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March 13, 2003

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RECEIVED
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VIA HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: BZA Appeal No. 16934
922 Constitution Avenue, N.E.

Dear Members of the Board:

On behalf of Christopher's Row, LLC, we provide the following response to the information submitted on March 12, 2003, by Advisory Neighborhood Commission ("ANC") 6A in the above-referenced appeal case. Additionally, copies of the approved foundation plan are attached hereto for the convenience of the Board.

The ANC contends that the foundation permit and related plans for 922 Constitution Avenue, N.E., which is located in the R-4 District, are in violation of the side yard requirements of the zoning regulations. The ANC is wrong.

First, under section 405 of the regulations, there is no requirement that a *foundation* have a side yard. Only *dwellings* in certain zone districts are required to have side yards. A dwelling is defined under section 199 of the zoning regulations as "a building designed for human habitation." Because a

BZA
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Exhibit No. 48

Board of Zoning Adjustment
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foundation is neither a building[1] nor designed for human habitation, the side yard provisions of the regulations are not triggered.

Second, even if the ANC's argument that section 405.3 of the regulations applies to this property – which it does not – the side yard requirements still would not be triggered. Foundations are permitted in side yards under section 2503.2 of the regulations. That section provides that "a structure, not including a building no part of which is more than four feet (4 ft.) above the grade at any point, may occupy any yard required under the provisions of this title." Again, because the foundation is not a building, it is not required to have a side yard. Further structures that protrude no more than four feet above the grade at any point are allowed in any required open space. Other structures permitted in required open spaces include a fence, retaining wall, stairs, and antennas. *See* 11 DCMR § 2503. If Christopher's Row, LLC, had never constructed the dwelling at 922 Constitution Ave., and only completed the foundation work as authorized by the permit under challenge, there would be no building or side yard issue.

Third, those materials submitted yesterday by the ANC pertaining to the construction of the dwelling at 922 Constitution Ave., N.E., which constitute the bulk of the ANC's filing, are irrelevant to the current appeal case and must be disregarded by the Board.[2] The scope of the appeal cannot now be expanded to include the building permit for the dwelling. The ANC specifically limited its appeal to the foundation permit, even after questioning by the Board on this matter at its November 19, 2002, hearing. At its meeting on March 4, 2003, the Board again explicitly limited the scope of the appeal case to the narrow issue of the foundation permit after the ANC confirmed that it did not wish to and did not intend to appeal the building permit. Consequently, any attempts to include the building permit as part of the appeal at this late date must fail on grounds of untimeliness. *See Waste Management of Maryland, Inc. v. D.C. Board of Zoning Adjustment,* 775 A.2d 1117,1122 (D.C. 2001) ("in the absence of exceptional circumstances substantially impairing the ability of an aggrieved party to appeal – circumstances outside of the party's control – we conceive of two months between notice of a decision and appeal therefrom as the limit of timeliness"); *see*

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[1]A building 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.

[2]Christopher's Row, LLC, notes for the record that it was not served with a copy of the ANC submission.

also Zoning Commission Notice of Final Rulemaking and Order, September 9, 2002.[3]

The ANC has provided no information to sustain its contention that the foundation permit violates the side yard requirements of section 405.3, or even that 405.3 is applicable to this property. As Christopher's Row, LLC, will demonstrate at the hearing on March 18, 2003, section 405.3 does not apply to this property because the dwelling shares a common division wall with the property to the east.

We look forward to the opportunity to address these issues more fully at the March 18th hearing. Thank you for your consideration of this information.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: _____
Mary Carolyn Brown, Esq.
Steven E. Sher, Director of Land Use
and Zoning Services

Attachment

cc: Virginia Gaddis, ANC 6A representative (w/o attachment)
Robert Kelly, Zoning Administrator (w/o attachment)
William J. Bennett, Office of Corporation Counsel (w/o attachment)

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[3]Additionally, the Board does not have *sua sponte* authority to expand the scope of the appeal case to the building permit. Even if it did have the authority to amend this case, the time to appeal the building permit expired September 11, 2002, 60 days after its issuance.

EXHIBIT 48A

FROM

CASE 16934

IS AN OVERSIZED DOCUMENT

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