Board of Zoning Adjustment
Hearing on Appeal 16811
March 5, 2002

Statement of Lyle R. Schauer

Summary.

The question before the Board is whether the Zoning Administrator should follow past practice and custom in issuing a building permit as a "matter of right" for a side addition at 1018 Constitution Avenue, NE. Adoption of Section 223, making it possible to seek special exception relief instead of a variance, should have led to a revised interpretation of Section 405 to require that applicants to seek a special exception.

Background.

David and Janet Pritchard are seeking review of a decision by the Zoning Administrator to issue a building permit for a side addition at 1018 Constitution Avenue, NE.

The property at 1018 Constitution is at the east end of a row of houses on the north side of Constitution Avenue. That property was improved with a semi-detached dwelling with a side yard along its east property line. The property abuts the rear property line of a row of dwellings, the Pritchard property being one, which face 11th Street, NE. Until the recent construction of the side addition, 1018 Constitution was separated from the Pritchard property by the side yard. The Pritchard property, and others that abut the east property line of 1018 Constitution, have relatively short lots and, as a result, a side addition at 1018 that comes to the property line adversely affects light and air to the 11th Street properties.

A building permit (B431591) for construction of a "two story addition on rear of existing home" was issued on July 5, 2001. On August 7, the Pritchards requested that the permit be suspended. By letter dated August 20, the Zoning Administrator issued a formal determination that the permit was "issued correctly, in accordance with the Zoning Regulations and previous precedence, as established by past Zoning Administrators." This appeal is from that formal determination.

Interpretation of the regulations.

If the Zoning Administrator "goes by the book," the property at 1018 Constitution will have to provide a side yard or secure relief from that requirement from this Board.

Section 405.3, dealing with side yards in residential districts, could not be clearer: a row house must share a common division wall or provide a side yard on each free-standing side. There is only one exception (Sec. 405.5): no side yard is required along a side street abutting a corner lot. But, as noted above, the property at 1018 Constitution abuts the rear property line of a row of dwellings, not a street.

BZA
Case No. 16811
Exhibit No. 28
Board of Zoning Adjustment
District of Columbia
CASE NO.16811
EXHIBIT NO.28

The letter of determination from the Zoning Administrator argues that Section 405.3 was "intended to ensure ... a common division wall between each two adjacent properties." The letter concludes that no side yard is required along the east property line of 1018 Constitution because there can be no common division wall on that line.

The Zoning Administrators have adopted the practice of reading Section 405.3 as if it includes an exception when a common division wall is not possible. The problem with the Zoning Administrator's conclusion is that the regulations do not include such an exception. And what are we to make of Section 405.5, which provides that no side yard is required along a side street abutting a corner lot? Zoning Administrator's interpretation makes that section superfluous. In the absence of an applicable exception, it seems to us that Section 405.5 should be read as requiring a side yard for properties, like 1018 Constitution, which abuts on adjacent lots and not on a side street. Specific provision of one exception and the absence of others normally is interpreted as indicating other exceptions were considered and rejected.

The letter of determination argues that if a lot meets the minimum requirements for width and area: "Surely the regulations intent cannot be to allow the creation of 1800 square foot lots ... and then subsequently require an eight foot side yard setback." But that is precisely what the regulations require for a structure that cannot provide a common division wall with a structure on an adjacent property.

Finally, reference is made to Section 405.6 to the effect that with the exception of single family detached (Section 405.1) and single-family semi-detached dwelling (Section 405.2), "a side yard shall not be required in an ... R-4 ... district." But the purpose of Section 405.6 is to specify the width of a side yard if one is provided, not to definitively limit the instances in which such a side yard is required. Note that no reference is made to Section 405.3, which does require side yards in other situations.

In summary, Zoning Administrator did not "go by the book;" instead, he relied on practice and custom of his office. In the past, there was a practical reason to interpret the regulations to allow matter-of-right construction to the lot line where it is not possible to have a common division wall. In the absence of that interpretation, it would have been necessary to win a variance in order to construct a side-yard addition. Many applicants would not have been able to meet the rigorous tests of a variance, an inequitable result.

Section 223

With adoption of Section 223 in 1998, however, additions in side yards become special exceptions instead of variances. Although applicants must show that a proposed addition will not have a substantially adverse effect on light, air, and privacy of neighboring properties, they escape the rigors of proving a variance. It then became possible and desirable to treat side additions, where it is not possible to have a common division wall, as special exceptions rather than matters of right. The public process of a special exception is highly desirable in these relatively uncommon situations of filling in a side yard where it is not possible to have a common division wall, as at the end of a row.