

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



July 13, 2015

Meridith H. Moldenhauer
Griffin, Murphy, Moldenhauer & Wiggins, LLP
1912 Sunderland Place, NW
Washington DC, 20036

Re: 1701 Independence Avenue, SE- Square 1098, Lot 0070 (the "Property")

Dear Ms. Moldenhauer,

This letter is in reference to a discussion I had with you, at a meeting on May 22, 2015, regarding your client's intended development at the Property, referenced above. As we discussed, the Property is currently under a stop work order. The as-built project has a nonconforming side yard and exceeds lot occupancy. I would like to memorialize the discussion regarding your client's proposed redevelopment of the Property.

Description of Existing Property

The Property is a corner lot located in the R-4 District. The Property has frontage on Independence Avenue SE, and 17th Street S.E. as a side street. Square 1098, lot 0070 consists of 2,454 square feet of land area. As shown in the accompanying plat map, the present structure is a two-story semi-detached residential dwelling, occupying 29.3% of the lot. The as-built structure is built against the interior side lot line on the east, and has an existing, approximately 4.25 foot wide, nonconforming side yard along the western side property line bordering 17th St SE.

Description of Proposed Project

As represented in the attached architectural plans, the proposed project constructs a third story addition, rooftop deck, and a new side yard trellis and arbor at the Property. The trellis and arbor will be a 6.67 foot wide and 45.41 foot long side yard addition to the Property along the western property line. You requested that I review whether the addition converts the semi-detached dwelling into a rowhouse.

The seminal Board of Zoning Adjustment opinion on semi-detached dwelling conversions to a row dwelling is the *Pritchard* case, BZA Appeal 16811. The appellant in *Pritchard* challenged the Zoning Administrator's issuance of a building permit that allowed the construction of a rear addition that spanned the width of the lot, allegedly converting the semi-detached dwelling into a row dwelling.

The Board found in favor of the appellant. The Board noted that the purpose of the minimum side yard requirement was to "require the provision of open spaces around buildings and structures." *Pritchard*, page 10. Therefore, the Zoning Administrator erred in approving "the issuance of the permit, to allow as a matter of right the construction of an addition to a semi-detached dwelling, where the addition does not provide a side yard on its free-standing side". *Id.*

The Board found that compliance with the side yard requirement was critical in ensuring that neighboring properties received adequate light and air. On page of 10 of *Pritchard* the Board states:

Thus, in the terms employed in §101.1, the minimum side yard requirements serve to provide separation between dwellings, ***ensuring adequate light and air***, preventing the undue concentration of population and the overcrowding of land, and providing a distribution of population and use of land that will create conditions favorable to the protection of property and that will tend to further economy and efficiency in the supply of public services. (Emphasis added).

However, *Pritchard* is limited to a specific set of facts and the Board has acknowledged this repeatedly. In the *Pritchard* decision, the Board noted that the side yard requirement did not apply to corner lots pursuant to §405.5. The Board stated,

Subsection 405.5, which states that “A side yard shall not be required along a side street abutting a corner lot in a Residence District” provides the an exception to §405.3 Thus, at the end of a row of row dwellings, ***except in the case of a corner lot***, the last dwelling (a semi-detached dwelling) must provide a side yard.” *Pritchard*, page 8. (Emphasis added).

And subsequent to *Pritchard*, the Board has gone through great lengths to make clear that the scope of the *Pritchard* decision is very narrow and applies to a very specific set of facts. The Board, two years after *Pritchard*, in Appeal No. 17085, the “Smith and Marsh” case, stressed the fact that *Pritchard* did not “prohibit the construction of new ***end-unit*** row dwellings, or any new row dwelling, regardless of whether the structure shares one or common division wall, or none at all.” *See*, page 6 of Appeal 17085. (Emphasis added). It is clear from the numerous BZA decisions that rowhouses are permitted as matter of right structures in many circumstances. *See, Id.*, Board quoting *Application of Kathleen Peoples and Philip Sedlak*, BZA 17007 which narrowed *Pritchard*, stating, “Row dwellings, when permitted as a matter of right, maybe constructed on all lots, except in the narrow circumstances that existing with respect to this subject property.”

The Board, as required by the Zoning Regulations, is ever mindful of the impact of additions on the availability of light and air to neighboring properties. Even the DC Court of Appeals, decades ago, noted the importance of evaluating an addition’s impact on light and air available to neighboring properties. In *Draude v. Board of Zoning Adjustment*, the Court found that the BZA had failed to properly consider the effect approving a special exception would have on the light and air available to a neighboring property. The Court stated, “Moreover, the Board in the past has argued, and this court implicitly has accepted, ***that adverse effect on light and air to neighboring property*** can constitute a reason for denying a variance under the zoning regulations.” 527 A.2d 1242, 1252 (1987). (Emphasis added). But for obvious reasons, the Zoning Regulations, and the Board, recognize that there is a difference between an addition that abuts a neighboring property and one that abuts a side street. The purpose of the yard requirements is to provide separation between dwellings and to ensure the protection of a neighbor’s light and air. Such considerations do not apply when a property abuts a side street.

In this particular case, the subject Property is a corner lot, semi-detached dwelling that abuts a side street on 17th Street SE. Therefore, pursuant to §405.5, a side yard is not required. Moreover, in light of the Board's repeated statements concerning the narrow scope of Pritchard, a full reading of the Zoning Regulations, and the particular facts associated with this Property, it is apparent that 1) a change from a semi-detached residential dwelling to a row dwelling will have no adverse impact on light and air available to any neighboring properties due to the fact that the Property is a corner lot abutting a side street, and 2) the cumulative effect of the proposed addition would be to convert the semi-detached residential dwelling into a row dwelling. This change would, pursuant to 11 DCMR §403.2, increase the maximum allowable lot occupancy from 40% to 60%. Consequently, the proposed plan would have a lot occupancy of 49.3% and would comply with the lot occupancy requirement for a rowhouse in the R-4 District. All other zoning standards appear to be complied with.

Accordingly, the proposed addition as described in this letter, including the attachments, complies with and is consistent with all the requirements of the Zoning Regulations. Should you have any questions, please let me know.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Attachments:

- 1) Plat Map
- 2) Architectural Plans
- 3) Appeal No. 16811 of David and Janet Pritchard
- 4) Appeal No. 17085 of Louise and Larry Smith and Mary Ann Snow and James Marsh