GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment
FROM: Andrew Altman, Director
DATE: May 13, 2003
SUBJECT: BZA Case #17007, Special Exception Request

I. OFFICE OF PLANNING RECOMMENDATION-IN-BRIEF

The Office of Planning recommends that BZA Case #17007, Special Exception Request for 1018 Constitution Avenue NE be approved.

II. APPLICATION-IN-BRIEF

Location 1018 Constitution Avenue NE, Washington DC
Square 964, Lot 46, Ward 6; ANC 6A

Applicant: Kathleen Peoples, owner

Zoning: R-4

Proposal: Retention of a recently constructed non-conforming rear addition to the existing dwelling.

Relief Sought: Special exception to §405 Side Yards and §403 Lot Occupancy, pursuant to §223.

III. AREA AND SITE DESCRIPTION – Refer to Location Plan, Attachment I

The property, owned and occupied by Kathleen Peoples and Philip Sedlak, is located in Square 964, which is bound by Constitution Avenue SE on the south; 11th Street SE on the west; C Street NE to the north, and 10th Street SE on the east. It is within the Capitol Hill Historic District. Lots on this and adjacent blocks are predominantly occupied by row houses. Many of the houses on this block appear to have rear additions – usually of one story – or rear garages along the lane.

The subject property faces Constitution Avenue and is at the end of a line of row houses. It is one of three row houses constructed on lots created from a subdivision around the turn of the 20th century. To the east are row houses facing 11th Street SE, perpendicular to the subject property. To the rear is a narrow lane. The property is about 24.6' wide; other lots on this side of Constitution have a width of 15.5' to 18.2' except for the one at the west end of the square which has a width of 26.7' (refer to Context Plan, Attachment II). The original portion of the house is 17' wide, and provides a 7' to 12' setback along the east side. As this is now the last house facing Constitution Avenue SE, it is considered to be a "semi detached dwelling". It does not appear that any of the other semi-detached (end of row) houses on this square provide the required setback. The properties to the west of the site face 11th Street SE, so the rear yards butt up against the subject property. The property is developed with a semi-detached two story plus basement brick dwelling, with an essentially completed addition. There are currently tall (7 foot minimum) fences along the remainder of the west and east lot lines.

BZA
Case No. 17007
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO. 17007
EXHIBIT NO. 28

IV. PROJECT DESCRIPTION

The brick clad addition is two stories, and is slightly higher than the existing house. There are no windows on either the east or west walls of the addition, although there is one small new window in the existing portion of the house which is set 12 feet back from the property line. There are two upper story decks, a small one facing the street (south) and a larger one facing north towards the alley. The front deck is partially screened on the east side with a solid wall of about 4' in height.

V. BZA Case # 16811

A Building Permit was issued in July of 2001 for what was then considered to be a fully conforming rear addition to the existing house, based on a DCRA interpretation that the property was considered a "row dwelling" lot, so a side yard was not required. A neighbor appealed issuance of the permit in BZA case number 16811, arguing that the DCRA interpretation was incorrect - that the property should be considered "semi-detached", so that a side yard setback of 8 feet minimum would be required. A the BZA meeting for this case, DCRA staff argued that the building permit had been issued in accordance with past practice and with past DCRA interpretation of Section 405.3, in which properties like the subject one were consistently considered "row dwellings". While noting ambiguities in the Zoning Regulation wording, the BZA ruled in favor of the neighbor, that the property was, in fact, considered semi-detached. As such, the addition became considered non-conforming for side yard setback. The BZA advised the owners of the subject property that they could submit an application for a §223 special exception.

VI. Historic Preservation Review Board (HPRB)

The property is within the Capital Hill Historic District. At the time of Building Permit issuance, the then proposed addition was reviewed and approved by the HPRB in March, 2001, subject to the owners making detail modifications to the portion of the addition which faces towards the street.

VII. RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN

The property is designated "low density" residential (single-family detached and semi-detached housing as the predominant uses) on the Comprehensive Plan Generalized Land use Map. The proposal would not be contrary to this designation.

§1104 *Policies in Support of the Residential Objectives*:

> §1104.1 (h) *... encourage the maintenance of existing housing stock ... while exercising care to avoid undermining neighborhood quality and stability*

VIII. AREA ZONING

The property is zoned R-4, one family detached residential, which also permits row houses and semi-detached dwellings. The surrounding area is also zoned R-4.

IX. REQUESTED ZONING RELIEF (refer to Project Profile, Attachment III)

The proposal would require the following special exception relief pursuant to §223:

	Zoning Regulation:	Proposed:
1.	**Side Yard: (§405.6)** - 8 ft. min.[1]	existing = 0' west side; 7' min. east side for the addition, 0 feet on both sides.
2.	**Lot Occupancy: (§403)** – 40% max. 70% max. by special exception	existing = 31%; with addition = 55.4%

The house is currently non-conforming to current regulations, in that it provides a side yard of 7 feet on a portion of the open (east) side. The addition, as constructed, extends from side property line to side property line, so provides no setback. The application as submitted is for a side yard special exception.

In reviewing the application, OP staff noted that an additional non-conformity for lot occupancy appears to have been created by the addition. With the addition, the property has a lot occupancy of 55%, more than the outright permitted amount (40%) but less than the amount permitted by special exception in §223.2 (70%).

§223 permits BZA review and approval of these non-conformities, provided they meet the tests described below. OP notes, however, the particular mitigating circumstance exists in this case – the fact that the owner was issued a building permit for the addition and constructed the addition in good faith under the impression from building permit staff that the addition was conforming to regulations. This interpretation from staff was provided using standard interpretation and past practice of the time. It is only with the overturning of that interpretation that the addition was deemed, essentially after the fact, as non-conforming. The owner also properly submitted the addition for HPRB review, and incorporated required design modifications.

§223.2 - The addition shall not have a substantially adverse affect on the use of or enjoyment of any abutting or adjacent dwelling or property; in particular;

(a) The light and air availability to neighboring properties shall not be unduly affected;

The existing portion of the house provides a setback of 7 to 12 feet on the east side. The rear 25 feet of the lot is not developed. The addition is approximately 18.3 feet deep along the side lots lines. Properties directly to the east of the addition appeared to staff to provide rear setbacks of 15 feet or more to one story rear additions[2] and about 25 feet to the two story houses. It would appear that, the addition may cast additional shadow on yards of adjacent lots, but there should be minimal impact on the main portions of the dwellings.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The addition would contain no windows facing properties to the east or west. Existing fences eliminate visual access at ground level from one property to the next. Upper story decks are oriented away from the side properties and have low solid side walls, which lessen, but do not eliminate, visual impacts. Upper story windows of the adjacent houses are about 25 feet away from the deck. The privacy of neighboring properties may be less compromised than would be anticipated by a matter-of-right conforming addition providing an 8 foot setback, as it

---

1 §405.8 appears to say that, in this case, a side yard of no less than the existing side yard – 7' – is permitted.

2 Current regulations require a rear yard of 25'.

could contain more side wall windows in addition to decks with no solid sides, which could negatively impact privacy.

In terms of enjoyment of neighboring properties, the addition may feel more imposing when viewed from the rear yards of adjacent properties than a conforming addition would. It may be possible to lessen this impact through planting, but this would require the cooperation of the adjacent owners, as any vegetation would have to be planted on their properties.

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

The addition has minimal impact on the streetscape – although visible, it is partly screened by the existing house, and is set well back from the street, and is designed to visually compliment the house and the streetscape in its materials, height and details. The design incorporates changes required by the HPRB. The addition is more visible from the rear lane, but the impact is lessened somewhat by existing trees, fencing, and the design details of the north wall which help to limit the scale (as opposed to an unarticulated, flat wall, for example).

(d) In demonstrating compliance with (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs or elevation and section drawing sufficient to represent the relation of the proposed addiction to adjacent buildings and views from public ways.

The owner has presented photographs, plans and elevations to show the relation of the proposed addition to adjacent buildings and views from public ways.

§223.3 - The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4 and R-5 Districts.

The lot occupancy with the addition was calculated by the applicant to be 55.4%.

§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.

As noted above, screening (in addition to existing tall side lot line fencing) might lessen the visual impact of the addition when viewed from the rear yards of neighboring lots, but such planting would have to occur on the neighbor's lots. Frosted glass in the new washroom window (within the conforming portion of the house) and the addition of trelliswork or plants along the top of the brick side wall for the upper story south deck may lessen privacy impacts.

§223.5 - This section may not be used to permit the introduction or expansion of a nonconforming use.

The proposed addition would not alter the existing use of the site as a single family dwelling.

Will the special exception be in harmony with the general purpose and intent of the Zoning regulations and Maps?

The subject dwelling was constructed prior to the adoption of the Zoning Act of 1958. §223 provides housing modification relief for owners of dwellings that pre-date current zoning requirements. Requiring full conformity to current regulations can, in some instances, have a negative impact on the ability of home-owners to modify and upgrade their homes, so could, over

the long term, have a negative impact on area revitalization. Given the unique circumstances of this development and its previous approval, in good faith, OP feels that the granting of the requested special exception to allow for this addition would not be an inappropriate application of this special exception provision. The rear elevation of the house would be generally in line with those of the adjacent row houses.

Will the special exception adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps?

At least one adjacent neighbor states that the addition adversely affects the use and enjoyment of their property. The addition may have some visual impact, particularly on their rear yards. However, the design of the addition, with no side windows and decks oriented away from the neighbor's yards, would minimize impacts on use of neighboring buildings.

X. ADVISORY NEIGHBORHOOD COMMISSION (ANC) COMMENTS

BZA transcripts for Case #16811 indicate that the appeal of the neighbor to have the building permit overturned was supported by the ANC. The owners note that they attended a subcommittee meeting of ANC 6A, and that the committee was unable to reach consensus on a recommendation.

XI. OTHER AGENCY COMMENTS

As of the date of submitting this report, OP has not received comments from other District departments or agencies.

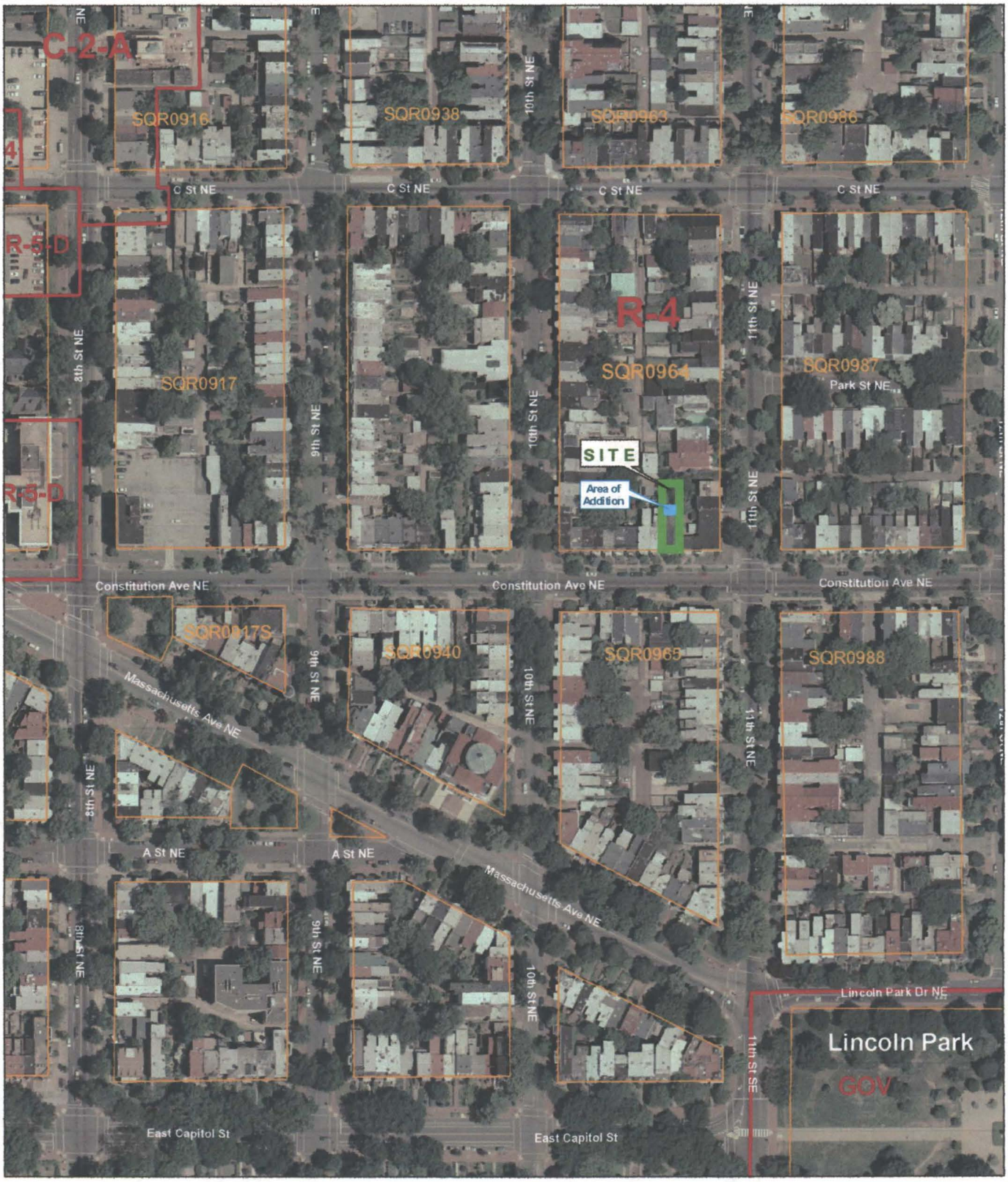
XII. OP SUMMARY RECOMMENDATION

Given the circumstances of this case, OP feels that it is appropriate to permit this addition to remain. In essence, the owners adhered to all required regulations, as interpreted by staff at the time, and processes. Although the DCRA interpretation was overturned, it may not have been unreasonable, as Zoning Regulation wording is not clear, and it was applied consistently. The determination by the BZA that this is considered a "semi-detached dwelling requiring an 8' minimum setback on the open side came after the addition was constructed with valid building permits and approval of the HPRB. While OP would encourage more dialogue between the owners and the neighbors to lessen impacts of the addition, OP feels that requiring its removal would result in significant and undue hardship to the owner. As such, OP recommends that the BZA approve the special exemption request. This recommendation is not inconsistent with the Comprehensive Plan and Generalized Land Use Map, and would not undermine the integrity of the Zoning Regulations.

AA/jl

Attachments:

I. Location Plan
II. Context Plan
III. Project Profile



Feature Key

Zoning Boundaries

Square Index

Board of Zoning Adjustment

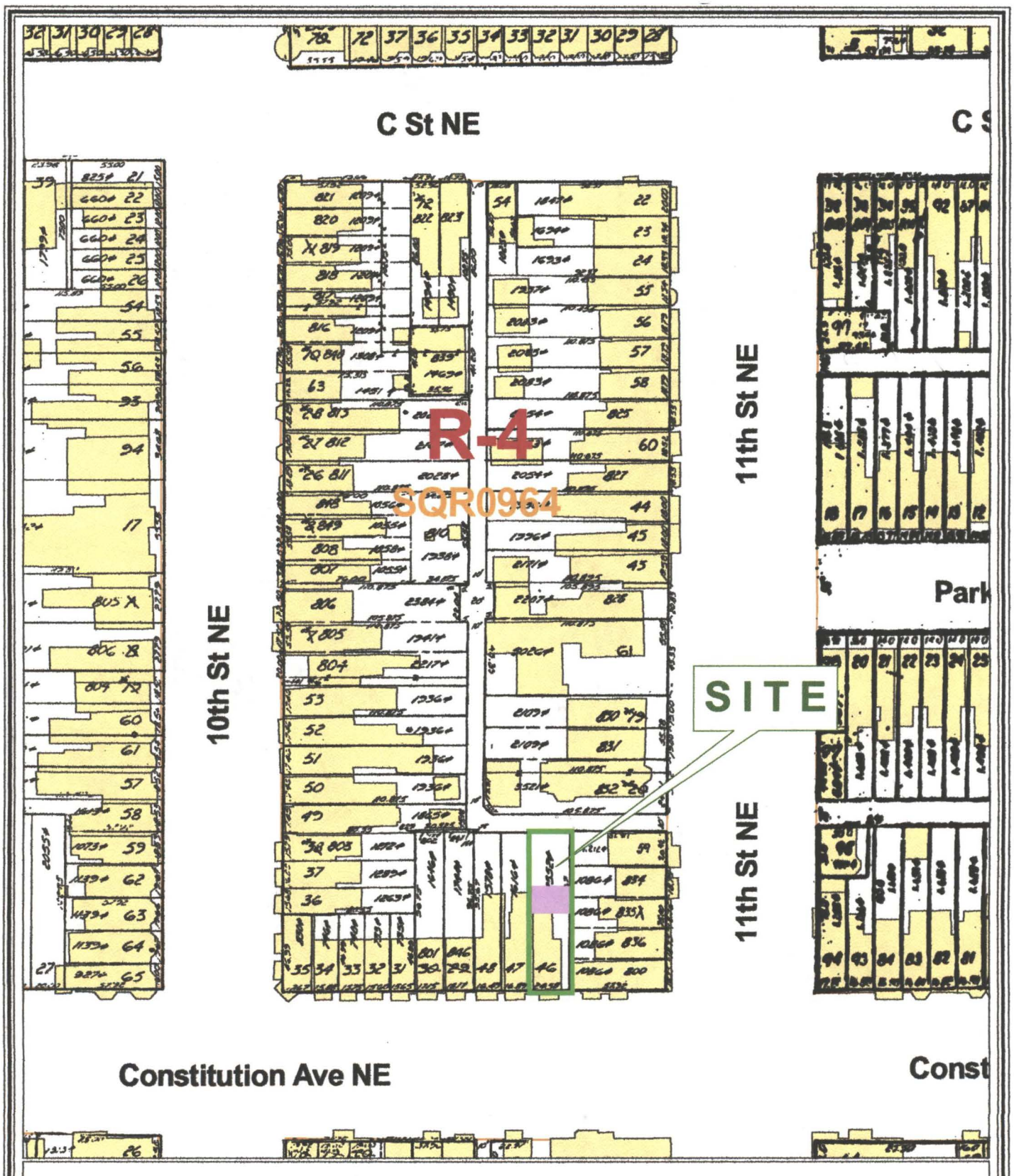
Application No. #17007, 1018 Constitution Avenue NE

DC Office of Planning

April 29, 2002

N

Attachment 1



Feature Key

Zoning Boundaries

Square Index

Board of Zoning Adjustment

Application No. #17007, 1018 Constitution Avenue NE

DC Office of Planning

April 29, 2002

N

Attachment II

Standard	R-4 Zone Regulations	Prior to Addition[1]	Current (with addition)[2]	Variance
Dwelling Type:	one family semi-detached dwelling	one family semi-detached dwelling[3]	unchanged	existing condition
Lot Size: (§401)	3,000 sq.ft. min.	2,357 sq.ft.	unchanged	existing condition
Lot Width:	30 ft. min.	24.6 ft.	unchanged	existing condition
Floor Area Ratio: (§402)	n/a[4]	information not provided	addition = approx. 810 sq ft.	n/a
Lot Occupancy: (§403)	40% max.[5]	31%	**55.4%**	**Special exception under §223 required**
Rear Yard: (§404)	20 ft min.	47.5 ft.	25.3 ft.	conforming
Side Yard: (§405)	8 ft. min. on open side	0 ft. / 7 ft.	**0 ft on each side**	**Special exception under §223 required**
Open Court Width: (§406)	4" / ft of building height = +/- 6.7 ft.	12 ft.	12 ft.	conforming
Height: (§400)	40 ft. max.	approx. 21 ft.	approx. 24 ft.	conforming
Stories: (§400)	3 max.	2	unchanged	conforming
Parking: (§2101.1)	1	1	unchanged	conforming

1 Information provided by applicant.

2 Information provided by applicant.

3 Historic Sanborn maps from the 1920's show a dwelling unit to the east of this one with an address of 1020 B Street NE (now Constitution Ave. NE), possibly associated with what was called a church on the corner.

4 This zone does not establish a maximum FAR.

5 Maximum permitted lot coverage in an R-4 zone is 40% for a semi-detached dwelling and 60% for a row dwelling. The application does not include a special exception request for lot coverage. §223.3 permits lot occupancy of 70% in this zone.