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April 27, 2015

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

Re: Application No. 18886 – 2709 36th Street N.W.
Supplemental Submission of the Applicant

Chairperson Lloyd Jordan and Honorable Members of the Board:

On behalf of the Applicant, Niloufar Hoorazor, enclosed please find the Supplemental Submission for the above-referenced application. At the conclusion of the hearing on March 31, 2015, the Board requested the additional documents provided herein. A decision date was scheduled for May 5, 2015.

In light of comments from the Board at the hearing and the Board's specific request for a shadow study, the Applicant has hired Arcadia Design Services to perform a shadow study and a landscape plan. Furthermore, the Applicant has conducted extensive outreach to her neighbors, and worked with an arborist to address some of their concerns. In addition to the evidence that was presented before the Board on March 31, 2015, the following submission demonstrates that the Applicant's addition does not have a substantially adverse affect on the use and enjoyment of any neighboring property.

A. The addition does not unduly impact the light and air available to neighboring properties

At the hearing, the Board expressed concern regarding the addition's overall impact on light and air available to neighboring properties, specifically the neighbor to the north, 2711 36th Street N.W, owned by Ms. Gail McKee. As a result, the Board requested that the parties conduct shadow studies. The shadow study performed by Arcadia Design Services demonstrates that the preexisting structure on the Applicant's property cast a shadow on Ms. McKee's property. More importantly, it is clear that the addition only minimally increases the shadow cast to the north. See, Exhibit A, Shadow Study. The change to the shadow cast to the north is *de minimus* and certainly does not unduly impact the light and air available to Ms. McKee's property.

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The shadow study also reveals the impact of a matter-of-right structure would cast more shadow on Ms. McKee's property than the proposed. When evaluating whether an addition has a substantial impact on a neighboring property, the D.C. Court of Appeals has noted and approved of the Board's use of comparing a matter-of-right project to the proposed project. See, *Draude v. DC Board of Zoning Adjustment*, 527 A.2d 1242, 1253 (DC 1987). In *Draude*, the Court found that the comparison of a proposed project to a matter-of-right project was a reasonable standard when seeking to determine whether an addition to a property was "objectionable" pursuant to 11 DCMR §210.2. See, *Id.* It is obvious that the matter-of-right structure the Applicant could have built would have a far greater impact on the light and air available to the neighboring properties than the existing addition.

Lastly, it is important to note that the addition is constructed of light colored materials, an important factor the Board has previously considered when determining an addition's impact on a neighboring property's access to light. The Court, commenting on the Board's findings of fact in *Draude II*, noted the "BZA found that the condominium units facing the Addition do not fail to benefit from a reasonable level of direct and reflected light". See, *Draude v. D.C. Board of Zoning Adjustment*, 582 A.2d 949,960 (D.C. 1990) (quoting BZA finding of fact paragraph 45) (internal quotations omitted). Considered together, it is apparent that the proposed relief does not substantially or unduly affect any of the neighboring properties' access to light.

B. The addition does not unduly compromise privacy of use of neighboring properties

The addition does not unduly comprise the privacy of use and enjoyment of neighboring properties. As testified to at the hearing, the addition is at least 68 feet away from the homes across the alley and over 8 feet away from Ms. McKee's property. Despite the distance, the Applicant worked with Arcadia Designs to develop a landscaping plan for the property to address the concerns raised by the Applicant's neighbors across the alley in the rear. See Exhibit B, Landscaping Plan. Additionally, the Applicant worked with an arborist to select trees that will act as a buffer between the Applicant's rear yard and the properties across the alley. The Applicant also met with Ms. Gail McKee at the property and discussed her privacy concerns. Pursuant to their discussions, the Applicant volunteered to plant a mature tree along the side yard that will create a buffer between the existing and new windows on the north side of the Applicant's property and Ms. Gail McKee's property. A mature tree on the side yard also addresses the screening concerns Commissioner Hood raised upon viewing exhibit 51C, which showed a picture of the Applicant's property from Ms. McKee's rear yard.

The addition does not have any impact on the privacy to the property to the south, Mr. Cunningham's property, due to a 13'6" concrete wall that runs along his property. As the Office of Planning noted in their report, "the property to the south has a high wall topped with vegetation and therefore preserving its privacy."

C. The Applicant has conducted extensive community outreach

In addition to the outreach the Applicant conducted prior to the hearing, the Applicant has engaged in significant targeted outreach post-hearing. The Applicant reached out to Ms. McKee, and Ms. Malia Brink, a community representative from the Massachusetts Avenue Heights Citizens Association. Ms. McKee and Ms. Brink both conducted a site visit at the Applicant's property and along the alley which resulted in the Applicant agreeing to purchase and plant mature trees at the rear and side of the Property, as noted above.

D. The addition does not have a substantially adverse affect on the use or enjoyment of a neighboring property.

All development has some impact on neighboring properties but 11 DCMR §223 requires that the impact to neighboring properties be substantial. As attested to at the hearing and as demonstrated from the exhibits submitted with this supplemental submission, the Applicant's addition does not have a substantially adverse affect on neighboring properties. Furthermore, the addition does not unduly affect the amount of light available to neighboring properties or unduly compromise the privacy of use of neighboring property owners. Moreover, it is clear from the exhibits submitted with this submission, the matter-of-right structure would have a greater impact on the neighboring properties than the existing addition.

E. Addition is in Harmony with the General Purpose and Intent of the Zoning Regulations

The addition has not changed the residential use of the dwelling and is in harmony with the existing residential neighborhood. As noted by the Office of Planning at the hearing and in their report, in which they recommended approval of the Applicant's request for special exception relief, the addition does "not intrude on the character scale and pattern of the house along 36th Street and the neighborhood."

In response to the Board's questions and request, the Applicant has included with this Supplemental Submission the following documents and will be prepared to present additional witness testimony if necessary:

- Exhibit A.1:** Shadow Study May 30-9:30 AM
- Exhibit A.2:** Shadow Study May 30-12:30 PM
- Exhibit A.3:** Shadow Study May 30-3:30 PM
- Exhibit A.4:** Shadow Study September 30-9:30 AM
- Exhibit A.5:** Shadow Study September 30-12:30 PM
- Exhibit A.6:** Shadow Study September 30-3:30 PM
- Exhibit B:** Landscaping Plan

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP


By: Meredith H Moldenhauer

Enclosures:

Cc: Advisory Neighborhood Commission 3C
c/o Carl Roller, Chair (via email)
Single Member District 3C08 Representative, Catherine May (via email)
Massachusetts Avenue Heights Citizens Association
c/o Malia Brink, Zoning Representative (via email)
Maxine Roberts-Brown, Office of Planning (via email)
Cliff Moy, Board of Zoning Adjustment (via email)







