Letter of Transmittal

Date: October 25, 2002

From: James F. Smith, Mr. Permit, L.L.C. 202-462-7662

To: Board of Zoning Adjustment Staff

Subject: Case Number 16863, 420 M Street, NW **Proposed Findings of Fact**

Please see the attached. I have also enclosed a diskette with the document saved in Word.

BZA
Case No. 16863
Exhibit No. 36

Board of Zoning Adjustment
District of Columbia
CASE NO.16863
EXHIBIT NO.36

Proposed Findings of Fact, Conclusions and Opinion from Applicant, Case No. 16863, for 420 M Street, NW, Washington, DC. (Note we have attached a diskette with the information saved in Word.)

Application No. 16863 of S & P Properties, L.L.C., pursuant to § 3103 of the Zoning Regulations, for a variance from the rear yard requirements set forth in Section 404, for a variance from the percentage lot occupancy requirements set forth in Section 403, and a variance from the non-conforming building requirements set forth in Section 2001.3, for construction of a six unit apartment house condominium in an R-5-B District at 420 M Street, N.W. (Square 0514, Lot 0863).

HEARING DATE: September 17, 2002

DECISION DATE: November 5, 2002

FINDINGS OF FACT:

1. The subject property is located in an R-5-B District at 420 M Street, N.W., a vacant single family house that extends from the front lot line of the property to the rear lot line of the property of Lot 0863 in Square 0513 has a land area of 3,795 square feet.

2. The subject property lies within the Mount Vernon Square East Historic District, and is a protected building pursuant to D.C. Law 2-144. According to the Historic Preservation Division Staff report, the house was built in 1873 as one house of an identical pair of houses constructed on this site. This is the only frame house on the block, and one of the few in the area.

3. The surrounding Mount Vernon Square neighborhood is predominantly residential, and is developed with a variety of building types, including townhouses, flats, and apartments. The immediate neighborhood also includes a proposed hotel directly behind the subject property, and several historic churches. One block to the south is New York Avenue, and beyond that, the commercial core of Washington and the region.

4. The Applicant proposes to construct a 48-foot, 1.67 FAR apartment house, which is permitted as a matter of right in the R-5-B District.

5. Applicant and its consultants and architect explained that the consultant mistakenly wrote "5-Unit residential apartment building" instead of "6-Unit residential apartment building" as was in the original application. The consultant was thinking of five units and a carriage house with a unit, and the result was a mistake. However, there is no limitation on unit size or number of units in an R-5-B zone, and the plans and exhibits of the case show six residential condominium units. The consultant has asked that in light of the

above, the mistake be considered a typographical error.

6. The subject property's uniqueness derives primarily from the uniqueness of improvements of the property, which differ in significant respects from most of the other buildings in the square and the surrounding area. The improvements consist of a two-story frame house with a one-story connector, which attaches to a two-story carriage house located in the rear yard of the property. In contrast, the square is characterized by three-story Victorian and federal-style brick brownstones.

7. The through lot configuration of the improvements with the connector and two-story carriage house at the rear of the property is also a unique condition of the property. The architect stated that to his knowledge, this is the only property in the square and immediate vicinity with this configuration. A related condition with respect to the property is that the Historic Preservation Review Board will not permit the demolition of the two-story frame house or the carriage house nor permit any additional development on top of the house.

8. The application of these historic constraints on the property as well as a building code interpretation which mandates access from the front of the property, through the lot to the carriage house, serve to severely limit the redevelopment potential of the site. The minor amount of additional lot occupancy requested in this application is needed to overcome these constraints

and provide for a more feasible project.

9. The rear yard variance that was requested to ensure that a new connector could be reconstructed on the site following the removal of the existing connector. The applicant has since reconsidered the need for this variance. The applicant now plans to retain the outer wall of the existing connector and to merely rebuild it in place rather than demolishing it completely. As a result, the existing non-conforming condition can continue to be grand-fathered and the rear yard variance may no longer be needed.

10. . The applicant and the applicants architect and consultants took a closer look at its design in light of the Office of Planning negative staff report dated May 14, 2002, and found that the overall width of the connector could be reduced to three feet, and the size of the single family house component (the historic two story frame house in the front of the lot) could also be shortened by three feet. This reduces the size of the footprint by 86.65 square feet, which is 2.18 percent more than the maximum lot coverage. This will reduce the amount of variance relief requested under section 403 from 68.8 percent to a revised 66.62 percent. Thus, instead of a variance of percentage of lot occupancy being 8.8 percent, it is now requested that variance be granted for percentage of lot occupancy variance of 6.62 percent.

11. The applicant's architect showed the Board how the landscaping of the drive aisle by the introduction of grass pavers, trees and other landscaping will make the drive aisle a dual purpose space, which can be used by the occupants as an outside recreational area, in addition to its intended purpose. The architect explained that this option was selected by the developer due to the introduction of a carriage house unit, in that the rear landscaping design needed to attract the occupants to use the area as a recreational space, and be as much a part of the development as the front of house landscaping features, rather than being just a concrete driveway. The applicant believes that this landscaping plan will help mitigate the request for zoning relief in section 403, in the amount of 6.62 percent, for a total lot occupancy of 66.62 percent.

12. The Office of Planning, by report dated May 14, 2002, recommended denial of the application, but left the avenue open to reconsider its position should the Applicant be forthcoming to provide more information about its variance rationale. At the hearing on September 17, 2002, the Office of Planning orally reversed its opinion, and supported the Applicants request for variance in light of its landscaping the rear driveway into a dual purpose driveway and landscaped recreational area use, and in light of further discussions concerning the connector. The Office of Planning filed a revised report on (date was not available as of the date of the writing of these proposed Findings) which supports the Applicant's request for zoning relief.

13. Advisory Neighborhood Commission 2C sent in a letter of support as well as Single Member District Commissioner Lydia Goring, who lives at the southeast corner of the same square at 400 M Street, N.W., also submitted a letter in support of the application. There was no opposition to the application. There was one letter questioning whether S and P Properties was registered in the District of Columbia. The applicant provided a Certificate of Good Standing as proof of its registration to the Board staff.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the requested variance is an area variance, the granting of which requires the showing of some exceptional condition or situation or uniqueness affecting the property that creates a practical difficulty for the owner.

The Board concludes that the requested variance is for six residential apartment units, and that the mitigation of the Applicant to reduce the requested percentage of lot occupancy from the requested 8.8 percent variance to a 6.62 percent variance, and introduction of landscaping to the rear of the project, to render the driveway a "dual purpose" recreational and driveway use are positive statements about the quality of this development.

The Board concludes that the property is unique as a two story frame historic building among three plus story Victorian and Federal style buildings on

this block and this area. The Board concludes that the building is connected from front property line to rear property line, and that the Historic Preservation Review Board has determined that the front of lot two story frame building and rear of lot two story carriage house components of the building improvement are contributing structures in the Mt. Vernon Square East Historic District.

The Board agrees that the Applicant may withdraw its portion of the case related to the lack of rear yard, and agrees that the retainage of a substantial part of the connector, i.e., the east wall on the party line, is a substantial part of the connector, and thus will allow the reconstruction of the connector as a result of the "grand-fathering" of the connector, thus precluding the necessity of a rear yard in this specific case.

The Board concludes that the Applicants request for additional percentage of lot occupancy and to build the proposed addition which will create this nonconformity is reasonable, and that the Applicant has taken upon itself to reduce the originally requested variance of the percentage of lot occupancy from 8.8 percent 6.62 percent, and that the Applicant has met the burden of proof as to the necessity to request this variance, due to the denial of zoning rights to make a third or fourth floor addition to the existing two story building by the Historic Preservation Review Board. The Board further determines that due to the circumstances of this case relating to code official requesting for public safety reasons front of building access to the rear unit on the lot, and the desirability to have residential use on this site, rather than a hard to manage artist studio. The Board also determines that the unique circumstances relating

to the existing two story nature of the subject property, (the "Protected Buildings") in an area of three plus story buildings in a zone that allows fifty foot buildings, not including penthouses or spires. In spite of fifty foot matter of right zoning, the Applicant has been held to a two story standard for the existing building wing at the front of the lot, and a two story plus mezzanine re-configured carriage house wing at the rear of the lot by the Historic Preservation Review Board.

The granting of the requested variance is consistent with the purposes of the R-5-B zone district and will not cause any public harm. The Board notes that ANC 2C, as well as the ANC Single Member District Commissioner submitted testimony in support of granting the variance. The Board concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. It is therefore ordered that the application is GRANTED.

VOTE: 5-0 (

ATTESTED BY: _____