Submission by Owner – Case 16996 – 3/18/2003 Pg.: 1of 7

From: Martin Block,

Re: Brief and Response and summary remarks on my behalf in support of my application under consideration: Case #16996 for application of Special Exception to allow and addition....at 3348 Military Rd NW.

BY FACSIMILE 3-18-03

Date: March 17, 2003

I am the owner and resident at 3348 Military Rd NW. I am writing to provide some background and explanation to support my application for Special Exception in order to renovate my basement and replace a basement garage and first floor porch with new construction. This application is required for two reasons:

- The now undersized lot (approx 4200 square floor) requires an exception for any new construction because it is less than the current 5000 square foot requirement;
- The current structure, a single family residence, already has a calculated 10.5 foot rear yard set back which is less than the currently required 25 foot limit.

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I am requesting the BZA accept this brief even though it falls outside the 14 day time limit for filing of such comment for reason of the late date of the ANC meeting – March 10th 2003. It took place on the evening of the 15th day prior to the hearing date, and because of the nature of the commentary and vote, and under advice from BZA staff and other advisors, I wish to submit in writing my presentation along with those from various agencies and individuals known and unknown to me who may have replied as well. I am also asking that you accept signed petitions of fifteen (15) of the closest neighbors who do not oppose my application – chief among them being those of the two adjacent (most affected) neighbors.

Summary:

Our property is a textbook case for why there are such things as exceptions and variances in any municipal zoning system and specifically in the District, with so many neighborhoods developed before the comprehensive regulations adopted in 1958.

- Has the full support of the immediately affected neighbors;
- Has the support of virtually all the affected neighbors (200 feet all ways from property);
- Fulfills our needs for space;
- Does not encroach any further than the present non-conforming structure;
- Does not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property;
- Does not unduly affect the light and air available to neighboring properties
- Does not unduly affect or compromise the privacy and use and enjoyment of neighboring properties – and in fact actually enhance these aspects of the neighboring properties;
- The addition, together with the original building, as viewed from the street, alley, and other public way, does not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.
- Our present and projected utilization of lot size will be less than the 40 percent
- We have not and will not exceed the square footage utilization limits placed on the artist studio as it pertains to interior utilization.
- We can produce the necessary permit allowing the home occupation,
- We have a lawfully licensed business, we have a lawfully permitted use,
- We are asking to add to the home in a way that is acceptable to our neighbors, our neighborhood, and our family lifestyle goals.
- We are not asking to impinge or exceed any presently established non-conformance,
- We have been very cautious and inclusive in the design and planning with the families most affected by our application.

BZA Case No. 16996 Exhibit No. 23

Board of Zoning Adjustment District of Columbia CASE NO. 16996 EXHIBIT NO. 23

We appeal to the BZA to grant our application on its merits, and respectfully submit that while the ANC's opinion bears 'great weight', this opinion in this specific application is based on factors that have no bearing on the application.

Background:

Approximately 2 years ago I began to make efforts to remove and replace an existing garage and first floor enclosed porch on my property. At that time it seemed that the least expensive method to enlarge my home was to add to the west side of the property, requiring an effort to remove the Building Restriction Line (BRL). I did not fully comprehend that this line was essentially an un-moveable object and that it effectively converts what is usually considered to be private property into public property

Once I learned the hurdles that would need to be overcome before a vote by the City Council to approve it, I gave up that route.

I appeared before the ANC3G committee to seek advice or guidance as to my plan and desires. I was told at that time that my efforts would likely not be successful but perhaps I might hire an architect to help me get the most use from my present lot without breaching the existing building restriction line.

Approximately 1 year ago, we hired architect Matthew Ossolinski, to help us see if we could build an art studio for photography for my wife, a freelance photographer specializing in food and still life images, as well as gain additional living space and update some of the systems in our home. Over the past 8 months, we enlisted the aid of our most affected neighbors so as to

- Has the full support of the immediately affected neighbors;
- Has the support of virtually all the affected neighbors (200 feet all ways from property);
- Fulfills our needs for space;
- Does not encroach any further than the present non-conforming structure;
- Does not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property;
- Does not unduly affect the light and air available to neighboring properties
- Does not unduly affect or compromise the privacy and use and enjoyment of neighboring properties – and in fact actually enhance these aspects of the neighboring properties;
- The addition, together with the original building, as viewed from the street, alley, and other public way, does not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

In our proposals, application and presentations to both the ANC at the meeting of March 10 as well as what will be presented at the March 25th hearing, we met and will meet the last requirement of the section and demonstrate compliance with paragraphs (a), (b) and (c) of this subsection, we will use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways.

In this document I reference the zoning regulations – but only to help me frame and organize my document, not as efforts to remind or 'tell' the BZA their business.

Desire for Home Office / Home Occupation Use:

My wife, Renee Comet, is a food and still life photographer. She has an established business in the District as Renee Comet Photography Inc. She has operated in the District for over 13 years, variously in Adams Morgan, Dupont Circle, Navy Memorial-former Stables Art Center Building, and most recently for the past 5 years at 1108 K St. NW.

She is a graduate of the Rochester Institute of Technology, has won numerous awards for her photography, a lecturer on fine art photography for local and regional universities and illustrator of over 30 cookbooks and countless magazine and editorial articles. She is frequently a contributor to the Washington Post Food section.

The business uses no chemicals for photography processing; in fact much of the work is now done in computer, captured digitally and edited. Film, when used is processed by Chrome Labs in Georgetown, delivered by messenger or dropped off during the following day when returning props and or buying foods tuffs to use for use in that day's shoot. The home already has 400-ampere electrical service installed in 1992, so ample power is available for the accessory use of the premises.

Much of the work involved is to collect and assemble props from local stores such as Sur le Table, Williams Sonoma, and other purveyor's in Georgetown, the 14th street business corridor, and other areas around the city.

Approximately 20 percent of the time she works alone. Another 20 to 25 percent of the time she works on location for restaurants, caterers, and other clients. The balance of the time she will work with 1 or 2 assistants or there might be an art director attending as well. The use is low traffic, it is during a time of day when traffic on Military Road is lessening (clients and other assemble at about 9:00), and there is ample non-zone parking available directly in front of the home on Military Road and the entire length of Nevada Avenue between Nebraska and Military Road NW. The block between Nevada Avenue and Nebraska Avenue NW on the south side of Military Road does not require a zone permit nor does the east side of Nevada Avenue between Nebraska Avenue and Military Road – parking is available all day and is ample for 5 to 8 vehicles in front of the house and for 5 vehicles on the side of the home, if necessary. So public parking is ample for the present in anticipated use.

There are several other home occupation businesses in the neighborhood. Across the street on Military Road, up the street on the east side of Nevada just north of Legation, Livingston Street NW at the southwest corner – in short – there a many people in the neighborhood who quietly and respectfully ply their trade and make their living working in the home. Why are we being singled out by this ANC as having incompatible use? In fact, the Chevy Chase neighborhood has in the past shown off its artist studios by having a 'studio walk' several years ago where neighbors visited the studios of the various artists and art related businesses that operated in artist studios in the neighborhood.

Our purpose in moving this activity into our home is manifold:

- Zero commute – we eliminate 20 trips downtown daily at a minimum;
- It is an approved and desirable use of the home and a way to afford to add value to our primary asset, our home
- More family time – less commute means more time for family;
- Less stress – being able to attend to family duties and spend time with family knowing that there is no commute home and back downtown to the studio;
- Better location – much of the job is preparation and getting plates, forks, spoons, and other food and food presentation props, Our home is much closer to many of the sources presently used;
- Flexibility – as a mother of two young children, there is often a 'change in plans' where a child is sick, or becomes ill and needs to be picked up. Alternately, when other children need a place to go after school because their parents are working late, being in the home provides sanctuary for my child and theirs;
- Economic – it is extraordinarily expensive to rent space in the District in areas where our clients will want to come;
- Finally, in this new age of constant terrorist threat against our nation's capitol, our desire to be in the home is much greater than ever. In the worst of possible scenarios, we want to be near or at home as opposed to some office building in downtown DC. The level of stress these alerts bring to our children is at times palpable – they want to know if they are sent home that a parent will be there – certainly not a possibility if every commuter in the city is also trying to make an exit at the same time.

Below (as an addendum on the last page) is the section of the enabling regulations regarding appropriate home occupational use of a private residence in a residentially zoned neighborhood. Please see the addendum to this document which provides the pertinent DC regulations and definitions as they relate to the appropriateness of a fine art studio for photography as an in the home office.

It is our position that the use is presently lawfully permitted, and that we are in receipt of a current and valid Home Occupation Permit issued by the issuing authority, that the protests of the ANC with regard to use are irrelevant and not germane to the application and are therefore moot.

Tests of section 223. How we believe we meet the criteria for the Exception and our presentation to the ANC on March 10, 2003 at Chevy Chase Community Center:

At the meeting, we were afforded an opportunity to present our design and explain the purpose of the improvements we wish to make. We had prepared a 3-d cardboard model of our home and the two adjacent homes which are most affected to be able to clearly show all angles of view, obstructions, sight line changes, presentation and so on. We presented the drawings that were submitted for application to the BZA, though in much larger format.

We explained the constricted building space resulting from the Northern and Western BRL's and showed how the present improvement is already out of conformance with respect to the rear yard setback, with one point of the house presently being 4 foot 6 inches from the property line.

The architect explained the various provisions or requirements of Section 223 and demonstrated how we had endeavored to meet the appearance-oriented requirements of the section. A summary of those comments are repeated below:

- By keeping the addition structure as single story we do not impede view or light and air from the neighbors home. The neighbor's home has a family room addition built immediately adjacent to the proposed addition. The neighbor's wall on this addition that faces my home has no windows. The addition proposed does not project further 'back' – that is in an easterly direction as viewed from Nevada Avenue - than the neighbor's windowless addition. Thus we maintain the same distance between our homes as presently exists when considered from the windows and side door that do exist.
- Viewing the addition from Nevada Avenue, the roofline over the doorway and doors to the storage area has been dropped so as to present less mass to the adjacent structure and also serves to match the height of the neighbor's roofline as well. Here we demonstrate that we have not unduly affected light and air as well as not having affected the privacy and use of the area between the structures. Further, this addresses the visual impact of structure in keeping it in scale and proportion with the accompanying structures.
    - It is important to note that this homeowner appeared on our behalf at the ANC meeting and expressed that he felt that the addition actually enhances the privacy aspect of the area between our homes. By blocking a bit of the street, the structure serves to shield noise from both Military and Nevada Avenues and allows for a more controlled space for their 3 year-old son play in. Further, by keeping the roof height low, we do not impede their view from the second floor of Military or Nevada Avenue's.
- The area of the addition that comprises the storage area is shown at 4 feet 9 inches from the property line. This makes the total distance between the proposed structure and the neighbor's existing structure 12 feet 9 inches (approximately). This distance between homes as viewed from the street is comparable to other homes up and down Nevada Avenue in this block on the east side of the street. There are 2 homes mid block which are spaced further apart, but that is due to the fact that those two homes were built on what was originally 3 building lots. That notwithstanding, the 5 closest structures to my property have similar 11, 12 or 13 foot distances between them.

Commissioner's Comments and questions:

At the ANC meeting, several objections were raised regarding the proposed improvement and it's intended use. I will address them as I can from memory.

Ms. Renshaw questioned whether the slope of the roof immediately adjacent to the property line would cause snow to fall and pile at the property line and perhaps impede access in the case of snow or heavy snow.

- Response: The roof pitch is approximately '1 in 3' and is fairly slight; that snow would tend to settle rather than slide. We offered if that was a concern, we would install the small spike-type objects presently on my upper roof that serve the purpose of preventing such an occurrence.

Ms. Renshaw also asked about the distance between the structures and stated she felt it too close to the property line.

- Response: We were further from the property line than the present encroachment in the south-east corner of the home. We also reminded that any modification to the home requires an exception application.

Ms. Resnshaw asked if we could cut off the storage area to create a more 'regular' shape and not go 'so close' to the property line.

- Response: The basement was to be finished for family and or office use, and that there was no appropriate interior storage for 4 bicycles, lawn mower, and other garden tools and objects.

Ms. Renshaw commented during deliberations, that perhaps I would build an accessory shed someplace on the property instead

- Response: By integrating the storage into the design of the home, we feel it is a better looking and more appealing than an accessory shed.
- We are planning now to use nearly every inch of the space available and cannot gain concurrence to do that. Because most all of the property we own is in public space or space treated as same, the addition of an accessory shed would require some other regulatory approval for such a structure.

Mr. Beach's comments and questions centered on the increase in size of the property addition.

- Response: The net gain in square footage is approximately 400 square feet, as we are adding 600 but removing an existing finished addition that is 200 square feet.

Mr. Beach asked if all the construction is oriented to the artist studio use.

- We did get some increased living area in the form of enlarging the family room on the first floor.

Mr. Beach then asked if we were planning to expand our family and if not, why we need more space.

- Response: We do not plan to have more children. In all the regulations I have read in the last month, none mentioned family size as a prerequisite for enlarging one's home.

Mr. Beach then turned to the question of our use and badgered us about our permit and use.

- We explained that in fact, we had a lawfully issued Home Occupation Permit for a photography studio that qualified as an artist studio under the regulations.

Mr. Beach asked several questions regarding numbers of people who might work there, numbers of deliveries we might get and so on. During the board deliberations where the audience is expected to sit and watch, he launched into a diatribe about how he had grown up in this neighborhood, and that a home was a place for children to play, and not a place of business; that h objected to the use we intended and thought we were clearly wrong in our desires.

- Response: None of these assertions has any bearing on our application and are not related to section 223.**We assert that lawfully permitted and regulated use of the home is of no bearing to the application at hand.**

Mr. Gordon made a statement that he opposed the exception based on the fact that my lot was small, and therefore my house should be small. He claimed that this would be a 'slippery slope' that would prevent the ANC from denying other applications in the future.

- Response: We understand that the special exception mechanism is the gateway to review our request for such relief; that the intent of the regulations to allow 40 percent utilization is a right afforded all landowners similarly situated.
- Our improvement is already sized to fit the reduced lot by proportion. Our lot size of approximately 4200 square feet is approximately 82 percent of the now minimum lot size for single family dwelling. Our proposed improvement would bring our lot coverage (footprint) to approximately 1600 square feet. Under right, if our lot were 5000 square feet, we would be entitled to a 2000 square foot footprint (40 percent coverage). Our proposed improvement, at 1600 square feet is approximately 80 percent of that amount. Therefore, we assert that the improvement keeps in scale with the reduced lot size.

In contrast, Mr. Levine countered that this is exactly the kind of application that should be supported precisely because of the odd lot size, hardship and extraordinary care, preparation and concurrence of neighbors that was evidenced. Mr. Bucholz (or Mr. Gordon, I do not know which) and Ms. Redmond concurred.

Our property is a textbook case for why there are such things as exceptions and variances in any municipal zoning system and specifically in the District, with so many neighborhoods developed before the comprehensive regulations adopted in 1958. For the reasons previously stated above and additionally:

- Our present and projected utilization of lot size will be less than the 40 percent
- we have not and will not exceed the square footage utilization limits placed on the artist studio as it pertains to interior utilization.
- We can produce the necessary permit allowing the home occupation,
- we have a lawfully licensed business, we have a lawfully permitted use,
- we are asking to add to the home in a way that is acceptable to our neighbors, our neighborhood, and our family lifestyle goals.
- We are not asking to impinge or exceed any presently established non-conformance,
- We have been very cautious and inclusive in the design and planning with the families most affected by our application.

Summary and request for Special Exception:

We appeal to the BZA to grant our application on its merits, and respectfully submit that while the ANC's opinion bears 'great weight', this opinion in this specific case is based in large part on factors that have no bearing on the application. While the written submission of the ANC and the minutes reflect an even tone, they do not reflect the tenor of the questioning and the various ancillary comments that colored the proceedings with respect to being questioned about use.

Submitted;

Martha J Block 3/17/03

Addendum for In the Home Office Regulatory Information:

Title 11 District of Columbia Regulations

Section:199 DEFINITIONS

199.1 When used in this title, the following terms and phrases shall have the meanings ascribed:

Artist studio - a place of work of one or more persons who are engaged actively, and either gainfully or as a vocation in the following:

(a) The fine arts, including but not limited to, painting, printmaking, or sculpturing;
(b) The performing and visual arts, including but not limited to, dance, choreography, photography, or filmmaking;
(c) Ceramics; or
(d) (d) The composition of music. (35 DCR 465)

The Regulations for home occupation specifically point to our lawful and permitted use:

Section 203.1

HOME OCCUPATION

The purpose of the home occupation provisions shall be to allow home occupations as accessory uses to residential uses; Provided, that they are compatible with the residential neighborhood in which they are located. The intent is to protect residential areas from adverse effects of activities associated with home occupations, while permitting residents of the community the opportunity to use the home as a workplace and source of livelihood under specific regulatory conditions.

203.2 For purposes of this section, a home occupation is a business, profession, or other economic activity conducted full-time or part-time in a dwelling unit which serves as the principal residence of the practitioner of the home occupation.

203.7 The following uses shall be allowed as home occupations; Provided, that the conditions specified in §§203.4 through 203.6 are met at the time of the establishment of the home occupation, and maintained on a continuing basis. The uses Listed under this subsection shall include similar uses in each category:

(a) Tutoring of not more than five (5) students at any one time:
(b) Dressmaking, sewing, and tailoring;
(c) Painting, sculpturing, writing, composing, photography, or other fine arts occupations practiced by an individual in a home studio; provided, that no more than sixty percent (60%) of the floor area of the dwelling unit may be devoted to the studio;
(d) .....Home crafts...

To Zoning Office

From Martin Block

RE Case 16996

Date 3-18-03.

202. 727-6072
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Please be so kind as to add these 7 pages to my case data for inclusion in the record and package you prepare for the BZA Hearing next Tuesday March 25th

Thank You

Marty Block