GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13550 of Marvin L. and Delores R. Kay, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against a second story addition to an accessory building to be used for sleeping exceeding fifteen feet in height (Sub-section 7601.3) in an R-3 District at the premises 3263 N Street, N.W., (Square 1230, Lot 803).

HEARING DATES: August 5 and October 14, 1981
DECISION DATE: October 14, 1981 (Bench Decision)

FINDINGS OF FACT:

1. The application was first scheduled for the public hearing of August 5, 1981 but was continued to the public hearing of October 14, 1981 since the applicant had not complied with Section 3.3 of the Supplemental Rules of Practice and Procedure before the BZA in that the applicant failed to post the subject property ten days prior to the public hearing.

2. At the public hearing of October 14, 1981 the application appeared on the preliminary calendar since no affidavit of posting was on file. After listening to the applicant and the opposition, the Chair ruled that the property had been properly posted and the affidavit of posting had been filed but misplaced, and that the hearing should go forward.

3. The Chair denied the Motion of the Citizens Association of Georgetown to dismiss the application prior to the application being heard on its merits, as no facts had been adduced nor had any evidence been received into the record to support such a motion.

4. The subject site is located on the north side of N Street, between Potomac and 33rd Streets., N.W. It is known as premises 3263 N Street., N.W. The property is located in an R-3 District.

5. The immediate area is residential with row houses the predominant building type. Some detached homes and small apartment buildings are interspersed. The site is in an R-3 District that extends northward and westward for several blocks. M Street and Wisconsin Avenue b[illegible] of

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which are zoned D/C-2-A, are each about 500 feet from the subject site.

6. The subject site is 28.62 feet in width and developed with a row house with an English basement. A two-car garage approximately fifteen feet in height occupies the entire width of the lot in the rear yard.

7. A private twenty-two foot wide alley is located between the garage and the rear property line and abuts the property to the north.

8. The applicant proposes to add a second story to the garage. The first story would continue to function as a garage. The second story would be used as living quarters for a domestic employee and would contain two rooms and a bath. No kitchen would be provided. Access to the second floor would be from the alley and from the rear yard of the subject lot. The height of the structure would be twenty feet.

9. Sub-section 7601.3 of the Zoning Regulations limits the height of accessory buildings in R-3 Districts to fifteen feet and one story. The requested relief is, therefore, an area variance of one story and five feet in height. Living area for a domestic employee in an accessory structure is a permitted accessory use under Paragraphs 3101.56 and 3101.63 of the Zoning Regulations.

10. The main building contains five floors with eight rooms, four of whch are bedrooms. The applicant proposes to convert two of the bedrooms into a study and a library. The architect for the applicant testified that it would be difficult, or not desirable, to separate living accommodations for a servant in the main building since there would be a lack of privacy for the applicant.

11. The applicant's architect testified that the proposed addition would enhance the appearance of the alley and create a harmonious relationship with the taller and smaller buildings now surrounding the site. The architect further testified that a servant being on the premises would alleviate the use of a car by the servant and thus decrease traffic congestion in the alley. The applicant perceived no substantial detriment to the public good or substantial impairment of the intent, purpose and integrity of the zone plan with the proposed addition.

12. The architect testified that there was no practical difficulty inherent in the land itself to support the request for the variance but that there was a practical difficulty inherent in the main building. The main building is a Federal house with magnificent proportions. The applicant did not intend to "chop it up" to provide

accommodations for domestic help. The architect also testified that he was aware that, if he kept the garage to a height of fifteen feet and one story, the garage could be used for domestic purposes as a matter-of-right.

13. The Office of Planning and Development, by report dated July 31, 1981, and by testimony, recommended that the application be approved. The OPD testifed that the subject lot and those surrounding it are unusually large for Georgetown. Several are only slightly less than the R-1-B minimum of 5,000 square feet. The overall density of dwelling units per land area is only slightly more than half of that permitted as a matter-of-right in an R-3 Zone District. Creating living quarters for a domestic employee in an accessory structure would not, therefore, conflict with the objective, as embodied in the Zoning Regulations, of limiting residential densities in areas largely developed in a particular style prior to the implementation of a Zoning Plan. The addition of a second floor to the accessory structure would only slightly increase the bulk of that structure, and most of this added bulk would not be visible from any street or nearby property. There would be no interference with access to light and air for the subject property, nor the adjoining properties. The Office of Planning and Development recmmended that this application be approved, subject to the condition that no kitchen facilities be provided in the proposed addition, and that occupancy of the proposed living quarters be limited to a domestic employee associated with the subject premises. The OPD further reported that there was approximately a fifty-five foot distance between the rear of the main building and the rear of the garage and that it was possible for the applicant to construct a three story addition to the main building or a single story addition to the garage. The Board, for reasons discussed below, does not concur in the recommendation of the OPD as to the subject addition.

14. The applicants did not demonstrate that the property is affected by any extraordinary or unusual situation or condition.

15. The applicants did not demonstrate that they would suffer any particular practical difficulties if the Zoning Regulations were strictly applied.

16. Advisory Neighborhood Commission 3A, by letter dated July 31, 1981, opposed the application. The ANC noted that the basis for the variance was the applicants' convenience, not a proper basis for the granting of a variance. The Board agrees.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking an area variance, the granting of which requires proof of a practical difficulty inherent in the land itself and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The Board concludes that the applicant has not met this burden of proof. The applicant testified that there was no practical difficulty inherent in the land itself but that the practical difficulty existed in the convenient use of the main building. Also, as set forth in Finding No. 18, the OPD reported that the applicant had other options to attain the desired result. The Board concludes that the requested variance is a matter of convenience on the part of the applicant and not based on an exceptional condition or a practical difficulty. Accordingly, it is ORDERED that the application is DENIED for failure to meet the burden of proof required for the granting of an area variance.

VOTE: 5-0 (Walter B. Lewis, William F. McIntosh, Douglas J. Patton, Charles R. Norris and Connie Fortune to deny).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JAN 28 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."