Pillsbury
Winthrop
Shaw
Pittman LLP

2300 N Street NW
Washington, DC 20037-1128

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

September 30, 2005

Not Admitted in DC
Supervised by Members of DC Bar
Telephone: 202.663.9142
Facsimile: 202.663.8007

BY HAND DELIVERY

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 14th St., NW
Suite 210-S
Washington, DC

Re: BZA Application No. 17355
Post-Hearing Submission of Applicant

Dear Chairman Griffis and Members of the Board:

Enclosed please find a copy of Joseph and Regina Stettinius' response to the post-hearing submission filed by the 1645 31st Street Personal Residence Trust, as well as a draft Order regarding the above-referenced application.

Best regards,

Christine A. Roddy

Enclosures

cc: Cynthia A. Giordano, Esq.
Nathan Gross, AICP
Mr. Edward Solomon
Mr. Joseph Stettinius
Mr. Outerbridge Horsey

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17355
EXHIBIT NO. 35

Board of Zoning Adjustment
District of Columbia
CASE NO. 17355
EXHIBIT NO. 35A1

Pillsbury
Winthrop
Shaw
Pittman LLP

2300 N St, NW
Washington, DC 20037-1128

Telephone: 202.663.8000
Facsimile: 202.663.8007
www.pillsburylaw.com

September 30, 2005

John T. Epting
202.663.8879
John. Epting@pillsburylaw.com

BY HAND DELIVERY

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th St., NW
Suite 210-S
Washington, DC 20001

Re: BZA Application No. 17355
Post-Hearing Submission of Applicant

Dear Chairman Griffis and Members of the Board:

Please accept this as Regina and Joseph Stettinius' ("**Applicants**") post hearing submission in support of their application for a Special Exception for relief from the side-yard requirements in an R-1-B Zone District. Applicants propose constructing three additions to their home: a one story addition to the southeast side of the home, a two story addition on the west side of the dwelling, which would stretch to the property line adjacent to the Friendly family's property ("**Neighbors**"), and a one story addition connecting with the two story addition on the west side.

I. Applicants Satisfy The Standard Set Forth Under Section 223

The Zoning Commission ("**Commission**") delineated a clear standard for analyzing applications for non-conforming additions to a single-family dwelling. Indeed, the Commission amended the Zoning Regulations to ensure that reasonable additions to single-family dwellings would be permitted where the applicant could not satisfy the tests for an area variance so long as the applicant was able to meet certain, less stringent, criteria.

Section 223 allows an addition to a single family dwelling that does not conform with regulations regarding side yards so long as the "addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property." 11 DCMR § 223.2. Specifically, the addition shall not unduly affect the light and air available to neighboring properties; the privacy of use and enjoyment of

neighboring properties shall not be adversely compromised; the addition, together with the original building, as viewed from the street, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; and, the lot occupancy shall not exceed fifty percent (50%) for dwellings in the R-1 district.

In developing section 223, the Office of Planning strove to include standards respecting the neighboring properties and upholding the public design in the immediate vicinity. See Zoning Commission Order No. 840, attached hereto as Exhibit A. As demonstrated below, Applicants' plans satisfy these standards.

A. The proposed addition will not adversely impact the use or enjoyment of any abutting or adjacent dwelling or property

Applicants' home was built in 1948, long before the adoption of the Zoning Regulations. The lot is deep from north to south, but narrow from east to west and unlike the Neighbors' home, Applicants' house faces east; furthermore, a significant portion (23%) of the lot, fronting on Avon Place, is unusable for extending the main house, but provides a large open space, which benefits the neighborhood. See site plan attached as Exhibit B. The configuration of the dwelling on the lot limits the Applicants' options for adding onto the home. With regard to possible "matter of right" options, the only two available are simply not workable: a) an addition to the north (rear) of the house does not address the need to expand the kitchen adjacent to the garage, it does not work with the bedroom and stair layout on the second floor, and it would have a considerable negative impact on the neighbors to the east whose house is 20 feet away; b) a larger addition to the south (front) of the house would necessitate the removal of the garage, would shift the parking to the east side of the property in front of the house belonging to the neighbors to the east and, most importantly, would substantially alter the character of the original house as viewed from the street.

Applicants looked to building the additions on the west side of their home, which would allow for an expansion of the existing galley kitchen. Building the additions on the west side, on the property line adjacent to the Neighbors' tennis court but approximately 110 feet from the Neighbors' home, also allows Applicants to preserve the appearance of the house and to eliminate a nonconforming aspect of the property by connecting the existing garage to the home. In developing their plans, Applicants carefully considered the effect their decisions regarding placement of the additions would have on the neighboring properties.

In fact, they approached the Neighbors very early in the process to discuss any concerns. Applicants even went so far as to create an agreement with the Neighbors to

address drainage problems on the Neighbors' property in return for support for the project. See the Agreement attached hereto as Exhibit C. After Applicants invested considerable sums in developing plans amenable to the Neighbors, including hiring a civil engineer to visit the property to review the Neighbors' drainage needs, the Neighbors denounced the agreement. See Transcript, p. 96 (The Neighbors sent letters in support of the additions to the ANC and Old Georgetown Board as part of the agreement, but later deny there was an agreement).

1. The light and air available to neighboring properties will not be unduly affected

The additions Applicants are proposing will not unduly affect the light and air available to neighboring properties. The Board of Zoning Adjustment ("Board") heard testimony from the Office of Planning at the hearing on September 13, 2005, that specifically addressed this concern, particularly with regard to the Neighbors. Mr. Moore explained that there would "not be anymore restriction to light and air than is in the existing condition right now." Board of Zoning Adjustment Public Hearing Transcript, September 13, 2005 ("**Transcript**"), p. 51. In fact, Mr. Moore found that "there's more than adequate light that would shine on that court." Transcript, p. 52.

The Neighbors have already erected a structure that casts a shadow on their property: a ten foot high fence. Transcript, p. 98. Thus, the effect of the construction on the lighting of their property will be minimal. The proposed second floor addition is only ten feet taller than the existing fence; the one floor addition on the west side of the home is the same height as the existing fence. Accordingly, these additions will create only a slight shadow beyond that which currently exists. See copies of the shadow study prepared by Outerbridge Horsey and Associates, LLC, attached hereto as Exhibit D. Moreover, the increased shadows will only affect the property in the morning hours and even then, it will not be as noticeable at certain points in the year. Id.

The Neighbors have voiced concern that the shadows will affect their ability to play tennis. Shadows will not impair the Neighbors' ability to place tennis, particularly since they are evident only during a brief interval in the morning. Moreover, the proposed 27 foot long, two story addition will be built so that there is minimal overlap with the 120 foot long tennis court. See Exhibit B. Even in combination with the one story addition, only 1/3 of the tennis court borders the proposed construction. The Neighbors have only offered unsubstantiated assertions that the proposed additions will unduly affect the lighting on their property. Their shadow study has no basis in reality and they do not offer the qualifications of the individual who created it.

The Neighbors' primary concern with the alleged lack of light is that their clay tennis court will not be able to dry. The Neighbors are stretching the breadth of what is controlled by the Zoning Regulations and within the jurisdiction of the Board of Zoning Adjustment ("**BZA**"). Nonetheless, as the Applicants noted at the hearing, such concern can be alleviated by reducing the amount of time the Neighbors spend on a daily basis watering the court. Transcript, p. 99. Additionally, while not a zoning issue, the Neighbors' backyard is known to have a drainage problem despite the amount of light that is cast on their property. Transcript, pp. 68, 78. They are currently taking steps to correct the problem, but that is the consequence of constructing such an extensive impervious accessory in their backyard. Despite this, and, again, not a zoning issue, the Applicants will include gutters on their addition so as to minimize any run-off from their structure. Transcript, p. 103.

With regard to the effect the proposed additions will have on wind flow, it is clear that any effect would be minor. According to daily wind direction reports in the Washington Post, wind directions change constantly in this area and range from the south to the north to the northwest. There is currently a ten foot fence along the Neighbors' property, thus the bulk of any diminishment in wind would have been already caused by the fence and the existing two story house ten feet away. It would seem that the Neighbors are grasping at straws to find grounds to oppose the additions. In fact, it would seem that less wind would benefit the actual playing of the game, however, the Neighbors apparently felt compelled to create a point of contention to support their opposition. Regardless, the proposed construction on Applicants' property will have a very minor impact on the wind flow on the Neighbors' property.

The Board has approved applications in the past allowing property owners to construct an addition if the effect on the adjacent property owner is minimal. In the application of Richard Cantor and Charles Grizzle, the Board approved a three story addition, which admittedly caused shadow changes to the abutting property. The Board did not find the fact that the abutting property would be subjected to slightly more shade at particular times of the year to be a substantially adverse impact so as to require denial of the application. In fact, the Board found that "it would not prevent the abutting property owner from continuing to enjoy the view and privacy from his home." See Board of Zoning Adjustment Order No. 16725, a copy of which is attached hereto as Exhibit E.

2. The privacy of use and enjoyment of neighboring properties is not unduly compromised

Applicants' proposed construction will increase the privacy afforded to the Neighbors, rather than decrease it. The Office of Planning noted that the Neighbors would not sacrifice any privacy as a result of Applicants' proposal. Transcript, p. 54. The additions to the Applicants' home will create a border, giving the Neighbors a barrier against the daily activities of the Applicants' home.

In Applicants' earlier conversations with the Neighbors, the Neighbors suggested that Applicants include windows in the proposed addition in an effort to diminish the aesthetic impact of the brick wall. For whatever reason, the Neighbors now suggest that the windows on the addition will invade their privacy. Regardless, Applicants have minimized the number of windows on the wall facing the Neighbors' property. Transcript, p. 100. Though the additions would be more appealing with additional windows, Applicants are willing to forego most windows along that wall. Interestingly enough, the Neighbors take issue with the few windows that were to be included in Applicants' additions, but not with the numerous windows overlooking their tennis court from the apartment complex located to the northwest of their property. See aerial view, attached hereto as Exhibit F. This would suggest that the Neighbors' expectation of privacy cannot be very high. Yet, Applicants respect the Neighbors' desire for privacy, which is why when they moved into their home and there were minimal barriers between their backyard and the Neighbors', they planted the ivy along the existing fence. The additions along the Neighbors' property will have a similar effect of providing additional privacy for the respective property owners.

Applicants point out, however, the irony in the Neighbors' claim that the construction is an invasion of their property. The Neighbors were the ones who chose to build a tennis court directly abutting Applicants' property line, without providing a buffer. In so choosing, the Neighbors seemingly did not consider the effect of the noise of the game on their neighbors or the nuisance it imposes on the Applicants who end up collecting the tennis balls from their own lawn and pool. Transcript, p. 64. The Neighbors must have given some thought to the effect neighboring construction could have on their ability to enjoy the tennis court, but proceeded with the project regardless. It would seem hypocritical to ask Applicants to now refrain from construction on their property so the Neighbors can continue to enjoy the benefit of their decision to build the tennis court on the property line.

3. The additions, together with the original building, as viewed from the street, do not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage

As stated previously, the additions were designed so as to maintain the scale of the home and its consistency within the neighborhood. The additions will not be out of character with the neighborhood. Testimony from one of the Applicants' neighbors, Robert Gabriel, indicated that there are several buildings in the neighborhood that are built to the property line. Transcript, p. 58. The legislative history of section 223 indicates that the Office of Planning contemplated the fact that some projects would require a zero side yard and that this would be acceptable under this section. See Exhibit A. In fact, the Office of Planning noted that "[a] formula limiting the deviation to some percent of the standard might simply introduce an arbitrary, complicating factor." Id. Applicants have taken considerable efforts to blend their additions with the character of the neighborhood, as described above.

The Neighbors have not challenged the character of the Applicants' additions, simply their effect on their own property. The Advisory Neighborhood Commission 2E has unanimously approved Applicants' plans twice, first during its review of the architectural/aesthetic issues (May 31, 2005) and again during its review specifically dedicated to the Special Exception application (August 30, 2005). Transcript, p. 108. See letters of Support from Ed Solomon, Chair for ANC 2E attached as Exhibit G. As the Board is aware, the ANC's findings are accorded great weight. The Old Georgetown Board also approved the proposed additions. See Office of Planning report, p. 4, attached hereto as Exhibit H. Accordingly, there seems to be minimal, if any, debate as to whether the additions are consistent with the character of the neighborhood.

B. The proposed construction meets lot occupancy requirements

Despite the lack of a side yard, Applicants' construction will remain well within the permissible 50% lot occupancy set forth under section 223.3 and below the 40% allowed as a matter of right. As discussed at the hearing, the lot occupancy of the home will be 36% after construction of the proposed additions. Transcript, p. 23.

II. Several of the Points Raised in the Neighbors' Post-Hearing Submission Confuse the Issues

A. Whether Applicants have obtained permits for construction of their property, past and present, is not an issue currently before the Board

The Neighbors' post-hearing submission elaborates at great length on improvements the Applicants have allegedly made to their home without proceeding through the proper channels. Without conceding this allegation, but taking it to be true for the sake of the argument, this has no bearing on the matter before the Board. The Board noted as much when the Neighbors tried to bring it up during the hearing. Transcript, pp. 26, 27. The Neighbors' inclusion of such allegations was simply an attempt to taint Applicants before the Board. Ironically, it was the Neighbors who were recently cited for doing work on their drain without the proper permits. See the photographs of the stop work order attached hereto as Exhibit I.

Regardless, Applicants simultaneously file herewith the necessary permit applications, so as to eliminate any notion that they are not dealing with clean hands. Applicants felt it appropriate to obtain all permits simultaneously.

B. The potential buyers of the Neighbors' property could have voided their contract for a variety of reasons, none of which affect the zoning issue at hand

The Neighbors also expend great effort discussing the contract they had which fell through allegedly once the potential buyers learned of the Applicants' plans for their property. This, however, has no bearing on whether the Applicants' proposals meet the standards delineated for nonconforming additions to a single family dwelling. The potential buyers' cancellation of the contract is not evidence of the fact that Applicants' proposals invade privacy and affect lighting, it is simply evidence of their preferences of living locations and with whom they deal in their transactions. There are any number of reasons the potential buyers backed out of the deal. Exhibit B to the Neighbors' submission underscores this point. In fact, the reason that the potential buyers initially cite for their decision not to go through with the deal was that they could not be sure that the Neighbors were not withholding other information from them since the Neighbors withheld information regarding the drainage problems. In Neighbors' Exhibit B, purchasers note, "[t]his matter [Applicants' plans for the additions] came to the Purchasers' attention through the efforts of the Purchasers' consultant and without any information being provided by the Seller even though the Seller was well aware of those

plans." It is clear that blame for the failed contract cannot easily be shifted from the Neighbors to Applicants.

Nevertheless, despite the Neighbors' efforts to imply otherwise, the contract that they had is not relevant to the zoning issues before the Board.

C. The drainage problems on the Neighbors' property is not a zoning issue affecting Applicants' ability to add on to their home

Drainage problems should not be confused with zoning issues before the Board. The Neighbors attempt to confuse the drainage problems on their property with zoning issues associated with approval of the Applicants' proposed additions. Though the drainage problems are a practical matter that will need to be dealt with, they are independent of and do not affect whether the Applicants' plans are appropriate for their lot, which is the immediate zoning issue.

III. Conclusion

Applicants have spent a great deal of effort to gain the approval of their community, which they have done for the most part, successfully. The ANC has approved their plans, as have a number of neighbors throughout the community. The Neighbors, however, oppose the plans because of an alleged affect on light and air impacting their tennis court, not their residence, despite the fact they built the tennis court immediately adjacent to the property line. The Neighbors also submit additional letters of opposition to the Board (from persons unaffected by the additions), which are untimely and should not be taken into consideration. Applicants respectfully request that the Board approve their plans for the additions so as to avoid any further delay in constructing the additions.

Sincerely,

John Epting/ckr

John T. Epting

cc: Cynthia A. Giordano, Esq.
Nathan Gross, AICP
Ed Solomon, ANC 2E
Mr. Joseph Stettinius
Mr. Outerbridge Horsey

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17355 of Joseph Stettinius, pursuant to 11 DCMR § 3104 for a special exception to allow one and two story additions to an existing single-family dwelling under Section 223, not meeting the side yard requirements for the R-1-B Zone District, located at 3051 Avon Lane, N.W. (Square 1282, Lot 258).

HEARING DATE: September 13, 2005
DECISION DATE: October 11, 2005

DECISION AND ORDER

This application was originally filed April 26, 2005, by Joseph and Regina Stettinius ("Applicants"), the owners of the property that is the subject of this application ("subject property"). The subject property was built in 1948 and Applicants intend to build three additions to the dwelling. Applicants filed an application for a Special Exception for relief from the side yard requirement provisions of the Zoning Regulations in order to allow a two-story and a one-story addition on the west side of the dwelling. A public hearing was held to discuss the proposed additions on September 13, 2005.

Requests for Party Status: ANC 2E was automatically a party to this case. Party status was also granted to the 1645 31st Street Personal Residence Trust, the owner of the adjacent property to the west.

Applicants' Case: Applicants' architect, Outerbridge Horsey, testified on their behalf at the public hearing. He provided more information regarding the project and its effect on the adjacent property to the west. He also reviewed the various letters from neighbors in support of the project. The Applicants' neighbor to the east, Robert Gabriel, testified in support of the additions. The Office of Planning also testified in support of granting the special exception.

Government Reports: The Office of Planning ("OP") filed a report with the Board on September 13, 2005. OP recommended approval of the requested special exception and specifically found that the proposed additions will not affect light and air neighboring properties.

ANC Reports: The ANC submitted a letters dated June 1 and July 1, 2005, indicating that they had no objections to proposed additions. After their regularly scheduled public meeting to discuss the project, the ANC submitted a letter dated September 2, 2005, supporting the additions on the condition that windows be removed from the additions along the west property line in order to address the neighboring property owner's privacy concerns.

Additional Reports: The Commission of Fine Arts submitted a letter dated July 25, 2005 stating that it had no objection to the general concept for the proposed one and two story additions to the subject property.

FINDINGS OF FACT:

1. The subject property is located at 3051 Avon Lane, N.W., Square 1282, Lot 258. The subject property is located in an R-1-B Zone District.

2. The subject property is improved with a three story single-family dwelling; a one story, detached garage; a one story porch; a swimming pool; a one story pool house; and a pergola. The dwelling was constructed in 1948.

3. The subject property is deep from north to south and narrower from east to west. The house faces the east.

4. The Applicants propose to construct three additions to the existing dwelling on the subject property. Two of the additions will be one story structures, while the third will be a two story structure. The first one story addition will be on the south side of the dwelling and will extend west along the front to about mid-point of the dwelling. The second addition will be two stories and will connect the first addition, extending northward along the west property line, adjacent to an existing fence. The third addition is a single story structure that will connect to the two-story section and extend further north along the west property line. The one story additions will be ten feet tall, while the two story addition will be twenty feet tall.

5. The Applicants noted that the additions will afford more interior living space and will connect to an existing garage, removing a nonconforming aspect of the property. (The garage is currently located in a front yard, which is not permitted by the Zoning Regulations.)

6. The additions along the property line will eliminate the side yard along the west side of the dwelling.

7. The proposed lot coverage including the accessory structures and the proposed additions is 36%.

8. The Applicants seek relief from the side yard requirements for the R-1-B Zone District pursuant to section 223, which allows reasonable additions to single-family dwellings.

9. The Applicants' neighbors to the west, the owner of 1645 31st Street, NW, have built a tennis court extending to the property line and a ten foot tall fence along said property line.

10. The 27 foot long, two story addition will exceed the height of the existing fence by ten feet, thus, causing some shadow changes on the abutting property.

11. The one story addition along the west side of the dwelling will not exceed the height of the existing fence, thus, it will have minimal effect, if any, on the lighting of the adjacent property.

12. The dwelling located on the adjacent property to the west is approximately 110 feet away and, thus will not be impacted by the proposed additions.

13. Applicants have agreed to minimize the number of windows in the additions abutting the west property line, so as to alleviate concerns of invading the privacy of the adjacent property owners.

14. The Office of Planning, by memorandum dated September 13, 2005, recommended approval of the application. The Office of Planning was of the opinion that the application met the criteria of Section 223. The Office of Planning believed that the proposed additions would not change the residential nature of the structure. It also found that the additions would not unduly affect the light and air available to neighboring properties and it would not unduly compromise the privacy of use and enjoyment of neighboring properties. Finally, the Office of Planning found that the addition would not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

15. The Advisory Neighborhood Commission 2E supports the application, with the condition that no windows be located on the additions running along the west property line, adjacent to the 1645 31st Street property line, and that the privacy concerns of the neighbors be addressed.

16. The Commission of Fine Arts approved the proposed additions at its meeting on July 25, 2005.

17. The owners of 1645 31st Street property oppose this application on the grounds that it will affect the lighting and wind flow on their property. The owners have also voiced concerns for their privacy with the proposed additions along the west property line. The owners testified at the hearing held on September 13, 2005, and have submitted a post-hearing brief detailing their opposition.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing findings of fact and evidence of record, the Board concludes that the Applicants are seeking a special exception pursuant to § 3104.1 and under § 223 to allow construction of three additions to a single-family dwelling not meeting the side yard requirements set forth in § 405.

In order to obtain a special exception, the Applicants must demonstrate that the project 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 properties in accordance with said Regulations and Maps. The Board concludes that the project will not change the residential use of the Subject property and will be in harmony with the existing residential neighborhood.

Under § 223, 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, so long as it does not have a substantially adverse effect on the use or enjoyment of any abutting property. The Board finds that this project meets such requirements. Specifically, the project will not unduly affect the light and air of neighboring properties. The Board is satisfied that any effect the additions will have on the light and air of the adjacent property will be minimal and will not interfere with the neighbors located to the west of the property ability to enjoy the use of their tennis court. The Board further finds that the privacy, use, and enjoyment of neighboring properties will not be unduly compromised. The Board notes that the Applicants have agreed to minimize the number of windows on the wall along the west property line, thus alleviating the adjacent property owners' fear of loss of privacy.

Finally, the additions, as viewed from the street or alley, will not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. The additions to the subject property do not deviate from the pattern of development in the area with respect to its scale or design. Due to their location primarily on the west side of the dwelling, the additions blend with the existing structure.

The Board has afforded "great weight" to the recommendation of the OP and agrees with the OP that the proposed additions would not have substantial adverse impacts on the use or enjoyment of any abutting or adjacent dwelling or property. The Board further concurs with the OP's findings that the light and air of the neighboring properties would not be affected and the privacy of use and enjoyment of neighboring properties would not be unduly compromised. The Board also afforded "great weight" to the ANC's report and the issues raised therein and agrees with its recommendation of approval.

The Board has considered the adjacent property owner's concerns regarding the effect the additions will have on the lighting, air, and privacy of their property and it was not sufficient to persuade the Board to deny the application. The shading studies submitted by Applicants demonstrate that the additions will have a minimal affect on the property's lighting. The adjacent property owner's air will not be affected given wind patterns in this area. Finally, Applicants have addressed the adjacent property owner's fear of diminished privacy by reducing the number of windows in the additions along the west property line.

The Board further notes that some opponents to this matter indicated that approval for this case would establish a new standard for approval in future cases. Each matter,

however, is to be decided according to its merits. Thus, the Board is not persuaded by this argument.

Based on the findings of fact and having given great weight to the ANC and OP reports, the Board concludes that the special exception will not materially impair the intent and purpose of the Zoning Regulations, nor adversely affect the light and air of adjacent buildings.

For the reasons stated above, the Board concludes that the Applicants have met their burden of proof. It is hereby **ORDERED** that the application is **GRANTED.**

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

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this order.

Final date of Order:_____

A

Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 840

Case No. 97-2/94-6
(Text Amendments - Special Exception Provisions for Single-family Dwellings and Administrative Flexibility Provisions)
February 23, 1998

The Zoning Commission for the District of Columbia initiated this case in response to a petition from the Office of Planning based on a longstanding request from the Board of Zoning Adjustment (BZA) to explore whether certain additions to single-family dwellings could be regulated by the special exception process rather than the area variance process. The BZA request was initially recorded in Z.C. Case No. 94-6, which is incorporated in this case. The purpose of the amendments is to provide a legal basis for making reasonable additions to single-family dwellings where the strict tests associated with an area variance are unattainable. In addition, both the Zoning Commission and the BZA questioned whether the Zoning Administrator should be authorized to allow very minor, "de minimus" deviations from the area standards of the zone districts, and determined that the issue was appropriate for this case. Amendments to the Zoning Regulations are authorized pursuant to the Zoning Act {Act of June 20, 1938, 52 Stat. 797, as amended, D.C. Code Ann. Section 5-413 (1981)}.

The petition, filed on January 31, 1997 and February 3, 1997, presented background information about the proposal, and presented the proposed text with comments indicating the intent and justification for the proposal. The overall goal of the proposal is to provide a degree of flexibility regarding additions, while retaining essential controls related to effects on neighboring properties and neighborhood character.

At its public meeting on February 10, 1997, the Zoning Commission determined that the proposed text amendments presented a sound basis for consideration and authorized a public hearing. The public hearing in this case was scheduled for May 1, 1997. The May 1, 1997 hearing session was canceled. The public hearing was rescheduled for and re-advertised for July 10, 1997.

Pursuant to proper notice, the Zoning Commission held a public hearing on the proposed amendments on July 10, 1997. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021. At the close of the public hearing, the Commission left the record of the case open until September 2, 1997 to receive additional public comments.

At the hearing session, the Commission heard the presentation of the Office of Planning (OP) and the testimony of one witness, Lindsley Williams. In addition to the testimony presented at the public hearing session, the Commission received the testimony of the Chairperson of the Board of Zoning Adjustment, and items of correspondence from Advisory Neighborhood Commissions 3D, 2E, 3C, 3E, 3F, 6B; the District of Columbia Building Industry Association; Lindsley Williams; and Weinstein Associates Architects.

THE REPORT AND TESTIMONY OF THE OFFICE OF PLANNING

By memorandum dated April 21, 1997 and by testimony presented at the public hearing, the Office of Planning recommended the adoption of the advertised text in this case, subject to modifications that may be justified by testimony presented at the public hearing or submissions to the record of the case. The OP noted that on several occasions, the Board of Zoning Adjustment (BZA) had requested that the Commission and the OP explore whether additions to single-family dwellings and flats could be regulated by a special exception process rather than the area variance process. The OP further noted that the reason for the request was that some applicants had presented reasonable plans for additions to their homes to the BZA which were denied because the subject properties did not provide a legal basis for area variance relief. In many cases, neighbors expressed minor or no objections, and the proposed additions were reasonably attractive, functional additions to the homes in question. However, the properties lacked uniqueness or a specific characteristic that would have provided a legal basis for approval of the requested variance relief.

In its report dated April 21, 1997, the OP provided its rationale and comments for each provision of the amendments as initially proposed and advertised. The proposed provisions and a summary of OP's rationale and comments follow:

223.1 **An addition to a single-family dwelling or flat that does not comply with all of the requirements of sections 401, 403, 404, 405 or 406 of this title shall be permitted if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section.**

The Office of Planning noted that the reference to Section 3108 of the Zoning Regulations in Subsection 223.1 establishes that the special exception process would govern applications under proposed Section 223. Additionally, this subsection specifies which sections of the Zoning Regulations would be affected by the proposed special exception process.

223.2 **A matter of right addition is demonstrated to be inadequate or undesirable to achieve a suitable expansion of the dwelling or flat.**

The Office of Planning stated that Subsection 223.2 is intended to require justification for deviating from the area standards of the subject zone districts. Homeowners, architects and builders should look first to a matter-of-right addition and only apply for special exception relief if their case has significant need and merit.

223.3 **The addition shall not adversely impact 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;**

(b) **The privacy of use and enjoyment of neighboring properties is not adversely affected; and**

(c) **The addition, together with the original building, as viewed from the street, is not out of character with the scale and pattern of houses along the subject street frontage.**

The Office of Planning indicated that the specific impact standards in Subsection 223.3 are intended to guide the impact review regarding adjacent properties with a degree of detail, ensure a satisfactory addition or provide for denial of the application when appropriate. The inclusion of specific standards assures the community that the applicant must make a strong case by presenting a plan for an addition that respects neighboring properties and public design character in the immediate vicinity.

223.4 **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 or seventy percent (70%) in the R-3, R-4 and R-5 districts. (Fifty-five percent in the former category and 75 percent in the latter category are advertised in the alternative to the main text provisions.)**

The Office of Planning indicated that the proposed standards would allow the lot occupancy to be 10-15 percent higher than matter-of-right standards in the respective zone districts. OP recommended an overall limit on lot occupancy because lot occupancy is a reasonable approximation of a general density in those residential zone districts where no floor area ratio (FAR) is specified. Specifically, in the R-1 and R-2 zone districts, the maximum lot occupancy of 40 percent times the maximum height of three stories is equivalent to a 1.2 FAR. In the R-3 and R-4 zone districts, the maximum lot occupancy of 60 percent, together with the maximum height limit of three stories, equals a maximum density of 1.8 FAR. Beginning in the R-5-A zone district, FAR limits are provided in the Zoning Regulations. Therefore, in the R-5 zone districts, the FAR standards in the Regulations would govern the density of the original building and the proposed addition. The greater flexibility in lot occupancy, if granted, would allow that density to be spread over a larger portion of the lot. OP emphasized that the

advertised special exception would only apply to properties zoned R-5 where there is an existing single-family dwelling or flat.

The Office of Planning again noted that the general lot occupancy limit provides a general density maximum within which the other standards of the subject zone districts are eligible for flexibility according to the proposed special exception process. OP further indicated that some of the other standards, especially side yard requirements, do not lend themselves to a percentage formula so readily. For example, in an R-1 zone district with an eight-foot side yard requirement, a deviation may have a sound basis at zero side yard, depending on the character of the abutting lot. A formula limiting the deviation to some percent of the standard might simply introduce an arbitrary, complicating factor. OP believes the standards in proposed Subsection 223.3 can address privacy, light, air and design factors on a case-by-case basis.

223.5 **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 Office of Planning stated that the Board's authority to require special treatment is a critical ingredient regarding additions to dwellings and flats. Some mention of "design" seems appropriate without making it such a prominent issue that the Board must attempt to evaluate architectural design per se.

The Office of Planning commented on the issue of whether decks more than four feet above grade should be afforded greater flexibility in the proposed provisions than other additions. OP indicated that the flexibility provided by the proposed regulations would also apply to decks that are greater than four feet in height and therefore count toward the lot occupancy and maximum gross floor area (FAR) limits. OP noted that because of the height of such decks and the potential visual and privacy effects on neighbors, they probably should not be excluded from FAR or lot occupancy limits as a matter-of-right. The impact standards of proposed Subsection 223.3 would guide review of this issue.

Regarding the Commission's request for testimony on whether it should adopt a flexibility rule that would authorize the Zoning Administrator to allow "de minimus" deviations from the area standards of the residential zone districts, OP suggested that such flexibility might be specified as one or two percent, whether a yard, court, lot occupancy, FAR or other standard. OP indicated that the purpose of such a rule would be to eliminate a few variance cases that now go to the BZA for public hearing on a deviation that is extremely minor. Finally, OP noted its support for such a regulation and reminded the Commission that the planned unit development (PUD) provisions of the Zoning Regulations have a similar provision.

In testimony presented at the public hearing, the Office of Planning acknowledged issues and comments submitted to the record of the case and stated that many actually improved the text of the proposed amendments. OP referred to comments submitted by Lindsley Williams

related to the standards from which deviations would be eligible under the proposed rules, and agreed with his statement that substandard lots should be excluded from this process and should be required to meet the variance tests because these lots tend to be already more dense than the zone would normally allow and have an arguable case for a variance.

The Office of Planning disagreed with comments in the record which state that the criteria for review make the proposed rules tantamount to a variance, and indicated that such is not the case because the criteria refers to the addition and a variance would be related to proof regarding the property as a whole. OP also indicated that Amy Weinstein in her comments to the Commission made a good point about graphic representations about why a matter-of-right addition is undesirable.

In discussing the adverse impact criteria, OP suggested that the Commission add language that would clearly require an applicant to show in a graphic form the dimensionally correct adjacencies. Finally, OP generally discussed the comments from the ANCs and noted that many were opposed based on the specific character of their areas and their misunderstandings about the proposal. At least one ANC strongly opposed any increase in lot occupancy and referred to older, pre-zoning structures that were rendered nonconforming by the 1958 Regulations. OP opined that a lot occupancy lower than that proposed might be appropriate. Finally, OP discussed with the Commission whether nonconforming structures should be eligible to seek relief under the proposed regulations.

At the close of the public hearing, the Commission left the record of the case open until September 2, 1997, for additional comments. By memorandum dated July 25, 1997, the OP submitted a post-hearing report containing changes and additions to the proposed amendments that reflected the Commission's preliminary discussion of the case based on information submitted to the record and testimony presented at the public hearing. OP's report revised Subsection 223.1 to include language indicating that any reference to a flat was to be considered in those zone districts where a flat is permitted. The advertised text of Subsection 223.2 was deleted, and Subsection 223.3 became 223.2 with a modification to Paragraph c to add consideration of views from an "alley, and other public way" and the addition of a new Paragraph (d) to require graphical representations to represent the relationship of the proposed addition to adjacent buildings and views from public ways. Advertised Subsection 223.4 became 223.3 and added the option of no change from the lot occupancy limits currently allowed by the Zoning Regulations. Advertised Subsection 223.5 became 223.4 and remained as initially advertised.

The report provided proposed text for effectuating the Commission's request for a flexibility rule for the Zoning Administrator. The amendment would be placed in Chapter 4 of the Zoning Regulations and would allow the Zoning Administrator two percent flexibility in deviating from the area requirements of Sections 401, 403, 404, 405 and 406; provided that deviations were allowed for no more than two of the sections and the deviations were determined to be minor and consistent with the purpose of the applicable regulations.

THE TESTIMONY OF THE BOARD OF ZONING ADJUSTMENT

The Board of Zoning Adjustment, by testimony of its Chairperson submitted on July 10, 1997, supported the proposed amendments and stated that many applications that come before the Board are requests for modest additions to single-family residences. While the additions seem reasonable and attractive, there is often no legal basis for granting variance relief. In most cases, the construction of these additions would cause no harm to the neighborhood, and would afford an improved living environment for the residents. The Board believes that the residents of the District could better be served by a change to the Zoning Regulations that would provide a little flexibility in the area of minor residential additions.

THE REPORTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

Advisory Neighborhood Commission (ANC) 3E, by letter dated June 9, 1997, stated that it voted unanimously to support the proposed text amendments.

Advisory Neighborhood Commission 3F commented on the proposed amendments but took no formal position on the proposal and urged further study. Advisory Neighborhood Commissions 2E, 3C, 3D, and 6B submitted reports in opposition to the proposed amendments. The issues and concerns raised by the ANCs and the Commission's disposition of them are summarized as follows:

1. The proposed language is vague. The proposed amendments rely on subjective criteria, are unclear in their application and provide no rational guidance for decisionmakers. The Commission believes that its proposed rules, as revised by the Commission during discussions both at the public hearing and the decision meeting, address the issue of vagueness, subjectivity and provide adequate guidance for the BZA in its special exception proceedings.

2. The proposed amendments provide a loophole to evade government review and effectively deny citizen-participation in the decisionmaking process. The Commission notes that the proposed amendments, as revised, provide for a special exception process which requires a public hearing on any application filed. Additionally, the Commission notes that the flexibility standard for the Zoning Administrator is so low that it would only allow for deviations that are extremely minor.

3. The proposed increase in lot occupancy may result in unfair crowding, and would impact on those areas in ANC 3C where there are large single-family houses on small lots which generate applications from owners to expand or exacerbate nonconformities. The increase in lot coverage would be detrimental to the historic district of Georgetown and the communities of Foxhall, Hillandale and Burleith. ANC 6B is unsure what impact an increase in lot coverage would have on the

Capitol Hill area. The Commission believes that its proposed amendments, as revised, provide criteria for the BZA's review which will allow for consideration of each case based on the specific circumstances of the particular case, and will therefore consider the impacts associated with the surrounding area on a case-by-case basis.

4. Current regulations protect air and light, while the proposed amendments would have a detrimental impact on open space, privacy, light and air of adjacent properties. As indicated in No. 3 above, the Commission believes that the criteria for the special exception relief in the proposed amendments, as revised, adequately provide for protection of open space, privacy, light and air of adjacent properties.

5. Decks more than four feet above grade should continue to be counted toward lot occupancy. The Commission agrees with the ANCs and others that the current deck provisions are appropriate.

6. The proposed amendments would allow nonconforming additions to single-family dwellings in the most restrictive (R-1) zone districts by special exception rather than by variance. The Commission notes that the purpose of the proposed amendments is to more easily allow single-family homeowners to make minor additions to their homes in the residential zones. The special exception process is the mechanism chosen. Any resulting nonconformities will continue to be minor as in variance cases.

7. The proposed amendments while making additions easier for some, may reduce the protections of others. The Commission believes that the amendments, as revised, afford adequate protection to properties neighboring.

8. Special treatment of proposed construction, required as a condition, is no defense to neighboring properties in an era of lax zoning enforcement. The Commission notes that in special exception cases, special treatment provisions are important in allowing for the BZA to condition applications in such a manner as to mitigate or eliminate adverse impact.

The Commission received a letter dated July 29, 1997 from Charles R. Braun in opposition to the amendments. Mr. Braun's post-hearing submission agreed with the points of opposition made by ANC 3C in its report to the Commission. Additionally, Mr. Braun stated that the amendments would add to the responsibilities of the BZA at a time when the BZA is unable to complete its current workload. Mr. Braun indicated that the proposed amendments are constitutionally and legally questionable because they would substitute broad Board discretion to alter area standards using vague criteria on a case-by-case basis for area standards that are uniform through the same zone districts. The Commission noted that it is not modifying the area standards, but is adding a special exception. The Commission believes that it has

responded to Mr. Braun other issues satisfactorily within its discussion of the ANCs' issues and concerns.

Lindsley Williams by correspondence dated May 1, 1997 and by testimony at the public hearing supported the proposed regulations with modifications. The District of Columbia Building Industry Association and Weinstein Associates Architects submitted letters in support of the proposed amendments with modifications. The salient issues raised by the above-referenced correspondence and testimony and the Commission's disposition of those issues are summarized below:

1. References to single-family dwelling(s) should be changed to one-family dwelling(s) to conform to the current terminology used in the Zoning Regulations. The Commission agrees with the recommendation and noted that the term "dwelling, one-family" is defined in the Zoning Regulations and used throughout the Regulations whereas single-family dwelling is not officially used in the Regulations. The Commission, however, noted that the term single-family dwelling has been used by the Commission and others for many years.

2. Subsection 223.2 of the advertised text should require graphic demonstration of matter-of-right inadequacy. Subsection 223.2 should be eliminated, it requires the applicant to argue two cases. The Commission determined that the language in the advertised text of Subsection 223.2 created a burden on the applicant that was unintended. The Commission deleted this Subsection.

3. Subsection 223.3 of the advertised text should be more specific by adding language to require the applicant to put forth in graphic form the dimensionally correct adjacencies. The Commission agrees with this recommendation and has included appropriate language in its revised regulations.

4. Paragraph 223.4 (c) should be modified to require views from the street, alley and other public ways .... The Commission agrees with this recommendation and has made the modification in its revised regulations.

5. The flexibility for the Zoning Administrator in percentage form works for floor area and lot occupancy but not linear requirements like rear yard or side yard. One percent to two percent would be insignificant and therefore specific dimensional variations should be provided for linear requirements. Such variations should apply only to additions and not new buildings. The Commission believes that the proposed two percent flexibility is appropriate for the categories that are area standards, but that a larger percentage may be more appropriate for flexibility involving linear standards. The Commission noted that the flexibility granted to the Zoning Administrator is intended to be general and would apply to new buildings and additions.

6. Limit the flexibility to projects on lots that are conforming as to area requirements in Subsection 401.3 because substandard lots have a difficulty inherently arising in the land and can be reasonably considered as variance cases. The Commission believes that some owners of substandard lots may want to make reasonable additions that have minor or no adverse impacts on surrounding properties and otherwise meet the criteria for the proposed special exception process.

7. Retain current lot occupancy limits. Current minimum lot sizes with maximum lot occupancy and two floors in R-1-A through R-4 already permit sizable dwellings. The Commission believes that lot occupancy flexibility is important in the context of the proposed amendments.

Having discussed, considered and resolved the issues and concerns of the ANCs, the Commission determined that it has accorded the ANCs the "great weight" to which they are entitled.

A notice of proposed rulemaking was published in the D.C. Register on December 12, 1997. As a result of the publication of the proposed rules, the Commission received comments from Arcadia Residential and Commercial Design Services, the law firm of Jackson and Campbell, Lindsley Williams, and ANC-3C. After reviewing and discussing the comments received and the testimony presented during the public hearing, the Commission determined that the term "single-family dwelling" should be changed to "one-family dwelling" to conform to the Zoning Regulations. Additionally, the Commission determined that the flexibility given to the Zoning Administrator for standards in sections 401, 403, 404, 405 and 406 of chapter 4 of the Zoning Regulations should be higher for linear standards than for area standards and revised the percentages accordingly.

The proposed decision to approve the text amendments was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Subsection 1-201 et seq. The NCPC, by delegated action of the Executive Director dated December 19, 1997, determined that no federal interests would be affected by the proposed amendments.

The Zoning Commission believes that its decision to approve the text amendments set forth in this order is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the following amendments to the Zoning Regulations:

1. Add a new Section 223 as follows:

223 ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS (R-1)

223.1 An addition to a one-family dwelling or flat, in those residential districts where a flat is permitted, that does not comply with all of the requirements of sections 401, 403, 404, 405 or 406 of this title shall be permitted if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section.

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;

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly 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 subject street frontage; and

(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 or seventy percent (70%) in the R-3, R-4 and R-5 districts.

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.

2. Add a new Section 407 as follows:

407 MINOR FLEXIBILITY BY ZONING ADMINISTRATOR'S RULING

407.1 The Zoning Administrator is authorized to permit a deviation not to exceed two percent (2%) of the area requirements of sections 401 and

403 of this chapter; a deviation not to exceed ten percent (10%) of the linear requirements of sections 404 and 405 of this chapter; and a deviation of the requirements of section 406 of this chapter, not to exceed **either** two percent (2%) of the area standard **or** ten percent (10%) of the width standard; Provided, that:

(a) A building shall be allowed to deviate from the requirements of no more than two (2) of the sections identified in this subsection; and

(b) The deviation or deviations shall be deemed by the Zoning Administrator not to impair the purpose of the otherwise applicable regulations.

Vote of the Zoning Commission taken at its regular meeting on September 15, 1997: 4-0 (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett to approve; Jerrily R. Kress to approve by absentee vote).

This order was adopted by the Zoning Commission at its special public meeting on February 23, 1998 by a vote of 3-0 (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett to approve; Jerrily R. Kress not present, not voting).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on MAR 13 1998.

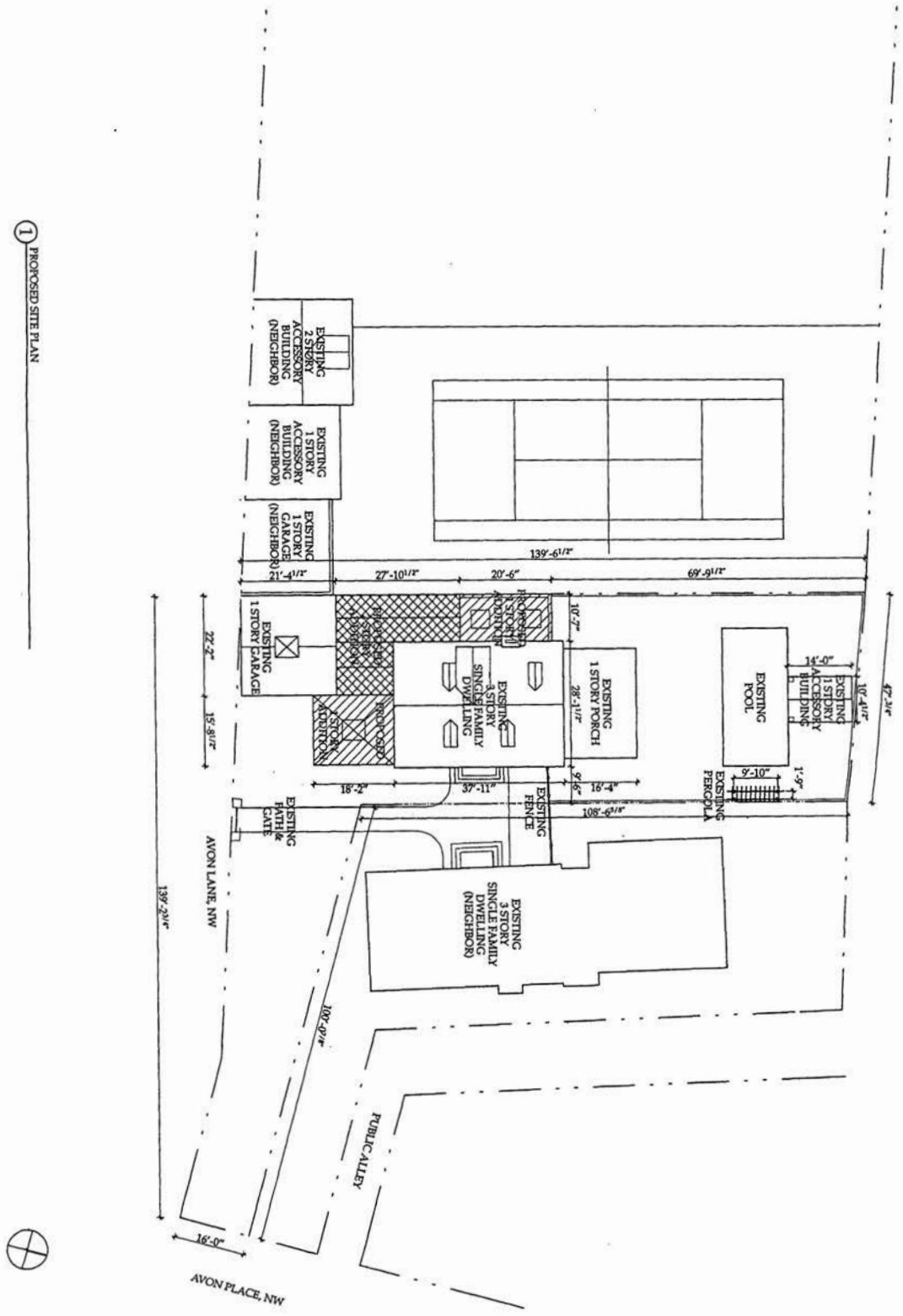
MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

MADELIENE H. DOBBINS
Director
Office of Zoning

zco840/MHD

B

1 PROPOSED SITE PLAN



ASK 6.23b	SCALE: 1" = 10'-0"	STETTINIUS HOUSE	OUTERBRIDGE HORSEY ASSOCIATES, PLLC
	DATE: June 23, 2005	3051 AVON LANE, NW WASHINGTON, D.C.	1228 1/2 31st STREET, NW WASHINGTON, DC 20007 TEL 202 337 7334 FAX 202 337 7331

COPYRIGHT 2005 OUTERBRIDGE HORSEY ASSOCIATES PLLC

C

May 26, 2005

Mr. Alfred Friendly, Jr.
3506 Macomb Street, NW
Washington, DC 20007

RE: 1645 31st Street, NW
Washington, DC

Dear Alfred:

Our sincere thanks to Lucinda and to you for spending time with us today reviewing the plans for our proposed addition to our house at 3051 Avon Lane, NW. We really appreciate your consideration of our efforts to expand our house and the good natured way in which you earlier raised your concerns about the windows on the portion of the west façade of the proposed addition directly abutting your tennis court, as well as the drainage from any run-off from the court and from the roofs of your accessory buildings adjacent to it.

Per our conversation today, it appeared that we had adequately addressed those concerns provided we give you an assurance that we would hold you, as well as a subsequent owner of your property, harmless for any damage that might be sustained to our property by water from your property as a result of our proposed solution to the existing drainage issue. In exchange for your support of our proposed addition, we will provide that indemnity.

At your request and our direction, our architect for the project, Outerbridge Horsey, engaged a civil engineer to review the current drainage for the run-off from your tennis court and adjacent accessory buildings in an effort to resolve the issue if we were to build our proposed addition.

After consultation with the civil engineer and Mr. Horsey, it was determined that the ideal solution would be to have the tennis court and accessory buildings' run-off drain directly into the city sewer by installing a pipe or pipes under your accessory buildings out to the city sewer on Avon Lane, NW. We acknowledge that this would be a very expensive solution. In an effort to avoid unduly burdening you, we searched for an alternative. The proposed alternative solution is similar to the existing situation where the catch basin on your property drains into a pipe installed on our property that currently empties onto our lawn in an albeit unsatisfactory manner.

Therefore, we have proposed a "heavier duty" version of the current solution: that we install at our expense an appropriate trench drain at the eastern edge of the tennis court (on your property) along the length of our addition and connect this drain to two large pipes which would, again, run through our property and daylight onto Avon Lane, NW.

Also, we wanted to clarify that, since the existing masonry wall supporting the tennis court fence projects onto our property about four inches and since the fence and wall will be unnecessary if the wall of our addition is built, we have proposed to remove the fence and wall at our expense from our garage to where our addition would end. We would then build our new addition wall "face on line" onto the property line so that it would align with our garage wall and retain your tennis court. Documents at the D.C. Surveyor's office show the property line at the face of our garage wall. Per Lucinda's request, the extension of this property line northward along the length of the west façade of our proposed addition would be confirmed by a survey, which we would undertake prior to beginning any work.

While we believe we have addressed all of the concerns you have expressed, please let us know if you have any additional issues.

We appreciate your willingness to write us a letter of support for our proposed project provided it is built substantially in accordance with the plans we reviewed with you today and that we would commit to address the issues described above in the manner contained herein. It would obviously be very beneficial for us to have that letter prior to our appearance before the ANC and the Old Georgetown Board. We are scheduled to appear before the ANC to present our plans on May 31 and we then plan to proceed to the Old Georgetown Board on June 2.

Again, our thanks to you both for your time and interest with regard to this project, as well as for graciously allowing us to use the tennis court.

Kind regards,

Joseph Stettinius, Jr.

Regina T. Stettinius

cc: Outerbridge Horsey

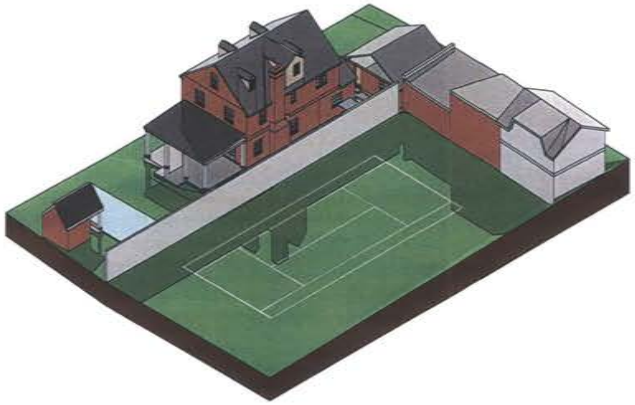
D

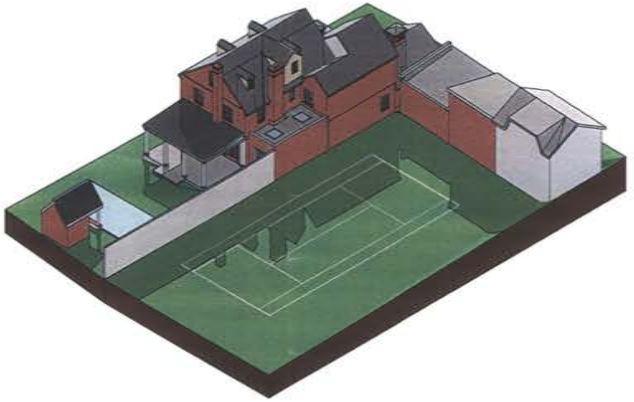
SHADOWS CAST ON VERNAL EQUINOX: (MARCH 20)

EXISTING CONDITIONS

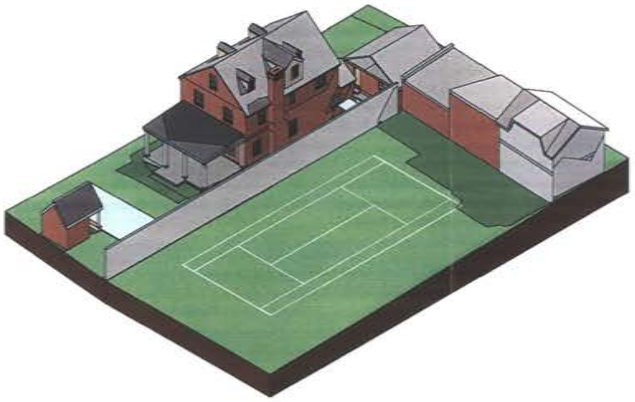
WITH PROPOSED ADDITION

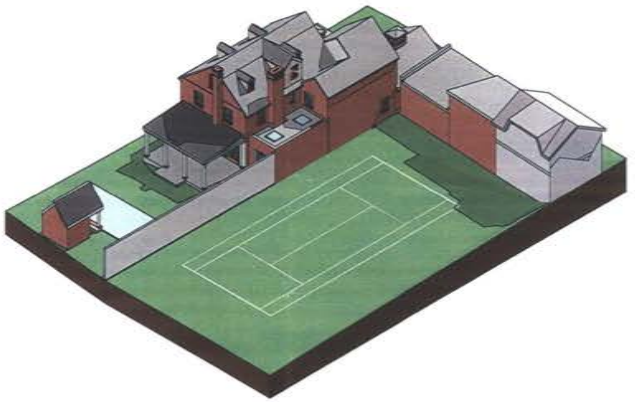
9:00 AM:



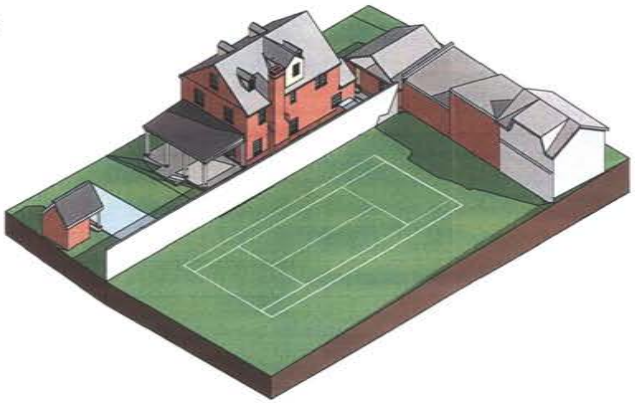


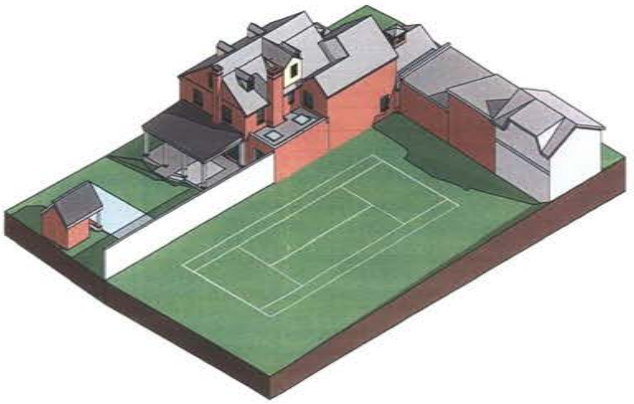
12:00 PM:





3:00 PM:





DISTRICT OF COLUMBIA
OUTERBRIDGE HORSEY
No. 700004329
REGISTERED
ARCHITECT

OUTERBRIDGE HORSEY ASSOCIATES, PLLC.
1228 1/2 31ST STREET, NW WASHINGTON, DC 20007
TEL 202.337.7334 FAX 202.337.7331
COPYRIGHT 2005 OUTERBRIDGE HORSEY ASSOCIATES, PLLC.

STETTINIUS HOUSE
3051 AVON LANE, NW
WASHINGTON, D.C.

SCALE: NTS
DATE: 9/27/05

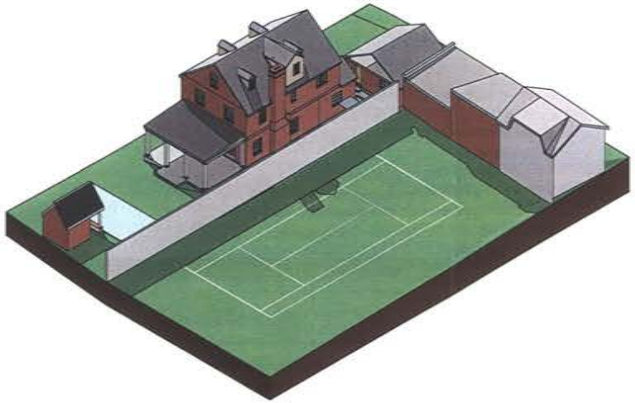
ASK-9.27A

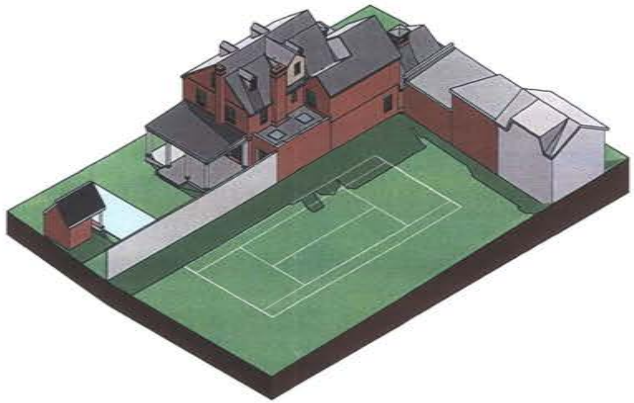
SHADOWS CAST ON SUM. SOLSTICE: (JUNE 21)

EXISTING CONDITIONS

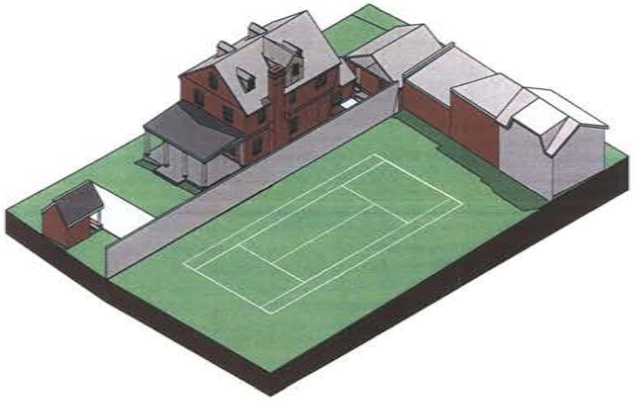
WITH PROPOSED ADDITION

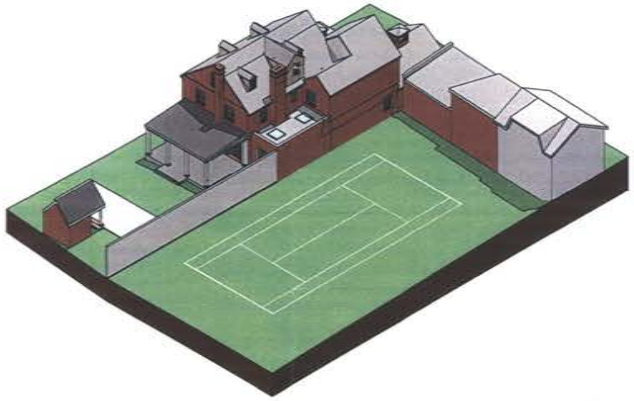
9:00 AM:



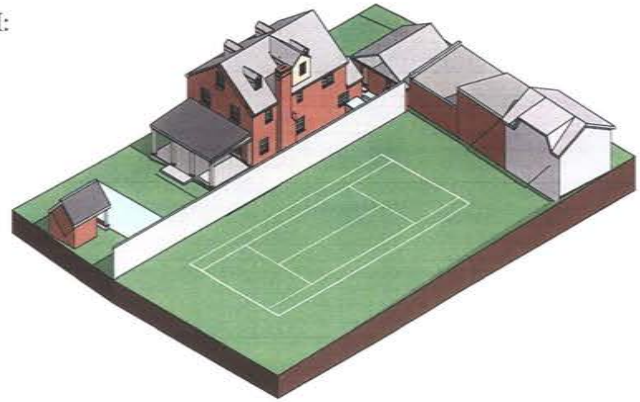


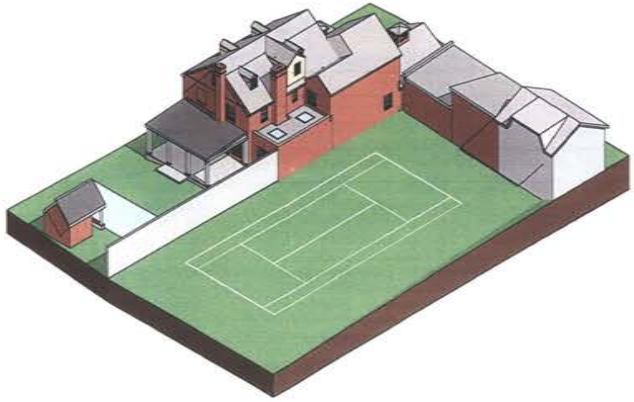
12:00 PM:





3:00 PM:





DISTRICT OF COLUMBIA
OUTERBRIDGE HORSEY
NO. 706004329
REGISTERED
ARCHITECT

OUTERBRIDGE HORSEY ASSOCIATES, PLLC.
1226 1/2 31ST STREET, NW WASHINGTON, DC 20007
TEL 202.337.7334 FAX 202.337.7331
COPYRIGHT 2005 OUTERBRIDGE HORSEY ASSOCIATES, PLLC.

STETTINIUS HOUSE
3051 AVON LANE, NW
WASHINGTON, D.C.

SCALE: NTS
DATE: 9/27/05

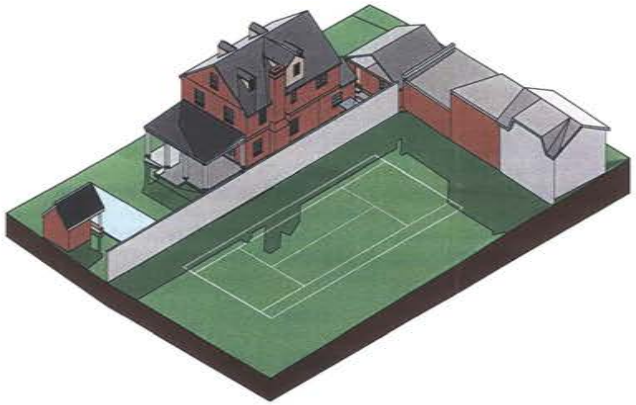
ASK-9.27B

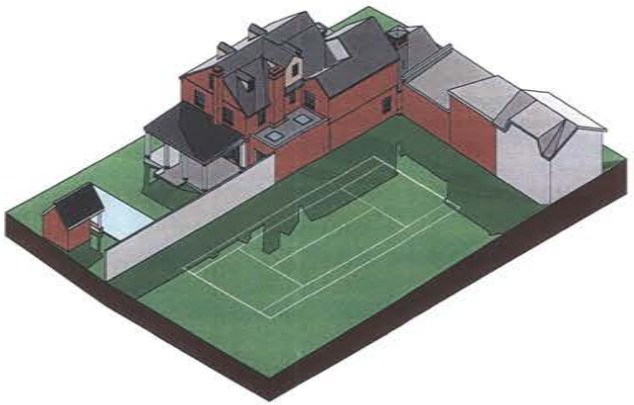
SHADOWS CAST ON AUTUMN. EQUINOX:
(SEPTEMBER 22)

EXISTING CONDITIONS

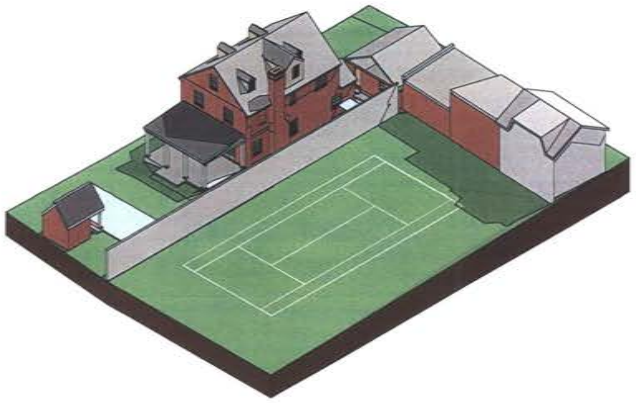
WITH PROPOSED ADDITION

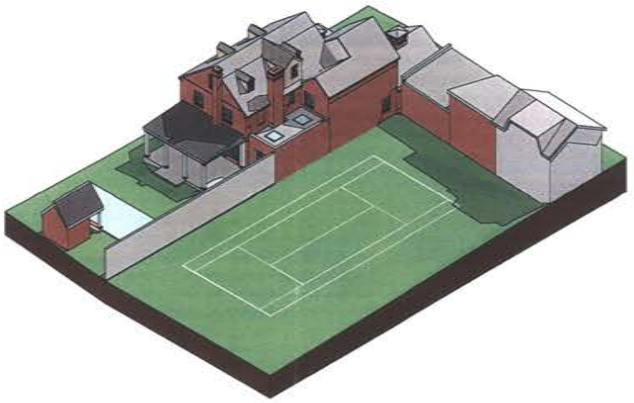
9:00 AM:



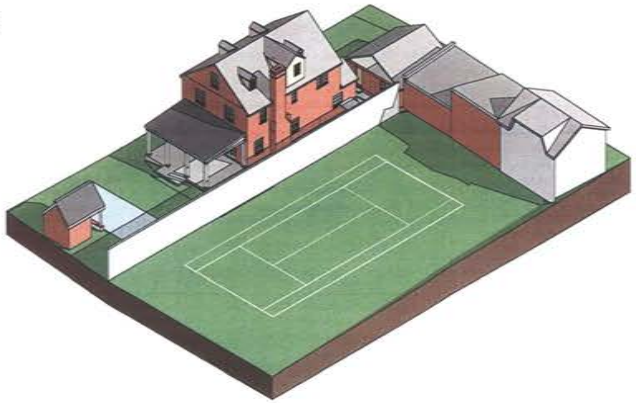


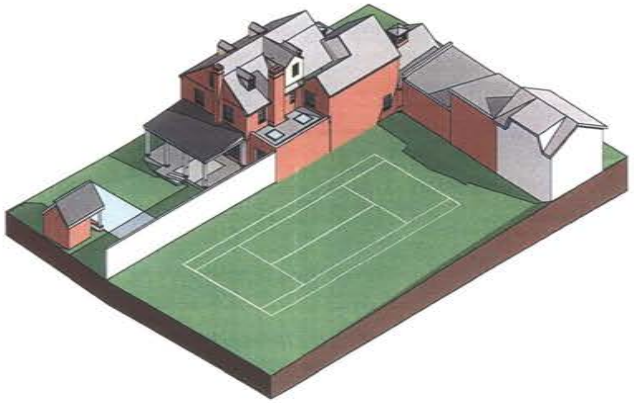
12:00 PM:





3:00 PM:





DISTRICT OF COLUMBIA
OUTERBRIDGE HORSEY
No. 706004329
REGISTERED
ARCHITECT

OUTERBRIDGE HORSEY ASSOCIATES, PLLC.
1228 1/2 31ST STREET, NW WASHINGTON, DC 20007
TEL. 202.337.7334 FAX. 202.337.7331
COPYRIGHT 2005 OUTERBRIDGE HORSEY ASSOCIATES, PLLC.

STETTINIUS HOUSE
3051 AVON LANE, NW
WASHINGTON, D.C.

ASK-9.27C

SCALE: NTS

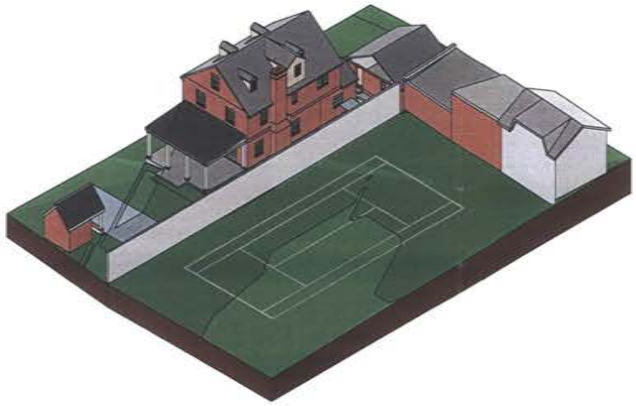
DATE: 9/27/05

SHADOWS CAST ON WINTER SOLSTICE:
(DECEMBER 21)

EXISTING CONDITIONS

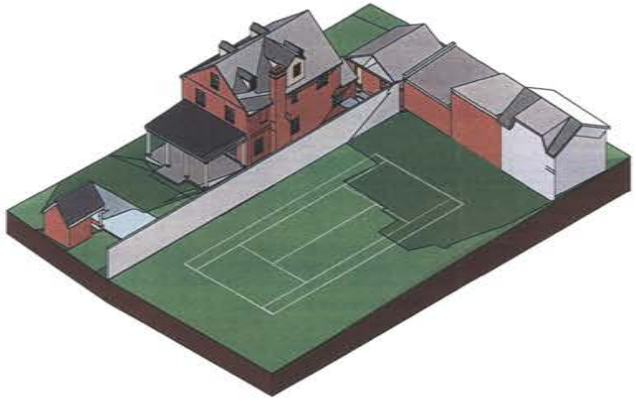
WITH PROPOSED ADDITION

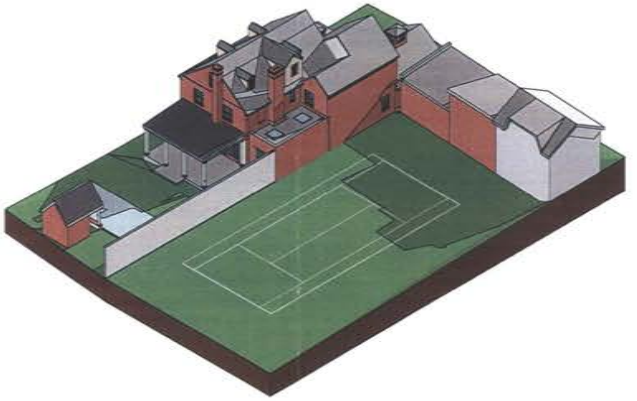
9:00 AM:





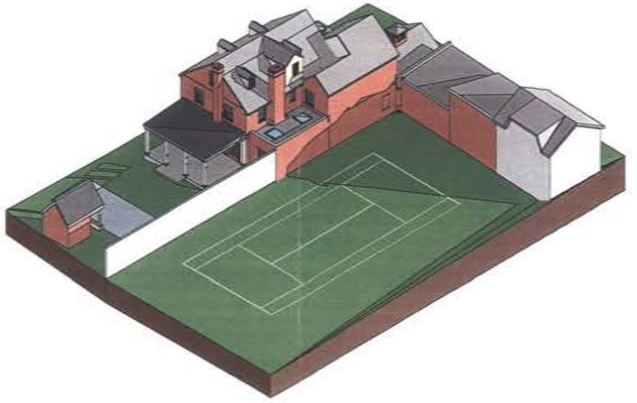
12:00 PM:





3:00 PM:





DISTRICT OF COLUMBIA
OUTERBRIDGE HORSEY
No. 706004329
REGISTERED
ARCHITECT

OUTERBRIDGE HORSEY ASSOCIATES, PLLC
1228 1/2 31ST STREET, NW WASHINGTON, DC 20007
TEL. 202.337.7334 FAX. 202.337.7331
COPYRIGHT 2005 OUTERBRIDGE HORSEY ASSOCIATES, PLLC.

STETTINIUS HOUSE
3051 AVON LANE, NW
WASHINGTON, D.C.

SCALE: NTS
DATE: 9/27/05

ASK-9.27D

E

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

Application No. 16725 of Richard A. Cantor and Charles L. Grizzle, as amended, pursuant to 11 DCMR § 3103.1 for variances to allow an addition to a nonconforming one-family structure under subsection 2001.3 (a), (b) and (c), and from the lot occupancy requirement under subsection 403.2, and pursuant to subsection 3104.1 for a special exception to allow the establishment of a nonconforming open court and the enlargement of an existing nonconforming open court (section 406) under section 223 in an R-1-B District at premises 2326 California Street, N.W. (Square 2519, Lot 46).[1]

HEARING DATE: **July 10, 2001**
DECISION DATE: **July 10, 2001 (Bench Decision)**

DECISION AND ORDER

PRELIMINARY MATTER:

Dr. Robert E. Wittes, the abutting property owner (who also shares a party wall with the applicant), requested party status (Exhibit No. 20). The Board determined that Dr. Wittes met the requirements as outlined in section 3106 of the Zoning Regulations to be granted party status and, therefore, approved his request.

SUMMARY OF EVIDENCE:

The site is located in Square 2519, on Lot 46. The site is located mid-block on California Street, N.W., at premises 2326, in the Sheridan-Kalorama neighborhood of Ward 1. The lot contains 2,437.5 square feet; it has a width of 25 feet and a depth of 97.5 feet. A three-story plus basement, semi-detached, building that was constructed in 1914 is located on the property.

The owners proposed replacing an existing two-story rear addition that was constructed in 1985 with a three-story brick addition. The rear of the existing structure would be reconfigured, to include adding a second bathroom on the third floor. The addition would extend the third story out an additional 8 feet, so that the rear wall at the proposed third story aligns with the rear wall of the existing house.

[1] **The Board amended the application at the public hearing. The Board determined that the corrected announcement would not change the substantive issues of the case.**

The site is zoned R-1-B. The R-1-B District permits matter-of-right development of one-family detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, maximum lot occupancy of 40 feet, a minimum side yard depth of 8 feet (each), and a height of 3 stories/40 feet.

The applicants are allowed to occupy 975 square feet of the 2,437 square foot lot (based on 40 percent lot occupancy). The Board was provided with different calculations for the lot occupancy. The Zoning Administrator's computations sheet (Exhibit No. 6), the applicants' construction plans (Exhibit No. 9), and the applicants' calculations at the public hearing (transcript page 84) contain different lot occupancy figures. After reviewing all the scenarios, the Board indicated that the existing building and proposed addition exceeded the footprint by 30 square feet or less (11 percent). The proposed increase in lot coverage would be approximately 1 percent of the total lot area. The footprint of the proposed and existing structures would be very similar.

No zoning relief was needed from the side yard zoning requirements even though the application was initially advertised for relief from section 405 of the Regulations. Eight-foot side yards are required in the R-1-B district. To the east, the applicants share a party wall with their neighbor. To the west, the dwelling is constructed adjacent to the property line. The existing dwelling is built on lot lines on both sides. The existing rear yard has a depth of 42.4 feet; and a 25-foot depth is required. The depth of the rear yard is much larger than that required by the Zoning Regulations.

An existing open court is located on the east side of the property. The applicants' are proposing to construct a bay window on the west side of the property thus creating another open court. Zoning relief is needed for two nonconforming open courts at the site.

The DC Historic Preservation Review Board (HPRB) reviewed the project. The HPRB found that the applicants' proposal to be consistent with the character of the Sheridan-Kalorama Historic District, and therefore approved the design and massing of the addition (Exhibit No. 22).

By correspondence to the Board, Advisory Neighborhood Commission (ANC) 1D indicated that at its April 17, 2001 public meeting, the ANC voted to support the application (Exhibit No. 19).

The applicants prepared a Sun and Shadow Study (Exhibit No. 26) to simulate how sunlight of the abutting neighbor's property would be affected during the seasons of the year if the addition were constructed. The applicants indicated that the addition would have minimal effect on the abutting property. However, for approximately one hour during the afternoon, the proposed addition would cast a shadow on the adjoining property to the east.

OPPOSITION:

Dr. Robert E. Wittes, party to the case, does not object to the addition in general, but does object to the third story. Dr. Wittes indicated that:

- The top story would decrease the amount of sunlight to his property.

- The third floor addition would change his view from that of trees and greenery (a woodsy appearance) to a man-made structure at the rear right of his property.

- The proposed third story addition would block the open space view from the third floor west window.

- The addition would decrease his privacy.

FINDINGS OF FACT:

The lot is nonconforming; the lot size is approximately one-half of that required in the R-1-B District. The subject existing dwelling exceeds the allowable lot occupancy by 11 percent. The lot and existing structure are nonconforming. Any exterior addition to the building requires relief from the Board of Zoning Adjustment.

The addition would cause some shadow changes to the abutting property. However, the changes would be minimal. Two windows would be impacted for short periods of time at particular times of the year. A majority of Dr. Wittes' property, however, would not be substantially affected by a loss of light to most of the windows and rooms. Dr. Wittes provided photographs to show the existing view; however, he did not provide any other documentation to substantiate the extent to which his view would be significantly diminished, nor did he discuss, in-depth, how his privacy would be impaired.

The Board found that the site contains inherent difficulties, which arise out of the land. The lot size and width are approximately one half the size required for the R-1-B District. There are no side yards at the site, resulting in the creation of open courts that cannot meet the zoning requirement. The dwelling is 87 years old; it was built 44 years prior to the effective date of the 1958 Zoning Regulations. The footprint of the original dwelling exceeded the allowable lot occupancy.

The building is located in Sheridan-Kalorama historic district and must meet historic preservation review design requirements. Those design requirements are intended to place specific restrictions on how the addition can be constructed, thus constraining, to some extent, the use of the property. The DC Historic Preservation Review Board approved the project.

The property's rear yard is 17 feet larger than required by the Zoning Regulations. The substantially large back yard adds a measure of open space to the property.

Advisory Neighborhood Commission 1D at a public meeting passed a resolution to support the application.

CONCLUSIONS OF LAW AND OPINION:

The Board is authorized under Section 8 of the Zoning Act of June 20, 1938 (52 Stat. 799, as amended; D.C. Code § 5-424(g)(3) (1994)), to grant variances from the strict application of the

Zoning Regulations. Richard A. Cantor and Charles L. Grizzle sought variances and a special exception pursuant to 11 DCMR § 3103.2 and 3104.1, to permit the construction of a three-story rear addition to a nonconforming semi-detached dwelling. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met, as the Office of Zoning provided timely written notice to the applicant, the owners of all property within 200 feet of the subject property, and ANC 1D, and by publishing the notice in the D.C. Register. In addition, the applicant timely posted notice on the property.

The application must meet the three-prong test for area variances, as identified in subsection 3103.1 of the Zoning Regulations. The applicants must demonstrate that: (1) the property is unique because of its size, shape, or topography or other extraordinary or exceptional situation or condition connected with the property; (2) the applicants would encounter practical difficulty if the Zoning Regulations were strictly applied; and (3) granting the variance will not result in substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The applicants must also demonstrate that based on 11 DCMR subsection 3104.1, the requested relief can be granted in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect, adversely, the use of neighboring property in accordance with the Zoning Regulations and Map.

Based on the summary of evidence and findings of fact, the Board finds that the site is zoned R-1-B and semi-detached dwellings are not permitted as a matter-of-right in the R-1-B District. The lot area, lot width, lot occupancy, side yard and open courts cannot meet the zoning requirements. The building was constructed 44 years prior to enactment of the 1958 Zoning Regulations, and is unable to meet current zoning requirements. These zoning constraints render the property and structure to be nonconforming. Further, the site is located in a historic district and the project is required to meet design guidelines specifically tailored to the Sheridan-Kalorama neighborhood. These physical restrictions create an exceptional condition at the site and inhibit the applicants' ability to reasonably develop the property. As such, a practical difficulty exists at the site, which prevents the applicants from reasonably using the property.

The Board found the applicants arguments persuasive, supported by the Sun and Shadow Study, that the addition would not create substantial adverse impact on the abutting or nearby properties. The addition would cause a limited amount of shadow and sunlight changes to the abutting property and would minimally change the view from the rear windows. However, it would not prevent the abutting property owner from continuing to enjoy the view and privacy from his home. The Board is of the opinion that approving the application would not be in disharmony with the Sheridan-Kalorama neighborhood and would be in accord with the general purpose and intent of the Zoning Regulations and Map.

The Board considered the views of Advisory Neighborhood Commission 1D and gave the ANC the "great weight" to which it is entitled.

The Board was persuaded that the applicants have met the burden of proof for area variances and special exception to construct the proposed rear addition. Therefore, it is hereby **ORDERED**

that the application be **APPROVED**, in accordance with the building plans identified at Exhibit 9 of the record.

VOTE: 5-0-0 (Geoffrey H. Griffis, Anthony J. Hood, Susan Morgan Hinton, Anne Mohnkern Renshaw and Sheila Cross Reid to approve.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this Order.

JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF ORDER: SEP 18 2001

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.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OF THE D.C. CODE. *SEE* D.C. CODE § 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

BAB/8.28.01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

BZA APPLICATION NO. 16725

As Director of the Office of Zoning, I hereby certify and attest that on SEP 18 2001 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:

Richard A. Cantor
Charles Grizzle
2326 California Street, N.W.
Washington, DC 20008

Robert Wittes
2324 California Street, N.W.
Washington, DC 20008

Lance Salonia, Chairperson
Advisory Neighborhood Commission 1D
P.O. Box 53342
Washington, DC 20009

Marlis Carter,
Single Member District Commissioner 1D02
2131 Bancroft Place, N.W.
Washington, DC 20008

Michael Johnson, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

Councilmember Jim Graham
441 4th Street, N.W., Suite 718
Washington, DC 20001

Ellen McCarthy, Deputy Director
Development Review
Office of Planning
801 North Capitol Street, NE, Room 400
Washington, DC 20002

Alan Bergstein
Office of the Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, DC 20001

JERRILY R. KRESS, FAIA
Director