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.

BZA
Case No. 17039
Exhibit No. 3

Board of Zoning Adjustment
District of Columbia
CASE NO. 17039
EXHIBIT NO. 3

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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 R-1-B 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 (No. of stories and height), 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 other houses surrounding it are of the same general size and type as the subject. 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 R-1-B. The property is subject to the Zoning regulations generally applicable to buildings in the R-1-B 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 height is measured from the grade at the front of the house, this house, which is

similar to other houses in the immediate neighborhood, technically violates zoning regulations in height, story, and GFA non-conformity.

Practical Difficulties caused in part by District action

A further practical difficulty arises from the District's initial permit approval and subsequent uncertainty as to a proper course of action. Without Applicants' knowledge, after they 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, despite the fact that the plans had been signed off by the Zoning Administrator and construction permits had been issued on August 26, 1998. It was not until nearly three and a half years later, that the District notified the current owner of the violations.

Despite numerous letters between District officials and Mr. William Timmons, there was no effort to notify the Applicants. They were not copied on any of the correspondence to or from the District during the three and a half years from the time of the purchase to the notice of violation in November 2002. This lack of notice is not surprising, considering that as late as February 26, 2002, J. Gregory Love, Administrator, BLRA, advised Mr. Timmons by letter 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.

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. Moreover, nearby neighbors have been supportive of the house remaining as it is. It should be noted that there are no neighbors living across the street, but rather Glover Archibald Park. Presumably, it was the addition of 4 small dormers that created the non-conformity in stories, height and GFA. If it were not for the dormers, the overall bulk of the structure would not be an issue. In addition, the pictures of the house show the dormers to be a valuable aesthetic feature. Their removal would have a greater negative impact on the neighborhood than their maintenance.

COMPLIANCE WITH THE COMPREHENSIVE PLAN

A. Appropriate Residential Use

This single family house fulfills the objectives of the R-1-B 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 negative effect on the nearby houses. Moreover, such a use will be in harmony with the purpose and intent of the Zoning Regulations. Finally, the approval of a variance in this case will rectify an error to which the District was a party some 5 years ago.

Respectfully submitted,

Stephen N. Gell, Esq.