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 the Zoning Administrator, Department of Consumer and Regulatory Affairs, in the issuance of a building permit (No. B 439442), dated October 17, 2001, to Farhad Nasseri to permit the construction of a one- family dwelling located at 909 Hughes Mews, N.W. (Square 16, Lot 888).

HEARING DATE: February 12, 2002

DECISION DATE:March 5, 2002

DECISION AND ORDER

This appeal was filed on December 3, 2001, by ANC 2A and Richard J. Price ("Appellants") challenging on two grounds the Zoning Administrator's decision to approve the issue of Building Permit No. B 439442, to Farhad Nasseri to construct a one family dwelling at 909 Hughes Mews, N.W. The subject property is located in ANC 2A04. After a public hearing, the Board denied the appeal, affirming the Zoning Administrator's approval of the permit.

PRELIMINARY MATTERS

Parties. The co-appellants in this case are the ANC 2A and Richard J Price. Mr. Price represents himself and the ANC. The subject property is located within the area served by ANC 2A. Mr. Price is the single member district commissioner of ANC 2A02. Mr. Price lives at 2555 Pennsylvania Avenue, N.W., in close proximity to the subject property.

The property owner, Farhad Nasseri[1], is automatically a party to this appeal, pursuant to 11 DCMR § 3199.1. Mr. Nasseri is represented by Shaw Pittman, LLP.

The Office of the Corporation Counsel represented the Zoning Administrator.

Notice of Appeal and Notice of Public Hearing. By memoranda dated December 10, 2001, the Office of Zoning advised Appellants, the Zoning Administrator, the Ward 2

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[1] When the building permit was applied for, Mr. Nasseri acted as the agent for Dr. Forest K Harris, who owned the subject property at that time. By the time the appeal was heard, Mr. Nasseri had purchased the subject property.

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council member, the Office of Planning, and the Office of the Corporation Counsel of the filing of the appeal.

The Board scheduled a public hearing on the appeal for February 12, 2002. Pursuant to 11 DCMR § 3112.14, the Office of Zoning, on January 4, 2002, mailed ANC 2A and the Zoning Administrator notice of hearing. Notice of hearing was also published in the D.C. Register.

Appellants' Case. The Appellants allege two errors on the part of the Zoning Administrator, which form the basis for their argument that the building permit should not have been issued. These are:

1) The subject property does not conform to the minimum lot size for a single family dwelling in a FBOD/R-3 district; and

2) The alley adjacent to the subject property does not conform to the minimum alley width requirements for development of a one-family dwelling on an alley lot.

Property Owner's and Zoning Administrator's Case. The property owner and the Zoning Administrator claimed that the Appellants' misinterpreted the Zoning Regulations where 1) a lot, with a building that existed in 1958, that complies with all requirements but minimum lot size, may be developed with a one-family dwelling, and 2) not all alleys abutting the lot need be at least 30 feet in width.

Toye Bello, the acting Zoning Administrator from the Department of Consumer and Regulatory Affairs, testified as to his interpretation of the Zoning Regulations.

Gladys Hicks, a zoning consultant, also testified in favor of the Zoning Administrator's interpretation of the regulations and approval of the subject building permit. Ms. Hicks' resume was entered into the record.

ANC Report. In lieu of a report, the ANC 2A submitted a Pre-hearing Submission for Appellants Advisory Neighborhood Commission 2A and Richard J. Price on January 29, 2002, authored by Mr. Cornish Hitchcock, Esq.. On February 4, 2002, the ANC sent the Office of Zoning a letter stating that the ANC 2A, at its regularly monthly meeting on January 23, 2002, voted 5 to 1 to approve a resolution that appealed the subject building permit, authorized the hiring of Mr. Hitchcock to outline the ANC's position, and authorized Commissioner Richard J. Price to represent the ANC.

Closing of the Record. The record closed at the conclusion of the February 12, 2002, hearing, with the exception of submittal of a certified copy of the official plat record showing the width of Queen Anne's Lane, evidence by the appellants that establishes whether or not Queen Anne's Lane should be considered an alley, and proposed findings of fact and conclusions of law from the parties.

Decision Meeting. At its decision meeting on March 5, 2002, the Board, voting 3-1, with James Hannaham not voting, denied the appeal in all aspects.

FINDINGS OF FACT

The Subject Property

1. The property that is the subject of this appeal is located at 909 Hughes Mews, N.W., Square 16, Lot 888, in an R-3 District, in the Foggy Bottom Overlay District ("FBOD"), 11 DCMR § 1521.

2. The FBOD became effective on Aprril 17, 1992, 39 DCR 2741.

3. The Zoning Regulations define "row dwelling" as a "one family dwelling having no side yards". 11 DCMR § 199.1. The single dwelling to be constructed on the subject property has no side yards.

4. The property is approximately 1486 square feet.

5. Section 401.3 requires a minimum lot area in an R-3 district of 2000 square feet.

6. The Zoning Regulations provide that "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". 11 DCMR 401.3 (emphasis added).

7. The Foggy Bottom Overlay District rules provide: "buildings constructed on or before the effective date of this rezoning regulations and existing legitimate uses within the buildings shall be deemed conforming, except that no addition, replacement, or expansion of the building, or change in use (except to a more conforming residential use other than dormitory) shall be permitted unless in conformance with the requirements of the underlying R-3 district." 11 DCMR § 1531.1.

8. The property is located behind 2513 I Street, N.W., and contained a garage on its northern half.

9. It is undisputed that the garage was located on the subject property since May 12, 1958.

10. A "building" is defined, in relevant part, in the Zoning Regulations as "a structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, or chattel." 11 DCMR § 199.1.

11. The building owner received a permit from DCRA to demolish the existing garage, which has been replaced by a one-family dwelling.

12. The subject property faces an alley and not a street and is therefore an alley lot under the Zoning Regulations. 11 DCMR § 199.1.

13. Section 2507.2 of the Zoning Regulations provide:

> A one-family dwelling shall not be erected or constructed on an alley lot 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.

14. The subject property is bound by an alley on two sides. On only one of the sides, the westernmost side, is the adjacent alley, as shown on the official surveyor's map submitted by the Zoning Administrator, at least 30 feet in width.

15. It is not necessary to use the easternmost portion of the alley abutting the subject property to gain access to the subject property.

16. Entrance from the street is via Queen Anne's Lane, which is depicted on the official plat record, a copy of which was submitted by DCRA. Queen Anne's Lane is at least 30 feet in width.

17. No part of the alley system that provides access to the subject property has a width of less than 30 feet.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code, 2001 Ed. §6-641.07(g)(1) (2001)) ("Zoning Act"), to hear and decide appeals where it is alleged by an appellant that an administrative officer erred in any administrative decision based in whole or in part upon any Zoning Regulation or Zoning Map. This appeal is properly before the Board pursuant to 11

DCMR §§ 3100.2, 3101.5, and 3200.2. The notice requirements of 11 DCMR § 3112 for the public hearing on the appeal have been met.

The appellants, ANC 2A and Richard J. Price, appeal the decision of the Zoning Administrator to approve the issuance of a building permit for a one-family dwelling on the grounds that the lot is too small and the adjacent alley is not a continuous thirty feet in width along the lot's perimeter, in contravention of the regulations governing R-3 districts.

The Foggy Bottom Overlay District allows that a building may be replaced in accordance with the requirements of an R-3 District, discussed below.

The property contained a garage before 1958, which still stood at the time the building permit was applied for. A garage meets the definition of "building" in the Zoning Regulations. (See Finding of Fact # 10). Therefore, the replacement of the garage with a one-family dwelling, also a building as that term is defined in the Zoning Regulations, is governed by 11 DCMR § 401.1.

As noted in Finding of Fact number 6, Section 401.1 of the zoning regulations provides that if a property containing a building that existed before May 12, 1958 "complies with all other provisions of this title" (emphasis added) it may be replaced. The Appellants' interpret the section as if the word "other" did not exist. Had the Zoning Commission intended for all zoning requirements to be met it would not have included the word "other". But the use of the "other" in conjunction with the phrase "on a lot area ... less than is prescribed in 401.3" means that a replacement for a pre-1958 building on a nonconforming lot is permitted so long as it meets all zoning requirements "other" than lot width. The Board therefore does not agree with the Appellants' assertion that § 401.1 provides that the minimum lot size established by § 401.3 must also be met before the subject building can be replaced.

As to the width of the alley, Appellants argue that § 2507.2 provides that an alley adjacent to an alley lot must be at least 30 feet wide, continuously, for the lot to be developed with a one-family dwelling. They therefore assert that, because the easternmost portion of the property abuts a portion of the alley that is less than 30 feet wide, their appeal should be granted. The Appellants support their interpretation by stating that the minimum alley width requirement addresses, among other things, the distance that a structure built on an alley lot should be set back from other nearby structures and lots.

However, the Board finds nothing in § 2507.2 that requires all portions of an alley abutting an alley lot to be at least 30 feet in width. Nor can the Board conceive of a reason to interpret the regulations as such, particularly where another regulation already

protects from such encroachment.[2] The intent of § 2507.2 is that any one-family dwelling in an alley lot be accessed by an alley that is a large enough to accommodate the use. To that end, access to the subject property must be possible through an alley that is at least 30 feet in width, as is the case with the property in question. It is immaterial that a portion of the alley system not necessary to access the property is less than 30 feet in width, even if that portion is adjacent to the subject property.

CONCLUSION

For the reasons stated above, the Board concludes that the appellants have not met their burden of proving by a preponderance of the evidence that the Zoning Administrator erred in approving the issuance of the building permit. It is hereby **ORDERED** that the appeal of the issuance of Building Permit number B 439442 filed by Richard J. Price and Advisory Neighborhood Commission 2A is **DENIED**.

VOTE: 3 - 1 - 0 (David W. Levy, Geoffrey H. Griffis, Curtis Etherly, to deny the appeal, Anne M. Renshaw to grant the appeal, James Hannaham, not voting, not present).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 2 2 2002

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.
rsn

[2] To ensure that a building on an alley lot is not encroaching on neighboring properties section 2507.4 provides "The height of building of a structure erected or constructed on an alley lot shall not exceed the distance from the opposition side of the abutting alley to the outside wall of the structure nearest the alley."

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As Director of the Office of Zoning, I hereby certify and attest that on MAY 22 2002 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
Director