plans), is **GRANTED**.

VOTE: 5-0-0 (Meridith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle, and Greg M. Selfridge to Approve)

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

A majority of the Board members approved the issuance of this Order.

ATTESTED BY:

RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: December 20, 2011

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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



BZA APPLICATION NO. 18232

As Director of the Office of Zoning, I hereby certify and attest that on December 20, 2011, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Herbert J. Sanborn, Jr.
1679 35th Street, N.W.
Washington, D.C. 20007

Chairperson
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007

Single Member District Commissioner 2E01
Advisory Neighborhood Commission 2E
3525 S Street, N.W.
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ATTESTED BY: _____

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TAB B

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 16992 of David P. and Jana Frankel, pursuant to 11 DCMR § 3104.1 for a special exception to allow an accessory apartment within an existing detached single family dwelling under subsection 202.10, in the R-2 District at premises 4336 Garrison Street, N.W. (Square 1655, Lot 16).

HEARING DATE: **March 18, 2003**
DECISION DATE: **March 18, 2003 (Bench Decision)**

DECISION AND ORDER

On January 15, 2003, David P. and Jana Frankel filed an application with the Board of Zoning Adjustment (BZA) seeking a special exception in order to alter approximately 570 square feet of existing basement storage space in their residence for use as an accessory apartment. The Applicants stated that they intended to construct an accessory apartment in this space and rent it to one or two people.

The BZA, at its March 18, 2003 public hearing, after discussion and deliberation on the application approved the application by a vote of 4-0-1.

PRELIMINARY MATTERS:

BZA Chairman Geoffrey H. Griffis announced that in reviewing the file in this case, he noticed that Paul Davey was identified as the Applicants' architect. Chairman Griffis stated that Paul Davey is someone he knows, has worked with in the past, and is presently working with on an unrelated project. Chairman Griffis stated that he had not discussed this case with Mr. Davey and felt he could proceed to review and decide on this matter impartially. Chairman Griffis added that he would recuse himself if anyone objected. Upon request, neither the Applicants nor those seeking party status (Daphne and Andrew Trotter) objected to Chairman Griffis' participation in this case. The BZA voted unanimously (but with Chairman Griffis abstaining) to proceed on this case with Chairman Griffis' full participation.

Notice of Application and Notice of Hearing. By memorandum dated January 15, 2003, the Office of Zoning provided notice of filing of the application to the District of Columbia Office of Planning, the affected Advisory

Neighborhood Commission (ANC 3E) and Single Member District Commissioner, and the Ward 3 Council Member. Exhibit No. 15.

The BZA scheduled a hearing on the application for March 18, 2003. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on January 23, 2003, mailed the Applicants, the owners of all property within 200 feet of the subject property, and ANC 3E notice of hearing. Exhibit Nos. 22-23. Notice of hearing was also published in the D.C. Register. The Applicants filed an Affidavit of Posting, which indicates that the property was posted properly. Exhibit No. 35.

Request for Party Status. Daphne and Andrew Trotter (the “Trotters”), the owners of a property at 5015 44th Street, N.W., that shares a common border with the Applicants, each separately requested party status. Exhibit Nos. 32 and 33. The Trotters requested that the BZA deny the application. The BZA asked whether the Trotters were related and living at the same address, and if so, whether these two requests for party status could be consolidated into one request. The Trotters answered that they are related and living at the same address and therefore agreed to the consolidation of their requests for party status. The Applicants had no objection to either the consolidation or to the granting of the request for party status. The BZA voted unanimously to grant the request for party status to the Trotters.

Persons in Support of the Application. The Applicants submitted four letters in support of their application from neighbors living within 200 feet of their property and one e-mail message stating no objection to the application but praising the Applicants’ investment in the neighborhood. Exhibit Nos. 9-10 and 25-30. The four letters in support were from: (1) Ida Kunz of 4340 Garrison Street, N.W., the owner of the adjacent property immediately to the west of the Applicants’ property; (2) Thomas E. Eichler of 4328 Garrison Street, N.W. (also writing on behalf of his wife, Wendy Eichler), the owners of the adjacent property immediately to the east of the Applicants’ property; (3) Todd D. Boley, the owner of the property at 4324 Garrison Street, N.W.; and (4) David Epstein, the owner of the property at 4320 Garrison Street, N.W. The e-mail message was from Janet Bachman, the owner of the property at 5012 44th Street, N.W.

Persons in Opposition to the Application. No other person other than the Trotters expressed opposition to the application.

Self-Certified Application. The Applicants filed a Self-Certified BZA Application, Exhibit No. 6, seeking a special exception pursuant to 11 DCMR § 3104.1 pursuant to 11 DCMR § 202.10.

Authorization. David P. Frankel, Esquire, an attorney and a member of the District of Columbia Bar and one of the Applicants represented the Applicants at the public hearing. Jana Frankel, one of the two Applicants, was also in attendance at the hearing, as was the Applicants' D.C. licensed architect, Paul Davey.

DC Office of Planning (OP) Report. OP filed a report recommending approval of the application. Exhibit No. 36. The report was received in the Office of Zoning on March 11, 2003. OP's rationale for recommending approval of the application was: (1) the proposed accessory apartment satisfied Section 202.10(a) because the area of the subject property is 6,142 square feet, which is in excess of the minimum requirement of 4,000 square feet for an accessory apartment in the R-2 district; (2) the proposed accessory apartment satisfied Section 202.10(b) because the house consists of 3,768 square feet exclusive of the garage, which is in excess of the minimum requirement of 2,000 square feet; (3) the proposed accessory apartment satisfied Section 202.10(c) because the Applicants have indicated that the accessory apartment is approximately 600 square feet in area, which is 15.9 percent of the gross floor area, which is less than the maximum 25 percent permitted; (4) the proposed accessory apartment satisfied Section 202.10(d) because it is being created in an area that is identified on the "Existing Lower Level Floor Plan" submitted by the Applicants as either "storage," or "bike storage" or "bike workshop." No additional lot occupancy or gross floor area is necessary, and this proposal does not include the conversion of any garage space; (5) the proposed accessory apartment satisfied Section 202.10(e) because no additional entrance to the house is proposed and access to the proposed accessory apartment is through an existing external doorway, on the west side of the dwelling; (6) the proposed accessory apartment satisfied Section 202.10(f) because the owners of the property will occupy the principal dwelling; (7) the proposed accessory apartment satisfied Section 202.10(g) because the total number of persons occupying the house will not be more than six, as the maximum number of occupants within the principal dwelling is three and the maximum number of occupants within the proposed accessory apartment is two, for a total of five; and (8) the proposed accessory apartment satisfied Section 202.10(h) because the Applicants do not and will not have a home occupation located on the premises. OP concluded that the Applicants satisfactorily met the criteria for special exception relief pursuant to 11 DCMR § 202.10, and that in granting the relief, the intent and purpose of the chapter "shall not adversely affect the use of the neighboring properties." OP also concluded that this proposed accessory apartment will contribute towards the Ward 3 general policy of creating housing opportunities for housing near the ward's Metrorail stations. Finally, while OP recommended granting the application as submitted by the Applicants, it also suggested "that if the Applicants install any external lighting for the proposed accessory apartment entrance, that such lighting be shielded and directed

downward so as to not cast light into any window or door of the adjacent house to the west.”

Advisory Neighborhood Commission (ANC) Report. By correspondence dated February 28, 2003 (Exhibit No. 34), ANC 3E recommended approval of the application “with the caveat that within six months of completion the applicant design and provide for adequate screening and lighting for the accessory apartment.” Further, ANC 3E recommended that the Trotters be given party status with the right to appeal to the BZA six months after the completion of the project has expired. ANC 3E’s report indicated that the vote on this recommendation was 5-0. ANC 3E’s report indicated that it was informed that on January 13, 2003, the Applicants notified all property owners living within 200 feet of the Applicants’ property of the ANC meeting which was scheduled for and held on February 13, 2003. ANC 3E itself also informed the community of this matter by publishing its agenda in the Northwest Current, on ANC 3E’s official Internet web site, and by posting its proposed agenda around the community.

A letter dated March 12, 2003 from Single Member Commissioner Amy Bauer McVey (ANC 3E01) was waived into the record by the BZA (Exhibit No. 38). Commissioner McVey wrote that the caveat contained in the report submitted by ANC 3E was not the caveat she recalled approving at ANC 3E’s February 13, 2003 meeting. She stated that she approved a caveat that read: “with the caveat that within six months of completion the applicant design screening and lighting for the accessory apartment.”

Closing of the Record. Upon hearing the Applicants’ case, reviewing the recommendations of the Office of Planning and Advisory Neighborhood Commission 3E and the Trotters’ opposition, the BZA closed the record and did not request any additional information.

Decision. The BZA approved the special exception request without any caveats, qualifications or restrictions at the conclusion of the public hearing.

SUMMARY OF EVIDENCE

The Applicants’ Proposal

The Applicants’ proposal would allow the conversion of approximately 570 square feet of existing basement storage space into an accessory apartment that could be rented to one or two persons. This proposed accessory apartment would be located in part of the recently-constructed addition to the rear of the Applicants’ detached, single family dwelling. The Applicants’ 54 year old house has been undergoing extensive renovations since October 2002 pursuant to DCRA Building

Permit Number B445928. The entranceway, floor, exterior walls, door and windows are part of the permitted addition and have already been constructed and installed so the work to convert part of the basement of the addition into an accessory apartment will consist of internal conversion only.

The entrance door to the proposed accessory apartment faces west towards the property at 4340 Garrison Street, N.W. and does not face the street. The proposed accessory apartment will have a separate bedroom with an existing window facing the adjoining property to the east and a separate walk-in closet, a fully-equipped kitchen, a full bath, a washer/dryer combination, a living area with a window and an entrance door, recessed lights, two high speed internet connections, a centrally-monitored security system, including heat and smoke detectors and two cable/ satellite television connections.

Because the subject property is located in the R-2 District, a special exception is required for the placement there of this proposed accessory apartment. Under the requirement of Section 202.10 of the Zoning Regulations, accessory apartments may be placed in single-family dwellings, if the criteria contained in the Regulations are met. The Applicants, therefore, sought approval to convert part of their existing basement space into an accessory apartment under the special exception provision of Section 202.10. The Applicants stated that their proposal met each of the eight specific requirements contained in Section 202.10, and even if were found that one or two of the requirements were not met, the Applicants stated that their request for a special exception should be granted because the BZA may waive up to two of the requirements under certain circumstances applicable here. See 11 DCMR § 202.10(i).

The Subject Property and the Surrounding Area

The site is located in the Friendship Heights neighborhood of Ward 3. It is also located in Square 1655, on Lot 16, at premises 4336 Garrison Street, N.W. The boundaries of the subject square are Wisconsin Avenue to the east, 44th Street to the west, Garrison Street to the north and Fessenden Street to the south. The neighborhood is residential and commercial in character, consisting primarily of brick colonial and wood frame structures and commercial buildings. Across Garrison Street from the site is the undeveloped portion of a lot that is within the R-2 District. The remainder of that lot is developed with a surface parking lot within the R-2 District and an office building with ground floor retail that fronts on Wisconsin Avenue within the C-2-A District. Wisconsin Avenue, located approximately one-half block to the east, is developed primarily with low and mid-rise buildings occupied by commercial and retail uses within the C-2-A District. Approximately two and one-half blocks to the north is an entrance to the Friendship Heights Metro station (red line).

There is no alley access to the subject property. The only access to the rear of the subject property is through the dwelling or via the east and west side yards. The east side yard is six feet wide from the house to the property line and access through the side yard is limited because of mature trees in the front, the placement on the ground of air conditioning condenser units from the subject property and the neighboring property at 4328 Garrison Street, N.W., and the window well related to the subject property. The west side yard of the subject property is eight feet wide from the house to the property line and access through the side yard is limited because of the cement retaining wall separating the earth from the eight cement steps leading to the basement area. The outermost edge of this retaining wall is approximately four feet from the west property line of the subject property.

The rectangular shaped site contains 6,142 square feet of land area. It has a width of 50 feet and a depth of 122.83 feet. It is improved with a two-story single-family detached dwelling that was constructed in 1949. The house is undergoing renovations and an addition has been added as part of these renovations. The dwelling unit contains two stories plus a basement and a walk up attic. There is also a garage attached to the house and a driveway leading to the garage.

Zoning

The subject property is zoned R-2. The R-2 District consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. No variance relief is being sought for the area requirements of the R-2 District.

The Applicants are proposing to place an accessory apartment, consisting of approximately 570 square feet, in a portion of the existing basement area of their property. The Applicants and their architect, Paul Davey, testified that each of the eight criteria set forth in 11 DCMR § 202.10 have been met in this case.

First, they stated that because the Applicants' lot size is 6,142 square feet, they exceed the minimum required lot size of 4,000 by more than 50 percent. *See id.* § 202.10(a).

Second, the Applicants and their architect testified at the hearing that the total square footage of gross floor area, exclusive of garage space, is approximately 4,586 square feet. Of this, they testified that approximately 2,366 square feet existed prior to the construction of their recent addition. Thus, the Applicants stated that their house contains more than the required 2,000 square

feet of gross floor area required by the zoning regulations for accessory apartments. *See id.* § 202.10(b).

Third, the Applicants and their architect testified that with a proposed accessory apartment consisting of approximately 570 square feet, this will constitute less than 15 percent of the gross floor area of the house. The Applicants further testified that even if no addition had been placed on the house, the proposed accessory apartment would have occupied only 24 percent of the gross floor area of the pre-addition house (i.e., 2,366 square feet), excluding the garage. Using either calculation, the Applicants testified that their proposed accessory apartment will occupy no more than 25 percent of the gross floor area of their house. *See id.* 202.10(c).

Fourth, the Applicants and their architect testified that their proposed accessory apartment will be created only through internal conversion of the house, without any additional lot occupancy or gross floor area and that garage space will not be converted. *See id.* 202.10(d).

Fifth, the Applicants and their architect testified that no additional entrance to their house will be created, that the below grade entrance to the proposed accessory apartment already exists and that this entrance faces west towards the adjacent property located at 4340 Garrison Street, N.W. and does not face the street. *See id.* 202.10(e).

Sixth, the Applicants and their architect testified that they plan on occupying the principal dwelling and renting the proposed accessory apartment one or two tenants. *See id.* 202.10(f).

Seventh, the Applicants testified that their family consists of three people and that they plan on renting their proposed accessory apartment to one or two tenants. Even if there are two tenants, this would mean that the combination of the principal dwelling and the proposed accessory apartment together would yield five persons, one less than zoning limit of six persons. *See id.* 202.10(g).

Eighth, the Applicants and their architect testified that they have never had a home occupation on the premises and they have no plans to ever do so. *See id.* 202.10(h).

Finally, the Applicants and their architect testified that if the BZA were to find that they did not meet any of the above-listed criteria, the BZA should modify or waive up to two of the requirements pursuant to 11 DCMR § 202.10(i). The Applicants have not requested a waiver of the owner-occupancy requirement and they and their architect testified that any modifications of the remaining

requirements will not conflict with the concept of maintaining the single-family residential appearance and character in the R-2 District.

Opposition

The only opposition to the application was submitted and presented by Daphne and Andrew Trotter. The Trotters live at 5015 44th Street, N.W. and their entire rear property line (their easternmost property line) is contiguous with part of the side portion of the Applicants' southwesternmost property line. The Trotters expressed concern that the proposed accessory apartment would expose them to the activity of tenants, their comings and goings through the existing basement entrance, window lighting, and exterior lighting over the basement entrance, intrude on their privacy and affect the value of their property.

The Trotters also presented two related legal challenges to the application. First, they contended that the proposed accessory apartment is part of a new lot occupancy or new gross floor area because it is contained entirely within the newly-constructed addition that has been placed onto the rear of the Applicants' property pursuant to a building permit that was issued in May 2002. This, they asserted, is in violation of 11 DCMR § 202.10(d).

Second, the Trotters argued at the hearing that part of the entrance door to the proposed accessory apartment is visible from 44th Street, N.W. and that this violates 11 DCMR § 202.10(e).

FINDINGS OF FACT

1. The subject property is zoned R-2. No variance relief is being sought for the area requirements of the R-2 District.
2. The subject lot size is 6,142 square feet, which exceeds the minimum required lot size of 4,000 by more than 50 percent.
3. The total square footage of gross floor area, exclusive of garage space, of the subject dwelling is approximately 4,586 square feet. Of this, approximately 2,366 square feet (exclusive of garage space) existed prior to the construction of the recent addition to the subject dwelling. Thus, the subject dwelling, both pre- and post-addition, contains more than the required 2,000 square feet of gross floor area required by the zoning regulations for accessory apartments.

4. With a proposed accessory apartment consisting of approximately 570 square feet, this will constitute less than 15 percent of the gross floor area of the subject dwelling. Even if no addition had been placed on the subject dwelling, the proposed accessory apartment would have occupied only 24 percent of the gross floor area of the pre-addition house (*i.e.*, 570 square feet of 2,366 square feet), excluding the garage. Using either calculation, the proposed accessory apartment will occupy no more than 25 percent of the gross floor area of the subject dwelling.

5. The proposed accessory apartment will be created only through internal conversion of the house, without any additional lot occupancy or gross floor area and garage space will not be converted. The entranceway, floor, exterior walls, door and windows for this entire basement area have already been constructed and installed pursuant to DCRA building permit number B445928. The basement area of the already permitted addition, where this proposed accessory apartment will be placed, will continue to exist (albeit not as an accessory apartment) if the BZA denies the application for an accessory apartment.

6. The below-grade entrance to the proposed accessory apartment already exists and no additional entrance to the subject property will be created. This entrance faces west towards the adjacent property located at 4340 Garrison Street, N.W. While the top portion of the entrance may be partially visible from 44th Street, N.W., the entrance faces the adjacent property at 4340 Garrison Street, N.W. and does not face Garrison, 44th or any other streets.

7. The subject property will be owner-occupied. The Applicants testified that they plan on occupying the principal dwelling and renting the proposed accessory apartment to one or two tenants. This testimony was undisputed.

8. The Applicants' family consists of three people and they plan on renting their proposed accessory apartment to one or two tenants. Even if there are two tenants, this would mean that the combination of the principal dwelling and the proposed accessory apartment together would total five persons, one less than the zoning limit of six persons.

9. The Applicants have never had a home occupation on the premises and they testified that they have no plans to ever do so. This testimony was undisputed.

10. The availability of parking for motor vehicles along the portion of Garrison Street, N.W. in the vicinity of the subject property is generally not a problem because each house on the 4300 block of Garrison Street, N.W. has a garage and a driveway and because most of the north side of this portion of Garrison Street, N.W. consists of an undeveloped lot within the R-2 District. In addition, there are

two surface parking lots behind the commercial buildings that line the northwest and southwest sides of Wisconsin Avenue, N.W. at the intersection of Garrison Street, N.W. that help minimize parking problems on this block of Garrison Street, N.W. during business hours.

11. There is no alley access to the subject property. The only possible access to the rear yard of the subject property is via the east side yard, the west side yard and the dwelling.

12. The eastern side yard of the subject property is six feet wide. The northeast part of the side yard has mature trees and shrubs that restrict access to this side yard. In addition, both the subject property and the adjacent property at 4328 Garrison Street, N.W. use this side yard for the placement of air conditioner condenser units on the ground, as well as gas, electric and telephone utility connections. Finally, the subject property contains a deep window well in its east side yard that further restricts access along this side yard. These factors in combination severely restrict the Applicants' ability to gain access to their rear yard via their east side yard.

13. The western side yard of the subject property is eight feet wide. There are eight cement steps leading to the below-grade basement entrance along the west side yard of the subject property. These steps are separated from the surrounding earth by a cement retaining wall. The distance from the outermost edge of the retaining wall to the west side property line of the subject property is approximately four feet, leaving approximately four feet for access to the rear yard of the subject property for such items as a lawnmower or a large trash container.

14. The two property owners who are most affected by the proposed accessory apartment – the property owners at 4340 Garrison Street, N.W. (Mrs. Ida Kunz) and at 4328 Garrison Street, N.W. (Thomas and Wendy Eichler) – support the application. Mrs. Kunz' property is eight feet from the existing below-grade basement entrance and her dwelling is approximately sixteen feet from that entrance. Mrs. Kunz' rear screened-in porch, dining room and master bedroom overlook the existing below-grade basement entrance. The Eichlers' property is six feet from the existing below-grade window and their dwelling is approximately 12 feet from that window. The Eichlers' kitchen overlooks the existing below-grade basement window. Two other property owners on Garrison Street, N.W. support the application and one property owner on 44th Street, N.W. has expressed her support for the Applicants' investment in the neighborhood. Each of these letters and the e-mail message were submitted from owners of property within 200 feet of the subject property.

15. The already-constructed and permitted below-grade entrance to the subject property's proposed accessory apartment is approximately 80 feet from the rear entrance of the Trotters' dwelling and about 15 feet from the Trotters' rear property line.

16. The Trotters have offered no evidence, such as the testimony of a licensed appraiser, to support their contention that this proposed accessory apartment will diminish the value of their property, and if so, by how much.

17. The BZA considered the position of Advisory Neighborhood Commission 3E, which recommended approval of the application "with the caveat that within six months of completion the applicant design and provide for adequate screening and lighting for the accessory apartment." Further, the BZA considered the recommendation of ANC 3E that the Trotters be given party status with the right to appeal to the BZA six months after the completion of the project has expired.

18. The BZA reviewed the recommendation of the Office of Planning that the BZA grant the application as submitted by the Applicants. The BZA also considered the suggestion of the Office of Planning "that if the Applicants install any external lighting for the proposed accessory apartment entrance, that such lighting be shielded and directed downward so as to not cast light into any window or door of the adjacent house to the west."

CONCLUSIONS OF LAW AND OPINION

The BZA is authorized under § 8 of the Zoning Act, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code §§ 6-641.07(g)(2) and (3) (2002)), to grant special exceptions from the Zoning Regulations. The Applicants are seeking a special exception pursuant to § 3104.1 and under 202.10 to allow an accessory apartment within an existing detached single family dwelling in the R-2 District. The notice requirements of § 3113 for the public hearing on the application have been met.

The Applicants were required to demonstrate that the proposed accessory apartment would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely, the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps. Based upon the findings of fact, the BZA concludes that the application does meet the requirements for approval of the accessory apartment.

The BZA gave "great weight" to the recommendation of the Office of Planning and agrees with OP that upon due consideration to the subject property's zoning, the intensity of use, the character of the neighborhood and the standards

for special exception, the proposed accessory apartment meets the required tests and can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. At the same time, the BZA determined not to make as a condition of approval the OP's suggestion that if the applicants install any external lighting for the accessory apartment entrance, that such lighting be shielded and directed downward so as not to cast light into any window or door of the adjacent house to the west. The BZA determined that issues related to lighting raise safety and security issues that are best addressed in the building code compliance process. Because the rear entrance to the Trotters' dwelling is approximately 80 feet from the entrance and one window to the proposed accessory apartment, it is unlikely that lights from the proposed accessory apartment area of the subject property will substantially impair the use and enjoyment of the Trotters' property.

The BZA is of the opinion that § 202.10 of the Zoning Regulations was developed to maintain and expand the existing housing stock and to ensure a greater variety of housing types, opportunities and choices. This is especially relevant in areas, such as the subject property, which are close to Metrorail and Metrobus lines, as well as commercial and retail development. The BZA is of the opinion that the Applicants meet and satisfy each of the requirements of § 202.10.

In reviewing BZA cases, the BZA is required under D.C. Code § 1-309(d) (2002) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. The BZA has carefully considered ANC 3E's report and agrees with that ANC's recommendation to approve the application. At the same time, the BZA has determined not to accept the ANC 3E's caveat that within six months of completion the Applicants design and provide for adequate screening and lighting for the accessory apartment. As stated in response to the Office of Planning's suggestion with respect to external lighting, lighting is an issue of safety and security and is best addressed in the building code compliance process, especially here, where there are eight cement steps leading to this below-grade entrance that need to be illuminated. In addition, any efforts to implement screening along the west side yard of the subject property must take into account the existing cement steps and retaining wall which greatly restrict the area available for installing screening. Thus, this screening issue is best left to the Applicants to discuss with their adjoining neighbor to the west at 4340 Garrison Street, N.W., who has written in support of the application and who is clearly most affected by the proposed accessory apartment.

ANC 3E also recommended that the Trotters be given party status with the right to appeal to the BZA six months after the completion of the project has expired. The BZA granted party status to the Trotters but determined not to

permit the Trotters to appeal to the BZA six months after the completion of the project. Because the BZA has decided to deny the underlying premise for such an appeal (i.e., the BZA decided not to add a caveat to the effect that within six months of completion the Applicants design and provide for adequate screening and lighting for the accessory apartment) there is no need to permit the appeal to the BZA that ANC 3E has proposed.

Based on the findings of fact and having given great weight to the ANC and OP reports, the BZA concludes that the special exception will not materially impair the intent and purpose of the Zoning Regulations, adversely affect the light and air of adjacent buildings or significantly increase traffic, noise or nighttime lighting. The BZA concludes that the requested special exception relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not affect adversely the use of neighboring properties.

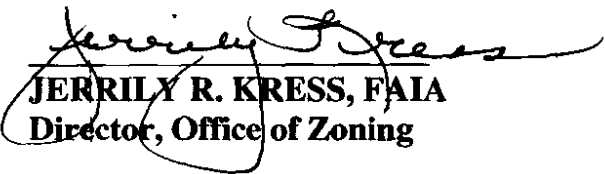
For the reasons stated above, the BZA concludes that the Applicants have met their burden of proof. It is hereby **ORDERED** that the application is **GRANTED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Anne Mohnkern Renshaw, Curtis L. Etherly, Jr. and Anthony Hood to approve, and David A. Zaidain not present).

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

Each concurring member approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR - 2 2003

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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 PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. 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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN