GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16987 of Pablo Martinez, pursuant to 11 DCMR § 3104.1 for a special exception under § 223 to allow an existing rear deck addition to a two-family dwelling that does not comply with the lot occupancy requirements (§ 403), the rear yard requirements (§ 404), and the court area requirements (§ 406) in an R- 4 zone, at the premises located at 1207 Clifton Street, N.W. (Square 2865, Lot 41).

HEARING DATE: **March 11, 2003**
DECISION DATES: **April 15, 2003, May 6, 2003, June 3, 2003**

DECISION AND ORDER

Preliminary Matters

Pablo Martinez, the property owner (the owner or the applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (BZA) on January 3, 2003 for a special exception under § 223 to allow an existing rear deck addition to his dwelling where the dwelling does not conform to the lot occupancy requirements of § 403, the minimum rear yard requirements of § 404, or the court area requirements of § 406 of the Zoning Regulations.

Notice of Public Hearing The BZA scheduled a public hearing for March 11, 2003. Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, owners of all property within 200 feet of the subject premises, the Advisory Neighborhood Commission (ANC) 1B, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the BZA to this effect (Exhibit 29).

OP Report OP reviewed the special exception application and prepared a written report supporting the special exception (Exhibit 28). Among other things, OP concluded that the dwelling and addition occupied 63.24% of the lot.

ANC Report In its report dated February 7, 2003, ANC 1B indicated that at a regularly scheduled monthly meeting with a quorum present, the ANC also voted to support the special exception (Exhibit 25).

Parties in Opposition The BZA granted unopposed requests for party status to two adjacent property owners, Robert Stofferson and Larry Ewers. Mr. Stofferson and Mr. Ewers reside, respectively, at 1209 and 1205 Clifton Street. The BZA found under 11 DCMR § 3106.3 that Mr. Stofferson and Mr. Ewers both qualified for party status because their interests would be more significantly affected by the proposed special exception than those of persons in the general population. Both Mr. Stofferson and Mr. Ewers maintained throughout the proceedings that the deck was too large and too tall, and that it disturbed their privacy and blocked their sunlight.

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They also maintained that the ANC report in support should not be given "great weight" because the ANC failed to give proper notice prior to its meeting when the matter was discussed and decided.

Submissions to the BZA and Procedural History The owner submitted photographs and drawings of the deck and dwelling with his application, but none of the drawings were certified by an architect. At the public hearing on March 11, 2003, the BZA requested additional submissions from the applicant prior to its April 15, 2003 decision meeting, specifically: graphic documentation of the rear of the property and nearby dwellings, and written closing remarks. The applicant made additional submissions that contained, among other things, revisions to his original lot occupancy calculations. Specifically, the applicant revised the 63.24% lot occupancy figure to between 65% and 68.7%. At its decision meeting on April 15, 2003, the BZA expressed concern that the applicant's submissions and calculations of lot occupancy were inaccurate, and directed the applicant to provide a certified surveyor's plat with dimensions of the property and structure. The applicant was to submit the survey plat within two weeks. At a later decision meeting on May 6, 2003, the applicant requested additional time to submit the survey plat. The BZA granted the applicant's request for additional time and reset its decision meeting for June 3, 2003. The applicant submitted a certified survey plat of the property prepared by "West Group" prior to the BZA's June 3 decision meeting.

FINDINGS OF FACT

1. The property is located at 1207 Clifton Street, NW, and is currently developed as a dwelling with a front porch and a rear deck addition. It is located on Lot 41, at Square 2865.

2. Based upon the certified survey plat prepared by West Group, the BZA finds that the dwelling (including the addition) occupies more than 73% of Lot 41. Although OP reported that the lot occupancy was only 63.24%, the applicant conceded that OP's findings were based upon the applicant's initial uncertified drawings. These drawings failed to take into account the front porch and were, therefore, incomplete and inaccurate. As a result, OP's findings with respect to lot occupancy cannot be credited.

CONCLUSIONS OF LAW

The BZA 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)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant is seeking a special exception pursuant to 11 DCMR § § 223 and 3104.1 to allow an existing rear deck addition to a two-family dwelling in an R-4 District, where the addition will not comply with the lot occupancy requirements, rear yard requirements, or court area requirements in the Zoning Regulations.

Section 223 of the Regulations governs "additions to one-family dwellings or flats". Section 223.1 allows additions as a special exception, "subject to the provisions of [section 223]". In other words, special exceptions granted under § 223 must satisfy each of the subsections in that section, *i.e.*, provisions contained in § § 223.2, 223.3, 223.4, and 223.5.

Section 223.3 states that **"[t]he lot occupancy of the dwelling or flat, together with the addition, shall not exceed** fifty percent (50%) in the R-1 and R-2 Districts or **seventy percent (70%) in the** R-3, **R-4**, and R-5 **Districts**", (emphasis added). Because the dwelling with the addition covers 73% of the lot (see Findings of Fact, paragraph 2), and is located in the R-4 District, it does not satisfy the requirements of § 223.3. Since the lot occupancy exceeds 70%, the dwelling with rear deck addition cannot, on its face, qualify for a special exception under § 223. As such, there is no need for the BZA to decide whether the remaining criteria under § 223 are satisfied.

The BZA is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, D.C. Official Code §1-309.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. To give great weight the BZA must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns. The BZA cannot give great weight to the ANC issues and concerns[1], since they did not relate to the lot occupancy question, upon which this case is being decided. *See Concerned Citizens of Brentwood v. BZA, 634 A.2d 1234, 1241 (1993)* (The "great weight" requirement extends only to 'issues and concerns that are legally relevant.' *Bakers Local 118, supra, 437 A.2d at 179* (citation omitted)" (internal quotation marks omitted).

The BZA is also required under D.C. Official Code § 6-623.04 to give "great weight" to OP recommendations. OP determined that the lot occupancy was below the 70% maximum permitted. However, the applicant concedes that the OP finding in this case regarding lot occupancy was based on inaccurate data. Its conclusions were based upon depictions of the property that did not account for the front porch. While OP is not responsible for reaching its erroneous conclusion – the applicant is responsible – the OP recommendations cannot be given "great weight" under the circumstances.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law. It is therefore **ORDERED** that this application be **DENIED.**

VOTE: **4-0-1** (Carol J. Mitten, David A. Zaidain, Geoffrey H. Griffis, and Curtis L. Etherly, Jr., in favor of the motion, none opposed, and Ruthanne G. Miller not participating in the proceedings)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

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

[1] Since the ANC issues and concerns did not turn out to be legally relevant, there is no need to address the arguments raised by Mr. Stofferson and Mr. Ewers regarding the ANC's failure to give proper notice of its meeting.

FINAL DATE OF ORDER: OCT - 6 2003

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND 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. SAG/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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BZA APPLICATION NO. 16987

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:

Pablo Martinez
1207 Clifton Street, N.W.
Washington, D.C. 20009

Larry Ewers
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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning