Application No. 17251 of Paul and Frances O'Reilly, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a two-story rear addition to a single-family semi-detached dwelling under § 223 of the Zoning Regulations, not meeting the rear yard requirements (§ 404), side yard requirements (§ 405), and the non-conforming structure provisions (§ 2001.3) in the R-1-B District at premises 3715 Albemarle Street, N.W. (Square 1888, Lot 48)

HEARING DATE: December 14, 2004
DECISION DATE: January 4, 2005

DECISION AND ORDER

Paul and Frances O'Reilly, the property owner (the owner or the applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on October 4, 2004 for a special exception under § 223 to construct an addition to their residence[1] where the addition would not conform to the minimum rear and side yard requirements, lot occupancy requirements,[2] or non-conforming structure provisions of the Zoning Regulations. Following a hearing on December 14, 2004 the Board voted to approve the special exception.

Preliminary Matters

Self-Certification David Kacar, a registered architect retained by the applicant, submitted a "self-certification" form with the Board which describes the zoning relief that is requested (Exhibit 6).

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, the Advisory neighborhood Commission (ANC) 3F and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect.

[1] As will be explained in the Findings of Fact, construction began prior to the public hearing.
[2] Although the application does not address the lot occupancy requirements, the Board has determined that this relief is necessary.

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EXHIBIT NO. 35

ANC Report In its report submitted December 6, 2004, ANC 3F indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to oppose the special exception (Exhibit 22). Its primary ground for opposition was the alleged "adverse impact on the use and enjoyment of the adjacent home at 3713 Albemarle Street".

Request for Party Status The Board received a request for party status from Emilia Psillos (Exhibit 21). Ms. Psillos resides at the adjacent property located at 3713 Albemarle Street (the Psillos property). The request for party status was granted and Ms. Psillos opposed the application at the public hearing.[3] Most of her concerns pertained to problems that she claims to have experienced during the partial construction of the addition, or problems she expected during future maintenance of the subject property. However, Ms. Psillos also asserted that the new addition would adversely impact upon her privacy and light and air.

Other Persons in Support/Opposition No other persons appeared in support or in opposition to the application. However, letters from nearby property owners were received, both in support and opposition.

OP Report OP's report indicated that the application meets the test for a special exception. In addition, John Fondersmith, the OP representative who prepared the report, testified at the public hearing in support of the application.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is a single-family semi-detached dwelling that was built prior to 1958 to 1958 and is located at 3715 Albemarle Street, NW in the R-1-B zone.

2. The property is located in the North Cleveland Park residential neighborhood, bordered on the east by Reno Road, on the south by Albemarle Street, on the west by 38th Street, and on the north by Appleton Street.

3. Most of the residential buildings in the area are single-family detached dwellings. However, there are 5 pairs of single-family semi-detached dwellings (10 dwellings in all), on the north side of Albemarle Street, including the subject dwelling. The semi-detached dwellings were all built in 1927.

[3] Ms. Psillos' son, George Psillos, spoke on his mother's behalf at the public hearing.

4. The subject dwelling is on a relatively small lot, approximately 2,035 square feet in size, 28 feet wide and 72.68 feet in length. The lot size is below the minimum lot area of 5,000 square feet now required in the R-1-B zone and below the 3,000 square feet required for a single family semi-detached dwelling in the R-2 zone.

5. The current front yard is 5 feet and the rear yard is 28.38 feet. Although the side yard on the west is 9.5 feet, the side yard on the east consists of a narrow space that is only one foot wide and approximately 8 feet in length, due to the existence of a "sleeping porch" between the lot line and the original two-story protrusion at the rear of the house.

6. Sometime during 2002, the applicant constructed the first floor of a two story rear addition that extends the full width of the existing house at the rear and an additional 12 feet in length.

7. After the addition was well under construction, the DC Building and Land Regulation Administration (BLRA) issued a stop work order to halt construction of the addition when it discovered that the work had commenced without a permit The applicant stopped work at that time and covered the partially built addition in plastic. The applicant also discharged the contractor who had performed the work without a permit and hired Mr. Kaacar (the architect who self-certified this application) to take appropriate steps to conclude the project.

8. When fully constructed with the second floor, the addition will reduce the rear yard from 28.38 feet to 16.38 feet (less than the 25 feet required), and increase the lot occupancy to 45 percent (more than the 40 percent allowed). It will also extend the non-conforming side yard to the east and the structure's non-conformity as a single-family semi-detached dwelling in an R-1-B zone. This application was filed for relief so the owner could complete the addition.

The Impact of the Addition

9. The applicant submitted elevation plans, construction plans, a foundation plan, and a plat of survey for the property. He also submitted photographs depicting rear views from 3717 Albemarle Street, 3715 Albemarle Street and 3713 Albemarle Street. OP submitted additional photographs illustrating the relationship of the addition to adjacent buildings and views from Albemarle Street.

10. The addition is not visible from the street due to its location at the rear of the dwelling. Nor is there a direct alley view where the addition would be seen.

11. There are 6 foot fences on both sides at the rear yard of the applicant's property. The Board credits OP's finding that no additional screening is needed at the rear of the property.

12. The addition would not have an adverse affect on the dwelling to the west at 3717 Albemarle Street. The applicant's property has a 9.5 foot side yard on the west and the 3717 property has a similar side yard on its east, providing an overall space of 19 feet between the two dwellings.

13. The addition would not have adverse affects on the two single-family dwellings to the north, opposite the rear yard of the property. The dwellings to the north, 3722 and 3724 Appleton Street, have deep lots, creating a significant distance between the addition and the two dwellings. Also, the rear yard has significant trees, brushes and landscaping, which serves to screen the view of the proposed addition from the two dwellings.

14. The proposed addition, when completed, will be two stories high (approximately 21 feet high) and will extend 12 feet at the rear, next to the Psillos property . The subject property and the Psillos will be separated from the lot line by one foot.

15. There were some drainage and water flow problems associated with the addition that may have affected the Psillos property. However, the Board finds that these problems occurred during the partial construction of the addition, and were ultimately corrected by the applicant.

16. The addition will not impact on the privacy of the property owner at the Psillos property because there will not be any windows in the wall of the addition on that side, and because a fence separates the properties.

17. The Board credits OP's assessment that the addition, when fully constructed, will not unduly restrict the amount of light and air at any of the neighboring properties. Even at the Psillos property, where the question is debatable, the amount of sunlight during the morning and afternoon hours has not been a problem in the past. The reduced sunlight, which does exist during the late afternoon, is attributable to the existence of a large tree. Ms. Psillos claims that the partially built addition has already reduced the light and air at her property, causing mold to form on her patio. The Board finds that the problem with mold, if any, was not caused by the addition. The Board accepts the applicant's testimony that there has always been a problem with mold at each of the semi-detached dwellings in the row, and that this problem is alleviated by frequent cleaning and maintenance.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official 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 single-family dwelling in an R-1-B zone, where the addition will not comply with the side yard requirements of section 405, the rear yard requirements of section 404, the lot occupancy requirements of section 403, and the non-conforming structure provisions of section 2001.3.

The Board 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. As to the first test, the proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood. Since the second test is nearly identical to the criteria for the special conditions under section 223, it will be discussed in the section below entitled "The 'special conditions' for an addition under section 223".

The "special conditions" for an addition under section 223 Under section 223.1 of the Zoning Regulations, the Board may permit an addition to a single family dwelling where it does not comply with applicable area requirements, such as the side yard requirement, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property pursuant to section 223.2, in particular:

a. The light and air available to neighboring properties shall not be unduly affected. Light and air to neighboring properties will not be unduly affected. , Neither the Psillos property nor any of the other neighboring properties will have their light and air significantly reduced. While light and air at the Psillos property may be affected by the addition, the Board does not conclude that it will be "unduly" affected. (Findings of Fact 12, 13, 17)

b. The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The privacy of neighboring properties will not be affected by the addition. (Findings of Fact 9, 11, 12, 13, 16). The property to the west is separated by an ample side yard (Finding of Fact 12), and the properties to the rear are screened by fences (Finding of Fact 11). With respect to the Psillos property,

there will not be any windows facing it, and there is also a fence separating it from the subject property (Finding of Fact 16).

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 addition to the subject property does not deviate from the pattern of development in the area with respect to its scale or design. Due to its location at the rear of the dwelling, the addition is not visible from the street (Findings of Fact 9 and 10). Thus, the addition causes no visual intrusion as viewed from the street.

d. In demonstrating compliance with paragraphs (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 views from public ways. This condition has been met.

The Board must also find that the proposed addition meets the conditions under sections 223.3, 223.4 and 223.5.

223.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-1 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts. When fully constructed, the proposed addition will result in a lot occupancy of 45 percent (Finding of Fact 8).

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 nearby properties. This is not necessary. The addition will not be visible from the front and is adequately screened at the rear.

223.5 This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception. This section is inapplicable.

In reviewing a special exception application, the Board is required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

The Board is also 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's recommendations. The ANC concerns mirror those of Ms. Psillos, the party in opposition. The ANC asserts that: (1) The applicant commenced construction

without a permit and damaged the Psillos property during construction; (2) the fence separating the subject property does not sit on the property line; (3) The addition will adversely affect the Psillos property because it is so close to it; and (4) The addition will disrupt the harmony of the line of semi-detached dwellings.

The Board finds that the first two concerns are not legally relevant to this proceeding. Neither construction issues nor survey issues are pertinent to this application for a special exception. Moreover, the Board found that any construction damage which may have occurred was remedied prior to this public hearing.
The second two "concerns" are legally relevant. However, the Board does not agree that they should preclude the granting of this application. As explained previously, the Board does not conclude that the addition will unduly affect the light and air at the Psillos property. While an addition (or any other structure) will always result in some impact on light and air, we agree with OP that the impact will not be substantial. As to harmony of the building line, this assertion lacks merit. Section 223.2(c) requires that the addition not intrude upon the character, scale and pattern of houses along the street frontage. Because this addition is proposed at the rear of the dwelling, not the along the street frontage, the Board believes this condition has been satisfied.

For the reasons stated above, the Board 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 side yard requirements an R-1-B zone.

Therefore, for the reasons stated above, the application for a special exception is granted.

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., and John A. Mann. II in favor of the motion to grant, and no Zoning Commission member having participated in the application)

Vote taken on January 4, 2005

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

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

FINAL DATE OF ORDER: JUN 29 2005

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

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As Director of the Office of Zoning, I hereby certify and attest that on JUN 2 9 2005, 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:

Francis W. O'Reilly
3715 Albemarle Street, N.W.
Washington, D.C. 20016

Emilia Psillos
3713 Albemarle Street, N.W.
Washington, D.C. 20016

Chairperson
Advisory Neighborhood Commission 3F
4401-A Connecticut Avenue, N.W. #244
Washington, D.C. 20008

SMD Commissioner
ANC 3F-06
3810 Albemarle Street, N.W.
Washington, D.C. 20016

Kathleen Patterson
City Councilmember, Ward 3
1350 Pennsylvania Avenue, N.W.
Suite 107
Washington, D.C. 20004

Alan Bergstein, Esq.
Office of Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

Ellen McCarthy, Interim Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Corey Buffo
Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning