4336 Garrison Street, N.W.
Washington, D.C. 20016-4035
March 27, 2003

Jerrily R. Kress, FAIA
Director
D.C. Office of Zoning
441 Fourth Street, N.W., Suite 210 South
Washington, DC 20001

D.C. Office of Zoning
2003 MAR 27 A 9:10

Re: *Board of Zoning Adjustment Case Number 16992*
Application for a Special Exception for an Accessory Apartment
at 4336 Garrison Street, N.W. (Square 1655, Lot 0016, R-2 District)

Dear Director Kress:

On March 18, 2003, the Board of Zoning Adjustment held its public hearing on the above-referenced matter and voted 4-0-1 to grant our application for a special exception for an accessory apartment. Because there was opposition to the application, a summary order was not appropriate and the Board of Zoning Adjustment will, as we understand it, ultimately issue a decision and order under your signature. Time is of the essence for us because we have a general contractor working on our ongoing home renovations right now (pursuant to DCRA Building Permit Number B445928) and it will be far less expensive for him (and us) to create this proposed accessory apartment now while he is doing other work at our house than it would be if he has to come back later and create the proposed accessory apartment from scratch.

Your staff explained to me that to expedite this matter, we are permitted to draft and submit a proposed decision and order (including findings of fact and conclusions of law) for consideration by your office and by the Board of Zoning Adjustment. We have therefore availed ourselves of this opportunity and we have enclosed with this letter a copy of our proposed decision and order. We are also sending a true and correct copy of this letter and the proposed decision and order to Daphne and Andrew Trotter, who were granted party status at the March 18, 2003 hearing.

We respectfully request that you take whatever actions are possible to expedite the preparation of the decision and order in this case. In this regards, please do not hesitate to contact me if you have any questions or comments whatsoever.

Sincerely yours,

David P. Frankel

Enclosure (proposed decision and order)
cc: Daphne and Andrew Trotter (with enclosure)

BZA
Case No. 16992
Exhibit No. 44

Board of Zoning Adjustment
District of Columbia
CASE NO. 16992
EXHIBIT NO. 44

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 27, 2003, I served a true and correct copy of (1) my letter to Jerrily R. Kress, FAIA, dated March 27, 2003; and (2) our proposed decision and order in BZA Case Number 16992, via first class mail, postage prepaid on Daphne and Andrew Trotter, 5015 44th Street, N.W., Washington, D.C. 20016.

David P. Frankel

Application No. 16992 of David P. and Jana Frankel, pursuant to 11 DCMR § 3104.1 for a special exception to allow an accessory apartment within an existing detached single family dwelling under Section 202.10, in the R-2 District at premises 4336 Garrison Street, N.W. (Square 1655, Lot 16).

HEARING DATE: **March 18, 2003**
DECISION DATE: **March 18, 2003 (Bench Decision)**

DECISION AND ORDER

On January 15, 2003, David P. and Jana Frankel filed an application with the Board of Zoning Adjustment (BZA) seeking a special exception in order to alter approximately 570 square feet of existing basement storage space in their residence for use as an accessory apartment. The Applicants stated that they intended to construct an accessory apartment in this space and rent it to one or two people.

The BZA, at its March 18, 2003 public hearing, after discussion and deliberation on the application approved the application by a vote of 4-0-1.

PRELIMINARY MATTERS:

BZA Chairman Geoffrey H. Griffis announced that in reviewing the file in this case, he noticed that Paul Davey was identified as the Applicants' architect. Chairman Griffis stated that Paul Davey is someone he knows, has worked with in the past, and is presently working with on an unrelated project. Chairman Griffis stated that he had not discussed this case with Mr. Davey and felt he could proceed to review and decide on this matter impartially. Chairman Griffis added that he would recuse himself if anyone objected. Upon request, neither the Applicants nor those seeking party status (Daphne and Andrew Trotter) objected to Chairman Griffis' participation in this case. The BZA voted unanimously (but with Chairman Griffis abstaining) to proceed on this case with Chairman Griffis' full participation.

Notice of Application and Notice of Hearing. By memorandum dated January 15, 2003, the Office of Zoning provided notice of filing of the application to the District of Columbia Office of Planning, the affected Advisory Neighborhood Commission (ANC 3E) and Single Member District Commissioner, and the Ward 3 Council Member. Exhibit No. 15.

The BZA scheduled a hearing on the application for March 18, 2003. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on January 23, 2003, mailed the Applicants, the owners of all property within 200 feet of the subject property, and ANC 3E notice of hearing. Exhibit Nos. 22-23. Notice of hearing was also published in the D.C. Register. The Applicants filed an Affidavit of Posting, which indicates that the property was posted properly. Exhibit No. 35.

Request for Party Status. Daphne and Andrew Trotter (the "Trotters"), the owners of a property at 5015 44th Street, N.W., that shares a common border with the Applicants, each separately requested party status. Exhibit Nos. 32 and 33. The Trotters requested that the BZA deny the application. The BZA asked whether the Trotters were related and living at the same address, and if so, whether these two requests for party status could be consolidated into one request. The Trotters answered that they are related and living at the same address and therefore agreed to the consolidation of their requests for party status. The Applicants had no objection to either the consolidation or to the granting of the request for party status. The BZA voted unanimously to grant the request for party status to the Trotters.

Persons in Support of the Application. The Applicants submitted four letters in support of their application from neighbors living within 200 feet of their property and one e-mail message stating no objection to the application but praising the Applicants' investment in the neighborhood. Exhibit Nos. 9-10 and 25-30. The four letters in support were from: (1) Ida Kunz of 4340 Garrison Street, N.W., the owner of the adjacent property immediately to the west of the Applicants' property; (2) Thomas E. Eichler of 4328 Garrison Street, N.W. (also writing on behalf of his wife, Wendy Eichler), the owners of the adjacent property immediately to the east of the Applicants' property; (3) Todd D. Boley, the owner of the property at 4324 Garrison Street, N.W.; and (4) David Epstein, the owner of the property at 4320 Garrison Street, N.W. The e-mail message was from Janet Bachman, the owner of the property at 5012 44th Street, N.W.

Persons in Opposition to the Application. No other person other than the Trotters expressed opposition to the application.

Self-Certified Application. The Applicants filed a Self-Certified BZA Application, Exhibit No. 6, seeking a special exception pursuant to 11 DCMR § 3104.1 pursuant to 11 DCMR § 202.10.

Authorization. David P. Frankel, Esquire, an attorney and a member of the District of Columbia Bar and one of the Applicants represented the Applicants at the public hearing. Jana Frankel, one of the two Applicants, was also in attendance at the hearing, as was the Applicants' D.C. licensed architect, Paul Davey.

DC Office of Planning (OP) Report. OP filed a report recommending approval of the application. Exhibit No. 36. The report was received in the Office of Zoning on March 11, 2003. OP's rationale for recommending approval of the application was: (1) the proposed accessory apartment satisfied Section 202.10(a) because the area of the subject property is 6,142 square feet, which is in excess of the minimum requirement of 4,000 square feet for an accessory apartment in the R-2 district; (2) the proposed accessory apartment satisfied Section 202.10(b) because the house consists of 3,768 square feet exclusive of the garage, which is in excess of the minimum requirement of 2,000 square feet; (3) the proposed accessory apartment satisfied Section 202.10(c) because the Applicants have indicated that the accessory apartment is approximately 600

square feet in area, which is 15.9 percent of the gross floor area, which is less than the maximum 25 percent permitted; (4) the proposed accessory apartment satisfied Section 202.10(d) because it is being created in an area that is identified on the "Existing Lower Level Floor Plan" submitted by the Applicants as either "storage," or "bike storage" or "bike workshop." No additional lot occupancy or gross floor area is necessary, and this proposal does not include the conversion of any garage space; (5) the proposed accessory apartment satisfied Section 202.10(e) because no additional entrance to the house is proposed and access to the proposed accessory apartment is through an existing external doorway, on the west side of the dwelling; (6) the proposed accessory apartment satisfied Section 202.10(f) because the owners of the property will occupy the principal dwelling; (7) the proposed accessory apartment satisfied Section 202.10(g) because the total number of persons occupying the house will not be more than six, as the maximum number of occupants within the principal dwelling is three and the maximum number of occupants within the proposed accessory apartment is two, for a total of five; and (8) the proposed accessory apartment satisfied Section 202.10(h) because the Applicants do not and will not have a home occupation located on the premises. OP concluded that the Applicants satisfactorily met the criteria for special exception relief pursuant to 11 DCMR § 202.10, and that in granting the relief, the intent and purpose of the chapter "shall not adversely affect the use of the neighboring properties." OP also concluded that this proposed accessory apartment will contribute towards the Ward 3 general policy of creating housing opportunities for housing near the ward's Metrorail stations. Finally, while OP recommended granting the application as submitted by the Applicants, it also suggested "that if the Applicants install any external lighting for the proposed accessory apartment entrance, that such lighting be shielded and directed downward so as to not cast light into any window or door of the adjacent house to the west."

Advisory Neighborhood Commission (ANC) Report. By correspondence dated February 28, 2003 (Exhibit No. 34), ANC 3E recommended approval of the application "with the caveat that within six months of completion the applicant design and provide for adequate screening and lighting for the accessory apartment." Further, ANC 3E recommended that the Trotters be given party status with the right to appeal to the BZA six months after the completion of the project has expired. ANC 3E's report indicated that the vote on this recommendation was 5-0. ANC 3E's report indicated that it was informed that on January 13, 2003, the Applicants notified all property owners living within 200 feet of the Applicants' property of the ANC meeting which was scheduled for and held on February 13, 2003. ANC 3E itself also informed the community of this matter by publishing its agenda in the Northwest Current, on ANC 3E's official Internet web site, and by posting its proposed agenda around the community.

A letter dated March 12, 2003 from Single Member Commissioner Amy Bauer McVey (ANC 3E01) was waived into the record by the BZA (Exhibit No. 38). Commissioner McVey wrote that the caveat contained in the report submitted by ANC 3E was not the caveat she recalled approving at ANC 3E's February 13, 2003 meeting. She stated that she approved a caveat that read: "with the caveat that within six months of completion the applicant design screening and lighting for the accessory apartment."

Closing of the Record. Upon hearing the Applicants' case, reviewing the recommendations of the Office of Planning and Advisory Neighborhood Commission 3E and the Trotters' opposition, the BZA closed the record and did not request any additional information.

Decision. The BZA approved the special exception request without any caveats, qualifications or restrictions at the conclusion of the public hearing.

SUMMARY OF EVIDENCE

The Applicants' Proposal

The Applicants' proposal would allow the conversion of approximately 570 square feet of existing basement storage space into an accessory apartment that could be rented to one or two persons. This proposed accessory apartment would be located in part of the recently-constructed addition to the rear of the Applicants' detached, single family dwelling. The Applicants' 54 year old house has been undergoing extensive renovations since October 2002 pursuant to DCRA Building Permit Number B445928. The entranceway, floor, exterior walls, door and windows are part of the permitted addition and have already been constructed and installed so the work to convert part of the basement of the addition into an accessory apartment will consist of internal conversion only.

The entrance door to the proposed accessory apartment faces west towards the property at 4340 Garrison Street, N.W. and does not face the street. The proposed accessory apartment will have a separate bedroom with an existing window facing the adjoining property to the east and a separate walk-in closet, a fully-equipped kitchen, a full bath, a washer/dryer combination, a living area with a window and an entrance door, recessed lights, two high speed internet connections, a centrally-monitored security system, including heat and smoke detectors and two cable/ satellite television connections.

Because the subject property is located in the R-2 District, a special exception is required for the placement there of this proposed accessory apartment. Under the requirement of Section 202.10 of the Zoning Regulations, accessory apartments may be placed in single-family dwellings, if the criteria contained in the Regulations are met. The Applicants, therefore, sought approval to convert part of their existing basement space into an accessory apartment under the special exception provision of Section 202.10. The Applicants stated that their proposal met each of the eight specific requirements contained in Section 202.10, and even if were found that one or two of the requirements were not met, the Applicants stated that their request for a special exception should be granted because the BZA may waive up to two of the requirements under certain circumstances applicable here. See 11 DCMR § 202.10(i).

The Subject Property and the Surrounding Area

The site is located in the Friendship Heights neighborhood of Ward 3. It is also located in Square 1655, on Lot 16, at premises 4336 Garrison Street, N.W. The boundaries of the subject square are Wisconsin Avenue to the east, 44th Street to the west, Garrison Street to the north and Fessenden Street to the south. The neighborhood is residential and commercial in character, consisting primarily of brick colonial and wood frame structures and commercial buildings. Across Garrison Street from the site is the undeveloped portion of a lot that is within the R-2 District. The remainder of that lot is developed with a surface parking lot within the R-2 District and an office building with ground floor retail that fronts on Wisconsin Avenue within the C-2-A District. Wisconsin Avenue, located approximately one-half block to the east, is developed primarily with low and mid-rise buildings occupied by commercial and retail uses within the C-2-A District. Approximately two and one-half blocks to the north is an entrance to the Friendship Heights Metro station (red line).

There is no alley access to the subject property. The only access to the rear of the subject property is through the dwelling or via the east and west side yards. The east side yard is six feet wide from the house to the property line and access through the side yard is limited because of mature trees in the front, the placement on the ground of air conditioning condenser units from the subject property and the neighboring property at 4328 Garrison Street, N.W., and the window well related to the subject property. The west side yard of the subject property is eight feet wide from the house to the property line and access through the side yard is limited because of the cement retaining wall separating the earth from the eight cement steps leading to the basement area. The outermost edge of this retaining wall is approximately four feet from the west property line of the subject property.

The rectangular shaped site contains 6,142 square feet of land area. It has a width of 50 feet and a depth of 122.83 feet. It is improved with a two-story single-family detached dwelling that was constructed in 1949. The house is undergoing renovations and an addition has been added as part of these renovations. The dwelling unit contains two stories plus a basement and a walk up attic. There is also a garage attached to the house and a driveway leading to the garage.

Zoning

The subject property is zoned R-2. The R-2 District consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. No variance relief is being sought for the area requirements of the R-2 District.

The Applicants are proposing to place an accessory apartment, consisting of approximately 570 square feet, in a portion of the existing basement area of their property. The Applicants and their architect, Paul Davey, testified that each of the eight criteria set forth in 11 DCMR § 202.10 have been met in this case.

First, they stated that because the Applicants' lot size is 6,142 square feet, they exceed the minimum required lot size of 4,000 by more than 50 percent. *See id.* § 202.10(a).

Second, the Applicants and their architect testified at the hearing that the total square footage of gross floor area, exclusive of garage space, is approximately 4,586 square feet. Of this, they testified that approximately 2,366 square feet existed prior to the construction of their recent addition. Thus, the Applicants stated that their house contains more than the required 2,000 square feet of gross floor area required by the zoning regulations for accessory apartments. *See id.* § 202.10(b).

Third, the Applicants and their architect testified that with a proposed accessory apartment consisting of approximately 570 square feet, this will constitute less than 15 percent of the gross floor area of the house. The Applicants further testified that even if no addition had been placed on the house, the proposed accessory apartment would have occupied only 24 percent of the gross floor area of the pre-addition house (i.e., 2,366 square feet), excluding the garage. Using either calculation, the Applicants testified that their proposed accessory apartment will occupy no more than 25 percent of the gross floor area of their house. *See id.* 202.10(c).

Fourth, the Applicants and their architect testified that their proposed accessory apartment will be created only through internal conversion of the house, without any additional lot occupancy or gross floor area and that garage space will not be converted. *See id.* 202.10(d).

Fifth, the Applicants and their architect testified that no additional entrance to their house will be created, that the below grade entrance to the proposed accessory apartment already exists and that this entrance faces west towards the adjacent property located at 4340 Garrison Street, N.W. and does not face the street. *See id.* 202.10(e).

Sixth, the Applicants and their architect testified that they plan on occupying the principal dwelling and renting the proposed accessory apartment one or two tenants. *See id.* 202.10(f).

Seventh, the Applicants testified that their family consists of three people and that they plan on renting their proposed accessory apartment to one or two tenants. Even if there are two tenants, this would mean that the combination of the principal dwelling and the proposed accessory apartment together would yield five persons, one less than zoning limit of six persons. *See id.* 202.10(g).

Eighth, the Applicants and their architect testified that they have never had a home occupation on the premises and they have no plans to ever do so. *See id.* 202.10(h).

Finally, the Applicants and their architect testified that if the BZA were to find that they did not meet any of the above-listed criteria, the BZA should modify or waive up to two of the requirements pursuant to 11 DCMR § 202.10(i). The Applicants have not requested a waiver of the owner-occupancy requirement and they and their architect testified that any modifications of the remaining requirements will not conflict with the concept of maintaining the single-family residential appearance and character in the R-2 District.

Opposition

The only opposition to the application was submitted and presented by Daphne and Andrew Trotter. The Trotters live at 5015 44th Street, N.W. and their entire rear property line (their easternmost property line) is contiguous with part of the side portion of the Applicants' southwesternmost property line. The Trotters expressed concern that the proposed accessory apartment would expose them to the activity of tenants, their comings and goings through the existing basement entrance, window lighting, and exterior lighting over the basement entrance, intrude on their privacy and affect the value of their property.

The Trotters also presented two related legal challenges to the application. First, they contended that the proposed accessory apartment is part of a new lot occupancy or new gross floor area because it is contained entirely within the newly-constructed addition that has been placed onto the rear of the Applicants' property pursuant to a building permit that was issued in May 2002. This, they asserted, is in violation of 11 DCMR § 202.10(d).

Second, the Trotters argued at the hearing that part of the entrance door to the proposed accessory apartment is visible from 44th Street, N.W. and that this violates 11 DCMR § 202.10(e).

FINDINGS OF FACT

1. The subject property is zoned R-2. No variance relief is being sought for the area requirements of the R-2 District.

2. The subject lot size is 6,142 square feet, which exceeds the minimum required lot size of 4,000 by more than 50 percent.

3. The total square footage of gross floor area, exclusive of garage space, of the subject dwelling is approximately 4,586 square feet. Of this, approximately 2,366 square feet (exclusive of garage space) existed prior to the construction of the recent addition to the subject dwelling. Thus, the subject dwelling, both pre- and post-addition, contains more than the required 2,000 square feet of gross floor area required by the zoning regulations for accessory apartments.

4. With a proposed accessory apartment consisting of approximately 570 square feet, this will constitute less than 15 percent of the gross floor area of the subject dwelling. Even if no addition had been placed on the subject dwelling, the proposed accessory apartment would have occupied only 24 percent of the gross floor area of the pre-addition house (*i.e.*, 570 square feet of 2,366 square feet), excluding the garage. Using either calculation, the proposed accessory apartment will occupy no more than 25 percent of the gross floor area of the subject dwelling.

5. The proposed accessory apartment will be created only through internal conversion of the house, without any additional lot occupancy or gross floor area and garage space will not be converted. The entranceway, floor, exterior walls, door and windows for this entire basement area have already been constructed and installed pursuant to DCRA building permit number B445928. The basement area of the already permitted addition, where this proposed accessory apartment will be placed, will continue to exist (albeit not as an accessory apartment) if the BZA denies the application for an accessory apartment.

6. The below-grade entrance to the proposed accessory apartment already exists and no additional entrance to the subject property will be created. This entrance faces west towards the adjacent property located at 4340 Garrison Street, N.W. While the top portion of the entrance may be partially visible from 44th Street, N.W., the entrance faces the adjacent property at 4340 Garrison Street, N.W. and does not face Garrison, 44th or any other streets.

7. The subject property will be owner-occupied. The Applicants testified that they plan on occupying the principal dwelling and renting the proposed accessory apartment to one or two tenants. This testimony was undisputed.

8. The Applicants' family consists of three people and they plan on renting their proposed accessory apartment to one or two tenants. Even if there are two tenants, this would mean that the combination of the principal dwelling and the proposed accessory apartment together would total five persons, one less than the zoning limit of six persons.

9. The Applicants have never had a home occupation on the premises and they testified that they have no plans to ever do so. This testimony was undisputed.

10. The availability of parking for motor vehicles along the portion of Garrison Street, N.W. in the vicinity of the subject property is generally not a problem because each house on the 4300 block of Garrison Street, N.W. has a garage and a driveway and because most of the north side of this portion of Garrison Street, N.W. consists of an undeveloped lot within the R-2 District. In addition, there are two surface parking lots behind the commercial buildings that line the northwest and southwest sides of Wisconsin Avenue, N.W. at the intersection of Garrison Street, N.W. that help minimize parking problems on this block of Garrison Street, N.W. during business hours.

11. There is no alley access to the subject property. The only possible access to the rear yard of the subject property is via the east side yard, the west side yard and the dwelling.

12. The eastern side yard of the subject property is six feet wide. The northeast part of the side yard has mature trees and shrubs that restrict access to this side yard. In addition, both the subject property and the adjacent property at 4328 Garrison Street, N.W. use this side yard for the placement of air conditioner condenser units on the ground, as well as gas, electric and telephone utility connections. Finally, the subject property contains a deep window well in its east side yard that further restricts access along this side yard. These factors in combination severely restrict the Applicants' ability to gain access to their rear yard via their east side yard.

13. The western side yard of the subject property is eight feet wide. There are eight cement steps leading to the below-grade basement entrance along the west side yard of the subject property. These steps are separated from the surrounding earth by a cement retaining wall. The distance from the outermost edge of the retaining wall to the west side property line of the subject property is approximately four feet, leaving approximately four feet for access to the rear yard of the subject property for such items as a lawnmower or a large trash container.

14. The two property owners who are most affected by the proposed accessory apartment – the property owners at 4340 Garrison Street, N.W. (Mrs. Ida Kunz) and at 4328 Garrison Street, N.W. (Thomas and Wendy Eichler) – support the application. Mrs. Kunz' property is eight feet from the existing below-grade basement entrance and her dwelling is approximately sixteen feet from that entrance. Mrs. Kunz' rear screened-in porch, dining room and master bedroom overlook the existing below-grade basement entrance. The Eichlers' property is six feet from the existing below-grade window and their dwelling is approximately 12 feet from that window. The Eichlers' kitchen overlooks the existing below-grade basement window. Two other property owners on Garrison Street, N.W. support the application and one property owner on 44th Street, N.W. has expressed her support for the Applicants' investment in the neighborhood. Each of these letters and the e-mail message were submitted from owners of property within 200 feet of the subject property.

15. The already-constructed and permitted below-grade entrance to the subject property's proposed accessory apartment is approximately 80 feet from the rear entrance of the Trotters' dwelling and about 15 feet from the Trotters' rear property line.

16. The Trotters have offered no evidence, such as the testimony of a licensed appraiser, to support their contention that this proposed accessory apartment will diminish the value of their property, and if so, by how much.

17. The BZA considered the position of Advisory Neighborhood Commission 3E, which recommended approval of the application "with the caveat that within six months of completion the applicant design and provide for adequate screening and lighting for the accessory apartment." Further, the BZA considered the recommendation of ANC 3E that the Trotters be given party status with the right to appeal to the BZA six months after the completion of the project has expired.

18. The BZA reviewed the recommendation of the Office of Planning that the BZA grant the application as submitted by the Applicants. The BZA also considered the suggestion of the Office of Planning "that if the Applicants install any external lighting for the proposed accessory apartment entrance, that such lighting be shielded and directed downward so as to not cast light into any window or door of the adjacent house to the west."

CONCLUSIONS OF LAW AND OPINION

The BZA is authorized under § 8 of the Zoning Act, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code §§ 6-641.07(g)(2) and (3) (2002)), to grant special exceptions from the Zoning Regulations. The Applicants are seeking a special exception pursuant to § 3104.1 and under 202.10 to allow an accessory apartment within an existing detached single family dwelling in the R-2 District. The notice requirements of § 3113 for the public hearing on the application have been met.

The Applicants were required to demonstrate that the proposed accessory apartment 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 properties in accordance with the Zoning Regulations and Zoning Maps. Based upon the findings of fact, the BZA concludes that the application does meet the requirements for approval of the accessory apartment.

The BZA gave "great weight" to the recommendation of the Office of Planning and agrees with OP that upon due consideration to the subject property's zoning, the intensity of use, the character of the neighborhood and the standards for special exception, the proposed accessory apartment meets the required tests and 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. At the same time, the BZA determined not to make as a condition of approval the OP's suggestion that if the applicants install any external lighting for the accessory apartment entrance, that such lighting be shielded and directed downward so as not to cast light into any window or door of the adjacent house to the west. The BZA determined that issues related to lighting raise safety and security issues that are best addressed in the building code compliance process. Because the rear entrance to the Trotters' dwelling is approximately 80 feet from the entrance and one window to the proposed accessory apartment, it is unlikely that lights from the proposed accessory apartment area of the subject property will substantially impair the use and enjoyment of the Trotters' property.

The BZA is of the opinion that § 202.10 of the Zoning Regulations was developed to maintain and expand the existing housing stock and to ensure a greater variety of housing types, opportunities and choices. This is especially relevant in areas, such as the subject property, which are close to Metrorail and Metrobus lines, as well as commercial and retail development. The BZA is of the opinion that the Applicants meet and satisfy each of the requirements of § 202.10.

In reviewing BZA cases, the BZA is required under D.C. Code § 1-309(d) (2002) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. The BZA has carefully considered ANC 3E's report and agrees with that ANC's recommendation to approve the application. At the same time, the BZA has determined not to accept the ANC 3E's caveat that within six months of completion the Applicants design and provide for adequate screening and lighting for the accessory apartment. As stated in response to the Office of Planning's suggestion with respect to external lighting, lighting is an issue of safety and security and is best addressed in the building code compliance process, especially here, where there are eight cement steps leading to this below-grade entrance that need to be illuminated. In addition, any efforts to implement screening along the west side yard of the subject property must take into account the existing cement steps and retaining wall which greatly restrict the area available for installing screening. Thus, this screening issue is best left to the Applicants to discuss with their adjoining neighbor to the west at 4340 Garrison Street, N.W., who has written in support of the application and who is clearly most affected by the proposed accessory apartment.

ANC 3E also recommended that the Trotters be given party status with the right to appeal to the BZA six months after the completion of the project has expired. The BZA granted party status to the Trotters but determined not to permit the Trotters to appeal to the BZA six months after the completion of the project. Because the BZA has decided to deny the underlying premise for such an appeal (*i.e.*, the BZA decided not to add a caveat to the effect that within six months of completion the Applicants design and provide for adequate screening and lighting for the accessory apartment) there is no need to permit the appeal to the BZA that ANC 3E has proposed.

Based on the findings of fact and having given great weight to the ANC and OP reports, the BZA concludes that the special exception will not materially impair the intent and purpose of the Zoning Regulations, adversely affect the light and air of adjacent buildings or significantly increase traffic, noise or nighttime lighting. The BZA concludes that the requested special exception relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not affect adversely the use of neighboring properties.

For the reasons stated above, the BZA concludes that the Applicants have met their burden of proof. It is hereby **ORDERED** that the application is **GRANTED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Anne Mohnkern Renshaw, Curtis L. Etherly, Jr. and Anthony Hood to approve, and David A. Zaidain not present).

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

_____

JERRILY R. KRESS, FAIA
Director

FINAL DATE OF APPROVAL: _____