GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 19226[1] **of Christopher Pashby**, as amended,[2] pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, to allow an accessory garage to an existing one-family dwelling in the R-2 District at premises 5526 39th Street N.W. (Square 1747, Lot 37).

HEARING DATES: November 17, 2015, December 15, 2015, and January 26, 2016[3]
DECISION DATE: January 26, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 2 (original) and 54 (revised).)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3G and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3G, which is automatically a party to this application. The ANC submitted a timely report dated November 10, 2015, which indicated that at a regularly scheduled and properly noticed public meeting on

[1] The case was initially processed and noticed as Application No. 18843A, as it was originally filed as a modification of a previously filed and approved case. Upon clarification at the December 15, 2015 hearing by the Applicant that this application only pertains to construction of the garage and does not impact the previously approved two-story addition together with the filing of a revised self-certification form (Exhibit 54), the case was continued to January 26, 2016, to allow for additional notice and posting, and renumbered to reflect that the case proposes new construction, not a modification of previously approved plans.

[2] Although the case was originally framed as a request for a modification, the Applicant clarified that the relief being requested is for a garage structure and will not modify the plans for the rear deck that had been previously approved in Application No. 18843. The caption has been changed accordingly.

[3] The hearing was postponed from November 17, 2015 at the request of the neighbors in opposition and later continued from the hearing on December 15, 2015 to January 26, 2016.

November 9, 2015, the ANC voted 5 to 2 to support the application with one condition, i.e. that the Board require further discussion and mediation between the parties. (Exhibit 39.) A Single Member District Commissioner also submitted a letter in support of the opposing neighbors, particularly their request for a continuance so as to seek professional counsel, and reiterated the ANC's request for additional mediation. (Exhibit 45.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 38) and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 26.)

At the December 15, 2015 hearing, the Board granted party status in opposition to Lisa Terry, 3904 McKinley Street, N.W. and Bruce Meredith, 3902 McKinley Street, N.W. ("Opposition Party") (Exhibits 29 and 34) who were represented by Claude Bailey, Esq., Venable LLP. (Exhibit 48.) Another party request was submitted by Peter and Ann Kolker, 5524 39th Street, N.W. (Exhibit 30) but it was withdrawn before the December 15 hearing, based on testimony from the other neighbors in opposition. The Kolkers were represented by Meridith Moldenhauer, Esq., Griffin, Murphy, Moldenhauer, & Wiggins, LLP. (Exhibit 41.) At the January 26, 2016 hearing, the Opposition Party did not appear and through counsel, later informed staff that it withdrew its opposition. Subsequently, and with leave from the Board, the Opposition Party formally submitted its withdrawal to the record. (Exhibit 58.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, to allow an accessory garage to an existing one-family dwelling in the R-2 District. Upon withdrawal of the parties in opposition, the only parties to the case were the ANC and the Applicant. No parties appeared at the final public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, and 403.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 4.**

VOTE: **3-0-2** (Marnique Y. Heath, Michael G. Turnbull, and Frederick L. Hill, to APPROVE; Jeffrey L. Hinkle, not present or participating, and one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 8, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL

AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.