GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16842 of Mary Jane and R. Gerald Suskind, pursuant to 11 DCMR § 3104.1, for a special exception under section 223 for an addition to a one-family dwelling not meeting the lot occupancy (section 403) side yard and nonconforming structure (section 405 and subsection 2001.3, respectively) requirements in R-1-B District at premises 2943 Macomb Street, N.W., (Square 2082, Lot 23)

HEARING DATE: **March 12, 2002**
DECISION DATE: **March 12, 2002**

DECISION AND ORDER

On January 7, 2002, Mary Jane and R. Gerald Suskind filed an application with the Board of Zoning Adjustment (BZA) to construct a one-story, 112 square foot addition at the rear of their property. The Applicants stated that the intended purpose of the addition was to enlarge the existing kitchen and to provide for additional light and privacy.

The project could not meet the lot occupancy (§ 403), side yard (§ 405) and nonconforming structure (§ 2001.3) provisions of the Zoning Regulations; therefore, the Applicants sought special exception zoning relief under § 223.

The BZA, at the March 12, 2002 public hearing, after discussion and deliberation on the application unanimously approved the application by a vote of 5-0-0.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Application and Notice of Hearing. By memorandum dated January 18 and January 14, 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 March 12, 2002. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on January 18, 2002, mailed the Applicants, the owners of all property within 200 feet of the subject property, and ANC 3C notice of the hearing. Notice of the hearing was also published in the D.C. Register. The Applicants filed an Affidavit Of Posting, which indicates that the property was properly posted. Exhibit No. 23.

BZA
Case No. 16842
Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO.16842
EXHIBIT NO.26

Request for Party Status. The Board received correspondence from Glenn J. Berger requesting party status. Mr. Berger also requested that the Board deny the application, Exhibit No. 21. Mr. Berger is a property owner who resides at 2946 Newark Street, N.W., to the rear of the site. He indicated that he would be unable to attend the hearing and requested that it be rescheduled.

The Board approved Mr. Berger's request for party status, and denied his request for the hearing to be rescheduled, finding that Mr. Berger had not demonstrated good cause for a continuance and that the continuance would be prejudicial to the Applicants.

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 initially sought zoning relief from the variance provision, under §§ 3103, 403 and 405. The Office of Zoning staff recommended to the Applicants that the application would be better suited as a special exception, under § 223, Exhibit No. 12. The Applicants agreed and the application was advertised as requiring zoning relief from the special exception provision under §§ 223 (403, 405 and 2001.3).

Authorization. Architect, Craig Morgan, represented the Applicants at the public hearing. Mary Jane Suskind, one of the two Applicants, was also in attendance at the hearing.

DC Office of Planning (OP) Report. OP filed a report recommending approval of the application, Exhibit No. 21. The report was received in the Office of Zoning on February 29, 2002. OP's rationale for recommending approval of the application were: (1) the proposed addition would be in harmony with the general purpose and intent of the Zoning Regulations and Map; (2) the addition would not substantially affect the enjoyment of any property owner residing in an abutting or adjacent property; (3) the proposed addition would not unduly affect the availability of light and air to any neighboring property owner; (4) the addition would not compromise the privacy of any neighboring property owner; and, (5) the addition and the original building, as viewed from the street, alley, and other public rights of way would not intrude on the special character of Macomb Street and the Cleveland Park neighborhood.

Advisory Neighborhood Commission (ANC) Report. By correspondence date February 27, 2002, ANC 3C recommended approval of the application, Exhibit No. 25. The ANC indicated that the application was considered at its February 25, 2002 meeting. The architect presented the proposed plans to the ANC. The ANC was informed that the Applicants informed their immediate neighbors of their plans and that the neighbors had not expressed any opposition. The abutting property owners did not attend the ANC meeting.

Closing of the Record. Upon hearing the Applicants case, and reviewing the recommendations of the Office of Planning and Advisory Neighborhood Commission 3C, the Board closed the record and did not request any additional information.

Decision. The Board approved the special exception request at the conclusion of the public hearing.

SUMMARY OF EVIDENCE

The Applicants' Proposal

The Applicants proposal would allow an addition to be constructed at the rear of the single-family dwelling, on the east side of the property. The addition would be used to enlarge the existing kitchen. The addition would be 14 feet wide by 8 feet deep and contain 112 square feet. The addition would replace an existing wooden deck; it would be constructed of wood framing, with large glass windows on the rear and smaller windows on the west side. There would be no windows on the east of the new addition. Skylights are to be constructed on the side of the roof. The Applicant indicated that the existing vegetation, including a large Holly tree that is located at the rear of the property would remain.

The Applicant indicated that because of the site's location in the Cleveland Park Historic District, approval was sought and received from the DC Historic Preservation Review Board to construct the proposed addition.

The subject building and property are nonconforming; they cannot meet the zoning requirements of the R-1-B District. Under the requirements of § 223 of the Zoning Regulations, additions can be made to single-family dwellings, if the criteria stipulated in the Regulations are is met. The Applicants, therefore, sought approval to construct the proposed addition under the special exception provision of § 223. Specifically, the project cannot meet the lot occupancy, side yard and nonconforming structure provisions of the Regulations.

The Subject Property and the Surrounding Area

The site is located in the Cleveland Park neighborhood of Ward 3, and in the Cleveland Park Historic District. It is also located in Square 2082, on Lot 23, at premises 2943 Macomb Street, N.W. The boundaries of the subject square are Connecticut Avenue to the east, 34th Street to west, Newark Street to the north and Macomb Street to the south. The neighborhood is predominantly residential in character, consisting primarily of wood frame bungalow structures. Commercial services are located one block to the east of the site, on both sides of Connecticut Avenue, between Klingle Road and Porter Street. The Cleveland Park Branch Public Library is located in close proximity to the site.

The Applicants indicated that prior to the development of the Cleveland Park neighborhood, the area surrounding the site was as a quarry and the rocks located there were used in the construction of the neighborhood. Further, the topography at the rear of the dwelling slopes substantially up toward Newark Street. For example, the view from the rear of the adjacent properties fronting on Newark Street looks into the second floor of the houses on Macomb Street. The Applicants indicated that the rear of their property couldn't be built in because it is steep, hilly and terraced into the hillside.

The rectangular shaped site contains 4,060 square feet of land area. It has a width of 40 feet, and on average, a depth of 102 feet. A 15-foot wide building restriction area is located at the front on the property, along Macomb Street. The property does not have access to an alley.

The property is developed with a single-family detached dwelling that was constructed in 1911. The dwelling unit contains two-stories plus a basement. A garage, which is attached on one side to the adjacent neighbor's garage, is located at the rear of the site. A shared driveway provides access to the garage from Macomb Street. A mature Holly tree is located at the rear of the property. The tree is used to provide privacy between the site and the abutting neighbor at the rear.

Zoning

The site is zoned R-1-B. The R-1-B District permits matter-of-right development of single-family detached dwellings with a 5,000 square foot minimum lot area, a 50-foot minimum lot width, a 40-foot/3 stories maximum height limit, a 40 percent lot occupancy, a 25-foot rear yard, and 8-foot side yards.

The minimum lot size in the R-1-B District is 5,000 square feet; the subject lot contains 4,060 square feet. It is 940 square feet below the minimum lot size. Additionally, the Zoning Regulations stipulate that the minimum width of lots in the R-1-B District shall be 50 feet; the width of the subject lot is 40 feet. Its width is 10 feet less than the minimum required.

The existing lot occupancy is 38.5 percent, 40 percent is permitted in the R-1-B District. The Applicants are proposing to occupy 41.3 percent of the lot area. The proposed addition and the existing building would occupy 1.3 percent more of the lot size than allowed by the Regulations. Eight-foot side yards are required in the R-1-B District. The east side yard has a 3-foot depth and cannot meet the zoning requirement; the Applicants are requesting a variance of 5 feet from the side yard requirement. [No zoning relief is required or was requested for the west side yard.]

Opposition

The Board received a letter of opposition from Glenn J. Berger; an opposing party whose property borders the rear of the Applicants' property. Mr. Berger expressed concern that the proposed addition would severely visually intrude on his property; that the use and enjoyment of his property would be unduly compromised; and, that the Applicants' property is already beyond the zoning requirements prescribed for the R-1-B District. Additionally, he stated that a very large tree, which creates a buffer between the two properties, is located on the Applicants' property. Mr. Berger indicated that removal of the tree would create a severe visual impact on his property and cause other deleterious impacts associated with privacy and enjoyment of his property. For the above stated reasons, Mr. Berger requested that the Board deny the application.

FINDINGS OF FACT

1. The subject lot is nonconforming. The lot cannot meet the minimum size and width requirements of the Zoning Regulations.

2. The 3-foot side yard on the east side yard of the property is an existing condition. The Applicants are proposing to enlarge the existing kitchen, and it is located at the rear of the dwelling on the east side of the premises. Constructing the addition in this location is the only reasonable and logical place on the site. Additionally, the Applicants are proposing to construct only solid walls on the east side of the property, to avoid any intrusion on the neighbors' property.

3. The Applicants are proposing to increase the lot occupancy by 1.3 percent, a modest increase. The addition would replace an existing wooden deck. The existing structure, plus deck, occupies 41.3 percent of the land area. The total footprint would minimally exceed the 40 percent lot occupancy requirement.

4. The property was developed in 1911, 47 years prior to enactment of the 1958 Zoning Regulations, and 91 years prior to filing the application with the BZA. Because of the nonconformities that exist at the site, the Applicants are prevented from making any exterior additions to the structure without the approval of the BZA. The Applicants proposal would increase the size of the structure by 112 square foot. The addition was designed to make the kitchen functional based on current living standards.

5. The rear of the property is terraced into a hilly slope. A retaining wall that assists with drainage, water runoff and erosion is located on the property. Additionally, trees and shrubbery are planted in the rear yard. The vegetation provides screening between the Applicants property and properties that are located at a higher elevation at the rear.

6. The Applicants are not proposing to remove any of the existing vegetation that is located at the rear of the site, including the large tree that is used as a buffer between the site and the abutting property. The Applicants are committed to taking special care to protect the tree roots during the construction period, including retaining an Arborist, if necessary.

7. The site is located in the Cleveland Park Historic District. The Applicants received conceptual approval from the DC Historic Preservation Review Board to construct the addition. Additionally, the design of the addition has been respectful of the distinctive architectural style of the historic district.

8. The Board considered the position of Advisory Neighborhood Commission 3C which indicated that no difficulties were brought to its attention that would prevent approval of the application. The Board is satisfied that the ANC thoroughly reviewed the application and that the project would not have any substantial impact on the Cleveland Park neighborhood or the Cleveland Park Historic District.

9. The Board reviewed the recommendation of the Office of Planning and has taken its recommendation to approve the application under advisement.

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 from the Zoning Regulations. The Applicants are seeking a special exception pursuant to § 3104.1 and under § 223 to allow an addition to a single-family dwelling not meeting the lot occupancy (§ 403), side yard (§ 405), and nonconforming structure requirements (§ 2001.3). The notice requirements of § 3113 for the public hearing on the application have been met.

The Applicants were required to demonstrate that the project would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely, the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps. Based upon the findings of fact, the Board concludes that the application does meet the requirements for approval of the addition to the dwelling unit.

The Board gave "great weight" to the recommendation of the Office of Planning and agrees with OP that the proposed addition would not have substantial adverse impacts on the use or enjoyment of any abutting or adjacent dwelling or property. The Board further concurs with the OP's recommendation that the light and air of the neighboring properties would not be affected and the privacy of use and enjoyment of neighboring properties would not be unduly compromised.

The Board is of the opinion that § 223 of the Zoning Regulations was developed to assist property owners who want to upgrade their properties by making modest additions to their dwellings, however, were restricted from doing so because of the stringent requirements of the Zoning Regulations. The Board is of the opinion that the Applicants meet the requirements of § 223.

In reviewing BZA 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 agreed with their recommendation to approve the application.

Based on the findings of fact and having given great weight to the ANC and OP reports, the Board concludes that the special exception 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 Maps, and will not affect adversely the use of neighboring properties.

For the reasons stated above, the Board concludes that the Applicants have met their burden of proof. It is hereby **ORDERED** that the application is **GRANTED**

VOTE: 5-0-0 (Geoffrey H. Griffis, Anne Mohnkern Renshaw, David W. Levy, Curtis L. Etherly, Jr. and Anthony J. Hood to approve).

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

JERRILY R. KRESS, FAIA
Director

FINAL DATE OF APPROVAL: AUG 2 9 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 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 SECTION 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. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT THAT IT IS THE INTENT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, IN ENACTING THIS CHAPTER, TO SECURE AN END IN THE DISTRICT OF COLUMBIA TO DISCRIMINATION FOR ANY REASON OTHER THAN THAT OF INDIVIDUAL MERIT, INCLUDING, BUT NOT LIMITED TO, DISCRIMINATION BY REASON OF RACE, COLOR, RELIGION, NATURAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, AND PLACE OF RESIDENCE OR BUSINESS.

BAB/8.14.02

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16842

As Director of the Office of Zoning, I hereby certify and attest that on AUG 2 9 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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JERRILY R. KRESS, FAIA
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