District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

16921

GARLAND F. PINKSTON
CLERK OF COURT

Telephone: 879-2700
Area Code 202

October 17, 2003

NO. 03-AA-1109 Kathleen B. Beckwith vs. DC Board of Zoning Adjustment

District of Columbia Board of Zoning Adjustment
Jerrily Kress, Director
441 - 4th Street, N.W.
#210S
Washington, D.C. 20001

Dear Sir/Madam:

Pursuant to the rules of this Court I am transmitting, herewith, a copy of the petition for review filed on October 6, 2003 in the above-entitled case.

Yours very truly,

Garland F. Pinkston
Clerk of Court

By: _____
Information Center Supervisor

cc: Edward Schwab, Esq.

BZA
Case No. 16921
Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
CASE NO.16921
EXHIBIT NO.43

DISTRI[OF COLUMBIA COURT OF APPEALS

PETITION FOR REVIEW

RECEIVED
OCT 16 2003
DISTRICT OF COLUMBIA
COURT OF APPEALS

APPEAL NO. _____

KATHLEEN B. BECKWITH,
Your Name PETITIONER,

v.

03AA1109
Agency No.

BOARD OF ZONING ADJUSTMENT (BZA)
Agency Name
RESPONDENT.

I, KATHLEEN B. BECKWITH, wish to appeal to the District of Columbia Court of Appeals from the decision or order of the BOARD OF ZONING ADJUSTMENT entered on the 24TH day of MARCH, 2003. (RECONSIDERATION ORDER ENTERED 6TH DAY OF OCT., 2003

Statement of the Nature of the Proceedings and Grounds Relied On (continue on reverse side if needed):

APPELLANT OPPOSED NEXT DOOR NEIGHBORS' REQUEST FOR A SPECIAL EXCEPTION TO ZONING REGULATIONS TO ALLOW FOR A PROPOSED ADDITION. THE BZA GRANTED THE EXCEPTION REQUEST AND SUBSEQUENTLY DENIED APPELLANT'S MOTION FOR RECONSIDERATION. APPELLANT →

Name, address and telephone number of all other parties and counsel (continue on reverse side if needed):

(SEE ATTACHED)

Kathleen B Beckwith
Signature of Petitioner or Attorney

KATHLEEN B. BECKWITH
Printed Name Petitioner or Attorney

4428 FARADAY PL NW
Address

(202) 686-9493
Telephone

NOTE: Attach a copy of the decision/order issued by the District of Columbia agency from which this appeal is taken.

BELIEVES THE BZA IGNORED FACTS, ERRED IN ITS INTERPRETATION OF FACTS, AND DID NOT PROPERLY APPLY THE LAW AND REGULATIONS IN THIS CASE. APPELLANT FURTHER BELIEVES THE BZA'S ORDERS ARE INCONSISTENT WITH THE EVIDENCE PRESENTED.

Name, address and telephone number of all other parties and counsel:

Board of Zoning Adjustment
441 4th St, NW
Washington, D.C. 20001
(202) 727-6311

Celia Berg and Jack Benson
4432 Faraday Pl, NW
Washington, DC 20016
(202) 237-7942

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, NW, 6th Floor
Washington, D.C. 20001

I certify that a copy of the foregoing was mailed, postage prepaid, this 16th date of October 2003, to:

Board of Zoning Adjustment
441 4th St, NW
Washington, D.C. 20001

Celia Berg and Jack Benson
4432 Faraday Pl, NW
Washington, DC 20016

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

Signature Kathleen B Beckwith
KATHLEEN B. BECKWITH

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16921 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

DECISION AND ORDER

This application was submitted June 24, 2002, by the owners of the property that is the subject of the application, Celia Berg-Benson and Jack Benson (collectively, "Applicant"). The Zoning Administrator informed the Applicant by memorandum dated June 20, 2002 that several variances were necessary to allow construction of an addition to the Applicant's detached single-family dwelling. The Office of Zoning later determined that the Applicant's development plans were eligible for consideration as a special exception under section 223.

Following a hearing on October 8, 2002, and a public meeting on October 29, 2002, the Board voted 5-0-0 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. The Office of Zoning mailed the Councilmember for Ward 3, the Office of Planning, the Department of Public Works, Advisory Neighborhood Commission ("ANC") 3E, and Single Member District/ANC 3E03 memoranda dated June 28, 2002, providing notice of the application. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters or memoranda dated July 31, 2002, to the Applicant, ANC 3E, and all owners of property within 200 feet of the subject property providing notice of the hearing.

Requests for Party Status. ANC 3E was automatically a party in this proceeding. The Board granted a request for party status from Kathleen Beckwith, the owner of property abutting the subject property.

Applicant's Case. The Applicant stated that the special exception was needed to allow construction of a one-story addition to the rear of a single-family detached dwelling intended to increase the living space in the house by creating a new family room. The planned addition would be similar in appearance to the existing house.

Government Reports. By memorandum dated October 8, 2002, the Office of Planning ("OP") recommended approval of the requested special exception. According to OP, 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.

ANC Report. By letter dated October 7, 2002, the commissioner for Single Member District ANC 3E03 indicated that ANC 3E had not taken a vote on the application.

Persons in Opposition to the Application. The party in opposition, Kathleen Beckwith, contended that the Applicant's proposed addition would block light to her property and obstruct the view from the side and rear of her property.

Hearing. A public hearing on the application was conducted October 8, 2002. Testimony and evidence was provided by the Applicant, the Office of Planning, and Kathleen Beckwith, a party in opposition to the application.

FINDINGS OF FACT

1. The subject property is located at 4432 Faraday Place, N.W. (Square 1582, Lot 190) in the Friendship Heights neighborhood of Ward 3. The site is improved with a two-story single-family detached house built in 1930.

2. The Applicant proposes to build a one-story, one-room addition to a portion of the rear of the house that would be used as a family room. The planned addition would be constructed of "cedar shake shingle" to match the exterior finish on the existing structure in appearance and character. The addition would have three French doors and windows located high on the rear exterior wall designed to allow light to enter without impinging on privacy. The addition would be built on piers at its rear corners, rather than having a full foundation trenched into the ground.

3. The proposed addition would include a landing, three feet wide and approximately three feet above the ground, at the rear exit door and three steps exiting into the east side of the rear yard.

4. The Applicant's house is located six feet from the property line on the east and five feet from the property line on the west. The houses located on the abutting parcels on either side of the Applicant's house also have side yards.

5. The subject property is located on an interior lot on the south side of the street, so that the Applicant's house and neighboring residences have a north/south orientation.

6. The subject property and many other houses on the same block have trees and fences in the rear yards that minimize visibility between the subject property and abutting rear yards.

7. The lot area of the subject property is 3,412.5 square feet. The existing dwelling occupies 1,203 square feet of lot area, and the planned addition – 16.6 feet deep by 16.2 feet wide, with an area of approximately 269 square feet – would bring the total occupied area to 1,472 square feet. Lot occupancy with the proposed addition would therefore be 43.13%.

8. The rear wall of the existing dwelling is approximately 25 feet from the rear property line. The proposed addition would project into the rear yard setback area by 11.4 feet. The rear wall of the planned addition would be eight feet, six inches from the rear property line; including the landing, the distance to the rear property line would be five feet, six inches.

9. The subject property is zoned R-2. The predominant land use in the vicinity of the subject property is low-density single-family detached dwellings.

CONCLUSIONS OF LAW

The Applicant seeks a special exception under section 223 pursuant to 11 DCMR § 3104.1 to allow construction of a one-story addition on the rear of a single-family detached dwelling in the R-2 zone. The Board is authorized to grant special exceptions where, in the Board's judgment, a special exception 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 property in accordance with the Zoning Regulations and Zoning Maps. D.C. Official Code § 6-641.07(g)(2) (2001); 11 DCMR § 3104. Pursuant to section 223, the Board may permit, by special exception approval, an addition to a one-family dwelling that does not comply with requirements pertaining to minimum lot dimension, lot occupancy, rear and side yards, courts, and nonconforming structures, subject to the conditions enumerated in section 223. The Applicant's property does not comply with requirements pertaining to minimum lot area, lot occupancy, rear yard setback, and nonconforming structures.

Lot area. The minimum lot area required for a single-family detached dwelling in an R-2 zone is 4,000 square feet. 11 DCMR § 401.3. The lot area of the subject property is 3,412.5 square feet. The subject property contains a nonconforming structure devoted to a conforming use; that is, a single-family detached dwelling built before the adoption of the Zoning Regulations on a lot that is smaller than the minimum size prescribed by the Regulations for the R-2 zone.

Lot occupancy. The maximum permitted lot occupancy for a single-family detached dwelling in an R-2 zone is 40 percent. 11 DCMR § 403.2. The lot occupancy of the subject property, with the planned addition, would be 43 percent. Pursuant to 11 DCMR § 223.3, the lot occupancy of the dwelling, together with the addition, may be as high as 50 percent in the R-2 district, if approved by the Board consistent with the requirements of section 223.

Rear yard. The required minimum depth of a rear yard in an R-2 zone is generally 20 feet. 11 DCMR § 404.1. Although the existing rear yard setback on the subject property is approximately 25 feet and therefore larger than the required minimum, the Applicant's planned addition would project into the rear yard setback area by 11.4 feet. Under the Applicant's

proposal, the distance from the planned addition to the rear property line would be 8.5 feet, or 5.5 feet including the three-foot-wide landing and stairs outside the addition's door leading to the rear yard.

§ 223 provisions. The Applicant seeks approval of an addition to a one-family dwelling that does not comply with requirements pertaining to minimum lot area, lot occupancy, rear yard, and nonconforming structures. The Board may grant such approval as a special exception subject to the provisions enumerated in section 223. The provisions include 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. 11 DCMR § 223.2.

The Board credits the testimony of the Office of Planning in concluding that the Applicant's proposed addition is consistent with the requirements for special exception approval under section 223. For the reasons discussed below, the Board is not persuaded by the testimony of the party in opposition that the planned addition would encroach substantially into the rear setback and adversely affect abutting property by overshadowing the back yard and blocking light to the neighboring house, diminishing privacy and enjoyment of the abutting property, or possibly damaging a mature tree.

The planned addition will not unduly affect the availability of light or air to neighboring properties, given its relatively small size, its location at the rear of a structure oriented north/south, and the adequate size of the side yards located between the subject dwelling and neighboring properties. The addition will not compromise the privacy of use and enjoyment of neighboring properties, in part because the subject property and many other houses in the same block have trees and fences in the rear yards that minimize visibility between the subject property and abutting rear yards. The fenestration of the planned addition provides for high clerestory windows, which will not allow visibility between the adjoining residences.

The addition will not visually intrude on the character, scale, or pattern of houses along the street frontage. The one-story addition will be built at the rear of and along the same building alignment as the existing dwelling, and will not be visible from the street. The addition will be constructed of materials similar in appearance and character to the existing dwelling. Its construction on piers, rather than having a full foundation trenched into the ground, will avoid harm to the roots of mature trees growing nearby.

The Board concludes that approval of this application will not permit the introduction or expansion of a nonconforming use, in violation of 11 DCMR § 223.5. Rather, the Applicant's planned addition will be devoted to single-family residential use, which is a principal purpose of the R-2 zone.

The Board also credits the testimony of OP in concluding that the requested special exception is 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 property. The R-2 district is designed to protect the relatively low-density residential land use that characterizes the zone. The Board notes that the Comprehensive Plan Generalized Land Use Map depicts the site in the low-density residential land use category, in which single-family detached and semi-detached housing is the predominant land use. The planned addition will continue and improve the use of the subject property as a single-family dwelling.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception to allow construction of a one-story addition to the rear of a single-family detached dwelling in an R-2 zone.

Accordingly, it is therefore **ORDERED** that the application is **GRANTED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, Anne M. Renshaw, Curtis L. Etherly, Jr., Carol J. Mitten (by absentee vote), and David A. Zaidain to approve).

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

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 2 4 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.

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 IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL

HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. MN/RSN