GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16715 of John E. Kern, pursuant to 11 DCMR § 3103.2 for a variance from the side yard provisions under section 405 to allow the construction of a detached single family dwelling in the R-1-B District at premises 2318 Nebraska Avenue, N.W. (Square 1412, Lot 64).

HEARING DATE: **June 12, 2001**
DECISION DATE: **June 12, 2001 (Bench Decision)**

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2 (Exhibit No. 6).

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register and by mail to the applicant, Advisory Neighborhood Commission (ANC) 3D, and to owners of all property within 200 feet of the property that is the subject of this application.

The subject property is located within the jurisdiction of ANC 3D. ANC 3D, which is automatically a party to this application, submitted a written statement in support of the application (Exhibit No. 19). The National Park Service submitted a letter (Exhibit No. 25) stating that it had no objection to the application provided the applicant agreed to certain conditions. The Office of Planning submitted a report (Exhibit No. 22) recommending conditional approval of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR § 3103.2. No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board encourages the applicant to develop a construction management plan for the site. The plan may include specifics on the hours and days of construction; the duration of the construction period; the route that the construction vehicles would use; mitigation measures to reduce noise and dust at the site; and the name, telephone number and address of a contact

BZA Case No. 16715 Exhibit No. 28

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person. The applicant is encouraged to develop the construction management plan in consultation with ANC 3D and file a copy with the ANC upon completion.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, under 11 DCMR §§ 3103.2 and 405, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED SUBJECT TO THE CONDITIONS IDENTIFIED IN EXHIBIT NO. 25 OF THE RECORD AND AS FOLLOWS:**

1. The large maple tree situated immediately in the corner of the lot and partially on National Park Service property and the Nebraska Avenue right-of-way shall be protected and maintained. The applicant shall develop a tree protection plan for the construction period of the building.

2. The exterior finishes of the building shall be red brick exterior walls and a gray slate roof and copper gutters.

3. Access to the property shall be from Nebraska Avenue, N.W. No request shall be made to access the property from the street, which runs through Park Service property".

Pursuant to 11 DCMR § 3101.6, the Board waived the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 5-0-0 (Carol J. Mitten, Anne Mohnkern Renshaw, Sheila Cross Reid, Geoffrey H. Griffis and Susan Morgan Hinton to approve).

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

Each concurring Board member has approved the issuance of this Order.

JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF ORDER: JUL - 5 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

BAB/6.22.01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16715

As Director of the Office of Zoning, I hereby certify and attest that on JUL - 5 2001 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

John E. Kern
5208 Wissioming Road
Bethesda, Maryland 20816

Eleanor Roberts Lewis, Chairperson
Advisory Neighborhood Commission 3D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

John W. Finney, Commissioner
Single Member District 3D04
5275 Watson Street, N.W.
Washington, D.C. 20016

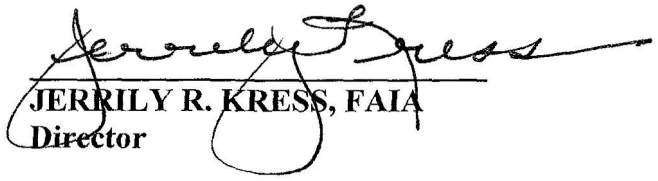
Michael Johnson, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

Councilmember Kathleen Patterson
Ward 3
441 4th Street, N.W., Suite 709
Washington, D.C. 20001

Ellen McCarthy, Deputy Director
Development Review
Office of Planning
801 North Capitol Street, N.E., Room 400
Washington, DC 20002

BZA No. 16715 - Attestation Sheet

Alan Bergstein
Office of the Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, DC 20001



JERRILY R. KRESS, FAIA
Director