GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

FEB 23 2000

IN RE: 4512 28th Street, N.W. )
Square 2251, Lot 29 ) BZA Appeal No. 16533
)
Appeal of )
)
George and Mary Clark )
Stuart Sloame and Ellen Seeherman )
James D. and Emily Baker )

FEB 22 P 4:56

**ADDITIONAL EXHIBITS OF APPELLANTS**
**NOT INCLUDED IN ORIGINAL FILING JANUARY 19, 2000**

BZA Case No. 16533 Exhibit No. 27

George R. Clark, D.C. Bar #179747
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
(202) 414-9215
(202) 414-9299
Attorney for Appellants

February 22, 2000

BZA Case No. 16533 Exhibit No. 27

Board of Zoning Adjustment
District of Columbia
CASE NO.16533
EXHIBIT NO.27A1
DCLIB-0204299.01-GRCLARK
February 21, 2000 6:01 PM

**ADDITIONAL EXHIBITS OF APPELLANTS**
**NOT INCLUDED IN ORIGINAL FILING JANUARY 19, 2000**

24. Photograph of two workmen in front of 4512 (new)[1]

25. Photograph of steeply sloping berm (new)

26. Photograph of 4512 shadow on 4525 (not used)[2]

27. Photograph showing 4525 from 4512 (not used)

28. Photograph of 4512 with Sloame house at left

29. Photograph showing 28th Street from 4512 "second" floor (not used)

30. Photograph showing house to north of 4512 (not used)

31. Photograph showing houses across the street from 4512 (not used)

32. Photograph of front of house with garage (two workmen digging out new steps)

33. Photographs showing front of house with garage

34. Photograph showing balcony (not used)

35. Photograph showing fireplace extension at Sloame side of 4512 (new)

36. Photograph showing side yard (side away from Sloame) (new)

37. Photograph showing side yard at Sloame side (new)

38. Photograph of bent 2x4s supporting house (new)

39. Photograph showing new joists, subfloor and breaks in the old joists (shot from old foundation in rear towards front)

40. Photograph showing new joists, missing old subfloor (shot from garage side)

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[1] "New" means that copies of this exhibit were not distributed at the February 2, 2000 hearing.

[2] "Not used" means that copies of this exhibit were distributed at the February 2, 2000 hearing but were not shown to the BZA.

41. Photograph of garage with exposed beam

41A. January 28, 2000 fax from mayor's office re Wesley Heights issues (was called Exhibit 41)

42. Photograph of garage with exposed beam and missing brick work

42A. Undated memorandum concerning 4417 Garfield Street NW (was called Exhibit 42)

43. Photograph of replaced beam in basement

44. February 23, 1998 memorandum concerning Service of Zoning Commission Order No. 840

45. July 25, 1997 memorandum from Director, Office of Planning concerning Additions to Dwellings and Flats, Post-Hearing Submission

46. May 9, 1997 memorandum from Director, Zoning Commission regarding Notice of Rescheduled Public Hearing in Zoning Commission Case No. 97-2

47. April 30, 1997 letter from Vice Chairman, District of Columbia Building Industry Association concerning Zoning Commission Case No. 97-2

48. April 21, 1997 memorandum from Director, Office of Planning regarding Hearing Report, Zoning Commission Case No. 97-2 (Board of Zoning Adjustment Process for Additions to Single-Family Dwellings)

Exhibit 24



EXHIBIT
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Exhibit 25

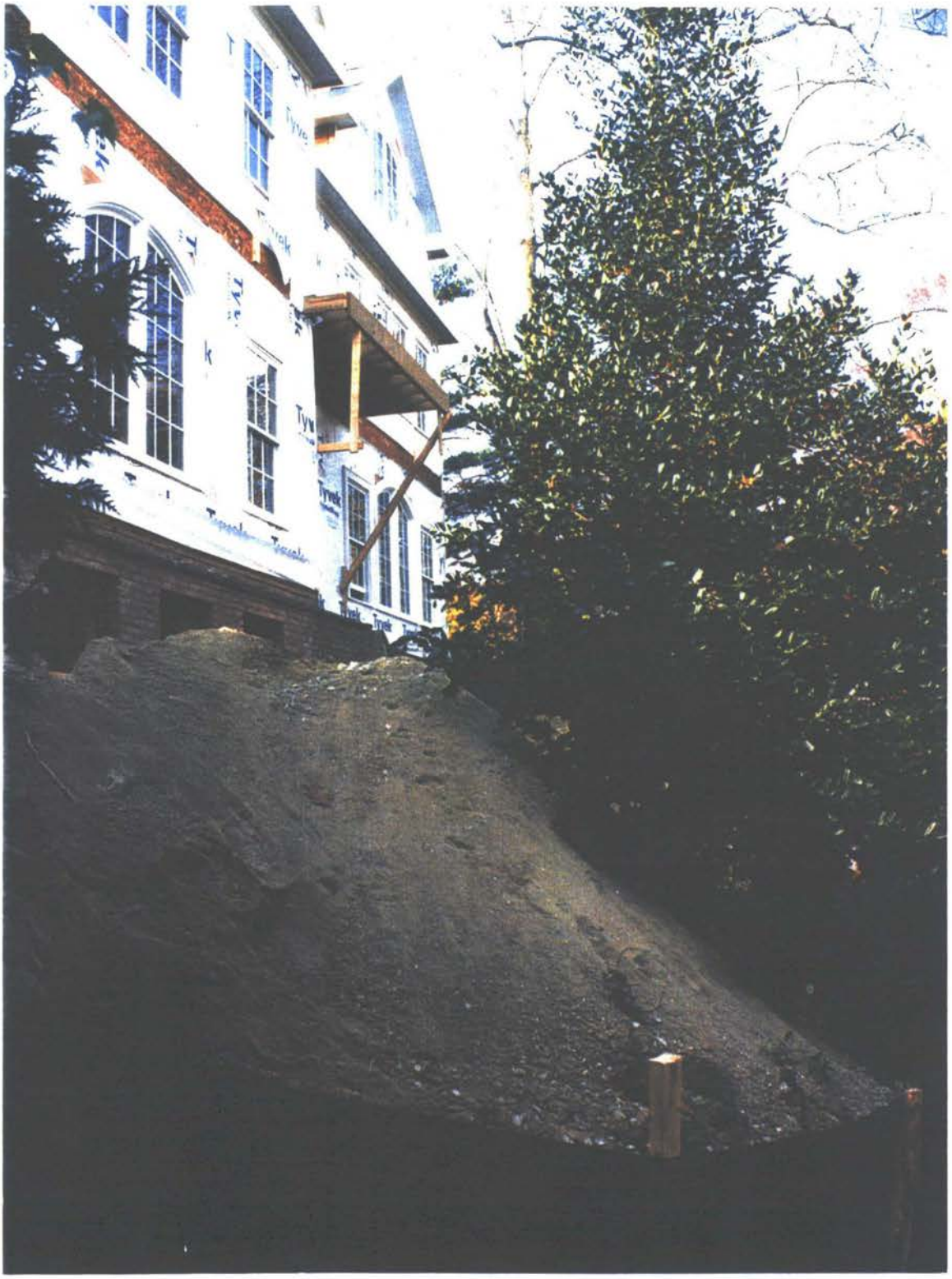


EXHIBIT
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Exhibit 26



EXHIBIT
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Exhibit 27



EXHIBIT
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Exhibit 28




EXHIBIT
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Exhibit 29



EXHIBIT
APP
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Exhibit 30



EXHIBIT
APP
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Exhibit 31

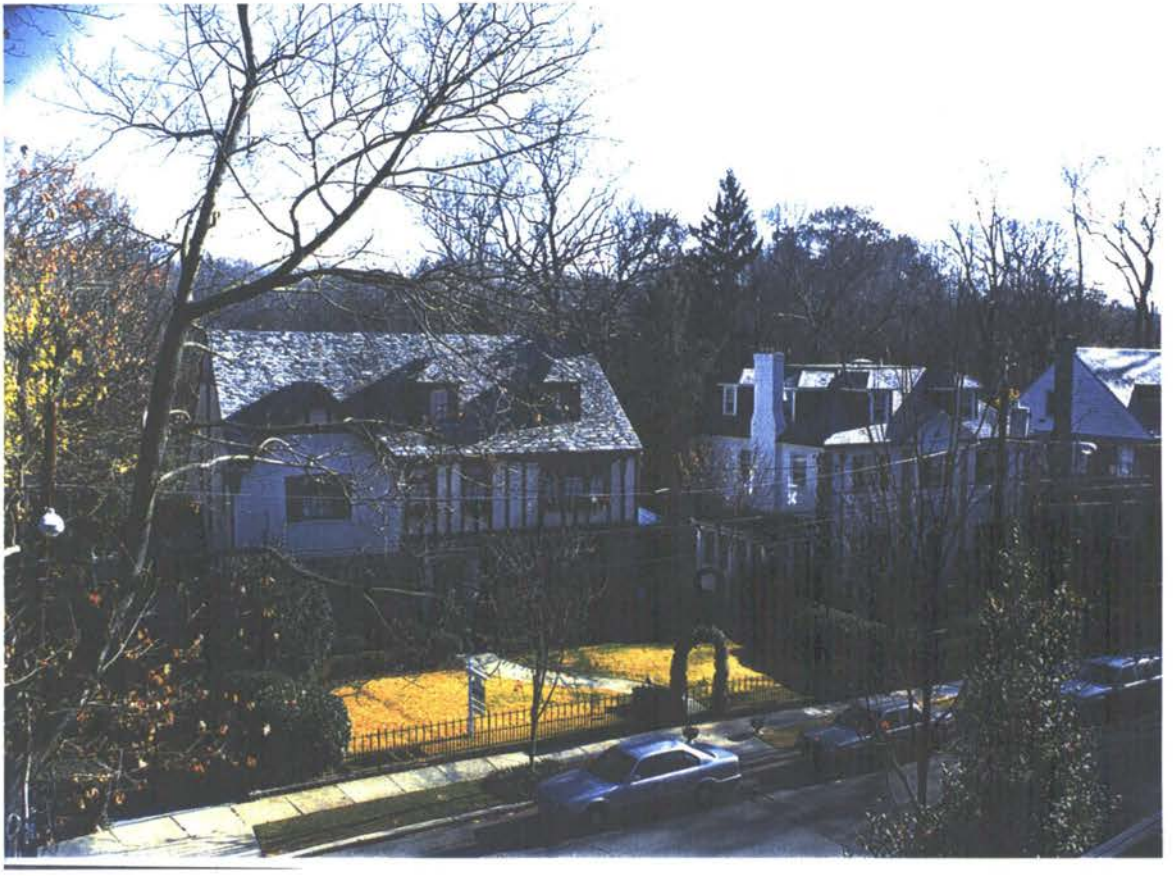


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Exhibit 32

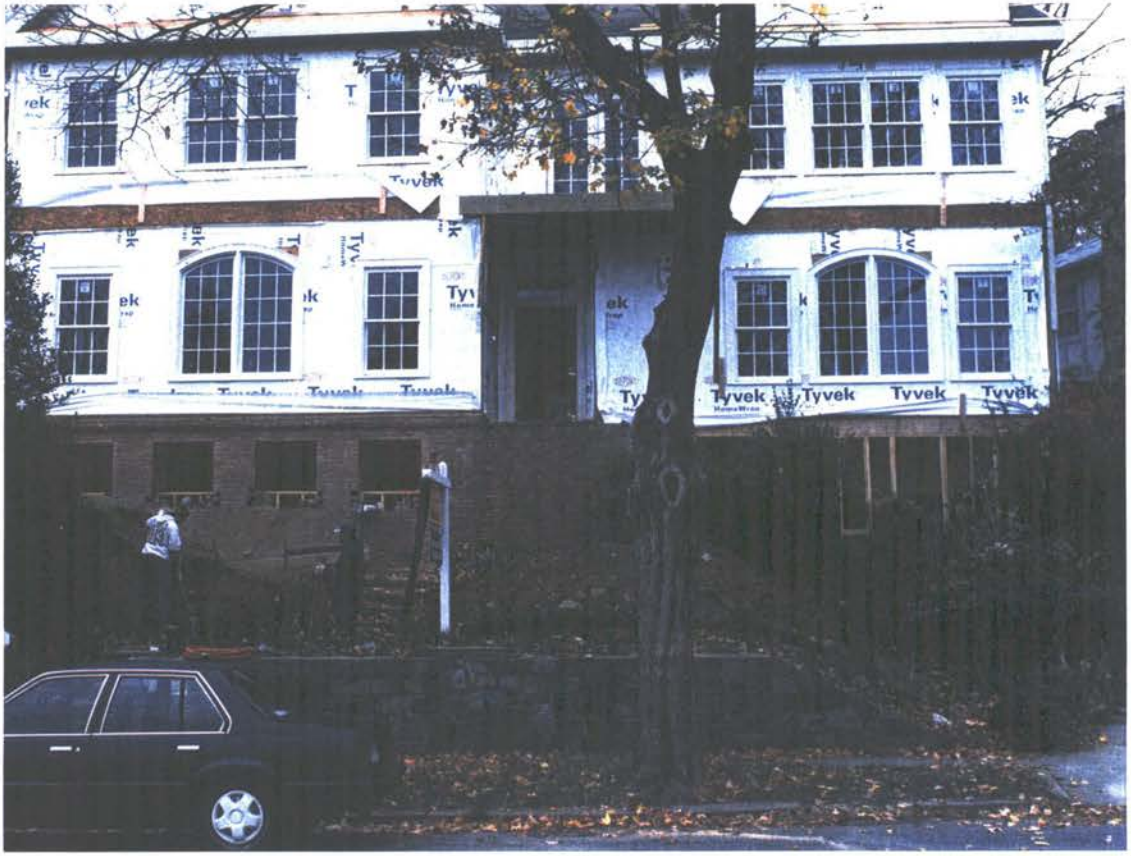



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Exhibit 33

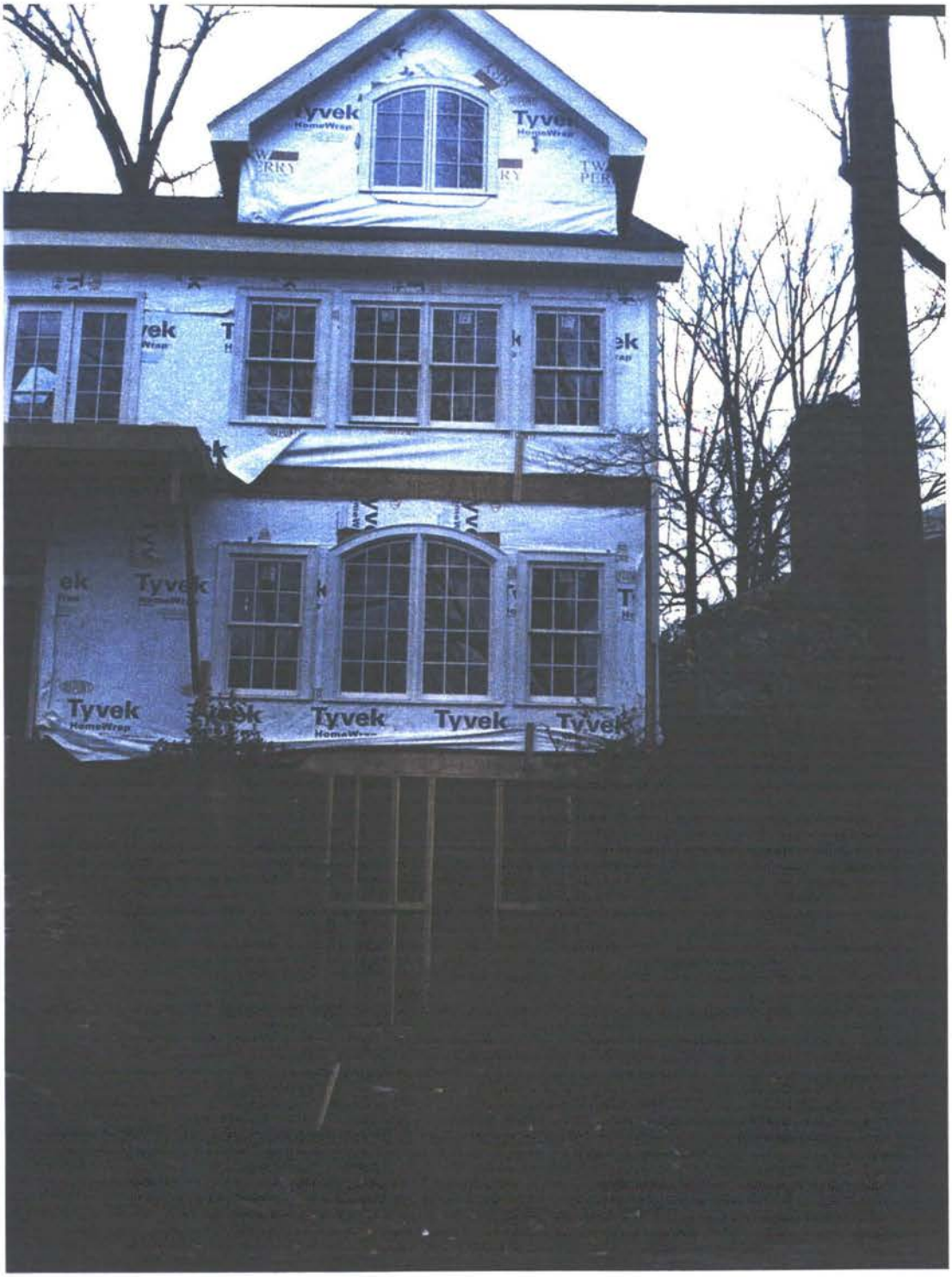



EXHIBIT
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Exhibit 34




EXHIBIT
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Exhibit 35




EXHIBIT
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Exhibit 36




EXHIBIT
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Exhibit 37




EXHIBIT
APP
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Exhibit 38

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Exhibit 39

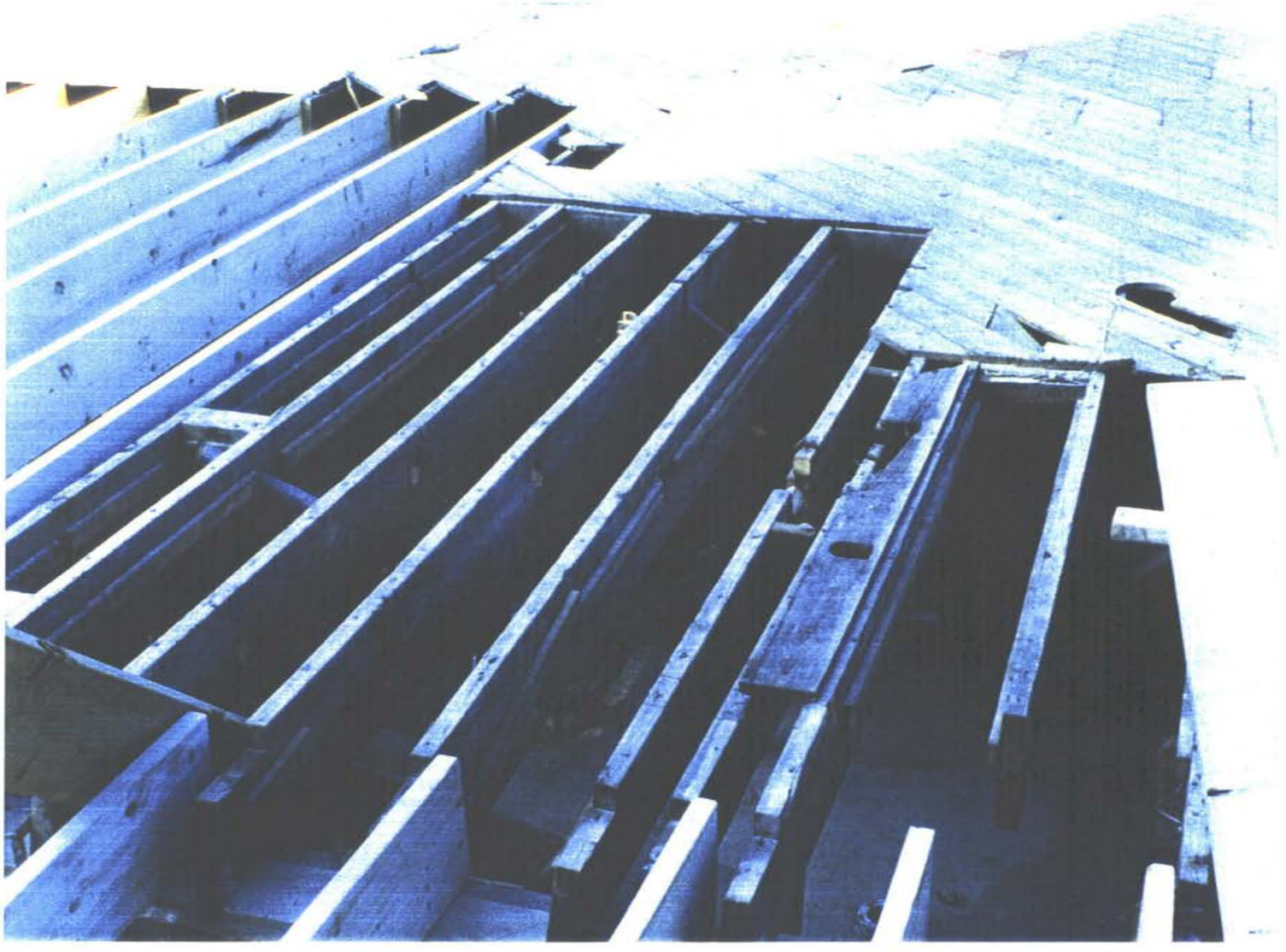


EXHIBIT
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Exhibit 40

EXHIBIT
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Exhibit 41




EXHIBIT
APP
41

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EXECUTIVE
OFFICE OF THE MAYOR

One Judiciary Square - Suite 1100
441 Fourth Street, N.W.
Washington, D.C. 20001
Phone: (202) 727-6815
Fax: (202) 727-0675

# Fax

To: ELEANOR Rogers Long From: ERIC K. FOSTER, EXTERNAL AFFAIRS
Fax #: 202.363.4130 Date: 1.28.00
Phone: Pages: 6
Re: Time:
☐ Urgent ☑ For Review ☐ Please Comment ☑ Please Reply ☐ Please Recycle
Comments:

TO: Eleanor
Tanya
Patrick
Jaun
Bev
FROM:

To: George Watson
pls. pass on to B. Townsend

EXHIBIT
APP
41 A

**Ms. Carol Heindl Issue**
**6232 Loughboro Rd., NW**

This is a case of neighbors allowing Ms. Heidl, a local homeless woman receiving assistance from the community and Sibley Hospital, that goes back about 15 years. Neighbors allege she resides in the rear yard of Mr. & Mrs. Simpiech, at 5232 Loughboro Rd., NW. According to one of the complaining neighbors, MPD had informed him that Ms. Heindl has the permission from another neighbor in the same block to stay in their property also. The neighbors invoke alleged zoning violations, inter alia that a 8' by 8' open sided tent is a structure subject to zoning regulations, and that Ms. Heindl's constant presence and belongings in the back yard constitute a second family dwelling.

The ZA made the determination that no zoning violations exist and a letter was sent to Patrick Shaughness, ANC member (see attached).

Not withstanding, and realizing a human tragedy was unfolding, the ZA attempted to contact other DC agencies (Health and Human Services) for assistance. Unfortunately, what has complicated the matter is the fact that Ms. Heidl refuses to accept assistance from the City in the form of mental health and/or Social Services. On December 15, 1999, the ZA met w/ Mrs. Simpiech, the property owners and appealed to her sensibility not to continue to allow and encourage Ms. Heidel to return to the property. Mrs. Simpiech stated she would do something about it, i.e., petition her neighbors to fund housing for Ms. Heidl.

**4417 Garfield Street, NW**

Alleged Zoning violations as to height, rear yard setback, floor-to-area ratio (FAR) and bathroom in garage. This project is in the Wesley Heights Overlay District (WHOD).

In response to a letter from Mr. William Timmons, the ZA inspected the site and determined that possible violations existed. Because the project was under construction, the ZA requested, by memo of 11/12/99 that a stop work order be issued. A stop work order was issued by building inspection on 11/17/99.

The builder and his attorney met with the ZA to review the approved plans and it was determined that the plans conformed to the requirements for the WHOD, in height and setback. There were doubts, however, as to the FAR, that could only be resolved with

the data from a surveyor's wall check. So the stop work order was left on, pending provision of the additional information.

The wall check was reviewed and it was determined that the as-built construction does not comply with the approved plat. The inspector visited the site today and has issued a second stop work order.

**3020 43rd St., NW**
**Multiple Building permits for 2 Car Garage**

A permit was issued for a 2-car garage, based on information submitted by the applicant, Mr. Sessions. Subsequently, Zoning staff learned that its initial review and approval of the plans had been based on misinformation submitted by the applicant. The Zoning Administration took action and the owner was informed that the non-conformance needed to be abated. New plans have been re-submitted to DCRA for review. The ZA reviewed them based on the findings of the original filing and found them to be non-compliant.

A BZA hearing will be required to ultimately resolve this issue. It is anticipated that the applicant will request BZA to schedule a hearing on this matter by early March 2000. Staff continues to follow the case.

**Poolhouse case**
**4634 Garfield Street, NW**

This case developed in the early nineties. A poolhouse was built by Mr. R. Davidson, at the corner of Garfield Street and Foxhall Road, whose property adjoins Mr. Ty Barre's property, on Foxhall Road. Because of opposition from Mr. Barre, the project was very closely monitored by the Zoning Administrator at the time (Joseph Bottner).

Mr. Barre appealed the size, use and location of the proposed new accessory structure to the Board of Zoning Adjustment (BZA) that issued an order (Case # 15453; decided 6/23/91) giving some direction to the Zoning Administrator on how to mitigate some of the impact of the poolhouse on neighboring property. Mr. Davidson appealed the BZA decision to the Court of Appeals (Case No. 91-AA-847) that ruled, on 12/15/92, that the BZA order was not arbitrary and capricious and reaffirmed the BZA decision.

The Zoning Administrator finally approved a modified project and a building permit was issued. The poolhouse was built, inspected and approved. Mr. Barre appealed to the Board of Zoning Adjustment (BZA) again (Case # 16020; heard 2/8/95; decided 4/5/95; final date of the order 12/21/98) and the board ruled to reverse the Zoning Administrator's approval, based mostly on the size of the poolhouse that was deemed

larger than "poolhouses constructed as customarily incidental uses to single-family dwellings."

Since the date of the order, Mr. Davidson applied for (4/5/99) and obtained (5/5/99) a building permit to modify the structure. The changes will have the net effect of reducing the bulk of the structure and bringing it in compliance with matter-of-right development zoning requirements, thereby removing the aspects that were addressed by the last BZA order. The permit changed the use of the structure to an accessory garage, which is a matter-of-right accessory use in the zoning district R-1-A where it is located.

Mr. Barre's attorney, Richard Nettler, Esq., has requested that the permit be revoked on a technicality and the Administrator refused to do so because the alleged discrepancies of the application are not materially important to the approval of the permit. Mr. Nettler invoked other arguments based on zoning requirements (size and encroachment on required yard) that were deemed inapplicable by the Administrator.

This ten-year old issue is in the process of being resolved. Mr. Davidson's steps since the BZA order became effective, . When construction is completed, it will conclude the resolution of this old case.

**2708 44th Street, NW**

This project is in the Wesley Heights Overlay District (WHOD). Neighbors brought to BI.RA's attention allegations that the construction at this address violated some zoning requirements. The renovation/addition project in question was performed under two building permits issued to Mr. Lipnick , of Lipnick Construction Company.

The Zoning regulations, for an R-1-B zone, limit improvements to a maximum of three (3) stories and forty feet (40 ft.) of height, measured from finished grade at the middle of the front wall, to the ceiling of the top story. On the other hand, the Wesley Heights Overlay District, limits the gross floor area of all structures on the lot to two thousand square feet (2,000 sq. ft.) plus forty percent (40%) of the area of the lot, with some exclusions.

The original building permit, issued on 12/18/97, which allowed construction of a new single family structure at the subject premises, permitted a three-story structure. The attic was an unfinished space, entirely devoted to housing the roof trusses. The revised plans submitted to the zoning reviewer did not include complete elevations which would have enabled the technician to make the appropriate determination as to number of stories and height to topmost ceiling. Instead, the zoning reviewer approved the revised permit based on incomplete information, which was issued on 8/26/98, to render the attic space occupiable by the addition of dormers and of a finished floor level.

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The lot is 10,883.76 square feet. Therefore, the maximum gross floor area permissible is 6,353.2 sq. ft. The original gross floor area approved was 5,743.76 square feet. The revision to the attic space, increased the total gross floor area to 6,705.76 sq. ft., thereby exceeding the maximum allowable gross floor area by 352.56 square feet.

The non-conformance resulted from the expansion of the scope of work, done under the revision Building Permit number B418044, issued 8/26/98. As a result, the owner was notified, on June 18, 1999, that he would need to obtain relief from the Board of Zoning Adjustment for two items, one that requires a variance and one that will need a special exception. The owner, Mr. Lipnick, had the option of appealing to the Board of Zoning Adjustment, to obtain relief for the two items, or to appeal the determination of the Zoning Administrator.

The owner has not appealed to BZA to abate the non-conforming items. The Zoning Administrator is preparing a referral of this case to the Office of Compliance for further enforcement action.

**4900 Indian Lane, NW**
**New Accessory Private Garage**

Mr. Garfoorian obtained a permit and is building a private garage at 4900 Indian Lane, NW. Mr. Edward Potter, his next door neighbor, has raised several concerns about the size and location of this garage. There is an access driveway 8-foot-wide easement along the common property line, 4 ft on each side, to gain access to the garages on both properties.

This project has been before the District Court because of alleged encroachment into this easement and alleged violations of the zoning regulations. The BLRA Administrator, Armando Lourenco, was summoned to testified on this case as a witness and testified that the issued permit and a preliminary inspection of the site revealed no zoning violations. This civil matter was resolved in Court.

Mr. Potter initiated another legal action against Mr. Garfoorian, currently ongoing. Two DCRA/BLRA inspectors were deposed on this case.

Mr. Potter wrote a letter to the BLRA Administrator arguing that the garage, now erected and close to completion, was in violation of several zoning provisions. Essentially, Mr. Potter alleged the garage is too large (951 SF in area), too high (21 ft high), attached to the main residence and encroaching on the side yard. Mr Potter also mentioned the possible encroachment of retaining walls into the required side yard.

The Zoning Administrator, Michael Johnson, and Armando Lourenco inspected the property on December 27, 1999, to measure the actual structure, now that the walls are framed and the roof is in place. The garage was found to be within the size allowed

by the regulations (870 square feet for allowable 900 SF; 14'-3" high for allowable 15 ft). Mr. Potter had measured the foundation walls and the front wall of the garage is recessed 2'-2" from the foundation wall corners. Mr. Potter was also using the wrong reference point to measure the height of the garage. The inspection also confirmed that the garage is a detached building and is located entirely in the rear yard where there are no encroachment requirements for an accessory private garage.

When implementing the Zoning Regulations, retaining walls are not considered to be structures covered by setback requirements or encroachment restrictions of any kind. It would be inappropriate for the Zoning Regulations to restrict the ability to locate earth stabilization structures as may be dictated by topography or geological conditions. The District has never interpreted retaining walls in that manner and the same neighborhood is full of cases of retaining walls built within required side and rear yards.

No zoning violations were observed during this inspection that focused on all the issues raised by Mr. Potter.

Exhibit 42




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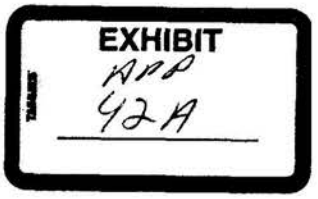
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## ***4417 GARFIELD STREET, N.W.***

Many letters from ANC 3-D, Wesley Heights Historical Society, and individual residents have been written to various DC leaders and zoning officials starting in July 1999.

Questions were raised about:

- Building height appears to be in violation of the code that restricts vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof. While it is true that in districts where the height is limited to 40 feet this calculation *may be* measured from the finished grade level at the middle of the front of the building to the ceiling of the top story. However, this is permissive, requiring special approval by authorities. The provision for a waiver of the norm clearly is meant to give flexibility to the government when construction is on a hill or steep rise and it would be unrealistic to measure from the curb. This is not the case at 4417 Garfield Street because it is a level lot.
- Subject property has a cellar with planned living space. Title 14, Section 404.1, states that any room with more than 50% of any exterior wall from floor to ceiling below ground level shall not be used as a habitable room. This provision is the logical reason a cellar is not counted as a story in a house. If it is determined that subject cellar is habitable then it should be counted as a story, thereby making the structure 4 floors which violates the regulation for number of stories. A developer should not be allowed to have it both ways.
- The Wesley Heights Overlay District provides that no *structure*, including accessory buildings, shall occupy an area in excess of 30% of the lot. The definition of a structure is anything requiring permanent location in the ground or anything attached to something having a permanent location in the ground. Therefore, the footprints of the house and garage, as well as the patio, court, driveway, and walkways are *structures* and in total exceed the 30% rule. A permit was issued based on the application that 29% of the lot would be building, 25% paved area, and 46% greenery. The most casual observer can see that 46% of this lot does not remain in greenery.
- The Wesley Heights Overlay District allows the first 600 square feet of a garage not to be counted in the floor area ratio. The modest garage at the rear of the old Garfield street house has been demolished and a larger garage built with a section devoted to a bathroom/changing room. Therefore, if this is permitted to be



more than a garage at least the habitable section should be counted in the gross floor area of the new house.

- There is a question if the side and rear setbacks are in compliance with the code. For side yards in Wesley Heights 8 feet is required between any portion of a building or other *structure* and the adjacent side lot line. Again, "structure" as explained above should include driveways. Section 405.9 states that side yards shall be provided on lots in residence districts, and a yard is defined as open to the sky and shall not be occupied by any building or *structure*. There also is a question if the rear setback conforms to the minimum required depth.

Repeated attempts by concerned organizations and citizens to meet with Zoning Office professional inspectors to review this Garfield Street construction have been unsuccessful. Efforts to have the government's field calculations explained have been ignored.

On November 12th the Zoning Administrator notified the community that this project appeared to exceed the gross floor area limitations and that he requested the Construction Inspection Branch to issue a temporary stoop-work order. However, after two days stoppage the construction commenced again. We have no further information explaining why the Zoning Office now believes the building is in compliance.

## ***2708 44TH STREET, N.W.***

Dozens of letters from ANC 3-D, Wesley Heights Historical Society, Spring Valley-Wesley Heights Citizens Association, and individuals were written to various DC leaders and zoning officials as well as the builder as early as May 1998 challenging permits for this construction.

Questions were raised about:

- Structures exceeding the maximum allowed 30% lot occupancy
- Gross floor area violations of the Wesley Heights Overlay
- Building height greater than the 40 foot limit
- House has more than 3 stories contrary to zoning restriction
- Rear and side setbacks may not conform to regulation
- 72% required "greenery" in permit application not honored

Another troubling issue was discovered and reported to the authorities. An effort to purchase copies of the construction drawings for this house at the Office of Records Management and Central Files Office was unsuccessful because the plans were checked out – and never returned – by Mr. Wayne Bowie. The Records Office staff could not identify Mr. Bowie but stated he was not an employee of that office. They felt it highly irregular that someone could remove the official copy. As it turns out, Mr. Bowie is an employee of the developer, William Lipnick. The question arises why did the builder need the only official copy of his own plans? Why weren't they returned? Why didn't the Zoning Office initiate an investigation?

After months of prodding, in June 1999 the government finally notified the builder of non-conformity based on number of stories, building height, and gross floor area. Unfortunately, issues of lot occupancy, setbacks, and percentage of greenery were not addressed.

Repeated attempts by concerned organizations and citizens to find the status of enforcement have been unsuccessful.

Exhibit 43



EXHIBIT
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Exhibit 44

Government of the District of Columbia
ZONING COMMISSION

# ZONING COMMISSION ORDER NO. 840

**Case No. 97-2/94-6**
**(Text Amendments - Special Exception Provisions for Single-family Dwellings and Administrative Flexibility Provisions)**
**February 23, 1998**

The Zoning Commission for the District of Columbia initiated this case in response to a petition from the Office of Planning based on a longstanding request from the Board of Zoning Adjustment (BZA) to explore whether certain additions to single-family dwellings could be regulated by the special exception process rather than the area variance process. The BZA request was initially recorded in Z.C. Case No. 94-6, which is incorporated in this case. The purpose of the amendments is to provide a legal basis for making reasonable additions to single-family dwellings where the strict tests associated with an area variance are unattainable. In addition, both the Zoning Commission and the BZA questioned whether the Zoning Administrator should be authorized to allow very minor, "de minimus" deviations from the area standards of the zone districts, and determined that the issue was appropriate for this case. Amendments to the Zoning Regulations are authorized pursuant to the Zoning Act {Act of June 20, 1938, 52 Stat. 797, as amended, D.C. Code Ann. Section 5-413 (1981)}.

The petition, filed on January 31, 1997 and February 3, 1997, presented background information about the proposal, and presented the proposed text with comments indicating the intent and justification for the proposal. The overall goal of the proposal is to provide a degree of flexibility regarding additions, while retaining essential controls related to effects on neighboring properties and neighborhood character.

At its public meeting on February 10, 1997, the Zoning Commission determined that the proposed text amendments presented a sound basis for consideration and authorized a public hearing. The public hearing in this case was scheduled for May 1, 1997. The May 1, 1997 hearing session was canceled. The public hearing was rescheduled for and re-advertised for July 10, 1997.

Pursuant to proper notice, the Zoning Commission held a public hearing on the proposed amendments on July 10, 1997. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021. At the close of the public hearing, the Commission left the record of the case open until September 2, 1997 to receive additional public comments.

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At the hearing session, the Commission heard the presentation of the Office of Planning (OP) and the testimony of one witness, Lindsley Williams. In addition to the testimony presented at the public hearing session, the Commission received the testimony of the Chairperson of the Board of Zoning Adjustment, and items of correspondence from Advisory Neighborhood Commissions 3D, 2E, 3C, 3E, 3F, 6B; the District of Columbia Building Industry Association; Lindsley Williams; and Weinstein Associates Architects.

THE REPORT AND TESTIMONY OF THE OFFICE OF PLANNING

By memorandum dated April 21, 1997 and by testimony presented at the public hearing, the Office of Planning recommended the adoption of the advertised text in this case, subject to modifications that may be justified by testimony presented at the public hearing or submissions to the record of the case. The OP noted that on several occasions, the Board of Zoning Adjustment (BZA) had requested that the Commission and the OP explore whether additions to single-family dwellings and flats could be regulated by a special exception process rather than the area variance process. The OP further noted that the reason for the request was that some applicants had presented reasonable plans for additions to their homes to the BZA which were denied because the subject properties did not provide a legal basis for area variance relief. In many cases, neighbors expressed minor or no objections, and the proposed additions were reasonably attractive, functional additions to the homes in question. However, the properties lacked uniqueness or a specific characteristic that would have provided a legal basis for approval of the requested variance relief.

In its report dated April 21, 1997, the OP provided its rationale and comments for each provision of the amendments as initially proposed and advertised. The proposed provisions and a summary of OP's rationale and comments follow:

223.1 **An addition to a single-family dwelling or flat that does not comply with all of the requirements of sections 401, 403, 404, 405 or 406 of this title shall be permitted if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section.**

The Office of Planning noted that the reference to Section 3108 of the Zoning Regulations in Subsection 223.1 establishes that the special exception process would govern applications under proposed Section 223. Additionally, this subsection specifies which sections of the Zoning Regulations would be affected by the proposed special exception process.

223.2 **A matter of right addition is demonstrated to be inadequate or undesirable to achieve a suitable expansion of the dwelling or flat.**

The Office of Planning stated that Subsection 223.2 is intended to require justification for deviating from the area standards of the subject zone districts. Homeowners, architects and builders should look first to a matter-of-right addition and only apply for special exception relief if their case has significant need and merit.

223.3 **The addition shall not adversely impact 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;**

(b) **The privacy of use and enjoyment of neighboring properties is not adversely affected; and**

(c) **The addition, together with the original building, as viewed from the street, is not out of character with the scale and pattern of houses along the subject street frontage.**

The Office of Planning indicated that the specific impact standards in Subsection 223.3 are intended to guide the impact review regarding adjacent properties with a degree of detail, ensure a satisfactory addition or provide for denial of the application when appropriate. The inclusion of specific standards assures the community that the applicant must make a strong case by presenting a plan for an addition that respects neighboring properties and public design character in the immediate vicinity.

223.4 **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. (Fifty-five percent in the former category and 75 percent in the latter category are advertised in the alternative to the main text provisions.)**

The Office of Planning indicated that the proposed standards would allow the lot occupancy to be 10-15 percent higher than matter-of-right standards in the respective zone districts. OP recommended an overall limit on lot occupancy because lot occupancy is a reasonable approximation of a general density in those residential zone districts where no floor area ratio (FAR) is specified. Specifically, in the R-1 and R-2 zone districts, the maximum lot occupancy of 40 percent times the maximum height of three stories is equivalent to a 1.2 FAR. In the R-3 and R-4 zone districts, the maximum lot occupancy of 60 percent, together with the maximum height limit of three stories, equals a maximum density of 1.8 FAR. Beginning in the R-5-A zone district, FAR limits are provided in the Zoning Regulations. Therefore, in the R-5 zone districts, the FAR standards in the Regulations would govern the density of the original building and the proposed addition. The greater flexibility in lot occupancy, if granted, would allow that density to be spread over a larger portion of the lot. OP emphasized that the

advertised special exception would only apply to properties zoned R-5 where there is an existing single-family dwelling or flat.

The Office of Planning again noted that the general lot occupancy limit provides a general density maximum within which the other standards of the subject zone districts are eligible for flexibility according to the proposed special exception process. OP further indicated that some of the other standards, especially side yard requirements, do not lend themselves to a percentage formula so readily. For example, in an R-1 zone district with an eight-foot side yard requirement, a deviation may have a sound basis at zero side yard, depending on the character of the abutting lot. A formula limiting the deviation to some percent of the standard might simply introduce an arbitrary, complicating factor. OP believes the standards in proposed Subsection 223.3 can address privacy, light, air and design factors on a case-by-case basis.

223.5 **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 Office of Planning stated that the Board's authority to require special treatment is a critical ingredient regarding additions to dwellings and flats. Some mention of "design" seems appropriate without making it such a prominent issue that the Board must attempt to evaluate architectural design per se.

The Office of Planning commented on the issue of whether decks more than four feet above grade should be afforded greater flexibility in the proposed provisions than other additions. OP indicated that the flexibility provided by the proposed regulations would also apply to decks that are greater than four feet in height and therefore count toward the lot occupancy and maximum gross floor area (FAR) limits. OP noted that because of the height of such decks and the potential visual and privacy effects on neighbors, they probably should not be excluded from FAR or lot occupancy limits as a matter-of-right. The impact standards of proposed Subsection 223.3 would guide review of this issue.

Regarding the Commission's request for testimony on whether it should adopt a flexibility rule that would authorize the Zoning Administrator to allow "de minimus" deviations from the area standards of the residential zone districts, OP suggested that such flexibility might be specified as one or two percent, whether a yard, court, lot occupancy, FAR or other standard. OP indicated that the purpose of such a rule would be to eliminate a few variance cases that now go to the BZA for public hearing on a deviation that is extremely minor. Finally, OP noted its support for such a regulation and reminded the Commission that the planned unit development (PUD) provisions of the Zoning Regulations have a similar provision.

In testimony presented at the public hearing, the Office of Planning acknowledged issues and comments submitted to the record of the case and stated that many actually improved the text of the proposed amendments. OP referred to comments submitted by Lindsley Williams

related to the standards from which deviations would be eligible under the proposed rules, and agreed with his statement that substandard lots should be excluded from this process and should be required to meet the variance tests because these lots tend to be already more dense than the zone would normally allow and have an arguable case for a variance.

The Office of Planning disagreed with comments in the record which state that the criteria for review make the proposed rules tantamount to a variance, and indicated that such is not the case because the criteria refers to the addition and a variance would be related to proof regarding the property as a whole. OP also indicated that Amy Weinstein in her comments to the Commission made a good point about graphic representations about why a matter-of-right addition is undesirable.

In discussing the adverse impact criteria, OP suggested that the Commission add language that would clearly require an applicant to show in a graphic form the dimensionally correct adjacencies. Finally, OP generally discussed the comments from the ANCs and noted that many were opposed based on the specific character of their areas and their misunderstandings about the proposal. At least one ANC strongly opposed any increase in lot occupancy and referred to older, pre-zoning structures that were rendered nonconforming by the 1958 Regulations. OP opined that a lot occupancy lower than that proposed might be appropriate. Finally, OP discussed with the Commission whether nonconforming structures should be eligible to seek relief under the proposed regulations.

At the close of the public hearing, the Commission left the record of the case open until September 2, 1997, for additional comments. By memorandum dated July 25, 1997, the OP submitted a post-hearing report containing changes and additions to the proposed amendments that reflected the Commission's preliminary discussion of the case based on information submitted to the record and testimony presented at the public hearing. OP's report revised Subsection 223.1 to include language indicating that any reference to a flat was to be considered in those zone districts where a flat is permitted. The advertised text of Subsection 223.2 was deleted, and Subsection 223.3 became 223.2 with a modification to Paragraph c to add consideration of views from an "alley, and other public way" and the addition of a new Paragraph (d) to require graphical representations to represent the relationship of the proposed addition to adjacent buildings and views from public ways. Advertised Subsection 223.4 became 223.3 and added the option of no change from the lot occupancy limits currently allowed by the Zoning Regulations. Advertised Subsection 223.5 became 223.4 and remained as initially advertised.

The report provided proposed text for effectuating the Commission's request for a flexibility rule for the Zoning Administrator. The amendment would be placed in Chapter 4 of the Zoning Regulations and would allow the Zoning Administrator two percent flexibility in deviating from the area requirements of Sections 401, 403, 404, 405 and 406; provided that deviations were allowed for no more than two of the sections and the deviations were determined to be minor and consistent with the purpose of the applicable regulations.

THE TESTIMONY OF THE BOARD OF ZONING ADJUSTMENT

The Board of Zoning Adjustment, by testimony of its Chairperson submitted on July 10, 1997, supported the proposed amendments and stated that many applications that come before the Board are requests for modest additions to single-family residences. While the additions seem reasonable and attractive, there is often no legal basis for granting variance relief. In most cases, the construction of these additions would cause no harm to the neighborhood, and would afford an improved living environment for the residents. The Board believes that the residents of the District could better be served by a change to the Zoning Regulations that would provide a little flexibility in the area of minor residential additions.

THE REPORTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

Advisory Neighborhood Commission (ANC) 3E, by letter dated June 9, 1997, stated that it voted unanimously to support the proposed text amendments.

Advisory Neighborhood Commission 3F commented on the proposed amendments but took no formal position on the proposal and urged further study. Advisory Neighborhood Commissions 2E, 3C, 3D, and 6B submitted reports in opposition to the proposed amendments. The issues and concerns raised by the ANCs and the Commission's disposition of them are summarized as follows:

1. The proposed language is vague. The proposed amendments rely on subjective criteria, are unclear in their application and provide no rational guidance for decisionmakers. The Commission believes that its proposed rules, as revised by the Commission during discussions both at the public hearing and the decision meeting, address the issue of vagueness, subjectivity and provide adequate guidance for the BZA in its special exception proceedings.

2. The proposed amendments provide a loophole to evade government review and effectively deny citizen-participation in the decisionmaking process. The Commission notes that the proposed amendments, as revised, provide for a special exception process which requires a public hearing on any application filed. Additionally, the Commission notes that the flexibility standard for the Zoning Administrator is so low that it would only allow for deviations that are extremely minor.

3. The proposed increase in lot occupancy may result in unfair crowding, and would impact on those areas in ANC 3C where there are large single-family houses on small lots which generate applications from owners to expand or exacerbate nonconformities. The increase in lot coverage would be detrimental to the historic district of Georgetown and the communities of Foxhall, Hillandale and Burleith. ANC 6B is unsure what impact an increase in lot coverage would have on the

Capitol Hill area. The Commission believes that its proposed amendments, as revised, provide criteria for the BZA's review which will allow for consideration of each case based on the specific circumstances of the particular case, and will therefore consider the impacts associated with the surrounding area on a case-by-case basis.

4. Current regulations protect air and light, while the proposed amendments would have a detrimental impact on open space, privacy, light and air of adjacent properties. As indicated in No. 3 above, the Commission believes that the criteria for the special exception relief in the proposed amendments, as revised, adequately provide for protection of open space, privacy, light and air of adjacent properties.

5. Decks more than four feet above grade should continue to be counted toward lot occupancy. The Commission agrees with the ANCs and others that the current deck provisions are appropriate.

6. The proposed amendments would allow nonconforming additions to single-family dwellings in the most restrictive (R-1) zone districts by special exception rather than by variance. The Commission notes that the purpose of the proposed amendments is to more easily allow single-family homeowners to make minor additions to their homes in the residential zones. The special exception process is the mechanism chosen. Any resulting nonconformities will continue to be minor as in variance cases.

7. The proposed amendments while making additions easier for some, may reduce the protections of others. The Commission believes that the amendments, as revised, afford adequate protection to properties neighboring.

8. Special treatment of proposed construction, required as a condition, is no defense to neighboring properties in an era of lax zoning enforcement. The Commission notes that in special exception cases, special treatment provisions are important in allowing for the BZA to condition applications in such a manner as to mitigate or eliminate adverse impact.

The Commission received a letter dated July 29, 1997 from Charles R. Braun in opposition to the amendments. Mr. Braun's post-hearing submission agreed with the points of opposition made by ANC 3C in its report to the Commission. Additionally, Mr. Braun stated that the amendments would add to the responsibilities of the BZA at a time when the BZA is unable to complete its current workload. Mr. Braun indicated that the proposed amendments are constitutionally and legally questionable because they would substitute broad Board discretion to alter area standards using vague criteria on a case-by-case basis for area standards that are uniform through the same zone districts. The Commission noted that it is not modifying the area standards, but is adding a special exception. The Commission believes that it has

responded to Mr. Braun other issues satisfactorily within its discussion of the ANCs' issues and concerns.

Lindsley Williams by correspondence dated May 1, 1997 and by testimony at the public hearing supported the proposed regulations with modifications. The District of Columbia Building Industry Association and Weinstein Associates Architects submitted letters in support of the proposed amendments with modifications. The salient issues raised by the above-referenced correspondence and testimony and the Commission's disposition of those issues are summarized below:

1. References to single-family dwelling(s) should be changed to one-family dwelling(s) to conform to the current terminology used in the Zoning Regulations. The Commission agrees with the recommendation and noted that the term "dwelling, one-family" is defined in the Zoning Regulations and used throughout the Regulations whereas single-family dwelling is not officially used in the Regulations. The Commission, however, noted that the term single-family dwelling has been used by the Commission and others for many years.

2. Subsection 223.2 of the advertised text should require graphic demonstration of matter-of-right inadequacy. Subsection 223.2 should be eliminated, it requires the applicant to argue two cases. The Commission determined that the language in the advertised text of Subsection 223.2 created a burden on the applicant that was unintended. The Commission deleted this Subsection.

3. Subsection 223.3 of the advertised text should be more specific by adding language to require the applicant to put forth in graphic form the dimensionally correct adjacencies. The Commission agrees with this recommendation and has included appropriate language in its revised regulations.

4. Paragraph 223.4 (c) should be modified to require views from the street, alley and other public ways ... . The Commission agrees with this recommendation and has made the modification in its revised regulations.

5. The flexibility for the Zoning Administrator in percentage form works for floor area and lot occupancy but not linear requirements like rear yard or side yard. One percent to two percent would be insignificant and therefore specific dimensional variations should be provided for linear requirements. Such variations should apply only to additions and not new buildings. The Commission believes that the proposed two percent flexibility is appropriate for the categories that are area standards, but that a larger percentage may be more appropriate for flexibility involving linear standards. The Commission noted that the flexibility granted to the Zoning Administrator is intended to be general and would apply to new buildings and additions.

6. Limit the flexibility to projects on lots that are conforming as to area requirements in Subsection 401.3 because substandard lots have a difficulty inherently arising in the land and can be reasonably considered as variance cases. The Commission believes that some owners of substandard lots may want to make reasonable additions that have minor or no adverse impacts on surrounding properties and otherwise meet the criteria for the proposed special exception process.

7. Retain current lot occupancy limits. Current minimum lot sizes with maximum lot occupancy and two floors in R-1-A through R-4 already permit sizable dwellings. The Commission believes that lot occupancy flexibility is important in the context of the proposed amendments.

Having discussed, considered and resolved the issues and concerns of the ANCs, the Commission determined that it has accorded the ANCs the "great weight" to which they are entitled.

A notice of proposed rulemaking was published in the D.C. Register on December 12, 1997. As a result of the publication of the proposed rules, the Commission received comments from Arcadia Residential and Commercial Design Services, the law firm of Jackson and Campbell, Lindsley Williams, and ANC-3C. After reviewing and discussing the comments received and the testimony presented during the public hearing, the Commission determined that the term "single-family dwelling" should be changed to "one-family dwelling" to conform to the Zoning Regulations. Additionally, the Commission determined that the flexibility given to the Zoning Administrator for standards in sections 401, 403, 404, 405 and 406 of chapter 4 of the Zoning Regulations should be higher for linear standards than for area standards and revised the percentages accordingly.

The proposed decision to approve the text amendments was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Subsection 1-201 et seq. The NCPC, by delegated action of the Executive Director dated December 19, 1997, determined that no federal interests would be affected by the proposed amendments.

The Zoning Commission believes that its decision to approve the text amendments set forth in this order is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the following amendments to the Zoning Regulations:

**1. Add a new Section 223 as follows:**

## 223 ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS (R-1)

223.1 An addition to a one-family dwelling or flat, in those residential districts where a flat is permitted, that does not comply with all of the requirements of sections 401, 403, 404, 405 or 406 of this title shall be permitted if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section.

223.2 The addition 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;

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

(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; and

(d) 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 to adjacent buildings and views from public ways.

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.

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.

**2. Add a new Section 407 as follows:**

## 407 MINOR FLEXIBILITY BY ZONING ADMINISTRATOR'S RULING

407.1 The Zoning Administrator is authorized to permit a deviation not to exceed two percent (2%) of the area requirements of sections 401 and

403 of this chapter; a deviation not to exceed ten percent (10%) of the linear requirements of sections 404 and 405 of this chapter; and a deviation of the requirements of section 406 of this chapter, not to exceed **either** two percent (2%) of the area standard **or** ten percent (10%) of the width standard; Provided, that:

(a) A building shall be allowed to deviate from the requirements of no more than two (2) of the sections identified in this subsection; and

(b) The deviation or deviations shall be deemed by the Zoning Administrator not to impair the purpose of the otherwise applicable regulations.

Vote of the Zoning Commission taken at its regular meeting on September 15, 1997: 4-0 (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett to approve; Jerrily R. Kress to approve by absentee vote).

This order was adopted by the Zoning Commission at its special public meeting on February 23, 1998 by a vote of 3-0 (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett to approve; Jerrily R. Kress not present, not voting).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on _____.

**MAYBELLE TAYLOR BENNETT**
**Chairperson**
**Zoning Commission**

**MADELIENE H. DOBBINS**
**Director**
**Office of Zoning**

zco840/MHD

Exhibit 45

Government of the District of Columbia

Office of the
Director

Office of Planning
415 12th Street, N.W.,
Washington, D.C. 20004

JUL 2 5 1997

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**MEMORANDUM**

**TO:** D.C. Zoning Commission

**FROM:** Jill C. Dennis
Director

Nathan W. Gross, Chief
Comprehensive Plan Implementation

**SUBJECT:** Zoning Commission Case No. 97-2 (Additions to Dwellings and Flats), Post-Hearing Submission

The public hearing on this case was conducted on July 10, 1997. During and at the conclusion of the hearing, the Zoning Commission discussed each of the advertised criteria for approval of certain residential additions by the special exception process. The draft text below reflects the Office of Planning's (OP) understanding of the direction of the Commission's preliminary discussion. Added text is highlighted in **bold face type**; deletions are shown in ~~strikover mode.~~

223 ADDITIONS TO SINGLE-FAMILY DWELLINGS OR FLATS (R-1)

223.1 An addition to a single-family dwelling or a flat **in those residential districts where a flat is permitted** that does not comply with all of the requirements of sections 401, 403, 404, 405 or 406 of this title shall be permitted if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section.

~~223.2 A matter of right addition is demonstrated to be inadequate or undesirable to achieve a suitable expansion of the dwelling or flat.~~

223.2 The addition shall not adversely ~~impact~~ **affect** 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;

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8/4/97

(b) The privacy of use and enjoyment of neighboring properties is not adversely affected;

(c) The addition, together with the original building, as viewed from the street, **alley, and other public way,** is not out of keeping with the character, scale and pattern of houses along the subject street frontage; and

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

*[Added text in paragraphs (c) and (d) reflect the suggestions of Amy Weinstein, FAIA. The more flexible approach suggested orally to OP by architect Robert Bell, and reported to the Commission by OP at the public hearing could be carried out as follows:*

*223.3 The addition shall not adversely affect the use or enjoyment of any abutting or adjacent dwelling or property, nor be out of character with the scale and pattern of houses along the subject street frontage, as viewed from the street, alley, and other public way.*

*In this approach, paragraphs (a), (b) and (c) would be deleted.]*

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. (Fifty-five percent and 65% advertised in the alternative; no change would be 40% and 60%.)

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.

Zoning Administrator flexibility rule:

One way to effectuate this advertised concept is shown below. It is assumed that the Commission's intent would be to limit such flexibility to those area standards of the residential zones being generally considered in this case. This approach would exclude flexibility as to height and bulk (FAR). The amendment could logically be placed in Chapter 4 Residence Districts: Height, Area, and Density Regulations, using Reserved Section 407, so that the exception would be highlighted in the contents at the beginning of the chapter.

**407 MINOR FLEXIBILITY BY ZONING ADMINISTRATOR'S RULING**

**407.1 The Zoning Administrator is authorized to permit a deviation not to exceed two**

**percent (2%) of the area requirements of sections 401, 403, 404, 405 and 406 of this chapter; Provided, that:**

**(a) A building shall be allowed to deviate from the requirements of no more than two (2) of the sections identified in this subsection; and**

**(b) The deviation or deviations shall be deemed by the Zoning Administrator to be minor in practical effect and to be consistent with the purpose of the applicable regulation.**