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February 6, 2002

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BY HAND DELIVERY

Mr. Geoffrey Griffis, Chairman
D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: BZA Appeal No. 16830 – 909 Hughes Mews, NW
Appeal of ANC 2A and Richard Price ("Appellants") –
Response of Property Owner

Dear Members of the Board:

On behalf of the property owner of 909 Hughes Mews, NW (the "subject property"), Farhad Nasseri, enclosed please find a response in opposition to the Appellants' statement in support of Board of Zoning Adjustment ("BZA or Board") Appeal No. 16830. The enclosed response clearly addresses the faults in the Appellants' arguments and supports the Zoning Administrator's decision to issue the building permit. I will be serving as counsel to Mr. Nasseri.

Mr. Nasseri hereby requests that the Board remove Richard Price as a party to this appeal, since Mr. Price has not properly demonstrated that he is an "aggrieved person" as that term has been defined and utilized by the BZA. Mr. Price lives at 2588 Pennsylvania Avenue, NW. The Appellants' pre-hearing submission notes that this is approximately 3 blocks from the subject property, however, 2588 Pennsylvania Avenue is effectively cut-off and removed from the subject property by the submerged portion of K Street, in addition to being three blocks from the subject property which is an alley lot. Mr. Price is not an adjacent neighbor to the subject property, he does not live in the same Square as the subject property and he does not live within 200 feet of the subject property.

While Mr. Price is the single-member district commissioner for ANC 2A02, the subject property is not located in that district, rather it is located in ANC 2A04. Mr. Price has not shown that he is "aggrieved" in any manner that is different from any other resident of the Foggy Bottom neighborhood. Accordingly, the Board should remove Mr. Price as a party to this appeal.

BZA
Case No. 16830
Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO.16830
EXHIBIT NO.23

We have no objection to Mr. Price presenting the appeal on behalf of ANC 2A. We believe that Mr. Price's ability to present the ANC's case will allow the ANC to have a full and fair presentation of its appeal before the Board.

If you have any questions or comments regarding this request, please feel free to contact the undersigned at (202) 663-8873.

Sincerely,

Paul A. Tummonds, Jr.

cc: ANC 2A
Richard Price
Toye Bello
Raouf Abdullah
Farhad Nasseri

Document #: 1210020 v.1

A

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

ADVISORY NEIGHBORHOOD COMMISSION 2A, RICHARD PRICE; APPELLANTS

APPEAL NO. 16830
PUBLIC HEARING: FEBRUARY 12, 2002

STATEMENT OF FARHAD NASSERI DEVELOPMENT, INC.,
PROPERTY OWNER

I.
Introduction

The subject appeal was filed on December 3, 2001, by Advisory Neighborhood Commission 2A, and Richard J. Price[1] (the "Appellants") and challenges the decision of David Clark, Director of the Department of Consumer and Regulatory Affairs, to approve the issuance of a building permit authorizing the construction of a new single family dwelling at 909 Hughes Mews, N.W., Lot 888, Square 16, (the "subject property"). A copy of the official Surveyor's Plat for the subject property is attached as Exhibit A. The building permit in question, Building Permit No. B439442, was issued on October 17, 2001.

When the building permit application was filed on August 22, 2001, the subject property was owned by Dr. Forest K. Harris, and Farhad Nasseri was the agent for Dr. Harris. On October 1, 2001, Mr. Nasseri purchased the subject property from Dr. Harris. Pursuant to 11 DCMR 3199.1, as owner of the subject property, Farhad Nasseri (the "property owner") is automatically a party in this case.

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[1] Please note the objection to Richard Price's status as an individual Appellant in this case. The objection is fully discussed in a letter to the Board of Zoning Adjustment dated February 6, 2002.

The property owner fully supports the Zoning Administrator's decision to approve the building permit authorizing the construction of a new single family dwelling on the subject property. More specifically, the property owner believes that the Zoning Administrator properly applied the relevant portions of the Zoning Regulations in determining that the building permit application fully complied with the applicable zoning requirements for the subject property. Accordingly, the property owner appears as a party in opposition to the appeal and requests that the appeal be denied.

II.
Summary Response to
Issues Raised By the Appellantss

The Appellants contend that the Zoning Administrator's decision to approve the building permit application was erroneous for the following reasons:

1. The Zoning Regulations require a minimum lot size of 2,000 square feet in the R-3 District which the subject property does not satisfy; and

2. The Zoning Regulations require an alley lot to abut an alley that is at least 30 feet wide and the subject property abuts a portion of the alley system in Square 16 that is not 30 feet wide.

The issues raised by the Appellants do not support a reversal of the decision of the Zoning Administrator. This appeal should be rejected. As discussed in greater detail in Section VI, both of the Appellants' arguments are completely flawed and are incorrect on their face. The Zoning Administrator's decision to approve the building permit application was correct and is fully supported by the Zoning Regulations.

III.
List of Witnesses

The following is a list of witnesses who are expected to testify on behalf of the property owner:

1) Farhad Nasseri, Farhad Nasseri Development, Inc., property owner; and

2) Gladys Hicks, Zoning Consultant.

IV.
History of Events Leading Up To the Appeal

The property owner has taken all appropriate steps and received all of the necessary approvals to construct the proposed new single family dwelling on the subject property. The subject property is located in the Foggy Bottom Historic District. Accordingly, it was necessary for the property owner to obtain Historic Preservation Review Board ("HPRB") approval of the building permit application. On April 24, 2001, the property owner submitted a request for conceptual design review with HPRB and was initially scheduled to present the plans to HPRB at its May 24, 2001 public hearing. The ANC requested that the initial HPRB hearing on this matter be postponed to June 28, 2001. At the June 28, 2001 meeting, members of the HPRB asked the property owner and Historic Preservation Office Staff to share the proposed plans with members of the community. These meetings occurred prior to the July 26, 2001 HPRB public meeting, in which HPRB granted conceptual design approval of the proposed single family structure and granted Historic Preservation Office Staff the authority to grant final approval of the building permit application. On August 31, 2001, Tim Denee of the Historic Preservation Office staff authorized the issuance of the building permit.

During this period, the property owner was also seeking the input of members of the surrounding community as well as members of ANC 2A. On May 12, 2001, the property owner and the prior owner (Dr. Harris) met with ANC 2A Commissioner Maria Tyler to discuss the proposed single family dwelling. In addition, in June and July of 2001, the property owner made presentations to ANC 2A and the greater community at the ANC's regularly scheduled public meetings. The property owner also met with various Building and Land Regulation Administration ("BLRA") reviewers to confirm that the proposed construction of the single family home on the alley lot would be able to satisfy all relevant codes and regulations. On August 22, 2001, the property owner filed the building permit application based on the information and guidance that he received.

The building permit application was thoroughly reviewed by BLRA staff between August 22, 2001 and October 17, 2001. During this period, ANC 2A sent at least two letters to David Clark, Director of DCRA, requesting that DCRA handle this case "appropriately". Prior to the issuance of the building permit, the application was fully and thoroughly reviewed by BLRA and HPRB staff. Both of these agencies of the District of Columbia Government determined that the building permit application satisfied all relevant codes and regulations. In addition, the ultimate issuance of the building permit was delayed until October 17, 2001 and a demolition permit to remove the existing garage building was withheld until November 5, 2001 to assure that the ANC received proper notice of the building permit and demolition permit applications. The ANC was fully aware that this permit was being processed, yet it did not file an appeal until December 3, 2001.

Based on the valid issuance of Building Permit No. B 439442 on October 17, 2001, the property owner began construction activity on the subject property in accordance with the

approved building permit. At the present time, the framing of the building is complete, the plumbing rough-in is completed and inspected, and the electrical and mechanical rough-ins are expected to be completed shortly. In addition, the exterior brickwork is more than 60% completed.

The property owner went to great lengths to assure that the proposed single family dwelling on the subject property satisfied the Zoning Regulations and applicable historic district requirements. The property owner did everything that the District of Columbia Government asks developers to do. The property owner followed the established rules and regulations and relied on the valid issuance of the building permit. As a result of this appeal process, the property owner has been required to expend time, energy and financial resources in order to oppose the appeal. The appeal should be denied.

V.
List of Exhibits

The following exhibits are included in support of the property owner's case and to establish that the building permit was issued in full compliance with all zoning requirements

Exhibit A	Surveyor's Plat depicting the Subject Property.
Exhibit B	BZA Order No. 16604.
Exhibit C	Historic Preservation Review Board Staff Report and Recommendation – June 28, 2001

VI.
Detailed Response to Zoning Issues Raised by the Appellantss

The Appellants' burden of proof is "to show by a *preponderance of the evidence* that the building permit was issued in error because the proposed building would violate the Zoning Regulations." (See p.3 of BZA Order 16604 dated November 22, 2000 (Exhibit B) in which the

BZA upheld the issuance of a building permit for the Sikh Cultural Society at 3801 Massachusetts Avenue, N.W.) Accordingly, there is a strong presumption of the permit's validity and the BZA can overturn the Zoning Administrator's decision only if there is strong evidence of an error. In this case, Appellants have failed to meet their burden of proof.

1. The Subject Property Does Satisfy the Zoning Regulations Regarding Minimum Lot Size

The Appellants' argument regarding the failure of the building permit application to satisfy the minimum lot dimension is incorrect and fails to consider the plain meaning of 11 DCMR §401.1. This section of the Zoning Regulations states:

> Except as provided in Chapter 20 through 25 of this title, in the case of a building located, on May 12, 1958, on a lot area or width of lot, or both, less than is prescribed in §401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all *other provisions of this title*. (Emphasis added.)

The Appellants' argument clearly fails to understand the meaning of Sections §401.1 and §401.3 of the Zoning Regulations. What these Sections establish is the rule that if you have a lot that is less than 2,000 square feet in the R-3 District, and a building existed on that lot prior to May 12, 1958, a new building can be built on that lot IF IT COMPLIES WITH ALL OTHER PROVISIONS OF THIS TITLE. (See §401.1 above.)

When applied to the subject property, which has a total lot area of 1,485.58 square feet (as shown in Exhibit A) and included a garage building on the property as of May 12, 1958 (see the HPRB Staff Report and Recommendation that notes a portion of the garage may date to 1925 and that it was expanded in the mid-twentieth century, attached as Exhibit C), Section §401.1 requires that in order to construct a new building on the subject property, the building must satisfy *all other provisions of this title*. This means that the building on the subject property is not required to satisfy the minimum lot area requirements, but it is required to satisfy all other

applicable zoning requirements such as rear yard, height, etc. As rightfully determined by the Zoning Review Branch of BLRA, the building proposed in Building Permit No. B439442 fully satisfies all of the other applicable zoning requirements.

In regards to the Foggy Bottom Overlay requirements, the Appellants' argument is once again incorrect. The demolition of the garage structure on the subject property and its replacement with a single family home is entirely consistent with 11 DCMR §1523.1. As described above, the proposed building fully satisfies all of the requirements of the R-3 District, including 11 DCMR §401.1. Accordingly, the Appellants' argument regarding the required lot dimensions is fatally flawed and should be denied.

2. The Subject Property Abuts an Alley that is 30 feet Wide

The Appellants' argument on this issue requires an even more tortured interpretation of the Zoning Regulations. The Appellants argue that the issuance of the building permit was contrary to 11 DCMR §2507.2. This Section states:

> A one-family dwelling shall not be erected or constructed on an alley unless the alley lot abuts an alley thirty feet (30 ft.) or more in width and has from the alley access to a street through an alley or alleys not less than thirty feet (30 ft.) in width.

The Appellants claim that the Zoning Administrator erred in granting the building permit because the subject property abuts a portion of the alley that is 30 feet wide and a portion of the alley that is less than 30 feet wide. For some reason, the Appellants have added an additional requirement to 11 DCMR §2507.2. Page 6 of the Appellants' pre-hearing statement states, in relevant part: "Under section 2507.2, an alley lot must abut an alley that is at least 30 feet wide *continuously*".

The Appellants can not create additional requirements of the Zoning Regulations, as §2507.2 does not include the word *continuously*. As shown on the Surveyor's Plat (attached as Exhibit A), the subject property abuts Hughes Mews, an alley that has a width of 30 feet. According to §2507.2, it does not matter that a portion of the subject property is adjacent to a portion of the alley system in Square 16 that is less than 30 feet. §2507.2 only requires that the subject property abut an alley that is 30 feet wide. The subject property fully satisfies this requirement and the Zoning Administrator's decision to issue the building permit was correct.

VII.
Conclusion

For the above-mentioned reasons, the property owner respectfully requests that the Board deny the appeal and allow the property owner to complete construction of the approved single family dwelling.

Respectfully submitted,

Paul A. Tummonds, Jr.

February 6, 2002
Date

Document #: 1209860 v.1



GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Appeal No. 16604 of Fairview Heights Neighborhood Association, pursuant to 11 DCMR §§ 3105 and 3106, from the administrative decision of the Zoning Administrator, on July 16, 1999, to issue Building Permit No. B425220 to the Sikh Cultural Society to permit the construction of a temple in an R-1-B District at premises 3801 Massachusetts Avenue, N.W., Square 1816, Lot 45.

Hearing Date: September 13, 2000
Decision Date: October 3, 2000

PROCEDURAL HISTORY

The Sikh Cultural Society of Washington, D.C., an intervener in this matter, applied November 8, 1996 for a building permit to construct a temple at 3801 Massachusetts Avenue, N W. The Department of Consumer and Regulatory Affairs ("DCRA") approved the building plans and issued Building Permit No. B425220 on July 16, 1999. On May 26, 2000, DCRA issued a stop work order for the project as preventive measure to ensure that the Intervener had complied with applicable regulations. The stop work order was subsequently rescinded.

Fairview Heights Neighborhood Association ("Appellant"), a group of residents who live in the immediate area of the proposed temple, filed the instant appeal on June 12, 2000. The appeal alleges, among other things, that issuance of the building permit resulted from an erroneous interpretation of the zoning regulations governing building height, side yard and rear setbacks, and parking. The appeal also alleges that issuance of the building permit violated provisions of the Comprehensive Plan and that certain zoning regulations are invalid under the First Amendment because they directly favor churches over all other private entities. In addition, the Appellant advances a contention made by Advisory Neighborhood Commission ("ANC") 3C that DCRA failed to give the ANC notice of the issuance of the building permit, contrary to the legal requirement under D.C. Code § 1-261(c)(3) and (d). The ANC contended that the lack of proper notice prevented the community from raising the issues now before the Board, and that, as a result, the permit was improperly issued.

A public hearing was held before the Board on September 13, 2000. Testimony was received from the Fairview Heights Neighborhood Association, the Sikh Cultural Society, DCRA, and ANC 3C.

FINDING OF FACT

1. The subject property is located at 3801 Massachusetts Avenue, N.W. in an R-1-B zone district at Square 1816, Lot 45.

2. The site is an irregular corner lot bounded on the east by 38th Street and on the south by Massachusetts Avenue.

3. The property is owned by the Sikh Cultural Society, which proposes to build a temple on the site. A church or other place of worship is permitted as a matter of right in an R-1-B district. 11 DCMR § 201.1(b).

4. The proposed temple would be 30 feet high, with a 10-foot side yard on the west side of the property but no setback from the property line on the east side (along 38th Street), and a 26-foot back yard. The temple would occupy approximately 48 percent of the lot.

5. The proposed temple would include as an architectural embellishment a spire extending approximately 40 feet above the building's roof.

6. Six parking spaces would be provided in the alley, with 21 additional spaces located underground.

7. The proposed temple would have a seating capacity of 270.

8. At its public meeting of August 28, 2000, ANC 3C unanimously approved a resolution expressing its concern that the issuance of the building permit for the Sikh temple "resulted from an erroneous interpretation of the zoning regulations governing height and setback limitations in an R-1 District." The resolution also stated that:

> the Zoning Administrator's application of the . . . zoning regulations will result in the construction of a building that is out of scale and character with the rest of the neighborhood immediately surrounding it, to the serious detriment of fundamental objectives of zoning policy in the District of Columbia and the Ward 3 Plan in the Comprehensive Plan (i.e. preventing the overcrowding of land and preserving light and air).

Resolution of ANC 3C, August 28, 2000. The ANC testified at the public hearing that the Zoning Regulations should not be interpreted inconsistently with the Comprehensive Plan.

CONCLUSION OF LAW AND OPINION

The Board of Zoning Adjustment has jurisdiction to hear this appeal and render a decision and order pursuant to D.C. Code § 5-424(f). The Appellant, as the proponent in this matter, has the burden of proof pursuant to 11 DCMR § 3119.2. To reverse the Zoning Administrator's decision approving the issuance of the building permit, the Appellant must show by a preponderance of

the evidence that the building permit was issued in error because the proposed building would violate the Zoning Regulations. The Appellant contends that the proposed building would violate (1) the setback requirements and height restrictions specified in 11 DCMR §§ 400.1, 400.5, 400.6 and 400.9 and (2) the number and width of parking spaces required under 11 DCMR §§ 2101 and 2115. The Board is not persuaded by the Appellant's arguments, and concludes that the Zoning Administrator properly issued Building Permit No. B425220, because the proposed temple does not exceed the applicable height or setback requirements, or otherwise violate the Zoning Regulations.

Building height. In an R-1-B district, building height is generally limited to 40 feet or three stories. 11 DCMR § 400.1. That height may be exceeded in specific instances. 11 DCMR § 400.2. A "spire . . . serving as an architectural embellishment . . . may be erected to a height in excess of that" otherwise authorized. 11 DCMR § 400.3. A church or other place of worship "may be erected to a height of sixty feet (60 ft.). . . ." 11 DCMR § 400.6.

The proposed Sikh temple would be built to a height of approximately 30 feet, with a spire extending approximately 40 above the roof line. The spire constitutes an architectural embellishment, whose height is not limited by the Zoning Regulations. The Zoning Regulations specify that "[i]n those districts in which the height of building is limited to forty feet (40 ft.), the height of the building may be measured from the finished grade level at the middle of the front of the building *to the ceiling of the top story.*" 11 DCMR § 199 (emphasis added).

The Board concludes that the 30-foot height of the proposed temple complies with the applicable zoning requirements. Building heights of up to 40 feet are generally permitted in an R-1-B zone, and places of worship in particular may be built to a height of 60 feet. The proposed spire constitutes an architectural embellishment that does not increase building height for zoning purposes.

Setbacks. The Appellant argues that the proposed temple violates the setback requirements of 11 DCMR §§ 400.5 and 400.9. Those provisions allow construction of a building up to 90 feet in height, rather than the 40-foot limit that would otherwise apply, provided that the building is sufficiently set back from the property's lot lines. However, this provision is not applicable to this building, which as previously noted, is only 30 feet high. The setback provisions cited by the Appellant apply for buildings that exceed the otherwise applicable height limits, which is not the case here.

The rear and side yard requirements applicable to the Sikh temple project are found in 11 DCMR §§ 404 and 405, respectively. In this case, the Zoning Regulations require a rear yard of at least 25 feet and a side yard of at least eight feet on the west side of the property. 11 DCMR §§ 404.1, 405.9. No minimum side yard is required on the east (38th Street) side of the property, consistent with 11 DCMR § 405.5 (no side yard is required along a side street abutting a corner lot in a Residence district). Because the proposed temple would have a side yard of 10 feet on the west and a rear yard of 26 feet, the Board concludes that the proposed development complies with minimum rear and side yard requirements of the Zoning Regulations.

The Appellant asserts that the front steps of the proposed temple should be set back because they are within a few feet of the lot line. The setback requirements of 11 DCMR §§ 400.5 and 400.9 govern rear and side yards, and do not apply to the steps at the front of the building. As proposed, the front steps of the temple building do not violate any provision of the Zoning Regulations.

Parking. The Appellant contends that the six underground parking spaces do not meet minimum size requirements, which specify that parking spaces must be at least nine feet wide. 11DCMR § 2115.1. However, the Appellant did not offer sufficient evidence to prove this assertion, while DCRA testified at the hearing that there were no issues of non-compliance with respect to parking. Tr. at 77-78.

The proposed temple is required to provide one parking space for every 10 seats of occupancy capacity. 11 DCMR § 2101.1. As proposed, the temple would have a capacity of 270 people and a total of 27 parking spaces. The Board concludes that the off-street parking provided by the proposed temple satisfies the relevant requirements of the Zoning Regulations.

Other issues. At the public hearing, the Board ruled as a preliminary matter that it would not hear testimony on issues raised by the Appellant concerning the constitutionality of the Zoning Regulations with respect to religious uses or the effect of DCRA's alleged failure to give the ANC proper notice of the building permit, because those issues are outside the scope of the Board's jurisdiction. Noting that the sole authority for any amendment of the Zoning Regulations is in the Zoning Commission, the Board concluded that it must give effect to the Zoning Regulations that are currently in place, and this was not the proper forum to consider arguments concerning whether the regulations are unconstitutional.

With respect to the issue of ANC notice, the Board held that a delay or failure by DCRA to notify an affected ANC of a building permit was not a decision made in the administration of the Zoning Regulations such that the notice issue should be considered by the Board pursuant to its appellate jurisdiction. *See* D.C. Code § 5-424(f); 11 DCMR § 3112.2 (an appeal may be brought to the Board by any person aggrieved by any order or decision made in the administration or enforcement of the Zoning Regulations).

The Board also declined to hear the Appellant's argument that the Zoning Administrator's decision to issue the building permit was not consistent with certain provisions of the Comprehensive Plan. The Board concurs with DCRA that, when issuing a building permit, the Zoning Administrator is required to comply only with existing Zoning Regulations. The Comprehensive Plan is a statement of general policy governing planning and development in the District of Columbia. *See, e.g., Levy v. District of Columbia Board of Zoning Adjustment*, 570 A.2d 739, 744 (D.C. 1990). The Plan "is a broad framework intended to guide the future land use planning decisions for the District." *Tenley and Cleveland Park Emergency Committee et al. v. District of Columbia Board of Zoning Adjustment*, 550 A.2d 331, 337 (D.C. 1988), *cert. denied*, 489 U.S. 1082 (1989). The Plan is not self-executing but is implemented by various agencies charged with regulatory authority. *Id.* One such agency is the Zoning Commission, which is the exclusive agency vested by Congress, through the District Charter, with power to

enact zoning regulations for the District of Columbia. Home Rule Act § 492(e), D.C. Code § 5-413.

The Charter requires that "[z]oning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital . . . ." Home Rule Act, § 492(b)(1); D.C. Code § 5-414. However, the Court of Appeals has recognized that, while "the existing zoning regulations may be inconsistent in some instances with the policies outlined in the Comprehensive Plan, . . . an examination of existing zoning regulations for conformance with the Comprehensive Plan is necessarily a time-consuming process . . . ." *Tenley and Cleveland Park Emergency Committee*, 550 A.2d 331, 337 (D.C. 1988). Zoning regulations and maps already in place continue to have the full force and effect of law until such time as the Zoning Commission amends them. *Id.*, 550 A.2d 331, 336 (D.C. 1988).

The Board accorded ANC 3C the "great weight" to which it is entitled. However, the Board concludes that the ANC has not offered persuasive advice that would cause the Board to find that the building permit was issued in error or that the proposed temple would be constructed in violation of the Zoning Regulations. Specifically, the Board does not agree with the ANC's assertion that issuance of the building permit resulted from an erroneous interpretation of the Zoning Regulations governing building height and setback requirements. The Board finds that the ANC's assessment of building height improperly included an architectural embellishment, and that the proposed temple in fact does not exceed the 60-foot building height allowed as a matter of right for places of worship in an R-1 zone. As previously discussed, the Board is not persuaded by the ANC's argument regarding zoning decisions that are allegedly inconsistent with the Comprehensive Plan, but concurs with DCRA that the Zoning Administrator is bound to apply the existing zoning regulations.

CONCLUSION

This appeal concerns the proposed construction of a temple on property zoned R-1-B, where a place of worship is permitted as matter of right up to a height of 60 feet. The temple design includes a spire extending above the roofline. The spire, as an architectural embellishment, does not increase the calculation of building height for zoning purposes. The height of the proposed temple building, at approximately 30 feet, is well within the 60-foot allowable height limit for a place of worship in an R-1-B district. Moreover, the siting of the proposed temple on the subject property satisfies all applicable zoning provisions with respect to lot occupancy and to rear and side yard setbacks, and the development will provide off-street parking consistent with the requirements of the Zoning Regulation. The Board finds that the Appellant has failed to prove, by a preponderance of evidence, that the building permit for the proposed temple was issued in error, and therefore the appeal of the Fairview Heights Neighborhood Association is denied

VOTE: **3-1-1** (Kwasi Holman, Rodney Moulden and Sheila Cross Reid to deny the appeal, Robert Sockwell abstaining and Anne Renshaw in opposition).

ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER: NOV 22 2000

UNDER 10 DCMR § 3125.9, "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6" OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES.

Ord 16604 NM/SMP

BZA APPEAL NO. 16604

As Director of the Office of Zoning, I hereby certify and attest that on NOV 22 2000 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Richard H. Boote
Fairview Heights Neighborhood Association
3737 Massachusetts Avenue, N.W.
Washington D.C. 20016

Mr. Gajinder Singh
The Sikh Cultural Society, Inc.
4452 Springdale Street, N.W.
Washington, D.C. 20016

Ruth Anne Miller
Advisory Neighborhood Commission 3C
2737 Devonshire Place, N.W.
Washington, DC 20008

Lyle Blanchard
Single Mender District 3C07
3124 38th Street N.W.
Washington, D.C. 20016

Councilmember Kathleen Patterson
441 4th Street N.W. Suite 709
Washington, D.C. 20005

Michael Johnson, Zoning Administrator
Building & Land Regulation Administration
941 North Capitol Street, N.E., Suite 200
Washington, DC 20009

ATTESTED BY:
Jerrily R. Kress, FAIA
Director



HISTORIC PRESERVATION REVIEW BOARD
STAFF REPORT AND RECOMMENDATION

Landmark/District:	**Foggy Bottom Historic District**	(x) Agenda
Address:	**2513 I Street (rear), NW**	( ) Consent Calendar
Meeting Date:	**June 28, 2001**	(x) Demolition
H.P.A. Number:	**01-316**	( ) Alteration
Date Received:	**April 24, 2001**	(x) New Construction
Staff Reviewer:	**Tim Dennée**	(x) Concept

The applicant, Farhad Nasseri, agent for the property owner, requests conceptual review of a proposal to construct a single-family dwelling on a lot at the rear of 2513 I Street, NW, facing Hughes Court. Construction of the house would require the raze of a one-story brick and concrete block garage structure. The garage does not contribute to the character of the historic district; a portion of it may date to 1925, but it has been expanded or modified at least twice during the mid twentieth century, including the reconstruction of one exposed wall in concrete block.

Hughes Court, formerly Hughes Alley, is significant in that it retains a number of alley dwellings of a type ubiquitous in late nineteenth-century Washington but now mostly vanished. As can be seen from the attached 1888 insurance map, a number of dwellings were scattered through the alley. According to one source, the Hughes Alley community was closely tied to that of Snow's Court, across 25th Street.[1] During the mid and late twentieth century, the northern two-thirds of this block were redeveloped, leaving only seven two-story brick rowhouses and some garages and accessory structures at the south end of Hughes Court, near the subject property. The rowhouses were erected at the end of 1885 by Danenhower & Son, real estate brokers, as rental properties for working class families.

The Hughes Court rowhouses are typical of the late nineteenth-century Washington alley dwelling in form, height, material, plan and detail. The preservation of the character of these dwellings and of this corner of the Foggy Bottom Historic District is imperative, not only for the understanding of the historic physical environment, but also for insight into "how the other half lived." More important than the design of the proposed new building itself is the impact it will have upon these remaining alley dwellings

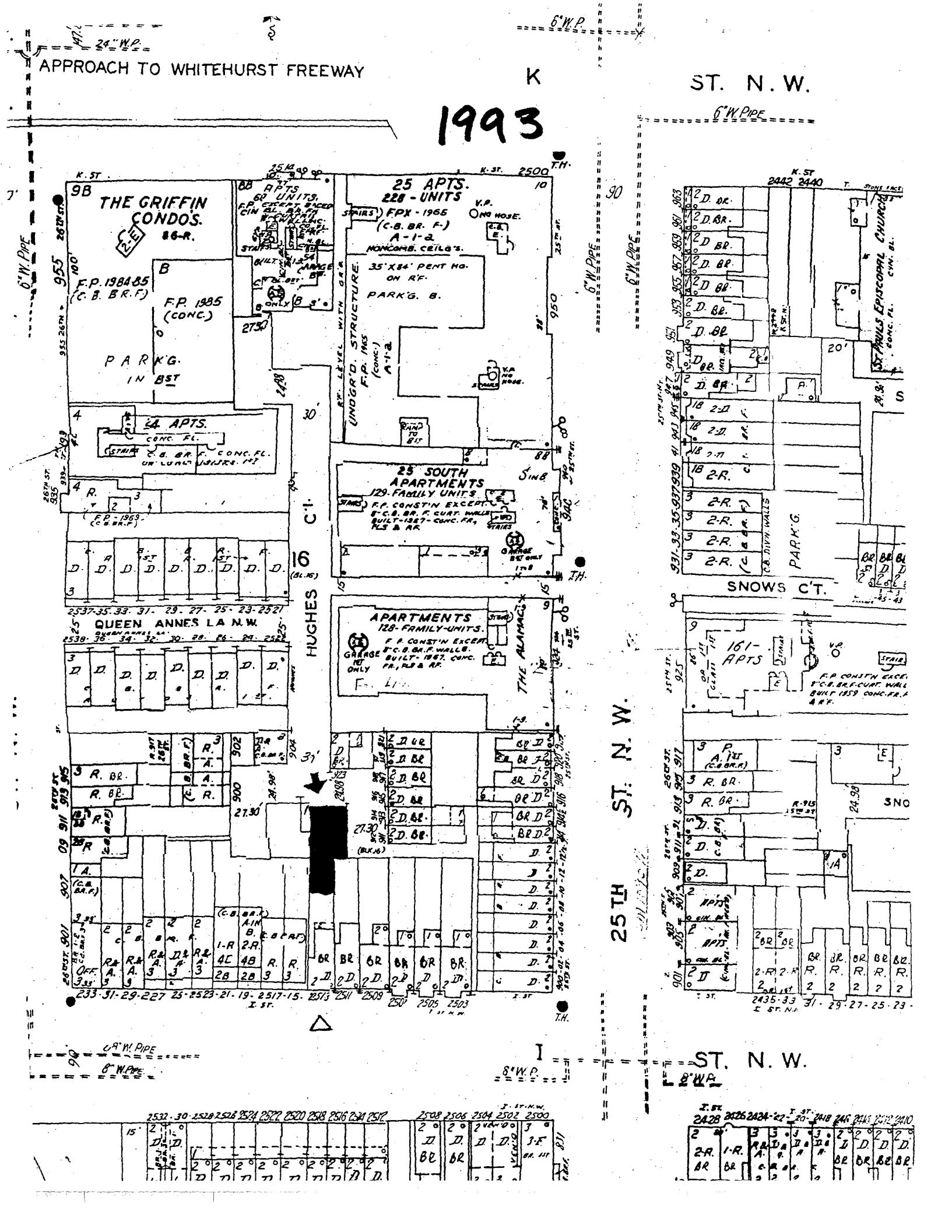
[1] Borchert, James, *Alley Life in Washington: Family, Community, Religion, and Folklife in the City, 1850 1970*, (Chicago: University of Illinois Press), pp. 122, 206-207. Hughes Court is also notable as the former residence of Sam McKeever. According to the oral tradition of the local African American community, junk dealer and rag picker McKeever was also a "night doctor," who provided cadavers for medical schools. Some of the bodies were reportedly not exactly deceased when McKeever found them!

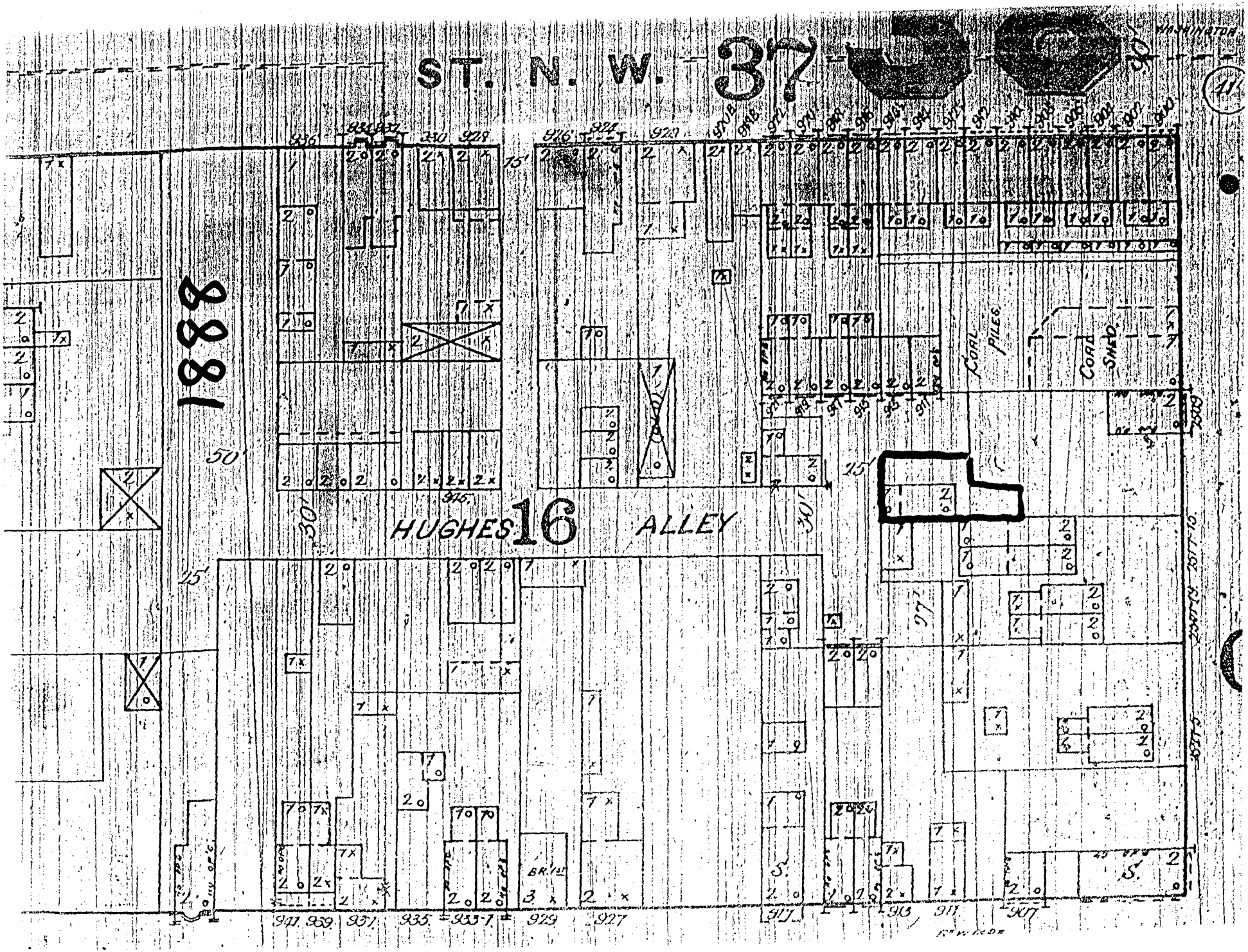
Consequently, the height, massing and material of the proposed building are crucial considerations in maintaining consistency and not overwhelming the existing buildings.

The proposed dwelling is to stand 25.5 feet tall at the primary façade and 24.5 feet (accounting for a slight drop in grade) at the rear. The width of the house is proposed to be slightly more than 27 feet, filling the width of the available lot. The house's depth is to be about 33 feet, with no setback from the alley. The walls are to be face brick (painted) over concrete block. The primary elevation is to be detailed with a bracketed cornice and doorway architrave in the manner of the mid- to late-nineteenth-century Italianate style. A transom over the main entrance and two-over-two wood windows throughout are also consistent with the Italianate vocabulary. The west elevation would be blank for fire safety reasons, as it would stand on a common property line. The rear elevation is to have full-light French doors on the main level, opening onto a small stoop or deck. The basement level is to be accessed from the exterior by means of a gated sunken stair and areaway.

The proposed style and skin of the building are compatible with the existing alley dwellings, and the form is similar to period Italianate buildings. The house would be wider than the rowhouses, however. As the lot is as close as 25 feet to the alley dwellings, the height is the principal issue. Desiring three levels of living space, the applicant has sunk the lowest level into the ground, producing the equivalent of a typical two-and-one-half-story structure. If necessary, it might be possible to take another two feet off the height, because the roof parapet is to serve as HVAC screening in order to keep the unit off the ground. However, the presently proposed height is an acceptable and worthy concession to contemporary needs; even for their day, alley dwellings were considered quite small, and it would be unreasonable to constrain new construction to the same dimensions as the old. The proposed height provides a transition between the modern three-story buildings on the west side of Hughes Court and the two-story original ones on the east side. A one-to-one proportion between the height of the proposed building and the distance from it to the alley dwellings should be sufficient to retain the alley character and ample light and air and to prevent the new construction from overwhelming the old.

The staff recommends that the Board approve the project, including the proposed demolition, in concept as consistent with the purposes of the preservation law and delegate final approval to staff.


1993
APPROACH TO WHITEHURST FREEWAY
K ST. N.W.
6" W.P.
24" W.P.
6" W. PIPE
K. ST.
2500
T.H.
9B
THE GRIFFIN CONDOS.
86-R.
B
F.P. 1984-85 (C.B. BR.F.)
F.P. 1985 (CONC.)
PARK'G. IN BST
955
100
26TH ST.
935
88
APTS.
68 UNITS
25 APTS.
228 - UNITS
F.P.X - 1965
(C.B. BR. F.)
A-1-a
MONCOMB. CEILG'S.
35'X84' PENT HO. ON R'F.
PARK'G. B.
UNDR'D. STRUCTURE
F.P. 1965 (CONC.)
A-1-a
54 APTS.
CONC. FL.
C.B. BR. F. CONC. FL. ON LOWER UNITS. PT
4
R.
F.P. - 1969 (C.B. BR.F.)
2750
2428
30'
950
25 SOUTH APARTMENTS
129- FAMILY UNITS
F.P. CONST'N EXCEPT F.C.B. BR. F. CURT. WALLS BUILT-1967- CONC. FR., FLS & RR.
GARAGE NOT ONLY
16
(BL. 16)
HUGHES C't.
2537-35-33-31-29-27-25-23-2521
QUEEN ANNES LA N.W.
2538-36-34-32-30-28-26-24-2522
APARTMENTS
128- FAMILY-UNITS.
F.P. CONST'N EXCEPT F.C.B. BR.F. WALLS. BUILT-1967. CONC. FR., FLS & RR.
GARAGE NOT ONLY
THE ALAMAC
902
904
31'
900
27.30
(BLK. 16)
907
901
911
913
915
917
909
903
26TH ST.
233-31-29-227 25-2523-21-19-2517-15-2513-2511-2509-2505-2503
I. ST.
T.H.
25TH ST. N.W.
6" W. PIPE
8" W.P.
I ST. N.W.
2532-30-2528-2526-2524-2522-2520-2518-2516-2514-2512
2508-2506-2504-2502-2500
I. ST. N.W.
2428-2426-2424-22-20-2418-2416-2414-2412-2410
K ST.
2442 2440
ST. PAULS EPISCOPAL CHURCH
963-961-959-957-955-953-951-949-947-945-941-939-937-935-933-931
D. BR.
D. BR.
D. BR.
D. BR.
D. BR.
D. BR.
D. BR.
D. BR.
2-D.
2-R.
2-R. (C.B. 4 R.F.)
C.B. DIVN. WALLS
PARK'G.
SNOWS C'T.
161- APTS
F.P. CONST'N EXCEPT F.C.B. BR.F. CURT. WALL BUILT 1959 CONC. FR. & 4 R.F.
925
915
917
909
903
901
R. BR.
1-A
(C.B. BR.F.)
2435-33
I ST. N.W.
31-29-27-25-23-


ST. N. W.
37
1888
HUGHES
16
ALLEY
50'
30'
25'
75'
15'
911
939
931
935
933-1/2
929
927
917
913
911
907
BR'G
COAL PILES
COAL SHED

OFFICE OF THE SURVEYOR

Washington, D.C., FEB 27, 2001

Plat for Building Permit of SQUARE 16 LOT 888

Scale: 1 inch = 10 feet Recorded in Book A&T Page 3509

Receipt No. 2327

Furnished to: FARHAD NASSEH

Surveyor, D.C.

By: MA

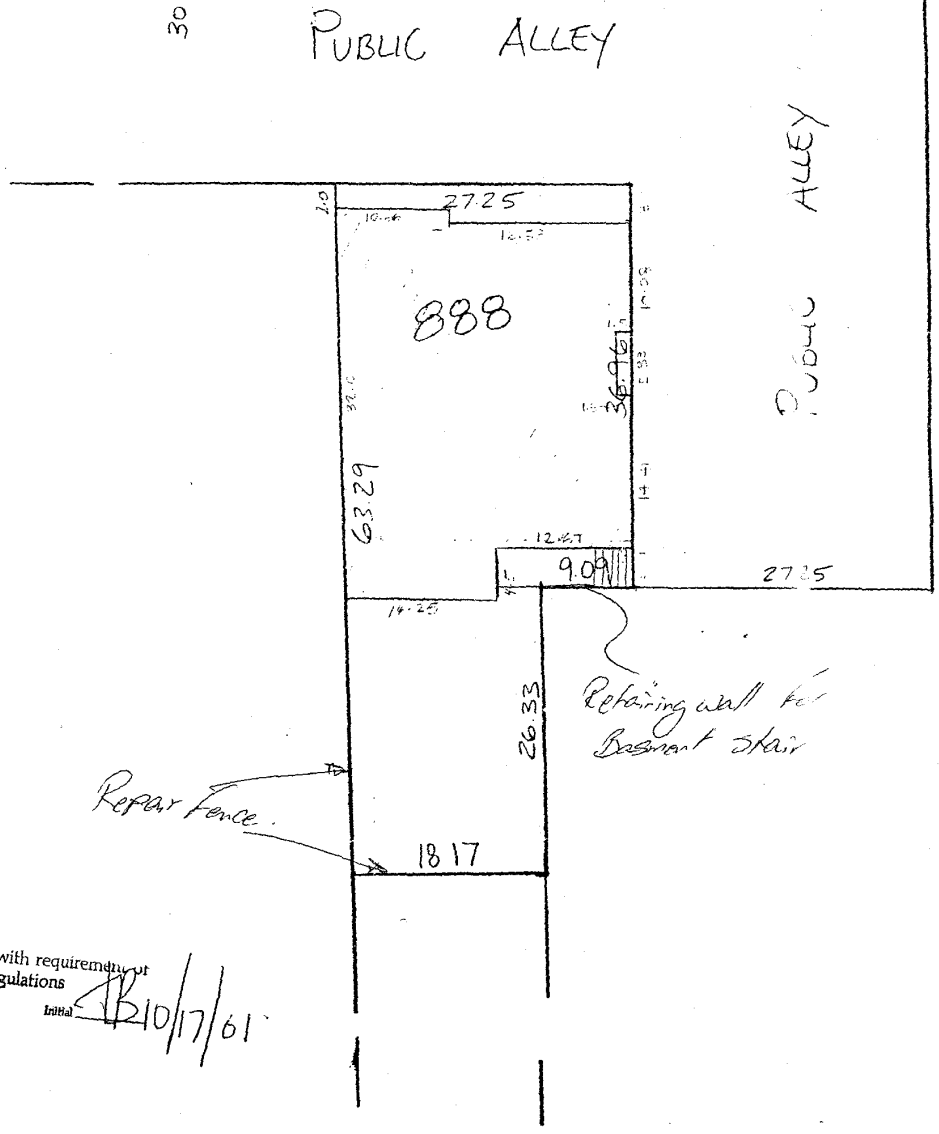
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 2/14/01

Farhad Nasseh

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



Complies with requirements of Zoning Regulations

Initial 10/17/01

Total lot area - 1485.58.