GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

ADVISORY NEIGHBORHOOD COMMISSION 2A, *et al.*	BZA Appeal No.: 16830
Appellants,	Appeal of Issuance of Building Permit B439442
v.	
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS,	
Appellee.	

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APPELLEE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL AND PRELIMINARY MATTERS

This appeal was initiated on December 3, 2001, by appellants, Advisory Neighborhood Commission 2A and Richard J. Price, seeking the revocation of a building permit issued on October 17, 2001 permitting the construction of a single family dwelling on an alley lot located at 909 Hughes Mews, Lot 888, Square 16, which is in the R-3 Zone of the Foggy Bottom Overlay District. The contested hearing occurred on February 12, 2002.

By notices dated December 10, 2001, the Board apprised the City Council Member for Ward Two, David Clark, Director of the Department of Consumer and Regulatory Affairs ("DCRA"), Advisory Neighborhood Commission 2A, and the Office of Planning Development Review and Coordination of the filing of the appeal. By notices dated December 14, 2001, the Board apprised the Office of the Corporation

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Board of Zoning Adjustment
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EXHIBIT NO.31

Counsel and the property owner of the filing of the appeal. The Board also apprised all of the parties of the date of the public hearing.

ANC Report. In its report, ANC 2A alleged that the permit should be revoked because: (1) Lot 888, Square 16 is 1486 square feet in size whereas the zoning regulations require a minimum lot size of 2000 square feet for the proposed new single family dwelling (11 D.C.M.R. § 401.3).

(2) The zoning regulations require that an alley lot cannot abut an alley that is less than 30 feet in width (11 D.C.M.R. § 2507.2).

ANC 2A's report did not address the allegations in the appeal that the proposed single family dwelling to be built on Lot 888, Square 16 violated zoning requirements for side yards. Nor did it address the allegation that there is a prohibition against building on alley lots.

FINDINGS OF FACT

1. Mr. Farhad Nasseri ("Nasseri" or "Intervenor") is the owner of Lot 888, Square 16, 909 Hughes Mews. (Board File.)
2. Lot 888, Square 16 is located in an alley in an R-3 Zone of the Foggy Bottom Overlay District. (Testimony of Price, Bello, Acting Zoning Administrator, and Nasseri; Board File.)
3. Nasseri applied to the Department of Consumer and Regulatory Affairs ("DCRA") for a building permit on or about August 22, 2001. The permit was issued by DCRA on October 17, 2001. (Testimony of Bello; Appellants' Brief Exhibit)
4. Lot 888, Square 16 was owned by Dr. Forrest K. Harris who transferred his ownership to Nasseri on or about October 1, 2001. (Board File.)

5. The Historic Preservation Review Board approved Nasseri's construction plans for a single family dwelling at Lot 888, Square 16. (Intervenor's Brief, Exhibit C.)
6. Nasseri met with the Area Neighborhood Council 2A and members of the adjacent community to seek their input into his proposed building design. (Testimony of Nasseri and Price).
7. On November 5, 2001, DCRA issued a demolition permit that allowed Nasseri to remove a garage on Lot 888, Square 16. (Testimony of Bello; Board File.)
8. The garage on Lot 888, Square 16 existed on the lot before May 12, 1958. (Intervenor's Brief, Exhibit C; Testimony of Bello.)
9. Lot 888, Square 16 is similar in size to other lots in Hughes Mews. (Testimony of Bello; Board File.)
10. Hughes Mews is an alley that is thirty feet (30') wide, in parts and is less than 30 feet (30') wide in other parts. (Intervenor's Brief, Exhibit A.)
11. Lot 888, Square 16 abuts Hughes Mews. (Intervenor's Brief, Exhibit A.)
12. Hughes Mews abuts Queen Anne Lane, which is an alley thirty feet (30') wide. (Appellee's Supplemental Filing, Exhibits 1 and 2.)

CONCLUSIONS OF LAW

1. The Board of Zoning Adjustment has jurisdiction over this appeal and over the parties, pursuant to D.C. Code § 5-424(f).
2. The burden of proof rests with the appellants, pursuant to 11 D.C.M.R. § 3119.2.
3. Appellants must meet their burden of proof by a preponderance of the evidence.
4. Nasseri, as the property owner of Lot 888, Square 16, is a party to the appeal as a matter of right pursuant to 11 D.C.M.R. § 3106.2(e).

5. ANC 2A is a party pursuant to 11 D.C.M.R. § 3112.7, because the lot is located in its district.
6. All parties received proper notice of the appeal and the public hearing.
7. 11 D.C.M.R. § 401.1 exempts buildings that are erected to replace pre-May 12, 1958 buildings from complying with the minimum lot size requirement of 2,000 square feet.
8. The lot complies with 11 D.C.M.R. § 2507.2 because it abuts Hughes Mews which is an alley that is 30 feet (30') wide and Hughes Mews has access to a street through Queen Anne's Lane, which is an alley that is 30 feet (30') wide.
9. The appellants failed to brief or present evidence on the appeal issues of side yard requirements and prohibitions on building on alley lots and therefore failed to meet their burden to establish those allegations by a preponderance of the evidence.
10. 11 D.C.M.R. § 3119.2 states that even if the appellee fails to submit opposing evidence on an issue, the burden of proof remains with the appellant.
11. The demolition permit for the lot was properly issued by DCRA.
12. Building permit No. B439442 was properly issued by DCRA.
13. Appellants failed to meet their burden of proof that Building Permit B439442 was issued in error.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Appellee's Proposed Findings of Fact, Conclusions of Law, and Order were served by first class U.S. mail, postage prepaid, on Richard J. Price, 2555 Pennsylvania Avenue, NW, Apt. 818, Washington, DC 20037, and Paul A. Timmonds, Jr., Esq., ShawPittman llp, 2300 N. Street, N.W., Washington, D.C. 20037-1128, on February 25, 2002.

Raouf M. Abdullah
Special Assistant Corporation Counsel

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HEARING DATE: **February 12, 2002**

DECISION DATE: **March 5, 2002**

Appeal No. 16830 by Advisory Neighborhood Commission 2A and Richard J. Price, pursuant to 11 D.C.M.R. §§ 3100 and 3101, from the decision of David Clark, Director, District of Columbia Department of Consumer and Regulatory Affairs, effecting the issuance of a building permit (No. B439442, dated October 17, 2001) to allow the construction of a new single family dwelling allegedly in violation of the area requirements in an FBOD/R-3 District at premises 909 Hughes Mews, N.W. (Square 16, Lot 888).

DECISION OF THE BOARD

The Board credits the testimony of expert witnesses Toye Bello and Gladys Hicks and agrees that the plain language of 11 D.C.M.R. § 401.1 requires the Board to conclude that a newly erected building on an alley lot that contained a pre-May12, 1958 building is exempted from the 2,000 square foot minimum lot requirement.

The construction of the language of 11 D.C.M.R. § 401.1 that the appellants urge would make the word "other" meaningless and superfluous. We are required by canons of construction to presume, in the absence of contrary information, that all words of a regulation have their ordinary and customary meaning and are necessary for the proper application of the law. Thus, the Board declines to adopt the meaning of 11 D.C.M.R. § 401.1 appellants offer.

Appellants' second argument must also fail as the evidence refutes it. In their submission, appellants state that Hughes Mews is not 30 feet (30') wide. The exhibits demonstrate that Hughes Mews has portions that are 30 feet (30') wide. In their pre-hearing submission, appellants state at page 5 that: "[f]or the western half of Lot 888, the 30-foot width requirement is met." Appellants submitted no decision, regulation, or case that supports their assertion that the zoning regulations require all portions of a lot to abut an alley 30 feet wide. We do not find appellants' argument persuasive and must decline to adopt it.

For the reasons stated above, the Board concludes that the Appellants have failed to meet their burden and it is, therefor, this _____ day of _____ 2002

Ordered: That Appeal No. 16830 be **Denied** with prejudice.

Vote:

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____

JERRILY R. KRESS, FAIA
Director