GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16996 of Martin Block, pursuant to 11 DCMR § 3104.1 for a special exception under § 223 to allow an addition to an existing one-family dwelling that does not comply with the rear yard requirements (§ 404) in an R-1-B zone, and pursuant to 11 DCMR § 3103.2 for a variance from the off-street parking requirements under §§ 2101.1 and 2116.4 of the Zoning Regulations at premises located at 3348 Military Road, N.W., (Square 1991, Lot 35)

HEARING DATE: March 25, 2003
DECISION DATE: March 25, 2003 (Bench Decision)

DECISION AND ORDER

Preliminary Matters

Martin Block, the property owner (the owner or the applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (BZA) on January 22, 2003 for a special exception under § 223 to construct an addition to his residence where the addition would not conform to the minimum rear yard requirements of § 404.1. Matthew Ossolinski, a licensed architect retained by the applicant, submitted a "self-certification" form with the BZA which describes the zoning relief that is requested (Exhibit 7).

Notice of Public Hearing The BZA scheduled a public hearing for March 25, 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) 3G, the District of Columbia Office of Planning (OP) and the Department of Transportation. The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the BZA to this effect (Exhibit 22).

OP Report and Amendment to Application OP reviewed the special exception application and prepared a written report supporting the special exception, but noted that the owner might also need a variance from the parking requirements within the Zoning Regulations (Exhibit 25). As a result, the owner requested permission from the BZA to amend his application to include the variance relief. The BZA granted this request and considered the variance as well as the special exception during the public hearing on March 25, 2003.

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EXHIBIT NO. 34

At the hearing, Karen Thomas, an OP planner, testified in support of a variance of the parking requirement, noting that the applicant had no viable options other than parking on the driveway. The BZA credits her testimony.

ANC Report In its report dated March 17, 2003, ANC 3G indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted not to support the special exception, stating that it objected to the scale of the proposed development on such a small lot (Exhibit 21).

Persons and Parties in Support Several neighbors wrote in support of the application, including the owners of the two adjacent properties.

Persons and Parties in Opposition Other than the ANC, there were no persons or parties in opposition.

FINDINGS OF FACT

The Property

1. The property is located at the corner of Military Road and Nevada Avenue in the Chevy Chase neighborhood of northwest Washington. It is improved with a two story single-family brick residence with a basement, and was constructed in 1930, prior to the adoption of the Zoning Act of 1938 or the 1958 Zoning Regulations.

2. The lot, being only 4,238 square feet, is undersized under the current Zoning Regulations.[1] It also has a very irregular shape, with unusual dimensions (See Exhibit 2). The longest property lines along the property face the roadways along Military Road and Nevada Avenue, while the smaller edges of the lot are adjacent to the side yard and rear yard neighbors.

3. The lot is also non-conforming in that the rear yard setback requirement is not met. Section 404.1 of the Zoning Regulations requires a minimum 25 feet rear yard for dwellings in the R-1-B zone. The existing residence is setback only 10 feet 7 inches from the rear yard property line.

The Application

4. The applicant proposes to remove an existing attached structure[2] and construct a new west wing of the residence. The addition would include a basement

[1] Section 401.3 of the Zoning Regulations requires a minimum lot size of 5,000 square feet in the R-1-B zone.
[2] The structure is referred to by the applicant as a "garage", but is too small to house motor vehicles.

addition at the east side of the property and a basement with one-story addition at the west side. The applicant proposes to use the addition as an "art studio" for photography. He possesses a valid home occupation permit for this purpose.

5. Although the proposed addition would comply with side yard requirements in the R-1-B zone, it would violate the applicable rear yard requirements, in that it would be set back only 4 feet 6 inches from the rear yard line. Because the dwelling with addition would violate the rear yard setbacks, it would not comply with applicable area requirements under Section 404 of the Zoning Regulations.

6. The proposed addition reduces in height as it approaches the neighboring house to the south at 5379 Nevada Avenue, and would face the side of that property where there are no windows. Also, the residence at 5379 Nevada Avenue will not be effected by the addition because there is an existing tall fence between the properties. The addition to the east of the existing house would be built at the basement level only and would not project above the first floor level. With his application, the owner submitted photographs of the property (Exhibit 5) and elevations for the proposed additions (Exhibit 8). He also submitted a 3 dimensional scale model showing the proposed construction and adjacent homes.

7. The proposed addition does not deviate from the pattern of development along Nevada Avenue and Military Road. The scale of the proposed addition will match the adjacent properties due to the materials and windows to be used.

8. The applicant proposes to continue using the driveway off of Nevada Avenue to park his vehicle, a practice of his since he purchased the residence thirteen years ago. This portion of the driveway is located between the property line and the building restriction line in violation of § 2116.4 of the Zoning Regulations. Because the driveway does not qualify as a valid parking space under the Zoning Regulations and because the parked vehicle would encroach into the setback area, the applicant also seeks a variance of the requirement to provide a parking space under Section 2101.1 of the Zoning Regulations.

9. There is no off-street parking near the applicant's residence on Military Road or Nevada Avenue. Nor is there an alley adjacent to the lot. Therefore, the

only place to park is on the lot. The only method of ingress or egress for a vehicle is through the driveway entered on Nevada Avenue. While there is sufficient space to install a parking pad at the east side of the lot (where it would not encroach into the setback), the applicant would need to obtain a curb cut off Military Road, tear down a large tree, regrade the property, and install retaining walls.

CONCLUSIONS OF LAW

The Special Exception

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 construct an addition to a one-family dwelling in an R-1-B District, where the addition will not comply with the rear yard requirements of § 404.

The Applicant Qualifies for Special Exception Relief. The BZA can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are granted.

The general tests. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. The proposed addition will not change the residential/home occupation use of the dwelling and will be in harmony with the existing residential neighborhood. Because of the windows and other materials to be used, the addition will blend in with the residence and those residences at nearby properties. While the addition will result in an increase in the percentage of lot occupancy, the BZA does not believe that this increase will significantly alter the character of the residence or dramatically change its scale or bulk in relation to residences on other nearby properties. And, as stated in the Findings of Fact, and specified in detail below, the addition will not adversely impact on neighboring properties. Indeed, neighboring property owner -- including both adjacent property owners-- have supported the special exception application.

The "special conditions" for an addition under § 223.1. Under Section 223.1 of the Zoning Regulations, the BZA may permit an addition to a one family dwelling where it does not comply with applicable area requirements, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

a. The light and air available to neighboring properties shall not be unduly affected.

Because the proposed addition reduces in height as it approaches the neighboring house to the south, it will not unduly affect the light and air available to neighboring properties at the south. And, because the addition is located to the north of the neighboring house, it will not cast shadows on the neighboring house at the north. Also, the basement addition will not project high enough to effect the light and air available.

b. The privacy of use and enjoyment of neighboring properties shall not be unduly compromised.

The privacy of neighboring properties will not be effected because no portion of the proposed addition will be built opposite first floor windows of the adjacent properties. Also, there is an existing tall fence between the subject property and the property to the south at 5379 Nevada Avenue.

c. The addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

The proposed additions do not deviate with the pattern of development along Nevada Avenue or Military Road. Nor do the scale of the proposed additions. Since the design is not out of character with existing properties in the immediate area, the proposed additions will not cause any visual intrusion from the frontage along Nevada Avenue or Military Road.

d. In demonstrating compliance with (a), (b) and (c) of this subsection, the Applicant shall 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 view from public ways.

The applicant has provided photographs, elevation drawings, a site plan showing the relationship of the proposed addition to adjacent buildings, and a three dimensional model of the addition and adjacent properties.

The BZA is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; 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. In this case, the ANC has not offered persuasive advice. It stated that the scale of the proposed development was too big for the lot. Based upon the evidence, including the submitted plans, photographs and elevations, and the OP report, we believe the proposed addition is consistent with the neighborhood in terms of scale, bulk and design.

For the reasons stated above, the BZA concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the rear yard requirements in an R-1-B zone.

The Variance

The BZA is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 641.07(g)(3)(2001), to grant variances from the strict application of the Zoning Regulations. The applicant proposes to continue using his driveway off of Nevada Avenue to park his vehicle. A portion of the driveway is located between the property line and the building restriction line in violation of § 2116.4 of the Zoning Restrictions. In addition, the driveway does not qualify as a parking space under the Zoning Regulations, in violation of the obligation under § 2101.1 of the Regulations to provide a parking space. As a result, the applicant seeks relief from these two provisions of the Regulations.

Section 8 of the Zoning Act of 1938, as repeated in 1 DC,R § 3103 authorizes the BZA to grant a variance where

> by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any [zoning] regulation. . . . would result in peculiar and exceptional practical difficulties to. . . the owner of the property."

Because the property is an acute angled corner lot, subject to setback restrictions at the side and rear sides, only a small portion of it is buildable. In addition, the lot itself is undersized, resulting in only a small portion of an already small lot that can be put to use. The dwelling was constructed in 1930, long before the current minimum lot size requirements and setback requirements were put in place. Thus, the lot has been non-conforming for many years, and a vehicle has been parked on the driveway for at least the 13 year period during which the current owner has resided there. If the owner is not granted a variance from the parking requirements, exceptional practical difficulties would result. He would have to obtain a curb cut off Military Road – a very busy road. He

would have to cut a mature tree, regrade the property where it slopes, and construct a retaining wall. Allowing the parking to continue at the driveway would have no detrimental effects and would not impair the intent or purpose of the zone plan.

In reviewing a variance application, the BZA is required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. OP has concluded that the applicant's long-standing practice of parking on his driveway is his only viable option and recommends granting the variance from the parking requirements. For the reasons stated in this Decision and Order, the BZA agrees with OP's recommendation that the variance of the parking requirements be granted.

Therefore, for the reasons stated above, it is hereby **ORDERED** that:

a. the motion to approve the special exception is **GRANTED.**

VOTE: 4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., David A. Zaidain and John G. Parsons, in favor of the motion, none opposed, and Anne M. Renshaw having recused herself from participating in the proceedings)

b. the motion to amend the application to include variance relief and to grant the variance from the parking requirements is **GRANTED.**

VOTE: 4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., David A. Zadain and John G. Parsons, in favor of the motions, none opposed, and Anne M. Renshaw having recused herself from participating in the proceedings)

Vote taken on March 25, 2003

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

ATTESTED: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: SEP 2 7 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

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BZA APPEAL NO. 16996

As Director of the Office of Zoning, I hereby certify and attest that on SEP 27 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:

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ATTESTED BY: _____
JERRILY R. KRESS, FAIA
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