LAW OFFICES

GREENSTEIN DELORME & LUCHS, P.C.

WILLIAM H. HARRIS, JR.
RICHARD G. WISE
ABRAHAM J. GREENSTEIN
GILBERT E. DELORME
VINCENT MARK J. POLICY
RICHARD W. LUCHS
JUDITH R. GOLDMAN
JACQUES B. DEPUY
JEFFREY H. GELMAN
ALAN S. WEITZ
WILLIAM C. CASANO
STEPHEN H. ABRAHAM
LEWIS F. MORSE
JOHN PATRICK BROWN, JR.
STEPHANIE A. BALDWIN
LYLE M. BLANCHARD
JOHN M. CATALANO
GREGORY T. DUMONT
ALFRED M. GOLDBERG
MONIC Y. HALSEY#
DONALD F. HOLMES, JR.
M. RYAN JENNESS*
MIRIAM HELLEN JONES
ISABEL P. RUIZ DE GAMBOA*
JAMES D. SADOWSKI

*ADMITTED IN VA ONLY
#ADMITTED IN TX ONLY

1620 L STREET, N.W., SUITE 900

WASHINGTON, D.C. 20036-5605

TELEPHONE (202) 452-1400
FACSIMILE (202) 452-1410
www.gdllaw.com

OF COUNSEL
MARK J. ZWEIFLER

ADMITTED IN NEW YORK
AND NEW JERSEY ONLY

January 28, 2003

RECEIVED
D.C. OFFICE OF ZONING
2003 JAN 28 PM 4:44

BY HAND DELIVERY

Mr. Geoffrey H. Griffis
Chairman
Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: BZA Application No. 16962; Transmittal of Proposed Order

Dear Mr. Griffis and Members of the Board:

This letter transmits the Applicant's enclosed draft order.

Thank you for your consideration of this information.

Sincerely,

Lyle M. Blanchard

Enclosure
199213

cc: All Copies by First Class Mail
Mr. and Mrs. Aislee Smith
Shawn Glerum, AIA
Robert Berkebile, Esq.
John Patrick Brown, Jr., Esq.
Office of Planning
ANC 5C

BZA
Case No. 16962
Exhibit No. 42

Board of Zoning Adjustment
District of Columbia
CASE NO.16962
EXHIBIT NO.42

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 29, 2002, the Office of Zoning notified the Zoning Administrator, the D.C. Office of Planning, Advisory Neighborhood Commission (ANC) 5C (the ANC for the area within which the subject property is located), the ANC commissioner for the affected Single-Member District and the Ward 5 Councilmember of the filing of the application.

The Board scheduled a public hearing on the application for January 7, 2003. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on November 8, 2002, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 5C notice of the hearing. Notice of Hearing was also published in the D. C. *Register* on November 15, 2002, at 49 DCR 10303. The applicant's affidavit of posting indicates that on December 23, 2002, zoning posters were placed on the subject property in plain view of the public.

As preliminary matters, Applicant requested through counsel that the application be amended on two points. First, Applicant withdrew its request for a special exception from the roof structure provisions under section 411 since no relief from this section is required. The Board accepted this request. Second, Applicant added a request for variance relief from section 2115.1 because the length of the parking space in the Applicant's proposed garage is 18 feet and one (1) inch instead of the 19 feet in length as required. The Board also accepted this request.

Request for Party Status. The Board granted party status to Mr. and Mrs. Lonzo Shafer, who reside at 2306 First Street, N.W. This party was represented by counsel.

Applicant's Case. Mr. and Mrs. Smith testified with respect to their proposal to build a three-story wood structure with a basement level garage. They described the history of the project and the razing of their garage after it was found by their engineer to be structurally unsafe. They both testified with respect to the requirements of the area variances. (See discussion below.)

Public Agency Reports and Memoranda. By memorandum (Ex. __) dated January __, 2003, the Office of Planning (OP) recommended .....

ANC Report. The Board waived the seven-day filing deadline of 11 DCMR § 3115.1 to accept the ANC's written report, dated January 2, 2003 (Ex. 30). In its report of January 2, 2003, Mr. James D. Berry, Jr., Chair, ANC 5C states that on December 17, 2002, at a properly noticed meeting with a quorum present, ANC 5C voted unanimously to support the application and variances requested.

Persons in Support of the Application. There were ten (10) letters in support of the application. These letters are from Mrs. Harriet Crawford (Ex. 29), who resides in the abutting property at 2302 First Street, N.W., Mr. John May and Mrs. Joanne B. May (Ex. 31), who reside at 2300 First Street, N.W., Mr. Wayne McKinnon (Ex. 31), who resides at 2226 First Street, N.W., Mr. Walter Ross and Mrs. Patricia J. Ross (Ex. 31), who reside at 2312 First Street, N.W., Mr. Juniors B. Thompson and Mrs. Alice A. Thompson (Ex. 31), who reside at 2316 First Street, N.W., Ms. Marisol Morrisey (Ex. 31), who resides at 2317 First Street, N.W., Dr. Johanna

Ferman (Ex. 31), who resides at 2315 First Street, N.W., Mr. Ron Crittendon (Ex. 31), who resides at 2303 First Street, N.W., Ms. Naomi Walker (Ex. 31), who resides at 2229 First Street, N.W., and Mr. and Mrs. Carl S. Swinson, Sr. (Ex. 31), who reside at 2311 First Street, N.W.

Mrs. Harriet Crawford and Mr. George Crawford of 2304 First Street, N.W. presented testimony in support of the application.

Parties and Persons in Opposition to the Application. Mr. Lonzo Shafer and his wife, Mrs. Deborah Shafer, party in opposition, testified in opposition to the application. Mrs. Shafer and her husband testified that they were concerned about the impact on the party wall in the rear of their property and light and air. No persons testified in opposition to the application.

Closing of the Record. The record closed at the conclusion of the hearing, with the exception that certain documents were allowed to be filed on January 14, 2003. Responses to the documents were due to be filed on January 21, 2003, and findings of fact and conclusions of law were due to be filed on January 28, 2003. The Board also requested that the Office of Planning (OP) file a report. The documents to be filed on January 14, 2003 were a graphic representation of the addition showing the adjacent buildings and impact on the adjacent structures from the applicant, a graphic representation or narrative regarding the lot widths in the surrounding area, photographs of the rear of the properties and of the alley, and a response by the party in opposition to the ANC report. Parties' responses, if any, to the documents filed on January 14, 2003 were due to be filed on January 21, 2003. Draft Findings of Fact and Conclusions of Law were due to be filed on January 28, 2003.

Applicant filed the documents requested on January 14, 2003 (Ex. 37). Counsel for the party in opposition filed a response to the ANC report on January 13, 2003 (Ex. 36). On January 21, 2003, Applicant filed a response (Ex. 39) to party in opposition's filing. The OP report (Ex. __) was filed on January __, 2003.

FINDINGS OF FACT

1. The subject property is located at 2304 First Street, N.W. (Square 3125, Lot 75) in the ____ neighborhood of Ward 5. The subject property is zoned R-4.

2. The subject property contains 1,633 square feet and is improved with one structure, a residential dwelling which formerly included a garage.

3. The subject property was constructed in the late 1800s. Prior to the Applicant's purchase of the property it was inhabited by indigents.

4. The proposed building plans include a three-story addition to the existing residence with a one car garage. Mr. and Mrs. Smith have a new born and wish to expand their family with an additional child. The proposed addition would allow the Applicant to expand what is now a "ridiculously" small Victorian kitchen (Tr. at 55), add a bedroom on the second floor and a small study on the third floor. They intend to obtain a home occupancy permit at the appropriate time for their husband and wife law firm. The proposed building is an addition to a "row dwelling" which is defined in 11 DCMR § 199.1 as a one-family dwelling having no side yards.

5. The minimum lot width in an R-4 District for a row dwelling is 18 feet. See 11 DCMR § 401.3. The subject lot is 17.65 feet wide.

6. Extraordinary or Exceptional Conditions of the Property. The property is unique in that it is exceptionally narrow. It is only 17.65 feet in width. The property is also unique due to its substandard size. It is only 1,633 square feet in area. Further, the property has an extraordinary condition in the unusually-shaped court on the south side of the property.

7. Practical Difficulties. The inherent narrowness and substandard area of the lot as well as the existing court prevent any development of the lot absent the zoning relief requested.

8. Practical Difficulties. The applicant is unable to expand without expanding into the rear yard, exceeding the lot occupancy and replacing the previously existing non-conforming structure which was the garage. Razing the approximately 70 year old garage was necessary based on the inspection and professional determination of the Applicant's structural engineer (Ex. 32) who recommended demolition for "public safety" reasons. The proposed interior dimension of the replacement garage is 18 feet and one (1) inch, which is eleven (11) inches less than the required length of a parking space. Due to the size of the rear yard and the dimensions of the walls of the garage, it is not possible to provide for a 19 foot long parking space (Ex. 9).

9. No Substantial Detriment to the Public Good or Zone Plan. The requested relief is 19% of the lot occupancy, an area in the 20 feet deep rear yard which was formerly completely

occupied by the previously existing non-conforming garage structure. The proposed replacement of the garage would occupy the same footprint as the previously existing garage (Tr. at 32). Many properties in the surrounding neighborhood have similar garages which occupy the rear yard, such as the abutting property at 2302 First Street, N.W., which also has a fence enclosure surrounding a patio on top of its garage (Ex. 37).

Due to east-west orientation of the property and the rear alley, any impact on the abutting properties affecting light and air will be minimal. Because of this circumstance, the daily movement of the sun is almost directly overhead. Morning light comes from the east into the front of the property. The sun is directly overhead at mid-day, and afternoon light comes from the west into the rear of the property. See photographs under Tab 1 in Ex. 37. Furthermore, the abutting rear alley is 12 feet and seven (7) inches in width which also provides light and air.

Moreover, the property to the west (across the alley) at 115 Adams Street, N.W. blocks the afternoon light to the Applicant's property; however, the afternoon light is not blocked to the opposition party's property. The rear wall of 115 Adams Street, N.W. is almost parallel to the property line between the Applicant's property and the opposition party's property. Thus, the opposition party's property receives ample light in the afternoon. Application's proposed addition, therefore, would have minimal impact.

Applicant has also stepped back all the floors above the garage by four (4) feet and ten and one-half (10.5) inches to provide a patio at the rear of the kitchen. This set back also provides light and air to the abutting properties.

Finally, there are other properties in the immediate neighborhood which have additions above a garage in the rear yard (Ex. 33 and 37). The proposed addition is compatible with other structures in the neighborhood as indicated in the numerous letters of support (Ex. 29 and 31). The neighborhood support for the variances requested and the positive impact on residential neighborhood is further buttressed by the application's compatibility with the Ward 5 objectives for land use and zoning in the Comprehensive Plan (Ex. 34). For these reasons, the variances requested will not result in a substantial detriment to the public good or the zone plan.

10. ANC 5C reported that on December 17, 2002, at a properly noticed meeting with a quorum present, ANC 5C voted unanimously to support the application.

11. The notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code § 6-641.07(g)(3) (2001)), to grant variances from the strict application of the Zoning Regulations. The Applicant is seeking a variance pursuant to 11 DCMR § 3103.2 from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow the construction of a three story addition to a row dwelling in the R-4 District.

1. Under the three-part test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the subject property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or zoning plan. (See Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990).

2. With respect to the first part of the variance test, the Board concludes that the property is unique because of its width, lot area and existing court. Specifically, the lot is exceptionally narrow, being only 17.65 feet in width. Expansion options are nonexistent because there are existing dwellings on the north and south sides of the property and a public alley on the west side of the property. Contrary to the claim made by counsel to Mr. and Mrs. Shafer, party in opposition, it is not necessary to demonstrate that the narrow width of the lot is narrow in comparison to other lots. Since the Zoning Regulations require all lots in the R-4 zone to be eighteen (18) feet in width, any lot that is less than eighteen (18) feet in R-4 zone is *ipso facto* a narrow lot that satisfies the variance test.

The lot is also unique in regard to its area. The lot area is 1,633 square feet which is far less than the required area of 1,800 square feet in a R-4 District. Similarly, since the Zoning Regulations require all lots in the R-4 zone to be 1,800 square feet in area, any lot that is less than 1,800 square feet is zone is *ipso facto* a small, substandard lot that satisfies the variance test.

In addition, the unusually-shaped court is presently 23 feet and seven (7) inches in length and four (4) feet and seven (7) inches in width, except at the point closest to the front of the property where the court increases to approximately eight (8) feet and ten (10) inches in width. The Applicant does not intend to, nor in all likelihood could get permission to, fill in this area. This existing condition of this unusually-shaped court is also an exceptional condition making the property unique.

3. With respect to the second part of the variance test, the practical difficulty requirement, the Board concludes that because the lot is narrower than the 18 foot minimum lot width requirement permitted in the R-4 district, the inherent narrowness of lot prevents any development of lot absent zoning relief of the minimum width requirement. This fact would support the more difficult legal burden of proving "undue hardship" for a use variance and easily supports the "practical difficulty" requirement. The Board makes the same conclusion with regard to the substandard area of the lot (1,633 square foot) creating a practical difficulty for the Applicant. The net effect of these practical difficulties combined with preserving the existing court is that the Applicant can only expand into the rear yard and above the permitted percentage of lot occupancy.

In addition, the Applicant has a practical difficulty with respect to the replacement of the former garage. The lot had a non-conforming structure, a garage, in the rear which exceeded the allowable lot occupancy by 19% and occupied the rear yard. The condition of garage was discovered to be no longer structurally sound. Replacement of the garage and allowing the addition above would be compatible with other properties in the neighborhood.

Several properties within a block of Applicant's property have additions above a garage in the rear yard. The proposed addition is compatible with other structures in the neighborhood, and the addition will improve the general character of the neighborhood.

4. With regard to the third part of the variance test, the Board concludes that granting the requested relief from the lot occupancy, rear yard and non-conforming structure requirements in the R-4 zone will not substantially impair the public good and substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. First, the Board notes that any adverse effect from any new project must have a substantial effect and must substantially impair the public good and the intent and purpose of the zone plan. Any impact on light and air is not necessarily substantial. Second, the east-west orientation of the Applicant's property and the abutting properties significantly lessens any impact on light and air. Third, the alley in the rear is of ample size to provide light and air. The opposing party (Mr. and Mrs. Shafer at 2306 First Street) already benefits from the open space created by the existing 12 and a half foot wide alley which lays at the rear of the two properties. This alley is more than two-thirds as wide as a standard building lot.

In addition, the structure on the opposite side of the alley (115 Adams Street, N.W.) is situated such that its rear wall is almost parallel to the property line between the Shafer's property and the Applicant's property. This means that irrespective of any rear addition on the Applicant's dwelling, the Shafer's will continue to benefit from the afternoon light and air from the west which is not blocked by the structure at 155 Adams Street, N.W. Thus, there will be no adverse effect on light and air to the Shafer's property as the result of the variances requested.

Moreover, Applicant took reasonable steps to mitigate the impacts of its project on light and air by providing a set back of four (4) feet and ten and half (10.5) inches on all three stories to ensure light and air. Finally, there is unanimous support from the ANC and a significant number of neighbors who contend that the proposed addition will be an enhancement to the neighborhood, which is also an objective in the Ward 5 element of the Comprehensive Plan. The totality of these factors ensures that the variances will not substantially impair the public good and substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

5. In reviewing a proposed variance application, 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. In this case, the ANC's written report was unanimous in its support of the Applicant's request for variances.

6. The Board (position with regard to) the recommendations made by the Office of Planning.

7. The Board concludes, based on the ANC report, the Findings of Fact and evidence of record, that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Therefore, it is hereby **ORDERED** that this Application be **GRANTED**.

VOTE: (Geoffrey H. Griffis, Anne M. Renshaw, Curtis L. Etherly, Jr., David Zaidan and Anthony J. Hood).

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

ATTESTED BY:_____

JERRILY R. KRESS

DIRECTOR

FINAL DATE OF ORDER: . _____, 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.

199082