GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17139 of Thomas and Linda Waltz, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing single-family dwelling under section 223, not meeting the side yard requirements (section 405) in the WH/R-1-B District at premises 4529 Lowell Street, N.W. (Square 1605, Lot 67).

HEARING DATE: April 6, 2004
DECISION DATE: May 4, 2004

DECISION AND ORDER

Thomas and Linda Waltz, property owners of the subject site, filed an application with the Board of Zoning Adjustment (Board or BZA) on January 30, 2004. The Applicants constructed a second-story addition to their dwelling. The newly constructed addition enlarged an existing bedroom, added a bathroom and closet space. The Applicants indicated that the addition was mistakenly built without the prior approval of the Board because of a series of technical mishaps. The Applicants sought special exception zoning relief under 223, as the addition did not conform to the side yard requirement (§405) of the Zoning Regulations.

The Board heard testimony on the application at its April 6, 2004 public hearing and voted on May 4, 2004 to approve the special exception request.

Preliminary Matters

Self-Certification Philip L. Vandermyde, architect retained by the Applicants, signed a Zoning Self-Certification Form attesting to the relief that was necessary for the project (Exhibit 6).

Notice of Public Hearing Pursuant to 11 DCMR 3113.13, notice was sent 40 days prior to the public hearing to the Applicant, the DC Register, all owners within 200 feet of the subject property, Advisory Neighborhood Commission (ANC) 3D, and the District of Columbia Office of Planning (OP). The Applicant posted the property 15 days prior to the hearing, thereby informing the public of the pending application and the April 6, 2004 hearing date. The Applicant filed a notarized Affidavit of Posting with the Board verifying that the property was posted (Exhibit 24).

Request for Party Status The Board received a request for party status in opposition to the application from Michael J. Sharpston, 4531 Lowell Street, N.W. – owner of the abutting property to the east (Exhibit 20). The Board, by unanimous consensus, granted party status to Mr. Sharpston. In addition to Mr. Sharpston's participation at the public hearing, his counsel Stephen Gell and architect Stephen duPont spoke on his behalf.

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Mr. Sharpston stated that the addition would intrude on and diminish the privacy of his second-story open deck, and in his rear yard. He further indicated that the addition would lessen light to his first floor dining and living rooms. He expressed concern that if the Applicants, at a future date, fill in the open space beneath the new addition, light to his downstairs would be drastically affected. Mr. Sharpston was concerned that the Applicants had not consulted with him regarding the addition and the placement of windows in close proximity to his upstairs deck; that they removed a tall Maple tree that provided screening between the two properties; and, that they removed a fence and posts on the west side of the site. Additionally, Stephen duPont indicated that there could be a Building Code requirement regarding the square footage of windows that are allowed within a certain distance of an adjacent property line.

Government Report The Office of Planning (OP), by report dated March 22, 2004, recommended approval of the special exception request to reduce the required side yard setback to 3 feet. OP was of the opinion that the addition would be in harmony with the general purpose and intent of the Zoning Regulations and Map, and that the proposed changes would not tend to affect adversely the use of neighboring properties (Exhibit 23).

ANC Report The ANC voted 5-0-0 at its March 2, 2004 regularly scheduled monthly meeting to recommend that the Board approve the application. The ANC noted that no objections to the application were raised at its public meeting (Exhibit 21).

FINDINGS OF FACT

1. The subject property is located in the Wesley Heights neighborhood of Ward 3 at 4529 Lowell Street, N.W. (Square 1605, Lot 67). The property is occupied with a masonry and wood frame two-story, single-family, detached, dwelling that was constructed in 1927.

2. Two additions were constructed on the dwelling. The first addition consisted of a one-story, 660 square foot room that was built in 1990 on the ground floor on the east side of the building. The second addition, the subject of the application before the Board, entailed the construction in 2003 of an addition to the second floor master bedroom, a new bathroom and closet space on the west side of the property. The 2003 upstairs addition contains approximately 210 square foot and is supported by posts. Open space is located beneath the posts. The gross floor area of the existing building and addition is approximately 3,206 square feet.

3. The Applicants indicated that the addition was mistakenly constructed without prior approval of the Board because of a series of technical difficulties. At the onset, the general contractor inaccurately measured the west side yard, it was shown as 5 feet 2 inches. On that basis, the contractor submitted a plat to the city, which was subsequently approved. A wall check later revealed that the width of the west side yard is 3.1 feet.

4. The property is zoned WH/R-1-B. The R-1-B District permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot width of 50 feet, a minimum lot area of 5,000 square feet, a maximum lot occupancy of 40 percent for residential uses, a rear yard depth of 25 feet, and a maximum height of three stories/40 feet. In addition to the underlying zoning, the Wesley Heights (WH) Overlay District is mapped at the site.

5. The lot has a width of 50 feet and a depth of 150 feet; it contains a lot area of 7,500 square feet. The site has a 70.6-foot rear depth. The height of the dwelling unit is 26 feet. Two parking spaces are located at the site.

6. At the site, the Zoning Regulations allow a lot occupancy of 40 percent under section 403.2, 50 percent under section 223, and 30 percent under the Wesley Heights Overlay District, section 1543.2. The building has an existing lot occupancy of 1,587 square feet (21 percent). The addition would increase the building's lot occupancy to 24.3 percent.

7. Eight foot side yards are required in the R-1-B District. In the case of a building existing on or before May 12, 1958, with a side yard less than 8 feet, an extension or addition may be made to the building; provided the width of the existing side yard shall not be decreased; and provided that the width of the side yard shall have a minimum of 5 feet. On the east side of the property, the side yard measures 5 feet 7 inches. The measurement of the west side yard is 3 feet 1 inch; the Applicants sought zoning relief for 1 foot 9 inches from the 5 foot requirement for the west side yard.

8. The Applicants filed building plans with the DC Department of Consumer and Regulatory Affairs in December of 2002. Subsequently, in February 2003, Building Permit No. B448996 was issued. The Applicants began construction in May 2003.

9. The Applicants undertook a wall check in July 2003. The wall check revealed that the west side yard was deficient by 1 foot 9 inches; the results were provided to District officials in August 2003. Framing and footings for the building were approved, plumbing and electrical work were completed and inspected by building inspectors. Closing of the interior of the addition was scheduled for December 12, 2003. The closing was disapproved and the Applicants, at that time, voluntarily, stopped working.

10. The Applicants filed a special exception application with the Board requesting relief from the side yard requirement on January 30, 2004.

11. A Maple tree existed between the Applicant's property and the adjacent neighbor's property at 4531 Lowell Street, N.W. The tree was removed prior to construction. The Applicants indicated that the tree had become seriously overgrown and was a potential threat to both properties.

12. Michael J. Sharpston has an open deck on the second story, east side of his property, that is parallel to the Applicants' addition

13. Michael J. Sharpston filed a wall check report dated March 12, 1990, Exhibit 28. Mr. Sharpston indicated that the Applicants were aware of 3.1-foot west side as early as 1990 when the first addition was constructed.

14. Initial building plans filed with the Board by the Applicants showed the windows on the side of the addition in a different location from where they were actually constructed (Exhibit 7).

15. According to records available in the Office of the Surveyor, Mr. Sharpston's property has a 10-feet setback from the shared boundary line. The total distance between the two properties is 13 feet, with the Applicants' 3-foot side yard setback.

16. The Applicants filed petitions from 21 neighborhood residents stating that they did not object to the addition (Exhibit 22).

CONCLUSIONS OF LAW

The Applicants sought a special exception under section 223 pursuant to 11 DCMR § 3104.1 to allow the construction of a second story addition to a single-family, detached, dwelling on the west side of the WH/R-1-B zoned site. The Board is authorized to grant special exceptions where, in the Board's judgment, the special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring. 11 DCMR § 3104. Pursuant to section 223, the Board may permit, by special exception approval, an addition to a one-family dwelling that does not comply with requirements pertaining to minimum lot dimension, lot occupancy, rear and side yards, courts, and nonconforming structures, subject to the conditions enumerated in section 223. The Applicants' property does not comply with requirement pertaining to the side yard requirement.

Side Yards

The site is required to have, at minimum, 5-foot side yards. The east side yard measures 5 feet 7 inches and is in compliance with the Zoning Regulations. The west side yard is not able to meet the requirements of the Regulations; it measures 3 feet 1 inch. The Applicants requested zoning relief for 1 foot 9 inches for the west side yard. With the exception of the side yard, the application met all zoning requirements. The Applicants testified that they were unaware that the west side yard measured 3 feet 1 inch, until the results of the wall check were made available to them. The noncompliant side yard is a condition that exists at site. The building was constructed in 1927, 31 years prior to enactment of the 1958 Zoning Regulations. Therefore, without zoning relief from the

Board, the Applicants would be restricted from building the addition on the west side of the property. The Board found the requested relief to be minimal, particularly because the dwelling is 77 years old, and the modest addition would be in keeping with current living standards.

The site has a 3.1 foot west side yard, and the adjacent property is 10 feet from the property line. The distance between the two buildings is 13 feet. The Board found that the distance between the two properties is sufficient to ameliorate any potential impacts.

Section 223 Provisions The Board may grant special exception approval in accordance with the provisions enumerated in section 223. The provisions include that the proposed addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular (a) the light and air available to neighboring properties must not be unduly affected; (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised; and (c) the addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage, 11 DCMR § 223.2.

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

The Board found that the light and air to the neighboring property owner would not be unduly affected. The light and air to the adjacent neighbor to the west would not be significantly compromised because of an additional 1 foot 9 inches. The Board gave credit to the Applicants statement that they attempted to position the windows of the addition so that both properties would have optimal lighting and mutual privacy. Additionally, the Board requested that the Applicants file current plans accurately showing the location of the addition's windows.

The subject lot contains 7,500 square feet. The lot occupancy of the underlying zone and Wesley Heights Overlay District, after the addition, is 24.3 percent, meeting the requirement of the Zoning Regulations. The site has a rear yard depth 70.6 feet. The lot size and rear yard depth, in relationship to the building's lot occupancy, is an indication of the generous amount of light and air available to the abutting property owner.

The Board was persuaded by the Applicants' argument that the Maple tree that provided screening and some privacy between the two properties, had to be felled.

The Board found no reason to condition its Order requiring that the Applicant not enclose the open space below the addition because the adjacent property owner, at some future time, could lose light and air. Prior to any future additions on the west side of the property, the regulatory process would determine that a noncompliant 3.1-foot side yard exists which does not comply with the 5-foot minimum requirement.

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

The addition would not unduly compromise the privacy and enjoyment of the adjacent property owner. The record indicates that the Applicants' visibility onto the next-door neighbor's deck and back yard is the same from the second floor bedroom as it would be from the addition, therefore privacy of the neighboring yard would not be compromised. With the introduction of the Applicants' addition, windows provide a view onto the deck, which previously did not exist. However, the Board did not find the neighbor's concerns of privacy compelling, as an open deck does not lend itself to a tremendous amount of privacy.

With reference to Stephen duPont's concern that there could be a Building Code requirement pertaining to the square footage of window space allowed within a certain distance of an adjacent property line, the Board has no jurisdiction over the Building Code, and therefore this concern is not within its purview.

The Board found that although the Applicants did not discuss the addition with the Mr. Sharpston prior to construction, proper and adequate notice of the BZA application and the public hearing were provided as evidenced by (a) the 21 petitions that were filed from persons in support of the application; (b) the mailing from the Board to persons within 200 feet of the site; and (c) the ANC report which indicates that notice was given to the Wesley Heights community.

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 finish of the addition complements the existing dwelling, and as such it would not visually intrude on the character, scale and pattern of development on Lowell Street. The addition does not deviate from the pattern of development in the Wesley Heights neighborhood with respect to its design. The front yard setback is equal to the neighboring property owners and does not change in any way with the application. Therefore, the addition causes no visual intrusion as viewed from the street.

The Board 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 §1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC recommendations. For the reasons stated in this Decision and Order, the Board finds the ANC advice to be persuasive.

In reviewing a special exception application, the Board is also required under D.C. Official Code 6-623.04(2001) to give "great weight" to the recommendation of the Office

of Planning. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

For the reasons stated above, the Board concludes that the applicants 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 side yard requirement in the WH/R-1-B zone.

Accordingly, it is **ORDERED** that the application is **GRANTED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and John G. Parsons to approve).

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: AUG 2 3 2004

PURSUANT TO 11 DCMR § 3125.6, THIS 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.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION, WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

BAB/8.20.04

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BZA APPLICATION NO. 17139

As Director of the Office of Zoning, I hereby certify and attest that on AUG 2 3 2004 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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