IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

CRAIG AND ANN GOODMAN	:	
	:	
Petitioners	:	
	:	
vs.	:	No. 02-AA- 149
	:	(Application No. 16696)
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT	:	
	:	
Respondent	:	

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AMENDED PETITION FOR REVIEW

Petitioners Craig and Ann Goodman, by and through counsel, respectfully seek review of the Decision and Order of the District of Columbia Board of Zoning Adjustment dated February 4, 2002. Petitioners filed an application for a variance. Respondent held hearings on May 1, 2001 and July 17, 2001. A Decision and Order was issued on February 4, 2002. As grounds for this Petition, Petitioners state the following issues:

1. Whether the Board of Zoning Adjustment ("BZA") by its Order dated February 4, 2002 improperly used Modified Application number 16696 as a means of promulgating a new rulemaking of general applicability and effect without proper notice and comment and in derogation of Petitioners' rights to due process.

2. Whether under a plain reading of the Zoning Code and Regulations, the owners of an R-3 property that meets the population density and lot size requirements of an R-1-B property require a variance to construct a second story not to

BZA
Case No. 16696
Exhibit No. 92

Board of Zoning Adjustment
District of Columbia
CASE NO.16696
EXHIBIT NO.92

exceed 20 feet on an accessory structure for use as sleeping or living quarters of domestic employees of the family occupying the main building.

3. Whether the BZA erred in interpreting the plain meaning of 11 DCMR sections 320 and 321 et seq.

4. Whether the BZA Decision and Order dated February 4, 2002 erred by misstating and/or misapplying the facts established by competent expert testimony in the record before it.

5. Whether the BZA deprived Petitioners of their due process rights.

6. Whether the BZA erroneously applied regulatory standards and/or misinterpreted the relevant D.C. Code and Regulations sections as they applied to the facts established by competent expert testimony in the hearing record before it, without proper notice in derogation of Petitioners' due process and property rights.

7. Whether the BZA's Decision and Order dated February 4, 2002 is inherently inconsistent, incorporates inaccurate facts and/or interprets applicable sections of the DC Code and Regulations in a manner that is inconsistent with the plain meaning and intent of the Code and Regulations.

8. Whether the BZA's Decision and Order dated February 4, 2002 was so rife with errors of both fact and law as to render its Decision and Order arbitrary, capricious and unsupported by either competent expert evidence properly

submitted into the record, or by any of the facts properly submitted into the record by Petitioners as well as the BZA's own expert Zoning Code witness, as evidenced by its Decision Day Transcript of October 2, 2001.

9. Whether the Decision and Order dated February 4, 2002 was essentially an attempt by either the Zoning Commission or the BZA to implement a new zoning law in the District of Columbia that would prohibit a permitted accessory use in an accessory structure contrary to the plain language of the applicable Code and Regulations sections governing both R-1 and R-3 Districts and despite the fact that the use is obviously customarily incidental to use of the main property as a single family dwelling and despite the fact that it would not violate either the lot or population density limitations governing the property on which it would be constructed. All of the legal gymnastics that the Order attempted to impose on Petitioners, either multiple area/height variance requirements and/or use variance requirements, were merely a charade for this other intent and purpose as evidenced by the decision day transcript

10. Whether improper official conduct in this case by city official(s) and misinformation submitted by other city officials unduly influenced the outcome of this matter, prejudiced Petitioners' property rights and deprived them of due process.

11. Whether the regulatory process the BZA employed in this proceeding unfairly prejudiced Petitioners' property

rights and deprived them of due process by permitting expert testimony and new issues to be raised for the first time at or after the BZA Hearing of July 17, 2001.

12. Whether the BZA's interpretation and political use of 11 DCMR 3103 imposes either an arbitrary and/or legally impossible burden of proof on Petitioners and deprives them of valuable property rights without due process of law.

13. Whether the area and/or use intended by Petitioners is explicitly permitted by the DC Code and Regulations and whether the interpretation of the DC Code and Regulations contained in the Decision and Order that would require Petitioners to destroy the historic fabric of an historic property and garden and cause significantly more damage to their property and neighboring properties is inconsistent with existing precedent and contrary to the intent of the zoning laws, regulations and plan.

14. Whether use of an accessory structure in an R-3 district by an immediate family member or domestic employee of the family occupying the principal dwelling is a customary and incidental use of an accessory structure as a matter of law.

WHEREFORE, Petitioners seek review of the Decision and Order of the District of Columbia Board of Zoning Adjustment.

Respectfully submitted,

CRAIG G. GOODMAN (946319)
Petitioner and Co-Counsel
for Petitioners

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NICHOLAS D. DALE (202440)
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(301) 907-7490

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February, 2002, I served a copy of the Petition for Review and foregoing Amended Petition for Review on the following:

Mary R. Carter
1317 - 33rd Street, N.W.
Washington, D.C. 20007

Mary D. Sella
1319 33rd Street, N.W.
Washington, D.C. 20007

Cynthia A. Giordano
Nathan W. Gross, AICP
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

Peter Pulsifer, Chairman
Advisory Neighborhood Commission 2E
St. John's Episcopal Church
3265 S Street, N.W.
Washington, D.C. 20007

Honorable Jack Evans
Councilmember Ward 2
Council of the District of Columbia.
1350 Pennsylvania Avenue, N.W., Room 106
Washington, D.C. 20004

Ellen McCarthy, Deputy Director
Development Review Division
D.C. Office of Planning
801 North Capitol Street, N.E., Suite 4000
Washington, D.C. 20002

Toye Bello
Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol] Street, N.E., Suite 2000
Washington, D.C. 20002

and a copy of the foregoing Amended Petition upon

Office of the Corporation Counsel, D.C.
441 - 4th Street, N.W.
Washington, DC 20001

Board of Zoning Adjustment
Suite 210-S
441 - 4th Street, N.W.
Washington, DC 20001

NICHOLAS D. DALE

Mrs. Jerrily R. Kress,
Director of the Office of Zoning
Board of Zoning Administrator
441 4th Street, NW
Suite 210
Washington, DC 20001

Re: BZA Application No. 16696;
District of Columbia Court of Appeals
Case Number 02-AA-149

Dear Ms. Kress,

The undersigned Applicant/Appellant has filed an appeal of the BZA Decision and Order entered in the above reference BZA case number on February 4, 2002. Not all the material in the BZA relevant to the instant appeal. Only the following documents and transcripts are hereby designated by Appellant and transmitted to the Court of Appeals to be used for the Record on Appeal.

Consequently, the undersigned Applicant/Appellant respectfully requests that you or the proper person with the BZA transmit and certify to the Court of Appeals the following materials to be used for the Record on Appeal:

Appellants Designation of the Sections of the Record for Appeal

1. Appellant Application Number 16696 as Modified to a limit of 20 feet and for use solely as living quarters for a domestic employee dated April 25, 2001.

2. Appellants Brief dated June 25, 2001 with 9 attachments including colored photographs. Please transmit the colored photographs so the Appeals court may see the project.

3. Applicant's objection to late intervention and expert proffer dated July 16, 2001

4. The Transcript of the hearing dated July 17, 2001

5. Appellants Post Hearing Brief dated August 22, 2001 with 7 attachments including colored photographs. Please transmit the colored photographs so the Appeals Court may see the project.

6. Appellants Rebuttal Brief Dated September Brief dated September 18, 2001 with 6 attachments including colored photographs and a letter from Mrs. Goodman dated September 17, 2002. Please transmit the colored photographs so the Appeals Court may see the project.

7. ANC's Resolution dated June 13, 2001.

8. The Office of Planning's Findings dated July 10, 2001.

9. The BZA hearing transcript dated July 17, 2002.

10. The Decision Day transcript dated October 2, 2002.

11. The BZA Order dated February 4, 2002.

Thank you in advance for your cooperation herein.

Sincerely,

Craig Goodman
Petitioner/Co-Counsel