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**STATEMENT IN SUPPORT
APPLICATION OF
SCOTT AND KRISTEN FRANKLIN
FOR A
ZONING MAP AMENDMENT
FROM
UNZONED TO R-5-D DISTRICT

2269 CATHEDRAL AVENUE, N.W.
(Square 2210, Lot 803)**

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April 10, 2009

ZONING COMMISSION
District of Columbia

CASE NO. 09-07
ZONING COMMISSION
District of Columbia
EXHIBIT NO. 3
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I.

INTRODUCTION

This application, filed by Scott and Kristen Franklin, the owners of the subject property, seeks to designate zoning for a piece of property which has been in continuous private ownership since at least 1909 and for which the Zoning Commission does not appear to ever have included in any zone category. The application seeks to designate the property in the R-5-D District, the zoning applicable to the property located on the same side of Cathedral Avenue and immediately across a fifty foot wide paper street from the subject property.

As far as we can determine, the exclusion of this property from any zoning category appears to be an oversight. The property is adjacent to Federal land which is part of the National Zoo and Rock Creek Park. It is a very small piece compared to the size of the Federal holdings and it appears to have been treated by the Zoning Commission in 1920 and again in 1958 as if it were part of the Zoo or Park. However, an examination of the chain of title indicates that the property has been in private ownership continually since 1909 and should never have been excluded from a zoning category.

Because the property has no zoning, there are no regulations in place which control the use and development of the property. The Applicants are in the midst of preparations for a modest addition to the home and therefore request that the Commission adopt zoning for the property on an emergency basis, as more fully set forth in Section VII, below.

II.

DESCRIPTION OF THE PROPERTY

This application seeks the rezoning of property located on the north side of Cathedral Avenue east of Connecticut Avenue, N.W. The site comprises Lot 803 in Square 2210. See the house location survey attached as Exhibit A. The site has a land area of approximately 5,822 square feet and is currently occupied by a detached single family dwelling originally built in

1909. Pictures of the existing house are attached as Exhibit B. The property is wide and shallow and has a total frontage of approximately 220 feet on Cathedral Avenue. A portion of the property also appears to abut on Hawthorne Street, which while partially improved, is a paper street on the District's Highway Plan. See the excerpt from the Office of Tax and Revenue plats, attached as Exhibit C.

The property borders on the area of the National Zoo and Rock Creek Park to the east and south and any new site improvements are subject to review by the Commission of Fine Arts under the Shipstead Luce Act. Alterations and additions to the property are also subject to review by the Historic Preservation Review Board and the Mayor's Agent because the property is included in the Old Woodley Park Historic District.

III. DESCRIPTION OF THE SURROUNDING AREA

The property is within the Woodley Park area of the District of Columbia, east of the Connecticut Avenue corridor. See the aerial photograph attached as Exhibit D. To the north and east are large open areas occupied by the National Zoo (part of the Smithsonian Institution) and Rock Creek Park, under the jurisdiction and control of the National Park Service. To the northwest are five apartment buildings which front on Cathedral and Connecticut Avenues and which are five to seven stories high. To the south are moderate density residential uses, rowhouse and apartments, lining Cathedral Avenue and Woodley Place. To the southwest and west are additional multifamily residences lining Connecticut Avenue.

The subject property is located less than 1,000 linear feet from the Woodley Park Metrorail station and approximately 1,800 feet walking distance to the Station. There is substantial bus service along the Connecticut Avenue corridor as well as to the east along Calvert Street.

IV.
EXISTING AND PROPOSED ZONING

A. Existing Zoning: Unzoned

The property does not presently appear to be included in any zone category. The Zoning Maps appears to have assumed that it was Federal property and therefore unzoned. See the excerpt from the May, 12, 1958, Zoning Map, attached as Exhibit E, the excerpt from the January, 1, 2003, Zoning Map attached as Exhibit F, and the certification from the Office of Zoning dated April 3, 2009, indicating that the property is unzoned, attached as Exhibit G.

B. Proposed R-5-D District

The Applicant requests designation of the property in the R-5-D District. This is the same zoning applicable to the property immediately to the west across the narrow paper street. The R-5-D District has the following provisions:

Permitted uses (§350)	Single family dwelling, flat, multiple dwelling, specified institutional type uses
Maximum permitted height (§400.1)	90 feet
Minimum required lot area and lot width (§401)	None specified
Maximum permitted floor area ratio (§402.4)	3.5
Maximum permitted lot occupancy (§403.2)	75%
Minimum required rear yard (§404)	4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the roof or parapet but not less than 15 feet
Minimum required side yard (§405)	8 feet for a one-family detached or semi-detached dwelling

C. The Effect of Zoning the Property

The zoning of the property to R-5-D applies a zone district classification to a property which currently has none. The zone is the same classification applied to the property

immediately across the paper street to the west. Given the size and shape of the property, the fact that the house is deemed a contributing building to the Old Woodley Park Historic District and the requirement for review of any future alterations by the Commission of Fine Arts and the Historic Preservation Review Board and the Mayor's Agent, it is highly unlikely that the existing house could be demolished and that any building other than one devoted to single family use could be constructed or would be permitted.

The other zoning classification present in the vicinity, R-4, permits a maximum lot occupancy of 40%. The existing building is already slightly over the 40% limitation applicable in that zone. If R-4 were applied to the site, it would make the existing building nonconforming as to lot occupancy. Section 2001.3 of the Zoning Regulations would therefore preclude the applicants from constructing a small ± 225 square foot addition which they are proposing at the northeast corner of the house unless they applied for and received approval from the Board of Zoning Adjustment.

**V.
STANDARDS APPLICABLE TO AN APPLICATION
FOR A ZONING MAP AMENDMENT**

The Zoning Act sets forth the criteria which the Zoning Commission must apply in adopting and amending the Zoning Map of the District of Columbia. Section 6-421.01 of the D.C. Code states that the purposes of the regulations are to "promote the health, safety, morals, convenience, order, prosperity or general welfare of the District of Columbia and its planning and orderly development as the national capital." Section 6-641.02 provides that "[z]oning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital." The Zoning Commission applies these standards and criteria in determining whether to approve a requested map amendment. As set forth below, the proposed zoning of the property to R-5-D meets the standards for approval.

VI.
EVALUATION OF THE PROPOSED MAP AMENDMENT
AND COMPLIANCE WITH STATUTORY STANDARDS

A. Health, Safety and General Welfare

The proposed map designation of R-5-D would further the health, safety and general welfare of the District of Columbia by applying zoning to a piece of privately owned property for which there is no current zoning designation. The proposed zoning would allow the Applicants to use the property as a single family dwelling, and it would allow the Applicants to improve the property by adding a small ±225 square foot addition to enhance the existing dwelling.

B. No Overcrowding of Land

Rezoning of the property to R-5-D would not result in the overcrowding of land or the undue concentration of population. The contemplated modest addition to the existing dwelling will increase the footprint of the building on the lot by less than four percent. The lot will still maintain substantial open space and the existing dwelling plus the addition will not have any perceptible impact on surrounding buildings. The closest buildings are across Cathedral Avenue, at least ninety feet away. Consequently, the requested map amendment will not create overcrowding of land or the undue concentration of population.

C. No Objectionable Traffic Conditions

The designation of zoning for the property will not result in any objectionable traffic conditions. The property is a single family dwelling and because of the size and shape of the lot and building, there is no reason to believe that the building will ever be anything but a single family dwelling.

D. Comprehensive Plan

The Future Land Use Map and the Generalized Policy Map adopted as part of the Comprehensive Plan are generally incorrect as related to this property. See excerpts from both

maps, attached as Exhibits H and I. Both appear to assume that all the property north and east of Cathedral Avenue is Federal.

1. Rock Creek West Area Element

Located within the Rock Creek West planning area, the proposed map amendment supports, implements and is consistent with the policy set forth in §2308.2 of the Comprehensive Plan., which provides for "Protect[ing] the low density, stable residential neighborhoods west of Rock Creek Park and recogniz[ing] the contribution they make to the character, economy, and fiscal stability of the District of Columbia. Future development in both residential and commercial areas must be carefully managed to address infrastructure constraints and protect and enhance the existing scale, function, and character of these neighborhoods."

2. Land Use Element

The Comprehensive Plan provides that "[b]ecause the Land Use Element integrates the policies and objectives of all the other District Elements, it should be given greater weight than the other elements as competing policies in different elements are balanced." 10 DCMR § 300.2.

The underlying goal of the Land Use Element is to:

[e]nsure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; to help foster other District goals; to protect the health, safety, and welfare of District residents and businesses; to sustain, restore, or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries.

10 DCMR § 302.1. The proposed map amendment will advance this important goal by complying with the Land Use Element of the Comprehensive Plan.

Policy LU-2.1.5: Conservation of Single Family Neighborhoods

"Protect and conserve the District's stable, low density neighborhoods and ensure that their zoning reflects their established low density character. Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to

single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale." (§309.10)

VII. ACTION ON AN EMERGENCY BASIS

Pursuant to the authority set forth in section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641.01), and section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), the Applicants hereby request that the Zoning Commission designate the requested zoning, R-5-D, for the property on an emergency basis while the Commission goes through the hearing process normally required to zone property in the District. As grounds therefore, the Applicants state the following:

- The house was originally built in 1909, has remained in private ownership since that time and apparently has never been zoned;
- The Applicants purchased the house in March of 2009, and immediately started interior renovations on the house;
- The absence of a zoning category applicable to the property was not known prior to or at the time of settlement;
- The Applicants have taken pre-development steps in preparation for adding the small addition to the house, by submitting an application to make the property a record lot and by preparing a permit application for the addition;
- Only within the last few days, the Applicants learned that no zoning applies to the property and that permits for the addition cannot be issued until the property is zoned;
- The Applicants are selling their present residence in Maryland and need to continue to move forward with the small addition to get the house ready for their occupancy later this year;

- With two small children (ages 1 and 3), the Applicants cannot move into the house until after the construction is completed;
- Because the existing house is very slightly over the 40% lot occupancy permitted in R-4 for a detached or semi-detached dwelling, zoning the property in that category would require the Applicants to also seek approval from the Board of Zoning Adjustment (BZA) for the modest ± 225 square foot addition;
- The Applicants would need to carry two mortgage for an extended period of time and would therefore be severely harmed by the delay in having to wait for the property to be zoned and then having to proceed to the BZA before they could undertake the small addition; and
- The Applicants and Counsel are aware of no other example of a situation like this in the District (i.e., an individual piece of privately owned property not zoned).

The Applicants believe that the preservation of the public health, safety and welfare would be enhanced by designating zoning for the property on an emergency basis.

VIII. **EXHIBITS IN SUPPORT OF THE APPLICATION**

The Applicant submits the following exhibits in support of the application and this statement:

- A. House location survey for the Subject Property;
- B. Photographs of the existing house;
- C. Excerpt from the Office of Tax and Revenue Plats, showing the Subject Property;
- D. Aerial photograph of the immediate vicinity of the subject property;
- E. Portion of the Zoning Map from May 12, 1958;
- F. Portion of the Zoning Map from January 1, 2003, showing the Subject Property outlined in red;

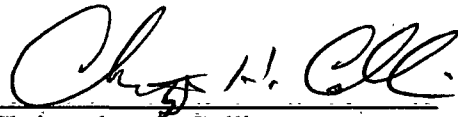
- G. Zoning Certification, dated April 3, 2009;
- H. Portion of the Future Land Use Map, adopted as part of the Comprehensive Plan; and
- I. Portion of the Generalized Land Use Policy Map, adopted as part of the Comprehensive Plan.

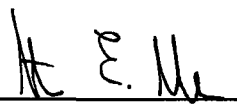
IX.
CONCLUSION

For the reasons stated herein, the Applicant requests approval of the subject application to amend the Zoning Map to designate the subject property as included in the R-5-D District. The rezoning will promote and improve the orderly development of land in conformity with the District of Columbia zone plan as embodied in the Zoning Regulations and the Zoning Map. Accordingly, the Applicant respectfully requests that the Zoning Commission grant this application and approve the proposed map amendment on an emergency and then on a permanent basis after notice and hearing.

Respectfully submitted,

HOLLAND & KNIGHT LLP

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