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

Re: BZA Appeal No. 16830 - 909 Hughes Mews, N.W.
Property Owner's Response to Submissions Filed on February 15, 2002
And Proposed Findings of Fact and Conclusions of Law

Dear Members of the Board:

Enclosed please find the property owner's proposed findings of fact and conclusions of law. The property owner also notes that the submission of the Department of Consumer and Regulatory Affairs, the appellee in this case, on February 15, 2002 clearly shows that Queen Anne's Lane has a width of 30 feet. In addition, the Appellants' submissions on February 15, 2002 clearly indicate that Queen Anne's Lane is considered to be a public alley. Therefore, there is no doubt that the issuance of the building permit completely satisfied 11 DCMR §2507.2.

Based on this additional information, as well as the information that was submitted prior to and at the public hearing, the property owner believes that the Appellants have failed to satisfy their burden of proof and the appeal should be denied.

Sincerely,

Paul A. Tummonds, Jr.

Enclosure

cc: ANC 2A (by mail)
Richard Price (by mail)
Raouf Abdullah (by mail)
Farhad Nasseri (by mail)

BZA
Case No. 16830
Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO.16830
EXHIBIT NO.32

PROPERTY OWNERS'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Appeal No. 16830 of Advisory Neighborhood Commission 2A and Richard J. Price, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of David Clark, Director, 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 a FBOD/R-3 District at premises 909 Hughes Mews, N.W. (Square 16, Lot 888).

HEARING DATE: **February 12, 2002**

DECISION DATE: **March 5, 2002**

PROCEDURAL HISTORY:

1. This appeal was filed on December 3, 2001, by Advisory Neighborhood Commission ("ANC") 2A and Richard J. Price (hereinafter referred to as "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").

2. 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. (Exhibit 23, p. 1.)

3. By letter dated January 9, 2002, Raouf Abdullah, noted his appearance as counsel for the Department of Consumer and Regulatory Affairs (the "Appellee"). (Exhibit 18.)

4. By letters dated February 6 and 7, 2002, counsel for the property owner objected to the granting of party status to Richard Price because Mr. Price failed to establish how he was aggrieved by the issuance of the building permit. At the February 12, 2002 public hearing, the Board denied the motion and granted Mr. Price party status in this appeal. (Exhibits 23 and 24.)

5. On February 6, 2002, counsel for the property owner filed a statement in response to the Appellants' pre-hearing statement disputing the grounds for appeal raised by the Appellants. (Exhibit 23.)

FINDINGS OF FACT:

1. On August 22, 2001 the property owner filed a building permit application for the construction of a single-family dwelling on the subject property. Building Permit No B439442 was issued on October 17, 2001. (Exhibit 23, p. 4.)

2. The subject property is located in the Foggy Bottom Overlay ("FB")/R-3 District. The subject property is an alley lot located on Hughes Mews that is bounded by 25th, 26th, I and K Streets, N.W. The subject property was previously improved with a garage structure. The subject property is also located in the Foggy Bottom Historic District.

3. The Appellants raised two issues on appeal that they assert constitute error on the part of the Zoning Administrator, and which form the basis for their argument that the building permit should be revoked. The issues are:

(a) 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

(b) 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.

4. Minimum Lot Size. The Appellants argued that since the subject property has a total lot area of only 1,485.58 square feet, the issuance of the building permit was improper because 11 DCMR §§401.1 and 401.3 require a minimum lot size of 2,000 square feet. 11 DCMR §401.1 states that:

> 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.

(a) The Acting Zoning Administrator, Toye Bello, testified that the Appellants incorrectly interpreted §401.1. Mr. Bello noted that this section is specifically intended to address the situation that is posed by the subject property. Mr. Bello stated that since the subject property satisfied all the requirements of §401.1, the subject property is not required to have a minimum lot size of 2,000 square feet in order for new construction to occur on the property. However, it is required to meet all other requirements of the Zoning Regulations established by the FB/R-3 zoning of the subject property. Mr. Bello concluded that the issuance of the building permit was proper because 11 DCMR §401.1 was fully satisfied.

(b) The property owner's Zoning Consultant, Gladys Hicks (admitted by the Board as a zoning expert) supported Mr. Bello's determination. By written submission and testimony at the public hearing, the property owner and Ms. Hicks noted that as of

May 12, 1958 the subject property included less than 2,000 square feet of land area and a garage structure was located on the subject property. By written submission and by testimony, the property owner and Ms. Hicks noted that, pursuant to 11 DCMR §401.1, 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 in order to receive a valid building permit. Ms. Hicks concluded that the proposed single-family dwelling fully satisfied all of the applicable requirements of the Zoning Regulations and the building permit was properly issued. (Exhibit 23, p. 6-7.)

5. Alley Width. The Appellants also argued 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. The Appellants argued that the Zoning Administrator's determination was contrary to the requirements of 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.

(a) Mr. Bello testified that the Appellants again incorrectly interpreted the Zoning Regulations. Mr. Bello stated that there is no requirement in the Zoning Regulations that all portions of a lot abut an alley that is 30 feet in width. Mr. Bello testified that the subject property abutted an alley, Hughes Mews, that is 30 feet in width and that Hughes Mews intersected Queen Anne's Lane which is another alley that is 30 feet in width that leads to 26th Street, N.W. Based on these facts, Mr. Bello concluded that the issuance of the building permit was in compliance with 11 DCMR §2507.2.

(b) The property owner, by written submission and testimony of Ms. Hicks, supported Mr. Bello's interpretation of the Zoning Regulations regarding 11 DCMR §2507.2. The property owner noted that the Surveyor's Plat that accompanied the building permit application shows the subject property abuts Hughes Mews, an alley that has a width of 30 feet. The property owner and his Zoning Consultant noted that, pursuant to §2507.2, it does not matter that a portion of the subject property is adjacent to a portion of the alley system that is less than 30 feet wide. The property owner noted that there is no requirement in §2507.2 that property *continuously* abut an alley that is 30 feet in width. In addition, the property owner and Ms. Hicks noted that they understood Queen Anne's Lane to be a public alley with a width of 30 feet. The property owner's zoning expert concluded that the subject property meets the standards of 11 DCMR §2507.2 and the issuance of the building permit in regards to this issue was proper. (Exhibit 23, p.8.)

(c) During the public hearing, the Board questioned whether Queen Anne's Lane, which intersects Hughes Mews and provides access to 26th Street, N.W. was a public alley and whether it had a width of 30 feet. Mr. Bello stated that when he reviewed the building permit application he thoroughly addressed this issue and determined that Queen Anne's Lane did have a width of 30 feet. Mr. Bello stated that he would provide a copy of a plat from the D.C. Surveyor's Office that accurately depicted the alley width of Queen Anne's Lane.

6. Post-Hearing Submissions. At the conclusion of the February 12, 2002 Public Hearing, the Board asked for two submissions to be filed in the record. First, the Board asked that the Appellee file information from the Office of the D.C. Surveyor that

it used in determining that Queen Anne's Lane is a public alley with a width of at least 30 feet. Second, the Board asked that the Appellants submit information as to the status of Hughes Mews and Queen Anne's Lane as public alleys.

(a) On February 15, 2002, the Appellee submitted a certified copy of the official record plat from the Office of the D.C. Surveyor depicting the width of Queen Anne's Lane. This plat showed that Queen Anne's Lane has a width of 30 feet. The Appellee noted that Queen Anne's Lane was initially known as Hughes Court, but was also referred to as Queen Anne's Lane in the official Surveyor's Office plat working papers. (Exhibit 28.)

(b) On February 15, 2002, the Appellants submitted a memorandum from DPW, dated February 14, 2002, that identified Hughes Mews, N.W. and Queen Ann's (sic.) Mews, N.W. as alleys in the Foggy Bottom Historic District that have been designated for rehabilitation work. (Exhibit 27 and 29.)

Conclusions 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 Section 5-424(f). Pursuant to 11 DCMR Section 3119.2, the Appellants have the burden of proof in this matter. In considering an application for a building permit, the Zoning Administrator is required to determine whether the plans for the proposed building meet the requirements of the Zoning Regulations. To reverse the Zoning Administrator's decision approving the issuance of the building permit, the Appellants must demonstrate to the Board, by a preponderance of the evidence, that the building permit was issued in error because the proposed building would violate the Zoning Regulations. Based on the above findings of fact, the Board

concludes that Building Permit No. B439442 was properly issued. The Board concludes that there are no facts in the record to sustain the Appellants arguments and that the Appellants have failed to meet their burden of proof.

The Board finds that the subject property does fully satisfy the requirements of 11 DCMR §§ 401.1 and 401.3. The plain meaning of these sections of the Zoning Regulations is such that if a property satisfies the requirements of §401.1, it is permissible to build on that property, regardless if the property satisfies the minimum lot dimension requirements, as long as all other applicable zoning requirements are satisfied. The Board agrees with the interpretations of § 401.1 made by the Acting Zoning Administrator and the property owner's expert Zoning Consultant. Therefore, the Board concludes that the Zoning Administrator correctly determined that the construction of the single-family dwelling on the subject property satisfied the requirements of the Zoning Regulations regarding minimum lot dimensions.

The Board also concludes that the subject property is in compliance with 11 DCMR §2507.2. The Board agrees with the conclusions reached by the Acting Zoning Administrator and the property owner's expert Zoning Consultant. Section 2507.2 of the Zoning Regulations does not require that the subject property continuously abut an alley that is 30 feet in width. Rather, the Zoning Regulations only require that an alley lot abut an alley that is 30 feet or more in width and has access from the alley or alleys to a street through an alley or alleys that are not less than 30 feet wide. In this case, the Board notes the official records of the D.C. Surveyor's Office and the Zoning Administrator's reliance on those documents. The building plat prepared by the Office of the D.C. Surveyor depicts the subject property abutting a 30 foot wide public alley, Hughes Mews. In

addition, the Board relies on the post-hearing submissions of the official plat of record for Queen Anne's Lane and the fact that it is a public alley that has a width of 30 feet. The Board concludes that the subject property abuts an alley that is 30 feet in width (Hughes Mews) and has access to a street (26th Street) through an alley (Queen Anne's Lane) that is 30 feet in width. Therefore, the Board concludes that the Zoning Administrator correctly determined that the construction of the single-family dwelling on the subject property satisfied the requirements of 11 DCMR §2507.2.

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Board of Zoning Adjustment for the District of Columbia **ORDERS DENIAL** of this appeal of the Zoning Administrator's decision in the issuance of Building Permit No. B439442.

For the reasons stated above, the Board concludes that the Appellants have not met their burden, it is hereby **ORDERED** that the appeal be **DENIED**.

VOTE:

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

ATTESTED BY: _____
JERRILY KRESS

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