District of Columbia
Court of Appeals

April 18, 2006

DC OFFICE OF ZONING
2006 APR 17 P 3:07

No. 04-AA-1216: Foggy Bottom Historic District Conservancy, Inc. v. District of Columbia Board of Zoning Adjustment; Bruno Freschi.

Director
District of Columbia Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

Dear Sir or Madam:

Pursuant to Rule 41(a) of this Court, the decision in the above-entitled case is attached.

Please acknowledge receipt of the decision by signing the copy of this letter and returning it to this office as soon as possible.

Garland Pinkston, Jr.
Clerk

I hereby acknowledge receipt of the original of this letter with attachments.

Signed

APR 20 2006

Date

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17154
EXHIBIT NO. 53

Board of Zoning Adjustment
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FILED
MAR 23 2006
DISTRICT OF COLUMBIA
COURT OF APPEALS

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 04-AA-1216

FOGGY BOTTOM HISTORIC DISTRICT CONSERVANCY, INC., PETITIONER,

v. BZA-17154

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, RESPONDENT.

BRUNO FRESCHI, INTERVENOR.

On Petition for Review of a Decision
of the District of Columbia Board of Zoning Adjustment

(Argued March 21, 2006 Decided March 23, 2006)

Before SCHWELB and FARRELL, *Associate Judges*, and TERRY, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Intervenor, the owner of a residence and adjoining undeveloped property (the Property) in Foggy Bottom, requested of the Board of Zoning Adjustment (the Board), and was granted, multiple variances from the zoning regulations in order to construct a row house on the Property. Although the zoning district (*i.e.*, the Foggy Bottom Overlay District/R-3) in which the Property lies is "designed essentially for row dwellings," the regulations in question impose various restrictions — such as minimum lot area and minimum lot width requirements — on the construction of row dwellings. In this court, petitioner does not challenge the correctness of the individual variances granted by the Board;[1] rather, it argues that intervenor's entire application for the variances was misconceived, and the Board's grant of any of them was correspondingly flawed, because both rested on the mistaken premise that what intervenor sought to build was a "row dwelling." According to petitioner, a row dwelling by nature is one of three or more dwellings in a row, but what intervenor intended to build was a freestanding house not adjoined to another dwelling — it was either a "one-family detached dwelling" or a "one-family semi-attached dwelling," both governed by other (and potentially more onerous) regulations.

The Board rejected this argument, relying on the plain language of 11 DCMR § 199.1 (2006), which defines a "row dwelling" as "a one-family dwelling having no side yards." The Board concluded that, because "[t]he proposed project will be constructed

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[1] Petitioner made this clear beyond peradventure at oral argument. In any event, under this court's standard of review of such decisions, any challenge to the individual variances granted would fail on this record. *See, e.g., Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

from lot line to lot line and will provide no side yards," it "meets the definition of a row dwelling." We find no error in this determination. Title 11 DCMR § 199.1 ("Definitions") specifically states, in its preamble, that "[w]hen used in this title . . . terms and phrases shall have the meanings ascribed" to them by the definition. Although the zoning regulations contemplate that, as a general rule, row dwellings will exist in groups of three,[2] they do not mandate that a row dwelling may not be built *unless* it is part of an actual row of dwellings. Otherwise, as intervenor points out, either all (or at least three) dwellings in a row would have to be built at one time or, at the least, the Board would be required to conjecture about the likelihood that adjoining dwellings will be constructed at some point in the future. "When we review the BZA's construction of regulations, . . . [its] interpretation is controlling unless it is plainly erroneous or inconsistent with the regulation." *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 942 (D.C. 1979). As there is no such error or inconsistency in the Board's interpretation of the term "row dwelling," the decision of the Board is

Affirmed.

ENTERED BY DIRECTION OF THE COURT:

GARLAND PINKSTON, JR.
Clerk

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A true Copy
Test:
Garland Pinkston, Jr.
Clerk of the District of Columbia Court of Appeals
BY
DEPUTY CLERK

[2] *See* 11 DCMR § 11-320.1 ("[T]here shall be included in an R-3 District areas within which row dwellings are mingled with [among other things] groups of three (3) or more row dwellings.").