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December 21, 2012

VIA EMAIL

D.C. Board of Zoning Adjustment
441 4th Street NW, Suite 210S
Washington, DC 20001

Re: BZA Case No. 18398 – Applicant's Draft Order and Revised Plans

Dear Members of the Board:

At the conclusion of the public hearing for the above-referenced case, the Board asked that the Applicant continue discussions with the neighbors and opposing parties. After hearing more detail about the concerns of the neighbor to the east (2128 Bancroft Pl.), the Applicant's architect communicated, via email on December 12, 2012, to her a proposal for additional revisions to the breezeway design in order to better accommodate her concerns. The suggested revision includes reducing the height of the breezeway's brick wall adjacent to her property line by two feet. In addition, the three foot high railing along breezeway roof would be eliminated. By reducing the height of the brick wall and eliminating the railing above, the overall mass would be reduced in height by approximately five feet. These revisions are purely based upon concerns that the neighbor expressed at the hearing and are a result of the Marks' desire to accommodate her concerns in any way possible. Over the past year the Applicant has drastically reduced the proposed project, from the initial conservatory design to the reduced breezeway proposal with a green roof above the garage, to further appease the community's desire to preserve green space. Despite the opposition they have experienced over this past year, Ken and Ellen Marks truly desire to be compatible and contributing neighbors.

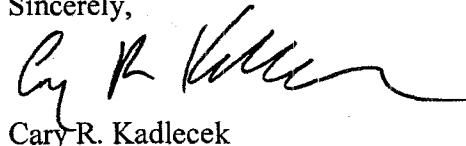
The Applicant's proposed draft order is enclosed. This case is now ready for approval. The Office of Planning supports the project, and the Applicant proposed further revisions to accommodate the most-affected neighbor. We request that the Board approve this application.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18398

EXHIBIT NO. 61

Sincerely,



Cary R. Kadlec

Enclosures
DCDOCS\7065063.1

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment

Application No. 18398 of Kenneth and Ellen Marks, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of an addition to an existing single-family detached dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements under § 403 and the rear yard requirements under § 404 in the R-3 District at premises 2130 Bancroft Place, NW. (Square 2532, Lot 802).

HEARING DATE: November 7, 2012

DECISION DATE: January 8, 2013

DECISION AND ORDER

Kenneth and Ellen Marks, the property owners (the "Applicant") of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on April 24, 2012 for variance relief from the requirements of Sections 403, 404, and 2001.3; however, the Applicant subsequently modified its application on October 24, 2012, to eliminate the request for variance relief and request only a special exception under § 223 to construct an addition to their residence. The addition will not conform to the lot occupancy requirements of § 403 and the rear yard requirements of § 404. Following a public hearing on November 7, 2012, the Board voted to approve the special exception.

Notice of Public Hearing

Pursuant to 11 DCMR 3113.13, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, the Advisory neighborhood Commission (ANC) 2D, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit ____).

ANC Report

In its report dated October 29, 2012, ANC 2D indicated that it did not have sufficient time to review the revised plans submitted by the Applicant on October 24, 2012. It asked the Board to keep the record open to allow the ANC to review the plans prior to its public meeting scheduled for December 17, 2012. Accordingly, the ANC did not take action on this application.

Request for Party Status

ANC 2D was automatically a party to this proceeding. The Board received a request for party status from the Sheridan-Kalorama Historical Association (SKHA); Norman Pozez and Melinda Bieber; Deborah Carstens; Marie Drissel and Curtis Bristol; and the Sheridan-Kalorama Neighborhood Council (Exhibits 24, 25, 26, 27, and 29). The Board consolidated these requests into a single party

and granted party status. The Board received a request for party status from Preserve Our Green Space ("POGS") (Exhibit 43). The Board found that the interests espoused by Preserve Our Green Space were adequately represented by other parties in the matter and denied the request for party status.

Other Persons in Support/Opposition POGS testified in opposition to the application (Exhibit 49). They argued that the proposed addition was not in keeping with the Zoning Regulations and had adverse impacts on the community by way of diminished views and sunlight for neighboring property owners. (Id.)

OP Report

OP reviewed the special exception application and prepared a written report recommending approval of the application (Exhibit 44). The OP report concluded that the proposed additions would not unduly affect light and air to neighboring properties. OP further concluded that the enjoyment of the neighboring property owners would not be compromised. (Id.)

FINDINGS OF FACT

Procedural History

1. The Applicant's initial application was a request for a variance from the lot occupancy requirements, the rear yard requirements, and the nonconforming structure requirements for a project that would have a lot occupancy of 88%. (Exhibit 4).
2. Following feedback from neighbors and the ANC, the Applicant amended its application and revised its plans to reduce the proposed lot occupancy to 70% so that the application could be considered as a special exception under Section 223 of the Zoning Regulations. (Exhibit 45)

The Site and Surrounding Area

3. The Property is located in the Kalorama Heights neighborhood of Ward 2. It is rectangular in shape and contains approximately 2,375 square feet of land area. The Property is mid-block on the south side of Bancroft Place between Phelps Place and Connecticut Avenue. It is bounded by substantially larger three-story row dwellings to the east and west, by Bancroft Place to the north, and by a 15-foot wide public alley to the south. (Exhibit 45)
4. The Property is improved with a two-story single family row dwelling constructed circa 1907. The house was originally constructed as a one-story ballroom addition for the mansion immediately to the east (2128 Bancroft Place). A second story was added in 1926 to provide servant quarters to 2128 Bancroft Place. The building became a separate single family residence in 1960. The Property also includes a separate accessory garage at the rear with parking for two cars. The existing garage has a second story roof deck with perimeter plantings and privacy fence. The existing roof deck at the rear accessory structure is accessed via stairs in the exterior courtyard between the main residence and the garage. The garage opens on to the rear alley and abuts the rear property line. The garage and house are separated by an open courtyard containing landscaping and hardscaping. The existing house has a nonconforming lot occupancy of 62%. (Id.)

5. The surrounding area is predominantly residential in character, with most of the buildings having been constructed prior to 1950. Most of the buildings along both sides of the block are single family three and four-story row dwellings, and most of these are nonconforming as to lot occupancy and/or rear yard. The buildings to the south across the alley are primarily row dwellings and multifamily apartment buildings. (Id.)

The Proposed Project

6. The proposed project will add to and reconfigure the existing structures in order to make the house more functional and more suitable for modern living standards. The addition will involve three main components. First, a third story will be added to the existing house. This additional story will provide an informal family room.
7. Second, a second story will be added to the garage structure to include a new master bedroom and bathroom. A green roof with extensive plantings will be on the roof of this master suite. This green roof is intended to increase the amount of greenery on the property as requested by the immediate neighbors and to enhance the sustainability of the house. It is not intended for active recreational use as the only access to the green roof will be from a second story bedroom of the main house.
8. Finally, an enclosed breezeway running along the eastern edge of the Property and within the courtyard will connect the ground floor of the existing house to the new master suite. The space below the breezeway (approximately six feet, eleven inches above the existing courtyard level) will remain open for increased landscaping and the preservation of existing brick pavers. The top of the breezeway will be a flat roof that will enable service access to the green roof above the master suite. The breezeway's height will be a minimum functional amount and it will include a flat roof designed to minimize any obstruction of light and air. The breezeway's location along the Property's eastern side will be such that it is cast in shadow for the majority of the day as to not block existing light into the exterior courtyard. The breezeway will be approximately six feet wide and will leave most of the courtyard open as it is today. Even though the garage and master suite will be separated from the rest of the house by all but the narrow enclosed breezeway, the entire house and garage will be considered one building for zoning purposes.
9. Following the addition, the house will have a height of approximately 31.5 feet. The new house will have a nonconforming residential lot occupancy of 70% (maximum permitted is 60%). There will continue to be no setback from the rear property line.

The Requested Relief

10. The Applicant requests a special exception under Section 223 of the Zoning Regulations (11 DCMR § 223) for an addition to a single family dwelling that does not comply with the lot occupancy (Section 403), rear yard (Section 404), and nonconforming structure (Section 2001.3) requirements. (Exhibit 45)

The Impact of the Addition

11. The expanded house will be compatible with the neighboring houses, and the Applicant designed the project to be compatible with the surrounding neighborhood in a way that adjacent

light and air will not be unduly affected. The proposed lot occupancy will not create any measurable impact because, as a practical matter, the lot occupancy will not be significantly different than the status quo. The proposed lot occupancy is an increase of only 8% from the status quo, and all of the increase is dedicated to the breezeway. Because the breezeway is so narrow, it will allow the landscaping and most of the width of the courtyard to remain. (Exhibit 45)

12. The addition of the master suite above the garage and the third story above the existing house will not have any impact on light and air to adjacent properties. Compared to the two adjacent houses, the proposed master suite and third story are small in scale. The entirety of the house at 2132 Bancroft (the house to the west) is taller than the proposed master suite and third story addition, so that house will not experience any adverse impacts on its light and air. The house at 2128 Bancroft (the house to the east) is taller than the proposed third-story addition. (Id.)
13. There will be no change to light and air to 2128 Bancroft from the existing shadows of the privacy fence at the garage roof deck as well as the height of the existing landscape at this roof deck. As the Applicant demonstrated, for a majority of the day, this area is already in shadow because of the plantings and height of the existing privacy fence. (Id.)
14. The only element of the proposed addition that will have any impact on light and air to adjacent properties is the breezeway. However, because the breezeway will be along the eastern side of the Property and much shorter and smaller in scale than either of the adjacent houses, the house to the west (2132 Bancroft) will not be affected. The breezeway will add structure along the eastern side of the Property that is taller than the status quo, so it will have a nominal impact on the 2128 Bancroft's second story windows and small outdoor space. However, as the solar studies in Exhibit 45 show, the effect of the breezeway truly will be minimal on that house. Because the outdoor area of 2128 Bancroft is along the western side of that house, light will only be negligibly impacted by the addition of the breezeway. The western side of 2128 Bancroft will not get direct light in the morning when the sun is in the east and the rest of that house obstructs direct sunlight. The breezeway will not impact light when the sun is directly overhead to the south during mid-day because it does obstruct affect any light from that angle. In addition, because 2132 Bancroft (the house to the west) is quite tall, it already blocks most of the afternoon light to 2128 Bancroft. Because it is much shorter than 2132 Bancroft and not separated a far distance from that house, the breezeway will not create a condition that will limit much more of that available light to 2128 Bancroft. In fact, as the solar studies show, the breezeway only obstructs nominally more light than already occurs. Windows along the western side of 2128 Bancroft that are higher than the breezeway will not be impacted in any respect by the breezeway. The open courtyard on the Property and otherwise unobstructed areas of 2128 Bancroft will allow for continued sufficient air to 2128 Bancroft. Therefore, light and air available to 2128 Bancroft will not be unduly affected. (Id.)
15. Properties either to the north across the street or to the south across the alley will not experience any adverse impacts on light and air. The street (60 feet wide) and alley (15 feet wide) provide a sufficient separation distance such that light and air will be unaffected on those properties. (Id.)
16. Privacy and use and enjoyment of neighboring properties will be largely unaffected by the proposed addition. Because it is at the rear of the Property and shorter than the adjacent properties, the proposed master suite above the garage will not affect privacy or use and enjoyment of any neighboring properties. It will not provide any additional sightlines into neighboring properties, and it will not affect any neighbor from using and enjoying his/her property because it will not be overly large or intrusive. (Id.)

17. Similarly, the proposed third story will not affect any neighboring properties. It will not provide any new sightlines onto neighboring properties in a way that will affect privacy. Also, it will not affect the ability for any neighbors to enjoy their property because it will not be overly imposing or visually intrusive. (Id.)
18. As with light and air, only the house to the east (2128 Bancroft) will experience a negligible impact on privacy and use and enjoyment from the addition of the breezeway. The walkway above the enclosed breezeway will allow people to be closer to the western side of 2128 Bancroft; however, because this walkway will be only to access the green roof above the master suite for maintenance, people will rarely use this flat service roof and intrude upon the privacy of 2128 Bancroft. Similarly, the use and enjoyment of the small second floor outdoor area of 2128 Bancroft will be only negligibly impacted by the breezeway. The Applicant has designed the breezeway so that it will be visually pleasing from the east and will have minimal height. In addition, the Applicant has discussed with the owner of 2128 Bancroft placing greenery along the eastern-facing wall of the breezeway to soften its visual impact. Therefore, the privacy and use and enjoyment of any neighboring properties will not be unduly compromised. (Id.)
19. The proposed addition will make the house more consistent with the character, scale, and pattern of houses along the street frontage. Nearly all of the houses in this block of Bancroft Place, on both sides of the street, are three or more stories. Furthermore, the vast majority of houses – if not all – on the same side of Bancroft Place in this block exceed the matter-of-right lot occupancy of 60%, and many of them exceed it by a large amount.
20. With its application, the Applicant submitted photos, elevation plans, sections, and site plans showing the relationship of the addition to adjacent buildings (Exhibit 45).
21. The Board credits and adopts OP's finding that the proposed addition will not significantly decrease the amount of light and air. (Exhibit 44).
22. The Board agrees with the conclusion of the Applicant and the OP that the addition will not cause an undue impact to the privacy of use and enjoyment of neighboring properties.
23. The Board credits and adopts OP's finding that, as viewed from the street, alley, or public way, the proposed addition will not visually intrude upon the character or scale and pattern of homes along the street frontage.
24. The Board acknowledges the arguments made by the parties in opposition and POGS regarding the potential impact that the addition will have on their homes and green space. However, the Board does not find that the potential impacts of the proposed addition rises to the level of requiring the Board to deny this special exception request. The Board finds that the Applicant has satisfied all of the special exception requirements necessary to grant approval of this application.

CONCLUSIONS OF LAW

The Special Exception

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797,799, as amended; D.C. Official Code § 6-641.07(g)(2) (2001), to grant special exceptions as provided in the Zoning Regulations. The applicant is seeking a special exception pursuant to 11

DCMR § 223 and 3104.1 to construct an addition to a one-family dwelling in an R-3 District, where the addition will not comply with the lot occupancy requirements of § 403 or the rear yard requirements under § 404.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are granted.

The general tests. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. As to the first test, the proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood.

Since the second test is nearly identical to the criteria for the special conditions under § 223, it will be discussed in the section below entitled "The 'special conditions' for an addition under § 223.1".

The "special conditions" for an addition under § 223.1. Under Section 223.1 of the Zoning Regulations, the Board may permit an addition to a single family dwelling where it does not comply with applicable area requirements, such as the lot occupancy and rear yard requirements, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

223.2(a) The light and air available to neighboring properties shall not be unduly affected. Light and air to neighboring properties will not be unduly affected. As stated in Findings of Fact Nos. 10-13, the proposed addition will not unduly affect light and air to the adjacent properties. Similarly, the proposed addition will not unduly affect the light and air that is provided to the properties located across the street to the north or across the alley to the south.

223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. As discussed in Findings of Fact Nos. 14-16, the privacy of use and enjoyment of neighboring properties will not be unduly compromised by the proposed addition.

223.2(c). The addition, 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. As noted in Findings of Fact Nos. 14-16, the proposed addition will be visually intrusive.

223.2(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevations and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways. In both written pleadings and at the public hearing, the applicant provided appropriate materials for the Board to understand the relationship between the proposed addition and the surrounding properties.

223.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts. The subject property is in the R-3 District. The proposed

addition will increase the lot occupancy from 62% to 70%. Therefore, this condition will be met.

223.4 The Board may require special treatment in the way of design screening, exterior or interior lighting, building materials or other features for the protection of adjacent and nearby properties. The Board concludes that no special treatment is required in order to screen the proposed addition.

223.5 This section may not be used to permit the introduction or expansion of a nonconforming use. The proposed addition will not introduce or expand a nonconforming use.

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. For the reasons stated in this Decision and Order, the Board finds that because the changes made to the project were in response to comments received from the community, delaying this decision for ANC action is not warranted.

In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive and accords OP the great weight to which it is entitled.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the lot occupancy and rear yard requirements in an R-3 District.

Therefore, for the reasons stated above, the application for a special exception is granted

VOTE: _____

Vote taken on January 8, 2013

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

Each concurring member has approved the issuance of this Decision and Order.

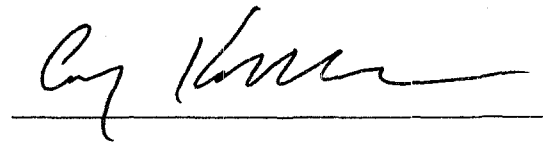
CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2012, copies of the attached letter and enclosure were delivered via U.S. Mail to the following:

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A handwritten signature in black ink, appearing to read "Cary Kadlecek", is written over a horizontal line.

Cary Kadlecek