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D.C. OFFICE OF ZONING
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July 8, 2003

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, DC 20001

Re: 2708 44th Street, N.W. Square 1340, Lot 35
Application for Variance - BZA Case No. 17039

Dear Mr. Griffis:

Enclosed is a revised statement of justification. The house for which the variances are requested was completed in 1999. On March 18, 2003, the Zoning Administrator issued an Order to Abate violations of the Zoning Regulations, requiring the removal of dormers in the roof. Although the Zoning Administrator had signed off on the plans prior to construction, the Office concluded, after construction was complete and the house was sold, that the dormers made the roof a fourth story, in violation of the three story maximum. It notified the builder that since the roof was considered a story, the gross square footage limitations in the Wesley Heights Overlay District were also exceeded.

As the Board knows, simultaneously with the application, we filed an appeal from the Order to Abate. It should be understood that by filing the application, we were not conceding that the order was justified. We maintain all possible defenses to the order. Nevertheless, we hope that the Board's favorable ruling in this case will moot any further processing of the appeal.

BZA
Case No. 17039
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO. 17039
EXHIBIT NO. 31

We are also submitting a petition with 40+ signatures of neighbors who support the variance. We have not encountered any opposition. On April 2, 2003, ANC 3D voted unanimously to support our application.

Our witnesses will be John and Pat McAdams.

Please call if there are any questions.

Yours very truly,

Stephen N. Gell

Enclosures
cc: John McAdams
John McGettigan

REVISED STATEMENT

OF EXPLANATIONS AND REASONS

SUPPORTING AN APPLICATION

TO THE BOARD OF ZONING ADJUSTMENT

OF THE DISTRICT OF COLUMBIA

FOR AREA VARIANCES

PURSUANT TO SECTIONS 400.1, 1543.3 and 3103

OF THE DISTRICT OF COLUMBIA ZONING REGULATIONS

2708 44th Street, N.W.

(SQUARE 1340, LOT 35)

BZA Case No. 17039

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INTRODUCTION

This is a Statement of Explanation and Reasons supporting the application of Mr. and Mrs. John McAdams, (hereinafter "Applicants") for a variance from the provisions governing the WHOD/R-1-A Zone District to maintain a 4th story and exceed the allowable gross floor area for the Wesley Heights Overlay District.

The District alleges violations of 11 DCMR Section 400.1 (number of stories in WHOD/R-1-A), and Section 1543.3 (Wesley Heights Overlay District gross floor area limitations).

DESCRIPTION OF THE APPLICANTS

Mr. and Mrs. McAdams purchased this new house on April 14, 1999, from the builder, William Lipnick.

THE SUBJECT PROPERTY

A. Location and Description of the Property

The property which is the subject of this Application is located at 2708 44th Street, N.W., Square 1340, Lot 35. It is a single family dwelling with a basement level garage.

B. Area Surrounding the Property

The Property is on the West side of 44th Street. The houses surrounding it are also large structures. The neighborhood is entirely residential. Approximately a block to the South is Wesley Heights Park and across the street is Glover Archibald Park.

C. Zoning History and Use History

The area is zoned WHOD/R-1-A. The property is subject to the Zoning regulations generally applicable to buildings in the WHOD/R-1-A Zone District as well as the Wesley Heights Overlay District Regulations found at Section 1541, *et seq.* (11 DCMR § 1541, *et seq.*)

REASONS IN SUPPORT OF THE APPLICATION FOR A VARIANCE

A. Compliance with D.C. Zoning Regulations

Extraordinary or exceptional physical conditions creating a practical difficulty

The site is on a slope with the front of the house 9 feet lower than the rear. Because the number of stories is measured from the grade at the front of the house, and

the garage/basement is at grade, this house, which is similar to other houses in the immediate neighborhood, has been charged with violating zoning regulations.

Stories

According to the Zoning Administrator, the inclusion of dormers in the roof renders the house 4 stories rather than 3 as permitted by §400.1. Solely for the sake of rendering moot the issues on appeal, we do not question the Zoning Administrator's conclusion on this point.

Gross Floor Area

According to the Zoning Administrator ("ZA") when the gross square footage of the roof is added to the rest, the building also violates the Wesley Heights gross floor area limitations by 353 square feet. Our calculations lead us to a different conclusion. The ZA cites to "Original computation sheets", (which we have not seen, but which conflict with the plans submitted in 1998) showing the basement and first and second floors as totalling 5,743.76 sf. The ZA then adds 962 sf for the third floor and arrives at a total GFA of 6,705.76 sf, while only 6,353.2 sf is permitted.

Below we have set out the three calculations: Builder, Zoning Administrator and our own. In doing our calculations, we took into account The Wesley Heights Overlay District which specifies that in calculating gross square footage of the basement, one only counts 5 times the area of fenestration. The only windows are in the Northwest Corner of the house in a room called the "den" on the plans. It has approximately 200 square feet. When that is multiplied by 5, it results in a usable basement of 1,000 square feet, half the size of the first floor. (On his plans the builder further noted that the fenestration area was 179 square feet. He also deducted the area of the garage in accordance with Sec.1543 (3) (a) to arrive at a usable area of 321 square feet.) We did not deduct the garage and we used the builder's 1,121 sf for the third floor, rather than the ZA's 962 sf.

Builder's calculation:
First and second floors = 4,189
Basement: 179 (fenestration area) x 5 – 574 (garage) = 321
Third floor = 1121
Total = 5,631

Zoning Administrator's calculation:
from "Original computation sheets"
Basement, first and second floors = 5,743.76
Third floor = 962
Total = 6,705.76

Our calculation from plans:
First and second floors = 4,189
Basement: 200 x 5 = 1,000

Third floor = 1121
Total = 6,310.

Permitted - 6,353.2

In determining a practical difficulty, the Board should consider the fact that the sharp slope of the land results in the loss of more than half the usable space in the basement. Moreover, the shape of the roof deprives the house of nearly half of the potential usable space at the third floor.

Finally, if the Board concludes that the variances should be granted, we urge the Board to confirm that gross floor area and height are not considered in violation, or include them as additional variances.

Practical Difficulties caused in part by District action

A further practical difficulty arises from the District's approval of the plans, its discovery of its mistake after the house had been constructed and sold, its failure to notify the owner for three and a half years and its uncertainty as to a proper course of action. This gives rise to a claim of estoppel and laches which would be cognizable in court. *Wieck v. District of Columbia BZA*, 383 A.2d 7 (DC App. 1978).

After Applicants took title to the completed structure on April 14, 1999, the District advised the builder that it found the building to be in violation of the Zoning Regulations but did not notify the Applicant, the then record owner. The Zoning Administrator had signed off on the plans and construction permits on August 26, 1998. Only after nearly three and a half years had elapsed did the District notify the current owner of the violations. During the three and a half years from the time of the purchase on April 14, 1999, to the notice of violation in November 2002, there had been numerous letters between District officials and Mr. William Timmons, not one of which was copied to Applicants. This lack of notice should not be surprising, considering that as late as February 26, 2002, J. Gregory Love, Administrator, BLRA, advised Mr. Timmons that the matter presented "a quandary of retroactive enforcement." He concluded that the case law prevented further action.

To further compound the confusion, a subsequent inspection by the Office of Zoning Enforcement on August 13, 2002, resulted in a report that found no zoning violations on the premises. Specifically, the inspector found that the attic was used for storage and should not be counted as a story. (See paragraph 9 of the Appeal for further discussion.) Since the District did not believe that it had the right to require the owner to alter the completed building, an owner, even if he had been privy to the correspondence, would not have known that he may be in violation.

The facts presented in this case are considerably more supportive of a finding of estoppel and laches than in the *Wieck* case where arguably the District was misled by the builder into thinking that plumbing and electrical work was being done on the main

structure, rather than an out-building in the back yard. Moreover, there was no failure in *Wieck* to notify the owner of the non-conformity, which it did on two occasions. Although the Court of Appeals did not find sufficient evidence for estoppel in that case, laches was found in the "longlasting failure of the proper officials to enforce their previous orders and consequent prejudice to petitioner from their present attempted enforcement." *Wieck*, at 11. In our case, similar to the analysis in the *Wieck* case, because the District did not take timely action to enforce its regulations, the builder was allowed to sell the house for a price which reflected the increased living space afforded by the dormers. Applicants might have been able to recoup some of their purchase price if they had had timely notice of the problem. Now, such redress would be speculative at best.

B. No Adverse Effects

The house is similar in height and bulk to the other houses in the neighborhood. The Wesley Heights Overlay District was adopted to protect smaller houses from being overshadowed and overwhelmed by outsized houses on adjacent lots. Such is not the case here. The houses on either side are substantial: Moreover, nearby neighbors have been supportive of the house remaining as it is. Finally, there are no houses across the street but, rather, Glover Archibald Park.

The bulk of the house should not be an issue here, since, absent the dormers, the building complies with relgulations. Moreover, far from being a negative influence, the dormers are a valuable aesthetic feature. Their removal would have a greater negative impact on the neighborhood than their continued existence.

COMPLIANCE WITH THE COMPREHENSIVE PLAN

A. Appropriate Residential Use

This single family house fulfills the objectives of the WHOD/R-1-A District.

CONCLUSION

The Applicants should be granted a variance to allow the dormers and additional gross floor area to remain. The building fits nicely into the neighborhood and its maintenance in its present size has no perceivable negative effect on the nearby houses. Moreover, such a use will be in harmony with the purpose and intent of the Zoning Regulations.

Respectfully submitted,

Steve Gell

To the Board of Zoning Adjustment:

We, the undersigned, support the request of John and Patricia McAdams for variances in the height, gross square footage, and number of stories of their home at 2708 44th Street, N.W. We understand that these variances will permit the house to remain as built in 1999.

Name Write	Print	Address	Date
	CECILIA JULIO	4480 Dexter St. NW	06/26/03
	Katherine Wilkes	4332 Garfield St	06/26/03
		4301 Forest St NW	6/27/03
		4470 DEXTER ST NW	6/27/03
		4420 Dexter St NW	6/29/03
		4460 " "	6/29/03
		4450 DEXTER ST	6/29/03
		4301 Forest Ln	6/29/03
	Katherine Epstein	4470 Dexter St NW	6/27/03
	Heather Cox	4432 Edmonds St. NW	7/1/03
	Deborah Phelps	4500 Edmonds St NW	6/29/03
	Karen Ruckman	4530 Dexter St, NW DC	July 1, 2003
	Alan Pearce	4530 Dexter St, NW DC	1 July 03
	Ann Rakestraw	4520 Dexter St NW DC	7/1/03
	Lynn Northland	2632 44th St NW	7/1/03
	Don Bender	2518 44th St NW	7/1/03
		2306 44th St NW	7/1/03
		2306 44 St NW	7/1/03

To the Board of Zoning Adjustment:

We, the undersigned, support the request of John and Patricia McAdams for variances in the height, gross square footage, and number of stories of their home at 2708 44th Street, N.W. We understand that these variances will permit the house to remain as built in 1999.

Name (Write / Print)	Address	Date
Thomas F. Gibson	4400 Edmunds St. NW	6.9.03
Alicia Van Arsdall	440B Edmunds St NW	6-13-03
PETER LEWIS	4412 Edmunds St NW	6-13-03
JERRY	4401 DEXTER ST NW	6-15-03
JACOBS SCHRIEVER	4501 Dexter St. N.W.	6-15-03
KAREN FRSTEN	4470 DEXTER ST NW	6-15-03
HOWARD PINSKER	4410 Dexter NW	6-15-03
W. TED GOSSETT	4400 Dexter NW	6-20-03
Nola Washington	4555 Dexter St NW	6-20-03
STEFANIA SCHLIK	2524 44th St. NW	6-20-03
N.D. BAXTER	4415 Dexter St NW	6.25.03
C. Hope Eccles Quarles	4515 Dexter St. NW	6-25-03
Robert Kacher	4409 Dexter St NW	6-25-03
C. KOSTOPULOS	4500 DEXTER ST. NW	6-26-03
J. ANTHONY J. ARMSTRONG	4420 Edmunds St NW	6-30-03
	4347 Forest Lane	
Carol Kolsky	2810 44th St NW	6/30/03
Robert L Wheeler	4428 Edmunds St NW	7/1/03

To the Board of Zoning Adjustment:

We, the undersigned, support the request of John and Patricia McAdams for variances in the height, gross square footage, and number of stories of their home at 2708 44th Street, N.W. We understand that these variances will permit the house to remain as built in 1999.

Name (Write / Print)	Address	Date
Carlin R. Rankin - CARLIN RANKIN	2520 44th ST, NW	7/1/03
Alfred Morgan	2520 44th ST NW	7/1/03
Lynne Pickard Lynne Pickard	2818 44th St. NW	7/1/03
Paul A. Zevnik PAUL A. ZEVNIK	2930 44th Street N.W.	7/1/03
Gerry SIGAL	2909 44th St NW	7/1/03
Susan Orchin SUSAN Orchin	2831 44th St NW	7/1/03
Jacy D. Orchin JEREMY D. ORCHIN	2831 44th St NW	7/1/03