GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16794 of Sylvia and Christopher Addison, pursuant to 11 DCMR § 3104.1 for a special exception to allow an addition to a single family dwelling under section 223, not meeting the side yard requirements (section 405), and pursuant to 11 DCMR § 3103.2 for a variance from the side yard provisions under subsection 2500.6 to allow the construction of an accessory building in an R-1-B District at premises 3207 Cathedral Avenue, N.W. (Square 2101, Lot 3).

HEARING DATE: **November 27, 2001**
DECISION DATES: **January 2 and February 5, 2002**

DECISION AND ORDER

The Applicants, Sylvia and Christopher Addison, filed an application with the Board of Zoning Adjustment (BZA) on September 20, 2001 to enlarge an existing dining room and to construct a two-story accessory structure at the rear of the site.

The Applicants sought zoning relief to enlarge an existing dining room on the west side of the property. The application cannot meet the 8-foot side yard requirement of the Zoning Regulations; therefore, relief is needed from section 223 (section 405 the side yard requirement), for the proposed construction of the dining room addition.

The Applicants also sought zoning relief for a variance under subsection 2500.6 to allow the construction of an accessory building that cannot meet the 8-foot side yard requirement on the east side of the property. The accessory building would replace a one-car garage with a two-car garage and allow the applicants to construct a second story above the garage to house a domestic employee. The Applicants are owners of the property and reside on the premises.

After discussion and deliberation of the application at a public hearing and two public meetings, the Board granted the application for the special exception and the variance.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Application and Notice of Hearing. By memorandum dated September 28, 2002, the Office of Zoning provided notice of the filing of the application to the District of Columbia Office of Planning, the affected Advisory Neighborhood Commission (ANC 3C) and Single Member District Commissioner, and the Ward 3 Councilmember.

The Board scheduled a hearing on the application for November 27, 2001. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on October 11, 2001, mailed the Applicants, the

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owners of all property within 200 feet of the subject property, and ANC 3C notice of the hearing. Notice of hearing was also published in the D.C. Register. The Applicants' Affidavit Of Posting indicates that on November 15, 2001, one zoning poster was placed on the property, in plain view of the public.

The property was posted for 12 days; 15 days are required. The Board waived the number of days for which the property should have been posted. The Board noted that there are several ways of informing the public about the application and that they were all followed. In addition, the Applicants indicated that they provided notice to the abutting and nearby property owners. The Board noted that anyone having an interest in the case would have been duly notified by one of the notification processes.

Request for Party Status. The Board received a letter on November 21, 2001 from George Chopivsky, Jr., an abutting property owner at 3215 Cathedral Avenue, N.W., expressing an interest in the case, Exhibit No. 20.[1] Mr. Chopivsky's correspondence states that after returning from an extended stay abroad, he had recently learned of the Applicants' proposal. Mr. Chopivsky further stated that the Applicants' request may significantly affect him and his property and he requested that the Board allow time for him to file written or oral comments at the November 27, 2001 public hearing.

Mr. Chopivsky did not attend the November public hearing. The Board wrote Mr. Chopivsky inviting him to attend the January 2, 2002 public meeting where the application would be discussed or to submit comments. He submitted written comments, received by the Board on December 20, 2001, requesting to be granted party status. He also expressed his approval of the application with specific conditions. Exhibit No. 27.

Persons in Opposition to the Application. No other person expressed an interest or opposition to the application.

Self-Certified Application. The Applicants filed a Self-Certified BZA Application, Exhibit No. 6. The Applicants filed their application under section 223, additions to one-family dwellings and flats, of the Zoning Regulations. The Board of Zoning Adjustment staff informed the Applicants that the relief being sought went beyond that which is permitted under section 223 as section 223 does not apply to accessory buildings and that the application needed to be amended to include variance relief from subsection 2500.6 of the Regulations. Exhibit No. 11.

Authorization. Outerbridge Horsey, with the architectural firm Horsey and Thorpe Architects represented the Applicants in the proceedings. The Applicants, Sylvia and Christopher Addison, gave Mr. Horsey authorization to represent them. Exhibit No. 7.

D.C. Office of Planning (OP) Report. The Office of Planning did not file a report on the application.

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[1] The property at 3215 Cathedral Avenue, NW is vacant. A dwelling previously occupied the property; however it was destroyed in a fire. Mr. Chopivsky resides at 3217 Cathedral Avenue, NW.

ANC Report. The Board waived the seven-day filing requirement of § 3115.1 to accept the report of Advisory Neighborhood Commission (ANC) 3C in the record. The report was filed on November 27, 2001, the day of the hearing. The ANC report indicates that at a public meeting held on November 26, 2001, the Commission, by unanimous vote, recommends approval of the application. Exhibit No. 26.

Closing of the Record. Except for information requested from the Applicants and George Chopivsky, the record closed at the conclusion of the public hearing.

Decision. The Board, by consensus, approved the special exception request on November 27, 2001. The Board, however, requested that the Applicants provide specific information concerning how the application meets the three-prong test for granting the variance and scheduled a decision for January 2, 2002 at its monthly meeting. At its January meeting, the Board determined that the Applicants did not adequately respond to its request, and rescheduled the decision for the February 5, 2002 public meeting. The Board approved the variance request by a vote of 3-1-1 on February 5, 2002.

SUMMARY OF EVIDENCE

The Applicants' Proposal

The Applicants had a two-fold request. First, the Applicants proposed to enlarge the existing dining room by constructing a one-story addition to the dwelling unit. The addition, to be constructed on the west side of the dwelling, would have a width of 4 feet 10 inches and a depth of 17 feet 8 inches. The west side yard would be reduced from 9 feet 2 inches to 4 feet 2 inches. The Applicants sought special exception relief under section 223 of the Regulations to permit the addition in the west side yard.

Secondly, the Applicants proposed to demolish an existing one-story garage and replace it with a two-story accessory building, which would measure 21 feet 4 inches by 26 feet. It would replace an existing one-story garage, which measures 19 feet 8 inches by 22 feet 7 inches. The accessory building would reduce the existing east side yard from 5 feet 9 inches to 4 feet 8 inches. The accessory building would increase the parking at the site from one to two spaces, provide space for the Applicants to store equipment and supplies in the structure, and allow the Applicants to construct a second story on the accessory building to house a domestic employee. The Applicants sought variance relief from subsection 2500.6 of the Regulations to permit the construction of the accessory building to project into the east side yard.

The second floor of the accessory building would contain approximately 150 square feet. The Applicants indicate that to make the floor plate any smaller would make the space uninhabitable. Additionally, it is unlikely that because of the garage's structural integrity, it can accommodate a second story floor plate, with a sloped roof, and have enough livable space.

The materials to be used for the new addition would be similar to that of the existing house. After demolishing the garage, the stones would be reused in the construction of the new

accessory building. Brick and natural stone to complement the existing dwelling would be used; also, they would have a slate roof and arch motif.

The Subject Property and the Surrounding Area

The site is located in Square 2101 on Lot 3 at premises 3207 Cathedral Avenue, N.W. The boundaries of the property are Klingle Road to the north, Cathedral Avenue to the south, 32nd Street to the east and 34th Street to the west.

The site is located in the Massachusetts Heights neighborhood of Ward 3. The site is located in a neighborhood that is developed predominantly with single-family detached and semi-detached homes. The Washington National Cathedral and the home of the Vice President of the United States are two important institutional facilities that are located in close proximity to the site.

The property is zoned R-1-B and has a land area of approximately 9,525 square feet. It is developed with a two-story, plus basement, single-family dwelling. The dwelling was constructed in 1920 and has a distinct architectural style that contributes to the character of the surrounding neighborhood. The property is improved with a swimming pool, a terraced garden and a one-car detached garage, in addition to the dwelling unit. A mature Oak tree that is approximately 24 inches in diameter is located on the west side of the property approximately 12 feet from the garage. An existing walkway is located around the swimming pool and must be maintained for safety reasons. The site is located on a slope that has a grade change from the front of the property to the rear. From Cathedral Avenue the land slopes steeply toward the site and beyond. No other property in the square has the same characteristics as the site.

A 15-foot wide public alley provides access to the garage and a 15-foot wide building restriction area is located at the front of the site.

The Applicants indicate that most of the side yards in the neighborhood are nonconforming. Side yards having 5-feet or less are not uncommon throughout the neighborhood. Many of the garages on neighboring properties have no side yards and are located on the property line. The Applicants also indicate that Cathedral Avenue has limited parking on one side of the street, unlike other streets in the neighborhood. The Applicants rely on off-street parking due to the limited on-street parking.

FINDINGS OF FACT

1. The property was developed in 1920, 38 years prior to enactment of the 1958 Zoning Regulations, and 82 years prior to this application. Eight foot side yards are required in the R-1-B District. The east side yard cannot meet the 8-foot requirement and is therefore nonconforming. The proposed accessory building would reduce the nonconforming east side yard by 1 foot 1 inch, from 5 feet 9 inches to 4 feet 8 inches.

2. The proposed use of the site to accommodate an accessory building with a second story is permitted as a matter of right in the R-1-B District. Section 2500.5 of the Zoning

Regulations state that an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building. The Applicants are committed to using the accessory building specifically as prescribed by the Zoning Regulations.

3. The Board finds that the Applicants are prevented from making major modifications to the existing garage so that it is habitable for a domestic employee, as well as use the space for parking because of structural deficiencies with the building. Not only are the Applicants restricted by the size of the structure, but also the building was constructed 82 years ago under quite different code requirements.

4. The mature Oak tree, the existing swimming pool and the terraced garden are existing conditions that contribute to the Applicants' difficulty in placing the proposed accessory building at any other location on the site. If the accessory building were to be constructed farther to the west, the construction would cause an immediate impact to the root zone of the Oak tree.

5. The topography of the site changes between the front of the dwelling, the terrace garden and the garage. Thus, the design must incorporate the changing topographical features of the site.

6. The proposed accessory building cannot be located any closer to the swimming pool because of the existing walkway that is located around the pool. Also, because of the placement of the swimming pool in the middle of the lot, the garage area is the only practical place where the accessory building can be located.

7. The Board finds that the main building has a distinguished architectural style, which contributes to the historic character of the neighborhood and that the proposed accessory building would have superior design features. The positioning and alignment of the single-family dwelling and its relationship to the accessory garage, the swimming pool, the terraced garden and the garage are designed to have a cohesive relationship. The swimming pool was constructed after the dwelling unit and is centered on the garage.

8. With the exception of the side yard requirement, the project complies with all other zoning requirements (e.g., lot area, lot width, lot occupancy, front and rear yard set back, height).

9. The Applicants made a good faith agreement with the abutting neighbor to the west, Mr. George Chopivsky, Jr., and satisfied his concerns. The Applicants' agreement with Mr. Chopivsky indicates that they are to:

   (a) Plant and maintain a dense evergreen vegetation screen that will block visibility into his yard from the buildings on their property, including from the existing structure and from the proposed two-story accessory building;

   (b) Maintain a mutually satisfactory attractive fence along their mutual property line; and

(c) Support a possible future application from Mr. Chopivsky for a side yard encroachment to build in the side yard a structure next to the Applicants' property of a scale similar to the Applicants' addition.

Mr. Chopivsky correspondence also states that the Applicants' assurances would run with their respective properties, and that the benefits and obligations of the assurances extend also to future owners of the properties.

10. The Board considered the position of Advisory Neighborhood Commission 3C and concurred with the ANC that the Applicants fully and truthfully responded to all concerns. The Board is satisfied that the ANC thoroughly reviewed the application and that the project would not have any substantial impact on the Massachusetts Heights neighborhood.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code §§ 6-641.07(g)(2) and (3) (2001)), to grant special exception and variance relief from the Zoning Regulations. The Applicants are seeking a special exception pursuant to § 3104.1 from the limitation in § 405 to allow an addition to a single-family dwelling not meeting the side yard requirements. In addition, the Applicants are seeking an area variance pursuant to § 3103.2 from § 2500.6 to allow the construction of an accessory building in the R-1-B District. The public notice requirements of § 3113 for the public hearing on the application have been met.

The application must meet the three-prong test for an area variance as set out in § 3103.2 of the Zoning Regulations. The Applicants must demonstrate that: (1) the property is unique because of its size, shape, 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. Based upon the findings of fact, the Board concludes that the application does meet the requirements for approval for construction of the addition to the dwelling unit and construction of an accessory building.

The Board finds the Applicants' arguments persuasive that the site has an existing nonconforming east side yard and that the proposed accessory building would reduce it minimally by 1 foot 1 inch; that the project was designed to maintain the site's symmetry and its relationship to the single family dwelling, the swimming pool and terraced garden; that the site has a hilly topography and that the project was designed to incorporate the property's natural terrain; that the use of the accessory building is permitted as a matter of right in the R-1-B District; that if the accessory building were to be constructed any closer to the mature Oak tree, its root system would be damaged; and that with the exception of the side yard requirement, the application meets all other zoning requirements. The Board also finds that the proposed use of the property is reasonable. The Applicants are seeking zoning relief to use their property based

on current zoning standards; the property was developed 82 years ago, 38 years prior to enactment of the 1958 Zoning Regulations.

The Board finds the design of the project to be superior and that all of the site's constraints contribute to the Applicants' practical difficulty. The Applicants are prevented from constructing a second story on the garage because of its structural integrity. If a second story were to be constructed on the existing garage, its small size would make it uninhabitable. Additionally, the Board is of the opinion that the Applicants would be denied reasonable use of their property if the accessory building could not constructed because of the site's constraints and because the use is permitted as a matter of right in the R-1-B District.

The Board held extensive discussions concerning whether the application meets the practical difficulty test. The concerns were associated with whether the accessory garage could be constructed at another location on the site; whether the proposed uses could in fact be located in the main structure; whether the design of the project was more aesthetic than functional; whether the Applicants had sufficiently demonstrated that there is a compelling reason for constructing a larger accessory building, instead of rebuilding what's existing and putting a second floor on it; and whether there is an exceptional and peculiar difficulty arising out of a unique condition of the site. A majority of the Board members indicated that the Applicants did in fact meet the practical difficulty test.

In reviewing special exception and variance cases, the Board is required under D.C. Code § 1-309(d) (2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. The Board has carefully considered the ANC's report and finds their recommendation to approve the application persuasive.

The Board finds that Mr. Chopivsky would be the only neighbor whose light and air could be affected by the Applicants' proposal and that his concerns have been resolved.

Based on the findings of fact and having given great weight to the ANC report, the Board concludes that the variance will not materially impair the intent and purpose of the Zoning Regulations, nor adversely affect the light and air of adjacent buildings. The Board concludes that the requested special exception relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, and will not affect adversely the use of neighboring properties. Finally, the Board concludes that the requested variance would not result in substantial detriment to the public good, nor substantial impairment of the zone plan.

For the reasons stated above, the Board concludes that the Applicants have met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED**, to permit the construction of an addition to the single-family dwelling and to allow the construction of an accessory building at premises 3207 Cathedral Avenue, N.W.

VOTE: 3-1-1 (Anne Mohnkern Renshaw, Geoffrey H. Griffis and David W. Levy to approve; Carol J. Mitten opposed to the motion; Curtis L. Etherly, Jr. not hearing the case, not voting.)[2]

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: MAY 17 2002

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 APPLICANTS FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANTS 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 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANTS TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

BAB/5.6.02

[2] The Board by consensus, on November 27, 2001, approved the special exception request. The Board members participating at the November public hearing were Carol J. Mitten, Geoffrey H. Griffis, David W. Levy and Anne Mohnkern Renshaw.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16794

As Director of the Office of Zoning, I hereby certify and attest that on MAY 17 2002 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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Courtesy Copy

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