District of Columbia Government
ADVISORY NEIGHBORHOOD COMMISSION 6A
P.O. Box 76680, Washington, D.C. 20013-6680
(202) 547-8741

September 4, 2002

Ms. Jerrily R. Kress, FAIA
Director, Office of Zoning
441 4th Street NW, Suite 210
Washington, DC 20001

Dear Ms. Kress:

Re: BZA Case No. 16934, Lot 77-78, Square 939, 920-922 Constitution Avenue NE (July 24, 2002)

This is in response to your letter of July 25 to former Advisory Neighborhood Commission (ANC) 6A Chair Ivette Basterrechea with regard to the ANC Appeal (BZA Case No. 16934) of a decision to issue a "Foundation Permit" on May 28 to contractor/owner Mr. John Casey, to build, as a matter of right, houses on either side of the historic house at 920 Constitution Avenue NE on Lot 77-78, Square 939. Ms. Basterrechea's term as Chair expired upon the election of new officers at the ANC's January 17, 2002 meeting. As the current Chair, I am responding to your request for additional information in connection with BZA Case No. 16934 and in accordance with BZA Form 125 instructions for filing an appeal with the Office of Zoning. We assume that the following information will meet those requirements and request that you notify us promptly if it does not.

In the meantime, given that work at 920 Constitution is proceeding rapidly and that the related Appeal may not be decided in time to prevent immediate and irreparable harm to the Civil War-era building, its site, and the neighboring property owners, we request that the BZA immediately recommend to appropriate parties at the Historic Preservation Office and at the Department of Consumer and Regulatory Affairs that a STOP WORK order should be issued or current permits revoked until the outcome of the Appeal is known.

Sincerely,

Keith Jarrell, Chair
Advisory Neighborhood Commission 6A

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Enclosures: addendum to Appeal 16934
copy of BZA Appeal No. 16811, Appellants' Letter Brief
copy of letter from Virginia Smith to Toye Bello Acting Zoning Administrator
reproductions of three (3) before-and-after photographs of 920 Constitution Avenue NE
detail of Sanborn map showing squares 939 and 964

BZA
Case No. 16934
Exhibit No. 14

Board of Zoning Adjustment
District of Columbia
CASE NO.16934
EXHIBIT NO.14

Addendum to Appeal No. 16934 (920 Constitution Avenue NE)

1. *A concise description of each and every exception being made to the administrative decision being appealed. This description must explain why the administrative decision was in error based on the relevant sections of Title 11 DCMR Zoning Regulations and/or the Zoning Map.*

   The ANC Appeal relies on precedent established in BZA Case No. 16811, an appeal, relating to 1018 Constitution, initiated in October 2001 by David and Janet Pritchard and supported by ANC6A.

2. *A detailed explanation of how you intend on proving your case.*

   The Pritchard Appeal provided a detailed set of arguments outlining why the proposed construction was not in compliance with zoning regulations. As you may remember, the Pritchards won the BZA's support 5 to 0. The house at 920 Constitution Avenue NE is similarly situated on its square and the regulations regarding side yard requirements, cited in the Pritchard Appeal, should apply.

   Enclosed are copies of BZA Appeal No. 16811, Appellants' Letter Brief and a letter from Virginia Smith, who lives beside 920 Constitution Avenue NE (in a house facing on 10th Street), to Acting Zoning Administrator Toye Bello, outlining the similarity between the two cases and requesting that the building permit for the work at 920 Constitution be revoked

3. *In the case of an alleged violation of an area requirement of the zoning regulations you must submit all relevant plats and plans from the DCRA permit file including a plat of the property in question drawn to scale and certified by a DC licensed survey engineer or DC Surveyor's Office. The plat must show boundaries and dimensions of the existing and proposed buildings and accessory buildings. Also required are, if any, architectural plans and elevations in sufficient detail to clearly illustrate any proposed building to be erected or altered, proposed landscaping/screens and building material as they relate to the specifics of the appeal. Plats and plans submitted shall not exceed 11" x 17" in size.*

   To demonstrate our point, we are enclosing a detail of a Sanborn map that shows the two relevant squares and graphically illustrates the similarity of the two cases..

4. *Proof that the owner of the property at 920–922 Constitution Avenue NE was served with the complete application of the appeal filed with this office.*

   The July meeting of the ANC, which would have fallen on July 4, was postponed until July 11. The public was duly notified of the date change in advance, and a quorum was present. The vote was 6 to 0 to support the ANC Appeal. This followed by one month a presentation by John Casey to ANC6A of his plans to demolish the side wing of a Civil War-era, freestanding, frame, farm house and build a new townhouse on either side of the historic house. Adjacent neighbors, who would be adversely affected by the proposed new construction, were in attendance at Mr. Casey's June presentation. The ANC Appeal in this case was filed on July 24, 2002 and assigned Case No. 16934. A copy of the letter notifying Mr. Casey of the Appeal will be forwarded under separate cover.

cc: Sharon Ambrose, Councilmember, Ward 6
Tersh Boasberg, Chair, Historic Preservation Review Board
David Clark, Director, DC Department of Consumer and Regulatory Affairs
Geoffrey Griffis, Chair, Board of Zoning Adjustment
David Maloney, Chief, DC Historic Preservation Office
Gregory McCarthy, DC State Historic Preservation Officer
Anthony Williams, Mayor of the District of Columbia
ANC6A Commissioners

John Casey

Virginia Gaddis
Janet and David Pritchard
Nancy Simpson
Virginia Smith

T. David Bell, President, DC Preservation League
Ann Hargrove, Committee of 100 on the Federal City
Nancy Metzger, Chair, CHRS Historic District Committee
Lyle Schauer, Chair, CHRS Zoning Committee
Kyle Pitsor, Coalition for Greater Preservation Enforcement

ANC6A files

Exhibit 15

Janet E.M. Pritchard
David J.M. Pritchard
204 11th Street NE
Washington, DC 20002

February 26, 2002

Board of Zoning Adjustment
441 4th Street NW, Room 210
Washington, DC 20001

RE: BZA No. 16811
1018 Constitution Avenue NE
Zone: CAP/ R-4
Hearing Date: 02/26/02

Dear Members of the Board:

To assist you in your consideration of the above-referenced appeal, Appellants submit the following summary of facts and legal argument.

## INTRODUCTION

A building permit (B431591) for "new construction" of a "two story addition on rear of existing home" was issued for 1018 Constitution Avenue NE ("1018 Constitution") on July 5, 2001. On August 7, Appellants requested that the permit be suspended. By letter dated August 20, 2001 ("letter of determination"), the Zoning Administrator issued a formal determination that the permit was "issued correctly, in accordance with Zoning Regulations and previous precedents, as established by past Zoning Administrators." *See* Attachment A. Appellants, Janet and David Pritchard, appeal that formal determination.

Appellants content that permit No. B431591 was granted in error. The proposed building addition does not comply with the side yard requirements of section 405.3 of the Zoning Regulations. Therefore, the Zoning Administrator should not have issued the permit without first determining whether a special exception to section 405.3 was warranted. To correct this error, Appellants ask the BZA to revoke the permit and instruct the applicant that he must first seek and obtain a special exception to section 405 of the zoning regulations before a new permit can be issued. This will require the BZA to interpret the side yard requirements of section 405 of the Zoning Regulations.

The Administrator's interpretation of a zoning regulation is entitled to deference by the Board of Zoning Adjustment only if it is a reasonable interpretation. In addition, in exercising his responsibility for authorizing or denying building permits in accordance with the zoning regulations, the Administrator must apply the regulations in a fair and consistent manner. The BZA is obligated to overturn any arbitrary or capricious decisions made by the Administrator.

As explained in greater detail below, the interpretation of section 405.3 offered by the

Administrator in the letter of determination is unreasonable in that it does not comport with the plain language of the regulation nor with the regulatory scheme as a whole. In addition, the Administrator has applied regulation 405.3 differently to similar situations in an arbitrary and capricious manner. Moreover, the Administrator's interpretation fails to follow the guiding principles provided in the regulations for resolving ambiguity or conflicts in the regulations. For all of these reasons, the BZA should reject the Administrator's interpretation of 405.3 and revoke the building permit issued to 1018 Constitution under this erroneous interpretation.

## SUMMARY OF FACTS

### Description of the Proposed Addition

As illustrated by the attached survey drawings, the side yard of 1018 Constitution Avenue NE abuts the rear lot line of Appellants' property, 204 11th Street NE. *See* Attachment B. The proposed addition would be extremely detrimental to Appellants' property, substantially reducing the light and air available to Appellants' home and to neighboring homes. The two-story addition would fill in the rear and side yard of 1018 Constitution where it abuts Appellants' property, resulting in a two-story brick wall running along almost the entirety of Appellants' rear property line -- a mere thirteen feet from the rear wall of Appellants' home.

### Timeline of Steps Taken to Protest the Permit, Leading Up to this Appeal

Since first learning of the proposed building plans, Appellants have taken timely steps to research relevant factual and legal issues, contact responsible government entities, and otherwise take the necessary steps to protest the permit that Appellants believe was granted in error. These efforts have culminated in this appeal. While Appellants have been unable to obtain a formal stop-work order pending this appeal, we have, at every step along the way, informed the owners of 1018 Constitution of our on-going concerns and legal objections to their building addition and of our unyielding intent to continue our protest until the matter can be authoritatively resolved by the BZA. A timeline detailing contacts made and steps taken is provided in attachment C.

## ARGUMENT

Section 199.1 of the zoning regulations defines a one-family, semi-detached dwelling as "a one-family dwelling, the wall on one side of which is either a party wall or a lot line wall, having one side yard." 11 DCMR sec. 199.1. 1018 Constitution meets this description. Section 405.3 of the zoning regulations provides that where a building "does not share a common division wall with an existing building or a building being constructed together with the new building, then it shall have a side yard on each free-standing side." 11 DCMR sec. 405.3. Section 405.2, read together with section 405.9, of the zoning regulations requires that a semi-detached dwelling in an

R-4 district maintain a side yard of at least eight feet. 1018 Constitution "does not share a common division wall with an existing building or a building being constructed together with the new building" on its east side. Therefore, under these regulations, it is required to maintain a side yard of at least eight feet on its east side unless the requirements for a special exception to section 405 are satisfied.[1]

In his letter of determination, the Zoning Administrator argued that a property owner in an R-4 district is entitled to convert a semi-detached dwelling into a row dwelling as a matter of right, and thus is not bound by the side yard requirements of section 405. The letter further argues that section 405.3 was "intended to ensure . . . a common division wall between each two adjacent properties," implying that section 405.3 simply does not apply to cases such as 1018 Constitution, where there is no possibility for a common division wall along one side of the property.

## I. The Administrator's Interpretation of Section 405.3 Does Not Comport with the Plain Language of Section 405.3

The meaning and intent of section 405.3 appears to be plain on its face: where a one-family dwelling "does not share a common division wall with an existing building or a building being constructed together with the new building then it *shall* have a side yard on the resulting free standing side." 11 DCMR sec. 405.3 (emphasis added). Given the configuration of 1018 Constitution and its relationship to the row of houses facing 11th Street, there is no possibility that 1018 Constitution could share a common division wall on its east side. Therefore, it must maintain a side yard on the resulting free-standing side.

Instead, the Administrator attempts to read section 405.3 to mean that, where two buildings are adjacent, they must share a common division wall. *See* Letter of Determination, Attachment A (arguing that section 405.3 was "intended to ensure . . . a common division wall between each two adjacent properties" and that 1018 Constitution Avenue NE "has met that requirement by sharing a common division wall with an adjacent structure" (apparently referring to the adjacent row house on its *west* side)). Clearly, the Administrator's interpretation of section 405.3 fails to comport with the plain language of section 405.3. While the regulation does support a ruling that adjacent properties should share a common division wall, it is primarily concerned with those circumstances where a building is *not* adjacent to another building and therefore does *not* share a common division wall with an adjacent building. In such circumstances, the regulation plainly states, the building "*shall have a side yard on each resulting free-standing side.*" 11 DCMR sec. 405.3 (emphasis added).

[1] A special exception may be applied for and granted pursuant to section 223 of the regulations. Section 223, in turn, provides that an exception shall be granted only if "the addition shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property," in particular, on the light and air available to, or the privacy and enjoyment of, neighboring properties. 11 DCMR sec. 223.

## II. The Administrator's Grant of the Permit at Issue Without Requiring a Special Exception to the Side Yard Requirements of Section 405.3 Contrasts with the Treatment of a Similarly Situated Property.

Even if the Administrator's justification for his decision in this case -- that a semi-detached dwelling can, as a matter of right, convert to a row dwelling notwithstanding the requirements of section 405.3 -- was based upon a reasonable interpretation of section 405.3, Appellants are aware of at least one circumstance where the Office of Zoning has failed to apply the same interpretation in a situation substantially similar to the one at issue in this appeal.

In the case of 220 5th Street SE, the Zoning Administrator required the owners of a semi-detached, single-family dwelling to obtain a special exception to section 405.3 in order to build an addition to their existing building where the resulting building would not share a common division wall with an adjacent building. *See* BZA Case No. 16755. Prior to the proposed addition, the building at 220 5th Street had a 8'5" side yard on its south side. The property owner sought to construct a two-story addition in the side yard. The adjacent property owners' house, 222 5th Street SE, is located 3'7" away from the property line. Thus, the proposed addition would not be able to share a division wall with the neighboring property.

Accordingly, the owners of 220 5th Street applied for a special exception to sections 405.2 and 405.3 of the zoning regulations. In their application, the owners asked for relief from Sections 405.2 and 405.3, which respectively require a side yard for any one-family semi-detached dwelling and a side yard when a one-family dwelling does not share a common division wall with an existing building. The Zoning Administrator confirmed that the proposed addition required BZA approval to obtain a special exception pursuant to Section 223 because the addition would not comply with the requirements of Sections 405.2 and 405.3.

The situation of 220 5th Street is substantially similar to the situation at 1018 Constitution . 1018 Constitution shares a division wall with a row house on its west side and has a side yard on its east side. The existing side yard is 7 feet wide along the front 32.4 feet of the house and 12.33 feet wide along the rear 16 feet of the house. The property owner seeks to construct a two-story addition in the existing side and rear yards. The adjacent property owners' homes (200, 202, 204, 206, and 208 11th Street NE) all face 11th Street. Thus, the proposed addition would not be able to share a division wall with the neighboring properties.

Notwithstanding their obvious similarities, the Zoning Administrator has inexplicably treated these two situations differently. The only difference between the 220 5th Street and 1018 Constitution is that, in the Constitution Avenue case, the existing side yard abuts the rear yards rather than the side yards of the adjacent properties. There is nothing in the letter of determination that suggests it should matter whether the side yard of the property seeking to build an addition abuts the side yard or the rear yard of neighboring property. The letter simply asserts that an owner may convert a semi-detached dwelling to a row dwelling as a matter of right, and section 405.3 is not intended to compromise this right. *See* Letter of Determination, Attachment A ("The intention of Section 405.3 is not to compromise the right of a property to establish the type of structure/use that is allowed as a matter of right by requiring a side yard and

therefore forcing upon a property owner a semi-detached or detached structure. However, it is intended to ensure the establishment of a common division wall between each two adjacent properties. The referenced property [1018 Constitution] has met that requirement by sharing a common division wall with an adjacent structure.") (emphasis in original).

The Administrator rightly held that the owners of 220 5th Street could not fill in their existing side yard where the resulting addition would not share a common division wall an adjacent structure without first obtaining a special exception to section 405.3. In order to obtain this special exception, the owners of 220 5th Street had to first demonstrate to the BZA that the building addition would not interfere with the light and air to neighboring properties.[2] Likewise, the owners of 1018 Constitution should be required to seek and obtain a special exception to section 405.3 before being permitted to fill in their existing side yard. There is no substantive basis for treating the permit applications for 220 5th Street and 1018 Constitution differently.

## III. The Administrator's Interpretation of Section 405.3 Does Not Comport With the Overall Regulatory Scheme.

Even if the Administrator were able to offer a coherent explanation for treating 1018 Constitution and 220 5th Street differently, his interpretation of section 405.3 must nevertheless be overruled because it does not comport with the regulatory scheme as a whole.

### A. The Administrator's Interpretation of Section 405.3 Renders Section 405.5 Superfluous.

The Zoning Administrator's interpretation is that the regulations allow, as a matter of right, an owner of a semi-detached house to convert to a row house with no side yard. Under this interpretation, section Section 405.5, which exempts corner lots from the side yard requirements of 405.3 -- is superflous. *See* 11 DCMR 405.5 ("A side yard shall not be required along a side street abutting a corner lot in a Residence district."). Section 405.5 makes sense under Appellants' interpretation of section 405.3, however. Appellants argue that 405.3 requires a side yard where a dwelling cannot share a common division wall with an adjacent building. Without section 405.5, this would mean that any house on the end of a row would be required to have a side yard. Most end-row houses abut an alley or a street. Pursuant to section 405.5, such homes would not be required to maintain a side yard. However, in the relatively rarer circumstance -- such as in the present case -- where the end-row house abuts another property rather than a street or an alley, section 405.3 serves to protect neighboring properties' concerns for air and light by requiring a side yard.

[2] The owners of 220 5th Street were granted a special exception following a BZA hearing at which no neighbors protested the permit. Indeed, the neighbors most affected, 222 5th Street SE, provided a statement in support of the proposed addition. *See* BZA Case No. 16755.

**B. The Administrator's Interpretation of Section 405.3 is Incongruous With Other Parts of Section 405.**

The Administrator seeks to rely on section 405.6 of the zoning regulations to support his contention that the owner of an existing semi-detached dwelling in an R-4 district can convert the property to a row dwelling as a matter of right, notwithstanding the side yard requirements set forth in section 405.3. In his letter of determination, the Administrator states as follows:

> The provision of Section 405.6 of DCMR Title 11 is instructive. In summary, Section 405.6 reiterates that with the exception of the provision of Sections 405.1 and 405.2: "A side yard shall not be required in an R-3, R-4, R-5-B, R-5-C, R-5-D or R-5-E zone." If, however, a side yard were provided, at the discretion of the owner, it shall be no less that eight (8) feet.

*See* Letter of Determination, Attachment A.

Section 405.6 is indeed instructive, but it favors Appellants' interpretation of section 405.3, not that of the Administrator. The Administrator fails to note that section 405.2 -- which provides an express exception to section 405.6's provision that side yards are not generally required -- requires the owner of a one-family semi-detached dwelling to maintain a side yard of at least eight feet. 11 DCMR sec. 405.2. The suggestion that the owner of an existing semi-detached dwelling can escape the requirements of section 405.2 (and 405.3) by converting his dwelling into a row house effectively strips these regulations of any real meaning. If regulations *requiring* side yards in the case of semi-detached dwellings are not intended to apply to the owners of existing semi-detached dwellings, then to whom could they have been intended to apply?

The logical way to reconcile these side yard requirements with the Administrator's contention that a row dwelling is allowed in an R-4 district as a matter of right is to recognize that section 405 was adopted on May 12, 1958 and imposed upon the already-developed (and historically preserved) neighborhood of Capital Hill. Although those acquiring undeveloped properties may be able to build a row house as a matter of right, those possessing or acquiringexisting semi-detached dwellings remain subject to the side yard requirements of section

405.[3] This interpretation is consistent with section 405.8 which provides that, for semi-detached buildings "existing on or before May 12, 1958 with a side yard of less than eight feet wide, an extension or addition may be made to the building, *provided that the width of the existing side yard shall not be decreased.*" 11 DCMR 405.8 (emphasis added).

### C. The Administrator's Interpretation of Section 405.3 Does Not Make Sense In Light of Section 223's Provisions For Granting Exceptions to Section 405.3's Side Yard Requirements.

Any reasonable interpretation of section 405.3 should also be evaluated in light of the governing principles stated in section 223, the provision by which a property owner may seek an exception to section 405's side yard requirements.

The interpretation of section 405.3 offered by Appellants is fully consistent with section 223. Section 405 specifies those circumstances in which side yards are required. Side yard requirements provide for open spaces between buildings and thus for the flow of air and light between neighboring buildings. Accordingly, section 223 allows a building addition to be permitted notwithstanding its failure to comply with section 405's side yard requirements only if the "addition 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; . . . ." 11 DCMR sec. 223.2. Thus, section 223 ensures that the purpose and spirit of section 405 shall be preserved even where an owner obtains an exception to strict application of section 405's specific requirements. Conversely, exceptions to section 405 may be made where such exceptions would not, in practical effect, be contrary to the regulation's purpose.

Under the Administrator's interpretation, however, section 223 is *more* restrictive than section 405. To obtain an exception to section 405.3, an owner needs to demonstrate that the proposed building addition would not interfere with the light, air, privacy, or enjoyment of neighboring properties. However, the Administrator's interpretation of 405.3 appears to have little to do with protecting the rights of neighboring properties. Thus, under the Administrator's interpretation, the exception is stricter than the rule, which is clearly absurd.

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[3] The Administrator also expresses concern that, under Appellants' proposed interpretation of the regulations, a newly created 1800 square foot lot could subsequently be required to have an eight foot side yard set back. *See* Letter of Determination, Attachment A. However, if the regulations, enacted in 1958, are properly understood to be imposed on an already-developed neighborhood, then the hypothetical impact of this interpretation on an undeveloped parcel of land are inapposite. A semi-detached dwelling built prior to 1958 on a lot adjoining other occupied parcels can be assumed to have reasonable value as a semi-detached dwelling, even without any further additions. While limitations on building additions do, of course, burden regulated properties, the Board need not worry that its adoption of this interpretation would render any properties worthless. Rather, Appellants' interpretation is consistent with the goal of balancing the desire of property owners to improve their existing properties with the potentially negative impact such improvements might have on neighboring properties. *See also* 11 DCMR sec. 101.2(c) (stating that the zoning regulations should be interpreted in a manner that encourages "the *stability* of districts and of land values in those districts" ) (emphasis added)).

## IV. The Administrator's Interpretation of Section 405.3 Does Not Adhere to the Guidelines for Interpreting and Applying the Regulations.

The Administrator admits that "there seemingly is ambiguous or contradictory language between section 405.3" and his contention that the owner of a semi-detached dwelling located in an R-4 district may build an addition converting it into a row dwelling as a matter of right. *See* Letter of Determination, Attachment A. The Administrator chooses to resolve this apparent conflict by allowing the purported right to a row dwelling in an R-4 district to trump the side yard requirements of section 405.3. This choice violates section 101 of the zoning regulations. Section 101, entitled "Interpretation and Application" sets forth principles to guide those authorized to interpret and apply the regulatons in the case of seeming ambiguity or apparent conflicts with other laws or regulations.

As these guidelines make plain, any ambiguity in the regulations should be resolved in favor of the interpretation that would best "provide light and air" and/or "encourage[] the stability of districts and of land value." 11 DCMR sec. 101.1(a), 101.2(c). Nowhere do the guidelines favor the improvement of an individual residential property owner's property at the expense of these principles. While the owners of 1018 Constitution seek to improve their own property, the regulations' guiding principles are more concerned with the *stability* of land value. *See* 11 DCMR sec. 101.2(c). While the proposed addition would presumably increase the value of 1018 Constitution, it would undoubtedly *decrease* the value of Appellants' property at 204 11th Street and neighboring properties facing 11th Street.

Significantly, the guidelines do not set down any arbitrary rule to govern potential conflicts of law between the zoning regulations and other statutes or municipal regulations. Rather, the guidelines provide a substantive principle expressly favoring whichever rule provides for larger yards and more open spaces. *See* 11 DCMR 101.3, 101.4. The same principle should apply to favor the preservation of existing side yards to the extent that section 405's side yard requirements conflict with any purported right to increase the density of buildings by converting an existing semi-detached dwelling into a row dwelling.

Finally, the BZA should, of course, be mindful of the precedential impact of the decision in this case. If the BZA were to decide to uphold the Administrator's interpretation and application of section 405.3 in this case, it would create an unfortunate precedent for a new tenement-style standard of building density. Rather than preserve some sense of space, order, and air-flow in Capital Hill's historic neighborhood, such a precedent would would abandon the guidelines' values of air and light, open spaces, and stability of land values and cause the homes on blocks such as Appellants' to feel like tenement-style buildings found in much more densely built cities such as New York, where residential buildings are essentially closed in by brick walls on three sides, rather than only two.

## CONCLUSION

The Zoning Administrator's interpretations of the zoning regulations are only entitled to deference by the BZA if the interpretation offered is reasonable. As explained above, the interpretation of section 405.3 offered by the Administrator cannot be considered reasonable because it fails to comport with the plain language of section 405.3 or with the regulatory scheme as a whole. Therefore, the BZA should reject the Administrator's interpretation of section 405.3.

The BZA is also obligated to overturn arbitrary and capricious rulemaking on the part of the Zoning Administrator. The rule offered to justify the Administrator's decision to grant a permit in this case was not invoked in a similar case; the different treatment of the two cases appears to be arbitrary. Therefore, the permit decision in this case should be overturned.

Respectfully Submitted By

Janet E.M. Pritchard

Janet E.M. Pritchard, Appellant

David J. M. Pritchard, Appellant

Mrs. Virginia Smith
206 10th Street NE
Washington DC 20002

July 24, 2002

Mr. Toye Bello
Acting Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capital Street NE
Washington, DC 20002

**RE: Request for the revocation of building permit No. B445856 for 922 Constitution Avenue NE, due to violations of DC Zoning Regulations**

Dear Mr. Bello:

I write to ask your immediate action to revoke Building Permit No. B445856, a "foundation only" permit for 922 Constitution Avenue NE, because it was erroneously issued. Although the current permit is for "foundation only," the permit application indicates that the owner, John Casey, intends to eventually construct a three-story, single-family dwelling extending the entire width of the lot at 922 Constitution Avenue NE.

I own and reside at 206 10th Street NE. The rear property line of my property abuts the side property line of 922 Constitution Avenue NE. Mr. Casey has already begun digging to lay the foundation for a three-story single-family dwelling at 922 Constitution Avenue. Clearly, he intends to erect a building with a face-on-line wall along the side property line -- i.e., along my rear property line. Indeed, in a letter delivered to my home by the builders hired by Mr. Casey, the Project Manager indicated that the foundation work would entail the removal of my existing retaining wall and that "the foundation of the new house will become your new retaining wall."

The property at 922 Constitution Avenue is not currently occupied by any buildings. Prior to the proposed construction, the only building between my home and a row house at 916 Constitution Avenue was a small, two-story historic single-family dwelling at 920 Constitution Avenue. It is my understanding that Mr. Casey owns the lots located at 920 and 918 as well as 922 and that he intends to construct new three-story single family dwellings in lots 918 and 922 and to convert the historic building at 920 into a three-story single-family dwelling.

The permit application for 922 Constitution Avenue appears to be flawed and incomplete because it fails to provide any diagrams indicating the scope of the proposed foundation or its relationship to and impact upon neighboring properties. In fact, the intended building would result in the erection of a face-on-line wall running the entirety of my rear property line and those of my neighbors on 10th Street NE ("the 10th Street properties"). The 10th Street properties

have very shallow rear yards. The proposed foundation wall would be situated only a few feet from the rear wall of my home. If the anticipated three-story dwelling is completed, the three-story face-on-line wall would severely shadow my home. The other 10th Street properties would be similarly affected.

Because the side lot line of 922 Constitution Avenue abuts the rear yards of the 10th Street properties, it is not possible for the three-story building proposed for 922 Constitution Avenue to share a common division wall where it abuts these properties. Therefore, the proposed three-story building will be in violation of section 405.3 of Title 11 of the District of Columbia Zoning Regulations. Section 405.3 provides that "*when a one-family dwelling . . . is* erected that does not share a common division wall with an existing building or a building being constructed together with the new building, then it shall have a side yard on each resulting free-standing side." See 11 DCMR sec. 405.3.

The Board of Zoning Adjustment was recently required to interpret section 405.3 in a similar case, BZA Appeal No. 16811. On June 4, 2002, the BZA decided in that case that a building permit granted to 1018 Constitution Avenue NE for the construction of a building addition resulting in a face-on-line wall running along the rear lot lines of a row of houses facing 11th Street was issued in error, in violation of section 405.3.

I attended a hearing before the Historic Preservation Review Board pertaining to the proposed buildings for 918-922 Constitution Avenue on June 21, 2002. At that hearing, I stated that the proposed building at 922 Constitution Avenue would violate section 405.3 of the Zoning Regulations as interpreted by the BZA's recent decision in BZA Appeal No. 16811. In response, representatives from the Zoning Division stated simply that the present case is "different from 1018 Constitution Avenue" and therefore that the BZA's decision in Appeal No. 16811 does not apply. However, no one was able to specify *how* the present case differs significantly from the case in BZA Appeal No. 16811 or *why* the BZA's recent decision should not apply. Apparently, this is because the two cases cannot be distinguished in any meaningful way. Therefore, you should promptly revoke the permit granted to 922 Constitution Avenue.

In the 1018 Constitution Avenue case, the building addition at issue was completed before the BZA reached its decision nullifying the permit in question. This has resulted in the unfortunate situation in which the owners at 1018 Constitution Avenue will need to tear down a completed building addition which they constructed in reliance on an erroneously granted permit issued by the Zoning Division. In that case, the proper interpretation of 405.3 was somewhat uncertain, as the BZA had not had occasion to consider this specific regulation previously. In light of the BZA's recent decision in Appeal No. 16811, however, it is irresponsible for the Zoning Division to grant permit No. B445856 to 922 Constitution Avenue. Construction to implement the work specified in the permit is already underway. On July 11, 2002, ANC 6A voted to appeal permit No. B445856 on the grounds that it is inconsistent with the BZA's decision in Appeal No. 16811. *In order to protect the interests of all sides*, you should, at the

very least, suspend the building permit until the relevance and application of 405.3 in this case can be clarified by the BZA.

Thank you for your consideration of this matter and I look forward to your prompt response.

Sincerely,

Virginia Smith

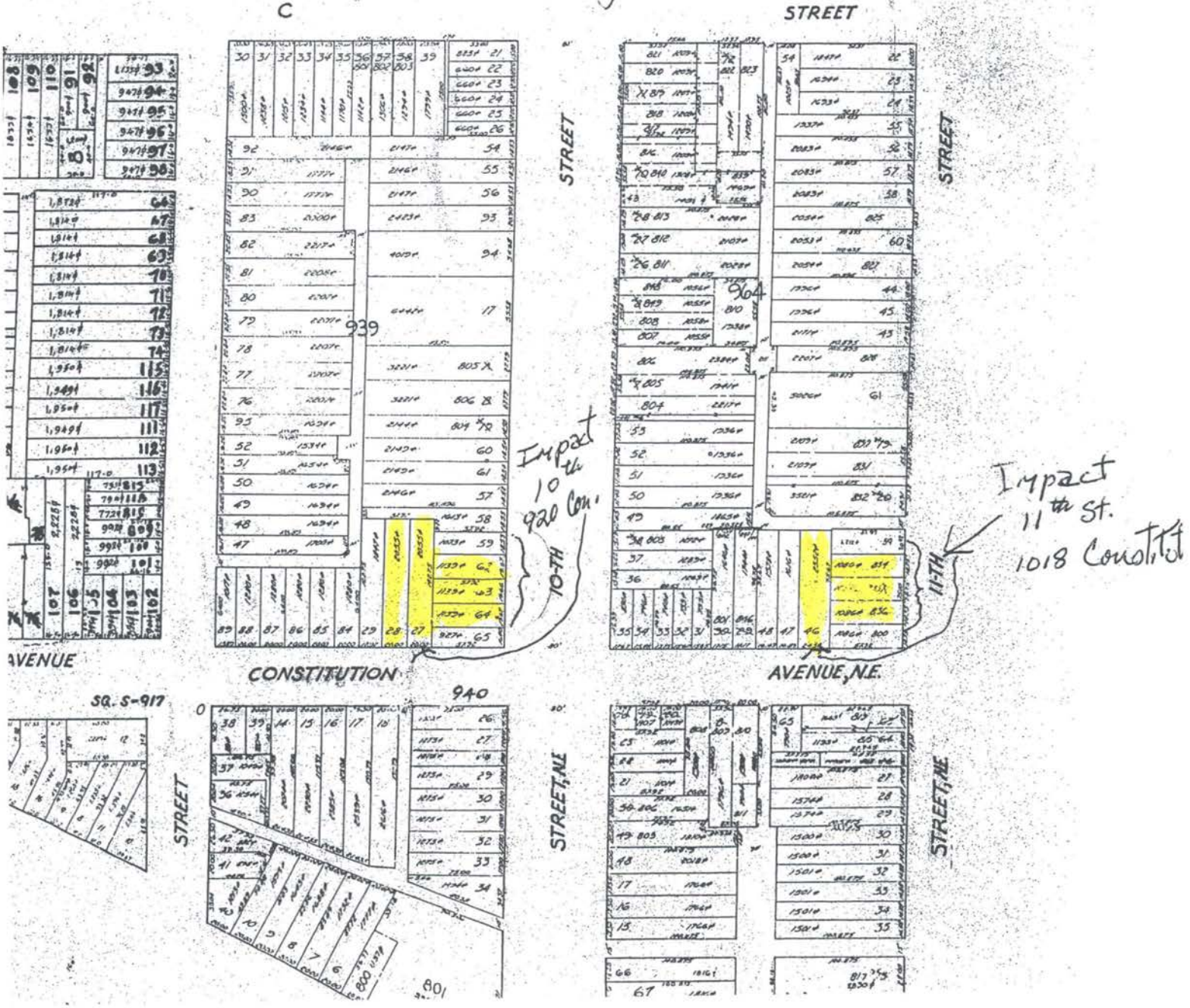
Virginia Smith

cc. Chairperson
Area Neighborhood Commission 6A
P.O. Box 76680
Washington, DC 20002

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hi-lite area of impact of building permit



920 Constitution



← 200 10th

West view of 920






920
Constitution