GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

Application No. 16725 of Richard A. Cantor and Charles L. Grizzle, as amended, pursuant to 11 DCMR § 3103.1 for variances to allow an addition to a nonconforming one-family structure under subsection 2001.3 (a), (b) and (c), and from the lot occupancy requirement under subsection 403.2, and pursuant to subsection 3104.1 for a special exception to allow the establishment of a nonconforming open court and the enlargement of an existing nonconforming open court (section 406) under section 223 in an R-1-B District at premises 2326 California Street, N.W. (Square 2519, Lot 46).[1]

HEARING DATE: **July 10, 2001**
DECISION DATE: **July 10, 2001 (Bench Decision)**

DECISION AND ORDER

PRELIMINARY MATTER:

Dr. Robert E. Wittes, the abutting property owner (who also shares a party wall with the applicant), requested party status (Exhibit No. 20). The Board determined that Dr. Wittes met the requirements as outlined in section 3106 of the Zoning Regulations to be granted party status and, therefore, approved his request.

BZA Case No. Exhibit No. 27

SUMMARY OF EVIDENCE:

The site is located in Square 2519, on Lot 46. The site is located mid-block on California Street, N.W., at premises 2326, in the Sheridan-Kalorama neighborhood of Ward 1. The lot contains 2,437.5 square feet; it has a width of 25 feet and a depth of 97.5 feet. A three-story plus basement, semi-detached, building that was constructed in 1914 is located on the property.

The owners proposed replacing an existing two-story rear addition that was constructed in 1985 with a three-story brick addition. The rear of the existing structure would be reconfigured, to include adding a second bathroom on the third floor. The addition would extend the third story out an additional 8 feet, so that the rear wall at the proposed third story aligns with the rear wall of the existing house.

[1] **The Board amended the application at the public hearing. The Board determined that the corrected announcement would not change the substantive issues of the case.**

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CASE NO.16725
EXHIBIT NO.27

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

The applicants are allowed to occupy 975 square feet of the 2,437 square foot lot (based on 40 percent lot occupancy). The Board was provided with different calculations for the lot occupancy. The Zoning Administrator's computations sheet (Exhibit No. 6), the applicants' construction plans (Exhibit No. 9), and the applicants' calculations at the public hearing (transcript page 84) contain different lot occupancy figures. After reviewing all the scenarios, the Board indicated that the existing building and proposed addition exceeded the footprint by 30 square feet or less (11 percent). The proposed increase in lot coverage would be approximately 1 percent of the total lot area. The footprint of the proposed and existing structures would be very similar.

No zoning relief was needed from the side yard zoning requirements even though the application was initially advertised for relief from section 405 of the Regulations. Eight-foot side yards are required in the R-1-B district. To the east, the applicants share a party wall with their neighbor. To the west, the dwelling is constructed adjacent to the property line. The existing dwelling is built on lot lines on both sides. The existing rear yard has a depth of 42.4 feet; and a 25-foot depth is required. The depth of the rear yard is much larger than that required by the Zoning Regulations.

An existing open court is located on the east side of the property. The applicants' are proposing to construct a bay window on the west side of the property thus creating another open court. Zoning relief is needed for two nonconforming open courts at the site.

The DC Historic Preservation Review Board (HPRB) reviewed the project. The HPRB found that the applicants' proposal to be consistent with the character of the Sheridan-Kalorama Historic District, and therefore approved the design and massing of the addition (Exhibit No. 22).

By correspondence to the Board, Advisory Neighborhood Commission (ANC) 1D indicated that at its April 17, 2001 public meeting, the ANC voted to support the application (Exhibit No. 19).

The applicants prepared a Sun and Shadow Study (Exhibit No. 26) to simulate how sunlight of the abutting neighbor's property would be affected during the seasons of the year if the addition were constructed. The applicants indicated that the addition would have minimal effect on the abutting property. However, for approximately one hour during the afternoon, the proposed addition would cast a shadow on the adjoining property to the east.

OPPOSITION:

Dr. Robert E. Wittes, party to the case, does not object to the addition in general, but does object to the third story. Dr. Wittes indicated that:

- The top story would decrease the amount of sunlight to his property.

- The third floor addition would change his view from that of trees and greenery (a woodsy appearance) to a man-made structure at the rear right of his property.

- The proposed third story addition would block the open space view from the third floor west window.

- The addition would decrease his privacy.

FINDINGS OF FACT:

The lot is nonconforming; the lot size is approximately one-half of that required in the R-1-B District. The subject existing dwelling exceeds the allowable lot occupancy by 11 percent. The lot and existing structure are nonconforming. Any exterior addition to the building requires relief from the Board of Zoning Adjustment.

The addition would cause some shadow changes to the abutting property. However, the changes would be minimal. Two windows would be impacted for short periods of time at particular times of the year. A majority of Dr. Wittes' property, however, would not be substantially affected by a loss of light to most of the windows and rooms. Dr. Wittes provided photographs to show the existing view; however, he did not provide any other documentation to substantiate the extent to which his view would be significantly diminished, nor did he discuss, in-depth, how his privacy would be impaired.

The Board found that the site contains inherent difficulties, which arise out of the land. The lot size and width are approximately one half the size required for the R-1-B District. There are no side yards at the site, resulting in the creation of open courts that cannot meet the zoning requirement. The dwelling is 87 years old; it was built 44 years prior to the effective date of the 1958 Zoning Regulations. The footprint of the original dwelling exceeded the allowable lot occupancy.

The building is located in Sheridan-Kalorama historic district and must meet historic preservation review design requirements. Those design requirements are intended to place specific restrictions on how the addition can be constructed, thus constraining, to some extent, the use of the property. The DC Historic Preservation Review Board approved the project.

The property's rear yard is 17 feet larger than required by the Zoning Regulations. The substantially large back yard adds a measure of open space to the property.

Advisory Neighborhood Commission 1D at a public meeting passed a resolution to support the application.

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. Richard A. Cantor and Charles L. Grizzle sought variances and a special exception pursuant to 11 DCMR § 3103.2 and 3104.1, to permit the construction of a three-story rear addition to a nonconforming semi-detached dwelling. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met, as the Office of Zoning provided timely written notice to the applicant, the owners of all property within 200 feet of the subject property, and ANC 1D, and by publishing the notice in the D.C. Register. In addition, the applicant timely posted notice on the property.

The application must meet the three-prong test for area variances, as identified in subsection 3103.1 of the Zoning Regulations. The applicants must demonstrate 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 applicants would encounter practical difficulty 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 Map. The applicants must also demonstrate that based on 11 DCMR subsection 3104.1, the requested relief can be granted in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect, adversely, the use of neighboring property in accordance with the Zoning Regulations and Map.

Based on the summary of evidence and findings of fact, the Board finds that the site is zoned R-1-B and semi-detached dwellings are not permitted as a matter-of-right in the R-1-B District. The lot area, lot width, lot occupancy, side yard and open courts cannot meet the zoning requirements. The building was constructed 44 years prior to enactment of the 1958 Zoning Regulations, and is unable to meet current zoning requirements. These zoning constraints render the property and structure to be nonconforming. Further, the site is located in a historic district and the project is required to meet design guidelines specifically tailored to the Sheridan-Kalorama neighborhood. These physical restrictions create an exceptional condition at the site and inhibit the applicants' ability to reasonably develop the property. As such, a practical difficulty exists at the site, which prevents the applicants from reasonably using the property.

The Board found the applicants arguments persuasive, supported by the Sun and Shadow Study, that the addition would not create substantial adverse impact on the abutting or nearby properties. The addition would cause a limited amount of shadow and sunlight changes to the abutting property and would minimally change the view from the rear windows. However, it would not prevent the abutting property owner from continuing to enjoy the view and privacy from his home. The Board is of the opinion that approving the application would not be in disharmony with the Sheridan-Kalorama neighborhood and would be in accord with the general purpose and intent of the Zoning Regulations and Map.

The Board considered the views of Advisory Neighborhood Commission 1D and gave the ANC the "great weight" to which it is entitled.

The Board was persuaded that the applicants have met the burden of proof for area variances and special exception to construct the proposed rear addition. Therefore, it is hereby **ORDERED**

that the application be **APPROVED**, in accordance with the building plans identified at Exhibit 9 of the record.

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

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

Each concurring Board member approved the issuance of this Order.

JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF ORDER: SEP 18 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.

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 14 IN TITLE 2 OF THE D.C. CODE. *SEE* D.C. CODE § 2-1402.67 (2001). 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/8.28.01

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As Director of the Office of Zoning, I hereby certify and attest that on SEP 18 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:

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JERRILY R. KRESS, FAIA
Director