GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16558 of Clare Parmalee, pursuant to 11 DCMR 3103.2, for a variance from Subsection 404.1, the minimum allowable rear yard setback requirements, and Subsection 2001.3 (b) and (c), to allow a proposed addition to an existing nonconforming structure in the R-1-B District at premises 5308 39th Street, N.W. (Square 1751, Lot 14).

HEARING DATE: March 15, 2000
DECISION DATE: March 15, 2000

ORDER

PROCEDURAL MATTER:

The abutting property owners, who reside at 3902 Jocelyn Street, N.W., requested party status (Exhibit No. 20). The Board approved the request.

SUMMARY OF EVIDENCE:

The site is located at 5308 39th Street, N.W., in Square 1751, on Lot 14. The corner lot property has street frontages on 39th Street (to the east) and on Jocelyn Street (to the north). The rectangular-shaped property contains 6,750 square feet of land area. It has a width of 90 feet along 39th Street and a depth of 75 feet along Jocelyn Street. A 15-foot wide building restriction area abuts the property on both streets.

The site is developed with a two-story, with basement, detached single-family dwelling. The Applicant indicated that the dwelling is 76 years old; it was constructed in 1924. The first floor of the dwelling contains a living room, foyer, dining room, kitchen and a studio/sunroom. The studio/sunroom was originally a screened porch that was remodeled after the applicant purchased the dwelling in 1996.

The subject property abuts two lots that are developed with single-family dwellings. The Applicant's rear yard abuts property at 3902 Jocelyn Street, N.W. (to the west), and the side yard abuts the property at 3901 Jenifer Street, N.W. (to the south). The east and north sides of the site abut public space.

BZA
Case No. 16558
Exhibit No. 40

Board of Zoning Adjustment
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EXHIBIT NO.40

The site is located in the Ward 3 neighborhood of Friendship Heights. The neighborhood is predominantly comprised of single-family detached homes. The Applicant testified that lots that are located on the south side of the 5300 block of Jocelyn Street have a depth of 90 feet. The depth of the lots on the north side of the street are substantially larger, they are over 100 feet. Most of the lots in the subject square are configured differently and the houses are sited differently on the lots.

The Applicant proposed to construct a one-story addition at the rear of the dwelling. Based on revised building plans that were submitted at the hearing, the addition would be 23.9 feet wide and 11.6 feet deep (277 square feet). The addition would be used as a kitchen/breakfast area. The house's existing kitchen would be used as a pantry and storage area. A new deck is to be constructed, as a matter-of-right, on the west side of the new addition.

The Applicant indicated that screening exists between her property and the abutting property at 3902 Jocelyn Street. The screening consists of a Leiland Cypress hedge, which is approximately 12 feet high, and a wooden fence.

The site is zoned R-1-B. The R-1-B District permits matter-of-right residential uses of single-family detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, a minimum rear yard depth of 25-feet, a minimum side yard depth of 8 feet (each), and a height of 3-stories/40 feet.

The site meets all requirements of the Zoning Regulations, except for the rear yard requirement. The site's rear yard is nonconforming because its' depth is less than 25 feet; it is approximately 20 feet. The proposed addition would extend 11.6 feet into the rear yard. The rear yard, after the proposed addition, would have a depth of 8.6 feet. A variance of 16.4 feet from the rear yard requirement of the Zoning Regulations is required for the proposed addition.[1]

The following table summarizes the site's zoning data:

	Lot Area (As provided by the ZA)	**Lot Width** (As provided by the ZA)	**Lot Occupancy** (As provided by the ZA)	**Rear Yard** (As provided by the Applicant)	**Side Yard** (As provided by the ZA)
Required	5,000 sq ft	50 feet	2,700 sq ft (allowed) 40 Percent	25 feet	8 feet, each
Provided	6,700 sq ft	90 feet	1,119.5 sq ft - existing 417.0 sq ft - addition 1,536.5 sq ft – total (22.78 percent)	8.6 feet	16' and 27.5'+ ½ of Jocelyn St.
Variance	-	-	-	**16.4 feet**	-

[1] The Applicant presented revised plans for the addition. The rear yard computations contained in the Zoning Administrator's correspondence and on the Surveyor's plat were modified at the public hearing.

A zoning memorandum from the Division of Zoning of the Department of Consumer and Regulatory Affairs identified the zoning relief required by the applicant and requested in this case.

The Applicant submitted a petition, which was signed by eight neighborhood residents in support of the application (Exhibit No. 38).

By correspondence dated March 3, 2000, Advisory Neighborhood Commission (ANC) 3G indicated that it had voted to support the application (Exhibit No. 25). The ANC's support was contingent upon the Board approving the application for a rear yard depth of 8.6 feet (not 7.6 feet as shown). The ANC also urged the owners of the site and the abutting property at 3902 Jocelyn Street to come to agreement on fencing and vegetation between the properties. The ANC's decision to support the application was based on the following:

1) The house exceeds minimum setback requirements on three sides and the lot is of sufficient size to permit further development.

2) The house is sited in an unusual fashion on the rectangular-shaped lot. It was built close to the rear of the property so that the existing building and proposed addition are now within the rear yard setback requirement.

3) The existing kitchen is located at the rear of the house, and this coupled with the internal circulation pattern of the house create a hardship in locating the proposed new kitchen anywhere but at the rear.

4) If the subject dwelling faced Jocelyn Street rather than 39th Street, the proposed addition would satisfy the minimum [25-foot rear yard] setback requirement.

5) The applicant is willing to add screening along the rear yard to minimize the visibility of the proposed addition to the neighbors on Jocelyn Street.

The property owners at 3902 and 3903 Jocelyn Street, N.W. were opposed to the proposed addition and presented testimony in this regard. In addition, the Board received ten letters of opposition from nearby property owners. The neighborhood residents were opposed for the following reasons:

1) The Applicant remodeled an existing screened porch, which is located on the north side of the property. The porch is being used as a sunroom/studio. The Applicant could have used this space for the proposed kitchen since no zoning relief would have been required.

2) The proposed addition would adversely affect the abutting property owners at 3902 Jocelyn Street, N.W. The addition would be located a distance of 8 feet from the rear property line, and, as such, there would be a visual impact. It would overlook the neighbors' house and garden. The neighbors' living room window faces directly into the proposed addition. The addition would deprive the

neighbors of privacy in their garden, reduce their light and air, and restrict enjoyment of their back yard. Further, the addition would negatively affect the value of the abutting neighbors' property.

3) The existing rear yard is nonconforming and the proposed addition would reduce its size even further.

4) Maintaining the setbacks in the neighborhood is important because they serve to protect the limited amount of open space in the area. It is important that the requirements of the Zoning Regulations be adhered to to protect the integrity of the R-1-B zoning district, not only for the rear yard setback requirements, but also for all of the neighbor's setbacks.

5) The proposed addition would impose an unwelcome encroachment on the nearby property owners.

6) There is no peculiar and exceptional practical difficulty characterizing the Applicant's premises. The lot area and width exceeds the R-1-B minimum requirements. The property is rectangular in shape, with no unusual topographic, soil, or other special conditions. The Applicant, who is the sole occupant of the premises, simply wants a bigger kitchen.

CONCLUSIONS OF LAW AND OPINION:

The Board is authorized under Section 8 of the Zoning Act of June 20, 1938 [52 Stat. 799, as amended; D.C. Code §5-424(g) (3) (1994)], to grant variances from the strict application of the Zoning Regulations. Clare Parmalee is seeking variances pursuant to 11 DCMR § 3103.2 from the provisions of 11 DCMR §§404.1 and 2001.3 (b) and (c) to allow a proposed addition to a nonconforming structure. The public notice requirements for a hearing on the application have been met.

Under the three-prong test for a variance set out in 11 DCMR §3103.2, the applicant must show that (1) the property is unique because of its size, shape, or topography or other extraordinary or exceptional situation or condition connected with the property; (2) the applicant would encounter practical difficulty or undue hardship if the Zoning Regulations were strictly applied; and, (3) granting the variance will not result in substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Maps. In addition, under D.C. Code §1-261 (d) (1999) to give "great weight" to the affected ANC's recommendation.

In this case, the lot exceeds the lot area zoning requirement by 1,700 square feet and the lot width by 40 feet. The structure was positioned on the lot to front on 39th Street. However, if the structure were positioned on the lot to front on Jocelyn Street, there would be enough land area to construct the addition, as a matter of right. Also, the building's existing footprint, proposed addition, and deck would occupy approximately 23 percent of the lot area. The maximum allowable lot occupancy in the R-1-B District is 40 percent.

It would be impractical for the Applicant to build the kitchen at another location on the site. The internal circulation of the dwelling dictates where the kitchen should be constructed. The kitchen could not be constructed at the northern portion of the site to line up with the end of the sunroom. This option was considered but rejected because it would introduce a new roofline (hip roof) to the existing massing of the structure. Testimony was given that the new feature would be unsightly, incompatible with the existing houses on the block, and out of character with the neighborhood. Further, the Applicant indicated that the dwelling is positioned on the lot in such a way that it fits in with the street line of the other houses on 39th Street.

The Applicant chose not to use the remodeled studio/sunroom that had been remodeled for the kitchen. The Applicant stated that the exterior stairs to the basement are located by the studio and that placing the addition at this location would prohibit use of the stairs. Also, it would be difficult to extend the existing plumbing, heating and waste lines from the current kitchen into this area.

The Board concurs with the recommendation of the ANC 3G and accorded the Commission the "great weight" to which it is entitled. Specifically, the Board is of the opinion that the dwelling meets all of the setback requirements (except for the rear yard requirement) and that the lot is large enough to allow for further development; that because of the siting of the dwelling on the lot, the structure was built less than 25-feet from the rear property line; that the proposed location is the best option to modernize the dwelling because of the internal circulation of the house; that if the dwelling faced Jocelyn Street, there would be a deeper rear yard set back; and, the applicant has agreed to provide additional screening on the premises.

The Board is of the opinion that a practical difficulty exists at the site for the following reasons:

- The building was constructed and the lot configured prior to the requirements of the Zoning Regulations. The structure was built approximately 34 years prior enactment of the May 12, 1958 Zoning Regulations. Therefore, the Applicant has limited options for using the site to construct the addition so that it conforms to the existing zoning requirements.

- A 15-foot wide building restriction area is located on two sides of the property. The Applicant is prohibited from building into this area, thus limiting the buildable area of the lot.

- The site is a nonconforming lot. The rear yard has a depth that is less than a 25-feet. This is an existing condition that inhibits development at the rear of the property. The Applicant is unable to make any additions to the rear of the dwelling without relief from the Zoning Regulations.

- The unique features of the lot are its size, the building restriction area on two sides and the siting of the dwelling on the property.

The Applicant proposed to augment the existing screening between the site and the premises at 3902 Jocelyn Street by adding additional Leiland Cypress trees (which can grow up to 12 feet) and a 7-foot fence. The trees and fence are intended to provide additional buffering between the properties.

The Board does not agree with the abutting property owners and neighborhood residents opinion that granting the zoning relief requested would adversely affect their properties; that the existing studio/sunroom should be used for the kitchen; that the addition would create visual impacts and block light and air; that the addition would create an encroachment on nearby properties, that the addition would diminish property values; and, that the residents of 3902 Jocelyn Street would lose privacy in their back yard. Finally, the Board does not believe that granting the requested relief would infringe upon the open space that is currently enjoyed by the community.

Based on the foregoing, it is therefore **ORDERED** that this application be **GRANTED.**

VOTE: 4-0-1 (Robert Sockwell, Anne Renshaw, Rodney Moulden and John Parsons to approve; Sheila Cross Reid, abstaining).

BY ORDER OF THE DC BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: JUL 21 2000

PURSUANT TO D.C. CODE SEC. 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1999), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6".

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

BAB/5.29.00

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16558

As Director of the Office of Zoning, I hereby certify and attest that on JUL 21 2000 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed, first class, postage prepaid, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Clare Parmalee
5308 39th Street, N.W.
Washington, DC 20015

Ruth Uhlmann/Craig Mathews
3902 Jocelyn Street, N.W.
Washington, DC 20015

Anne M. Renshaw, Vice-Chairperson
Advisory Neighborhood Commission 3G
P.O. Box 6252 Northwest Station
Washington, DC 20015

Michael Johnson, Zoning Administrator
Building and Land Regulation Administration
Dept. of Consumer and Regulatory Affairs
941 North Capitol Street, NE, Suite 2000
Washington, DC 20009

ATTESTED BY _____
JERRILY R. KRESS, FAIA
Director