CAPITOL HILL RESTORATION SOCIETY
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BZA No. 16935
1308-1314 Potomac Avenue, SE
Square 1045, Lots 134-137
Zone: C-2-B
Hearing Date: 01/21/03

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January 15, 2003

Board of Zoning Adjustment,
Room 210
441 4th Street, NW
Washington, DC 20001

The Capitol Hill Restoration Society SUPPORTS the above referenced appeal.

The Capitol Hill Restoration Society is a civic association representing 1,000 members. The Zoning Committee of the Capitol Hill Restoration Society considered the appeal on January 9, 2003. A quorum was present. The Committee unanimously voted to support the appeal. Under standing rules of the Board of Directors, this committee action becomes the position of the Society.

Background

This is an appeal by Southeast Citizens for Smart Development (SCSD) from the decision of the Zoning Administrator to issue four revised building permits on July 8, 2002 for buildings designated 1308, 1310, 1312, and 1314 Potomac Avenue, S.E.

The permits were issued to Father Flanagan's Boys Home and each is indicated as a revision to permits issued in September 2001. These revisions came about because the original permits were issued for construction of four community based residential facilities, each housing six youths and two staff. The Board of Zoning Adjustment in its order in BZA No. 16791, dated June 21, 2002, held that the four homes constituted a single residential facility for 24 youths and would require a special exception. Faced with revocation of its building permits, Boys Home sought revised permits for single-family residences. It is those permits that are the subject of this appeal.

On August 1, 2002, Andrea C. Ferster, counsel for SCSD, filed Appeal No. 16935 to challenge issuance of the revised permits and to seek revocation of them. The SCSD raised two issues:

Side yards Three of the four buildings lack required eight-foot side yards.

Parking None of the lots have access to the required parking spaces from a public street or alley, and some of the spaces are not on the same lot with the residences they are intended to serve.

BZA
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Exhibit No. 25

Board of Zoning Adjustment
District of Columbia
CASE NO.16935
EXHIBIT NO.25

Nearly three months later, on October 21, 2002, the Director of the Department of Consumer and Regulatory Affairs (DCRA) issued a Notice that presents the Zoning Administrator's rationale for issuing the revised permits. The Notice rejects the position taken by SCSD:

> We are confident, however, that the BZA will affirm the Zoning Administrator's decision, as all four of the single-family dwellings proposed in the building permit applications meet all of the applicable zoning regulations. More specifically, the Zoning Administrator found that both the parking requirements of 11 DCMR §2117, and the side yard requirements for residences in a commercial district, 11 DCMR §775—the two areas that are the subject of your August 26, 2002 letter—were met. (Notice to Andrea C. Ferster, attorney for SCSD, October 21, 2002, p. 2)

Side Yard Requirements

Although the premises are zoned C-2-B, the Zoning Regulations require side yards to conform to requirements in residential districts. One-family detached and semi-detached dwellings are subject to the side-yard requirements of the R-1 and R-2 districts respectively. (11 DCMR §775)

The Zoning Administrator examined each of the four dwellings for conformity with the side-yard requirements for either detached or semi-detached dwellings.

> 1308 Potomac Avenue was found to meet the requirements for a detached dwelling since it has an 8-foot side yard on either side. The Committee agrees.
>
> 1310, 1312, and 1314 Potomac Avenue were found to meet the requirements for a semi-detached dwelling because they each have a lot-line wall on one side and an 8-foot side yard on the other. The Committee disagrees.

Why the semi-detached dwellings do not meet side yard requirements

We agree that the buildings at 1310-1314 Potomac Avenue meet the definition of semi-detached dwellings; each has a lot-line wall on one side and an 8-foot side yard on the other. (Definition of Dwelling, one-family semi-detached, 11 DCMR §199) Note, however, that the Zoning Administrator does not mention the side yard requirements of 11 DCMR §405.3:

> In R-2 ... Districts, when a one-family 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, it shall have a side yard on each resulting free-standing side.

It seemed to the Committee that the lot-line walls on 1310, 1312, and 1314 were free-standing walls that required a side yard. We doubt that the Zoning Administrator overlooked this provision; we think that he simply decided that it was not applicable. In testimony regarding the meaning of the term "free-standing wall" in §405.3 on March 5, 2002, Acting Zoning Administrator Toye Bello stated:

> What I'm arguing is that in the term that is used here, a free-standing wall must set back from the side property line or from the lot line...(T)he free standing, I don't think, speaks to the necessity for attachment, as it does to whether or not you set back from the side property line. (Transcript, Appeal No. 16811, Appeal of David and Janet Pritchard, March 5, 2002, p. 108)

The Board of Zoning Adjustment rejected the Zoning Administrator' interpretation:

> Finding of Fact 17. The lot line wall is a free-standing wall. (Order in Appeal No. 16811)

The Committee believes that 405.3 was intended to prevent the situation presented by 1310-1314 Potomac Avenue: semi-detached dwellings that are not attached to an adjacent structure. The result is a row of detached building with side yards on one side only. Surely, this was not the intention of the regulations.

We do not understand why revised building permits were issued on July 8, 2002, when nearly a month before on June 4, 2002 the Board voted to reverse the Zoning Administrator in his conclusion that a lot line wall is <u>not</u> a free-standing wall. Although the order in Appeal No. 16811 did not issue until October, the Zoning Administrator, as a party in that appeal should have been aware of the Board's conclusion, and informed Boys Town that they would have to seek zoning relief before revised permits could be issued.

Why No Side Yard for 1314?

The Committee notes that the side yard for 1314 Potomac Avenue is obstructed by a protruding structure, indicated as a "Mud Room," that reduces the side yard to about two feet. Without detailed measured drawings, we cannot be sure, but so it seems on the developer's plat. We do not understand why an eight-foot side yard does not appear here also. We are aware that a side yard is not required along a side street abutting a corner lot (§405.5), but this lot appears to abut a private driveway, and would seem to require a side yard.

Parking access is not guaranteed

The site plans at one time seem to have provided required parking for some of the residences at some other location than the lot with the residences they are intended to serve. This has been corrected and each residence now has a parking space on the lot it occupies.

None of the dwellings have access to their parking spaces from a public street or alley. The private driveway beside 1314 Potomac Avenue provides access to the parking spaces for the dwellings, but there is no indication on the plans of an easement that would guarantee access to their parking spaces.

Conclusion

For all of these reasons, the Capitol Hill Restoration Society believes that the Board should reverse the decision of the Zoning Administrator to approve revised Building Permits B446916, B446917, B446918, and B446919.

Lyle R. Schauer,
Chair, Zoning Committee