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BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Advisory Neighborhood Commission
3E and Todd Boley

Case No. 17631

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APPELLANT TODD BOLEY'S RESPONSE TO BOARD REQUESTS

The Board asked Appellant to cite authority for two propositions: 1) that the current Acting Zoning Administrator could not qualify as an expert with regard to testimony supporting the challenged decisions of the Zoning Administrator whose place the witness has temporarily taken as the chief zoning officer within DCRA, and 2) that land covered by easements is excluded in determining compliance with lot size requirements of zoning regulations.

1. In Liberty Mutual Ins. Co. v. B. Frank Joy Co., 424 F.2d 831 (D.C. Cir. 1970), the Court held that "disinterestedness is not required of expert witnesses any more than it is required of ordinary witnesses" and that D.C. Code §14-301 does not require disinterestedness of ordinary witnesses. The Court further noted that an expert witness' interest goes to the weight of his testimony. Accordingly, Appellant withdraws his objection to the qualification as an expert of the Acting Zoning Administrator and asks the Board to consider his obvious self-interest in weighing the persuasiveness of his testimony.

2. The requested citations are as follows:

a. Loveladies Property Owners Ass'n . v. Barnegat City Service Co., 60 N.J. Super. 491, 159 A.2d 417 (1960) (private easements of access excluded in determining compliance with lot size requirements.)

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EXHIBIT NO. 24

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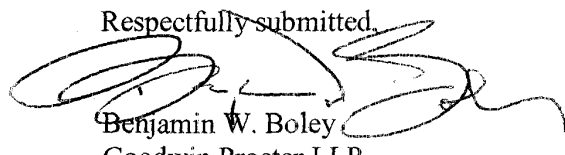
- b. Sommers v. Mayor and City Council of Baltimore, 215 Md. 1, 135 A.2d 625, 627 (1957) (alley, title to which was held by lot owner, excluded in determining compliance with lot size requirements where others have rights to use the alley as such; "a lot, for zoning purposes, means only the land used for a building or uses incident to the building.")
- c. Kefauver v. Zoning Board of Appeal, 151 Conn. 144, 195 A.2d 422 (1963) ("While technically the [Owners] may own the fee, the [service road use] easement effectively prevents them from using any part of the macadamized service road as a front yard" causing violation of front-yard depth requirement.)
- d. Mudge v. Precinct of Haverhill Corner, 133 N.H. 881, 587 A.2d 603, 606-07 (quoting from 3 E. Ziegler, Rathkopf's The Law of Zoning and Planning §34.04 (4th Ed. 1990): "In computing the size of lots, land contained in streets, public or private, which give access to the lot is excluded".)
- e. Lidke v. Martin, 31 Colo. App. 40, 500 P.2d 1184, 1185-86 (Colo. Ct. of App. 1972) (land subject to access easement excluded in determining compliance with lot area requirements).
- f. Clarks Lane Garden Apartments, Inc. v. Schloss, 197 Md. 457, 79 A.2d 538 (Md. Ct. of App. 1951) (land reserved for future streets excluded in determining compliance with lot size requirements).
- g. Stanish v. Guilford Planning and Zoning Commission, 2005 Conn. Super. LEXIS 2589 (September 26, 2005) (pedestrian and vehicular easements excluded in determining compliance with lot size requirements; ordinance specifically excludes easements for vehicular access.)

h. Shawomet Land Co. v. Zoning Board of Review, 1997 R.I. Super. LEXIS 116 (July 8, 1997) (easement on land in one lot alleged to satisfy frontage requirements for three other lots excluded in determining compliance with side lot requirements applicable to first lot.)

i. Metzenbaum v. City of Carmel-By-The-Sea, 234 Cal. App. 2d 62, 66-69 (Cal. Ct. of App. 1965) (dissenting opinion) (land subject to private road easements should be excluded in determining compliance with lot size requirements). But see, of course, the majority opinion, 234 Cal. App. 2d at 62-66 (private road easements included in determining compliance with lot size requirements).

Appellant contends that "easement" is a misnomer for Appellant's Exhibit 7, by which the Property Owner unilaterally redefined for zoning purposes the subject lots on Fessenden Street. See Leonard A. Jones, *A Treatise on the Law of Easements* §835 (2003) ("No person can have an easement in land which he himself holds"); Hefazi v. Stiglitz, 862 A.2d 901, 912 (D.C. Ct. of App. 2004) (applying same principle to prescriptive easements); Jon W. Bruce and James W. Ely, Jr., *The Law of Easements and Licenses in Land* §3:11 and n.2 (2001) (stating, "[I]t is axiomatic that a landowner cannot obtain an easement in the landowner's own property" and citing more than a dozen cases supporting that statement).

Respectfully submitted,



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July 19, 2007

Certificate of Service

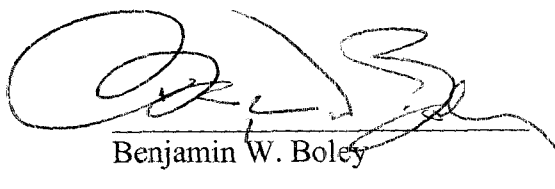
I hereby certify that the foregoing Appellant Todd Boley's Response To Board Requests was served on the following persons by First Class, United States mail, on July 19, 2007:

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