Advisory Neighborhood Commission 6A
REPRESENTATIVE FOR #16934
Virginia W. Gaddis, 238 11th Street NE, 20002

March 12, 2003

16934

Entry to record relative to challenge of Holland and Knight re Appropriateness of ANC'S Appeal of Permit # 445856 - July 24 2002

According to a Standard Dictionary* the definition of Foundation is:

> A structure upon which a building or machine is erected, usually wholly or principally of masonry; usually below the surface of the ground, or the portion that constitutes a base; sometimes a platform on which the upper portion rests.
>
> Also the act of founding or establishing that by which it is supported or sustained.

Because the upper portion rests on the base, it cannot become a presence without the foundation.

In the case of a foundation only, the lack of superstructure continues to allow light and air (in this case factors to support elevation of spirit and sense of connection and community.

Immediately with the addition of superstructure, as HPRB concept adds to the wording on the permit, the permit contributes to knowledge of what it is, the paper, portends.

For one, the carrying off of the soil that sustained the greenery, (trees, hedges, small wild life havens and an eternity of an ecosystem) is a loss to air quality, absorption of water, and of history. A side yard gives these to the total environment

Statutes of 223 and 405.3 have been written into the law for the protection of a population of the city -- and to continue the gifts of earlier owners who had a sense of what encourages, what protects, what sustains.

It takes a lack of feeling for the entire community and the natural environment to plan its destruction while these statutes are on the books.

Fortunately these statutes do not become null and void when new owners and processors of permit applications use tiny print to warn applicants that this application does not apply without permission of their shared boundary neighbors.

It might suggest the enforcer and guiding spirit of men and women of goodwill has a turn to make things right for those suffering persons on Tenth Street.

This Board of Zoning Adjustment showed unusual wisdom and courage in its June 4th report and October 15, 2002 Orders that govern this decision and situation today. We pray that this integrity of purpose continues to enlighten this city.

Virginia W. Gaddis
202 547-0378
547-0378

* Standard Funk + Wagnalls '31

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BZA
Case No. 16934
Exhibit No. 46

Board of Zoning Adjustment
District of Columbia
CASE NO.16934
EXHIBIT NO.46

Janet Meissner Pritchard
204 11th Street NE
Washington, DC 20002

January 21, 2003

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

RE: BZA Appeal No. 16934
922 Constitution Avenue NE (Square 939, Lot 28)
Hearing Date: February 18, 2003

Dear Members of the Board:

Virginia Gaddis, a Community Member of the ANC 6A Zoning and Licensing Committee and the designated representative of ANC 6A for the above-referenced case, has asked me to write a letter brief advocating that this case is controlled by the Board's holding in Appeal No. 16811. Appeal No. 16811 was filed by me and my husband in October 2001 and was decided by the Board on June 4, 2002. A written decision was issued on October 15, 2002. *See Appeal No. 16811 of David and Janet Pritchard* (Government of the District of Columbia Board of Zoning Adjustment, October 15, 2002) (hereinafter, Pritchard Appeal). As in the Pritchard Appeal, the challenged building in this appeal, if left to stand, will be very detrimental to the value and enjoyment of several homes on the 200 block of 10th Street NE, because the new building severely overshadows the rear of the 10th Street residences. As in the Pritchard Appeal, this case will turn on the Board's interpretation of the side yard requirements in 11 DCMR sec. 405. Out of a sense of empathy with my 10th Street neighbors and in an effort to assist the Board in its consideration of this case, I offer the following letter brief on behalf of ANC 6A.[1]

INTRODUCTION

The present case was initially scheduled for hearing on November 19, 2002. On that date, the ANC granted the request for a postponement submitted by the Appellant, ANC 6A, and rescheduled the hearing for February 18, 2003. In addition, the Chair asked the ANC to submit its case to the record no later than January 21, 2003. Responses by those opposing the appeal are due February 3, 2003. In accordance with this request, ANC 6A submits this letter brief outlining a summary of facts and legal argument supporting the appeal. In addition, ANC 6A reserves the right to submit additional arguments in reply to submissions filed by opponents on February 3rd.

[1] Please note that I have not been formally retained by the ANC, and may not be able to attend the scheduled hearing in this case. I have simply drafted this brief as a favor to Ms. Gaddis and my neighbors.

SUMMARY OF FACTS

Permits Issued and Construction Undertaken

During the early summer of 2002, the Zoning Division issued a "foundation only" permit (permit no. B445856) for 922 Constitution Avenue NE. With the understanding that the owner of the property intended to follow up this permit with a request for a permit to build a multi-story row dwelling extending the entire width and most of the depth of the lot, ANC 6A filed this appeal. As expected, the owner requested an additional permit to "construct a new single family dwelling attached row home" at 922 Constitution Avenue NE. The Zoning Division granted the later request by issuing permit no. B447067 on July 12, 2002. The owner proceeded to construct a row dwelling without any side yards at 922 Constitution Avenue NE. As far as can be observed from Constitution Avenue, the exterior of the new building is already substantially complete as of the date of this writing.

Prior to the summer of 2002, there was no building in the lot now identified as 922 Constitution Avenue NE. Rather, there was vacant space between a two-story, detached, single family dwelling at 920 Constitution Avenue NE and the home occupying the northwest corner of Constitution Avenue and 10th Street NE. In this appeal, ANC 6A alleges that the newly constructed building at 922 Constitution Avenue fails to comply with the side yard requirements in 11 DCMR sec. 405.

Configuration of 922 Constitution Avenue NE in Relation to Neighboring Properties

The newly constructed building at 922 Constitution Avenue NE is a "row dwelling" as defined in the Zoning Regulations, in that it is a "dwelling having no side yards." 11 DCMR sec. 199.1. The subject building shares a common division wall with a row dwelling on the adjacent lot to the west.

The lot adjacent to the subject property on the east is a corner lot occupying the northwest corner of the intersection at Constitution Avenue and 10th Street NE. The residence occupying this lot (hereinafter, "the corner home") shares a common division wall on its north side with a row dwelling at 202 10th Street NE and has windows on its remaining three sides -- including the side facing the subject building. In other words, the corner home is the first of a row of dwellings extending up 10th Street. The eastern wall of the subject building abuts a small basement-level garage of the corner home. Above this small garage is a small single-story section of the first floor of the corner home. While the rest of the corner home has a brick exterior and extends for two stories above the basement level, this small section above the garage is single-story and faced in siding. The section above the garage has windows facing 922 Constitution Avenue NE. Because the section over the garage is set in slightly, it is possible for the subject building to abut the wall of the garage at the basement level while remaining a few feet apart from

the section above the garage. With the exception of this small garage, the basement level of the corner home is only partially exposed. The small hill on which the corner home rests is dug out in front of the garage only, so as to allow entry into the garage from Constitution Avenue. Also, although the main entry to the corner home faces Constitution Avenue and not 10th Street, the side facing the subject building appears to be the rear, and not the side, of the corner home. This is evidenced, for example, by the fact that the two stories above the basement level have windows facing the subject property, whereas the length of the northern side of the building shares a common division wall with the entire length of a row dwelling on 10th Street, in the side-by-side style of row dwellings that is typical in the Capital Hill Historic District in which the buildings are located.

As is discussed in more detail below, a central issue in this appeal is whether the basement-level garage of the corner home suffices to provide a "common division wall" for the subject building for the purposes of subsection 405.3 of the Zoning Regulations.

Behind the corner home, the eastern side lot line of the subject property coincides with the rear lot lines of four more lots developed with row dwellings fronting 10th Street NE. The subject building, as currently constructed, is comprised of a partially submerged basement level with an additional two stories above the basement level. The subject building extends above ground for two stories down the length of the lot with a lot line wall[2] abutting the entirety of the rear lot lines of 202 and 204 10th Street NE. With the exception of the portion of wall that abuts the corner home's garage at the basement level as described above, the subject building's eastern side does not share a wall with another property. Indeed, just as in the Pritchard Appeal, the subject property physically *cannot* share a common division wall with the properties to the east -- not even with the corner home above the basement level. *Compare Pritchard Appeal* at 4.

Finally, as in the Pritchard Appeal, the adjacent lots facing 10th Street are relatively small, with very shallow rear yards. Consequently, the effect of the subject property on the adjacent 10th Street properties is severe, cutting off the light and air to the rear of their homes and creating a tenement-style feeling of being bricked in on three sides, rather than only on two. *Compare Pritchard Appeal* at 4.

ARGUMENT

As in the Pritchard Appeal, this case will turn on the Board's interpretation and application of subsection 405.3 of the Zoning Regulations. In 1970, in Z.C. Order No. 17, the Zoning Commission added Subsection 405.3 to the zoning regulations relating to the provision of side yards in Residence Districts. Subsection 405.3 states that:

[2] As the BZA noted in the Pritchard Appeal, "[a] 'lot line wall' is defined in sec. 199.1 as 'an enclosing wall constructed immediately adjacent to a side lot line, but not a party wall.'" *Pritchard Appeal* at 5, footnote 3.

> In R-2, R-3, R-4, and R-5 Districts, when a one-family dwelling, flat, or multiple 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.

In the Pritchard Appeal, the Zoning Administrator argued that a row dwelling is a matter-of-right use in the R-4 district and that section 405.3 did not apply as long as a dwelling has (at least) one common division wall. *See Pritchard Appeal* at 3, 8.

The Board rejected the Administrator's arguments, holding that, while a row dwelling is a matter-of-right use in the R-4 District, the side yard provisions of the Zoning Regulations limit the circumstances under which the owner of an existing semi-detached dwelling may convert the dwelling to a row dwelling. *See Pritchard Appeal* at 7. More specifically, the Board found that, "[b]ecause the eastern side lot line [of the building at issue] coincides with the rear lot lines of several abutting lots fronting on 11th Street, N.E., the subject dwelling does not and, given the configuration of the adjacent dwellings, physically cannot share a common division wall with a building to the east." The Board concluded that, therefore, under subsection 405.3 of the Zoning Regulations, "the dwelling must provide a side yard on the east side." *Id.*

As in the Pritchard Appeal, the issue in this case is whether an owner may construct a row dwelling as a matter of right, where the dwelling will not share on both sides a common division wall with an adjacent building. The Board has noted that the Zoning Regulations do not define the phrase "common division wall." *See Pritchard Appeal* at 4, footnote 1. In the Pritchard Appeal, the parties did not contest that fact that the building addition at issue in that case did not share a common division wall with a building on its east side. By contrast, in this case the Board is required to determine whether the wall of the basement-level garage of the corner home adjacent to the subject building's east side can properly be considered a "common division wall" within the meaning of subsection 405.3 and whether, on the basis of that wall, the owner can be permitted to build a two-story dwelling extending well beyond the garage wall and abutting the rear lot lines of several shallow lots fronting on 10th Street.

I. The Basement-Level Garage Does Not Constitute "a Common Division Wall with an Existing Building" for the Purpose of Subsection 405.3.

As noted in the description of the subject property's relationship to the corner home provided above at pages 2-3, the subject property shares a common wall with the basement-level garage only. It does not and cannot share a common division wall with the western wall of the corner home, as the two main levels of the corner home are set back from the lot line abutting the subject property. Moreover, these levels have rear windows facing the subject property.

In arriving at its holding in the Pritchard Appeal, the Board took care to consider not only the plain language of subsection 405.3, it also sought to interpret subsection 405.3 in light of

section 405 as a whole. The Board stated that "[t]he side yard regulations as a whole are designed to ensure the provision of an adequate amount of separation between structures." *Pritchard Appeal* at 9 (noting, *e.g.*, that subsection 405.6 "reflects a policy of providing a meaningful amount of open space between structures").

The Board also clarified the purposes of the side yard requirements: "minimum side yard requirements serve to provide separation between dwellings, ensuring adequate light and air, preventing the undue concentration of population and the overcrowding of land, and providing a distribution of population and use of land that will create conditions favorable to the protection of property and that will tend to further economy and efficiency in the supply of public services." *Pritchard Appeal* at 10.[3] The Board emphasized that these policies are reflected in the provisions of 11 DCMR sec. 101.1, which states the purpose of the zoning regulations and guides their interpretation and application. *Id.* Moreover, the Board recognized that "[i]n adopting section 405.3 in Z.C.. Order No. 17, the Zoning Commission expressly stated that its purpose is to insure the provision of adequate side yards for all residential buildings regardless of the zoning district in which they lie.'" *Id.*

In light of the purpose and meaning of section 405.3 as recently clarified by the Board, the basement-level garage wall clearly cannot suffice as a common division wall within the meaning of subsection 405.3, as the subject building severely interferes with light and air to the main living levels of the corner home, notwithstanding the fact that its basement level garage abuts the eastern property line of the subject property.

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[3] In arriving at this understanding of 405.3's side yard requirements, the Board relied in part on Rathkopf's The Law of Zoning and Planning sec. 34B.02[1] at 34B-2 to 34B-5 (2001), which it quoted as follows:

> Restrictions on land development controlling building setback lines and requiring minimum front, side, or rear yard areas that must be kept free from structural development have long been recognized by courts as being reasonably related to promotion of the public welfare. Front yards, rear yards, and side yards provide light, air, and privacy. They afford room for lawns and trees, keep residences away from street traffic, noise, dust, and neighbors, provide space for recreation and relaxation, and add to the attractiveness and comfort of a residential district. They provide access for firefighting equipment to the rear of buildings, and space for accessory buildings and uses. . . . More generally, police power restrictions relating to yards, courts, and other open spaces promote the overall community interest by fixing a spatial land use pattern and thereby promoting the orderly physical development of a community.

Pritchard Appeal at 10.

II. Even if the Garage Wall is Found to be a Common Division Wall, the Subject Building Should Not Be Permitted to Extend Along the Rear Lot Lines of Two Other Abutting Lots.

Even if the Board finds that the basement-level garage wall serves as a common division wall within the meaning of subsection 405.3, it should not permit the subject building to extend along the rear lot lines of 202 and 204 10th Street NE. As explained above at page 3, the subject property does not and cannot share a common division wall with these properties. Moreover, given how very shallow the rear yards of the 10th Street properties are, the two-story construction at 922 Constitution Avenue NE severely limits air and light to the 10th Street properties, in sharp conflict with the purpose of section 405.3.

It might be argued that, if the Board were to limit the subject building to the length of the corner lot only, and did not allow the building to extend along the adjacent 10th Street properties, such a precedent might limit an owner's ability to add to a building whenever the addition would extend beyond the common division walls of adjacent buildings. It should be noted however, that the typical case would involve the side wall of one row dwelling abutting the side wall of an adjacent row dwelling. In such cases, neither dwelling would have windows on face-on-line walls and both would still have access to light and air via their rear windows. At most, a property owner disgruntled by the extension of her neighbor's home could complain about a relative disadvantage to her yard or deck, and not any significant alteration to the amount of air and light accessing the home itself. Given the relative rarity of cases such as that at issue here -- where a proposed face-on-line wall would directly abut neighbors' rear lot lines, the competing interests in such cases are best evaluated in the course of the special exception hearings provided for in 11 DCMR sec. 223.

CONCLUSION

For the reasons explained above, the Board permit decisions in this case should be overturned.

Respectfully Submitted By

Janet E M Pritchard

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Virginia W. Gaddis
Community Member, ANC 6A
Zoning and Licensing Committee