GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

D.C. BOARD OF ZONING ADJUSTMENT
2002 MAR -5 PM 1:06

Appeal No. 16811 of David and Janet Pritchard, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of Michael D. Johnson, Zoning Administrator, for the issuance of Building Permit No. B431591 allowing the construction of an addition allegedly not complying with the side yard requirements (section 405) in an R-4 District at premises 1018 Constitution Avenue, N.E. (Square 964, Lot 46).

HEARING DATES: January 8, 2002; February 26, 2002; March 5, 2002
DECISION DATES: April 2, 2002; June 4, 2002

DECISION AND ORDER

David and Janet Pritchard filed an appeal with the Board of Zoning Adjustment on October 30, 2001, challenging the decision of the Zoning Administrator to approve the issuance of a building permit to their neighbors at 1018 Constitution Avenue, N.E. (Square 964, Lot 46), as violating the side yard requirements of the Zoning Regulations. Janet Pritchard represented herself and Mr. Pritchard in this proceeding. Assistant Corporation Counsel Marie Claire Brown represented the Zoning Administrator. The property owners, Philip Sedlak and Kathleen Peoples, have party status in this appeal and are represented by the law firm, Jackson & Campbell.

The building permit in question allowed the construction of an addition at the rear of a one-family semi-detached dwelling, located in an R-4 Zone District. The addition spans the width of the lot, converting the semi-detached dwelling (a dwelling, the wall on one side of which is either a party wall or a lot line wall, having one side yard) into a row dwelling (a dwelling having no side yards). Given the configuration of the adjacent properties, the dwelling with the addition cannot share on one side a common division or party wall with an adjacent building. The appellants argue that the dwelling is therefore subject to the side yard requirements in 11 DCMR § 405. Both the Zoning Administrator and the property owners contend that because a row dwelling is a matter of right use in the R-4 District, the addition may be constructed as a matter of right. After a public hearing, the Board granted the appeal, determining that § 405.3 requires the provision of a side yard, such that the addition cannot be constructed as a matter of right.

The terms "one-family semi-detached dwelling," "row dwelling," and "side yard" are terms of art in the Zoning Regulations, and defined in § 199.1 For the convenience of the reader, the definitions of these terms and other pertinent provisions of the regulations are reprinted in Appendix A to this Decision and Order.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17066
EXHIBIT NO. 4

Case No. 17066
Exhibit No. 4

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Appeal and Notice of Public Hearing. By memoranda dated November 6, 2001, the Office of Zoning advised the Zoning Administrator; the Office of the Corporation Counsel; Advisory Neighborhood Commission (ANC) 6A, the ANC for the area within which the property that is the subject of this appeal is located; the ANC Commissioner for the affected Single-Member District; the Ward 6 Councilmember; and the D.C. Office of Planning of the filing of the appeal.

The Board scheduled a public hearing on the appeal for January 8, 2002. Pursuant to 11 DCMR § 3113.14, the Office of Zoning on November 16, 2001, mailed the appellants, the Zoning Administrator, and ANC 6A notice of hearing. The owners of the subject property were copied with the appellants' notice. Notice of hearing was also published in the D.C. Register on November 23, 2001, at 48 DCR 10,614. At the January 8 hearing, the Board postponed the hearing until February 26, 2002, at the request of the property owners, to afford them the opportunity to obtain legal counsel and prepare their case. Due to the Board's congested calendar, the appeal was heard the following week, on March 5, 2002.

Appellants' Case. The Pritchards present four arguments. First, they argue that the building permit conflicts with the plain language of 11 DCMR § 405.3, which provides that in the R-2, R-3, R-4, and R-5 Districts, when a one-family dwelling is erected that does not share a common division wall with an existing building or a building being constructed with the new building, it must have a side yard on each resulting free-standing side. Second, they point out that the Zoning Administrator required a similarly situated property owner at 220 – 5th Street, S.E., to obtain special exception approval for an addition to a semi-detached dwelling that converted the dwelling to a row dwelling. Third, they argue that the Zoning Administrator's position conflicts with other provisions of the Zoning Regulations, including § 405.2, which requires that a semi-detached dwelling provide one eight-foot side yard; § 405.5, which provides that a side yard shall not be required along a side street abutting a corner lot; § 405.6, which provides that except for detached and semi-detached dwellings, a side yard shall not be required in the R-4 District; however, if a side yard is provided, it must be a minimum of eight feet in width; and § 223, which authorizes the Board to grant special exception relief from the minimum side yard requirements. Finally, the appellants argue that even if § 405.3 is found to be ambiguous, the Zoning Administrator's interpretation of § 405.3 conflicts with the interpretation guidelines in § 101 of the Zoning Regulations that expressly favor the interpretation that best provides light and air, and encourages stability of zone districts and land values.

The appellants also included within their case arguments presented by Lyle Schauer, Zoning Chairman of the Capitol Hill Restoration Society. Mr. Schauer argued that under § 405.3, a building constructed as a row dwelling must have common division walls on both sides; otherwise, the building must have a side yard on each resulting free-standing side. He argued that § 405.5, which provides that no side yard is required along a side street abutting a corner lot, constitutes the only exception to § 405.3.

Zoning Administrator's Case. The Zoning Administrator argues that conversion to a row dwelling is a matter of right in an R-4 District, such that the subject dwelling is not required to provide side yards. While the Zoning Administrator's final determination letter dated August 20, 2001, recognizes "that there is seemingly ambiguous or contradictory language between Section 405.3 and the allowance of a row dwelling in the R-4 district as a matter of right," the Zoning Administrator reasoned that the purpose of § 405.3 "is intended to ensure the establishment of a common division wall between each two adjacent properties. The referenced property has met that requirement by sharing a common division wall with an adjacent structure." At the hearing, then-Acting Zoning Administrator Toye Bello stated that the purpose of § 405.3 was to prevent a situation where a semi-detached dwelling could be constructed with a lot line wall on one side, and a free-standing wall within one foot of the lot line on the other side.

The Zoning Administrator also argued that an interpretation of § 405.3 that required a semi-detached one-family dwelling to maintain an eight-foot side yard would be inconsistent with § 401.3, which specifies minimum lot area and lot width requirements. That is, the Zoning Administrator argued that since the regulations allow in the R-4 District an 1800 square-foot lot as a matter of right, it would be illogical to interpret § 405.3 as requiring an eight-foot side yard, leaving only ten feet for the dwelling. Finally, the Zoning Administrator noted that § 405.6 specifies that, except for one-family detached and semi-detached dwellings, a side yard shall not be required in an R-3, R-4, R-5-B, R-5-C, R-5-D, or R-5-E District; but that if a side yard is provided at the discretion of a property owner, then it may be no less than eight feet wide.

Property Owners' Case. At the hearing, Bruce Wentworth of Wentworth Levine, Architect-Builder, Inc., described the addition. Ms. Peoples presented a statement indicating that the appellants had objected to the construction of the addition before the issuance of the building permit.

Mr. Sedlak and Ms. Peoples adopted the Zoning Administrator's case. They argued that since a row dwelling is a matter-of-right use in an R-4 District, a "non-party" wall may be constructed face-on-line, without any side yards. In addition, they argued that § 405.3 only applies to new construction. They asserted that § 405.3 does not apply where the owner seeks to construct a row dwelling, since a row dwelling has no side yards; nor where the owner seeks to convert a semi-detached dwelling to a row dwelling. They argued that the Zoning Commission's intent in adopting § 405.3 was limited to preventing the construction of only one-half of a pair of semi-detached dwellings. They also argued that the appellants' interpretation of § 405.3 would bar a use conversion.

ANC Report. In its report dated January 7, 2002, ANC 6A states that at a duly-noticed meeting held on December 6, 2001, with a quorum present, and after reviewing the report of the ANC's Zoning and Licensing Committee and hearing presentations from Mrs. Pritchard and Ms. Peoples, the ANC voted to support the appeal.

Closing of the Record. The record closed at the conclusion of the public hearing, with the exception of the proposed findings of fact and conclusions of law requested of the parties. Exhibits 17, 24 through 26, 32, and 33 consist of letters from nearby residents regarding this

appeal. Since the Board's Rules of Practice and Procedure do not provide for public comment in appeal cases, see 11 DCMR § 3177.11(a), Exhibits 17, 24 through 26, 32, and 33 are stricken from the record. The Board re-opened the record at its public meeting on April 4, 2002, to accept a report from the Office of Zoning related to this case, and to allow the parties the opportunity to submit written responses to the report.

Decision Meeting. At its public meeting on June 4, 2002, the Board voted 5 – 0 – 0 to grant the appeal.

FINDINGS OF FACT

The Subject Lot and the Dwelling Prior to the Addition

1. The property that is the subject of this appeal is located at 1018 Constitution Avenue, N.E. (Square 964, Lot 46), in an R-4 Zone District, in the Capitol Hill Historic District.

2. As described in 11 DCMR § 330.1, "The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families." Matter-of-right uses include one-family detached dwellings, one-family semi-detached dwellings, and row dwellings. See 11 DCMR §§ 330.5(a), 320.3(a), 300.3(a) and (c), 201.1(a).

3. The subject lot is rectangular in shape, 26 feet wide and approximately 90.5 feet deep, with a lot area of 2352 square feet.

4. The subject dwelling is located on the north side of Constitution Avenue, at the east end of a row of row dwellings.

5. The dwelling shares one common division wall[1] with a row dwelling on the adjacent lot to the west.

6. To the east, the side yard was 7.0 feet wide at the front portion of the dwelling (32.4 feet in depth), and 12.33 feet wide at the rear portion (16 feet in depth).

7. The dwelling was therefore classified for zoning purposes as a "one-family semi-detached dwelling"; that is, "a one-family dwelling, the wall on one (1) side of which is either a party wall or a lot line wall, having one side yard." See 11 DCMR § 199.1.

8. The eastern side lot line of the subject property coincides with the rear lot lines of five lots developed with row dwellings fronting on 11th Street, N.W., including the appellants' dwelling. All five lots are relatively small, with shallow rear yards.

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[1] The Zoning Regulations do not define either the phrase "common division wall" or the phrase "party wall." The Zoning Administrator testified that a "common division wall" is a "party wall," and that a party wall straddles the lot line. *See* Tr. at 106-07 (Mar. 5, 2002).

9. Given the configuration of the abutting properties, the subject dwelling does not, and physically cannot, share a second common division wall with any other building to the east.

The Rear Addition

10. On May 21, 2001, Mr. Sedlak filed an application with the Department of Consumer and Regulatory Affairs (DCRA) to construct a two-story rear addition. The application describes both the existing use and the proposed use of the property as a one-family "semi-detached" dwelling. Mr. Bello acknowledged the description of the proposed use on the application form as a "minor oversight" that could be administratively corrected. Tr. at 100 (Mar. 5, 2002). Notwithstanding the stated proposed use category, DCRA reviewed the plans that accompanied the application as a conversion to a row dwelling. Tr. at 101 (Mar. 5, 2002).

11. DCRA issued Mr. Sedlak Building Permit No. B431591 on July 5, 2001, for the construction of a "two story addition on rear of existing home."

12. By letter dated August 7, 2001, the appellants requested DCRA to suspend the permit, alleging that it did not comply with (1) the percentage of lot occupancy limitations in 11 DCMR § 403.2;[2] and (2) the side yard requirements of §§ 405.2, 405.3, and 405.9.

13. By letter dated August 20, 2001, the Zoning Administrator issued a formal determination that the permit was "issued correctly, in accordance with the Zoning Regulations and previous precedence [sic], as established by past Zoning Administrators." The letter stated the reasons for the Zoning Administrator's determination, and indicated that it was a final decision, appealable to the Board of Zoning Adjustment. The Pritchards filed their appeal timely on October 30, 2001.

14. By the date of the hearing on this appeal, the construction of the rear addition was nearly complete.

15. The two-story addition is constructed at the rear of the dwelling. It spans the full 26-foot width of the lot for a depth of 20.5 feet. A second-floor deck facing the front has also been constructed along the east side of the dwelling, 12.33 feet wide and 4.6 feet deep, abutting the eastern side lot line. There is also a second-floor deck at the rear.

16. The addition has a lot line wall[3] on the east side.

17. The lot line wall is a free-standing wall.[4]

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[2] The appellants did not raise the issue of lot occupancy in their appeal before the Board.

[3] A "lot line wall" is defined in § 199.1 as "an enclosing wall constructed immediately adjacent to a side lot line, but not a party wall." According to the Zoning Administrator, a lot line wall is also called a "face-on-line wall." Tr. at 106-07 (Mar. 5, 2002).

[4] In 11 DCMR § 199.2(g), the Zoning Regulations stipulate that words not defined in § 199 be given the meaning in *Webster's Unabridged Dictionary*. The phrase "free-standing" is defined in *Webster's Third New International Dictionary* (1986) as "standing alone and on its own foundation free of architectural or supporting frame or attachment," as in the phrase "a free-standing wall."

18. Since the open space on the east side of the dwelling no longer extends the full depth of the dwelling, the open space is considered a "court" and not a "side yard" as those terms are defined in § 199.1 of the Zoning Regulations.

19. The dwelling with the addition is therefore classified as a "row dwelling" for purposes of zoning; that is, "a one-family dwelling having no side yards." See 11 DCMR § 199.1.

20. The addition abuts approximately three-quarters of the rear lot line of the appellants' property at 204 - 11th Street and approximately one-half of the rear lot line of the appellants' neighbors at 206 – 11th Street.

21. Because the appellants have a nonconforming rear yard, the addition is located approximately 13 feet from the rear of their dwelling. The appellants assert that the addition substantially interferes with the air and light to their rear yard and kitchen. Mrs. Pritchard describes the addition as shadowing and overwhelming her dwelling, creating a "tenement style feeling," with her dwelling bricked-in on three sides rather than two. Tr. at 70 (Mar. 5, 2002).

22. Mr. Shauer also testified that the addition adversely affects the light and air to the abutting 11th Street properties.

Miscellaneous Findings

23. The purpose of § 405.3, as expressly stated in Z.C. Order No. 17, published at 17 DCR 305 (1970), is "to insure the provision of adequate side yards for all residential buildings regardless of the zoning district in which they lie."

24. The Zoning Administrator required the property owners of a semi-detached dwelling at 220 – 5th Street, S.E., also located on Capitol Hill, to seek special exception approval to construct an addition under somewhat similar circumstances. The side lot line of 220 – 5th Street coincides with the side lot line of the adjacent property. The Zoning Administrator's memorandum on 220 – 5th Street, dated June 11, 2001, indicates that the property owners required special exception relief pursuant to 11 DCMR § 223 from the provisions of § 405.2, requiring a semi-detached dwelling in the R-4 District to provide one side yard, and from § 405.3, requiring a side yard when a dwelling does not share a common division wall with an existing adjacent building. Mr. Bello stated that upon further reflection, he believed that this case was referred to the Board of Zoning Adjustment for special exception review in error. Regardless of the 220 – 5th Street case or Zoning Administrator determinations in other cases, the Board has not previously interpreted § 405.3.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Code § 6-641.07(f) and (g)(1) (2001)), to hear and decide appeals where it is alleged by an appellant that there is error in any decision by an administrative officer in the

carrying out or enforcement of the Zoning Regulations. This appeal is properly before the Board pursuant to 11 DCMR § 3100.2, 3101.5, and 3200.2. The notice requirements of § 3112 for the public hearing on the appeal have been met.

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Code, 2001 Ed. § 1-309.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. While ANC 6A supports the Pritchards' appeal, the ANC did not identify any issues and concerns for the Board's consideration.

The issue in this case is whether the owner of a one-family semi-detached dwelling in an R-4 District may convert the dwelling to a row dwelling as a matter of right, where the dwelling will not share on both sides a common division wall with an adjacent building. As explained below, the Board concludes that while a row dwelling is a matter-of-right use in the R-4 District, the side yard provisions of the Zoning Regulations limit the circumstances under which the owner of an existing semi-detached dwelling may convert the dwelling to a row dwelling.

Subsection 405.3

In 1970, in Z.C. Order No. 17, the Zoning Commission added Subsection 405.3 to the zoning regulations relating to the provision of side yards in Residence Districts. Subsection 405.3 states that:

> In R-2, R-3, R-4, and R-5 Districts, when a one-family dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, then it shall have a side yard on each resulting free-standing side.

The subject dwelling, which fronts on Constitution Avenue, N.E., shares one common division wall with a row dwelling to the west. Prior to the construction of the addition, it had one side yard to the east. It was, therefore, classified for purposes of zoning as a "one-family semi-detached dwelling." See id. § 199.1 (definition of "one-family semi-detached dwelling"). The rear addition spans the full width of the lot. Since the remaining open space on the east side of the dwelling no longer extends the full depth of the dwelling, it is classified for purposes of zoning as a "court" rather than a "side yard." See id. § 199.1 (definition of "court" and "side yard"). The dwelling with the addition is therefore classified for purposes of zoning as a "row dwelling," a dwelling having no side yards. See id. § 199.1 (definition of "row dwelling).

Because the eastern side lot line coincides with the rear lot lines of several abutting lots fronting on 11th Street, N.E., the subject dwelling does not and, given the configuration of the adjacent dwellings, physically cannot, share a common division wall with a building to the east. The Board concludes therefore that under § 405.3, the dwelling must provide a side yard on the east side, the "resulting free-standing side."

The Board rejects the arguments of the Zoning Administrator and the property owners that § 405.3 does not apply as long as a dwelling has (at least) one common division wall. Subsection 405.3 must be read in its entirety. The first clause employs the general phrase "one-family dwelling," defined in § 199.1 as "a dwelling used exclusively as a residence for one (1) family," rather than the more specific classifications, "one-family detached," "one-family semi-detached dwelling," or "row dwelling," all defined in § 199.1. If the purpose of § 405.3 was limited to the preventing the construction of only one-half of a pair of semi-detached dwellings as urged by the property owners, then the regulation would have used the specific term "one-family semi-detached dwelling," and not the general term, "one-family dwelling."

Moreover, the last clause of the sentence, in requiring "a side yard on each resulting free-standing side," refers to each one of potentially two free-standing sides.[5] Moreover, the use of the word "resulting" indicates that the free-standing side results from the absence of a common division wall with an adjacent building, such that a side yard must be provided on each side of the dwelling that does not share a common division wall with an adjacent building.

Subsection 405.5, which states that "A side yard shall not be required along a side street abutting a corner lot in a Residence District," provides the an exception to § 405.3. Thus, at the end of a row of row dwellings, except in the case of a corner lot, the last dwelling (a semi-detached dwelling) must provide a side yard.

The Zoning Administrator also argued that the purpose of § 405.3 was to prevent property owners from constructing a semi-detached dwelling to within one foot or so of the lot line. Subsection 405.3, however, does not address the required minimum width of side yards. Rather, it specifies circumstances under which a side yard must be provided. Subsections 405.6 and 405.9 specify minimum side yard width requirements. These regulations were in place prior to the adoption of § 405.3. Therefore, § 405.3 could not have been intended to prevent narrow, one-foot side yards, since §§ 405.6 and 405.9 already required a semi-detached dwelling to provide one side yard, a minimum of eight feet in width.

Finally, the Zoning Administrator argued that an interpretation of § 405.3 as requiring a side yard on the side of a dwelling that does not share a common division wall would not make sense in light of § 401.3, which prescribes for row dwellings in the R-4 District a minimum lot area of 1,800 square feet and a minimum lot width of 18 feet. The Zoning Administrator noted that the provision of an 8-foot wide side yard on an 18-foot wide lot would leave only 10 feet for the

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[5] The word "each" is defined as:

> being one of two or more distinct individuals having a similar relation and often constituting an aggregate: this as well as that or the next or any other of two or more separate but similar individuals (a boat hung from the ceiling by ropes attached at each end . . .) (the little chipmunk with a piñon nut in each cheek pouch . . .) (each day was like every other one . . .) (each year the Cape has a summer inundation of people . . .) (a program flexible enough to be tailored to each individual employee . . .) (giving to each syllable an equal stress . . .) (some publishers . . . will have books to show in each category . . .).

Webster's Third New International Dictionary (1986) (citations to sources of examples omitted).

dwelling. Subsection 401.3, however, also prescribes for a one-family semi-detached dwelling in the R-4 District a minimum lot area of 3,000 square feet and a minimum lot width of 30 feet. Subsection 101.6 provides in pertinent part that "Where a lot is divided, the division shall be effected in a manner that will not violate the provisions of this title for yards . . . applicable to that lot or any lot created." To comply with the side yard requirement of § 405.3, property should be subdivided such that the end lot (that is not a corner lot) of a row of lots subdivided for purposes of constructing row dwellings will have sufficient width to accommodate a semi-detached dwelling.

Subsection 405.3 Interpreted in Light of Section 405 as a Whole

The side yard regulations as a whole are designed to ensure the provision of an adequate amount of separation between structures. Subsection 405.6, for example, reflects a policy of providing a meaningful amount open space between structures. It states that:

> Except as provided in §§ 405.1 and 405.2, a side yard shall not be required in an R-3, R-4, R-5-B, R-5-C, R-5-D, or R-5-E District. However, if the yard is provided, it shall be at least three inches (3 in.) wide per foot of height of building, but not less than eight feet (8 ft.) wide.

Further, while side yards are not required as a general rule in an R-4 District, § 405.6 recognizes § 405.2 as an exception to the general rule. Subsection 405.2 provides that in an R-4 District, "a one-family semi-detached dwelling shall be subject to the side yard requires of an R-2 District." Subsection 405.9, in turn, requires that each side yard in an R-2 District have a minimum width of eight feet.

Subsection 405.8 is plainly intended to preserve side yards in existence prior to the effective date of the Zoning Regulations. It states:

> In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; Provided, that the width of the existing side yard shall not be decreased; and Provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).

As applied to the subject property,[6] § 405.8 requires the maintenance of the seven-foot side yard at the front portion of the dwelling, and §§ 405.2 and 405.9 requires the provision of an eight-foot side yard at the rear portion of the dwelling (where the side yard prior to the addition was 12.33 feet wide). Read together, §§ 405.3 and 405.8 preclude the conversion of a semi-detached dwelling to a row dwelling, unless the addition to the semi-detached dwelling will share, on what would otherwise be its free-standing side, a common division wall with an existing building or a building being constructed together with the addition.

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[6] The parties did not introduce any evidence concerning the date of construction of the dwelling. However, if the dwelling was constructed after May 12, 1958, as a semi-detached dwelling, it would have been required to provide on the east side a minimum eight-foot side yard for the full depth of the dwelling.

Purposes of the Side Yard Requirements

Finally, the appellants' interpretation of § 405.3 is consistent with the Zoning Regulations. The minimum yard requirements require the provision of open spaces around buildings and structures. As described in 3 Rathkopf's The Law of Zoning and Planning § 34B.02[1] at 34B-2 to 34B-5 (2001):

> Restrictions on land development controlling building setback lines and requiring minimum front, side, or rear yard areas that must be kept free from structural development have long been recognized by courts as being reasonably related to promotion of the public welfare. Front yards, rear yards, and side yards provide light, air, and privacy. They afford room for lawns and trees, keep residences away from street traffic, noise, dust, and neighbors, provide space for recreation and relaxation, and add to the attractiveness and comfort of a residential district. They provide access for firefighting equipment to the rear of buildings, and space for accessory buildings and uses. . . . More generally, police power restrictions relating to yards, courts, and other open spaces promote the overall community interest by fixing a spatial land use land use pattern and thereby promoting the orderly physical development of a community.

These same policies are reflected in the provisions of 11 DCMR § 101.1, which states the purpose of the zoning regulations and guides their interpretation and application. Thus, in the terms employed in § 101.1, the minimum side yard requirements serve to provide separation between dwellings, ensuring adequate light and air, preventing the undue concentration of population and the overcrowding of land, and providing a distribution of population and use of land that will create conditions favorable to the protection of property and that will tend to further economy and efficiency in the supply of public services.

In adopting § 405.3 in Z.C. Order No. 17, the Zoning Commission expressly stated that its purpose is "to insure the provision of adequate side yards for all residential buildings regardless of the zoning district in which they lie." Interpreting § 405.3 in light of these purposes leads to the conclusion that the Zoning Administrator erred in approving the issuance of the permit, to allow as a matter of right the construction of an addition to a semi-detached dwelling, where the addition does not provide a side yard on its free-standing side.

A property owner seeking to construct an addition that will convert a semi-detached dwelling to a row dwelling under circumstances where it is not possible to construct a common division wall may apply to the Board for a special exception or variance, as appropriate.[7] Just as in the special exception case involving 220 – 5th Street, S.E., the public hearing process will provide an opportunity to explore whether the requested zoning relief meets the criteria for such relief,

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[7] While the parties recognized that a property owner could apply for a special exception under 11 DCMR § 223 for relief from the side yard requirements, to qualify for relief under § 223, a dwelling must meet the percentage of occupancy limitations specified in the rule. Otherwise, variance relief would be required. *See* 11 DCMR § 223.3.

including whether it would adversely affect neighboring properties or the character of the zone district. See §§ 3103.2, 3104.1.

For the reasons stated above, it is hereby **ORDERED** that the appeal is **GRANTED** and that they decision of the Zoning Administrator to approve Building Permit No. B431591 is **REVERSED**.

VOTE: 5 – 0 - 0 (Peter G. May, Anne M. Renshaw, Geoffrey H. Griffis, Curtis L. Etherly, Jr., and David A. Zaidain, to grant the appeal).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

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

FINAL DATE OF ORDER: OCT 15 2002

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND 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. MS/rsn

APPENDIX A – APPLICABLE ZONING REGULATIONS

101 INTERPRETATION AND APPLICATION

101.1 In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare for the following purposes:

(a) To provide adequate light and air;

(b) To prevent undue concentration of population and the overcrowding of land; and

(c) To provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.. . . .

101.6 Where a lot is divided, the division shall be effected in a manner that will not violate the provisions of this title for yards, courts, other open spaces, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces, or loading berths applicable to that lot or any lot created.

199 DEFINITIONS

199.1 When used in this title, the following terms and phrases shall have the meanings ascribed:

Court – an unoccupied space, not a court niche, open to the sky, on the same lot with a building, which is bounded on two (2) or more sides by the exterior walls of the building or by two (2) or more exterior walls, lot lines, or yards. A court may also be bounded by a single curved wall of a building.

Dwelling, one-family – a dwelling used exclusively as a residence for one (1) family.

Dwelling, one-family detached – a one-family dwelling, completely separated from all other buildings and having two (2) side yards.

Dwelling, one-family semi-detached – a one-family dwelling, the wall on one (1) side of which is either a party wall, or a lot line wall, having one (1) side yard.

Dwelling, row – a one-family dwelling having no side yards.

Wall, lot line – an enclosing wall constructed immediately adjacent to a side lot line, but not a party wall.

Yard, side - a yard between any portion of a building or other structure and the adjacent side lot line, extending the full depth of the building or structure.

199.2 For the purpose of this title, the following definitions shall not be held to modify or affect in any way the legal interpretations of these terms or words where used in other regulations:

(g) Words not defined in this section shall have the meanings given in *Webster's Unabridged Dictionary.*

401 MINIMUM LOT DIMENSIONS

401.3 Except as prescribed in the other provisions of this chapter, the minimum dimensions of a lot in a Residence District shall be as set forth in the following table:

ZONING DISTRICT AND STRUCTURE	MINIMUM LOT AREA (SQUARE FEET)	MINIMUM WIDTH OF LOT (FEET)
R-4		
Row dwelling and flat	1,800	18
One-family semi-detached dwelling	3,000	30
. . .		
All other structures	4,000	40

405 SIDE YARDS (R)

405.1 In an R-2, R-3, R-4, or R-5 District, a one-family detached dwelling shall be subject to the side yard requirements of an R-1 District.

405.2 In an R-3, R-4, or R-5 District, a one-family semi-detached dwelling shall be subject to the side yard requirements of an R-2 District.

405.3 In R-2, R-3, R-4, and R-5 Districts, when a one-family dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, then it shall have a side yard on each resulting free-standing side.

405.4 Except as provided in § 405.1, in an R-5-A District, one side yard shall be provided for all structures unless the structure is an apartment house containing three (3) or more dwelling units per floor, in which case two (2) side yards shall be provided, each with the minimum width set forth in § 405.9.

405.5 A side yard shall not be required along a side street abutting a corner lot in a Residence District.

405.6 Except as provided in §§ 405.1 and 405.2, a side yard shall not be required in an R-3, R-4, R-5-B, R-5-C, R-5-D, or R-5-E District. However, if the yard is provided, it shall be at least three inches (3 in.) wide per foot of height of building, but not less than eight feet (8 ft.) wide.

405.7 In the case of a lot located in an R-1 or R-2 District proposed to be used by a public school that abuts or adjoins on one (1) or more side lot lines a public open space, recreation area, or reservation, the required side yard may be reduced or omitted.

405.8 In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; Provided, that the width of the existing side yard shall not be decreased; and Provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).

405.9 Side yards shall be provided on lots in Residence Districts as set forth in the following table, subject to the special requirements of other provisions of this chapter:

ZONING DISTRICT	MINIMUM DEPTH OF EACH SIDE YARD
R-1-A, R-1-B, R-2	8 feet
R-3, R-4	None required, except as provided under §§ 405.1, 405.2, and 405.5[8]
R-5-A	3 inches per foot of height of building, but not less than 8 ft.
R-5-B, R-5-C, R-5-D, R-5-E	None required, except as provided in §§ 405.1, 405.2, and 405.5[9]

[8] Subsection 405.5 (formerly numbered § 3305.5) should have been renumbered § 405.6 (§ 3305.6, under the former numbering system) as a result of Z.C. Order No. 17, 17 DCR 305 (1970).

[9] See footnote 8.