GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17007 of Application of Kathleen Peoples and Philip Sedlak, pursuant to 11 DCMR § 3104.1 for a special exception to allow an existing rear yard addition to a semi-detached single-family dwelling under 11 DCMR § 223, not meeting the side yard requirements of section 405 and the lot occupancy requirements of section 403 in the R-4 District at premises 1018 Constitution Ave, N.E. (Square 964, Lot 46).

HEARING DATE: May 20, 2003
DECISION DATE: June 3, 2003

DECISION AND ORDER

This application was submitted on February 28, 2003 by the owners of the property, Kathleen Peoples and Philip Sedlak (collectively, "Applicants").

Following a hearing on May 20, 2003, and public meeting on June 3, 2003, the District of Columbia Board of Zoning Adjustment ("BZA") voted 4-0-1 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. The District of Columbia Office of Zoning mailed memoranda dated March 13, 2003 providing notice of the application to: the Councilmember for Ward 6, Advisory Neighborhood Commission 6A, Single Member District /ANC 6A03, the Department of Transportation, and the District of Columbia Office of Planning ("OP"). Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters of notice of the hearing dated March 25, 2003 to the Applicants, ANC 6A, and all owners of property within 200 feet of the subject property. On April 30, 2003, the Applicants posted notice of the hearing at the subject property.

Request for Party Status. ANC 6A was automatically a party in this proceeding. The Board granted a request for party status from David and Janet Pritchard, the owners of a property abutting the subject property.

Applicants' Case. The Applicants stated that the special exception was needed to allow the existing two-story addition to the rear of a single-family dwelling they constructed to increase the living space in the house. The Applicants sought and received a building permit to construct the addition. The permit was later found invalid by an order of this Board. *Appeal No. 16811 of David and Janet Pritchard* (2002) The Applicants submitted photographs of the addition, building plans and elevations.

Government Reports. By memorandum dated May 13, 2003, the OP recommended approval of the special exception. According to OP, the special exception relief will be in harmony with the

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general purpose and intent of the Zoning Regulations and Zoning Maps, and would not tend to affect the use of neighboring property adversely.

ANC Report. None.

Persons in Opposition to the Application. The party in opposition, David and Janet Pritchard ("Party in Opposition"), contended that the proposed addition would block light to their property and obstruct the view from the rear of their property.

Hearing. The Board held a public hearing on the application on May 20, 2003. Testimony and evidence was provided by the Office of Planning, the Applicants, the Applicants' architect, and the Party in Opposition.

FINDINGS OF FACT

1. The subject property is located at 1018 Constitution Ave., N.E. (Square 964. Lot 46) in the Capitol Hill neighborhood of Ward 6. The lot is on the north side of Constitution Ave., N.E.

2. The subject lot is rectangular in shape, 26 feet wide and approximately 90.5 feet deep, and has a north-south orientation.

3. The site is improved with a two-story, single family semi-detached house built in 1889.

4. The house is at the end of a line of row houses. It shares a common party wall with the neighboring row house to the west. To the east, an alley runs along the property line. The original dwelling has a seven-foot wide side yard.

5. The eastern side of the lot line of the subject property coincides with the rear lot lines of five lots developed with row dwellings, fronting on 11th St., N.E., including the Party in Opposition's property, 204 11th St., N.E.

6. A fence extends along the east-side of the property line.

7. The Applicants constructed a two-story addition to the rear of the original dwelling. The addition extends the full width of the lot.

8. The addition did not add any new windows facing neighboring properties from the second level.

9. The deck in the rear of the second level of the addition is angled so as to minimize intrusion to neighboring properties.

10. The lot area of the subject property is 2,357 square feet. The original dwelling and the addition occupy 1226 square feet of the lot. The original dwelling plus the addition occupy 52% of the lot.

11. The lot is zoned R-4. The predominant land use in the vicinity of the subject property is row houses.

CONCLUSIONS OF LAW

The Applicants seek a special exception under 11 DCMR § 223 to allow an existing two-story addition to the rear of a single-family semi-detached dwelling in the R-4 zone. This application was required as a consequence of this Board's decision in **Appeal No. 16811 of David and Janet Pritchard** (BZA 2002), which held that an addition may not "convert a semi-detached dwelling to a row dwelling under circumstances where it is not possible to construct a common division wall". Because one side of the subject property abutted an alley, there was no adjacent structure to share a common division wall, and therefore a side yard was required.

Before going into the merits of this application, the Board wishes to stress the narrowness of the *Pritchard* ruling. As noted in **Appeal No. 16935 of Southeast Citizens for Smart Development,** the *Pritchard decision* did not make single semi detached dwellings illegal if one side of the structure sat on a lot line (and was thus free standing on both sides). Nor did *Pritchard* require two side yards for new structures on lots with row dwellings on either side. Row dwellings, when permitted as a matter of right, may be constructed on all lots, except in the narrow circumstances that existed with respect to this subject property.

The Pritchard decision is thus limited to its facts.

As to this application, the Board is authorized to grant special exceptions where, in the Board's judgment, a special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. See D.C. Official Code § 6-641.07(g)(2) (2001); 11 DCMR § 3104.

Pursuant to § 223, the Board may permit, by special exception approval, an addition to a one-family dwelling that does not comply with requirements pertaining to minimum lot dimension, lot occupancy, rear and side yards, courts, and nonconforming structures, subject to the conditions enumerated in § 223.

The Applicants' property does not comply with requirements pertaining to lot occupancy and side yards.

Lot occupancy. The maximum permitted lot occupancy for a semi-detached dwelling in an R-4 district is 40 percent. 11 DCMR § 403.2. Pursuant to 11 DCMR § 223.3, the lot occupancy of the dwelling, together with the addition, may be as high as 70 percent in the R-4 zone, if approved by the Board consistent with the requirements of section 223. The lot occupancy of the subject property, including the addition, is 52 percent.

Side yard. A one-family dwelling in an R-4 zone that does not share a common division wall with an existing building or a building constructed together with the new building must have a

side yard on each resulting free-standing side. *See* 11 DCMR § 405.3. Because this structure did not share a common division wall on its eastern side, the addition cannot intrude into the required side yard.

11 DCMR § 223 provisions. The Applicants seek approval of the already completed addition to the dwelling that does not comply with requirements pertaining to lot occupancy and side yards. The Board may grant such approval as a special exception subject to the provisions enumerated in section 223. The provisions include that the proposed addition must not have substantially adversely effect on the use and enjoyment of any abutting or adjacent dwelling or property, and in particular (a) the light and air available to neighboring properties must not be unduly affected; (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised; and (c) the addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. 11 DCMR § 223.2.

The Board concludes that the addition does not unduly affect the light and air available to affect neighboring properties, including the property owned by the party in opposition. In forming this conclusion, the Board reviewed the photographs and other graphical evidence submitted by the applicants and by the Party in Opposition, and considered their testimony. The Applicants testified that the addition did not unduly affect the light and air available to neighboring properties, did not compromise the privacy of neighboring properties, change the character of the property when viewed from the street. The Party in Opposition offered testimony that the addition blocked light and air available to the rear yard and back window of their house. The Party in Opposition submitted testimony that the addition blocked thirteen percent of the light available to the rear of their property. The Party in Opposition was unsure, however, how much of that thirteen percent was blocked by the portion of the addition that the Applicants could have built as of right, and without resort to a special exception. The Board is of the opinion that the addition does not unduly affect the light and air available to the Party in Opposition, nor to other neighboring properties.

The Board further concludes that the addition does not unduly compromise the privacy of use and enjoyment of neighboring properties, including the Party in Opposition's property. A fence provides privacy at ground level. The addition did not add any new windows facing neighboring properties from the second level. The deck in the rear of the second level of the addition is angled so as to minimize intrusion to neighboring properties.

The Board further concludes that as viewed from the street, the addition does not substantially intrude upon the character, scale and pattern of houses along the subject street frontage. The Board notes that the predominant use on the subject street frontage is row houses. The addition is consistent with the predominant use, and in fact, the addition renders the applicant's property more consistent with character, scale, and pattern of houses along the subject street frontage than it was previously.

The Board concludes that a special exception is in harmony with the general purpose and intent of the Zoning Regulations and Maps. The neighborhood is comprised mainly of row houses and it is only because of some unusual features of the Applicants' property that a special exception is

required. We do not believe that our granting this special exception will adversely affect neighboring properties.

For the reasons stated above, the Board concludes that the Applicants have satisfied their burden of proof

Finally, the Board observes that the surface of the addition that faces the Party in Opposition's property is finished with an unappealing cement material. 11 DCMR § 223.4 authorizes the Board to require special treatment in design, building materials or other features for the protection of adjacent or nearby properties. The Board finds that the application of a new finish to the addition will protect the Party in Opposition from visual intrusion on the character of the rear of their property.

Accordingly, it is therefore **ORDERED** that the application is **GRANTED**.

It is further **ORDERED** that the Applicants shall apply a final finish to the side of the addition facing the opposing party's property of a smooth parch or stucco finish that would be painted in a light color, and that will allow for the attachment for an additional veneer for a trellis type system.

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr. to approve; Anthony J. Hood to approve by proxy; David A. Zaidain not hearing the case, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: SEP - 7 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR

THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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BZA APPLICATION NO. 17007

As Director of the Office of Zoning, I hereby certify and attest that on SEP - 7 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

ATTESTED BY:

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