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May 22, 2003

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

D.C. BOARD OF ZONING
2003 MAY 22 PM 3:14

**VIA FAX# 202-727-6072 [total # of pages faxed = 6]**

RE: BZA Application No. 17007
1018 Constitution Avenue NE
Hearing Date: 05/20/03

BZA
Case No. 17007
Exhibit No. 40

Dear Members of the Board:

At the May 20, 2003 hearing regarding the above-referenced application for a special exception to the zoning regulations, the Board directed the parties to submit suggestions for measures to mitigate the harm caused to our property at 204 11th Street NE by the existence of the Applicants' addition. The following is our response to that request.

As Chairman Griffis acknowledged at the May 20th hearing, in light of the fact that the addition is already constructed, it is difficult to conceive of measures that could be *added* to the design of the addition that would mitigate these harms in a meaningful way. The only way to directly reduce the harm imposed is to *take away* from the addition. Yet we understand the Board's solitication of suggestions for mitigating measures is an effort to avoid the total demolition of the addition while still striving for some meaningful way to redress the damages we bear as a result of the Applicants' addition. Therefore, we have tried to offer other ways that the harm we suffer as a consequence of the addition might be meaningfully redressed.

Items (1) and (2) discuss the removal of portions of the addition in order to resolve our privacy claims and reduce the scale of the shadow cast by the addition. Items (3) through (13) pertain to obtaining an easement to access the rear of our home through the Applicants' side yard, ensuring that the portion our retaining wall replaced by Applicants is adequately stable, improving the appearance of the additon wall, and providing landscaping enhancements that would disguise, detract from, or otherwise offset the harm imposed by the addition.

Essentially, the harms alleged all pertain to a reduction in our use and enjoyment of our rear yard and kitchen. As an alternative to demolishing the entire addition in order to directly

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remove the specific harms alleged, we propose instead measures that would *enhance* our use and enjoyment of our rear yard and improve the view (although not the sunlight) accessed from our kitchen window. While the lack of an easement or the lack of attractive landscaping in our rear yard is not a direct result of the Applicants' addition, improvements in the access to and landscaping of our rear yard would serve as meaningful mitigating measures in this case because, like the harm caused by the building addition, they all have bearing on the same thing -- the use and enjoyment of our rear yard and kitchen. Moreover, the landscaping suggested below would help masquerade the addition wall.

(1) Reduction of the Height of the Parapet

Lowering the parapet would reduce the scale of the shadow cast on our property. Applicants' archetect stated at the hearing that a parapet is required by the D.C. Fire Code.

>> Applicants to investigate the degree to which the parapet could be lawfully lowered, and lower the parapet to the minimum legal height.

(2) Removal of the Balcony Portion of the Addition

A more substantial reduction in the scale of the shadow cast onto our property by the addition could be acheived by removing the balcony platform as well as the portion of the addition wall alongside the balcony and the patio below it. Removal of the balcony would also resolve our privacy claims. Both the shadow study and the photographs we submitted at the May 20th hearing are useful for accessing the degree to which the shadow could be reduced by removing this portion of the addition. Please note that removal of the balcony portion would have no effect on the loss of sunlight to our kitchen window, however. The archetectural drawings suggest that the balcony and the wall enclosing the balcony and patio could be removed without threatening the intergrity of the remainder of the addition.

>>Applicants to remove the balcony as well as the portion of the addition wall alongside the balcony and the patio below it.

(3) Refinishing of the Exterior Wall of the Addition Abutting 204 and 206 11th Street NE

We would prefer a brick wall to match the rest of Applicant's exterior walls that face our property.

>> Applicants to arrange and pay for removal of our existing fence (to be replaced with a gate between Applicant's wall and the rear fence of our neighbor at 202 11th Street NE, as explained in item (5) below), and facing of the entire wall with brick.

(4) Provision of an Easement Providing Access to our Rear Yard

Presently, there is no access to our home from the rear; access to the yard is through the house only. An easement through Applicants' side yard would enhance the use and enjoyment of our rear yard by providing a more convenient means of access to and egress from our rear yard. The easement would not be used routinely, but occassionally, such as when there is a need to move a bulky item to or from the rear yard. Assuming that Applicants will want to keep their sideyard locked, access to the easement could be arranged on an as-needed basis, with Applicants or their successors providing access following notification by us or our successors.

>> Applicants and the Pritchards to enter into a covenant outlining the terms of the easement as explained above. This covenant would attach to both properties upon being filed with the Office of Deeds and would, accordingly, bind future as well as current owners of both properties.

(5) Purchase and Installation of a Gate Providing Rear Access through Applicants' Side Yard

Following the removal of our rear fence in order to enable the brick facing of the wall as described in item (3) above, it would not be necessary to replace the entire fence. Only the gap remaining between Applicant's wall and the rear fence of 202 11th Street NE would need to be fenced. This section should include a lockable gate which can be opened to utilize the easement described in item (4).

>> Applicants to purchase and install a fence, including gate, sufficient to fill the gap between the wall of Applicants' addition and the rear fence of 202 11th Street NE. The height, design, and quality of the fence is to be similar to our existing rear fence, and must be installed tightly against Applicants' addition and the neighboring fence in order to ensure the security of 204 11th Street NE.

(6) Removal of the Tree in Our Rear Yard

The tree growing in the northwest corner of our yard should be removed. Although it does not have much foliage and therefore has never cast much shade on our rear yard, in light of the shadow cast by Applicants' addition, any additional shade provided by the tree is neither necessary nor welcome. We assume that Applicants may have an interest in removing this tree, as its root system may threaten the integrity of the wall of their addition. The removal of the tree would also make items (3) and (8) easier.

>> Applicants to arrange and pay for the complete removal of the tree.

(7) Consultation with a Professional Gardener/Landscaper

A consultation with a professional gardener would help us to identify plants likely to thrive in the shady conditions of our rear yard. In particular, we seek advice regarding flowering plants that could be trained to grow up a trellis installed against the addition wall (see also items (12) and (13), below).

>>Applicants to pay for a consultation with a reputable professional gardening consultant or landscaper selected by us.

(8) Construction of Brick Garden Walls around the Parameter of our Rear Yard

A raised flower bed around the parameter of the yard would enhance the attractiveness of the yard and deter somewhat from the overbearing closeness of the two-story wall of the addition. Plants growing in raised beds would suffer from less shadow than plants growing from ground level and, therefore, raised beds would likely be more successful for growing a variety of flowering plants. We propose brick garden walls, approximately two feet in height and set in one to two feet from the parameter of the yard. For stability, such walls would need to be at least two bricks deep and be built upon a gravel and concrete footing, with reinforcing mesh as appropriate in accordance with good masonry standards.

>>Applicants to employ reputable masonry contractors to construct brick garden walls around the parameter of our rear yard. We would work with Applicants and the masoners to develop and approve the design of the garden walls.

(9) Filling of the Raised Flower Beds with Appropriate Drainage Material and Soil

In order to be ready for planting, the flower beds described in item (8) above would need to be filled in with appropriate drainage material and soil as per the gardening consultant's recommendations.

>>Applicants to finance the purchase and professional installation of drainage materials and soil in accordance with gardening consultant's recommendations.

(10) Planting of Sod in our Rear Yard

Prior to learning of Applicants' proposed construction of their addition, we tore up the deteriorated brick patio that had been in our rear yard with the intention of planting a lawn to provide a suitable play space for our young children. From the photos displayed at the May 20th hearing, you can see that we recently planted grass seed. This is in the process of sprouting. Having workers in the yard removing the fence, facing the wall of the addition,

removing the tree, and constructing the garden walls will tear up these tender sprouts. Therefore, we propose that, following the completion of items (1) through (9), the yard should be laid with sod.

>> Applicants to finance the purchase and professional planting of sod covering our entire rear yard except for the parameter flower beds. The sod planted must be of a variety recommended by the gardening consultant and planting of the sod must include any preliminary fortication of the soil that is deemed necessary by the gardening consultant.

(11) Construction of a Garden Trellis along the Wall of the Addition Abutting our Rear Yard

Training flowering plants to climb up the wall of the addition would detract somewhat from its otherwise overwhelming presence. A garden trellis would assist the development of climbing folige and would enable the planting of more mature plants. Climbing plants are preferable to shrubs as they would hide at least the lower portion of the wall and would provide visual interest without crowding into the already-small area of the yard or causing any more shade.

>>Applicants to finance the purchase and professional installation of a wooden garden trellis, painted white and at least ten feet in height, extending the length of the portion of the addition wall abutting our rear yard.

(12) Purchase and Planting of Flowering Plants to Climb the Trellis

Planting flowering plants to climb the trellis installed along the addition wall would detract from the overbearing presence of the addition wall and masquerade it somewhat. Flowering plants climbing the wall would also significantly improve the view from our kitchen window. We would adhere to the gardening consultant's recommendations in selecting plants to climb the trellis.

>>Applicants to finance the purchase and professional planting of appropriate plants selected by us to fill the garden trellis installed against the addition wall.

(13) Inspection and Possible Replacement of the Southern Section of Our Retaining Wall

Prior to laying the foundation for their addition, Applicants removed the retaining wall along our joint property line. For approximately three-quarters of the property line, the new foundation for Applicants' addition now serves as a retaining wall for that portion of our property. The southernmost portion of our property was left without a retaining wall until recently. Following a conversation and e-mail with Ms. Peoples during March 2003 in which we raised concerns about the lack of a retaining wall, she informed us that she would have the

missing portion of the retaining wall reconstructed. We have not had an opportunity to inspect this wall to insure that it is suitably stable.

>>We would like the oppotunity to inspect the new retaining wall. If it is found to be adequately constructed, then nothing more need be done on this item. If, however, it is found to be without a sufficient foundation or otherwise deemed to be unstable, Applicants are to reconstruct a retaining wall in accordance with good masonry standards.

Timeframe

If, on June 3rd, the Board decides to grant a special exception including any or all of the conditions itemized above, we believe that this summer would be an appropriate time to undertake these measures. We suggest the deadline for completion should be set for sometime in September 2003.

We hope that these suggestions are useful to you in your consideration of this case.

Sincerely,

Janet E M Pritchard

Janet and David Pritchard