

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

Application of
Jeff Alpher and Haley Kaufman
BZA Application No. 18377

Hearing Date: July 17, 2012
ANC 3C

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**APPLICANTS' PRE-HEARING STATEMENT IN SUPPORT OF
SECTION 223 SPECIAL EXCEPTION RELIEF**

Jeff Alpher and Haley Kaufman ("Applicants") the owners of the property and improvements located at 2938 Macomb Street, N.W., Square 2084, Lot 825 (the "Property"), seek relief under §223 of the District of Columbia Zoning Regulations to construct a rear and side covered porch addition to their one-family detached dwelling. As set forth more fully below, the addition requires relief under §223 because the addition of the porch results in a lot occupancy that exceeds the amount allowed by the regulations by 239 square feet or 4.6 % and a side yard of 3 feet where 8 feet is required. The 3-foot side yard is a continuation of the existing nonconforming side yard of the one-family dwelling. Accordingly, Applicants seek relief under §223 for an addition that does not comply with the maximum lot occupancy requirement (§403.2) and the minimum side yard setback requirement (§405.9). While the Zoning Administrator did not so certify in his February 29, 2012, Memorandum, it appears that relief is also required under §223 because the addition does not comply with §2001.3 governing additions to nonconforming structures devoted to conforming uses. As set forth above, the addition increases the lot occupancy of the existing nonconforming structure to 4.6% above the allowed amount and extends the existing nonconforming side yard.

I. Description of the Property and Surrounding Neighborhood.

The Property is located in an R-1-B Zone District on the 2900 block of Macomb Street, N.W in the Cleveland Park neighborhood. The R-1-B District consists predominantly of one-family detached dwellings. A number of detached dwellings on this block of Macomb Street have side yards that are less than the required 8-foot side yard.

The property has a lot area of 5,156.25 square feet, greater than the minimum lot area for the R-1-B zone of 5,000 square feet (11 DCMR 401.3). It is improved with a one-family dwelling built in 1922, with additions made in more recent decades by prior owners. Applicants' property, in fact, had a wooden deck extending off the rear of the dwelling when Applicants purchased the property seven (7) years ago. However, Applicants removed the deck soon after purchase because it was infested with termites. The pilings for the deck were left standing and can be seen in the photograph of the rear elevation of the dwelling attached to the Application. *See also*, the survey provided to Applicants at time of purchase attached to this Pre-hearing Statement at Exhibit 1.

The property currently has a lot occupancy of 31.5 %, where 40% is allowed (11 DCMR 403.2) and a rear yard of approximately 49 feet, where 25 feet is required (11 DCMR 404.1). The Applicants' property has a nonconforming 3- foot side yard on its west side. However, the distance between the subject dwelling and the neighboring dwelling to the west is 11.34 feet. Applicants' property has an 8-foot side yard on its east side and a distance of 18.5 feet between its dwelling and its neighbor's dwelling to the east.

On each side of the property is a one-family dwelling with a porch or deck in the rear. On the west side of the property is a detached dwelling with two (2) stories of covered porches in the rear. On the east side of the property is a detached dwelling with a deck extending off the main level of the structure in the rear. The porches and deck of both these dwellings extend well beyond the Applicants' dwelling.

There is a moderate slope down from the street along the body of the dwelling and a severe slope down starting approximately 10 feet from the rear of the current structure. Applicants' rear yard backs up to the ravine and woods of Rock Creek Park, with the 20-acre Tregaron Estate behind the parkland.

II. The Application Meets the Special Exception Requirements of Section 223.

Section 223 provides zoning relief for additions to one-family dwellings or flats (R-1) and for new or enlarged accessory structures as a special exception. As set forth below, this application meets all the requirements, and accordingly, relief should be granted.

223.1 *An addition to a one-family dwelling or flat, in those Residence Districts where a flat is permitted, or a new or enlarged accessory structure on the same lot as a one-family dwelling or flat, shall be permitted even though the addition or accessory structure does not comply with all of the requirements of §§ 401, 403, 404, 405, 406, and 2001.3 shall be permitted as a special exception if approved by the Board of Zoning Adjustment under §3104, subject to the provisions of this section.*

Pursuant to §3104.1 of the Zoning Regulations, the Board of Zoning Adjustment (“Board”) is authorized to grant special exception relief 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 reviewing applications for a special exception under the Zoning Regulations, the Board’s discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. *See, e.g., Nat’l Cathedral Neighborhood Ass’n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000). In satisfying the specific provisions of §223 the general requirements of §3104 are met.

According to the computations of the Zoning Administrator, the proposed addition to this detached dwelling will result in a deviation of 2.6 % from lot occupancy (§403) and a deviation of 5 feet from the side yard set back requirement (§405.9). *See* Memorandum from Matthew Le Grant, Zoning Administrator to the Board of Zoning Administrator, dated February 29, 2012, with accompanying Notes and Computations, attached to the Application for Special Exception Relief in this case. (“Application”) However, Applicants concur with the Office of Planning that the 3-foot side yard and the area under the cantilevered roof over the front stoop should also be included as building area. *See, in relevant part, §199.1, the definition of Percentage of lot occupancy* – “ a figure that expresses that portion of a lot lying within lot lines that is occupied or that may be occupied under the provisions of this title as building area...” and **Building area** - “The term ‘building area’ shall include all side yards and open courts less than five feet (5 ft.) in width.” *See also*, BZA Application No. 17750 of Prashant and Nirpum Rohatgi (April 8, 2008) and hearing transcript at 104-155, in particular at 133, wherein the Board concludes that a cantilevered roof structure should be considered part of a building, as opposed to a projection.

As part of the building, the area underneath the cantilevered roof constitutes building area and should also be counted towards lot occupancy. With these areas included, the deviation from lot occupancy will be 4.6%.¹ A copy of the plans with the revised calculations is attached to this Pre-hearing Statement as Exhibit 2.

Based on these calculations the proposed addition will still result in deviations that fall within the provisions of the regulations encompassed by §223. Special exception relief should be granted because the proposal in this application meets the requirements of §223 as follows:

Section 223.2 *The addition or accessory structure shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

(a) *The light and air available to neighboring properties shall not be unduly affected:*

The addition in this case is a covered porch that will be similar in height to the deck and porches of the neighboring properties. The floor of the proposed covered porch will be at the same level as the main floor of the structure and will be located relative to the rear projections of these neighbors minimizing the impact of the proposed addition on those properties. While Applicants are seeking 5 feet in side yard setback relief, from the 8 feet required on the west side, there will be 11.34 feet between Applicants' structure and the neighboring structure on that side. There will be 18.5 feet between Applicants' structure and the neighboring structure on the east side. Accordingly, the light and air available to the neighboring properties to the east and west will not be unduly affected.

Finally, with the proposed addition, the property will still meet the rear yard requirements of the R-1-B zone (404.1), providing 37 feet, where 25 feet is required, and will not affect the air and light of the property to the rear, as the property to the rear consists of the ravine and woods of Rock Creek Park.

¹ The Zoning Administrator's "Notes and Computations" denote (Max. 60%) in the Allowed Lot Occupancy column. That appears to be a clerical error as the allowed percentage of lot occupancy in the R-1-B zone is 40 % (§403).

- (b) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*

The privacy of use and enjoyment of the neighboring properties to the west and east will not be unduly compromised because the covered porch addition will be separated from the porches and decks of these properties by 11.34 feet to the west and by 18.5 feet to the east. Its height and rear projection will be similar to the neighboring porches and deck. The neighbors on each side of the property support the proposed addition. See letters from neighboring property owners attached to this Pre-hearing Statement as Exhibit 3.

To the rear of the property are woodlands and fields, and therefore no privacy concerns.

- (c) *The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage*

The proposed covered porch will be minimally visible from Macomb Street and, therefore, will not visually intrude upon the character, scale and pattern of houses on that street. The Historic Preservation Review Board approved the concept design, finding no impact on the character of the house or the historic district and the Commission on Fine Arts also had no objection. The Staff Report states in relevant part:

The rear porch is compatible in size, placement and design. It is set back slightly on the west side and in line with the existing addition on the east. Because of the proximity of the adjacent houses and the location of an existing chimney, the addition will be largely obscured from view from the street and would not impact the character of the house or historic district. This rear covered porch is consistent with other HPRB approvals.

See Historic Preservation Review Board Staff Report and Recommendation for the January 26, 2011 meeting, attached to the Application. See also, the Commission of Fine Arts recommendation of no objection, dated January 20, 2012, attached as Exhibit 4 to this Pre-hearing Statement.

Finally, granting relief in this case would be in accordance with Board precedent with respect to a similarly situated property on this street. Prior to enactment of §223, the Board of Zoning Adjustment granted variance relief from the side yard requirements for a property at 2948 Macomb Street, N.W., whose rear yard also abuts the ravine. See BZA Order on Application No. 12281 of Elizabeth M. Goodman and Leo Goodman (January 19, 1977), attached as Exhibit 5 to this Pre-hearing Statement.

- (c) *In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.*

Attached to the Application are photographs showing the relationship of the proposed covered porch to adjacent buildings and a view from the public way. In addition, drawings and elevations which show the relationship of the proposed addition to adjacent buildings and views from the public way are attached to the Application and this Pre-hearing Statement.

Section 223.3 *The lot occupancy of all new and existing structures on the lot shall not exceed fifty percent (50%) in the R-1 and R-2 Districts...*

Upon construction of the covered porch addition, the total increase in lot occupancy will be 558.6 square feet, resulting in a lot occupancy of 44.6 %, well under the maximum permitted lot occupancy of 50% allowed for the R-1-Districts under §223.

III. Great Weight to be Afforded to the ANC

The Advisory Neighborhood Commission 3C (ANC 3C) considered this application at its May 21, 2012, publicly noticed regular meeting and unanimously voted no objection to the

application. *See* Letter from Victor Silveira to Lloyd Jordan, Chair, dated May 21, 2012, attached to this Pre-hearing Statement as Exhibit 6.

IV. Witnesses

Jeff Alpher and Haley Kaufman, Applicants

Tom Raithel, Architect

V. Conclusion

Section 223 was enacted by the Zoning Commission to enable homeowners to make modest improvements of this type to their homes. For the reasons stated above, this application meets the requirements for special exception approval by the Board, pursuant to §223 and §3104.1, and the Applicants respectfully request that the Board grant the special exception relief.

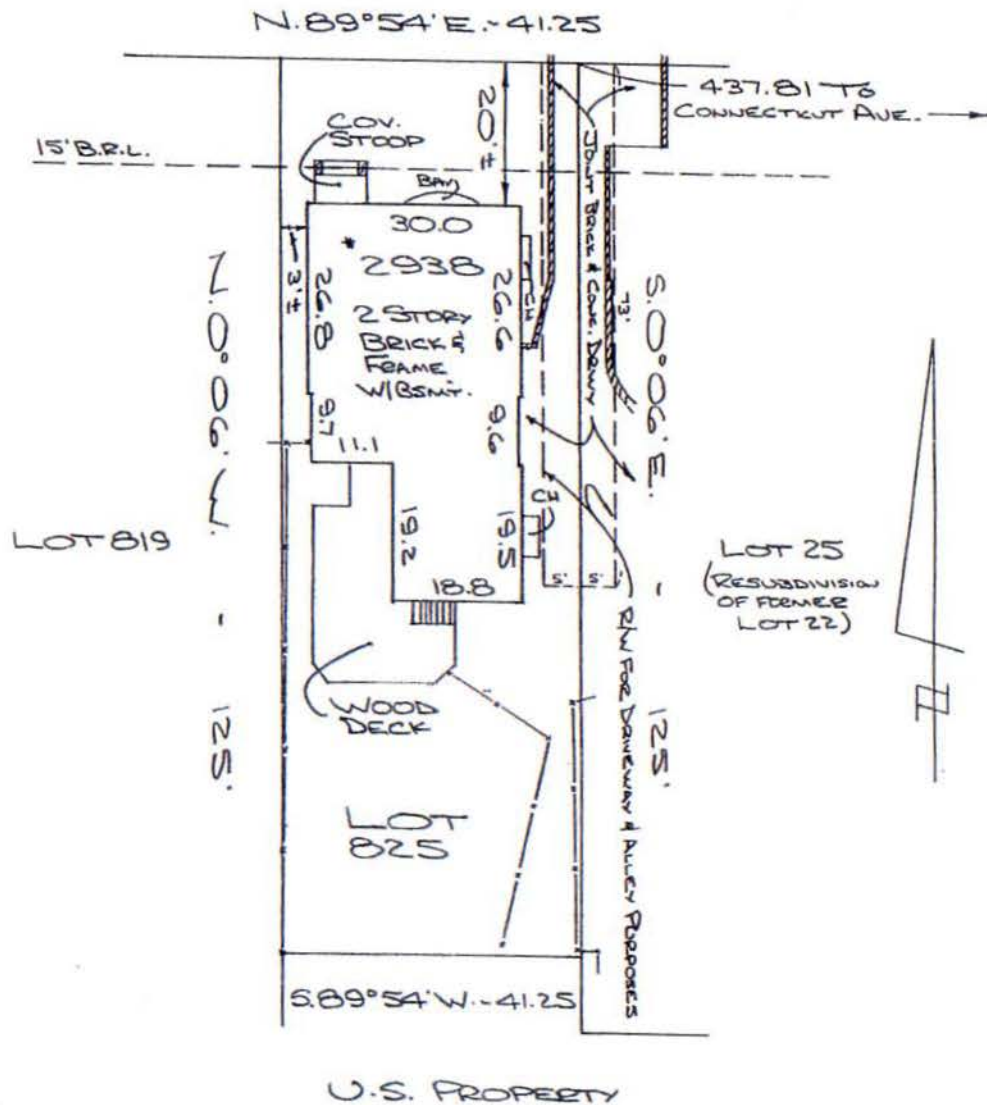
Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ruthanne G. Miller", is written over a horizontal line.

Ruthanne G. Miller, Esq.
Sullivan & Barros, LLP

NOTE: LOT 825 DIMENSIONALLY THE SAME
AS FORMER LOT 21 (LIBER 66 FOLIO 71)

MACOMB STREET, N.W.



Notes: This property does not lie within the limits of a flood hazard area as delineated on the maps of the National Flood Insurance Program, unless otherwise shown. This survey prepared for title purposes only.

10762 Rhode Island Avenue
Beltsville, MD 20705

CAPITOL SURVEYS

Phone 301-931-1350
Fax 301-931-1352

NOTE: This drawing is not intended to establish property lines. It cannot be used for construction or design purposes. All information shown hereon taken from the land records of the county or city in which the property is located and field work performed.

© As of current date.

HOUSE LOCATION
LOT 825 SQUARE 2084
RECORDED A&T PAGE 1444

DISTRICT OF COLUMBIA

Recorded in Liber — Folio — Scale 1" = 20'

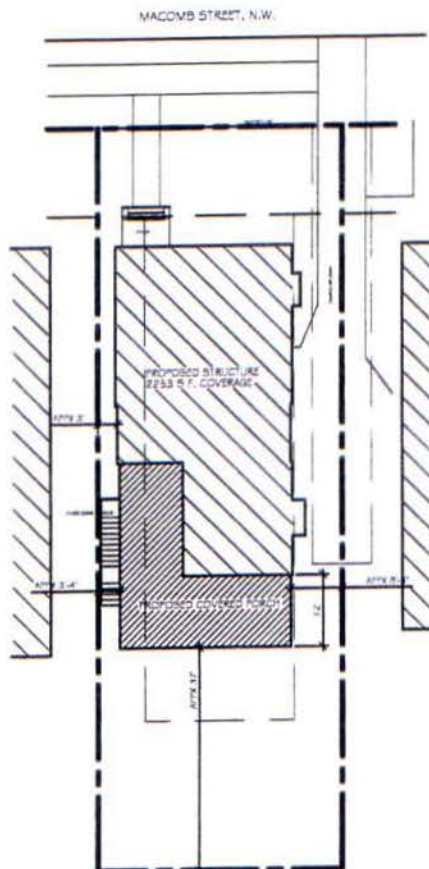
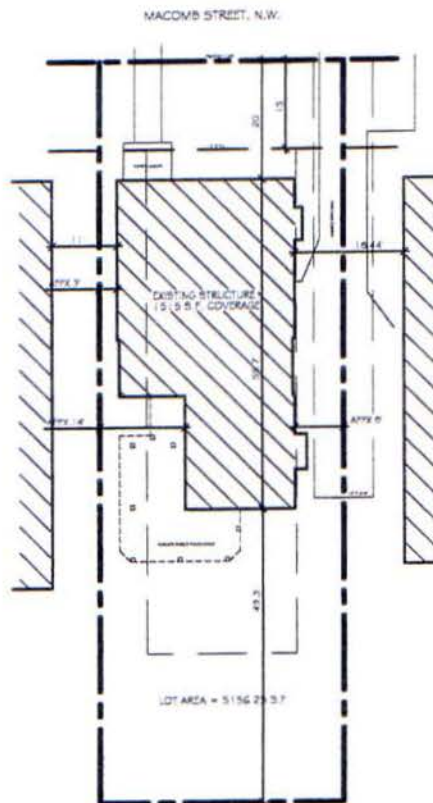
DATE: DEC. 3, 1998

CASE: 98-2803 FILE: 60605

I hereby certify that the position of all the existing visible improvements on the above described property have been established by accepted field practices, and that unless otherwise shown there are no visible encroachments.

EDWARD L. LOPEZ, J.
MD Property Line Surveyor
No. 522

EXHIBIT



PROJECT OWNER:

Jeff Alpher & Haley Kaufman
2938 Macomb Street, N.W.
Washington, D.C. 20008

PROJECT DESCRIPTION

THE PROJECT IS A PROPOSED COVERED FRONT PORCH AND A SCREEN PORCH ADDITION TO THE SIDE AND REAR OF AN EXISTING THREE STORY PLUS BASEMENT HOUSE. THE PROJECT SEEKS RELIEF FROM THE SIDE YARD RESTRICTION.

BUILDING CODE DATA

ZONE	R-1-B
LOT	623
SQUARE	2084
USE	R-3
LOT AREA	5156.29 S.F.
EXISTING COVERAGE	1228.5 S.F. (23.8%)
PROPOSED COVERAGE	27335 S.F. (52.9%)
ALLOWABLE COVERAGE	405 (2062.5 S.F.)
ALLOWABLE HEIGHT	40 FEET OR 5 STORES
PROPOSED HEIGHT	3 STORES WITH BASEMENT (EXISTING)
FRONT RESTRICTION	15 S.F.L.
SIDE YARD RESTRICTION	8 FEET
REAR YARD RESTRICTION	25 FEET
CONSTRUCTION TYPE	II-B
NON-SPRINKLERED	
APPLICABLE CODES	
	2006 INTERNATIONAL RESIDENTIAL CODE (DCMR 12A)
	2006 INTERNATIONAL PLUMBING CODE (DCMR 12P)
	2006 INTERNATIONAL MECHANICAL CODE (DCMR 12E)
	2006 INTERNATIONAL FIRE CODE (DCMR 12F)
	2006 INTERNATIONAL FUEL CODE (DCMR 12G)
	2006 NFPA 900 (DCMR 12C)

July 2, 2012

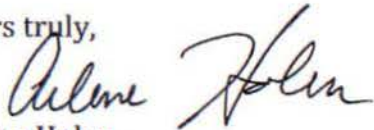
DC Board of Zoning Adjustment

Dear Sirs:

This letter is in support of Jeff Alpher and Haley Kaufman's BZA application #18277, to add a screened and covered porch to the back of their house at 2938 Macomb St., NW. They have shown us the plans.

We have lived at 2928 Macomb Street, very nearby, since 1967. We believe the proposed addition will enhance the Alpher-Kaufman's house and the neighborhood as well. Mosquitos are a continuing summer problem and it is difficult for families to enjoy the outdoors without a protected area.

Yours truly,



Arlene Holen



Sheldon Holen

2928 Macomb St., NW
Washington DC 20008
202-966-7472

EXHIBIT

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June 28, 2012

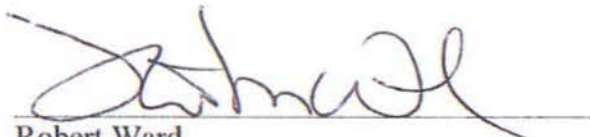
Robert & Jennifer Ward
2930 Macomb St NW
Washington, DC 20008
(202) 362-1981

RE: BZA Application # 18277
Jeff Alpher & Haley Kaufman
2938 Macomb Str NW

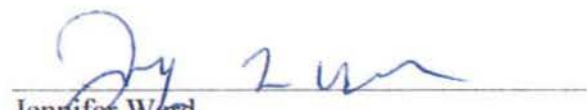
To Whom It May Concern:

We are fully in support of the application to grant permission for a rear porch at 2938 Macomb St NW.

Sincerely,



Robert Ward



Jennifer Ward

2936 Macomb Street, NW
Washington, D. C. 20008
May 3, 2012

Board of Zoning Adjustment
441 4th Street NW
Suite 210-S
Washington DC 20001

To Whom It May Concern:

I am writing to express my support BZA Application No. 18377. I have spoken to the applicants, Haley Kaufman and Jeff Alpher and have I have reviewed the proposed plans for the screened porch addition to the rear of their home at 2938 Macomb Street NW.

I am comfortable that the deck addition will not affect light and air or compromise the privacy of use and enjoyment of my property, nor will it otherwise negatively impact my property. Therefore I urge the Board to approve application 18377 as proposed.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Robin', with a long horizontal flourish extending to the right.

Richard M. Robin

Jane Lang and Paul Sprenger
2942 Macomb Street NW
Washington, DC 20008

May 3, 2012

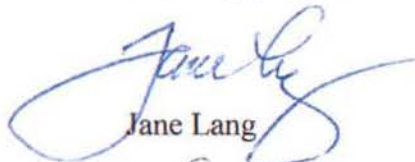
Board of Zoning Adjustment
441 4th Street NW
Suite 210-S
Washington DC 20001

Dear Members of the Board:

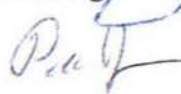
We are writing to express our support of BZA Application No. 18377. We have spoken to the applicants, Haley Kaufman and Jeff Alpher, and we have reviewed the proposed plans for the screened porch addition to the rear of their home at 2938 Macomb Street NW.

We are very pleased with the proposed design and are confident that the deck addition will not adversely affect light and air, or compromise the privacy of use and enjoyment of our neighboring property. Nor will it otherwise negatively impact our property. Therefore, we urge the Board to approve application 18377 as proposed.

Sincerely yours,



Jane Lang



Paul Sprenger

Paul Sprenger

U.S. COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS 17 MAY 1910

401 F STREET NW SUITE 312 WASHINGTON DC 20001-2728 202-504-2200 FAX 202-504-2195 WWW.CFA.GOV

20 January 2012

TO: Mayor's Agent for D.C. Law 2-144, Public Law 808, and Public Law 231, for those applications also subject to D.C. Law 2-144

The accompanying application is returned by the Commission of Fine Arts with recommendation as noted:

SL 12-034 (HPA 12-156)
2938 Macomb Street, NW (Square 2084, Lot 825)
Single-family residence
Additions & replacement windows
Concept

RECOMMENDATION: No objection to the concept design for porch additions and new windows, as shown in materials received and dated 6 January 2012 and supplemental materials received and dated 17 January 2012. Refer to DC Office of Zoning. Refer to DC Historic Preservation Office. Note: This is a concept approval only. When ready, submit the permit drawings and a permit application to DCRA for review by the Commission.



Frederick J. Lindstrom
Assistant Secretary

EXHIBIT

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BEFORE THE BOARD OF ZONING ADJUSTMENT, D.C.

Application No. 12281 of Elizabeth M. Goodman and Leo Goodman, pursuant to Sub-section 8207.11 of the Zoning Regulations, for a variance from the side yard requirements (Sub-section 3305.1 and 7107.22) to permit the construction of a rear addition to a dwelling which is a non-conforming structure in the R-1-B district at the premises 2948 Macomb Street, N.W. (Lot 17, Square 2084).

HEARING DATE: January 19, 1977

DECISION DATE: January 19, 1977

FINDINGS OF FACT:

1. The property is located in a R-1-B district which requires eight (8) foot side yards.
2. The dwelling, built in approximately 1920, is six feet on one side and three and one-half feet on the other side from the property lines.
3. Applicants propose to reconstruct and extend the existing porch and bathroom area six feet to the rear of the dwelling, continuing the existing side dimensions rearward.
4. Requiring compliance with the eight (8) foot side yard requirement would result in increased construction costs and would vary from the lines of the existing dwelling.
5. There is a ravine to the rear of the property.
6. The property owners on either side of the property have formally stated they have no objection to the granting of a variance.

CONCLUSIONS OF LAW AND OPINION

The Board concludes that the requested variance is an area variance requiring a showing of practical difficulty. The Board concludes that the shape of the property does create such a difficulty and that requiring strict compliance with the side yard requirements would operate as a hardship

EXHIBIT

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Application No. 12281
Page No. 2

upon the owners of the property. The Board concludes that the granting of this variance would not have an adverse impact upon the neighborhood. It is therefore ORDERED that the application be GRANTED.

VOTE: 4-0 (Lilla Burt Cummings, Esq., Richard Stanton,
Leonard L. McCants, Esq., and William McIntosh)

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

ATTESTED BY: Arthur B. Hatton
ARTHUR B. HATTON
Executive Secretary

FINAL DATE OF ORDER: 3-21-77

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

	ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS MCLEAN GARDENS • WOODLEY PARK
<i>Single Member District Commissioners</i> 01-Lee Brian Reba * 02-William Kummings * 03-Anne Marie Bairstow 04-Richard Steacy * 05-Leila Afzal * 06-Carl Roller * 07- Victor Silveira 08-Catherine May * 09-Nancy MacWood	3601 Connecticut Avenue, NW Suite L-06 Washington, DC 20008 Website http://www.anc3c.org Email all@anc3c.org

Lloyd Jordan, Chair
The Bureau of Zoning Adjustment
One Judiciary Square
441 4th Street NW, Suite 210S
Washington, DC 20001

Dear Mr. Jordan:

At the publicly noticed regular meeting of Advisory Neighborhood Commission 3C on May 21, 2012, the Commission considered BZA Application #18277 for a special exception to waive side yard and lot occupancy restrictions for a residence at 2938 Macomb Street, NW.

By motion the Commission unanimously voted no objection to this application.

If you have any questions or comments, please don't hesitate to contact me by email at 3c07@anc.dc.gov.

Attested by



Victor Silveira
Chair, on May 21, 2012

EXHIBIT

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