BZA CASE NO. 17251, 3715 ALBEMARLE STREET, N.W.
TESTIMONY OF CATHY WISS, COMMISSIONER, ANC 3F06
DECEMBER 14, 2004, HEARING

Good morning. My name is Cathy Wiss, and I represented ANC 3F06, where the subject property is located.

When Mr. O'Reilly first contacted me about this case, he left me with the impression that he was seeking a special exception to correct a minor technicality occasioned by the incorporation of this row of semi-detached houses into an R-1B zone. When the ANC later received the application, other commissioners and I were surprised at the extent of relief being sought: three special exceptions -- lot occupancy, rear yard set back, and side yard set back. This addition would not be possible as a matter of right even in an R-2 zone. In fact, the Zoning Regulations do not allow a one-foot side yard in *any* zone district – either residential or commercial – where a side yard is provided! We were also astounded to find out that construction had already been started. A stop work order was posted in the O'Reillys' front window, but covered over with permits for other work.

At the ANC meeting, Mr. O'Reilly stated he has lived in his house for 10 years. During that time he said he has worked to maintain and improve his home, but feels that his house of less than 2,000 square feet is small. This may be small, but many houses in our neighborhood are no bigger than this. After his wife became ill last year with a disorder that makes her sensitive to the sun, the O'Reillys decided to stay in DC and expand their house. Mr. O'Reilly told ANC 3F that he hired Kelkye Builders of Frederick, Md., to do the work, but did not inquire whether Kelkye was licensed in the District of Columbia or whether Kelkye had obtained permits for the job. (Mr. O'Reilly stated that he hired Mr. Kacar later to help with the BZA application. Mr. Kacar confirmed this.)

Mr. O'Reilly told the ANC he is building two "porches". These will be enclosed, covered with stucco like the rest of the house, and have some windows on the north and west sides, as shown in the elevations attached to the application. Mr. O'Reilly maintained that there will be no windows on the east side, but the application contains no east elevation to verify this. In fact, from the rear of 3713 Albemarle, one can see underneath the blue tarp openings in the east wall that could accommodate awning windows. When questioned why he was calling these rooms "porches", Mr. O'Reilly replied that they would have no heat or air conditioning. ANC Commissioners were unconvinced. They believe that these will be living spaces, regardless of how they are used. They can always be modified later, as has happened with the original sleeping porches in this row of duplexes. As the Office of Planning (OP) report correctly notes on page 4, "the addition is still an addition". The standards for Sections 403 (lot occupancy) and 404 (rear yard) relate to "structures". The side yard requirements of Section 405 apply to "buildings". This addition is both a "structure" and a "building", as defined in Section 199.1.

After much discussion at the ANC meeting, Mr. O'Reilly admitted that there is a basement underneath this two-story addition. Presumably, the crawl space under the original sleeping porches was also excavated to join the original basement to the new basement. On the west is a full set of stairs to the outside. Commissioners questioned whether Mr. O'Reilly intended to rent the basement as an accessory apartment and whether it could meet the standards for a special exception. Actually, there are a lot of basement apartments in my area, many of which probably were not approved as special exceptions and would not meet the standards of Section 202.10. Mr. O'Reilly stated he plans to use

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this large new basement for storage. The son-in-law of Mrs. Psillos, who owns 3713 Albemarle Street next door, recounted that Mr. O'Reilly told him there would be a bathroom in the basement.

Other commissioners were concerned about possible encroachments on the property at 3713 Albemarle Street from excavation for the foundation or from the foundation itself. Mr. Kacar assured the ANC that there had been no encroachment, but we have no evidence a survey was done prior to construction to locate the property line to prevent this. A one-foot offset from the property line does not give much space for error. Also, commissioners were worried about debris and water falling off the roof of the addition onto 3713 Albemarle. Mr. Kacar said gutters would channel the water to the other side of the building. The gutters themselves, though, would hang out over the side of the building, even closer to the property line than one foot.

The OP report discusses the one-foot space between the former sleeping porch and the property line as the basis for the one-foot side yard set back for the addition. The report likens the space to an open court. But if you look at views 2 and 3 on page 7 of the OP report, you will see that the space does not meet the test for either a court (open or closed) or for a side yard because it is not open to the sky. If anything, this small space would have to be a "court niche" (although it does not meet the standards of Section 406), an architectural embellishment from which can be derived no right to extension as a side yard. Perhaps the recess was for windows in the original sleeping porches, which have since been closed off.

The OP report questions the depth of the back yard beyond the addition, speculating that it could be 20 rather than 16 feet. In my investigation of this case, I found that several fences in this area are not on the property lines they appear to delineate. The old chain link fence running along most of the rear yards of this row of duplexes is not straight, but seems to veer off at an angle to the northwest. In addition, the owner of 3724 Appleton has just been advised by a surveyor that a fence near the rear of her property encloses a significant part of her property into the back yard of 3717 Albemarle Street. This fence also extends partway behind 3715 Albemarle Street, as you can see in view 1 on page 6 of the OP report, adding some depth to the apparent "back yard". The fence between 3715 and 3713 Albemarle Street, next to the addition and recently replaced by Mr. O'Reilly, seems to be wholly on the property of his next door neighbor, Mrs. Psillos. It is only 5 ½" from the side of her house, as you can see in the attached photograph. OP's advice to get an accurate survey is wise. A rear yard of only 16 feet deep, as shown in the plat from the DC surveyor attached to the application, would not be allowed as a matter of right in any zone district less dense than R-5B.

As part of my investigation of this case, I interviewed all the property owners adjacent to 3715 Albemarle Street, as well as one property owner further down the row of duplexes. Mary Thoms of 3717 Albemarle Street said that Mr. O'Reilly had talked with her about the addition and that she understood that the O'Reillys were building it because of Mrs. O'Reilly's illness. At that point she cut off the conversation. I should note that Ms. Thoms is in the process of selling her house, so she would not be affected by the decision of this board.

I next tried to reach Mrs. Emilia Psillos of 3713 Albemarle Street. She hung up on me, saying she does not speak English. Fortunately, a neighbor gave me contact information for her children, who do speak English. They stated she has been devastated by the addition. It was her son who, with a great deal of effort, got DCRA to inspect the construction. This inspection led to the stop work order.

Before the addition was started, Mrs. Psillos enjoyed spending time on her patio and planting flowers and vegetables. She enjoyed views of trees and could see the sky in all directions. Now, as the picture attached to the ANC resolution shows, the addition looms over her patio and extends almost half of the depth of her back yard. It has blocked views of trees and sunsets. If you place a paper along the outside wall of the addition in the photograph, you can imagine how much more overwhelming the addition would be and how much more would be lost to Mrs. Psillos if a second floor were added. With a second floor, the addition would be almost as high as the width of her back yard. Because the back yards are on the north side of the houses, the addition would put her back yard in shadow from midday on. Already with only one story to the addition, flowers and vegetables are harder to grow in the diminished sunlight, but mildew thrives. It now covers her patio and steps. Mrs. Psillos is afraid to go outside lest she slip and fall on the mildew. Also, the prevailing summer breezes in our area come from the southwest. The addition is positioned so as to block these breezes. Her patio is in a zone of dead air.

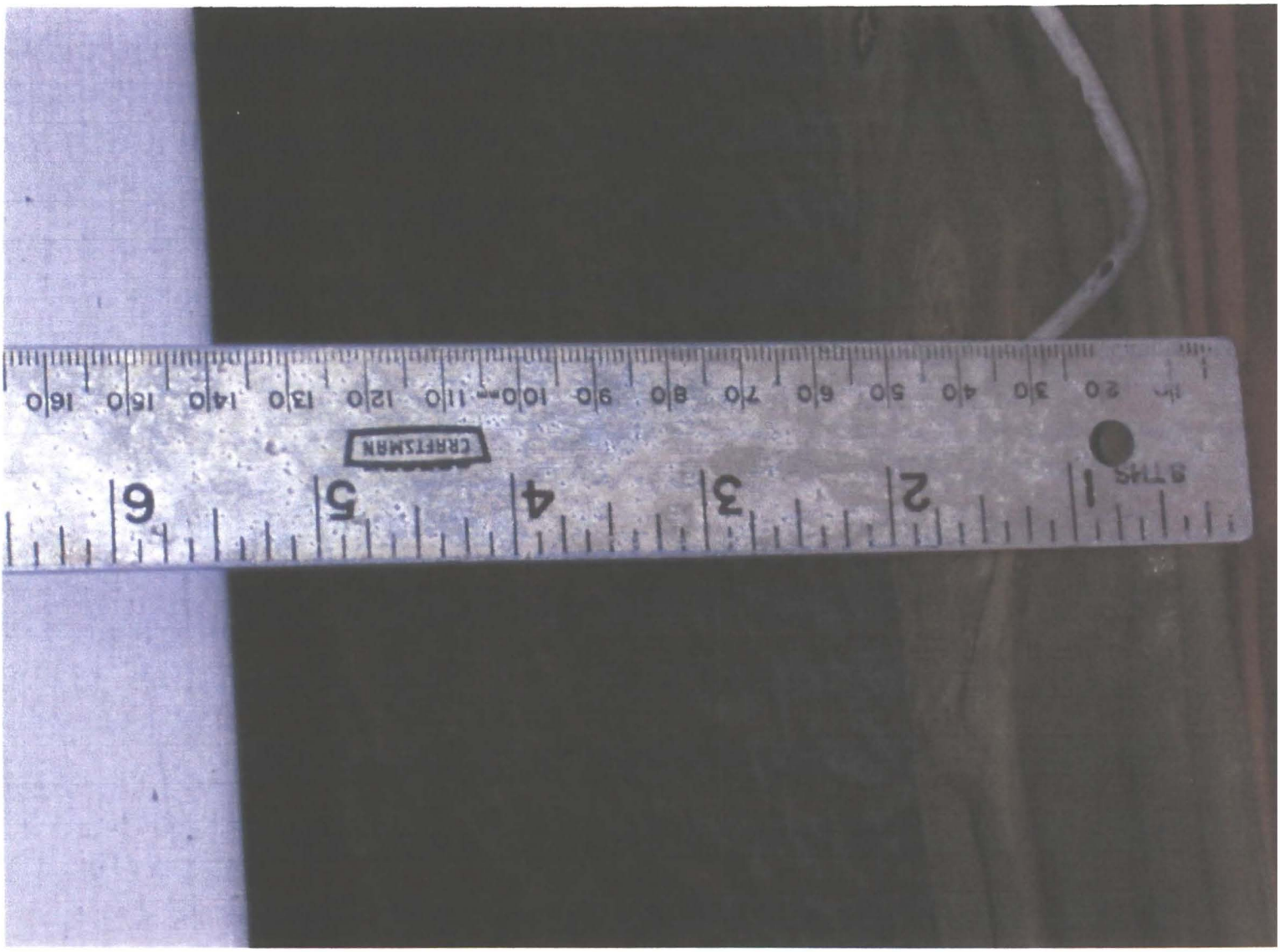
As can be seen in the photographs attached to this testimony, the addition blocks views and sunlight from inside Mrs. Psillos' house. She can no longer see trees from her breakfast table or upstairs sitting room, but instead must face a wall. The only form of housing where one might expect such a wall next to one's windows would be an apartment building, yet this block is zoned R-1B for low density housing.

This construction poses water problems for Mrs. Psillos. As noted above, ANC 3F was concerned about water falling off the roof of the addition onto her property. But with dirt excavated for the basement, the O'Reillys have elevated their back yard beyond the addition about two feet above the existing grade. Here they have built a patio. (I have taken photographs, but the change in elevation is hard to show.) As a result, water flows off the O'Reillys' patio and into Mrs. Psillos' back yard, where it forms pools.

Although not an adjacent neighbor, the owner of 3711 Albemarle also believes the addition projects too far into the back yard and affects her views. Her reaction is not unreasonable: her back yard is only 29 feet from the addition.

The adjacent property owners on Appleton Street are also opposed to the addition. The Chisholms, who own 3722 Appleton, submitted a letter to the file in this case. OP discounted the addition's effect on them because it is far from their *house*. They oppose an addition this close because it would affect their use and enjoyment of their *back yard.* Kay Cook, who owns 3724 Appleton, is concerned that if this addition is allowed, others will seek similar special exceptions. As a result, the character of the neighborhood would change. Trees would be lost. ANC 3F iss also very concerned about the precedent this case would set. Indeed, Mr. O'Reilly told the ANC that others in his row would like to build similar additions. If they did, the harmony and balance between the houses in this row would be destroyed. Those who chose not to expand would be sandwiched between large extensions, just as Mrs. Psillos is now.

ANC 3F recommends that this board deny the application, that the addition be torn down, and that the property be restored to its original condition. Thank you.



The distance between the Psillos house and
The fence installed by Mr. O'Reilly



View of the O'Reilly addition from the
first floor of the Psillos house



View of the O'Reilly addition from the
Second floor sitting room of the Psillos house