GOVERN ENT OF THE DISTRICT OF COL IBIA
Board of Zoning Adjustment

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Appeal No. 17066 of Judy and Clarke Brinckerhoff, Susan Buck, and David Price from the Zoning Administrator's administrative decision to issue Building Permit No. B452591, dated June 26, 2003, to John Walsh and Linda Jewell for the construction of a rear addition to an existing single-family detached dwelling at 4624 Brandywine Street, N.W. ("Subject Property") as non-compliant with the side yard (§ 405) and nonconforming structure (§ 2001.3) provisions in the R-1-B District.

HEARING DATE: December 16, 2003
DECISION DATE: December 16, 2003

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17066
EXHIBIT NO. 30

DECISION AND ORDER

This appeal was submitted on August 5, 2003 by Judy and Clarke Brinckerhoff, Susan Buck, and David Price (collectively, "Appellants") challenging the issuance of Building Permit No. B452591. The permit approved construction of an addition to the rear of the Subject Property. The Appellants alleged the permit was issued in violation of the side yard requirements of the R-1-B zone district. At the conclusion of the December 16, 2003 public hearing, the District of Columbia Board of Zoning Adjustment ("BZA") voted to deny the appeal.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. The District of Columbia Office of Zoning ("OZ") mailed memoranda dated September 16, 2003 providing notice of the appeal to: the Property Owners, the Councilmember for Ward 3, Advisory Neighborhood Commission 3F, Single Member District 3F03, the District of Columbia Office of the Attorney General, the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), and the District of Columbia Office of Planning ("OP"). On September 24, 2003, the OZ mailed further memoranda providing notice of the appeal to Single Member District 3E02, and Advisory Neighborhood Commission 3E. Pursuant to 11 DCMR § 3112.14, the Office of Zoning mailed letters of notice of the hearing dated October 20, 2003 to the parties to the appeal and ANC 3E.

Appellants' Case. The Appellants own properties adjacent to the Subject Property. They argued the building permit was improperly issued because: (1) 11 DCMR § 405.9 requires eight-foot side yards in R-1-B districts; (2) 11 DCMR § 2001.3(b) prohibits expansion of nonconforming structures; and (3) the addition does not fit within the exception for additions created by 11 DCMR § 405.8.

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Zoning Administrator's Case. The Zoning Administrator argued although the side yard was less than the eight feet required in the zone district by 11 DCMR § 405.9, the addition fell within the exception created by 11 DCMR § 405.8.

Request for Party Status and Property Owners' Case. The property owners, John Walsh and Linda Jewell ("Property Owners") were automatically granted party status pursuant to 11 DCMR § 3199(a)(3). They argued that 11 DCMR § 405.8 authorized construction of the addition.

Government Reports. None.

ANC Report. None.

Motion for Summary Judgment. The Board voted 3-1-1 to deny the Property Owners' motion for summary judgment (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John G. Parsons, in support, Ruthanne G. Miller opposed, David A. Zaidain not voting).

Hearing and Decision. The Board held a public hearing on the appeal on December 16, 2003. Testimony and evidence was provided by Acting Zoning Administrator Faye Ogognye on behalf of DCRA. Clarke and Judy Brinckerhoff, and Susan Buck testified for the Appellants. Steven Sher, Director of Zoning and Land Uses Services with the law firm of Holland and Knight, and former member of the District of Columbia Municipal Planning Office, testified for the Property Owners. At the conclusion of the hearing, the Board voted to deny the Appeal.

FINDINGS OF FACT

1. The Subject Property is a single-family dwelling located at 4624 Brandywine St., N.W. (square 1548, lot 21), in an R-1-B zone district and is owned by is owned by John Walsh and Linda Jewell ("the Property Owners").

2. The Appellants own homes adjacent to the Subject Property. Judy and Clarke Brinckerhoff own 4628 Brandywine St., to the immediate west of the subject property. Susan Buck and David Price own 4620 Brandywine St., to the immediate east.

3. On June 26, 2003, the Property Owners received Building Permit No. B452591. The permit approved construction of an addition to their home.

4. The Property Owners submitted plans with their application for the building permit showing the western wall of their home running parallel with the lot line. The plans show that the western wall of the existing house lies 5.1 feet away from the lot line. The plans further show that the planned addition extends the full width of the rear portion

of the house, so that the western wall of the house and addition form one contiguous wall 5.1 feet from the lot line.

5. Pursuant to 11 DCMR § 405.9, the side yards in an R-1-B zone must be at least eight (8) feet wide.

6. The Subject Property was constructed prior to 1958, and, to the extent that it does not comply with the applicable area requirements, is thus a nonconforming structure. 11 DCMR § 199.1 ("nonconforming structure").

7. Pursuant to 11 DCMR § 2001.3(b)(2), a nonconforming structure cannot be expanded in a way that increases or extends the nonconforming aspect of the structure.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641.07(f) and (g)(1) (2001 ed.)), to hear and decide appeals where it is alleged by an appellant that there is error in any decision by an administrative officer in the carrying out or enforcement of the Zoning Regulations.

The Appellant claims that DCRA erred in issuing the building permit because the addition to this nonconforming use results in the creation of a substandard side yard of less that 8 feet as is required in an R-1-B zone district. Although the Appellants recognized that 11 DCMR § 405.8 allows for pre-1958 buildings to be expanded so long as the side yard retains a depth of at least 5 feet, they contend that this property does not fall within this exception. The Board disagrees.

Section 405.8 reads as follows:

> In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; *provided, that the width of the existing side yard shall not be decreased*; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).

(Emphasis added).

The Appellants' focus on the italicized text, claiming that the addition decreased the width of the existing side yard. This is clearly not the case. The plans show the side yard is the same width before and after construction of the addition, 5.1 feet. The addition only extends into the rear yard. It does not encroach further into the side yard.

The Appellants also argue that the text of 11 DCMR § 405.8, though allowing additions to structures with non conforming side yards, does not allow the addition to extend the non-conformity. In essence, the Appellants' argue that the only purpose of the provision is to permit a single family dwelling, with a nonconforming side yard of at least five feet, to extend that side yard, so long as the extension maintains a width of eight feet. Such an interpretation would make § 405.8 superfluous, because § 2001.3 already permits a structure with a nonconforming side yard of any width to be extended in the manner suggested by appellants.

That section provides:

> Enlargements or additions may be made to the [nonconforming] structure; provided:
>
> (a) The structure shall conform to percentage of lot occupancy requirements;
>
> (b) The addition or enlargement itself shall:
>
> (1) Conform to use and structure requirements; and
>
> (2) Neither increase or extend any existing, nonconforming aspect of the structure; nor
>
> (3) Nor create any new nonconformity of structure and addition combined.

Thus, § 2001.3 already authorized the Property Owners to enlarge the structure, so long as the addition did not extend the nonconforming part of the side yard. The Board notes that in interpreting the Zoning Regulations it is required to provide meaning to all of its provisions so that no parts are rendered superfluous. *See Matter of T.L.J.*, 413 A.2d 154, 158 (D.C. 1980); *see also McDaniels v. District of Columbia Dept. of Employment Services*, 512 A.2d 990, 992 (D.C. 1986). Thus, § 405.8 cannot be read to authorize the same thing permitted by § 2001.3. Rather, § 405.8 can only be given effect if interpreted as an exception to the proscription of § 2001.3(b)(2) against extending a nonconformity. That exception being that the nonconforming aspect of a side yard may be extended, if that the side yard is not less than 5 feet in width. Since the width of the side yard in question is greater than 5 feet, it may be expanded as a matter of right.

The legislative history of this provision corroborates the Board's conclusion. As noted in its Motion for Summary Judgment, the Zoning Commission for the District of Columbia adopted the text of § 405.8 (then codified as § 3305.9) in Zoning Commission case Z.C. 76-10. The Commission took proposed action to approve the text on December 9, 1976 and, through its Executive Secretary, forwarded the proposed text to the National Capital Planning Commission for its review, as required by § 492 of the District Charter. Attached to the letter was the report of the Municipal Planning Office, the predecessor

agency to the Office of Planning. The report describes the purpose and need for the new regulations, and includes diagrams that show additions that would be permitted by the new regulations. One of the diagrams shows an addition to a house with a non-conforming five-foot side yard. The wall of the addition is contiguous with the wall of the existing house, five feet from the lot line, exactly the configuration allowed by the instant permit. The caption to the diagram notes the addition was permitted.

For this same reason, the Board rejects the Appellant's arguments that the Zoning Administrator's interpretation of § 405.8 conflicts with § 2001.3. As just explained, the interpretation gives meaning to and harmonizes both provisions. and is consistent with the legislative history of § 405.3.

Lastly, the Appellants claim that the Board's decision in *Appeal No. 16811of David and Janet Pritchard*, 49 D.C. Reg. 9707 (Oct. 25, 2002), compels the Board to find that the Zoning Regulations prohibit construction of the addition. The Board concludes that its earlier *Pritchard* decision is not implicated in this Appeal. In the *Pritchard* decision, the Board held that a semi-detached dwelling may not be converted into a row dwelling under circumstances where it is not possible to construct a common division wall. Because one side of the subject property in that appeal abutted an alley, there was no adjacent structure to share a common division wall, and therefore a side yard was required. As we stated previously in *Application No. 17007 of Kathleen Peoples and Philip Sedlak*, 51 D.C. Reg. 9518 (Oct. 8, 2004), and *Appeal No. 16935 of Southeast Citizens for Smart Development,* 50 D.C. Reg. 8108 (Sep. 26, 2003), the Board's *Pritchard* decision is strictly limited to its facts.

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended D.C. Code § 1-309.10(d)(3)(A) (2001 ed.)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. In this case the Board cannot do so because the ANC did not make a recommendation.

For the reasons stated above, it is hereby **ORDERED** that the appeal is **DENIED** and that the decision of the Zoning Administrator to approve Building Permit No. B452591 is **SUSTAINED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly Jr., John G. Parsons and David A. Zaidain to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FEB 02 2006

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.