Government of the District of Columbia
OFFICE OF ZONING

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MEMORANDUM

To: Chairperson Geoffrey Griffis
Board Member Anne Renshaw
Board Member David Levy
Board Member Curtis Etherly, Jr.
Board Member Peter May

From: Jerrily R. Kress, FAIA - Director

Date: May 6, 2002

Re: Side Yard Zoning Regulations Interpretation regarding BZA Case No. 16811 - Appeal of David and Janet Pritchard

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On April 2, 2002, the BZA reopened the record for a report from the BZA staff on the side yard Zoning Regulations interpretation only. While the question posed on side yards was meant to be generic, since the BZA had a case before it to which this would apply the BZA decided it only proper to allow the parties to comment on the BZA's staff report. The following are comments and interpretations regarding side yard zoning regulations.

Mr. Toye Bello's comments :

> "that having a common division wall is not the only condition under which a side yard may not be provided, and that a "face on line wall" is also construed as having no side yard. Hence there is no provision in the Zoning Regulations. for a side yard setback for the end of a series of row dwellings which happen to culminate on a lot abutting an alley or a street. This is consistent with the definition provided by section 199.1 for a "row dwelling" and semi-detached dwellings. The instructive emphasis is that if the only possibility for establishing a row dwelling were hinged on having two common division walls, then the Zoning Regulations would have defined a Row dwelling as such.
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> The Zoning Regulation recognizes that there are instances when a common division wall may never become a reality. In the instance of a corner lot, when a lot abuts an alley, and when a side property lot line abuts the rear lot line of an

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adjacent property. In the R1 & R2 zones, abutting an alley does not exempt a property from the side yard requirement. The inclusion of the R2 district in section 405.3 underscores my argument that the requirement is the need for one common division wall only, since we know one side yard is a requirement because only detached and semi-detached buildings are allowed anyway. I do not believe that the intent of the regulations is to allow subdivision to create an 18ft. wide lot and then impose an 8ft. side yard setback, thereby limiting one to a 10ft. wide building and more importantly rendering the lot non-conforming, just because the lot happens to abut the rear lot line of an adjacent property or an alley. Barring an alley closure, those lots abutting an alley will perpetually be "free-standing", but a free-standing wall on a side property lot line is only so temporarily, until the adjacent lot exercises its right to also build to the same lot line. Therefore, free-standing in the context used in 405.3 can only be construed to mean setting back away from the side property lot line and not its literal dictionary meaning.

One may even take the argument one step further as an interpretation of 405.3 to the contrary may be construed to mean that existing Row dwellings which may not share a common division wall for the entire depth of the building may not add to fill in existing open courts unless common division walls are also extended. This Siamese relationship amongst adjacent properties, in my view, is not the intent of the Zoning Regulations."

OZ's Corporation Counsel comments:

"the intent of Subsection 405.3 is to preserve side yards in all districts. It was adopted in 1970, so maybe someone can retrieve the old ZC file (ZC Order No. 17). I don't think Toye is correct that no side yards are required when there is only one common division wall; if the other wall is a free-standing wall and it is not abutting a street or alley, then I would read Subsection 405.3 to require a side yard on the free-standing side... I think the answer to the subdivision problem is that the end lot has to have sufficient lot width to accommodate a semi-detached dwelling, not the smaller lot width for the row dwelling. Variance or special exception relief can be sought and ordinarily should be given if the lots are truly substandard lots and the substandard width is not self-imposed, and any detrimental effects on adjacent properties from lack of adequate separation between buildings addressed in that process."

The BZA staff would also add the following comments:

1. Frank Murphy when he was Corporation Counsel and Jim Fahey when he was Zoning Administrator, both agreed that the language "does not share a common division wall ..." was key. If a building does share a common wall anywhere, then the entire section does not apply. Accordingly, it has been our understanding that the District has consistently applied the Regulations that

way: if a building shares a common wall on one side, then no side yards would be required on any other sides.

2. Toye's comments about "face on line" walls and lot line walls, as well as his reasoning about lots where the side faces rear yards of other lots or alleys, are relevant, especially in zones where row dwellings are permitted. This is not an issue in an R-2 zone, where one side yard is required.

3. The whole genesis for this provision came out of the 1970 Far Southeast studies done by Jim Banks' Office of Housing Programs. What was happening was that people were building half of a pair of semi-detached dwellings, building on the lot line on one side and having a side yard on the other side. The side built on the lot line was sometimes left almost unfinished, waiting for the construction of the other half of the pair which might have been in a different ownership or might have already been developed in a way that the lot line side of the house would never be covered up. The text provisions adopted did not appear to intend to always require a side yard where there was an adjoining building on one side.

4. While there appears to be contradictory language between Section 405.3 and the allowance of a row dwelling in the R-4 district as a matter-of-right, it has been consistently interpreted by the Zoning Administrator that the intent of 405.3 was not meant to compromise the right of a property owner to establish the type of structure/use that is allowed as a matter-of-right by requiring a side yard and therefore forcing upon a property owner a semi-detached or detached structure.

5. However, in summary since the language in the Zoning Regulations is contradictory, the BZA may find ample reason to interpret the Zoning Regulations as read and presented by the Appellant or the Appellee.

All parties are given as of the date of this memorandum, 10 days plus 3 days for mailing to respond to this BZA staff report regarding side yard Zoning Regulation interpretation only. The decision on this case is scheduled for June 4th at the public meeting.

If you have any questions, please do not hesitate to contact Rick Nero or me at (202) 72 6311.

cc: David and Janet Pritchard
Philip Sedlak and Kathleen Peepes
Ivette Basterrechea, Chairperson ANC 6A
Marie-Claire Brown - Assistant Corporation Counsel
Toye Bello, Acting Zoning Administrator