TO: Chairperson Geoffrey Griffis
Board of Zoning Adjustment
441 4th Street NW, Suite 210
Washington DC 20001

FROM: Janet Pritchard
204 11th Street NE
Washington DC 20002

RE: BZA CASE No. 16811

VIA FAX # 202-727-6072 [Total pages faxed, including this one: 8]

RECEIVED
D.C. OFFICE OF ZONING
2002 MAY 29 PM 12:00

Dear Chairperson Griffis:

As requested in the letter dated April 25, 2002 from Jerrily R. Kress regarding my appeal, I am faxing the Office of Zoning with draft Findings of Fact and Conclusions of Law by the 4:45 p.m. May 27, 2002 deadline specified in the letter.

Copies of the draft Findings and Conclusions have been sent to the other parties in the case via first class mail.

BZA
Case No. 16811
Exhibit No. 47
Board of Zoning Adjustment
District of Columbia
CASE NO.16811
EXHIBIT NO.47

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal of David and Janet Pritchard, pursuant to 11 DCMR sections 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 to a single-family dwelling allegedly not complying with the side yard requirements (section 405) in a R-4 District at premises 1018 Constitution Avenue, N.E. (Square 964, Lot 46).

BZA CASE NO.: 16811
HEARING DATE: March 5, 2002

RECEIVED
D.C. OFFICE OF ZONING
2002 MAY 27 PM 12:00

APPELLANTS' PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. On July 5, 2001, the Department of Consumer and Regulatory Affairs issued Building Permit No. B431591 (the "building permit"), thereby granting permission to the owner, Philip Sedlak, to build a two-story addition to the dwelling at 1018 Constitution Avenue, N.E. (the "dwelling").

2. The lot at 1018 Constitution Avenue is in an R-4 district. [Building Permit; Appeal, BZA Form 1 and Attachment C; Transcript of March 5, 2002 hearing ["Tr."] at 72-73.]

3. At the time the building permit was issued, the dwelling was a one-family semi-detached dwelling that had one side yard on its east side and shared a common division wall with a structure on the adjacent lot to the west. The proposed addition would fill in the side yard, which runs along the rear property line of a lot owned by David and Janet Pritchard ("Appellants") at 204 11th Street, N.E. The addition would result in the construction of a two-story face-on-line wall along approximately three quarters of Appellants' rear lot line.

4. By letter dated August 7, 2001, Appellants and other neighbors requested that the Zoning Administrator ("Administrator") suspend the building permit on the grounds that the proposed addition did not comply with (1) the "percentage lot occupancy" limitation set forth in 11 DCMR 403.2 and (2) the side-yard requirements of 11 DCMR sections 405.2, 405.3 and 405.9 [Appeal, Attachment C].

5. By letter to Appellants dated August 20, 2001, the Zoning Administrator made a formal determination that the building permit was not issued in error. [Appeal, Attachment E].

6. In this Appeal, Appellants contend that because the proposed addition fails to comply with the side-yard requirements of 11 DCMR sec. 405.3, the Zoning Administrator should not have issued the building permit without a special exception.

7. 1018 Constitution Avenue, N.E. is within ANC-6A. ANC-6A, by letter dated January 7, 2002, supports this Appeal. [Tr. at 5, 138].

PROPOSED CONCLUSIONS OF LAW

1. 11 DCMR sec. 405.3 states:

> 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.

1018 Constitution Avenue N.E. does not and cannot share a common division wall on its east side. Therefore, pursuant to section 405.3, it must have a side yard on the resulting free standing side. The addition allowed by the building permit would fill in the side yard at 1018 Constitution Avenue in violation of section 405.3. The Zoning Administrator relied on an erroneous interpretation of section 405.3 in issuing the permit.

2. Section 405.3 plainly states that "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 regulation's mandate is that each free standing side -- i.e., each side that does not share a common division wall with an adjacent building -- shall have a side yard.

3. The Administrator erroneously interprets section 405.3 to mean that, if a building shares a common division wall on one side, then it need not have a side yard on the other side. In

support of this interpretation, the Administrator relies heavily on his contention that a property owner in an R-4 zone is allowed to build or to convert to a row dwelling as a matter of right, and that section 405.3 should not be read as abridging this right. [*See, e.g.,* Tr. at 102-04]

4. As a preliminary matter, it must be noted that it is a standard tenet of statutory construction that, where a statutory provision articulates specific requirements in the case of specific and limited circumstances, such requirements will supersede any more general rules. Such is the case here. While row dwellings are generally permitted in an R4 district, section 405.3 provides that only semi-detached dwellings are permissible in the specific and limited circumstances described.

5. As explained below, the Administrator's interpretation does not comport with the regulatory scheme as a whole.

6. First, the Administrator's interpretation of section 405.3 would render 11 DCMR sec. 405.5 superfluous. Section 405.5 provides that "A side yard shall not be required along a side street abutting a corner lot in a Residence district." The Administrator contends that the regulations allow, as a matter of right, an owner of any property in an R-4 zone to build or to convert to a row dwelling with no side yard. If this were so, then section 405.5 would be redundant since, under the Administrator's rule, a side yard would not be required in any case in an R-4 zone. Section 405.5 makes sense under Appellants' interpretation of section 405.3, however. Appellants argue that 405.3 requires a side yard where a dwelling cannot share a common division wall with an adjacent building. Without section 405.5, this would mean that any house on the end of a row would be required to have a side yard. Most end-row houses abut an alley or a street. Pursuant to section 405.5, such homes would not be required to maintain a side yard. However, in the relatively rarer circumstance -- such as in the present case -- where the end-row house abuts another property rather than a street or an alley, section 405.3 serves to protect neighboring properties' concerns for air and light by requiring a side yard.

7. The Administrator's interpretation of section 405.3 is also inconsistent with sections 405.6 , 405.2, and 405.9. The Administrator insists that the owner of a semi-detached property in an R-4 zone is allowed to convert to a row dwelling as a matter of right, and that section 405.3

was not intended to abridge this right. [*See, e.g.*, Tr. at 103-04]. In support of this position, the Administrator attempts to rely on section 405.6. [Appeal, Attachment E.] Section 405.6 provides:

> Except as provided in sections 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-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.

11 DCMR sec. 405.6. The Administrator's reliance on this provision is clearly misplaced. In fact, section 405.6, read together with sections 405.2 and 405.9, appears to do precisely what the Administrator contends cannot be done -- that is, it requires the owner of a semi-detached dwelling in an R-4 district to *maintain* a side yard of at least eight feet in perpetuity, thereby foreclosing the possibility of converting the property to a row dwelling. Although section 405.6 states that, in general, side yards are not required in an R-4 district, it also notes that section 405.2 provides an exception to this rule. Section 405.2 provides that, in an R-4 district, "a one-family semi-detached dwelling shall be subject to the side yard requirements of an R-2 district." 11 DCMR sec. 405.2. Section 405.9, in turn, requires a side yard of at least eight feet in an R-2 district. *See* 11 DCMR sec. 405.9.

7. Section 405.8 also underscores that recently enacted regulations are -- contrary to the Administrator's contention -- intended to preserve existing side yards, notwithstanding the general rule allowing row dwellings in an R-4 district. Section 405.8 provides that, for semi-detached buildings "existing on or before May 12, 1958 with a side yard of less than eight feet wide, an extension or addition may be made to the building, *provided that the width of the existing side yard shall not be decreased.*" 11 DCMR 405.8 (emphasis added).

8. The Administrator also suggests that section 405.3 was intended to prevent situations in which a property owner built near to -- but not all the way up to -- the lot line, leaving a one or two foot side-yard gap between neighboring buildings. [*See* Tr. at 104 (Mr. Bello: ". . . The non-existence of 405.3 again would allow the construction of semi-detached structures within one foot of side property lot lines, so I don't think the intent of the amendment was to hold semi-detached structures in perpetuity.")] However, section 405.3 does not speak to the issue of how wide a side yard must be; rather it simply specifies circumstances in which a side yard is

required. Eight-foot minimum set-back requirements for side yards are specified in sections 405.6, 405.2 and 405.9, as explained above.

9. Moreover, the Administrator's interpretation does not make sense in light of section 223's provisions for granting exceptions to section 405.3's side yard requirements. Any reasonable interpretation of section 405.3 should be evaluated in light of the governing principles stated in section 223, the provision by which a property owner may seek an exception to section 405's side yard requirements. The interpretation of section 405.3 offered by Appellants is fully consistent with section 223. Section 405 specifies those circumstances in which side yards are required. Side yard requirements provide for open spaces between buildings and thus for the flow of air and light between neighboring buildings. Accordingly, section 223 allows a building addition to be permitted notwithstanding its failure to comply with section 405's side yard requirements only if the "addition shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property; in particular; (a) The light and air available to neighboring properties shall not be unduly affected; (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; . . . ." 11 DCMR sec. 223.2. Thus, section 223 ensures that the purpose and spirit of section 405 shall be preserved even where an owner obtains an exception to strict application of section 405's specific requirements. Conversely, exceptions to section 405 may be made where such exceptions would not, in practical effect, be contrary to the regulation's purpose. Under the Administrator's interpretation, however, section 223 is *more* restrictive than section 405. To obtain an exception to section 405.3, an owner needs to demonstrate that the proposed building addition would not interfere with the light, air, privacy, or enjoyment of neighboring properties. However, the Administrator's interpretation of 405.3 appears to have little to do with protecting such rights of neighboring properties. Thus, under the Administrator's interpretation, the exception is stricter than the rule -- an absurd result.

10. Mr. Bello also raises the concern that reading section 405.3 as limiting the general right to a row dwelling would mean that a lot could be subdivided to create an 18 ft wide lot and then further limited to a 10 ft wide building in those instances where 405.3 would apply. Mr. Bello insinuates that such a result would strip some properties of any meaningful value. However, 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 a row dwelling. Variance or special exception relief can be sought and ordinarily should be given if the lots are truly substandard 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.

11. Finally, to the extent that section 405.3's side yard requirements conflict with the general right to a row dwelling in an R-4 district, section 101 of the Zoning Regulations instructs the Administrator to resolve and such conflicts or ambiguities in favor of the interpretation that would best "provide light and air" and/or "encourage[] the stability of districts and of land value." 11 DCMR sec. 101.1(a), 101.2(c). In contravention of these interpretive principles, the Administrator's position that the general right to a row dwelling renders section 405's side yard requirements a nullity whenever a property owner opts to convert his property into a row dwelling favors the enrichment of an individual property owner at the expense of neighboring properties' air, light, and land value.

12. The Zoning Administrator relied on an erroneous interpretation of section 405.3 in issuing the building permit. 1018 Constitution Avenue N.E. does not and cannot share a common division wall on its east side. Therefore, pursuant to section 405.3, it must have a side yard on the resulting free standing side. The addition allowed by the building permit would fill in the side yard at 1018 Constitution Avenue in violation of section 405.3. Therefore, the permit must be revoked. In order to retain the building addition, the owners must first seek and obtain a special exception to section 405's side yard requirements.

Respectfully submitted,

Janet E.M. Pritchard
Appellant

David J.M. Pritchard
Appellant

CERTIFICATE OF SERVICE

I certify that on this ___ day of May, 2002, copies of the foregoing Appellants' Proposed Findings of Fact and Cconclusions of Law were mailed, first class postage prepaid to each of the following:

Marie-Claire Brown, Esq.
Charlotte Parker, Esq.
Office of the Corporation Counsel
441 4th Street, N.W., Suite 450N
Washington, DC 20001

Robert Clayton Cooper, Esq.
Jackson & Campbell, P.C.
1120 Twentieth Street, N.W.
South Tower
Washington, DC 20036

Ivette Basterrechea, Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 76680
Washington, DC 20002

Janet E.M. Pritchard