GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16921-A of Celia Berg and Jack Benson pursuant to 11 DCMR § 3104.1 for a special exception to allow a rear addition to a single-family dwelling under section 223, not meeting the lot occupancy (section 403), rear yard (section 404), and nonconforming structure (subsection 2001.3) requirements in the R-2 District at premises 4432 Faraday Place, N.W. (Square 1582, Lot 190).

HEARING DATE: October 8, 2002
DECISION DATE: October 29, 2002
ORDER DATE: March 24, 2003

RECONSIDERATION DECISION DATE: May 6, 2003

ORDER ON RECONSIDERATION

Preliminary matters. By order dated March 24, 2003, the Board granted a special exception under section 223 requested by the owners of the property that is the subject of the application, Celia Berg-Benson and Jack Benson (collectively, "Applicant"), to allow construction of a one-story addition to the rear of their single-family detached house at 4432 Faraday Place, N.W. (Square 1582, Lot 190). In addition to the Applicant, the parties in this proceeding are Advisory Neighborhood Commission ("ANC") 3E and Kathleen Beckwith, the owner of property abutting the subject property, who opposed the application.

Motion for reconsideration and stay. Kathleen Beckwith submitted a timely motion for reconsideration and request for a stay of the Board's order. *See* 11 DCMR § 3126. The motion requested the Board, upon reconsideration of its order granting the special exception, to vacate and stay the order and deny the application. Grounds for the motion included contentions that the Board's decision was not based on substantial evidence in the record or supported by the findings of fact and conclusions of law that permit the granting of a special exception under section 223. The motion alleges several instances of error by the Office of Planning ("OP") in its report and by the Board in its deliberations, including that the order was inconsistent with the public record. No party filed an answer in opposition or in support of the motion.

Reconsideration. With respect to the request for reconsideration, the motion states generally that the Board's order "was not compliant with nor lawfully issued pursuant to the authority granted under the restrictive provisions of Section 223.2. . . ." Specifically, the motion asserts that the "Applicant's request as approved is strongly opposed because . . . 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." Motion at ¶ 3. The motion complains that the Board "placed undue weight upon the testimony of the Office of Planning" and "erred by overly relying on an [Office of Planning] report which

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contains errors and omissions and fails to thoroughly address issues under Section 223," so that the "decision wrongly shifts the burden of proof upon the adverse party in opposition rather than the Applicant. . . ." Finally, the motion also contends that the Board's order is inconsistent with the public record and with comments by Board members during the hearing and the decision meeting in this case.

The Board finds that the motion does not state any grounds that warrant reconsideration of the March 24, 2003 order granting the Applicant's requested special exception. *See* 11 DCMR § 3126.4. The motion does not state specific respects in which the Board's final decision was erroneous, but merely restates the party in opposition's grounds for opposing the application. The party in opposition participated fully in the public hearing in this matter, and the Board carefully considered her testimony and evidence as part of the record on which its decision was based.

The Board does not concur with the party in opposition that any of its findings of fact, as set forth in the March 24, 2003 order approving the application, was in error. Rather, the motion misconstrues the planned one-story addition as two stories, and incorrectly characterizes comments or questions by individual Board members, made during the hearing or during the Board's deliberations at the public meeting, as part of the decision of the Board in approving the application. The Board voted to approve the requested special exception without conditions. Its findings of fact and conclusions of law were based on substantial evidence in the record. The party in opposition, while remaining opposed to the requested special exception, attempts to reassert the same arguments made at the hearing and has not presented grounds requiring reconsideration of the Board's decision.

The Board is required by statute to give "great weight to the recommendation of the Office of Planning." D.C. Official Code § 6-623.04 (2001). *See also Neighbors Against Foxhall Gridlock v. D.C. Board of Zoning Adjustment*, 792 A.2d 246, 253 (D.C. 2002). In this case, the Office of Planning recommended approval of the requested special exception because the proposed one-story rear addition would comply with the requirements for special exception relief, would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and would not tend to affect the use of neighboring property adversely. The Board credited the testimony of the Office of Planning in concluding that the Applicant's proposed addition was consistent with the requirements for special exception approval, but also fully considered all testimony and evidence in the record – including the testimony and evidence presented by the party in opposition – in deciding to grant the application. The errors in the OP report noted in the motion – concerning the building material of the structure, whether neighboring property owners supported the application, and whether the application would be considered by the ANC – were not crucial to the Board's decision.

Stay. With respect to the request for a stay, the Board notes that the motion does not state any grounds for a stay. To prevail on a motion for stay, the party seeking the stay must demonstrate that it is likely to prevail on the merits, that irreparable injury will result if the stay is denied, that the opposing parties will not be harmed by a stay, and that the public interest favors the granting of a stay. *See Kuflom v. District of Columbia Bureau of Motor Vehicle Services*, 543 A.2d 340,

344 (D.C. 1988) (administrative agency required to consider the four specified factors in considering a motion for stay). For the reasons discussed above, the Board concludes that the moving party is not likely to prevail on the merits of the request for reconsideration. Nor has the movant demonstrated irreparable injury resulting from the denial of a stay or the public interest favoring the grant of a stay. The Applicant, however, would be harmed by a stay preventing or delaying construction of a planned addition that is consistent with the requirements for special exception approval pursuant to section 223 of the Zoning Regulations.

Accordingly, it is therefore **ORDERED** that the motion for reconsideration and stay is **DENIED**.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Carol J. Mitten, and David A. Zaidain to deny; a mayoral appointee not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

ATTESTED BY: Jerrily Kress
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: OCT - 6 2003

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. MN/rsn

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BZA APPLICATION NO. 16921-A

As Director of the Office of Zoning, I hereby certify and attest that on OCT - 6 2003 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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ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning