

**STATEMENT AND RECOMMENDATION BY MILTON BRUCE MEREDITH ON
CASE NUMBER #18843A FOR BZA HEARING ON DECEMBER 15, 2015**

- **EXECUTIVE SUMMARY - Thank you for granting me the opportunity to speak to Case 18843A. Why are we here today?** I share a common property line with the applicant. The applicant lives in a bachelor house on an undersized lot. He plans to build a comfortable large family house with an oversized garage and a large parking slab on the same undersized lot -- at the expense of assaulting the interests of adjacent neighbors. The proposed construction affects my property more than the other adjacent properties. It critically impacts my interests as described in Section 223 and my financial interests as well.
- **Section 223.2(a)** – The back of my house faces the side of 5526 39th Street, NW, which now stretches 25 feet across my southern property line. The applicant plans to extend his two story house 21 feet across my entire 46 foot southern property line. He would eliminate 100% of the sunlight and air movement that is now available to my backyard through this 21 foot open and leafy space. A sunlight study that documents my loss of sunlight due to the proposed construction follows the attachments to this statement. (Please see attachments.) Construction of this addition unduly affects my light and air.
- **Section 223.2(b)** – The addition would include six windows, two larger than any in the existing house – all looking down onto my patio and into my kitchen and bedroom. It would also allow only a six inch space between the proposed construction and my southern property line. Not 8 feet. Not 5 feet. But SIX INCHES. (Please see attachments.)
- Six inches leaves no room for planting privacy screening now or anytime in the future.
 - The construction activity requires digging a 10 foot deep stairway to the cellar along my property line only six inches away from my fence. How can that be done without damaging my fence during construction and / or causing my ground and fence to sink during construction or sometime in the future?
 - This addition unduly compromises my privacy and enjoyment of my property.
- **Recommendations in the Office of Planning Report should be disregarded because:**
- The Report covers only the garage, not the addition to the house. It is in complete error with regard to the Scope of Case 18843A.
 - The BZA mission must include consideration of the vital interests of adjacent neighbors as well as those of the applicant. These interests were expressed in the requests for Party Status submitted five days before the OP Report was delivered to the BZA, yet they were not considered by the OP in its Report to the BZA.
 - The OP Report mistakenly leads the BZA to believe that a 5 foot set aside is available along the north side of the garage for screening planting. Only six inches of space is available for screening planting. A stairway to the garage cellar takes up the other 4.5 feet.

Board of Zoning Adjustment
District of Columbia
CASE NO. 18843A
EXHIBIT NO. 46

- The OP Report falsely claims the garage construction would not unduly compromise the enjoyment of my property. The short view west from my adjacent property would be a garage standing 7 feet above the existing 6 foot fence with no space for screening plants. The smaller existing garage is screened by foliage. The garage would unduly compromise the enjoyment of my property.

➤ **Contrary to the ANC Report to the BZA...**

- The owners of the adjacent properties WERE "willing to make significant compromises." We welcomed Mediation, worked together to agree on compromises, discussed them in Mediation, and described them at the public ANC meeting.
- The adjacent neighbors did NOT approve the planned construction for the addition to the house last year. We had no real opportunity to object and defend our interests in 2014. The "six tenths of an inch measurement" difference between two surveyors was the critical issue in 2014. That issue would not provide standing before the ANC and the BZA to mount a successful effort to protect our interests. BZA staff we were told had already assured approval of the request. Why ever would we invest time and resources to engage in a battle lost from the beginning? We are completely engaged in full time careers.

We now know the 2014 Request was invalid, and that the 2015 request under 223 does give standing for the adjacent neighbors before the BZA. We are here strongly opposing the request for Special Exemption under Section 223.

➤ **RECOMMENDATION**

- **The proposed construction fails to meet the standards required under section 223, and the Office of Planning Report to you lacks all credibility.**
- **I URGE YOUR DISAPPROVAL OF THE REQUEST FOR A SPECIAL EXEMPTION IN CASE NUMBER #18843A.**

Thank you for your careful consideration of this matter.

.....

■ **SECTION 223 ISSUES RAISED BY CASE 19943A**

- **The issue that triggered the need for a Special Exemption under Section 223 in this Case was the Pashby plan to construct overlarge buildings on an undersized property – The planned 43.7 % lot occupancy exceeds the 40% limit in the R-2 District.**
- The standards for approval under section 223 are familiar to you and quite explicit: a special exception "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."

- With regard to Section (a) - The back of my house faces south where the sun tracks across the sky. It is from this direction that sunlight enters my property. The side of the Pashby two story house runs along my southern property line. It now covers 25 feet of that line. The proposed construction would extend the two story house 21 feet all the way across my 46 foot property line. It would eliminate 100% of the light and air movement I receive now through the existing 21 foot open and leafy space.
- With regard to Section (b)
 - The proposed construction would add six new windows looking down on my patio and into the bay windows in my kitchen and master bedroom. We learned from the Mediation that the "placement of the windows on the addition was designed to minimize any intrusion on their neighbors' privacy." The architect must not have got that message. Two of those windows are very large, larger by far than any of the windows in the existing structure, and they are positioned directly across from my kitchen bay window.
 - A further complication - The construction planned for the addition completely blocks the possibility of any privacy planting now or in the future. From south to north across the width of the property it includes a deck, a 17 foot wide building addition, and a 4.5 foot stairway to the cellar, leaving only six inches of open space to my property line.
 - The ANC message to you encourages some form of compromise particularly in "some form of privacy screening and landscaping," and the applicant indicates that "they were developing such plans." Six inches of ground on the shadow side of a wall 22.5 feet high leaves room for words, certainly not screening plants and landscaping. I repeat, not an 8 foot side yard setback, not a 5 foot side yard setback – BUT a six INCH open space between the proposed construction and my property line.
 - The construction activity requires digging a 10 foot deep stairway to the cellar along my property line only six inches away from my fence. How can that be done without damaging my fence during construction and / or causing my ground and fence to sink during construction or sometime in the future?
- **What About the "Substantially Adverse Effect" on the Use or Enjoyment of my Property?**
 - The ANC message to you states that "The proposed design would not" unduly" interfere with the neighbor's light and the enjoyment of their property." The Pashby Burden of Proof Section of the Case Documents states more emphatically that "The proposed expansion ...presents no impediment to light or privacy on the neighboring structures."
 - The problem with those statements is that neither are based on or supported by any evidence. No Member of the ANC or representative of the ANC or Pashby looked at the proposed construction site from my backyard. The Case Documents and the ANC statement include no supporting material. They simply assert that these construction plans have no negative impact on the adjacent properties.

- **On The Other Hand** – What do the people who live in the adjacent properties have to say about “Substantially Adverse Effects?”
 - **The detailed facts I have presented to you and the sunlight study I am submitting separately make it clear that the proposed construction under Case 18843A would unduly affect** light and air available to my neighboring property, and that the privacy of use and enjoyment of my neighboring property would be unduly compromised.
 - **Moreover All** of the residents actually living in the “neighboring structures” have submitted Party Status Requests to appear before the BZA in opposition to this requested special exemption, because of its “Substantially Adverse Effects.” It does not meet the standards for approval under Section 223.
 - **Restating the Problem that Got us Here** - 5526 39th Street, NW is a cute bachelor house on an undersized plot. The proposed construction would convert it to a comfortable family house with an oversized garage and a parking slab on the same undersized plot – but not without assaulting the interests of residents living in the adjacent properties.

■ **THE PLANNING COMMISSION REPORT ON Case 18843A LACKS ALL CREDIBILITY.**

- **The recommendations in the November 10, 2015 OP Report to the BZA should be disregarded because the OP Report is in complete error regarding the Scope of Case 18843A. It excludes the addition to the house, and covers only the garage.**
 - Case 18843A documentation makes clear that it includes BOTH the addition to the house and the garage:
 - The DCOZ Case Report “Case Description” of Case Number 18843A states the application of Pashby under this case is “for a special exception under paragraph 223...to allow a rear addition to an existing one-family detached dwelling in the R-2 District.”
 - The Architectural Plans and Elevations submitted by Thomas and Cooke on behalf of Pashby states: “AMENDMENT REQUESTED: Special exception pursuant to 223.1 to permit an addition and new accessory building (detached garage) to an existing non conforming structure (2001.3) that does not comply with the maximum lot occupancy (403.2) in the R-2 District. (40%).”
- **Examples of Specific Failures and Errors in the OP Report**
 - **The OP recommendation under Section 223.4 against any “protection of adjacent and nearby properties” should be disregarded.** The OP failed to review available, relevant information in the requests of the adjacent neighbors for Party Status on the need for protection of their vital interests. These requests were filed five days before OP filed its Report.

- The OP Report analysis regarding Section 223.1 asserts there is over 5 feet available for privacy screening and that the applicant is developing plans for that planting. The OP analysis fails to note that the proposed plan fills the side yard space by the garage to the north property line with a 4.5 foot wide stairway to the cellar under the garage. That leaves only a six inch space for privacy planting, not 5 feet. Bottom line: there is no room for privacy planting along the north property line by the garage.
- The OP conclusion regarding Section 223.2(b) that construction of the garage would not unduly compromise neighboring properties is wrong and should be disregarded. The construction plan proposes to demolish the existing garage well screened by existing foliage, and replace it with a structure 13 feet high, with only six inches available for privacy screening. After construction the short view west from my backyard patio would be a dominating garage rising seven feet above the existing 6' privacy fence - with no privacy planting possible now or in the future on that six inch space.

■ **ISSUES RAISED IN THE "EXCERPTS OF MINUTES FROM ANC3/4G MEETING ON NOVEMBER 9, 2015" SUBMITTED TO THE BZA, BUT NOT DISCUSSED IN MY STATEMENT.**

➤ **Who is Willing to Compromise?**

- The *Excerpt* States: "neither side in the dispute had been willing to make significant compromises."
- The record tells a different story – The affected adjacent neighbors responded very positively to Commissioner Bradfield's suggestion for mediation; pressed to have those meetings prior to the ANC meeting on November 9, 2015; worked hard prior to the Mediation meeting to develop suggestions for compromise; made clear at the Mediation meeting that our intent was to work something out, and gave several examples of approaches that would at least provide enough space for privacy planting. During my presentation at the ANC meeting I was asked specifically by a Commissioner whether we had any ideas about what could be done, and I described a few of them.

➤ **Did adjacent neighbors approve of the addition to the house in 2014, as implied by the "Excerpt?"**

- The point in 2014 was not whether we objected. The point was that we had "no real opportunity to object" and defend our interests. A "sixth tenths of an inch measurement" was hardly a realistic issue that would provide sufficient standing before the ANC and the BZA to mount a successful opposition to protect our interests. BZA staff we were told had already assured approval of the request. We faced a virtual done deal. Why ever invest time and resources for a cause lost from the beginning?
- We now know that the 2014 Special Exemption Request was not valid to begin with. The real issue that triggers the need for a Special Exemption under Section 223 in 2015 is that the Pashby plan is to build oversized structures on an undersized property. The 43.7 % planned lot occupancy exceeds the 40% limit. The 2015 request does give standing for the adjacent neighbors before the BZA, and we are strongly opposing the request for a Special Exemption under Section 223.



BEFORE

NOON DECEMBER 7, 2015

SUNLIGHT FROM

21 FOOT OPEN SPACE

**SHADOW FROM EXISTING HOUSE
AT 5226 39TH ST, NW**

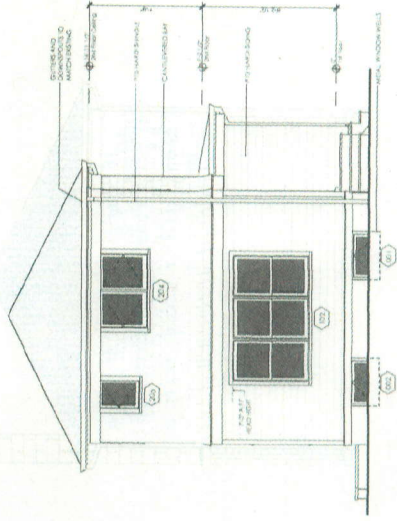


PROPOSED HOUSE ADDITION UNDER BZA CASE NUMBER 18843A

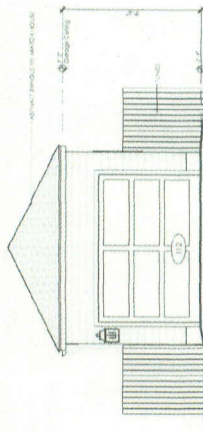
5526 39th ST NW

AFTER

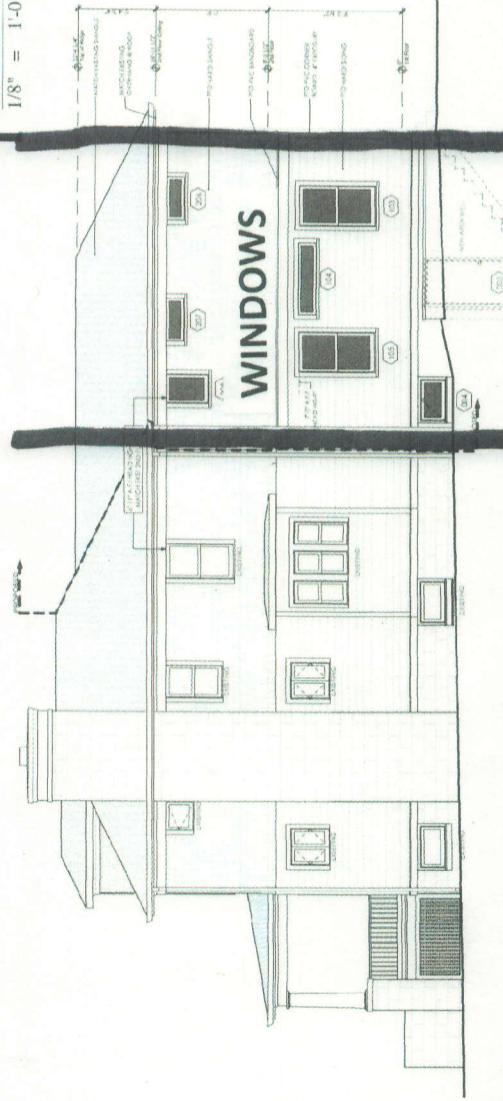




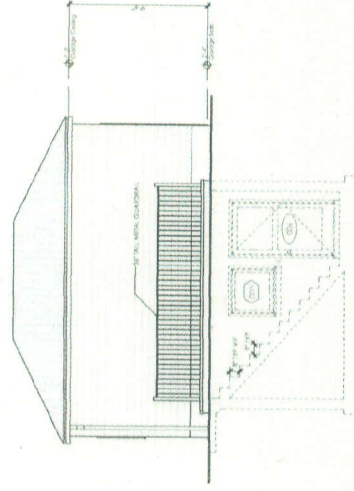
4 Garage Rear Elevation
 $\frac{1}{8"} = 1'-0"$



2 Right Elevation
 $\frac{1}{8"} = 1'-0"$



1 Rear Elevation
 $\frac{1}{8"} = 1'-0"$

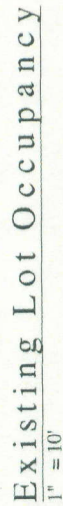


3 Garage Right Elevation
 $\frac{1}{8"} = 1'-0"$

WINDOWS FACING 3902 MCKINLEY ST, NW

Faces South

71





Appraise & Advise Associates
10506 Deakins Hall Drive, Adelphi, MD 20783
Cell: 301-337-0493

Letter of opinion - Solar path and shade impact caused by existing and future construction plan upon subject property's yard. **File # 015061**

DEC 4, 2015

For: Bruce Meredith, Inc.
3902 McKinley St NW
Washington, DC 20015

Subject site: 3902 McKinley St NW Washington, DC 20015

SUN PATH - SHADE SURVEY "Before /After Construction" impact "SOLAR CARD" results, photos and measurements.

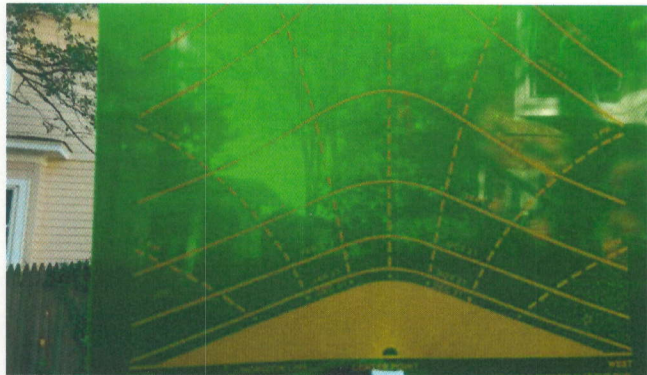


fig.1

Seasonal paths of the sun facing south (center of card) in "Solar Card" viewfinder



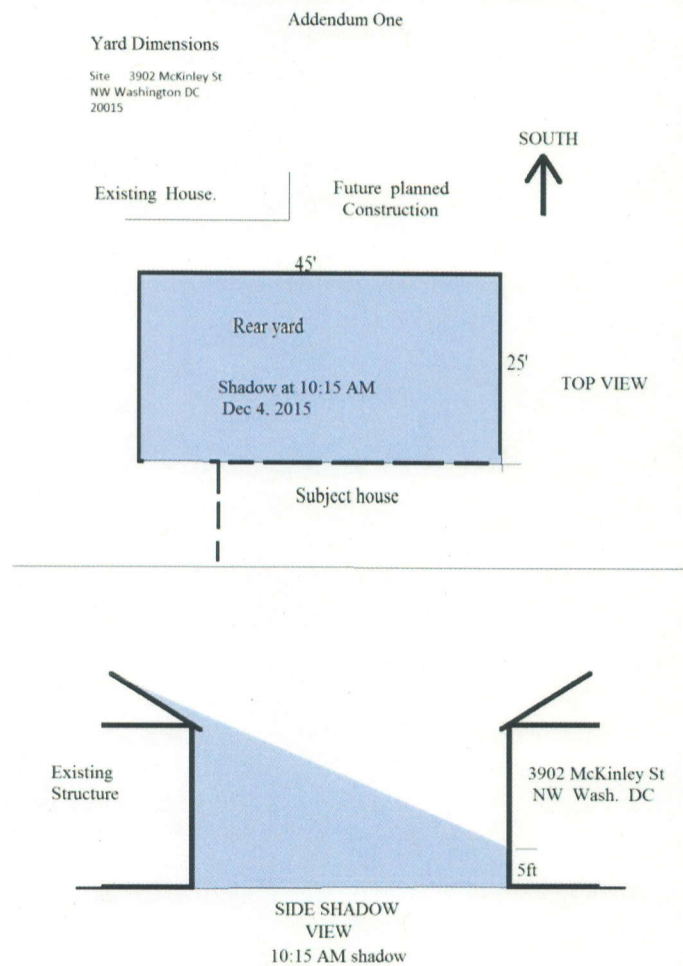
fig.2

Existing building



fig.3

Figure 3 - 10:15 AM Dec 4, 2015 shadow of existing structure on subject home rear wall, approximately five feet high.



Shade Impact Opinion for:
Bruce Meredith, Inc.
3902 McKinley St NW
Washington, DC 20015

It is my opinion as of 12/8/15 based upon a site survey taking measurements facing south (confirmed by a compass) and using a "solar card" semi-transparent viewfinder featured in fig.1 above, which presents the paths of the sun throughout the year, that this lot will be impacted by shade more than it is now from the new construction plans. From a simple observation of the shadow across the yard cast by the existing building, it appears the subject's rear yard will be shaded about twice as much as it is now if the plan for a two story 21 foot long addition is approved. During the site visit at 10 to 10:30 AM on December 4th, 2015, the entire rear yard was shaded by the existing structure, up to at least the mid morning hours. This shadow climbed up the subject house wall to five feet at 10:15 AM on the 4th. See Figures 1-3 above.

David W. Martin
Solar Site Surveyor

December 8, 2015

Appraise & Advise Associates
10506 Deakins Hall Drive, Adelphi, MD 20783
Cell: 301-337-0493



Davidwmartin5@verizon.net