GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17355 of Joseph and Regina Stettinius, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of an addition to a single-family detached dwelling under § 223 of the Zoning Regulations, not meeting the side yard requirements (§ 405) in the R-1-B District at premises 3051 Avon Lane, NW. (Square 1282, Lot 258).

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

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17355
EXHIBIT NO. 38

DECISION AND ORDER

Joseph and Regina Stettinius, the property owners (the owner or the applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on April 29, 2005 for a special exception under § 223 to construct an addition to their residence[1] where the addition will not conform to the minimum side yard requirements of § 405 of the Zoning Regulations. Following a hearing on September 13, 2005, the Board voted to approve the special exception.

Preliminary Matters

Self-Certification Outerbridge Horsey, an architect retained by the applicant, submitted a "self-certification" form with the Board which describes the zoning relief that is requested (Exhibit 2).

Notice of Public Hearing Pursuant to 11 DCMR 3113.13, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, the Advisory neighborhood Commission (ANC) 2E, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 24).

ANC Report In its report dated September 2, 2005, ANC 2E indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to support the special exception, subject to a condition that the applicant remove the windows on the wall facing the property to the west (Exhibit 23).

Request for Party Status ANC 2E was automatically a party to this proceeding. The Board received a request for party status from the owner of neighboring property at 1645 31st Street NW (Exhibit 22). The property is owned by the "1645 31st Street NW Personal Residence Trust". The Trustees are members of the family that has owned the property since 1939: Alfred Friendly, Jonathan Friendly, Lucinda Friendly Murphy, Nicholas Friendly, and Victoria Friendly (the Friendlys or the Neighbors). The request for party status was granted and the Friendlys

[1] As will be explained in the Findings of Fact, the applicant proposes to construct three additions to his home.

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opposed the application at the public hearing, asserting, among other things, that the additions would adversely impact upon their privacy and light and air, and would also exacerbate existing drainage problems.

Other Persons in Support/Opposition The Board received several letters in support of the application (Exhibit 21). It also received one letter in opposition from Barbara Zartman, chair of the Historic Preservation, Planning and Zoning Committee within the "Citizens Association of Georgetown". Ms. Zartman asked the Board to postpone the decision until prior "illegal construction" could be assessed.

Government Reports

OP Report OP reviewed the special exception application and prepared a written report recommending approval of the application (Exhibit 25). Among other things, OP concluded that the proposed additions would not unduly affect light and air to neighboring properties. In addition, John Moore, the OP representative who prepared the report, testified at the public hearing in support of the application.

US Commission on Fine Arts (Old Georgetown Board) The Commission stated that it had "no objection" to the additions, as depicted in architectural drawings submitted by the owner (Exhibit 21).

Preliminary Matters

Prior to the public hearing, the Friendlys filed a motion to dismiss or postpone the hearing, based upon existing structures at the property that were allegedly built without permits. The Friendlys argued that it would be inequitable for the Board to hear the application based upon the applicant's "unclean hands", and that, at a minimum, the hearing should be postponed because the calculations assumed for zoning relief were erroneous. The Board denied the motion, noting that the application was self-certified and the owner, therefore, proceeded at his own risk.[2]

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is a single-family dwelling located at 3051 Avon Lane, NW, (Square 1282, Lot 258) near the intersection of Avon Lane and Avon Place, in the Georgetown neighborhood. It is located in the R-1-B zone, and is bounded by R Street to the north, Q Street to the south, Avon Place to the east, and 31st Street to the west.

2. The property was improved in 1948 with a two-story single-family dwelling with basement and a nonconforming accessory garage structure. Single-family detached dwellings are the predominant land use on the square in which the property is located.

3. To the west of the property is the Friendly property, which fronts on 31st Street, at 1645 31st

[2] Although not relevant to this application, the owner later submitted evidence that permits were obtained for the structures in question.

Street. The subject property is separated from the Neighbors' property by a ten foot high fence. The dwelling at the Friendly property is more than 100 feet to the west of the subject property lot line. However, a clay tennis court at the Neighbors' property abuts the fence at the lot line of the subject property.

The Requested Relief

4. The applicant proposes to construct three additions to the existing dwelling in order to create more interior living space for his family. Two of the three additions will be one story; one of the additions will be two stories in height. The first one story addition will be on the east side of the dwelling and will extend along the front to about mid-point of the dwelling. The second addition will be two stories on the west side of the dwelling and will extend to the fence at the Neighbors' property line. The third addition will be a single story on the north side of the dwelling and will connect with the two story addition to the west.

5. Section 405 of the Zoning Regulations requires a minimum side yard of eight feet in the R-1-B zone. Because the second addition will extend to the lot line and eliminate the western side yard, the dwelling and proposed additions will not comply with applicable area requirements under § 405.

6. The proposed additions will increase the lot occupancy from 24% to 36%

The Impact of the Addition

7. With his application, the owner submitted elevation plans and a site plan showing the relationship of the addition to adjacent buildings and views from the public ways (Exhibit 8 and Applicant's Post-Hearing Submission, Exhibit B).

8. The dwelling at 1644 Avon Place is to the immediate east of the property. Because the addition to the east will be only one story it will not be high enough to compromise the light and air or privacy of use and enjoyment of this dwelling.

9. The Board credits and adopts OP's finding that the proposed additions will not significantly decrease the amount of light and air received at neighboring properties (Exhibit 25, Transcript, p. 51). The dwelling at the Neighbors' property is more than 100 feet away from the proposed western addition; it is the Neighbors' tennis court which is adjacent to the proposed addition. Also, as noted above, portions of the proposed eastern addition will be only one story and will not rise to a height that will affect light and air to the neighboring dwelling at 1644 Avon Place (Exhibit 25).

10. The Board finds that the ten feet fence at the Neighbors' lot already casts a shadow on the property, and the proposed western addition will only minimally affect light and air at the Neighbors' property. The applicant's architect prepared diagrams depicting the shadows cast on the Neighbors' property with existing conditions and also with the proposed western addition (Applicant's post-hearing submission, Exhibit D). According to the shadow study, the proposed additions will only minimally affect the light and air received at the Neighbors' property.

11. The Board finds that the proposed additions will not unduly compromise the use of the tennis court at the Neighbors' property. The proposed western addition is only 27 feet long and will be built so there is minimal overlap with the 120 foot tennis court (See, Post-Hearing Submission Site Plan, Exhibit B). Nor will any shadows created by the additions be significant enough to interfere with use of the court.

12. The Board finds that, so long as the number of windows on the western addition is minimized, the proposed addition will not unduly affect the privacy of use and enjoyment of the Neighbors' property. As noted by OP, the western wall will actually reduce the number of existing second floor windows and increase privacy of the tennis court.

13. The Board credits and adopts OP's finding that, as viewed from the street, alley, or public way, the proposed additions will not visually intrude upon the character or scale and pattern of homes along the street frontage. As viewed from Avon Lane, most of the addition will be screened by the one-story garage and mature trees. As viewed from the rear, the existing pool house and mature trees will limit view of the addition. As also noted, the Old Georgetown Board reviewed the architectural drawings for the proposed additions and had no objection to the project.

14. The Board received no persuasive evidence that the proposed additions will result in the intensification of any drainage problems that may exist at the Neighbors' property.

15. The Board received no persuasive evidence that the proposed additions resulted in the Neighbors' loss of a contract purchaser for their property, or, that the proposed additions will have such a result in the future.

CONCLUSIONS OF LAW

The Special Exception

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant is seeking a special exception pursuant to 11 DCMR § 223 and 3104.1 to construct an addition to a one-family dwelling in an R-1-B District, where the addition will not comply with the side yard requirements of § 405.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are granted.

The general tests. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. As to the first test, the proposed

addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood.

Since the second test is nearly identical to the criteria for the special conditions under § 223, it will be discussed in the section below entitled "The 'special conditions' for an addition under § 223.1".

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

> 223.2(a) The light and air available to neighboring properties shall not be unduly affected. Light and air to neighboring properties will not be unduly affected. As stated in the Findings of Fact, the proposed additions will not significantly affect light and air at the Neighbors' property or the property at 1644 Avon Place (See, Findings of Fact 8 – 11).
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> The light and air at the Neighbors' tennis court will be affected, but only minimally. However, the fact that the tennis court will be subjected to slightly more shade at particular times of the year is not a substantially adverse impact that requires denial of this application.
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> 223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. Nor will the privacy of use and enjoyment of neighboring properties be significantly affected by the proposed additions. The property at 1644 Avon Place will not be affected by the one story eastern addition (Finding of Fact 8). Moreover, the Board concurs with OP that the proposed western wall will actually reduce the number of existing second floor windows and, therefore, increase the privacy of the tennis court (Finding of Fact 12, Exhibit 25).
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> 223.2(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 proposed additions will cause no visual intrusion as viewed from the street. As set forth above, views from Avon Lane and from the rear will be screened by the existing garage and pool house, and by mature trees (Finding of Fact 13).
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> 223.2(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevations and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways. The applicant provided a site plan, surveyor's plat, floor plans, elevations and photographs to represent the relationship of the proposed additions to adjacent buildings and views from the public way (Finding of Fact 7, Exhibit 25).

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. The subject property is in the R-1-B zone (Finding of Fact 1). The proposed additions, will increase the lot occupancy from 24% to 36% (Finding of Fact 6). Therefore, this condition will be met.

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 Board agrees with OP that no special treatment is required (Exhibit 25).

223.5 This section may not be used to permit the introduction or expansion of a nonconforming use. As noted by OP, the proposed additions will not introduce or expand a nonconforming use (Exhibit 25). The nonconforming accessory garage structure was built in 1948 and will not be expanded (Findings of Fact 2, 4).

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. For the reasons stated in this Decision and Order, the Board finds the ANC's advice to be persuasive.

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

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the side yard requirements an R-1-B zone.

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

VOTE: 3-1-1 (Geoffrey H. Griffis, Curtis L. Etherly Jr. and John A. Mann II in favor of the motion to grant; Ruthanne G. Miller opposed, and no Zoning Commission member having participated in the application)

Vote taken on October 11, 2005

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

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: FEB 02 2006

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

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

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

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

BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.