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August 21, 2000

DISTRICT OF COLUMBIA
OFFICE OF ZONING
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By Hand

Board of Zoning Adjustment
441 4th Street, NW
Suite 210
Washington, DC 20001

Re: BZA Application No. 16599 of Tia Cudahy
1521 31st Street, NW (Square 1269, Lot 370)

Honorable Members of the Board:

This letter is in response to the letter of Advisory Neighborhood Commission 2E, dated August 2, 2000 (attached hereto as Exhibit A), objecting to the Applicants' request for approval of an accessory basement apartment as part of its application. The Board has previously issued an Order dated July 28, 2000, approving the construction of an addition to Ms. Cudahy's home, but reserved judgment on the accessory basement apartment until after receiving input from the ANC, and a reply from the Applicants.

The sole reason cited by the ANC in its letter of opposition to the accessory basement apartment is the ANC's "long-established policy of rejecting special exceptions to allow for additional dwelling units in the single-family homes of Georgetown." The Applicants immediate neighbors had no such concerns, and submitted letters indicating no objection to the basement apartment. The ANC's opposition does not address the particular facts of this particular case, but rather extends to all accessory basement apartments in all of Georgetown. Section 3115.1(e) of the Zoning Regulations requires that, in an ANC report to this Board, the ANC must set forth "the issues and concerns of the ANC about the appeal or application as related to the standards of the Zoning Regulations against which the appeal or application must be judged." The ANC report does not provide this information. Rather, it states only that the ANC has a policy of blanket opposition to all such applications in Georgetown.

In Order No. 741, the Zoning Commission established the special exception procedure now codified in Section 202.10 to allow accessory apartment units in single-family detached structures in low-density residential zone districts throughout the District of Columbia. The Commission's action was the result of over one year of deliberation by the Commission, the Office of Planning, the Zoning Administrator and a number of other government agencies, with two public hearings involving testimony from approximately 24 witnesses and input from 7 ANC's. "After considering and balancing all issues relative to the proposal, the Commission concluded that its decision to approve the [accessory apartment regulation] is not inconsistent with the intent of the Zoning Act, and

BZA Case No. 16599 Exhibit No. 34

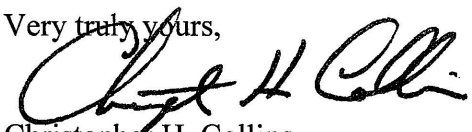
Board of Zoning Adjustment
District of Columbia
CASE NO.16599
EXHIBIT NO.34

is not inconsistent with the Comprehensive Plan for the Nation's Capital." Zoning Commission Order No. 741 at p.2.

This regulation applies city-wide and contains a number of objective criteria for approval. The Applicants in this case have set forth in detail in their July 11, 2000 submission to the Board, how their application meets the criteria of Section 202.10 of the Zoning Regulations. A copy of that portion of the Applicants' submission is attached hereto as Exhibit B. The District of Columbia Court of Appeals has long recognized that, in a special exception case, if the applicant meets its burden of proof, the Board must ordinarily grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment,* 432 A.2d 965 (1981); *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (1978). In essence, the ANC is stating that this special exception provision should not be allowed to be used in Georgetown. The Zoning Regulations must be uniformly applied throughout the District of Columbia. D.C. Code Section 5-424(e) states that "[t]he Board of Zoning Adjustment shall not have the power to amend any regulation or map." The Board itself cannot carve out a special category or classification to prohibit accessory apartments in Georgetown. The D.C. Court of Appeals has consistently held that the proper remedy in that instance is to seek an amendment of the regulations before the Zoning Commission. See *Citizens Association of Georgetown, Inc. v. District of Columbia Board of Zoning Adjustment*, 337 A.2d 495, 497 (D.C. 1975).

In summary, the ANC does not address whether or not the application meets the particular requirements of Section 202.10. The ANC simply asks this Board to disapprove this application, because it is located in Georgetown. The Zoning Commission has already determined that accessory apartments are permitted city-wide, subject to compliance with the requirements of Section 202.10. Because the Applicants have clearly demonstrated to the Board how those requirements are met, this Board should grant the application. Thank you for your consideration.

Very truly yours,



Christopher H. Collins

cc: Advisory Neighborhood Commission 2E
Tia Cudahy and Redmond Walsh



GOVERNMENT OF THE DISTRICT OF COLUMBIA

Advisory Neighborhood Commission 2E

Representing the communities of Burleith, Foxhall-MacArthur,
Georgetown and Hillandale
3265 S Street, NW • Washington, DC 20007
(202) 338-7427 • FAX (202) 338-0279 • anc2e@erols.com

August 2, 2000

Board of Zoning Adjustment
Suite 210
441 Fourth Street, NW
Washington, DC 20001

RE: BZA App.# 16599
Cudahy Residence, 1521 31st Street

Dear Members of the Board;

ANC 2E wishes to thank the Board for allowing the record to remain open after your hearing on July 25, 2000 so that we could respond to the above –referenced applicant. At our regularly scheduled meeting on August 1, 2000 which was duly noticed and at which all commissioners were present, the following motion was passed. The vote was 5-1-1.

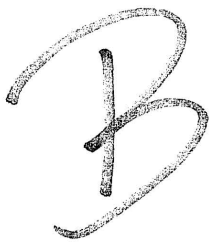
> ANC 2E has a long-established policy of rejecting special exceptions to allow for additional dwelling units in the single-family homes of Georgetown. These additional units create greater competition for parking, add to urban density, and in numbers, change the residential character of R-3 neighborhoods. Therefore, we object to the applicant's request for the Board of Zoning Adjustment's approval of an accessory basement apartment at 1521 31st Street, NW.

Sincerely,

Peter Pulsifer
Chair

COMMISSIONERS:

Scott - Dis- - Nran Goldstein, District 2 Peter Pulsifer, District 3 Barbara Zartman, District -



Justification for Special Exceptions

Re: Application No. 16599; 1521 31st Street, N.W.

Our application No 16599 requests two special exceptions for our property at 1521 31st Street, N.W, in the R-3 zoning district. The property has a three-story, plus basement, single-family house. The two special exceptions we are requesting are for the two undersized courts that will be created by our proposed additions and for an accessory apartment in the basement.

Section 223 – Two Undersized Courts

A special exception under Section 223 of the Zoning Regulations is required in order to construct the proposed additions. Based on the enclosed drawings, the zoning calculations are as follows:

	Zoning Regulation	Permitted/Required	Provided**
Height*	Section 400	40'/3 stories or less	35'10"/3 stories
Lot Size	Section 401	At least 2000 sq.ft./20' wide	3843 sq.ft./26'+ wide
Lot Occupancy	Section 403	60% (2305 sq.ft.) or less	38% (1448 sq.ft.)
Rear Yard	Section 404	At least 20'	71'8"
Side Yard	Section 405	None required	None
Court	Section 406	9'4" required North 9'4" required South	6'0" provided North 3'5" provided South

* In the 40-foot height residential zones, the height may be measured from the finished grade at the middle of the front of the building to the ceiling of the top story. ** From measured distances.

Section 223 of the Zoning Regulations permits, by special exception approval, an addition to a one-family dwelling that does not comply with all of the area requirements of Sections 400 through 406 of the Zoning Regulations, including the court requirements. As set forth above, and as shown on the plans, the courts that will result after the completion of construction do not meet the minimum court width requirements. Therefore, special exception relief is required under Section 223 of the Zoning Regulations. For the reasons set forth below, we meet the requirements for a special exception.

Section 223.2

The addition will 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 will not be unduly affected. We are entitled to build our addition all the way to our side lot lines. By holding back from our side lot lines to accommodate our neighbors, we are providing them greater light and air than would be the case if built as a matter-of-right.

(b) The privacy of use and enjoyment of neighboring properties will not be unduly compromised. Our plan was developed in consultation with our neighbors, and both neighbors have indicated no objection to our addition. Our rear lot line is more than 70 feet from our addition, so there is no impact on our neighbor to the rear.

(c) The addition, together with the original building, as viewed from the street, alley and other public way, will not substantially visually intrude upon the character, scale and pattern of houses along the street frontage. The two modest additions are at the rear of our house. As depicted on the plan, the small additions will not be visible from the street, nor will they be visible from any alley.

(d) In demonstrating compliance with items (a) through (c) above, we have used graphical representations such as plans, photographs and elevation drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways. The plans and photographs submitted to you clearly demonstrate the relationship of the proposed addition to the homes of our neighbors. Further, they demonstrate the fact that the additions will not be visible from any public way.

Section 223.3

As set forth above, the lot occupancy of our home, together with the addition, will not exceed seventy percent (70%). The lot occupancy of our existing home, together with the proposed addition, is thirty-eight percent (38%).

Section 223.4

The modest addition to our home has been painstakingly designed, with extensive input from our neighbors, in order to protect their adjacent properties. The additions are not visible from public space. . The Commission of Fine Arts and the Old Georgetown Board reviewed our plans and concluded that the proposed work falls under the jurisdiction of the Historic Preservation Review Board. The design of the additions has received the conceptual approval of the Historic Preservation Review Board and the Advisory Neighborhood Commission 2E. As such, no special treatment for the addition need be imposed by this Board.

Section 202.10 – Accessory Apartment

The plans also show the addition of a basement apartment in the dwelling. A special exception under Section 202.10 of the Zoning Regulations is required in order to add an accessory apartment to the basement in the house. Based on the enclosed drawings, the zoning calculations and requirements for Section 202.10 are as follows:

	Zoning Regulation	Permitted/Required	Provided
Lot Area	202.10(a)	At least 4,000 sq. ft.	3843 sq. ft.*
Gross Floor Area	202.10(b)	At least 2,000 sq. ft.	4,600 sq. ft.
Apt. % of Gross Floor Area	202.10(c)	25% (1150 sq. ft.) or less	12% (560 sq. ft.)
Internal Conversion of House	202.10(d)	No additional lot occupancy or gross floor area	54 sq. ft. additional under the new addition.
Additional Entrance	202.10(e)	If created, may not be located on a wall of the house that faces the street	No new entrance.
Owner Occupancy	202.10(f)	Either principal dwelling or apartment must be owner occupied	Principal dwelling will be owner occupied.
Aggregate number of persons to occupy house	202.10(g)	Not to exceed 6	Not to exceed 6
Existing home occupation	202.10(h)	No apartment where home occupation already located on premises	No home occupation on premises.
BZA waiver	202.10(i)	May not waive more than two of the above	Requesting two waivers: (a) lot area; and (d) additional square footage (to be under new addition).

* From measured distances

As set forth in the above chart, we will meet all of the specific requirements except for two. The only criteria that will not be met are Sections 202.10(a)(4) (lot size is less than 4,000 sq. ft.) and 202.10(d) (54 sq. ft. of additional gross floor area is being added). We are asking the Board to waive those requirements under Section 202.10(i).

All other requirements of Section 202.10 will be met. Specifically, the gross floor area of the dwelling is 4,600 sq. ft., and the gross floor area of the accessory apartment will be 560 sq. ft., which is less that 25% of the total. The basement apartment will utilize a separate existing door on the south side of the house for access. The owners will live in the main portion of the dwelling, and the aggregate number of persons that will occupy the house will not exceed 6. There is currently not a home occupation on the premises.

Our application meets the requirements of Section 202.10(i) for waiver of the above two criteria as follows:

1. The owner-occupancy requirement of paragraph (f) shall not be waived. We fully intend to reside in our new home, and we are not asking for a waiver of that provision.

2. The requested modifications do not conflict with the intent of this section to maintain a single-family residential appearance and character in the R-3 district.

    a. Section 202.10(a)(4) – The fact that our lot is 157 square feet less than the requirement will not conflict with the intent of this section. Our lot is almost twice the minimum lot size for the R-3 zone. In fact, the lot size is relatively large for the neighborhood, and many smaller dwellings nearby contain accessory apartments, and our plan is thus consistent with the neighborhood.

    b. Section 202.10(d) – The addition of 54 square feet at the basement level to accommodate the accessory apartment will not have an effect on the single-family residential appearance and character of our property. The 54 additional square feet of basement space is an incidental result of other work being done to the property, discussed above. The additional space is not being added solely for the use of the accessory apartment.

Section 3104.1 – Special Exception Approval

Based upon the above, we believe that the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, and will not tend to adversely affect the use of neighboring property.

For all of the above reasons, we respectfully request that the Board grant our application. Thank you.