

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

Tuesday
March 18, 2003

+ + + + +

The Revised Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 2001, pursuant to notice at 9:47 a.m., Geoffrey H. Griffis, Chairperson, presiding:

BOARD MEMBERS PRESENT:

GEOFFREY H. GRIFFIS, Chairperson
ANNE MOHNKERN RENSHAW, Vice Chairperson
DAVID A. ZAIDAIN
CURTIS L. ETHERLY, JR.

ZONING COMMISSIONER PRESENT:

ANTHONY J. HOOD

STAFF PRESENT:

SHERI M. PRUITT, Secretary, BZA
BEVERLY BAILEY, Office of Zoning
JOHN K.S. NYARKU, Office of Zoning
CLIFFORD MOY, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

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P-R-O-C-E-E-D-I-N-G-S

(9:47 a.m.)

CHAIRPERSON GRIFFIS: Let me call to order the 18 March 2003 Public Hearing of the Board of Zoning Adjustments of the District of Columbia. My name is Geoff Griffis. I am Chairperson.

Joining me today is Ms. Anne Renshaw, the Vice Chair, and also Mr. Curtis Etherly. Sitting on my right, representing the National Capitol Planning Commission with us this morning is Mr. Zaidain. Representing the Zoning Commission, Mr. Hannaham will be with us momentarily.

Copies of today's hearing are available to you. They are located at the table where you entered into the hearing room. Please take a look at that. We are going to try and stick to the schedule. We have a busy morning, but hopefully we'll get out in time for a good lunch.

A couple of important things so that everyone is clear. Please, you need to be aware that all public hearings before this Board are being recorded. Therefore, there are several things attendant to that. When coming forward to speak to the Board, you must be in front of a microphone, and that microphone must be on. We'll give you technical

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1 assistance if we run into any problems.

2 Secondly, all people coming forward to
3 speak to the Board need to fill out two witness cards.

4 Those are located at the table where you entered
5 into. They are also located at the table in front of
6 us. Before speaking to the Board, I need you to
7 deliver those two cards to the recorder, who is
8 sitting to my right.

9 The order of procedure for the special
10 exceptions and variances is first, we will have
11 statements and witnesses of the applicant. Second, we
12 will have any government reports attendant to the
13 application. Those include such as Office of Planning
14 or Department of Transportation. Third would be the
15 report from the advisory neighborhood commission.
16 Fourth would be parties or persons in support. Fifth
17 would be parties or persons in opposition. Sixth,
18 finally, we will have closing remarks by the
19 applicant.

20 Cross examination of witnesses is
21 permitted by the applicant or parties. The ANC within
22 which the property is located is automatically a party
23 in these cases.

24 The record in these cases will be closed
25 at the conclusion of each case except for material

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1 specifically requested by this Board, and we will be
2 very specific on what is to be submitted and when it
3 is to be submitted into the Office of Zoning. After
4 that material is received, it goes without saying that
5 the record will be finally closed, and no other
6 information would be accepted.

7 The Sunshine Act requires that public
8 hearings on each case be held in the open and before
9 the public. This Board may, however, consistent with
10 its rules of procedure and the Sunshine Act enter into
11 executive session during or after a case for purposes
12 of reviewing the record or deliberating on the case.

13 The decision of the Board in contested
14 cases must be based exclusively on the record.
15 Therefore, we ask people present today not engage
16 Board members in any type of conversation so that we
17 do not give the appearance of not basing our
18 deliberations specifically on the record.

19 I believe we are prepared at this point to
20 entertain any preliminary matters. Preliminary
21 matters are those which relate to whether a case will
22 or should be heard today, such as requests for a
23 continuance, withdrawal, or whether proper and
24 adequate notice has been provided regarding the case.

25 If you are not prepared to go forward today or if you

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1 believe the Board should not hear a case on this
2 morning's schedule, I would ask that you approach the
3 Board and have a seat at the table as an indication
4 that you have a preliminary matter.

5 I will ask staff if they are aware of any
6 preliminary matters at this time.

7 MS. BAILEY: Mr. Chairman, members of the
8 Board, good morning.

9 CHAIRPERSON GRIFFIS: Good morning.

10 MS. BAILEY: Mr. Chairman, there are no
11 preliminary matters that staff has at this time.

12 CHAIRPERSON GRIFFIS: Good. Thank you
13 very much. Good morning to you, Ms. Bailey, who is
14 with the Office of Zoning, ably staffing us. As well,
15 Mr. Moy and also Mr. Nyarku. Representing the
16 Corporation Counsel is Ms. Monroe.

17 Therefore, let's call the first case in
18 the morning.

19 MS. BAILEY: Application No. 16994 of
20 Richard Van Berkel, pursuant to 11 DCMR 3104.1 for a
21 special exception to construct a one-story rear
22 addition to a one-family dwelling under Section 223.
23 The property is located in the R-5-B District at
24 premises 1530 Swann Street, N.W., Square 191, Lot 76.

25 Please stand to take the oath.

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1 CHAIRPERSON GRIFFIS: Actually, she's
2 going to administer an oath. Just remain standing.
3 You can give her your attention, and she'll direct
4 you.

5 MS. BAILEY: Could you come a little
6 closer, sir? Thank you.

7 Do you solemnly swear or affirm that the
8 testimony you are about to give in this proceeding
9 will be the truth, the whole truth, and nothing but
10 the truth?

11 Thank you. Please have a seat at the
12 table.

13 CHAIRPERSON GRIFFIS: Bring your assistant
14 up. I'm not sure if we had her or him sworn in.

15 VICE CHAIRPERSON RENSHAW: We have to see
16 the assistant here.

17 CHAIRPERSON GRIFFIS: Good. Okay, I think
18 this is going to be fairly quick, but why don't you
19 just review quickly your submission in the case, and
20 you might outline. Then what I'd like to do is just
21 go to Board questions very quickly, and we can
22 probably evidence what we need to know.

23 MR. O'CONNELL: The outline is that we
24 have a property on Swann Street that has a very short
25 lot and relatively narrow, but that's pretty

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1 consistent with the whole block. The owner would like
2 to put a powder room on the first floor. There is no
3 room to do it. There is only really three main rooms,
4 a kitchen, a dining room, and living room.

5 CHAIRPERSON GRIFFIS: Actually, can you
6 just introduce yourself for the record?

7 MR. O'CONNELL: Oh, Brian O'Connell, Brian
8 O'Connell Architects, representative for Richard Van
9 Berkel.

10 CHAIRPERSON GRIFFIS: Excellent.

11 MR. O'CONNELL: So, we're within a 60
12 percent lot occupancy. So, if we were to pursue this
13 just based on that, we would be over, but under the
14 special exception, which the Zoning Board told us
15 would be our best bet to apply for. We're well within
16 that 70 percent.

17 If you look at the, you know, conjoining
18 areas, they have bigger lots, or they're in a less
19 restrictive zone. So, I think, you know, we meet a
20 lot of the burden of proof that we're asked.

21 I think if you look on Section 223, I
22 guess part number three of D, it does not affect the
23 light or the air movement. There's already a 7'6"
24 privacy fence, and this extends slightly above that,
25 but I showed Mr. Jackson that really, from the alley,

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1 you can't see it unless you're up above.

2 We're not going to add lighting or any
3 other kind of architectural embellishment. It's a
4 fairly straightforward brick addition.

5 CHAIRPERSON GRIFFIS: Good. Let me just
6 welcome Mr. Hood, who is representing the Zoning
7 Commission today. We may have other commissioners,
8 because I don't have my schedule in front of me.

9 Now, specifically to this, clearly this is
10 a special exception. This is exactly what Section 223
11 was written for, and that is additions to
12 nonconforming buildings, basically buildings that have
13 existed and because we think that we are so smart in
14 this city, we change the zoning and figure out that
15 all these existing structures are not conforming to
16 our new regulations.

17 MR. O'CONNELL: Right.

18 CHAIRPERSON GRIFFIS: But, it is also a
19 clear and important objective of this city and of the
20 zoning ordinance that we accommodate families and
21 changes within not household, and changes within
22 structures within the city. So, this fits exactly
23 within.

24 To that, the special exception test is
25 different than the variance test. So, in terms of the

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1 uniqueness of the property and such, that is not one
2 of the tests that we need to necessarily hear. You
3 have pointed to 223, and that I think really outlines
4 the more substantive issues of the special exception
5 with this case.

6 Why don't we take direct questions from
7 the Board relating to that for clarification? I want
8 to make one first clarification. You talked about the
9 lot occupancy, and clearly under 70 percent, you still
10 are allowable without going to a variance under 223.

11 However, in your calculations, it seems
12 that you removed the areaway from your lot occupancy
13 calculations, and actually, according to the
14 regulations, that would be counted towards lot
15 occupancy.

16 MR. O'CONNELL: Okay.

17 CHAIRPERSON GRIFFIS: So, as I look at
18 this, and I can be corrected if others see
19 differently, your lot occupancy with this addition is
20 actually not changing.

21 MR. O'CONNELL: Okay. That's correct, and
22 if the areaway counts against it, that is correct.

23 MR. ZAIDAIN: What portion are you saying
24 is not part of the lot occupancy?

25 CHAIRPERSON GRIFFIS: They have a

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1 nonconforming side yard is what it is, or a court, and
2 based on the dimension of that, it goes to the lot
3 occupancy calculation.

4 MR. ZAIDAIN: Okay, well, that was kind of
5 -- you're talking about where the addition is going?

6 CHAIRPERSON GRIFFIS: That's correct.

7 MR. ZAIDAIN: Okay, so that -- okay,
8 because that was going to be a question whether or not
9 that is considered a court. I don't have my
10 regulations in front of me. That's not a court?

11 CHAIRPERSON GRIFFIS: It is a court.

12 MR. ZAIDAIN: It is a court, and that's
13 included in the lot occupancy calculations?

14 CHAIRPERSON GRIFFIS: Yes.

15 MR. ZAIDAIN: Okay. So, in essence, yes,
16 they're not changing lot occupancy at all then if
17 that's the case.

18 CHAIRPERSON GRIFFIS: Right, but it is an
19 addition to an existing nonconforming building.

20 MR. ZAIDAIN: Right. So, that would put
21 him in the 223.

22 CHAIRPERSON GRIFFIS: It's more of a
23 technical clarification of the statistics of what
24 we're looking at.

25 MR. ZAIDAIN: Right, okay, because courts

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1 count towards lot occupancy, okay.

2 CHAIRPERSON GRIFFIS: Well, no, based on
3 the dimension of this one it does.

4 MR. ZAIDAIN: Okay.

5 MR. O'CONNELL: Well, the issue is that
6 it's 4-1/2 feet wide instead of 5 feet wide.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. O'CONNELL: If it's 5 feet wide, then
9 it's a court. It meets the definition of court in
10 terms of width, but it's less than 5 feet wide. Then
11 you count it in the recalculation of the building.

12 MR. ZAIDAIN: Okay. Another question I
13 had is part of this addition is for a proposed pantry?
14 Just out of curiosity?

15 MR. O'CONNELL: Yes.

16 MR. ZAIDAIN: When you say pantry, are you
17 talking about a food storage pantry?

18 MR. O'CONNELL: That's correct.

19 MR. ZAIDAIN: Oh, okay.

20 CHAIRPERSON GRIFFIS: Mr. Zaidain, let me
21 bring total clarification under 199, which is the
22 definition of building area. The term building area
23 shall include all side yards and open courts less than
24 five feet in width and all courts less than six feet
25 in width. Building area goes directly to the

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1 calculation on the lot occupancy.

2 MR. ZAIDAIN: On the lot occupancy. So,
3 just to reiterate, if it was greater than five feet in
4 length, then it would be excluded from that
5 calculation?

6 CHAIRPERSON GRIFFIS: That's correct.

7 MR. ZAIDAIN: Okay, thank you, and that's
8 under 199?

9 CHAIRPERSON GRIFFIS: Yes.

10 COMMISSIONER HOOD: Mr. Chairman?

11 CHAIRPERSON GRIFFIS: Yes.

12 COMMISSIONER HOOD: Mr. O'Connell, you
13 have no side yard as it is now, right?

14 MR. O'CONNELL: That's correct. It's a
15 party wall building.

16 COMMISSIONER HOOD: Okay. Is it your
17 testimony that you are not having any adverse impacts
18 or causing any problems with your adjoining neighbors'
19 light and air, is that your testimony?

20 MR. O'CONNELL: That's correct, yes.

21 COMMISSIONER HOOD: Okay, thank you.

22 CHAIRPERSON GRIFFIS: Very well, Mr. Hood.

23 Going specifically to that, it's in the written
24 submissions that you have that there's fenestration on
25 the adjacent property There's no windows facing this

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1 that you are coming close to our in fact, sorry to
2 cover?

3 MR. O'CONNELL: No, and I think by law you
4 can actually put windows on --

5 CHAIRPERSON GRIFFIS: On a property line.

6 MR. O'CONNELL: On those adjacent property
7 lines, correct.

8 CHAIRPERSON GRIFFIS: Okay. Other
9 questions? Clarifications needed?

10 Good. Let's go to the Office of Planning.
11 What I want to do is run through the rest of the
12 record, and then we'll give you an opportunity for any
13 closing remarks that you might have. Let's welcome
14 the Office of Planning and ask if they can present
15 their report or perhaps their move to stand on the
16 record.

17 MR. JACKSON: Mr. Chairman, my name is
18 Arthur Jackson with the Office of Planning. I would
19 happily agree to stand on the record. For the record,
20 we indicated in our staff report that the Applicant
21 meets the standards under 223.2, and it's consistent
22 with the comprehensive plan, and therefore, we
23 recommend approval.

24 CHAIRPERSON GRIFFIS: Excellent. Thank
25 you. Does the Board have questions of the Office of

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1 Planning?

2 VICE CHAIRPERSON RENSHAW: Perhaps the
3 Office of Planning would like to comment on page 5,
4 agency comments? Review by other agencies?

5 MR. JACKSON: Yes. We sent this
6 application to a number of district agencies for their
7 review and comment. The only comments that we
8 received back were from the D.C. Fire, in the EMS
9 department. They had no objection to the site, and
10 usually their comments will be with regard to either
11 building code issues or with new construction blocking
12 emergency ingress, egress, or access to facilities.

13 That is to say, if they had a utility --in
14 a commercial building, you have the Y connection that
15 they usually attach their pipes through. They'd be
16 concerned about whether or not they do addition cover
17 the Y connection, but none of those issues are
18 relevant to this probably because of the existing
19 conditions where the walls along the property lines
20 are solid, and then would block no windows, and the
21 fact that -- and I assume the fact that the addition
22 will not extend beyond the existing rear yard.

23 So, in essence, there were no concerns
24 expressed by the fire department and no other comments
25 from additional other agencies.

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1 CHAIRPERSON GRIFFIS: Any other questions
2 from the Board for the Office of Planning?

3 (No response.)

4 Mr. O'Connell, did you see the Office of
5 Planning's memo? Do you have it?

6 MR. O'CONNELL: I don't know. I don't
7 think I got a memo directly from the Office of
8 Planning.

9 CHAIRPERSON GRIFFIS: Okay. Well, we can
10 provide you with a copy if you would like. Do you
11 have any questions of the Office of Planning or their
12 report?

13 MR. O'CONNELL: I do not, no.

14 CHAIRPERSON GRIFFIS: Okay. Let's move on
15 then. It has just been discussed the fire emergency
16 and medical department, which had no objection.

17 ANC-2-B, they also had action on that.
18 Ms. Renshaw, do you have that?

19 VICE CHAIRPERSON RENSHAW: We have a
20 letter from ANC-2-B signed by Vince McCullen, the
21 chairperson, dated February 27, 2003. The ANC had a
22 meeting on February 12, 2003 and nine of nine
23 commissioners in attendance, a quorum, at a duly
24 called public meeting. They voted to support the
25 special exception to construct a one-story rear

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1 addition to a one-family dwelling in an R-5-B district
2 at 1530 Swann Street.

3 CHAIRPERSON GRIFFIS: Thank you, Ms.
4 Renshaw. We don't have any notes or submissions in
5 support or in opposition on this. Clearly we had no
6 party status requests. I think we are, unless there
7 are other questions of the Applicant at this time --
8 actually, there is one. Where are you in the HPRB
9 process?

10 MR. O'CONNELL: HPRB.

11 CHAIRPERSON GRIFFIS: I'm sorry, Historic
12 Preservation Review Board. Has this been reviewed?

13 MR. O'CONNELL: We have not submitted yet.
14 We're waiting for this, and then we're going to go
15 forward.

16 MR. JACKSON: I would note, Mr. Chair, the
17 I did run this by the HPRB staff because of its
18 location and proximity, and the fact that it's
19 screened, they had no concerns.

20 CHAIRPERSON GRIFFIS: So you anticipate
21 this going on the consent calendar. We like to take,
22 you know, the stronger hand than Historic, so go with
23 our decision to them.

24 MR. O'CONNELL: Okay.

25 CHAIRPERSON GRIFFIS: Actually, we

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1 probably ought to remove that from the record, right?

2 Get myself in trouble.

3 MR. O'CONNELL: I've run a lot of these by
4 them and really --

5 CHAIRPERSON GRIFFIS: Yes. No, I don't
6 see any, and obviously in terms of the Historic
7 Preservation Review, they're going to look at design
8 location. The location of this is clearly unseen by
9 the front elevation.

10 MR. O'CONNELL: That's right.

11 CHAIRPERSON GRIFFIS: Also, I've noted in
12 the record that this is a brick construction, which
13 will match the existing structure. What do I know
14 about historic preservation, but I wouldn't anticipate
15 any problem in that. And, we have full jurisdiction
16 to take action on our own with that, but I just wanted
17 to make note because we did have a note of that in the
18 record.

19 Therefore, are there other clarification
20 questions from the Board for the Applicant at this
21 time or the Applicant's representative?

22 Not seeing any, I'll give you an
23 opportunity for any closing remarks you might have.

24 MR. O'CONNELL: I would just like to say
25 thank you very much. I appreciate all your time and

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1 consideration.

2 CHAIRPERSON GRIFFIS: Thank you very much.

3 I would move for approval of Application 16994
4 pursuant to a special exception for the construction
5 of this one-story rear addition to this single family
6 dwelling. This does come under Section 223 at
7 premises 1530 Swann Street, N.W.

8 I think the facts of the case and the
9 submissions clearly make the test for special
10 exception are within the parameters of 223 and what it
11 was specifically drafted for, and I would ask for a
12 second.

13 COMMISSIONER HOOD: Second.

14 CHAIRPERSON GRIFFIS: Thank you, Mr. Hood.

15 Is there any discussion by the Board?

16 (No response.)

17 Then I'd ask for all those in favor of the
18 motion signify by saying aye.

19 (Chorus of ayes.)

20 And opposed?

21 (No response.)

22 MS. BAILEY: The vote is recorded as 5-0-0
23 to approve the application, motion made by Mr.
24 Griffis, seconded by Mr. Hood. Mrs. Renshaw, Mr.
25 Zaidain, and Mr. Etherly are in support. Is this a

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1 summary order, Mr. Chairman?

2 CHAIRPERSON GRIFFIS: I don't see any
3 difficulty with having a summary on this. Mr.
4 O'Connell, do you have any difficulty in taking a
5 summary order? We could do a full blown order.
6 You'll see that sometime after the summer. It will
7 outline facts of the --

8 MR. O'CONNELL: A summary is fine with
9 us.

10 CHAIRPERSON GRIFFIS: I should watch what
11 I say, shouldn't I? A summary order, of course, is
12 appropriate in a case that has no opposition. It will
13 just outline the specific rulings of the Board.

14 MR. O'CONNELL: That is fine with us, yes.

15 CHAIRPERSON GRIFFIS: Very well. I think
16 a summary order is appropriate in this case.

17 MS. BAILEY: Thank you.

18 CHAIRPERSON GRIFFIS: In which case, I
19 don't think there's anything else. Mr. O'Connell,
20 have a great day.

21 MR. O'CONNELL: Great.

22 CHAIRPERSON GRIFFIS: Go enjoy the
23 afternoon or morning with your son.

24 MR. O'CONNELL: Thank you.

25 CHAIRPERSON GRIFFIS: Let us call the next

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