GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

December 10, 2001

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2002 JAN 17 PM 3:44

Robert Lehrman
1027 33rd Street NW #2nd floor
Washington, DC 20007

RE: 2221 30th Street NW

Dear Mr Lehrman:

This letter is written in response to all previous correspondence, phone conversations, and complaints regarding construction at the referenced property and particularly with respect to the removal of a tree of regulated size and your specific request for re-evaluation of the Zoning Administrator's disposition letter of October 10, 2001.

I apologize for the seeming delay in response but I am sure your can appreciate the necessity for careful review of the extensive catalogue of documentation relating to possible violations of the Zoning Regulations and/or the D.C. building codes.

The issues of focus are:

1. You believe the Zoning Administrator improperly applied the Zoning Regulations in his determination of October 10, 2001 that the removal of a regulated tree on subject premises did not violate the intent and the letter of the Tree and Slope Protection Overlay Statutes.

2. You provided a tree expert report that a second tree has sustained recent fatal damage from heavy machinery, likely construction equipment, which would lead, in two years, to the demise of the tree.

3. You invoke Building and Land Regulations Administration (BLRA's) authority under 12 DCMR Section 108.9(I) to revoke a building permit obtained on false statements or information and requested revocation of building permit #B435446.

941 North Capitol Street, N.E., Suite 2000, Washington, D.C. 20002
Phone: (202) 442-4455 Fax: (202) 442-4863

BZA
Case No. 16849
Exhibit No. 2

Appeal of Robert Lehrman
Ex. 2 to App

Board of Zoning Adjustment
District of Columbia
CASE NO.16849
EXHIBIT NO.2

The following is my determination:

1. Zoning Administrator's determination:

The Zoning Administrator properly applied the Zoning Regulations in his opinion that the removal of the tree did not violate the TSP overlay restrictions. While one of the purposes of the TSP overlay district is the preservation of the natural topography and mature trees, "to the maximum extent feasible" (see section 1511.4), the regulation recognizes the necessity for removal of trees when they are unhealthy or when they constitute a present danger because of an unsafe condition, provided such conditions are certified by an aborist or other tree professional.

The language of Section 1511.4, in paraphrase, is instructive on overall intent in that it asserts that the TSP overlay district is designed for residential neighborhoods that have undeveloped lots and have a significant quantity of steep slopes, have mature trees and are located at the edge of stream beds, but are unsuitable for mapping in already developed lots where existing mature trees are "either yard trees or street trees". The subject premise is considered a "developed lot" and the unsafe condition of the removed tree was certified by a tree professional and corroborated by a respected resident of the neighborhood whose property is adjacent to said property. There is compliance, in every respect, with the provision of section 1514.1(b) of the Zoning Regulations.
The Zoning Regulation is silent on the timing of the certification of the arborist, perhaps because it recognizes that some situations may present, regardless of circumstance, a clear and imminent danger that warrants the removal of a tree that presents an unsafe condition and clearly cannot await the clearance of the Zoning Administrator. I believe the penalty, as set forth in section 1514.1(f), is designed to discourage willful damage and or removal of regulated trees for gain in the instance of contemporaneous application for building permit to construct where surreptitious removal of trees was effected in recent memory. There is no evidence that an expansion of the existing structure seeks to take advantage of the location of this specific tree removal.

The regulation recognizes that a construction permit is not required for tree removal on private property. Hence it conditions the issuance of a building permit on limits set forth in Section 1514.1(a) through (f) Subsection (f) inherently bestows upon the Zoning Administrator, the discretion of determining what constitutes a "contemporaneous" building permit application, where tree removal has occurred. In this particular case the issuance of the building permit preceded the tree removal and the condition for removal of a tree was satisfied. Therefore, I stand by the decision of the Zoning Administrator, as expressed in his letter of October 10, 2001.

2. Fatal Damage to Regulated Tree:

The property owner and counsel, Whayne Quinn, have provided this Department with a tree expert report (see enclosed) outlining the care administered the subject tree enough to save the tree not only from possible "fatal" construction damage but also from an existing unhealthy condition. No request is filed for the removal of the tree and the owner has committed to precautionary construction measures that are respectful of the intent of the Tree and Slope overlay district.

Your tree expert provides no evidence of the distance of the observation that informed his professional opinion. It is hence not unreasonable to conclude that the property owner's tree expert opinion was probably based on a more proximal observation of the subject tree.

The intent of the Tree and Slope overlay district is clearly to limit new and expansion construction at the expense of removal of mature trees. That is the basis of conditioning the issuance of a building permit for "construction of a building, accessory building, or an addition to a building, or the creation of any impervious surface are" (see Section 1514.1) on limitations on removal of trees of a regulated size.

There also is an inherent liability issue at stake. Assuredly, the intent of the overlay district cannot be to prevent the removal of a tree that is certified by an arborist as creating an unsafe condition, notwithstanding what precipitates said condition. The discretionary judgement of the Zoning Administrator is to determine what constitutes willful and or wanton removal of regulated trees for construction gain and then apply the punitive authority of section 1514.1(f).

There is insufficient evidence in this case to support the necessity for the application of Section 1514.1(f).

3. Revocation of Building Permit

This issue is moot. Building permit #B439404 has been superceeded by building permit #B435446, revised to address one of the basis for issuance of the first stop work order. Specifically the scope of the work allowed under building permit #B439404 was exceeded because it did not permit the complete demolition of the existing building. This has been remedied by the revised building permit.

The tree removal issue, as aforementioned, requires no further enforcement action as the Zoning Administrator's determination has addressed that issue.

The second stop work order was issued solely to address your concern that construction activity continued to willfully cause -fatal damage to protected trees. This stop work order has also been lifted as there was no evidence upon which I could continue to justify the continuance of said order.

In accordance with provisions of the Zoning regulations, DCMR Title II as set forth in section 3100.2, you may file an appeal before the Board of Zoning Adjustment if you believe the Zoning Administrator's decision is in error.

In conclusion, let me applaud your effort and vigilance in ensuring adequate and proper application of city regulations. I urge you to continue the vigorous exercise of your civic duty in the hope that I can be of assistance in the near future.

Respectively,

J. Gregory Love, Administrator
Building and Land Regulation Administration

Enclosure

Cc: D. Clark, D/DCRA
T. Lewis, DD/DCRA
D. Noble, DA/BLRA
T. Bello, AZA/BLRA