Exhibit 46

Government of the District of Columbia
ZONING COMMISSION

May 9, 1997

MEMORANDUM

TO: Jewel Ogonji
D.C. Public Library

FROM: Madeliene H. Dobbins
Director

SUBJ: Request to Distribute Notices of Rescheduled Public Hearing in Zoning Commission Case No. 97-2

Please distribute the attached Notices of Rescheduled Public Hearing for Zoning Commission Case No. 97-2 to all branches of the D.C. Public Library. If you have questions, please contact me. Your cooperation is appreciated.

Attachments

Notice of Public Hearing (30)

Ogo97-2/MHD

EXHIBIT
APP
46

ZONING COMMISSION
District of Columbia
Case 97-2
Exhibit 22

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: Thursday, July 10, 1997 @ 7:00 P.M.
Office of Zoning Hearing Room
441 Fourth Street, NW, Suite 220
Washington, D.C. 20001

(RESCHEDULED FROM THE CANCELED HEARING SESSION OF MAY 1, 1997)

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 97-2 (Text Amendments - Board of Zoning Adjustment Special Exception Provisions for Additions to Single-Family Dwellings)

THIS CASE IS OF INTEREST TO ALL ADVISORY NEIGHBORHOOD COMMISSIONS:

On January 31, 1997, the District of Columbia Office of Zoning (OZ) received a memorandum from the Office of Planning (OP) requesting the Zoning Commission to consider amendments to the text of Chapter Two of Title 11 District of Columbia Municipal Regulations (DCMR), Zoning. The proposed amendments relate to proposed provisions for a Board of Zoning Adjustment special exception process for additions to single-family dwellings. The purpose of the amendments is to provide a legal basis for applicants who want to make reasonable additions to their homes but cannot meet the strict tests associated with a variance. These amendments are proposed based on a request from the Board of Zoning Adjustment to the Zoning Commission to review whether additions to single-family dwellings could be regulated by a special exception process rather than the area variance process.

The Zoning Commission will consider the request of the OP, any modifications thereto, or alternative proposals that are presented and reasonably related to the scope of the proposed amendments set forth herein. The specific proposed language to amend the text of the Zoning Regulations is as follows:

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

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.

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

223.3 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 nor 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.

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.)

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.

In addition, the Zoning Commission invites testimony on the following two issues:

1. **Whether decks more than four feet above grade should be afforded greater flexibility in the proposed provisions than other additions and why?**

2. **Whether the Zoning Commission should adopt a flexibility rule similar to the rule in Subsection 2409.6 of 11 DCMR for matter of right buildings, and if so, what percentage should apply and to which standards should the flexibility apply?**

Proposed amendments to the text of the Zoning Regulations and the Zoning Map of the District of Columbia, are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, and Section 5-413 et seq., D.C. Code, (1981 Ed).

The public hearing on this case will be conducted in accordance with the provisions of Section 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing with the Director of the Office of Zoning by **June 30, 1997.** Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the number of the particular case, whether you are a proponent or an opponent, and your daytime telephone number. **For FURTHER INFORMATION CONTACT THE OFFICE OF ZONING ON (202) 727-6311.**

ALAN M. HANTMAN OR HERBERT M. FRANKLIN, JOHN G. PARSONS, MAYBELLE TAYLOR BENNETT, JERRILY R. KRESS --------- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY MADELIENE H. DOBBINS, DIRECTOR.

phn97-2/MHD

Exhibit 47

DISTRICT OF COLUMBIA
BUILDING INDUSTRY
ASSOCIATION

'97 MAY -1 P3:34
DISTRICT
OFFICE

Executive Committee
Thomas W. Wilbur
DCBIA President
The John Akridge Companies
Robert H. Braunohler
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The JBG Companies
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Lehman/Smith/Wiseman & Associates
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The Clark Construction Group
Matthew L. Richardson
Carr Development & Construction
Raymond A. Ritchey
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Centre Management/MCI Center
Nicholas Yakubik
NationsBank

Counsel
Abraham J. Greenstein
Greenstein DeLorme & Luchs, P.C.

Advisory Committee
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Executive Council
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Steven A. Grigg
Republic Properties Corporation
Michele V. Hagans
Fort Lincoln New Town Corporation
Joseph F. Horning, Jr.
Horning Brothers
Philip M. Horowitz
Arter & Hadden
Philip R. Miller
MDC Land, Inc
Louis Pohoryles
Attorney
David M. Richards
Richards Development Company
Michael Wm. Sacks
Thompson, Hine and Flory
Fred L. Valentine
The Clark Construction Group

Executive Vice President
Gail Edwards

April 30, 1997

Zoning Commission of
the District of Columbia
441 4th Street, N.W.
2nd Floor
Washington, D.C. 20001

Re: Z.C. Case No. 97-2
Text Amendments: Board of Zoning Adjustment
Special Exception Provisions for Additions to Single-Family Dwellings -- Comments of the District of Columbia Building Industry Association

Dear Zoning Commission Members:

The District of Columbia Building Industry Association is comprised of over 250 organizations and individuals in the real estate development and related industries. Pursuant to the public notice of April we reviewed the materials in Zoning Commission Case No. 97-2 set for hearing on May 1, 1997. The Association strongly supports any appropriate modifications to the Zoning Regulations that will encourage homeowners to improve the housing stock in the District of Columbia and to continue to look at the District of Columbia as a place in which they wish to reside. Too often the strict application of the Zoning Regulations and the delays arising from the regulatory process have caused residents to look to moving to other jurisdictions which are more accommodating.

The proposal presented by the Office of Planning in Case No. 97-2 is an important step to try to make single family home improvement and modernization more feasible in the District of Columbia. As noted in the Office of Planning's memo, the proposal seeks to permit modest additions to single family dwellings and flats, notwithstanding the fact that those additions may be nonconforming in nature with regard to certain area requirements of the Zoning Regulations. The intent of the proposed text change is to lessen the standard of proof a homeowner must meet in order to be entitled to relief in such cases. If the standard is lessened, it could expedite Board of Zoning Adjustment deliberations on these types of cases.

EXHIBIT
APP
47

NG COMMISSION
rict of Columbia
Case 97-2 5/1/97

5100 Wisconsin Avenue, NW • Suite [illegible] • (202) 966-[illegible] • FAX (202) 966-3222
REPRESENTING THE BUILDING INDUSTRY IN THE DISTRICT OF COLUMBIA

The specific proposal, while conceptually worthwhile, has several flaws which the Association wishes to note for the Commission. Since the text of this amendment would first appear in the R-1 Zone District, we would suggest deletion of the reference in the section title and in the text itself to the term "Flat." As you are aware, flats are only first permitted as a matter of right in the R-4 Zone District, and there should be no implication that an addition to a single family dwelling in a lesser Zone District can take the form of a flat (i.e. a two-family dwelling). If it is the pleasure of the Zoning Commission to have these provisions apply to flats in appropriate Zone Districts, then the text should be repeated or referred to in the appropriate Zone District. Also, the text speaks in terms of "single-family dwellings" whereas the Zoning Regulation speaks only to "one-family dwellings." We presume that the two terms are synonymous and thus we suggest that the reference to "single-family dwellings" be changed to "one-family dwellings."

In Section 223.1 of the proposal, the reference of the phrase "that does not comply with all of the requirements . . . " is ambiguous. Is it intended that this phrase refer to the principal building to which the addition is proposed, or is it intended that this phrase refer to the proposed addition, regardless of whether the principal building is conforming or not? Looking at Section 223.2, it would appear to imply that the principal building must be in compliance with the Zoning Regulations before the provisions of this Section 223 can apply; otherwise, there never can be a matter of right addition to be considered. If this is the intent of the text amendment, then a substantial number of owners of one-family dwellings in the District have been eliminated as possible candidates for use of these provisions. The Association suspects that much of the older housing stock in the District of Columbia that could benefit by this text amendment, will in fact be found to violate one or more area elements set down in the 1958 Zoning Regulations (i.e., are nonconforming structures), and thus will be precluded from benefitting from these provisions. The Association suggests that this phrase be clarified to refer to both the principal building and any proposed addition.

While we applaud the attempt to lessen the burden from special exception treatment, we would suggest that the text may in fact increase the burden on an applicant in another way. The text appears to create the need for a property owner to argue two cases in order to benefit from the lesser standard.

The first test is set forth in Section 223.2; here the applicant must first prove that a matter of right addition would be inadequate or undesirable to achieve a suitable expansion of the principal building. It is not clear on what standard or standards the Board will make this determination. As life styles change, what was acceptable at one point in time is no longer acceptable or desirable. It appears for instance to require the Board to determine whether a kitchen that is 10 feet by 10 feet is any more desirable than one that is 10 feet by 15 feet. Does the life style of the residents come into play? Does the number of family members become a factor? What if the next family is smaller but prefers other amenities? The Association would suggest that this provision puts the Board through needless investigation and inquiry and may in fact increase the burden on a property owner in arguing its case before the Board. We suggest the deletion of the proposed Section 223.2 in its entirety.

Our next observation relates to the matters noted in the text of proposed Section 223.3 and the second test that an applicant must successfully prove to the Board. As background, we understand from the Office of Planning that proposed Section 223 is intended only to create an alternative remedy to seeking variance relief, with its higher burden of proof and not an exclusive route of relief. In light of the subjectivity introduced by the proposed text of this Section, however, the Association suggests that what may appear to be a more attractive relief route for a property owner may in fact create more confusion for the owner and the Board.

The subjective nature of the inquiries proposed in Section 223.3 requires the Board to undertake an unusual and extraordinary level of inquiry into matters related to the impact of any addition on a neighbor's "privacy of use" and "enjoyment" of his or her abutting property. The standards of "privacy" and "enjoyment" are not defined for the benefit of the applicant or the Board. Unlike with other special exception relief provisions in the Zoning Regulations, which in most cases are "use" based in nature and not "area" based, the inquiries by the Board do not give the Board the benefit of any mandated reports from the Office of Planning, or other agencies or departments of the District government which may have special interests such as historic preservation. Also and due to the subjectivity that the Board must address, the "great weight" that must be given to recommendations of Advisory Neighborhood Commissions may further impact adversely how the Board hears a case under there provisions and how an owner selects his or her remedy for relief and subsequently presents his or her case to the Board.

Additionally a property owner confronted with the need for relief for his/her addition would appear to have to make a selection at the time of filing his or her application to the Board as to whether to seek variance relief or the special exception relief proposed in this case. The Zoning Administrator, while noting the need for relief, will not be making the choice of relief. If there is a contentious Advisory Neighborhood Commission or a contentious neighbor, the choice of relief alternative for a property could be difficult. The request for relief could be filed in the alternative, but that could become expensive since the fee for Board action is based upon the amount of relief required. Additionally prosecuting alternate relief cases would add complexity to the case that must be prosecuted and subsequently decided by the Board.

We have not spoken in this letter as to unusual properties, such as corner lots, where the impact may not be on neighboring properties but to the city street scape. Subsection(c) of Section 223.3 does not speak as worded to this matter. We also have not spoken to the degree of flexibility that is at the Board's discretion, limited only by a limit on the percentage of lot occupancy as provided for in Section 223.4.

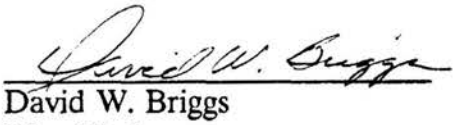
There is one matter in the Office of Planning proposal which has not been treated in textual fashion, but which the Association supports wholeheartedly. That is the proposal for recognition of an administrative process for "de minimis" deviations in area standards. We understand that if adopted it would apply to the Zoning Regulations in all Zone Districts. This process would be a worthwhile addition, and would we believe reduce the number of cases requiring action by the Board. We believe an appropriate standard may not necessarily be fixed by a specific percentage however. For instance, a percentage may work well on a floor area calculation or on a percentage of lot occupancy; it would not work well in our opinion on a side or rear yard deviation, where a percentage at 1% or 2% would have an insignificant impact. Therefore some statement of specific dimensional variation needs to be specified in those area deviations. The Association believes that the variation should only apply related to construction of additions, and not to the construction of new buildings, but should treat the existing condition of the building to which the addition is to be made with this deviation formula. In this fashion if a building as constructed is found to violate a rear yard requirement, an addition to that building should be able to be built to that same degree of violation.

We also thought it may prove helpful for the Commission to see the approach taken by another jurisdiction to address similar issues. Accordingly, as an example of an alternate approach to the Office of Planning's proposal, we have attached a copy of the provisions from the Dade County, Florida zoning code titled "Administrative Variances." (See Section 33-36.1 et. seq.). The Association would welcome the opportunity to work with the Office of Planning should the Commission choose to explore this or other proposals which seek to streamline the zoning process.

We congratulate the Commission and the Office of Planning for seeking ways to make the Zoning Regulations more responsive to the needs of property owners. The Association will be happy to assist in any way that it can.

Very truly yours,

DISTRICT OF COLUMBIA BUILDING
INDUSTRY ASSOCIATION

By: 

David W. Briggs
Vice Chairman
Legislative and Government
Affairs Committee

DWB:hh
Attachment

cc: Nate Gross, OPD (w/encl.)
Nelson Migdal, Esq. (w/encl.)

WAS1-254515.3

ments of this chapter and the present and probable future uses of the neighborhood, and

(2) That where the area of land involved is less than five (5) acres the area and shape of said land shall be such as would be acceptable for platting, and

(3) Application is made at the same time, in a form acceptable to the Director, to establish boundaries for a suitable district to cover the area where a new use or change of use is intended, and

(4) A plat shall be submitted and tentative approval of the Director obtained thereon for any use involving three (3) or more buildings to be used for residential or commercial purposes other than farming, and

(5) That for land to be used for a structure or use connected with farming, the area, setback and other requirements of this chapter shall be complied with, and a plat will not be required.

(c) *Temporary field offices.* Use of a lot or lots for temporary field sales or construction office during specified periods of time, provided map of said subdivision has been approved by the Director. Plans for any such temporary building or buildings shall also require approval of the Director.

(d) *Property split by district boundary.* Extension of a district when its boundary splits a privately owned lot.

(e) *Setbacks; lot area.* Variation, the purpose of which is to conform to front line requirements of the rest of the block; to allow a reduction in the minimum lot area requirements or setback where the shape of the building lot or location of existing nearby buildings justifies such variance.

(f) *Pending survey to verify distances.* Issuance of a permit conditional upon the owner's submitting a certified survey to verify distances shown on the plans filed with the application.

(g) *Special uses.* Other special types of special usage, such as temporary stands, landing fields, public buildings or structures for temporary use, temporary refuse dumps, etc. For other special or unusual uses permitted herein, where any question exists regarding the possibility of said special or unusual use conflicting with or encroaching upon other legally existing uses in any district.

(Ord. No. 57-19, § 38, 10-22-57)

Sec. 33-36.1. Administrative variances.

(a) Notwithstanding any other provision of this chapter, in RU-1, RU-2, RU-TH, all EU Districts, and those other districts permitting single-family, duplex, and townhouse use, upon application duly made, the Director may, by administrative decision, approve any "non-use variance" request. For the purposes of this subsection, a "non-use variance", as defined in Section 33-311.1(e)(2), Code of Metropolitan Dade County, may involve matters such as setback lines, frontage requirements, subdivision regulations, height limitations, lot size restrictions, yard requirements, and other variances which have no relation to change of use of the property in question. Requests varying setbacks, spacing, and lot coverage requirements from those specified elsewhere in the zoning regulations may only be approved providing that they do not exceed the following:

(1) That the setback required is not reduced below fifty (50) percent of that normally required.

(2) That the lot coverage is not increased by more than twenty (20) percent of that normally permitted.

(3) That the spacing requirement between principal and accessory buildings is not reduced below fifty (50) percent of that normally required.

(b) Notwithstanding any other provision of this chapter, in any district upon application duly made, the Director may, by administrative decision, approve any "non-use variance" request or "special exception" from zoning regulations on parking requirements for any property designated as an historical site and subject to a certificate of appropriateness pursuant to Chapter 16A of this Code. Such requests may be approved

providing that "non-use variance" requests do not exceed the standards set forth in Section 33-36.1(a) and that "special exception" from zoning regulations on parking requirements requests do not reduce parking below thirty (30) percent of that normally required. Further, the requirements of Section 33-36.1(i) shall not apply to administrative variances granted to designated historical sites pursuant to this subsection.

(c) The Director may vary the setback requirements for screened enclosures, tennis courts, swimming pools and other accessory structures or uses providing that the setback required is not reduced below fifty (50) percent of that normally required.

(d) In granting the variation and issuing the permit, the Director shall find:

(1) That the variance will be in harmony with the general appearance and character of the community.

(2) That the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

(3) That the proposed addition is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent residences while affording the applicant a reasonable use of his land.

(e) The application for variance shall be made by the fee owner of the property on a form prescribed by the Department and shall be submitted to the Department. The application shall include an accurately dimensioned plot use plan showing the existing structures on the subject property, the location of the proposed addition, the general location and use of existing structures on the adjacent property from which the variance is being requested. The application shall include a letter of intent explaining the reason and justification for the proposed addition and variance. The application shall be accompanied by:

(1) The consent of all the owners of all adjacent or abutting lots to the subject property, and

(2) The consents shall also include the owner of the lot(s) immediately across the street from the subject site.

(f) Upon receipt of the application for variances, the Director, prior to making his decision, shall have a staff member of his Department inspect the site of the subject property and the surrounding properties to determine what impact, if any, the proposed addition will have on the area. The staff member shall attempt to personally contact the residents and/or owners of the adjacent properties including the property or properties immediately across all adjacent streets, for the purpose of collecting additional information relevant to the application.

(g) Upon receipt of all necessary information including a staff report, the Director shall review the information and render his decision either approving, modifying or denying the request. A copy of said decision shall be published in a newspaper of general circulation. All approvals or modifications shall not be effective until fifteen (15) days after the Director's decision is published in a newspaper of general circulation. A courtesy notice containing the decision of the Director may be mailed to adjacent and abutting property owners of record, their tenants or their agents, that are duly noted on the application. The failure to mail or receive such courtesy notice shall not affect any action or proceedings taken hereunder. In granting any variances the Director may prescribe any appropriate conditions and safeguards he may feel necessary to protect and further the interest of the area and abutting properties, which may include but not be limited to the following:

(1) Landscape materials, walls, and fences as required buffering.

(2) Modifying of the orientation of any openings.

(3) Modifying of site arrangements.

The decision of the Director shall be recorded on the official zoning maps of Dade County.

(h) The applicant, or any aggrieved property owner in the area, may appeal the decision of the Director to the Zoning Appeals Board in the manner provided for appeals of administrative decisions (Section 33-311(c)(2) of the Code). In the event an appeal is made by an aggrieved property owner in the area, the Director may stop or suspend any construction authorized by the vari-

ance, until a decision has been made on the appeal. In the event the Director should determine that the suspension of the construction could cause imminent peril to life or property he may permit the construction to continue upon such conditions and limitations, including the furnishing of an appropriate bond, as may be deemed proper under the circumstances. Upon an appeal by an aggrieved property owner, the provisions of Section 33-311 shall be applicable.

(i) The right of the Director in so approving requested variances shall be limited to those requests applied to individual lots and where the lot in question is within an area where at least seventy-five (75) percent of the lots in a radius of three hundred (300) feet from the subject property have already been developed.
(Ord. No. 77-12, § 1, 2-15-77; Ord. No. 78-15, § 1, 3-21-78; Ord. No. 83-12, § 1, 3-1-83; Ord. No. 95-215, § 1, 12-5-95)

Sec. 33-37. Exceptions to chapter.

(a) Where the dimensions of any residential lot are less than prescribed by this chapter for its particular district and it is not possible to acquire sufficient adjoining land to increase the size of said lot to the dimensions required hereby, a permit shall be issued only after approval by public hearing.

(b) No use or occupancy of any land or structure, other than as provided in Section 33-36 and elsewhere herein, shall be permitted in any district established hereby; nor shall any deviation from any restriction established herein as to size of lot, distance of building from nearest right-of-way line of the highway or street, alley or other thoroughfare, or property line distance, or from any other restriction or regulation provided herein, be permitted, except as provided herein, until after a public hearing.
(Ord. No. 57-19, § 36, 10-22-57)

Sec. 33-38. Stop work orders.

For the purpose of inspection, the Director and his authorized representatives shall have free access to materials and work at all times and either or both shall have the power to stop work pending investigation as to materials, work, grades, use and other provisions of this chapter.

The Director is authorized, where he deems it necessary, to request the execution of any agreement for recording.
(Ord. No. 57-19, § 14, 10-22-57)

Sec. 33-38.1. Resisting or obstructing enforcement.

It shall be unlawful to resist, obstruct or oppose the Director or his designated representative or enforcement officer in the discharge of his duties under this chapter.
(Ord. No. 89-118, § 1, 11-21-89)

Sec. 33-39. Penalty for violation of chapter.

Any person who shall violate a provision of this chapter, or fails to comply therewith, or with any of the requirements thereof, shall upon conviction thereof in the County Court, be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment. Any person who violates or fails to comply with this chapter shall also be subject to fines in accordance with Chapter 8CC of this Code. Each day of violation or noncompliance shall constitute a separate offense.
(Ord. No. 58-21, § 1, 6-10-58; Ord. No. 80-83, § 1, 7-15-80; Ord. No. 89-118, § 2, 11-21-89)

Sec. 33-39.1. Civil liability; penalties; attorneys' fees.

(a) Any person who violates a provision of this chapter or any lawful rule, regulation or written order promulgated under this chapter is subject to injunction or other equitable relief to enforce compliance with or prohibit the violation of this chapter. Further, such person is liable for any damage to Dade County caused by such violation, and for the reasonable costs and expenses incurred by Dade County in enforcing the provisions of this chapter, including but not limited to the costs of enforcement inspections, preparation of enforcement reports, photographs, title searches, postage and other demonstrable administrative costs for enforcement and collection. All such

sums shall become immediately due and payable upon expenditure by the County and shall become delinquent if not paid within thirty (30) days after receipt by the violator of the Department's bill itemizing the enforcement costs incurred in enforcing the provisions of this chapter (the "due date"). All such delinquent sums shall bear interest at the rate of twelve (12) percent per annum.

(b) In addition to the foregoing, any person who violates a provision of this chapter or any lawful rule, regulation or written order promulgated under this chapter is subject to the judicial imposition of a civil penalty for each offense of an amount not to exceed five thousand dollars ($5,000.00) per offense. In assessing the penalty, the court may receive evidence in mitigation. Each day during any portion of which a violation occurs constitutes a separate offense.

(c) Upon the rendition of a judgment or decree by any of the courts of this State against any person and in favor of the Director or the County in any action to enforce compliance with or prohibit the violation of the provisions of this chapter, the court shall adjudge or decree against that person and in favor of the Director or the County a reasonable sum as fees or compensation for the attorney acting on behalf of the Director or the County in the suit in which recovery is had. Such fees or compensation shall be included in the judgment or decree rendered in the case. This provision shall apply to all civil actions filed after the effective date of this ordinance. Cessation of the violation of any of the provisions of this chapter prior rendition of a judgment or prior to execution of a negotiated settlement, but after an action has been filed by the Director or the County to enforce the provisions of this chapter, shall be deemed for the purposes of this section the functional equivalent of a confession of judgment or verdict in favor of the Director or the County, for which attorney's fees shall be awarded as set forth in this section.

(d) Nothing in this section shall be construed to permit or require the Director to bring an action on behalf of any private person.
(Ord. No. 89-118, § 3, 11-21-89)

Sec. 33-39.2. Enforcement; procedure.

The Director is hereby authorized to institute actions on behalf of the County in any court of competent jurisdiction in this State to seek enforcement of this chapter and all remedies for violation thereof.
(Ord. No. 89-118, § 4, 11-21-89)

Sec. 33-39.2.1. Team Metro: Delegation of enforcement power and duties.

Unless otherwise provided by ordinance, the Director of the Department of Planning, Development and Regulation shall delegate his enforcement powers and duties to the Director of Team Metro for the expressed purpose of enforcing the regulations of this Chapter as specified in Section 2-969 or in an administrative order of the County Manager.
(Ord. No. 96-86, § 4, 6-4-96)

Sec. 33-39.3. Consent agreements.

The Director or his designee may, in the discretion of the Director or designee, terminate an investigation or an action commenced under the provisions of this chapter upon execution of a written consent agreement between the Director or his designee and the persons who are the subject of the investigation or action. The consent agreement shall provide written assurance of voluntary compliance with all the applicable provisions of this chapter by such persons. The consent agreement may in addition provide for the following: Mitigation of injuries accruing on account of the violation investigated or sued upon; compensatory damages; punitive damages; civil penalties; costs and expenses of enforcement; attorneys' fees; and remedial or corrective action. Except as expressly and specifically provided in the executed written consent agreement, an executed written consent agreement shall neither be evidence of a prior violation of this chapter nor shall such agreement be deemed to impose any limitation or action by the Director or the County in enforcing any of the provisions of this chapter, nor shall the agreement constitute a waiver of or limitation upon the enforcement of any federal, State or local law or ordinance. Each violation of any of the terms of an executed written consent

Exhibit 48

Government of the District of Columbia

Office of the
Director

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

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MEMORANDUM

TO: D.C. Zoning Commission

FROM: Jill C. Dennis
Director for

Nathan W. Gross, Chief
Comprehensive Plan Implementation

SUBJECT: Hearing Report, Zoning Commission Case No. 97-2 (Board of Zoning Adjustment Process for Additions to Single-Family Dwellings)

Background

On several occasions the Board of Zoning Adjustment (BZA) has requested the Zoning Commission and the Office of Planning (OP) to explore whether additions to single-family dwellings and flats could be regulated by a special exception process rather than the area variance process. The reason for this request is that some applicants for additions have presented to the BZA reasonable plans for additions to their homes which had to be denied because the subject properties did not exhibit a legal basis for an area variance. Neighbors expressed no (or minor) objections, and the proposed additions were reasonably attractive, functional additions to the homes in question. Yet, the properties lacked uniqueness or a specific, ingrained problem (e.g., irregular shape) that would have provided a legal basis for a variance approval.

The Board's concern is that the applicants whose variance requests were denied were quite upset about the difficulty of gaining approval of expansions to their homes and in some cases indicated they will have to move to a larger dwelling, perhaps in another (typically suburban) jurisdiction. Accordingly, the Zoning Commission asked the Office of Planning to prepare text that has now been advertised for the instant public hearing, based on OP's Preliminary Report of January 31, 1997.

Proposed Text with Comments

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

The overall goal of the proposed text amendments is to provide a degree of flexibility regarding additions, while retaining essential controls related to effects on neighboring properties and

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neighborhood character. The following are OP's rationale and comments on each of the recommended provisions.

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.

Comment: The reference to Section 3108 of the Zoning Regulations establishes that the special exception process would govern such applications. Subsection 3108.1 authorizes the Board to grant special exceptions where, in the judgment of the Board, the requested exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property . . ., subject in each case to the special conditions specified in this title." The referenced "special conditions" in the instant case are the further conditions proposed below, i.e., sub-sections 223.2 through 223.5.

As indicated in 223.1 above, the special exception process would apply to the referenced sections of the Zoning Regulations: 401 (minimum lot dimensions), 403 (maximum percentage of lot occupancy), 404 (rear yard requirements), 405 (side yard requirements) and 406 (court dimensions).

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

Comment: This clause is intended to require a justification for deviating from the area (i.e., general design) standards of the subject zone district. The homeowner and architect or builder should, in fact, look first to the matter-of-right addition and only apply for the special exception if their case has significant need and merit.

A representative of the D.C. Building Industry Association (DCBIA) has had two telephone conversations with OP staff regarding two issues in this case, including Subsection 223.2, above. The issue here is whether this provision is too similar to the concept of a variance and therefore potentially a problem vis-a-vis the Zoning Enabling Act. In OP's opinion, as expressed in the second telephone conversation, the above provision asks for a comparison between a matter-of-right addition and a proposed addition that would require an exception from the existing regulations. This is significantly different from a variance test. Also, the focus is upon the proposed addition, whereas an area variance would focus on whether the existing property is unique or suffers a practical difficulty.

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.

Comment: The specific impact standards in paragraphs (a), (b) and (c) are intended to guide the impact review regarding adjacent properties with a degree of detail and ensure a satisfactory addition, or a denial of the application when appropriate. Including specific standards helps assure the community that, despite the absence of the legal variance standard, the applicant must nonetheless make a strong case by way of 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.)

Comment: The proposed standard allows the lot occupancy to be 10% (in the alternative, 15%) higher than the matter-of-right standard in the respective zones — 40% and 60%. A still larger lot occupancy would continue to require a variance. Note that the option of a five percent (5%) increase is also effectively advertised as an alternative, since this standard is in between the existing regulation and the main advertised text.

An overall limit on lot occupancy is recommended because lot occupancy is perhaps a reasonable approximation of a general density standard in those residential zones where there is no FAR limit. Specifically, in the R-1 and R-2 zones the maximum lot occupancy of 40 percent times the maximum height of three stories is the equivalent of a 1.2 FAR density limit. In the R-3 and R-4 zones 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, specific FAR limits are provided in the zoning regulations. Therefore, in the R-5 zones, the FAR standard in the regulations would govern the density of the original building plus the proposed addition; however, the greater flexibility in lot occupancy, if requested and granted, would allow that density to be spread over a larger portion of the lot. It should be emphasized that the advertised special exception process would only apply to properties zoned R-5 (apartments) where there is an existing single-family dwelling or flat (two-family dwelling). Such situations are expected to be relatively rare, since the existing development pattern in the R-5-A through R-5-E zones generally follows the permitted scale of development.

The general lot occupancy limit, then, provides a general density maximum within which the other area standards of the subject zone district are eligible for flexibility according to this special exception process. 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 with an eight-foot side yard requirement, a deviation may have a sound design rationale at zero side yard, depending on the character of the abutting lot. A formula limiting the deviation to, say, four feet (50% of standard), might simply introduce an arbitrary, complicating factor. The standards in proposed 223.3 can address privacy, light, air and design factors on a case-by-case basis.

Further, a high percentage of the row dwellings and flats in historic districts and other older neighborhoods (Capitol Hill, Georgetown, Dupont Circle, Logan Circle and Adams-Morgan) were built (prior to the advent of zoning) with numerous buildings whose lot occupancies exceed the 60 percent allowed in R-4 and R-5 districts. For such buildings that are already at 75 or 80 percent lot occupancy, an addition should always require a variance, given the built density.

Decks. Note that the flexibility provided by these special exception provisions would also apply to decks that are greater than four feet in height and therefore count towards lot occupancy and maximum gross floor area (FAR) limits. 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. However, in the context of this special exception review, they would be allowed subject to public review. The impact standards in proposed Subsection 223.3 will guide review of this issue. The Notice of Public Hearing also invites testimony on whether decks more than four feet above grade should be afforded additional flexibility. The rationale for greater flexibility is that decks create less visual intrusion than an enclosed addition, although they also present privacy issues vis-a-vis neighbors. OP has no further comment on that issue at this time.

The second issue on which testimony is invited is, "Whether the Zoning Commission should adopt a flexibility rule similar to the rule in Subsection 2409.6 of 11 DCMR for matter of right buildings, and if so, what percentage should apply and to which standards should the flexibility apply?"

OP has no further testimony on question number two in the Notice of Public Hearing, but will assist the Commission as requested in evaluating testimony that is forthcoming.

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.

Comment: Special treatment is obviously a critical ingredient regarding additions to dwellings and flats. At least some mention of "design" seems worthwhile to make it part of the case, without making it so prominent (i.e., as a separate provision) that the Board must attempt to evaluate architectural design per se.

The nature of this issue is whether the Zoning Administrator should be authorized to allow very minor, "de minimus" deviations from the area standards of the zone districts. Such flexibility might be specified as one or two percent of the standard, whether a yard, court, lot occupancy, FAR or other area standard. The purpose of such a provision would be to eliminate a few variance cases that now must go to the Board of Zoning Adjustment for a public hearing process and several months delay for a deviation that is extremely minor.

The example of such a rule cited in the Notice of Public Hearing is existing Subsection 2409.6 in the planned unit development (PUD) regulations (2407.6 in the 1995 version of DCMR 11). This provision allows the Zoning Administrator, in reviewing architectural plans for conformity with an approved PUD, to allow changes of up to two percent in such standards as height, lot occupancy, gross floor area, parking and loading spaces, number of residential units to be built, etc. OP is generally supportive of such a rule, and may respond later to testimony offered at the public hearing, but has no further substantive commentary to add at this time.

RECOMMENDATION

For the reasons set forth in this report, the Office of Planning recommends that the advertised text be adopted, subject to any modifications that are justified by testimony or submissions at the public hearing. OP will work with the Zoning Commission to resolve issues as requested.