

June 4, 2009

VIA HAND DELIVERY

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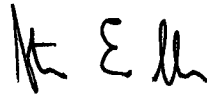
D.C. Zoning Commission  
Suite 210  
441 4<sup>th</sup> Street, N.W.  
Washington D.C. 20001

Re: Zoning Commission Case No. 09-07A  
Pre-Hearing Statement of the Applicants  
2269 Cathedral Avenue, N.W.  
Special Exception under Section 223

Dear Members of the Commission:

Attached, please find an original and twenty copies of the Pre-Hearing Statement of the Applicants in the above referenced case. Through the application, the plans and this statement and the supporting materials, the Applicants believe that they have met their burden of proof for the grant of the requested exception.

Sincerely,



Steven E. Sher  
Director of Zoning and Land Use Services

Attachments

cc: Arthur Jackson, D.C. Office of Planning  
Advisory Neighborhood Commission 3C  
Lee Bran Reba, ANC 3C01

ZONING COMMISSION  
District of Columbia  
CASE NO. 09-07A  
EXHIBIT NO. 8

2009 JUN -4 AM 10:41

D.C. OFFICE OF ZONING

**BEFORE THE DISTRICT OF COLUMBIA  
ZONING COMMISSION**

|                                               |   |                             |
|-----------------------------------------------|---|-----------------------------|
| <b>APPLICATION OF:</b>                        | ) |                             |
|                                               | ) |                             |
| <b>Scott and Kristen Franklin</b>             | ) | <b>ZC CASE NO. 09-07A</b>   |
|                                               | ) |                             |
| <b>Special Exception Relief pursuant to</b>   | ) | <b>ANC 3C</b>               |
| <b>Section 223 to Permit an Addition to a</b> | ) |                             |
| <b>Single Family Dwelling now Exceeding</b>   | ) | <b><u>HEARING DATE:</u></b> |
| <b>the Lot Occupancy at 2269 Cathedral</b>    | ) | <b>JUNE 18, 2009</b>        |
| <b>Avenue, N.W. (Square 2210, Lot 803)</b>    | ) |                             |

**STATEMENT OF THE APPLICANTS**

**I.  
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Scott and Kristen Franklin (the "Applicants") in support of their application to the Zoning Commission ("Commission") for special exception relief under §223 of Title 11 of the District of Columbia Municipal Regulations ("Zoning Regulations") to allow additions to an existing single family dwelling at the premises 2269 Cathedral Avenue, N.W. (Square 2210, Lot 803) (the "Subject Property"). The Applicants propose to construct additions to the lower level, first and second floors of the house which would total approximately 509 square feet of floor area, but which would increase the lot occupancy by only approximately 227 square feet.

The Subject Property is presently unzoned. In Case No. 09-07, the Applicants have requested the Zoning Commission to include the Subject Property in the R-4 District, which is the category applicable to property located across Cathedral Avenue. Assuming that the Subject Property will be zoned R-4, the existing dwelling will then exceed the maximum permitted percentage of lot occupancy for a detached dwelling.

## **II. JURISDICTION OF THE COMMISSION**

Special exceptions are ordinarily under the jurisdiction of the Board of Zoning Adjustment, pursuant to D.C. Code §6-641.07(d) (2001 ed.) and §3104 of the Regulations. At its public meeting held on April 27, 2009, the Commission stated its willingness to receive and consider an application for a special exception under §223, if the Subject Property is to be zoned R-4.

## **III. BACKGROUND**

### **A. Site and Vicinity Characteristics**

The Subject Property consists of Lot 803 in Square 2210 and is proposed to be zoned R-4. Square 2210 is bounded by Connecticut Avenue on the west, Cathedral Avenue on the south and the grounds of the National Zoo on the east and north. The Subject Property has frontage on Cathedral Avenue and on Hawthorne Street, which is a paper street connecting Cathedral and Connecticut Avenues, as shown on the excerpt from the Office of Tax and Revenue plats attached as Exhibit A. The subject property includes approximately 5,823 square feet of land area.

The Subject Property is located in the Woodley Park neighborhood, just east of Connecticut Avenue and abutting the National Zoo. The lots fronting along Connecticut Avenue largely consist of medium to high density residential uses, with commercial uses south of Woodley Road. The area to the east of Connecticut Avenue largely consists of moderate density residential uses, single family dwellings, flats and apartments. The property also falls within the boundaries of the Old Woodley Park Historic District. Because the property abuts the National

Zoo, which is part of Rock Creek Park, development on the property is subject to review by the Commission of Fine Arts.

**B. Existing and Proposed Uses**

The property is improved with a single family dwelling originally constructed in 1910. The property is also improved with a detached garage located approximately 7.5 feet to the southeast of the house. A plat of the property is attached as Exhibit B.

The Applicants propose to continue the use of the property as a single family dwelling and accomplish both interior and exterior renovations to the house and construction of additions on the second floor to expand the master bedroom and on the ground floor to add a bay, to slightly expand the kitchen and to connect the garage to the house. The kitchen expansion and the connection to the garage will be constructed over an expanded portion of the lower level. The Plans for the house showing the addition are attached as Exhibit C.

The existing dwelling and garage occupy 2,456 square feet. The Applicants propose to add additions which would cover approximately 227 square feet of the lot, in addition to the coverage of the existing house and garage. In an R-4 District, the maximum permitted percentage of lot occupancy for a detached single family dwelling is 40%. That would allow a maximum building area of 2,329 square feet. The existing condition therefore exceeds 40% by approximately 127 square feet and any addition would require special exception relief under §223.

**IV.  
STANDARD OF REVIEW**

A special exception use is presumed to be compatible with other uses permitted within the same zone district, provided the specific regulatory requirements are met. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695 (1981). In

reviewing applications for a special exception, the Commission's discretion is limited to determining whether the proposed exception satisfies the requirements set forth in the appropriate section of the Zoning Regulations. If the Applicants meet their burden, the Commission must ordinarily grant the application. *Id.*; *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (1973). Through the exhibits, testimony and other evidence before the Commission, the Applicants will establish that they comply with all applicable provisions to allow the proposed additions.

## **V.**

### **THE APPLICATION MEETS THE TEST FOR APPROVAL UNDER §223**

Under §223 of the Zoning Regulations, the Board may approve an addition to a one family dwelling which does not meet the normal area and bulk requirements of the subject zone district. As set forth above, assuming that the property will be zoned R-4, the existing building already exceeds the maximum 40 % lot occupancy permitted for a detached single family dwelling. The proposed additions will increase the lot occupancy by approximately 227 square feet, from approximately 42% to approximately 46%, an increase of approximately 4%. The existing house is also nonconforming as to the R-4 requirements for rear yard and side yard. The additions will not increase the degree of nonconformity and will be located no closer to any property line than the walls of the existing house and garage.

The subject house is the only single family dwelling on the northeast side of Cathedral Avenue in this location. The remaining property is devoted to the National Zoo and to apartment houses which are substantially taller and bigger than the subject house. The nearest apartment house is more than 150 feet away from the subject house. The properties on the southwest side of Cathedral Avenue are devoted to one and two family dwellings. The nearest residences are at least ninety feet away across the street.

The additions to the house are located toward the north and east sides of the lot, away from the closest residential buildings. The additions are no taller than the height of the existing house.

As set forth below, the Application complies with all the specific requirements of §223.

**A. §223.2 - The addition shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property.**

1. The light and air available to neighboring properties shall not be unduly affected (§223.2(a)).

The only abutting property to the Subject Property is land which is part of the National Zoo and is essentially undeveloped at that point. The subject property is separated from all other properties by an improved street, a paper street and a private driveway. The addition, to be constructed at the east corner of the house on the side away from the street, will not have any impact on the light and air available to neighboring properties.

2. The privacy of use and enjoyment of neighboring properties shall not be unduly compromised (§223.2(b))

The addition will not compromise in any way the privacy of use and enjoyment of neighboring properties. The addition will be located between the house and the garage and will not face on to any nearby residential property.

3. The addition, together with the original building, as viewed from the street, alley, or other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage (§223.2(c)).

The addition is setback at least 16 feet from the front of the house. Its location is such that it is essentially screened from public view by both the existing house and garage.

4. In demonstrating compliance with the above, 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 (§223.2(d)).

The application includes photographs of the existing dwelling and plans showing the proposed addition. Attached as Exhibit D is an aerial photograph, c. 2008, showing the Subject Property and its vicinity. Given the circumstances described above, no further material is necessary to describe the relationship between the proposed additions and the adjacent buildings and views from public ways.

- B. **§223.3 – The lot occupancy of the dwelling or flat, together with the addition, shall not exceed 50% in the R-1 and R-2 Districts or 70% in the R-3, R-4, and R-5 Districts.**

The lot occupancy of the dwelling with the addition is approximately 46%.

- C. **§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 design of the proposed addition is subject to review by both the Historic Preservation Review Board (HPRB) and the Commission of Fine Arts (CFA). The CFA approved the proposed additions and alterations on its consent calendar on May 21, 2009. A copy of the CFA transmittal letter to the Department of Consumer and Regulatory Affairs evidencing such approval is attached as Exhibit E. The staff of the HPRB has advised that no review by the Board will be necessary and that staff is prepared to sign-off on the permits when plans are presented for a building permit. The Applicants believe that no further design restrictions from the Commission will be required.

- D. §223.5 – This relief may not be used to permit the introduction or expansion of a nonconforming use as a special exception.**

The existing dwelling is not a nonconforming use and its continued use as a dwelling is not a nonconforming use.

- E. §3104.1 – A special exception may be granted where the Board determines that it is in harmony with the general purpose and intent of the Zoning Regulations and Maps and where the grant will not tend to affect adversely the use of neighboring property.**

Many of the existing structures along the opposite side of Cathedral Avenue and almost all of the structures along Woodley Place are permitted to have a maximum lot occupancy of 60% and almost all exceed 40%. Allowing a lot occupancy of approximately 46% on the Subject Property would be in harmony with what the Regulations allow elsewhere in the immediate vicinity. As discussed and demonstrated above under review of the specific criteria of §223, the grant of the requested exception will not affect adversely the use of neighboring property.

## **VI. COMMUNITY RESPONSE**

The Applicants have sent copies of all the materials filed in this application to Advisory Neighborhood Commission 3C and to the Single Member District Commissioner for the SMD in which the property is located. The Applicants are not aware whether ANC 3C has taken a position on the application. The Applicants are not aware of any opposition to the additions.

## **VII. LIST OF WITNESSES**

The Applicants may call the following witnesses to testify in support of their special exception application:

- A. Scott and/or Kristen Franklin, Owners and Applicants
- B. Margaret Gaughan Upton, AIA, Architect
- C. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP

**VIII.**  
**LIST OF EXHIBITS**

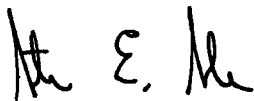
- Exhibit A: Excerpt from the plats of the Office of Tax Revenue showing the Subject Property and its vicinity
- Exhibit B: Plat of the Subject Property
- Exhibit C: Plans for the house including the proposed additions
- Exhibit D: Aerial photograph (c. 2008) showing the Subject Property and its vicinity
- Exhibit E: Transmittal from the Commission of Fine Arts to the Department of Consumer and Regulatory Affairs
- Exhibit F: Outlines of Witness Testimony

**IX.**  
**CONCLUSION**

For the reasons stated above, the requested relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Applicants therefore request that the Board grant the application.

Respectfully Submitted,

HOLLAND & KNIGHT LLP

By 

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Date: June 4, 2009