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May 19, 2002

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Chairperson Geoffrey Griffis
Board of Zoning Adjustment
441 4th Street NW, Ste. 210
Washington DC 20001

VIA FAX # 202-727-6072 [TOTAL # OF PAGES FAXED = 5]

RE: BZA Docket # 16811
Appeal of David and Janet Pritchard re 1018 Constitution Avenue NE
Decision Date: 06/04/02

Dear Chairman Griffis:

Appellants Janet and David Pritchard offer the following responses to the May 6, 2002 BZA Staff Report Re: Side Yard Zoning Regulations Interpretation.

Appellants' Response to Mr. Toye Bello's comments

First, Mr. Bello notes that "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." Mr. Bello's comments suggests that this fact is to be deduced from Mr. Bello's position that "having a common division wall is not the only condition under which a side yard may not be provided." However, as emphasized in Appellants' letter brief dated February 26, 2002 (hereinafter "Appellants' Letter Brief"), Section 405.5 of the Zoning Regulations specifically provides that "[a] side yard shall not be required along a side street abutting a corner lot in a Residence district." *See* 11 DCMR 405.5. It does not make sense that section 405.5's provision should be deduced from a more general rule providing that side yards are *not* generally required. Such an interpretation would render section 405.5 redundant and superfluous. Rather, section 405.5 is properly understood as exempting corner lots (i.e., lots abutting a street or an alley) from the more general rule of section 405.3, which requires "a side yard on each free standing side" where a one-family dwelling "does not share a common division wall with an existing building or a building being constructed together with the new building." *See* 11 DCMR 405.3 (emphasis added).

Mr. Bello goes on to suggest that "[t]he inclusion of the R2 district in section 405.3 underscores [his] argument that the requirement is the need for one common division wall only, since we know that one side yard is a requirement because only detached and semi-detached buildings are allowed anyway" and states that "[i]n the R1 and R2 zones, abutting an alley does

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Board of Zoning Adjustment
District of Columbia
CASE NO.16811
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not exempt a property from the side yard requirement." Once again, the points emphasized by Mr. Bello support Appellants' position, and not that of the Zoning Administrator. The inclusion of R2 zones in section 405.3 is consistent with the fact that only detached and semi-detached dwellings are permitted in such zones. Moreover, Mr. Bello's emphasis on the fact that "in the R1 and R2 zones, abutting an alley does not exempt a property from the side yard requirement" only underscores Appellants' argument that section 405.5 should be read as providing such an exemption, at least for row dwellings in an R4 zone.

In addition, Mr. Bello argues 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." Appellants' interpretation of section 405.3 does not compel this conclusion. Appellants do not dispute that row dwellings are generally permitted in an R4 zone. However, section 405.3 provides for a specific exception to this general rule in the specific circumstances where a dwelling "does not share a common division wall with an existing building or a building being constructed together with the new building." In such circumstances, only a semi-detached and not a row dwelling is permitted. Section 405.5, in turn, provides a exception to this exception, permitting a row dwelling in the case of a corner lot. Section 199.1's definition of a row dwelling as "a one-family dwelling have no side yards" is consistent with all of these provisions although, of course, a dwelling in compliance with section 405.3 will necessarily be semi-detached and not a row dwelling. Defining a row dwelling as having two common division walls would be inconsistent with the circumstances provided for in section 405.5, allowing a row on a corner lot.

The real issue for Mr. Bello, as far as Appellants can discern, does not turn on how a row dwelling is defined in the regulations, but rather on whether there can be an exception to the general rule permitting row dwellings in an R4 zone. 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 in the regulation.

Mr. Bello raises the concern that reading section 405.3 as providing an exception to 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, it is safe to assume that any building constructed prior to the 1970 creation of section 405.3 already has a reasonable value without the construction of any building additions which would violate section 405.3. It is also reasonable to assume that, if the BZA were to clarify the meaning and intent of section 405.3 to comport with Appellants' claims, then the surveyor would not make a new subdivision creating an 18 ft lot in circumstances that would invoke section 405.3. In other words, as suggested by the Office of Zoning's Corporation Counsel,"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."

Appellants' Response to OZ Corporation Counsel comments

The Office of Zoning's Corporation Counsel's comments are fully consistent with Appellants' position and therefore do not require further comment by Appellants.

Appellants' Response to BZA Staff comments

1. The BZA staff states their understanding that the interpretation of section 405.3 offered by the Zoning Administrator in this case has been consistently applied through the years. The Administrator's recent treatment of the property located at 220 5th Street SE casts suspicion on this issue. *See* BZA Case No. 16755; *see also* Appellants' Letter Brief, section II. Even assuming. however, that the treatment of 220 5th Street SE was an aberration and that section 405.3 has otherwise been consistently applied by the Zoning Administrator, it does not follow that the Administrator's long-standing interpretation of section 405.3 is *correct*. That is for the BZA to decide. This case provides the BZA with its first opportunity to clarify the meaning and intent of section 405.3 and it should not allow the mere fact that the Administrator's interpretation was not challenged at an earlier date influence its determination.

2. Mr. Bello has clarified that a "face on line" wall is a building wall that rests on the lot line. Thus, where a building has a "face on line" wall it does not have a side yard. Whether a "face on line" wall is permitted where the side lot line abuts rear yards of other lots is the issue in this case. However, as Appellants have argued above in response to Mr. Bello's comments as well as in Appellants' Letter Brief and in oral argument, Mr. Bello's observations about the existence of "face on line" walls abutting a street or alley do not compel a conclusion that section 405.3 permits a "face on line" wall where the side lot line abuts rear yards of other lots.

3. In paragraph no. 3, BZA staff examine the history and context in which section 405.3 originated and then appear to conclude that "[t]he text provisions adopted did not appear to intend to always require a side yard where there was an adjoining building on one side." This conclusion fails to address the question at issue in this case. The issue is not whether a side yard is required where there is an adjoining house on one side but rather whether a side yard is required on a side where there is *no* adjoining house (i.e., no common division wall). The legislative history outlined by the BZA staff is fully consistent with Appellants' interpretation of section 405.3. According to BZA staff, section 405.3 originated in response to a concern that "face on line" walls were being constructed and left unfinished, apparently in anticipation of an adjoining house which might never be constructed in a way that would cover up the unsightly face on line

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wall. While, conceivably, such a concern might have been resolved simply by requiring such walls to be finished to a specified standard, regulators instead decided to require a side yard in any circumstance in which a building "does not share a common division wall with an existing building or a building being constructed together with the new building" (with the exception of corner lots, as provided for in section 405.5). As plainly stated in Order No. 17 issued by the Zoning Commission on November 17, 1970 (codified as 11 DCMR 405.3), the proposed text changes were meant "*to insure the provision of adequate side yards* for all residential buildings regardless of the zoning district in which they lie." While unsightly unfinished face on line walls and other issues speculated upon in oral argument all might have precipitated the enactment of section 405.3, the order itself specifies *the provision of adequate side yards* as its principal purpose. Moreover, the provision of adequate side yards sufficiently resolves any and all of the precipitating problems discussed.

4. Even if "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," the mere fact that the Administrator's interpretation may have been *consistent* does not make his interpretation *correct*. Moreover, as noted above, 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. Thus, while row dwellings are generally permitted in an R4 district, section 405.3 provides that only semi-detached dwellings are permissible where a one-family dwelling "does not share a common division wall with an existing building or a building being constructed together with the new building."

5. It appears that the BZA staff's research into the history and interpretation of section 405.3 has unearthed nothing compelling the defeat of Appellants' claims. On the contrary, the staff concludes that "the BZA may find ample reason to interpret the Zoning Regulations as read and presented by the Appellant."

We hope these responses to the May 6th BZA staff report are useful for your consideration of this case. We intent to submit draft Findings of Fact and Conclusions of Law to the Office of Zoning by the May 27th deadline specified in April 25, 2002 letter issued by Jerrilyn Kress.

Sincerely,

Janet Pritchard, Appellant

David Pritchard, Appellant

cc. Robert Clayton Cooper, Esq.
Marie-Claire Brown, Esq.
Ivette Basterrechea, Chairperson ANC 6A

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