GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENTS

D.C. RECEIVED OFFICE OF ZONING
2001 JAN 24 AM 9:14

IN RE:	**5655 Moreland Street, N.W. Square 2307, Lots 801 and 802**	
		Appeal No. 16646
Appeal of		
James W. McBride		
Daniel Serwer		

INTERVENOR'S RESPONSE TO RECORD SUPPLEMENT OF APPELLANTS

This is in response to Appellant's post-hearing submission as to DPW's role in the processing of the permit at issue in this case. Appellants submitted a letter from Michelle Porciau at DPW which asserts that DPW should review permit applications involving highway plan designations and that a portion of the Intervenor's property which has been paved and appears to be part of Northampton Street should be acquired by the City. Upon receipt of the letter, we met with Ms. Porciau on January 19, 2001 to discuss her letter and to offer to cooperate with the City in dedicating the roadway area needed by the City.

Regarding the issue of DPW's role in the permit process, Ms. Porciau admitted that while it was her opinion that DPW review should be required as part of the permit process, she was not certain as to whether such reviews are currently taking place or how such reviews can be implemented under the current, one-stop permit process. We also shared with Ms. Porciau a copy of the Shiner's 1992 permit application (a copy of which was submitted at the hearing and an additional highlighted copy of which is attached hereto as Exhibit "A"). This application indicates that DPW did review and sign off on the garage location (within the Highway Plan area) in 1992. Ms. Porciau was unaware of

BZA
Case No. 16646
Exhibit No. 34

Board of Zoning Adjustment
District of Columbia
CASE NO.16646
EXHIBIT NO.34

this initial sign-off. In view of the law which is very clear as to the right of a property owner to develop land in a highway plan, until condemnation proceedings are begun, it is not at all certain, what authority, if any, DPW might have to hold up or deny a permit involving a Highway Plan area.[1]

Fortunately, the issue of DPW's role or authority with respect to the permit at issue does not have to be decided or determined by the BZA. As we indicated at the hearing, only those issues involving review and interpretation of the Zoning Regulations by the Zoning Administrator are properly before the BZA. There are only two such zoning issues in this case: (1) whether the connection between the Shiner's house and the garage is adequate to classify the garage and second floor home office as an addition to the house; and (2) whether the Zoning Administrator's acceptance of an assessment and taxation lot in lieu of a record lot violated § 3202.3 of the Zoning Regulations, which requires a record lot for the construction of a building or addition.[2].

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[1] Ms. Porciau's letter also alludes to a possible need to establish a building restriction line on the subject property. In our discussion with her, however, she indicated that she did not know what the process for establishing such lines is or if DPW is the agency which has the authority to establish building restriction lines.

[2] The entire text of Section 3202.3 reads as follows:

> Except as provided in §2516 and the Act of Congress of June 28, 1898 (30 *Stat.* 520, chapter 519, §5), a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; except buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure. (emphasis added)

With respect to the first issue, Mr. Bello's testimony was very clear as to the City's longstanding practice of approving such connections. In fact, in a recent case reviewed by the BZA, a desire to have a similar covered walkway connecting a house with a garage structure necessitated that an applicant apply for a rear yard variance.[3] Because of the applicant's difficulty in meeting the legal criteria for variance relief, the Zoning Administrator's Office and the Office of Zoning assisted the applicant in designing an opening in the structure so that the connection would not serve to connect the buildings together as one for zoning purposes.

In the interest of fairness, due process and the orderly administrative process, the BZA should uphold the Zoning Administrator's decision with respect to the connection in this case. Further, any change should be implemented prospectively with a zoning text amendment or an administrative rulemaking process which affords adequate public notice of the change.

With respect to the second issue, we speculated at the hearing that the stated exception for public transit right-of-ways in § 3202.3 (*See* footnote 2 above) might have been the derivation of the longstanding policy of the Zoning Administrator to accept an assessment and taxation lot in lieu of a record lot as normally required by § 3202.3. Unfortunately, due to a lack of recordkeeping over the years by the offices of the Zoning Administrator and Corporation Counsel, coupled with the retirement of many of the long-

[3] The BZA Order in this cause, Application No. 16508 was submitted into the record by the Invervenor.

term employees from these offices, it is often difficult to document the source or authority for administrative interpretations of the Zoning Regulations.

Since the hearing on this matter, however, we were able to locate the attached 1978 memorandum to James J. Fahey, who essentially served as the Zoning Administrator at that time, from Louis R. Robbins, Principal Deputy Corporation Counsel (*See* Exhibit "B"). While the memorandum does not directly address the issue at hand, it comes very close, and supports a reasonable inference that the current exception rests on a solid legal foundation established by the Office of the Corporation Counsel. The memorandum cites and discusses a number of instances in which properties which are encumbered by projected Highway Plan streets are exempted from the requirement of obtaining a record lot subdivision. The rationale given is the need to reconcile D.C. Code § 7-114 which provides the property owner with the "right" to use and enjoy their property "until proceedings looking to the condemnation of such land shall have been authorized and actually begun" and D.C. Code § 7-109 which prohibits the subdivision of land subject to projected Highway Plan streets.

CONCLUSION

The decision by the Zoning Administrator to grant the necessary zoning approval for the subject addition was proper and consistent with reasonable, longstanding

administrative interpretations relative to building connections and to lots which are encumbered by the Highway Plan. The appeal should therefore be denied.

Respectfully submitted,

Cynthia A. Giordano
DC Bar # 290973
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, DC 20004-2012
Phone: 202 942-5000

Attorneys for Intervenors

CERTIFICATE OF SERVICE

I hereby certify that I have on January 23, 2001 sent by first class mail a true copy of the foregoing Intervenor's Response to Record Supplement of Appellants to the parties listed below:

James W. McBride
D.C. Bar #99911
801 Pennsylvania Avenue, N.W.
Suite 800
Washington, DC 20004

Zoning Administrator
DCRA/BLRA
Zoning Division
941 North Capitol Street, N.E.
Suite 2200
Washington, DC 20002

Cynthia A. Giordano

THOMAS S. SHINER 202 537 4851

EXHIBIT A

55-36

PRE-FILE NUMBERS	ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER
[redacted]	[redacted]	[redacted]	[redacted]

★ ★ ★ GOVERNMENT OF THE DISTRICT OF COLUMBIA

BLRA-33 (Rev. 10/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (727-7050)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY
(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

0592

[redacted]

ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1. Address of Proposed Work:	Suite No.:	2. Lot:	3. Square:	4. Application Date:
5655 MORELAND STREET, NW		801	2307	OCT. 13, 1992

5. Owner of Building or Property:	6. Address: (Include Zip)	7. Phone:
THOMAS S. SHINER	5928 31ST PLACE, NW WDC 20015	Work: 202 537 0098 Home: 202 364 4076
8. Agent for Owner: (If applicable)	**9. Address: (Include Zip)**	**10. Phone:**
THOMAS S. SHINER ARCHITECT	4474 CONN AVE NW WDC 20008	Work: 202 537 0098 Home: 202 364 4076

11. Type of Proposed Work (check all applicable boxes):

- ☒ New Building
- ☐ Addition
- ☐ Alteration and Repair
- ☐ Raze Building
- ☐ Retaining Wall
- ☐ Fence
- ☐ Shed
- ☐ Awning
- ☐ Garage
- ☐ Sign
- ☐ Other (Specify) _____

12. Description of Proposed Work:

SINGLE-FAMILY HOUSE
2-STORY WOOD FRAME AS per plan

13. Existing Use(s) of Building or Property:	14. Ex. No. of Stories of Bldg.:	15. Ex. No. of Dwelling Units:	[redacted]
VACANT LOT			
16. Proposed Use(s) of Building or Property:	**17. Prop. No. of Stories of Bldg.:**	**18. Prop. No. of Dwelling Units:**	
SINGLE FAMILY HOUSE	2	1	

19. Starting Date of Work:	20. Completion Date of Work:	21. Method of Removing Construction Debris:	22. Does the proposed work involve disturbing the earth or razing a building?
NOV. 1, 1992	JUNE 1, 1992	☐ Pick-up Truck ☒ Dumpster ☐ Other (specify):	☒ Yes, answer q. 23 ☐ No, SKIP q. 23-27

23. Is the area of disturbed earth more than 50 sq. ft.?	24. Soil Erosion Control Methods:	25. Area of Offsite Drainage:	26. No. of Footings or Columns:	27. Size of Footing of Columns:
☒ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25	SILT FENCE / SEE ATTACHED "SITE" DRWG.	sq. ft.	-	sq.

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I).

Complete Section B if the proposed work is **new building, addition or alteration.** (Page 2)
Complete Section C if the proposed work is **razing a building.** (Page 2)
Complete Section D if the proposed work is a **retaining wall.** (Page 2)
Complete Section E if the proposed work is a **fence.** (Page 3)
Complete Section F if the proposed work is a **shed/garage.** (Page 3)
Complete Section G if the proposed work is an **awning.** (Page 3)
Complete Section H if the proposed work is a **sign.** (Page 3)

[redacted]

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

28. Architect's Name:	29. Lic. No.:	30. Architect's Address: (Include Zip)	31. Phone:
THOMAS S. SHINER AIA	DC 3472	4419 CONN AVE NW WDC 20008	202 537 00
32. Engineer's Name:	33. Lic. No.:	34. Engineer's Address: (Include Zip)	35. Phone:
36. Building Contractor's Name:	36A. Lic. No.:	37. Contractor's Address: 20862	38. Phone:
MARTIN SCHOLL		8910 NEW HAMPSHIRE AVE BRINKLOW, MD	301 924/55

39. Type of Construction	40. Fire Suppression:	41. Booster Pump:	42. Total Lot Area:	43. Breakdown of Lot Area (= 10
☐ Masonry ☐ Steel ☒ Wood ☐ Other: ☐ Concrete	☐ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☒ None ☐ Other:	☐ New ☐ Existing ☐ None	sq. ft.	a. Building: 18,98 b. Paved Area: c. Greenery: 80,60

44. Present Gross Floor Area of Bldg.:	45. Proposed Gross Floor Area of Bldg:	46. Floors involved in this permit:	47. Projection beyond building li
3200 sq. ft.	sq. ft.	☒ All ☐ Floors	☐ Yes, answer q. 48-52 ☒ No, SKIP q. 48-52

48. Number and type of projection:	49. Distance of projection:	50. Width of projection:	51. Width of building frontage:
			52. Signature of Owner (projection only):

53. Water or Sewer Excavation?	54. Driveway Construction?	55. Sheeting/Shoring Necessary?	56. Elevators involved?	57. No. and type of elev.:	58. Plans Certified by Engineer?
☒ Yes ☐ No	☒ Yes ☐ No	☒ Yes ☐ No	☐ Yes, answer q. 57 ☒ No, SKIP q. 57		☐ Yes, cert. is attac ☒ No

59. Estimated Cost of Work:
(a) New/Add.: $ 175,000
(b) Alt/Rep.: $ -0-
Total: $ 175,000

60. Volume of New Bldg. or Addition:
53170 cubic f..

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:	62. Contractor's Address: (Include Zip)	63. Phone:

64. Insurance Company:	65. Policy or Certif. No.:	66. Expir. Date:	67. Raze Method:

68. Building Material:	69. Raze Entire Building?	70. Building Condemned?	70A. Building Vacant?	71. Public Space Vault?	72. Disconnect Water and/or Sewer?	73. Size of Connec
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	

74. Plumber's Name:	75. Lic. No.	76. Length:	77. Width:	78. Height:	79. Volume:	80. Party Wa
		ft.	ft.	ft.	cu. ft.	☐ Yes ☐ No

81. Asbestos in the Building?	82. Raze Contractor Signature:
☒ No ☐ Yes, Location	83. Owner's Signature:

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations

84. Cost of Work:	85. Material:	86. Height:	87. Color:	88. Location:
$		ft.		☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Lan

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

89. Signature of Adjoining Owner:	90. Phone: Work / Home
91. Address of Adjoining Owner:	92. Lot: / 93. Square:

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations

Material and type:	95. Height: ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

Signature of Adjoining Owner:	99. Phone: Work Home	
Address of Adjoining Owner:	101. Lot:	102. Square:

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number:	104. Length: ft.	105. Width: ft.	106. Area: sq. ft.	107. Height: ft.	108. Volume: cu. ft.	109. Estimated Cost of Work: $

110. Material of Roof:	111. Material of Sides:	112. Wall thickness: ☐ External ( ) inches ☐ Party ( ) inches	113. Color:

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color:	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line ____ in. Beyond pl. of attachm. ____ in.	118. Height of lowest part of awning: (a) ____ ft above sidewalk (b) ____ ft above parking (c) ____ ft above grade

119. Material of Frame:	120. Material of Covering:	121. Lettering on Awning? ☐ Yes ☐ No	122. Fixed posts? ☐ Yes ☐ No	123. Over sidewalk cafe? ☐ Yes ☐ No

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number:	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No, SKIP q. 126-132	126. Type: ☐ Incandes. ☐ Fluoresc. ☐ Neon	127. Power ____ VA	128. Electrical Contractor: Lic. No.:

129. Address of Electrical Contractor (Include Zip)	130. Signature of Licensed Electrician:	131. Phone:	132. License No.:

133. Height relative to building and ground: ____ ft ____ in above sidewalk ____ ft ____ in above roof ____ ft ____ in is bldg height ____ ft ____ in above projection or window ____ ft ____ in from roof to sign's bottom	134. Material of Sign:	135. Type of Sign:	136. Color:

137. Width: ft.	138. Length: ft.	139. Area of Sign: sq. ft.	140. Width of Business Frontage: ft.

141. C of O Number for Building:	142. Sign Contractor Lic. No.:

143. Sign Contractor's Address:	144. Phone:

(I) APPLICANT'S SIGNATURE:

A. OWNER: I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner: _____ Address: 5920 31ST PL NW Date: 10/13/92

B. AGENT: I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent: _____ Address: 4479 CONN AVE NW Date: 10/13/92

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

NOT S.E.

- ☑ 1. Fine Arts by: [illegible] Date: 10/22/92
- ☐ 2. Historic by: _____ Date: _____
- ☐ 3. PADC by: _____ Date: _____
- ☐ 4. Cap. Gateway by: _____ Date: _____
- ☐ 5. W.H.I Obs. Precinct by: _____ Date: _____
- ☐ 6. Flood Control by: _____ Date: _____
- ☐ 7. WMATA by: _____ Date: _____
- ☐ 8. Condem. by: _____ Date: _____
- ☐ 9. RLA by: _____ Date: _____
- ☐ 10. Rental Accom. by: _____ Date: _____
- ☐ 11. Chinatown Distr. by: _____ Date: _____
- ☐ 12. Utility Clearance by: _____ Date: _____
- ☐ 13. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☑ 1. Zoning by: [illegible] Date: 10/22/92
- ☐ 2. DPW — Permit and Records Division
  - Access to Parking Str ist ☐ Street ☐ Alley
  - Cleared by: _____ Date: 10.22.92
- ☒ 3. DPW - Consumer Engineer
  - Cleared by: C.C. Collins 10-22-92
- ☐ 4. ERA - Erosion Control
  - Cleared by: RG Date: 10-22-92

Restrictions of the Permit:

SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED

C. PLANS AND APPLICATION APPROVAL

- ☑ 1. Information Counter by: [illegible] Date: 12/2/92
- ☑ 2. Information Center by: [illegible] Date: 12/22/92
  - ☐ (a) ABC Board by: _____ Date: _____
  - ☐ (b) Noise Control by: _____ Date: _____
  - ☐ (c) Industrial Safety by: _____ Date: _____
  - ☐ (d) Vector Control by: _____ Date: _____
  - ☐ (e) D.C. Animal by: _____ Date: _____
  - ☐ (f) Police Dept. by: _____ Date: _____
- ☑ 3. Zoning by: [illegible] Date: 12/14/92
  - Zoning Update by: [illegible] Date: 12/16/92
- ☐ 4. DPW - Permit and Records Division/Deposit #
  - Sidewalk Deposit $ 942.00 Driveway Deposit $ _____
  - by: [illegible] Date: 12-16-92
- ☑ 5. Water/Sewer Design Branch
  - Consumer Eng. by: C.C. Collins Date: 10-30-92
- ☐ 6. Environmental Regulation Administration
  - ☐ Environmental Policy Review
    - Control No.: _____
    - by: _____ Date: _____
  - ☑ Erosion Control by: RAG Date: 10-30-92
  - ☐ Storm Water Mgmt. by: _____ Date: _____
  - Plan No. 5-92-5dl
- ☑ 7. Mechanical Eng. Review by: [illegible] Date: 12/16/92
- ☑ 8. Plumbing Eng. Review by: [illegible] Date: 12/16/92
- ☑ 9. Electrical Eng. Review by: [illegible] Date: 12/10/92
- ☐ 10. Health Plan Review
  - ☐ (a) Food Plan Review by: _____ Date: _____
  - ☐ (b) Medical X-ray Plan Rev. by: _____ Date: _____
- ☑ 11. D.C. Fire Dept. (Fire Prevention Plan Review Section) by: [illegible] Date: 11/19/92
- ☐ 12. Elevator Plan Rev. Sec. by: _____ Date: _____
- ☐ 13. Plumbing Insp. Rev. by: _____ Date: _____
- ☐ 14. Construction Insp. Branch (Field Check) by: _____ Date: _____
- ☐ 15. Historic Pres. Div. by: _____ Date: _____
- ☑ 16. Structural Eng. by: [illegible] Date: 12/15/92
- ☑ 17. Permit and Certificate Issuance Counter By: _____ Date: _____
- ☑ 18. Q.C. By: [illegible] Date: 12/16/92

ZONING

C of O Number [illegible] Date _____

Existing Use(s) [illegible] SFD

☒ New bldg.
☐ P.O.D.
☐ File in room 329

DPW — PUBLIC SPACE

Street Name: _____
Street Width: _____
Road Width: _____
Sidewalk Width: _____
Parking: _____
Restrictions: _____

Job No.:	BZA Case No.:	PUD Order No.:
92-312 AA	N/A	N/A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev 9/30/91

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT PERMIT NO. B377846

PERMIT

Date 12-16-92 (Type) NEW CONSTRUCTION

Address of work 5655 MORELAND STREET NW Lot 901 Square 2307

Permission is hereby granted to THOMAS S SHINER (Owner) TOTAL PERMIT FEE $

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit. NO. AS PER PLANS AND PLAT DATE FILING FEE $ 297.75 175.00

Authorized work and conditions of performance thereof: FEE PAYABLE $ 122.75

FOR INSPECTIONS CALL 727-7562

SINGLE FAMILY HOUSE TWO STORY WD FRAME AS PER PLANS
SEPARATE ELEC., PLUMBING & MECHANICAL INSTALLATION PERMITS ARE REQUIRED.

Owner — [illegible] Value $ ~~145,000.00~~ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories TWO

Zone R 1 A To be occupied as S F D

Height of terrace above grade Projections:

Address of owner 5928 31st PLACE Amt. Chief, Permit Issuance Branch

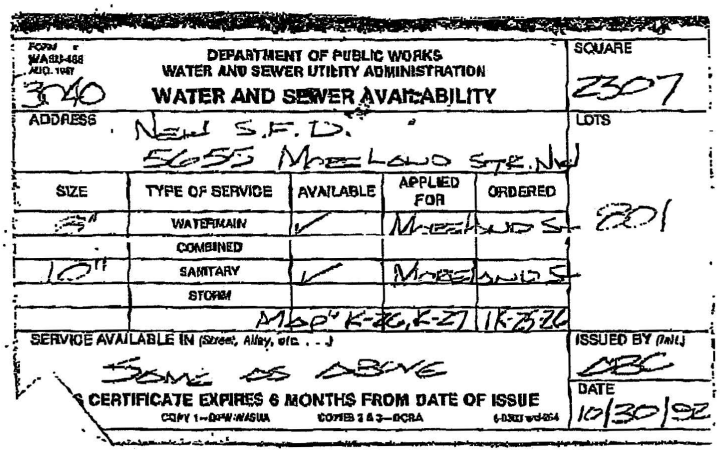
Deposit No. By

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS Permit Clerk

THIS PERMIT DOES NOT AUTHORIZE CROSSING SIDEWALK WITH TRUCKS

Audrey H. Edwards
DIRECTOR

01/23/01 17:41 FAX 202 942 5210 ARNOLD & PORTER 012
THOMAS S. SHINER 202 537 4851 P.06



FORM WASU-468 REV. 1987

DEPARTMENT OF PUBLIC WORKS
WATER AND SEWER UTILITY ADMINISTRATION

WATER AND SEWER AVAILABILITY

3040

SQUARE 2307

ADDRESS New S.F.D. 5655 Maryland St. NW

LOTS 201

SIZE	TYPE OF SERVICE	AVAILABLE	APPLIED FOR	ORDERED
5/8"	WATERMAIN	✓	Maryland St	
	COMBINED			
10"	SANITARY	✓	Maryland St	
	STORM			
		Map K-26, K-27	K-2726	

SERVICE AVAILABLE IN (Street, Alley, etc. . .)
Same as above

ISSUED BY (Init.) ABC

DATE 10/30/92

CERTIFICATE EXPIRES 6 MONTHS FROM DATE OF ISSUE

COPY 1—D+W-WASUA COPIES 2 & 3—DCRA 6-0302 wd-454

01/23/01 17:41 FAX 202 942 5210 ARNOLD & PORTER 013
THOMAS S. SHINER 202 537 4851 P.07

EXHIBIT B

174

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
DISTRICT BUILDING
WASHINGTON, D. C. 20004

IN REPLY REFER TO:
LCD:ALS:GG:jlb
TBD82819

June 22, 1978

MEMORANDUM TO: James J. Fahey, Acting Chief
Zoning Regulation Division
Department of Housing and Community Development

FROM: Louis P. Robbins LPR
Principal Deputy Corporation Counsel, D.C.

SUBJECT: Whether the creation of an assessment and taxation lot satisfies the requirements of Section 7615 of the D.C. Zoning Regulations with respect to land encumbered by a projected Permanent Highway Plan street.

This is to confirm my oral advice to you that the creation of an assessment and taxation lot satisfies the requirements contained in Section 7615 of the D.C. Zoning Regulations relating to exceptions to building lot control when the land in question is encumbered by a projected Permanent Highway Plan street.

The question has arisen in connection with the proposed development of the Rockefeller Estate, a 25-acre tract located off Foxhall Road, N.W., which is now under large-tract development review pursuant to Mayor's Order 78-58, March 16, 1978. The developer plans to construct a number of single-family detached homes arranged on private streets and will enter into a series of multiple building covenants with the District, which covenants will generally provide the following: 1) that pursuant to the provisions of section 7615 of the Zoning Regulations and section 108.7 of the Building Code (which permits the erection of more than one principal building on a single subdivided lot, provided the owner of the lot enters into a covenant with the District of Columbia), the owner-developer will agree to comply with all applicable requirements of the regulations enforced by the Building and Zoning Regulation Administration of the Department of Housing and

Community Development and with all District of Columbia laws and regulations; 2) that certain common grounds will be set aside for the purpose of providing rights of way for access, utilities, fire protection and other such purposes for the benefit of the owners of the dwellings erected on the property; 3) that the assignees of the developer will continue to maintain this common easement area; 4) that the easement shall be perpetual, shall run with the land, and shall entitle the owners of the dwellings to enforce same; and 5) that the easement area shall be paved with materials which form an all-weather, impervious surface and shall be kept unobstructed and maintained in a condition suitable for the purpose for which it is constituted. Essentially, the latter will insure that each dwelling will have access rights to public streets fronting on portions of the parcel.

Section 7615.1 of the Zoning Regulations authorizes exceptions to building lot controls established by the regulations when "two or more principal buildings or structures [are] to be erected on a single sub-divided lot." A building permit may be issued pursuant to that section if other requirements contained in the section are met. It is my understanding that the proposed development will meet the lot requirements with the exception of the requirement of street frontage.

The tract consists of a series of assessment and taxation lots (A & T lots) but does not contain sub-divided lots (or "record lots"). Moreover, the land is subject to projected streets appearing on the Permanent Highway Plan. See D.C. Code, § 7-108 et seq. Under the provisions of D.C. Code, § 7-109, the Surveyor is not permitted to record any subdivision of land subject to a projected street appearing on the Permanent Highway Plan. Therefore, the developer is precluded from applying for and obtaining a subdivision of the tract.

While the language of Section 7615 of the Zoning Regulations refers to "subdivided" lots as those lands which may be developed under the exceptions for lot controls, this Office has previously interpreted similar regulatory language as requiring a broader application when the land in question is subject to projected streets appearing on the Permanent Highway Plan. In an opinion relating to condominium development regulations (dated April 5, 1977; CCO No. 2958) a similar question was discussed. The regulations in question contained a requirement that condominium

projects may be allowed only on a lot or lots of record; the land involved consisted of an A & T lot, encumbered by a projected street. The opinion discussed the significance of the statutory protections afforded landowners in the District whose lands are subject to the Permanent Highway Plan. It noted that D.C. Code, § 7-114, provides that "[t]he owner or owners of land over or upon which any highway or reservation shall be projected upon any map filed under sections 7-108 to 7-112 shall have the free right to the use and enjoyment of the same for building or any other lawful purpose, and the free right to transfer the title thereof until proceedings looking to the condemnation of such land shall have been authorized and actually begun." Further, it was noted that the Department of Housing and Community Development had followed a practice of issuing permits for the construction of buildings through the use of a building plat showing the outlines of the property with a statement contained thereon indicating that no subdivision can be created because of the existence of a highway planned street. The opinion noted that such a building plat would have satisfied the requirements governing condominium recordation. In another opinion, issued in response to an inquiry from you relating to the legality of creating A & T lots within a recorded lot (dated April 5, 1977), we reaffirmed the conclusion that an "outline survey may still be used in ... [those] instances where land falls within a part of the Permanent Highway Plan which has not been acquired." That advice was also based upon the statutory provisions of D.C. Code, § 7-114 which preserves to the owner of such property the right to build on his land.

Accordingly, consistent with the opinions of this Office as cited above, it is my view that the requirements of Section 7615 of the Zoning Regulations may be satisfied by the creation of an assessment and taxation lot when, as in the case of the Rockefeller Estate, the land in question is encumbered by highway planned streets.

LPR

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