STATEMENT IN SUPPORT OF
APPLICATION BY CLARK PLACE LLC
AND TED AND MARY TSCHUDY
FOR A SPECIAL EXCEPTION TO CONSTRUCT A NONCOMPLYING
ADDITION TO A SINGLE FAMILY DETACHED DWELLING
AT 4641 CLARK PLACE, N.W.

October 14, 2004

I. Nature of Relief Sought

This application requests a special exception pursuant to 11 DCMR § 223 to allow an addition to a single-family dwelling that provides less than the required rear yard setback (§ 404) and on a lot that has less than the required minimum area (§ 401). The applicants are Clark Place LLC, the owners of the subject property at 4641 Clark Place, N.W. (Lot 850, Square 1358), and Ted and Mary Tschudy, the owners of an abutting property at 4646 Greene Place, N.W.[1] The Property is zoned R-1-B and is within the boundaries of Advisory Neighborhood Commission 3D.

II. Jurisdiction of the Board of Zoning Adjustment

The Board of Zoning Adjustment ("BZA") has jurisdiction to grant the relief requested pursuant to § 3104 of the Zoning Regulations.

III. The Subject Property and Vicinity

The Property is a detached single-family dwelling located in a small neighborhood of detached housing situated between MacArthur Boulevard, N.W. on the east and the C & O Canal and the Potomac River on the west at a lower elevation. To the

[1] For convenience and clarity, the first property (Applicant) will be referenced as "Clark Place" or the "Property" and the second property will be referenced as "Greene Place."

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north is parkland owned by the National Park Service and the Georgetown Reservoir.[2] The somewhat oversized building abutting the Property to the north, and located at the corner of Clark Place and Ellicott Street, N.W., is an office building owned and occupied by Reingold Consulting. Reportedly this property has a history of nonresidential uses extending back well before 1958.

IV. The Proposed Addition and Zoning Relief Requested

The Property is zoned R-1-B, which is a low-density residential zone that allows single-family detached dwellings on lots having a minimum area of 5,000 square feet and 50 feet of width. The maximum permitted building height is 40 feet, 3 stories.

Clark Place LLC purchased 4641 Clark Place, N.W. in the fall of 2003 and in winter 2004 obtained a building permit to renovate and substantially reconstruct the existing house. The Clark Place house is a three-story, detached, single-family dwelling. The additions under construction are a small side addition at the front and a rear addition with deck. The work is being done under a matter-of-right building permit.[3]

The plans in the original building permit application provide for a rear addition that is 14 feet deep, thereby providing a rear yard of 25 feet, which complies with the rear yard requirement in the R-1-B District. However, the owners have also constructed a deck at the rear of the house that is 9 feet deep by 14 feet wide and approximately 7 feet above ground level.

Zoning Issue Number One. The existence of a zoning problem arose with the recent discovery of a three-foot discrepancy in the location of the lot line at the rear of the

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[2] See the "Neighborhood Context Map" in *Exhibit A* and the "Zoning Map" in *Exhibit B*.

[3] See the Surveyor's Plats in *Exhibit C* and the photographs in *Exhibit D*.

Property and the abutting property at 4646 Greene Place, N.W. The rear yards of these houses abut each other without an intervening alley. The lots are separated only by a fence deemed for many years to be on the property line. This fence was constructed by the owners of Green Place and has been maintained by them for more than 15 years. They built the fence on the location of a much older fence.

Ted Tschudy, owner of Greene Place, discovered that the rear wall of the addition at Clark Place was actually only 22 feet from the division fence referenced above. When he pointed this out to the building supervisors on-site, they informed him that they were certain that the rear yard setback was in fact 25 feet as required. This was a complete surprise to the Tschudys, as they had for the 30+ years they have occupied Greene Place assumed that their property extended to their rear fence, which is 15 feet from the rear of their house. A fence in that location has existed since 1971 when the Tschudys purchased and moved into their property.

This assumption of a 15-foot setback was supported by documents provided by the City when, in 1979 the Tschudys applied for and were granted a rear yard variance in order to replace a then-existing porch with an addition that provided only the 15-foot rear yard.[4] At that time both the Tschudys and the Zoning Administrator, as indicated in a memorandum by Joseph Bottner, Jr. dated May 30, 1979, believed that the property extended to the Tschudy's rear fence. Also, location surveys completed for periodic refinancing of the Tschudy's house revealed no problems with the fact that the fence was situated on the rear property line. In fact, a 1993 survey shows the fence as being on the property line.

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[4] See the copy of BZA Order No. 12997 in *Exhibit F.*

Upon discovering the discrepancy in the location of the fence and property boundary, the Tschudys retained the West Consulting Group to survey their property and locate their rear yard fence. This survey informed the Tschudys for the first time that their fence did indeed site approximately three feet beyond their property line and on the property of the Clark Place house.

Concerned about the possibility of their rear yard being reduced to a depth of only 12 feet and therefore smaller and also out of compliance with the conditions of their 1979 variance, the Tschudys engaged the services of an attorney, who negotiated an agreement with Clark Place LLC. The agreement provides for the parties to pursue a special exception for Clark Place to provide a noncompliant rear yard. Clark Place would then deed to the Tschudys the land involved (approximately 3 feet by 55 feet), to that the Tschudy's fence can remain where it is and their yard will continue at its current depth. Also, the Tschudys would remain in compliance with their BZA approval to provide a 15-foot rear yard.[5] Also, if the Board grants this requested special exception, the owners of Clark Place will be able to sell the house unencumbered with nonconformity issues, as discussed below.

Zoning Issue Number Two. The deck at the rear of the new addition on the Clark Place house received a matter-of-right building permit as an amendment to the original permit.[6] The Applicants' understanding now is that a deck that is more than four feet above grade must comply with required setbacks in zoning. Because the deck is approximately seven feet above grand and extends 9 feet into the required 25-foot rear

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[5] A copy of the agreement is found in *Exhibit G.*

[6] The deck was approved by Building Permit No. B462371, a copy of which is attached in *Exhibit E.*

yard, the actual rear yard provided is 16 feet. Accordingly, a special exception is requested in this Application to authorize this exception of 9 feet from the normal rear yard requirement. If the exception is granted, the agreement between the respective owners to amend the property boundary and leave the fence in place can and will go forward.

V. Compliance with the Special Exception Criteria

The requested special exception may be granted by the Board subject to criteria set forth in § 223 of the Zoning Regulations ("Additions to One-Family Dwellings or Flats"). These criteria are addressed below.

> **223.1** *An addition to a one-family dwelling . . . that does not comply with all of the applicable area requirements of §§ 401, 403, 404, 405, 406 and 2001.3 shall be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.*

The Property is a single-family, detached dwelling and is therefore eligible for this special exception. The requested exceptions are from § 404 ("Rear Yards") and § 401 ("Minimum Lot Dimensions"). The exception from the Minimum Lot Dimensions requirements is needed because the lot area is only 3,600 square feet, which is less than the 5,000 s.f. minimum area required in the R-1-B District. The width of the subject lot is 50 feet, which complies with the lot width requirement in § 401.

> **223.2** *The addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*
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> *(a) The light and air available to neighboring properties shall not be unduly affected.*
>
> *(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised.*

The light and air available to the abutting property on Greene Place will not be affected. There will be a rear yard of 15 feet on Greene Place and 22 feet on Clark Place to the rear wall of the enlarged house. The deck will encroach into this space by a distance of nine feet, but the deck is not a solid wall like the side of a house, so that the visual effect will be minor. As to the impairment of privacy, please refer to conditions numbered 6 and 7 in the Agreement, a copy of which is attached in *Exhibit G.*

> *6. Clark Place agrees to plant screening directly behind the rear fence line on the Bloom (Clark Place) property to provide visual and sound shielding for the deck and property. It is agreed trees that are fast growing and green all year, such as Leyland Cypress, of an initial height at least equal to the height of the fence and the top of the deck, will be planted.*
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> *7. Clark Place agrees that any lighting placed on the rear of the house . . . be angled in a manner not to shine into the rear yard or the house on the Tschudy property.*

The Applicants believe that the evergreen plantings, control of lighting and the tall stockade fence will provide adequate privacy, visual and sound screening.

The addition at Clark Place is nearing completion and the deck is complete.[7] Approval of the special exception regarding the rear yard setback will not adversely affect either property or nearby properties. The fence will remain where it currently exists, and the construction at Clark Place will remain as it is.

The office building to the north of the Property will not be affected by the presence of the deck or the requested special exception, as that property has virtually no side yard on the south side, no outdoor activities and only some windows on that (south) wall of the office building. As an office use, employees will normally not be present

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[7] See the photographs in *Exhibit D.*

during the evenings, typically busiest time period for use of the adjacent deck on a residential property. The rear of the home to the south of the Property will be affected only to a minor degree because the deck is more removed from the property line on that side (approximately 18 feet) than from the rear property line. No other properties will have a view of the deck or be affected by it.

A degree of privacy for the Tschudys is lost because of the height of the deck at Clark Place, but as the photographs in *Exhibit D* illustrate, the loss of privacy is minor. And, the Tschudys, as co-applicants in this case, are more interested in retaining the existing location of their fence and being able to legally add the three-foot strip of land that they thought they owned since 1971. To have the fence relocated three feet towards the rear of the Greene Place house would create a more adverse effect on the Tschudys than the partial and part-time loss of privacy represented by the deck.

(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 photograph of the front of the Clark Place house in *Exhibit D* shows that the house will be an attractive, detached house that is compatible in scale and general character with adjacent and nearby houses. As viewed from the street, the small side addition near the front of the house does not make the house wider in a visual sense, because it simply fills in an existing rectangular notch in the existing house. The house was already perceived as having this width prior to construction of the addition. There is no public alley and therefore no issue regarding public views of the addition from that perspective.

(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.

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-2 Districts . . .*

The footprint of the Clark Place house, including additions and the deck, is approximately 1,475 square feet, which, on the subject lot of 3,600 square feet, equals a lot occupancy of 40.9%. This complies with the 50% standard set forth in § 223.3.

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.*

The Clark Place and Greene Place owners have agreed upon plantings designed to provide visual and sound screening as described previously, as well as agreement that no lighting at the rear of Clark Place shall shine on the rear of Greene Place. The Applicants believe that these two forms of special treatment, together with the high stockade fence, will provide ample privacy and visual screening and believe further that no additional screening will be necessary. However, the Applicants will accord with any additional requirements deemed necessary by the Board after public hearing.

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

The existing use of the dwelling as a single-family residence – a matter-of-right use in the applicable R-1-B District -- will continue after completion of the additions.

VI. Compliance with § 3104

Section 3104 authorizes the Board of Zoning Adjustment to grant special exceptions subject to the specific criteria (as reviewed above), and subject to a finding

that the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property.

Approval of this application will be consistent with the general purpose and intent of the Zoning Regulations and Map in that the existing and proposed use is a single-family detached dwelling, which allowed as of right in the R-1 Districts. The Zoning Regulations contemplate variations in area requirements as requested herein by including a special exception provision for this purpose in Section 223. The special exception criteria for the requested relief focus directly on any potential adverse effects on neighboring properties, and the facts and analysis presented above demonstrate that there will be no adverse effects on neighboring properties or the public.

VII. Conclusion

In the opinion of the Applicants, the facts and analysis presented above indicate compliance with the criteria for approval of this requested special exception, and the Applicants accordingly request approval.

Respectfully submitted,
ARNOLD & PORTER LLP

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Attachments