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May 18, 2004

By Hand Delivery

Mr. Geoffrey H. Griffis
Chair
Board of Zoning Adjustment
441 4th Street
Suite 210
Washington, DC 20001

Re: BZA Application No. 17154 - Application of Bruno B. Freschi, Post-Hearing Submission

Dear Chairperson Griffis and Members of the Board:

A. Background

During the public hearing on May 4, 2004 in the above-captioned application, the Board of Zoning Adjustment requested additional information from the Applicant with regard to the date of subdivision of Lots 94 and 95. The Applicant offered to secure a title report to resolve the date of the subdivision. With further research, however, we have been able to discover the actual subdivision and have obtained a copy of the official subdivision plat from the Office of the Surveyor. A copy of this plat is attached and is conclusive. The lots were created on January 6, 1969.

B. Effect of 1969 Subdivision

During the hearing, the Board expressed concern about the effect of § 401.6 of the Zoning Regulations on the proposed project. Section 401.6 provides that in order for a lot created after February 15, 1966 to be used as a single family house (or row dwelling), that lot must have street frontage of, at least, fourteen feet. The subject lot was created in 1969, thus after February 15, 1966. The Board expressed concern that the subject lot does not have the requisite street frontage. However, Section 401.6 is not the controlling regulation. Section 2507 of the Zoning Regulations controls all building on alley lots. Sections 2507.2 specifically allows a one-family dwelling to be erected on an alley lot if that lot abuts an alley that is at least thirty feet wide and has access to a street through an alley at least 30 feet wide, conditions which exist with the subject property.

Ms. Gladys Hicks, the Applicant's consultant (recognized as a zoning expert by the Board) testified that whenever there is a "general" regulation and a "specific" regulation in the Zoning Regulations, the "specific" regulation governs. Thus, she testified that Section 2507.2 governs this application because it specifically deals with a one family dwelling on an alley lot and the more general, Section 401.6, does not.

This legal premise has been upheld in the courts. The District of Columbia Court of Appeals has held, in the case of a conflict between two statutory provisions, that the

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provision covering a specific subject matter is controlling over a general provision covering the same and other subjects in general terms. *See, e.g., Winters v. Ridley*, 596 A.2d 569, 582-83 (D.C. 1991) (Ferren, J., concurring); *Onabiyi v. District of Columbia Taxicab Com'n*, 557 A.2d 1317, 1319 (D.C. 1989); *U.S. v. Stokes*, 365 A.2d 615, 619 (D.C. 1976). Section 401.6 applies to one-family dwellings in general. Section 2507.2 specifically governs one-family dwellings on alley lots. Accordingly, the provisions of Section 2507.2 are the controlling authority pursuant to the Zoning Regulations for this application.

Moreover, in *The Matter of T.L.J*, 413 A.2d 154 (D.C. 1980), the D.C. Court of Appeals relied on long-followed rules of statutory construction when it stated that "whenever possible, a statute should be interpreted as a harmonious whole." *Id.* at 158. (quoting *United States v. Firestone Tire and Rubber Co.*, 455 F. Supp. 1072, 1079 (D.D.C. 1978)). The Court further stated: "Similarly, one part of a statute must not be construed so as to render another part meaningless." *Id.* (quoting *Helvering v. Morgan's, Inc.*, 293 U.S. 121, 126-127, 55 S. Ct. 60, 79 L.Ed. 232 (1934)). An interpretation of § 401.6 that requires all one-family dwellings, including alley dwellings, to provide "street frontage" would prohibit all new alley dwellings and would render § 2507.2 completely meaningless.

If there is any further information that the Board requests kindly have your staff contact either of the undersigned.

Sincerely,

Phil Feola

Ashleigh D. Horne

Enclosure

cc: Dorothy Miller, ANC 2A
Lisa Ferrell
Foggy Bottom Historic District Conservancy – c/o John Bond, Esq.
Office of Planning – Joel Lawson
Bruno Freschi

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SUBDIVISION
SQUARE 16

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We, the undersigned owners, hereby subdivide lots as and for (of subdivision by Susie Burns, recorded in Book 22, page 20) square 16 and part of lot B (of subdivision by S.F. Clark, recorded in Book B, page 191) square in. into two lots as shown hereon and request that this subdivision be approved and recorded in the office of the Surveyor of the District of Columbia.

NATHANIEL DAVIS and ELIZABETH C. DAVIS

being first duly sworn, deposes and says that they are the owners in fee simple of the above mentioned property, that no other person or persons than the undersigned owners have any interest or claim therein, that they are in peaceful occupation thereof; that there are no suits or actions pending affecting the title, that there is no trust on said property.

Witness our hands and seals this 25 day of November 1968

WITNESSES:	OWNERS:	WE ASSENT, TRUSTEES:
Joan V. Scott	Nathaniel Davis	
Rosanne Cullen	Nathaniel Davis	
Joan V. Scott	Elizabeth C. Davis	
Rosanne Cullen	Elizabeth C. Davis	

REPUBLIC OF GUATEMALA
CITY AND DEPARTMENT OF GUATEMALA ss:
EMBASSY OF THE UNITED STATES OF AMERICA

Subscribed and sworn to before me this 26 day of November, 1968

Roy J. Agel
Consul of the United States of America

Notary Public
My commission expires it does not expire, 19

SURVEYOR'S OFFICE, D.C.
Made for: Bradford Do Wolf
Drawn by: J.M. (S.O. 12846)
Recorded and computations by: Robert L. King
Recorded at 1:30 P.M. January 17, 1969
Recorded in Book 154, page 119
Scale: 1 inch = 40 feet. File No. 68-168

FINANCE OFFICE, D.C.
PROPERTY TAX DIVISION

January 6, 1969

Ownership correct according to records of this office
1-6-69 RF

General taxes paid to 6-30-69 RF

No unpaid arrears 1-6-69 RF

No unpaid special assessments 1/6/69 RF

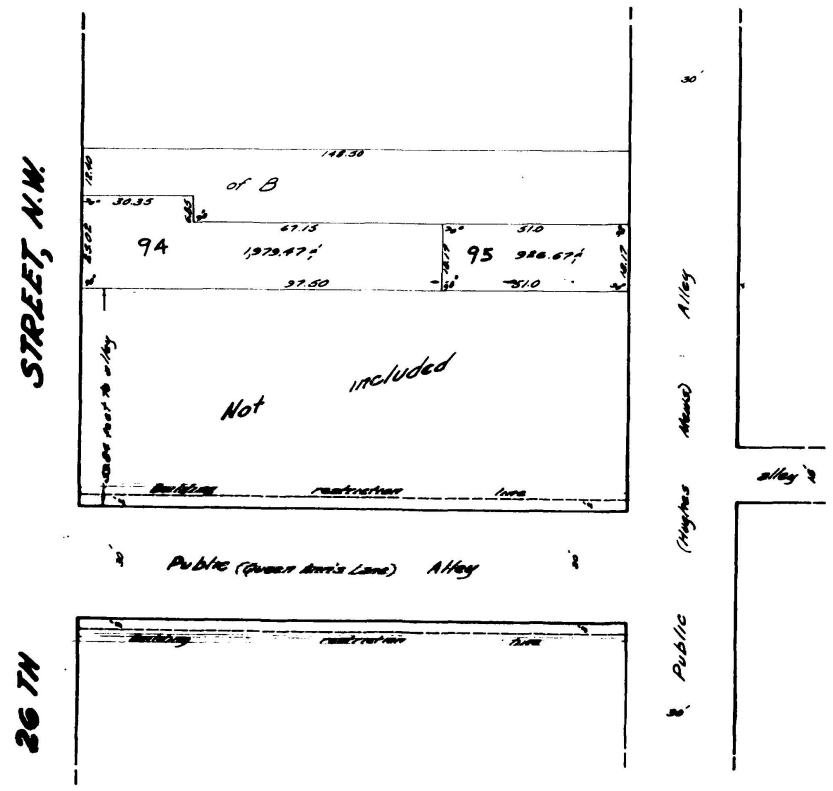
Chief, Property Tax Division

Approved for Zoning:
Zone R-5-B 1-16-69
Zoning Administrator

Office of the Surveyor of the District of Columbia
Washington, January 17, 1969

I certify that the subdivision shown hereon is correct and is hereby approved for record in this office.

Surveyor, D.C.



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