GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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In re: Kathleen Peoples and Philip Sedlak
Case #17007
1018 Constitution Avenue, N.E.

2nd POST-HEARING SUBMISSION OF APPLICANT IN REPLY AND RESPONSE

COMES NOW the Applicant, Kathleen Peoples and Philip Sedlak, by and through undersigned counsel, Jackson & Campbell, P.C., Robert Clayton Cooper, and submits this 2nd Post-Hearing Submission in Reply and Response to the Post Hearing submission of Janet and David Pritchard, filed on or about May 22, 2003. Applicant is compelled to submit this Reply and Response, in order to set forth the Applicant's position with respect to the Proposed Mitigating Measures made by the Pritchards.

At the conclusion of the Hearing on the above referenced matter, the Board requested that the parties submit, by Friday, May 23, 2003, a list of alternatives or options each is willing to consider with respect to finishes and treatments of the structural wall which separates the subject property from those to the East. It was not, however, the understanding of the Applicant that the Board would be presented with a laundry list of costly, capital improvements to the Pritchard property, in exchange for an approval of the Special Exception Application.

It is the Applicant's understanding that the specific provision of the Zoning Regulations referred to by the Board in directing the parties to make these Post Hearing submissions, is Section 223.4. That provision of the Zoning Regulations allows the Board, as a condition for granting the Special Exception, to require special treatments in the way of design, screening, exterior or interior lighting, building materials or other features for the protection of adjacent or nearby properties. Nowhere does that provision of the Regulations suggest that the Applicant bear the cost for costly, capital improvements to the adjacent or nearby properties unrelated to the Application; or that the Board may impose Easements or other benefits to the adjacent or nearby property owners that they would not otherwise have been entitled to enjoy absent the Application.

The Pritchards admit that their suggestions are intended only to enhance their use and enjoyment of their rear yard and views (much of which was previously blocked by their own fence). More importantly, they admit that their lack of an Easement and lack of attractive landscaping in their rear yard is NOT a direct result of the Applicant's addition or the elimination of the "side-yard". However, that admission did not prevent them from

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suggesting these outrageous improvements to their property in exchange for the elimination of a minor "side-yard". The Addition (without a side-yard) does not in anyway prevent the Pritchards (or any other owners facing 11th Street) from using their rear yards or their kitchens. These suggestions are nothing more than the Pritchard's continuing effort to extract a financial windfall from the Applicant, due to the District's approval of a Building Permit which eliminated a "side-yard".

The Board's attention is directed to several specific paragraphs of the Pritchard Post Hearing Submission which highlight these efforts. Although Applicant objects to nearly all of the proposals, these specific paragraphs are extremely objectionable which are solely intended to penalize the Applicant financially, and create a windfall benefit to the Pritchards:

1. Paragraph 3, **Finish of the Addition Wall**. The Pritchards suggest that the wall of the structure that faces the 11th Street homes be brick. The cost would be exorbitant, and unattainable by the Applicant. Any such brick facing would be solely on the 11th Street properties, and would therefore belong to them. Such a wall could also increase the objectionable "tenement feeling", as expressed by the Pritchards at the Hearing.

2. Paragraph 4, **Provision of an Easement**. Admittedly, at no point have the Pritchards (or any of the other homeowners facing 11th Street) had access through, over or any Easement to cross through or over, the Applicant's property. Photographs of the properties (See Exhibit 7) portray the solid nature of the fences between the properties which clearly prohibited this now requested access. Additionally, none of the properties facing 11th Street have provided any Easements or access across themselves, all having solid fences between them.

3. Paragraph 5, **Provision of an Access Gate**. As set forth immediately above, Applicant refuses to create or allow any Easement to be established across their property to the owners facing 11th Street. No such access has ever been established by right, and no such access has ever been requested, desired or permitted.

4. Paragraph 6 and 13, **Tree Removal and Retaining Wall**. The referenced tree is on the Pritchard property and belongs to them. If this neighbor desires to remove their tree, it should be at their own cost and expense. There should be no expectation that the Applicant is responsible for establishing and maintaining the greenery and landscaping of the neighboring properties, and the loss of the "side-yard" has no bearing on this tree. Additionally, the referenced "retaining wall" had actually been constructed on the Applicant's property. That wall has been repaired/replaced as needed, and may be inspected by persons of the Pritchard's choosing, and at their expense. If any additional work is desired to that wall, it too may be undertaken at the expense of the Pritchards.

5. Paragraphs 7, 8, 9, 10 and 12, **Professional Consultations, Brick Garden Walls, Flower Beds, Sod and Flower Purchases**. Again, this laundry list of expected costs to be incurred by the Applicant for the improvement and beautification of the Pritchard property is totally unacceptable. None of these "improvements" address the alleged

shadowing on the Pritchard kitchen caused by the Applicant's Addition; nor do they address any perceived "damages" as a result of the Applicant's Addition, and loss of the "side-yard". These desired improvements are nothing more than an attempt to extract renovations of their property that they are not inclined to pay for themselves.

WHEREFORE, the Applicant respectfully requests that this Board decline to entertain these outrageous requests of the Pritchards. They are not intended to mitigate the impact of the loss of the "side-yard", but are intended to harm and damage the Applicant and prevent the Applicant from enjoying the home that they have invested considerable funds, time and energy to improve, by Right. The Applicant has done nothing to prevent the Pritchards from assuming the same financial responsibility to improve their own property. They have, instead, chosen to seek financial profit from the Applicant, as a result of an unfortunate turn of events within the District Government. All of the hardship and prejudice of those events have fallen solely at the financial expense of the Applicant. There has been no loss of value to the real property of, or other out-of-pocket expenses incurred by, the Pritchards or other 11th Street owners. The Applicant should not now be further penalized by having to provide costly improvements to the neighboring property owners.

Respectfully submitted,
Jackson & Campbell, P.C.

Robert Clayton Cooper
Counsel for the Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing 2nd POST-HEARING SUBMISSION OF APPLICANT IN REPLY AND RESPONSE was mailed first-class, postage prepaid, this 30TH day of May, 2003, to Janet and David Pritchard, 204-11th Street, N.E., Washington, D.C. 20002.

Robert Clayton Cooper