GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: March 22, 2004

SUBJECT: BZA Application 17139

APPLICATION
Tom and Linda Waltz, the Applicants, are requesting a special exception under Section 223.1 to allow an existing rear addition to a dwelling located at 4529 Lowell Street, N.W. (Square 1605 Lot 67) pursuant to Section 3104.1 under Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning.

SUMMARY RECOMMENDATION
The Office of Planning recommends approval of the requested special exception to reduce the required side yard setback to 3 feet.

SITE AND AREA DESCRIPTION
The subject property is approximately 0.17-acre (7,500 square feet) in size and immediately north of Lowell Street, N.W. It is developed with a two-story one-family detached dwelling (circa 1927) of masonry and wood frame construction with a basement. Two additions have been constructed along the rear building façade; a one-story 19' x 33' room to the ground floor on the east side in 1990; and a 10' x 21' bath addition to the second-floor master bedroom on the west side in 2003. Posts support the latter addition so the space underneath is open to the ground. A vine-covered fence of wooden posts and wire mesh surrounds the rear yard.

Surrounding development consists entirely of similar two- and three-story dwellings in the Residential (R-1-B) zone district (see Exhibit 1).

APPLICANT'S PROPOSAL
The instant application involves the 2003 addition. In December 2002, construction plans were submitted to the Department of Consumer & Regulatory Affairs (DCRA) for building permit approval. These plans included a boundary plat prepared by the D.C. Surveyor and annotated by the building contractor to show the location of the existing dwelling. This location information was transposed from another annotated plat attached to permit plans previously approved for the

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1990 addition. That plat shows 5-foot setbacks between the dwelling and both side property boundaries.

Building permits were issued in February 2003 based in part on the existence of a 5-foot setback along the western property line. After a tall Silver Maple near the property line was removed, building footings were poured, building posts and framing erected, and a surveyor hired in June 2003 to perform a "wall-check" required to verify the location of the addition footings. Over succeeding months, construction continued with the issuance of plumbing and electrical permits, and completion of the associated work. In December 2003, the Applicants scheduled the "close-in" inspection needed to complete construction. However, they also received a copy of the wall-check inspection indicating that the western building setback was actually 3 feet instead of 5 feet. Since the smaller distance does not meet the minimum zoning requirement, the Building Inspector did not proceed with the final inspection.

The Applicants subsequently filed the instant application to resolve this zoning inconsistency.

EXISTING ZONING AND RELIEF REQUESTED

The site is zoned R-1-B. Zoning Regulation Section 202.1 (a) allows one-family detached dwellings as a matter of right. The existing dwelling generally conforms to the regulations, however the actual side yard along the western property boundary is 3.1 feet. Although Section 405.9 requires a minimum side yard setback of 8 feet, the Zoning Regulations provides the following for expanding nonconforming buildings:

"405.8 In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; Provided, that the width of the existing side yard shall not be decreased; and Provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.)."

So although this dwelling was constructed before 1958, the non-conforming western side yard setback cannot be extended as a matter-of-right. However, the following also applies:

"2001.3 Enlargements or additions may be made to the structure; provided, that the following requirements shall be met:

(a) The structure shall conform to percentage of lot occupancy requirements; and
(b) The addition or enlargement itself shall:
    (1) Conform to use and structure requirements; and
    (2) Neither increase or extend any existing, nonconforming aspect of the structure; nor
    (3) Create any new nonconformity of structure and addition combined."

The lot occupancy calculation on the submitted plat indicates that construction only increased the percentage of lot occupancy to 24% (the maximum allowed in R-1-B is 40%). However, the western side yard setback continues to be less than 5 feet. The Applicants therefore submitted a

request for special exception relief under Section 223, from the provisions of Section 2001.3, to allow continuation of the nonconforming side yard setback.

ANALYSIS
Section 3104.1 grants the Board of Zoning Appeals (BZA) the authority "to grant special exceptions where in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." The referenced special exception would allow the continuation of the nonconforming side yard setback along the western boundary subject to Section 223 provisions.

Compliance with Section 223
Requirements under this section include the following:

223.2 The addition shall not have a substantially adverse affect 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;* The property to the west at 4531 Lowell Street abuts the second floor addition. According the records in the Office of the Surveyor, the dwelling on the abutting property sets 10 feet back from the shared boundary. With the existing 3-foot setback, the total distance between the neighboring dwellings is 13 feet.

Construction of the 2003 addition was approved based on the dwelling on the subject property being 5 feet from the property line, representing a 15-foot distance between dwellings. The effect of this 2-foot difference on the availability of air and light to the abutting property does not appear significant. The 2003 addition maintains the existing dwelling setback.

Given the placement of the raised addition, and the distance between dwellings, air and light to the abutting property should not be adversely affected. However, the owner of the abutting property has expressed concern to the Applicants about the impact of any future construction to infill the open area beneath the addition. Note that this neighbor did not identify specific concerns about this proposal to Planning staff during several conversations.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; Visibility is the same from the second floor bedroom and the addition, so the privacy of neighboring yard has not been compromised.

(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 street frontage; ... The stucco finish of the addition is the same as the existing dwelling so it does not visually intrude on the character, scale and pattern of houses along Lowell Street. There is no public alley.

(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.* Sufficient graphical documentation was submitted for staff review and analysis.

223.3 *The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-l and R-2 districts or seventy percent (70%) in the R-3, R-4 and R-5 Districts.* This relief is not required.

223.4 *The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials or other features for the protection of adjacent and nearby properties.* No special treatment is recommended.

OP concludes that the application meets the requirements of Section 223.

Compliance with Section 3104.1:
Based on the findings of Section 223, granting the requested relief would be in harmony with the general purpose and intent of the Zoning Regulations, and Zoning Map, and proposed changes will not tend to affect adversely the use of the neighboring properties.

COMPREHENSIVE PLAN
The Comprehensive Plan Generalized Land Use Map designates this site and surrounding properties for Low Density residential development characterized by single-family detached and semi-detached houses as predominant uses.

COMMUNITY COMMENTS
According to the Applicants: Advisory Neighborhood Commission (ANC) 5C unanimously recommended approval of this request during a regular meeting on March 3, 2004; and a petition of support signed by neighbors is being prepared.

The Applicants are also working with the abutting neighbor to draft an agreement to address the referenced concern.

RECOMMENDATION
The Office of Planning recommends approval of the requested special exception to reduce of the required side yard setback to 3 feet.

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Attachments: Exhibit 1 Aerial Including Zoning

Exhibit 1





BZA Application No. 17139
4529 Lowell St, N.W.

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Government of the
District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ February 25, 2004

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Water
Street Centerlines
Zoning Districts
Property Squares