Form 150
(Revised 04/29/02)

Case No. 16921

BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

MOTION

Notice: See other side of motion form for instructions.

Applicant, Appellant, Appellee, Party, Intervener	vs.	Applicant, Appellant, Appellee, Party, Intervener
PARTY - K. BECKWITH		APPLICANT - BERG & BENSON

D.C. OFFICE OF ZONING
2003 APR -3 PM 4:39
RECEIVED

Motion of:
(state what you want the Board to do)

VACATE AND STAY ORDER
RECONSIDER CASE
DENY APPLICATION

Points and Authorities:
(state the each and every reason why the Board should grant your motion, including relevant references to the Zoning Regulations or Map)

DECISION ORDER IS INCONSISTENT WITH THE RECORD AS IT RELATES TO CRITERIA OF 223 OF THE ZONING REGULATIONS.

(SEE ATTACHED)

CERTIFICATE OF SERVICE

I hereby certify that on this (date) 3RD day of (month) APRIL, (year) 2003, I served a copy of the forgoing Motion on each entity that has requested party status; or entities that have be granted party status – on the above referenced BZA case via

☑ First-class mail ☐ Hand delivery ☐ Other (specify)

(ATTACH A LIST OF PARTIES SERVED)

Signature:	Kathleen B Beckwith Applicant*		
Print Name:	KATHLEEN B BECKWITH	Firm/Organization	
Address:	4428 FARADAY PL NW WASHINGTON DC 20016		

* *In the event an authorized agent files a motion on the behalf of the maker of the motion, a letter signed by the maker of the motion authorizing the agent to act on his/her behalf shall accompany the notice of application.*

To be notified of hearing and decision:
(Maker of Motion or Authorized Agent)*

Name:	KATHLEEN B BECKWITH				
Address:	4428 FARADAY PL NW				
Phone No.:	(202) 686-9493	Fax No.:		E-Mail:	

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

BZA
Case No. 16921
Exhibit No. 40

Board of Zoning Adjustment
District of Columbia
CASE NO.16921
EXHIBIT NO.40

BZA CASE NO. 16921

Parties Served with Motion for Reconsideration

Tracy Stannard, Agent
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Washington, DC 20015

Tad DiBiase, Chairperson
Advisory Neighborhood Commission 3E
P.O Box 9953
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Commissioner 3E03
Advisory Neighborhood Commission 3E
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Ellen McCarthy, Deputy Director
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801 North Capitol Street, NE
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Alan Bergstein, Esq.
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Celia Berg/Jack Benson
4432 Faraday Pl, NW
Washington, DC 20016

BEFORE THE GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In the matter of Application No. 16921 of
Celia Berg and Jack Benson

MOTION FOR RECONSIDERATION AND REQUEST FOR STAY
OF BZA ORDER DATED MARCH 24, 2003
BY THE PARTY IN OPPOSITION TO APPLICATION

Pursuant to Section 3126, Kathleen Beckwith, an abutting property owner and a party in opposition to the above referenced application, respectfully moves the Board of Zoning Adjustment (hereinafter "BZA"), upon reconsideration of its March 24, 2003 order, to vacate and stay said order and deny the application on the grounds as follows:

1. The decision of the BZA in this case is not based upon substantial evidence in the record and is not supported by the findings of fact and conclusion of law that permit the granting of a special exception under Section 223 pursuant to 11 DCMR Sec. 3104.1.

2. The decision of the Board was not compliant with nor lawfully issued pursuant to the authority granted under the restrictive provisions of Section 223.2 which require that:

"...the proposed addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular

(a) the **light** and **air** available to neighboring properties **must not be unduly affected;**

(b) the **privacy** of **use and enjoyment** of neighboring properties must **not be unduly compromised**; and

(c) the addition, together with the original building, as viewed from the street, alley, and other public way, **must not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage**. (Emphasis supplied.)

3. The Applicant's request as approved is strongly opposed because it violates the provisions of Section 223.2 since it has a substantially adverse effect upon the use and enjoyment of the opposing party's abutting home by negatively obstructing, light, views from such property, and the use and enjoyment of the property. Allowing this Decision to stand will have a substantially adverse affect on the use and enjoyment of opposing party's property in contradiction to Section 223.2 of the zoning regulations, to wit:

> Light will be blocked to the rear and side of opposing party's house by the pitched roof addition that rests on a pier foundation. Also, afternoon sunlight coming from the west and south will be blocked.

The Board in its Order describes the proposed addition as one-story, when the plans show it to be 22 feet tall. Zoning regulations (400.1) limit R1 structures to a maximum height of 40 feet and 3 stories. This works out to an average of 13.3 feet per story. Thus, the proposed addition is much closer to a two-story than a one-story addition.

The Board Chairman and vice chairman discussed the opportunity to reduce the addition's height in the Board's Decision Meeting (Transcript pages 7, 9,and 13), but the Order does not make such a finding or draw appropriate conclusions. The Order is therefore inconsistent with the record of the public decision meeting.

4. The Order is inconsistent with the public record with respect to the size of the addition and its impact on opposing party's property. The Order describes the addition as relatively small in size (p. 4) when at 16.6 feet deep it will fill 2/3 of the depth of the 25-foot backyard of the nonconforming lot. The addition would loom over the party in opposition's backyard with a twenty-two (22') foot high structure which has a roof line that actually reaches the second story level of both the applicant's and opponent's dwellings.

5. The Board has placed undue weight upon the testimony of the Office of Planning (hereinafter "OOP") as determinative of facts that substantially adversely effect the abutting property and adjacent dwelling owner. This decision wrongly shifts the burden of proof upon the adverse party in opposition rather than the Applicant regarding these above stated criteria. (See Order p. 4, paragraph 2)

6. The Board erred by overly relying upon an OOP report which contains errors and omissions and fails to thoroughly address issues under Section 223. The OOP report incorrectly

a) described the building material of the structure (e.g. stone instead of brick and cedar shingle),

b) stated that "the applicant has the support of neighbors on both sides of the subject property" (Exhibit 24, page 6), and

c) stated that the case was scheduled to go before the ANC.

That the report is flawed is evidenced by an amendment (Exhibit 24A) that was filed after opposing party brought errors to the attention of the OOP.

7. The OOP errors mentioned above demonstrate that the Office of Planning did not perform a thorough independent assessment of this case. OOP did not visit the site at a time of day that would have demonstrated lack of light to opposing party's property. It declined an offer to tour the interior of applicants property to assess other options available (Transcript of public hearing, page 52). The discussion of negative affects pursuant to Section 223 contained in the OOP report (Exhibit 24) did not address privacy and use and enjoyment of opposing party's property, only addressing alley screening. OOP did not contact the opposing party to gain party's perspective.

8. The BZA decision wrongfully ignores the testimony of the party in opposition and is counter to the substantial evidence on the record as also evidenced by the discussion of the Members of the BZA Board:

a. The order is inconsistent with the plans and the testimony of the Board's Vice Chairman who at the Decision Meeting stated:

> " Mr. Chairman, there is also the opportunity in addition to taking another look at the roof in order to drop the height, there is the opportunity to downsize that back end that is being proposed, **the very large family room, because where you say that the rear yard is substantial enough, I don't see it as being very substantial. It leaves a minimal amount of property in the back that slopes down. I just don't feel that the backyard can sustain so large an addition. I'm not saying that the addition isn't warranted. I'm just saying that it is a very large addition for that backyard."** (Transcript P.9)

b. During the public hearing, the BZA recognized the need for privacy consistent with Section 223 for party in opposition by discussing the reorientation of deck steps away from party in opposition's property. Finding of Fact #3 of the BZA Order is inconsistent with the discussions in the Public Hearing and in the Decision Meeting on this issue. It indicates that the steps from the deck of the addition exit to the East as originally proposed by the applicant. In the Decision meeting discussion, the Chairman indicated that the stairs to the deck of the addition had been reoriented away from opposing party's property toward the applicant's driveway (Transcript, p. 12). The Board's order does not reflect the reorienting that was discussed in the Decision Meeting and during the public hearing. Failure to reorient in the Order impinges on opponent's right to privacy in contradiction to Section 223.

c. During the public hearing, BZA Board Members agreed to require a survey of tree roots in order to ensure no adverse effects to the party in opposition's tree. In it's Decision Meeting, the Board Chairman said:

> "It was testified, and I think it's an absolute important piece to the application, and more importantly to the construction of this, that all means to preserve that Dogwood would be fulfilled.
>
> "That would mean surveying the area for the roots and marking them and then designing the foundation and any sort of excavation around the existing tree. I think that is an incredibly valuable asset on both properties. I think that can, in fact, be facilitated. The applicant did testify, in fact, they were going to pursue that. I think it would be well done if they did." (Transcript P.7) This was also discussed at the public hearing in which the Chairman, the applicant, and the applicant's architect agreed to pursue a root survey and location of piers based on such survey (Transcript p. 46)

The BZA Order was silent on the protection of this Dogwood tree and therefor failed to prevent an adverse affect on opposing party's property and use and enjoyment thereof as required by Section 223.

d. During the decision meeting, BZA Board Members debated consideration of actually lowering the height because the roof line reaches the second story of the abutting property "I do think there is the opportunity to drop the height"(Transcript page 7) and consideration of shortening the depth of the addition in order to address adverse effects of the addition upon the adjoining dwelling. In recording the vote, the zoning commission staff and the Chairman discussed clarifying in the order the suggestion to reduce the height of the addition. (Transcript pp 13 and 14). The Order does not reflect these items from the public record.

e. BZA Board Members debated a requirement for shrubbery on the side of the property to address use and enjoyment and privacy issues. The adverse effect on opposing party is confirmed in the Vice Chairman's recommendations in the Decision Meeting concerning the need for plantings to break up the appearance of the side wall of the proposed addition. (Transcript p. 10):

> " . . . the applicant would also see the need of providing some kind of a screening, some way to break **the long wall, 16 feet,** down into the property, into the backyard **so that the neighbor,** which has of course come before the Board to complain about this application, **can have a better view from her backyard** not just looking at the blank side of a house with some fenestration but can have some greenery to look at.
>
> "Take note of the photograph that has been provided. I think it is -- oh, isn't Exhibit No. 32 . . . In other words, **the side of the house that will now be such an (sic) prominent view from the neighbor's property."**

The Board, having identified and discussed this issue, failed in its Order to address the issue or use its authority under 223.4 to protect opposing party's right to the continued enjoyment of the abutting property.

f. The Board's Order (p. 3, #7) cites a 43% lot occupancy percentage that is at variance from the most recent exhibits submitted by the applicant (Exhibit 37) and used by the Board in it's Decision Meeting. This contradiction demonstrates the lack of support in the public record for the Decision and the fact that if the Board did not accept the applicant's architect's lot occupancy calculations, it can have no confidence in other measurements or representations by the applicant.

9. The decrease in rear yard setback area represents a 55 % encroachment and a 2/3 reduction in rear lot size on opposing party's side of applicant's property.

10. The Applicant's addition, because of its size, height and roof line, contains three French doors and several high windows in order to capture light that will be obstructed and cut off to the abutting property and the dwelling of the adjoining owner;

11. A review of the public record of this case shows the Board consistently favoring the Applicant and failing in it's responsibility to ensure that the Applicant bears the burden of making it's case. Examples are:

a) The late posting of the property by the applicant, which the Board chose to waive.
b) The failure of the applicant to maintain posting for the required time period.
c) The acceptance of a late submission required by the Board at the public hearing.

With respect to item c above, at it's Decision Meeting, the Board took up the late submission of information it had required at the public hearing. The Chairman characterized this as clarification that was not required (Transcript p.5). However, at the Public Hearing, the information was described as required:

> "We have one submission that is required by the Board. That as I noted was the recalculation or verification of the lot occupancy based on the side yard, whether that was included or not. (Transcript p76)

There is further discussion (Transcript p 76-77) in which the Applicant's architect clarifies what is expected of him. Then the Chair again reviewed what was to be submitted and when (Transcript p.80).

12. The decision of the Board will destroy the character, scale and nature of a residential area which for over sixty years has retained sufficient lot occupancy and rear yards by the intrusion of this large nonconforming structure that is not in harmony with a visually open airy and bright single family neighborhood visible from the public alley and other public ways. The opposing party has enjoyed her home and this neighborhood for over 18 years.

13. Because the party in opposition's property abuts upon this nonconforming addition, the resale value of such home may be reduced resulting in adverse financial impacts to the opposing party.

14. The Board should not shift the burden from the Applicant to show a lack of substantial adverse effects upon the use or enjoyment of the party in opposition's property in accordance with Section 223, when the Applicant should have had more foresight before purchasing a property that within 18 months did not meet its needs in size.

15. The proposed use of the approved structure for Applicant's home and office use is not in harmony with the character and scale of this neighborhood.

16. The Board could impose alternatives conditions or other options that would require the Applicant to build their addition across the width of their property rather than erect a deep extension that only runs along the side of the abutting dwelling in order to maximize and maintain their open yard area.

Therefore, the Party in Opposition requests that, for the above stated reasons, the BZA stay and vacate its decision and deny the application.



Kathleen Beckwith,
Party In Opposition to Application
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