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February 3, 2003

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Mr. Geoffrey H. Griffis
Chairperson
Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: BZA Appeal No. 16934
922 Constitution Avenue, N.E.
Square 939 Lot 28
Hearing Date February 18, 2003

Dear Mr. Griffis and Members of the Board:

On behalf of Christopher's Row, LLC, the owner of 922 Constitution Avenue, NE., we respectfully submit this letter brief in response to the January 21, 2003 letter brief of the appellant.

INTRODUCTION

Christopher's's Row , through an agent, applied for and was granted building permit B447067 on July 12, 2002 to construct a single family row dwelling on Square 939, lot 28. The lot is in a
R-4 District.

The lot at issue, Square 939,.lot 28., is otherwise known as 922 Constitution Avenue, N.E, (922 Constitution Avenue, NE) was vacant until construction began. The construction of the single family row house is near completed. The row house is permitted as a matter of right. See, 11 DCMR §§ 199.1 and 405.3. The row house under construction shares a common wall with the existing house to the west, 920 Constitution Avenue, N.E. On the other side, to the east, is a single family house with a wall on the common property line. This common division wall is part of a garage.

BZA
Case No. 16934
Exhibit No. 34

Board of Zoning Adjustment
District of Columbia
CASE NO.16934
EXHIBIT NO.34

The appellant argues that this wall is a rear wall and as a basement wall. Christopher's Row does not agree with either of these characterizations.

The wall is not a basement wall when viewed from 920 and 922 Constitution Avenue as the slab upon which the wall stands is at the same grade as lots 920 and 922 Constitution Avenue, NE. The floor of the garage and 920 and 922 Constitution Avenue, NE are at the same grade as Constitution Avenue. There is a retaining wall along the sidewalk in front of 928 Constitution Avenue, the house to the immediate east of 922 Constitution Avenue NE. [1] Attached to this letter are photographs which are included in Exhibit 14 of the appeal file.

The wall is a side wall as opposed to a rear wall of the adjoining house as the house is known as 928 Constitution Avenue, NE.

Christopher's's Row agrees with part of the appellant's characterization of the issue, at page 4 of her letter brief. The issue in this case is whether the west wall of the garage can be considered a common division wall within the meaning of 11 DCMR § 405.3 and whether on the basis of that wall, Christopher's Row is permitted to build a two story row house dwelling extending well beyond the garage[2] wall.

ARGUMENT

The appellant quotes extensively from the Board's decision in the Appeal of David and Janet Pritchard, Appeal No. 16811, 49 DCR 9707.

However, the appeal at hand is not controlled by the Pritchard decision because the facts are different as to the existence of a common division wall and the status of the lot prior to the issuance of the building permit. The Pritchard decision states that the existing house "... given the configuration of the adjacent dwellings, physically cannot, share a common division wall with a building ..." In this case there is a common division wall with the dwellings on the lots to both sides. Those walls are common division walls A common division wall is not defined in the Code. Pritchard, at 4, fn. 1.

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[1] There is a break in the 900 block street or house numbers.

[2] The garage, in this case, is part of the house and is not an accessory building.

The second major difference is that the building permit in the Pritchard decision was for an addition to a semi-detached house which would eliminate an existing side yard. In the matter at hand, Christopher's Row is constructing a row house on a vacant lot. No side yard will be eliminated in this case.

The Corner House, to the east of 922 Constitution Avenue Faces Constitution Avenue, NE.

The appellant's brief never gives the address of the adjacent house choosing to refer to the building as the 'corner house.'

The corner house has the address of 928 Constitution Avenue, NE. Therefore, the common division wall on 928 Constitution Avenue's west lot line is a sidewall and not a rear wall. The row house under construction will fill in the row along the 900 block of Constitution Avenue, NE.

What constitutes the front of a house was considered in the Appeal of Grinstead, 49 DCR 5227.

The Board looked to both,

> 37. Webster's Third New International Dictionary of the English Language Unabridged (1986) includes the following definition:
> 2: something that confronts or faces forward: as (1): a face of a building; esp: the face that contains the principal entrance.
>
> 38. The **Zoning** Administrator relied on the definition of "front" as "the part or side of anything, as a house, which seems to look or to be directed forward" and the portion of the building facing the property lot line that abuts the street.

The attached Exhibit A to this letter is a photograph of the 'corner house' or 928 Constitution Avenue, NE. The photograph shows that there is a front door and stoop to Constitution Avene, NE.

The same photograph, Attachment A, shows that the side of the garage is on the side of the house and not on the rear of the house.

The Garage Is Not a Basement Structure as to 920 and 922 Constitution Avenue, NE.

The photographs, Exhibit 14 in the BZA case jacket, Attachments A and B to this brief all show that the finished grade of 920 and 922 Constitution Avenue is at the same level as the front curb. The floor slab of the garage is at the same level as the curb. As to 922 Constitution Avenue, NE, the garage is not a basement structure; but is on the same grade.

The garage could be considered as a basement when looked at only from the prospective of 928 Constitution Avenue, because of a retaining wall built along the sidewalk raising the finished grade in front of 928 Constitution Avenue.

Therefore, the common division wall is not a basement wall.

Furthermore, even if the Board should determine that the garage is to be considered a basement, that does not preclude the garage wall from being a common division wall. The Code does not define a common division wall. The wall at issue is above the finished grade from any view.

The appellant argues that there are windows on the west side of 928 Constitution Avenue. This assessment is correct, however, the windows are on a wall of the story above the garage and set back from the common division wall. The appellant goes on to argue that the Christopher's Row construction will affect the sun to the side[3] windows. The appellant does not describe the type of room out of which the windows open and fails to note that there is a window on the front of the house which appears to provides light to the same room as the side windows. See Attachment A.

There is a common division wall on the east side of 922 Constitution Avene.

The Common Division Wall Can Extend along the Lot Line.

Appellant argues at page 6 of her letter brief that if the Board finds that Christopher's Row can build to the common division wall the Board should not allow the construction to extend along the rear lot lines of 202 and 204 10th Street, N.E and that the structure on 922 Constitution Avenue NE cannot share a common division wall with those properties.

[3] The appellant mistakenly refers to the windows as rear windows in her letter-brief at page 5.

The appellant cites no authority for her argument other then an alleged restriction of light and air. The Code, setting forth the rear yard requirements for the 10th Street lots, provide those structures with the light and air that they need.

The Christopher's Row structure sharing a common division wall along part of its lot line is entitled to build to the entire extent of that lot line.

Christopher's Row is entitled to build to the lot line towards the front of the lot where the garage stands, and there is no reason that it should not be allowed to build to the back. lot line. Holding otherwise would allow land owners to unduly control the size of row houses on the lots next to theirs. The rear yard restrictions in the Code would be over ridden by the depth of the adjacent row house. No owner could make an addition to his or her row house unless the row houses on either side extended further back.

Finding that the length of the common dividing wall controls will restrict development on an unknown number of other lots. Further such a holding may, in some circumstances, require courts where the lot line runs along lines of multiple lots some of which have common division walls and others which do not.

Conclusion

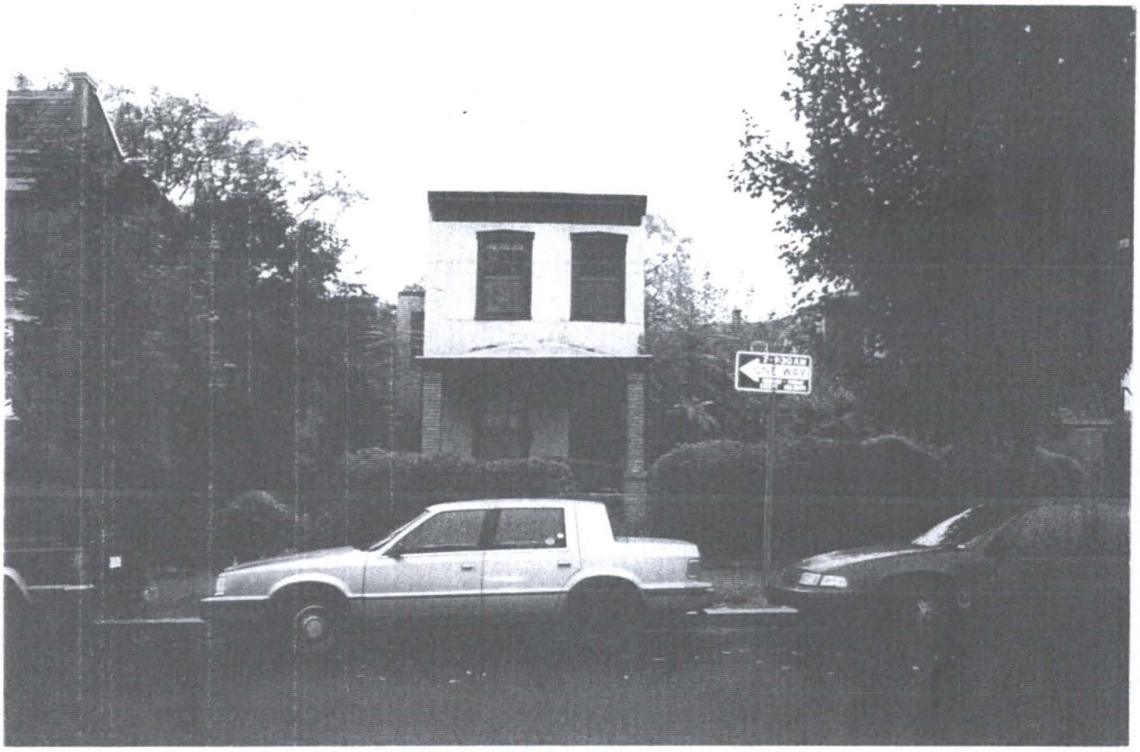
The issuance of the building permit should be upheld in this case. There is a common division wall on the east lot line. Because there is a common division wall on both side lot lines, a row house can be built as a matter of right.

Respectfully submitted

Richard P. Schmitt

Attachments
cc:
Bennett Rushkoff, Esq. (With attachments)
Virginia Gaddis (With attachments)

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920
Constitution

Part of Exhibit 14

920 Constitution



West View of 920





Attachment A



Attachment B