

APPLICATION OF SAMUEL
MEDEIROS AND JESSICA
ELLIS
BZA 20389

1915 SHEPHERD STREET NE

NATURE OF RELIEF SOUGHT

- AREA VARIANCE : PURSUANT TO 11 DCMR SUBTITLE X CHAPTER 10 § 1001.1 UNDER SUBTITLE D § 302.1 FROM THE MINIMUM LOT WIDTH
- SPECIAL EXCEPTION: PURSUANT TO 11 DCMR SUBTITLE X CHAPTER 9 §901.2 AND SUBTITLE D, § 5201.1 (B) UNDER D, §206.2 FROM MINIMUM SIDE YARD

1977 CORPORATION COUNSEL OPINION EXHIBIT # 10

CONCLUSIONS OF THE CORPORATION COUNSEL OPINION ARE AS FOLLOWS:

- CREATION OF AN A & T LOT IS NOT A “DIVISION” WITHIN THE MEANING AND REACH OF SEC. 1302.2 (ZR58 PRECURSOR TO ZR16 SUBTITLE C §302.1)
- A & T LOTS ARE NOT CONTROLLED BY SEC. 1302.2 BASED ON REVIEW OF STATUTORY AND REGULATORY BASES FOR THE SEVERAL DESCRIPTION OF LAND IN THE DISTRICT
- THE TWO LAND DESCRIPTIONS OF PERTINENCE ARE “LOTS OF RECORD” (OR “RECORD LOTS) AND “A &T LOTS”
- “A RECORD LOT IS A PARTICULAR PIECE OF PROPERTY DESIGNATED BY LOT AND SQUARE IN THE OFFICIAL RECORDS OF THE DISTRICT OF COLUMBIA SURVEYOR”

1977 CORPORATION COUNSEL OPINION (CONT'D)

- “THE DESIGNATION OF RECORD LOTS IS CONTROLLED BY THE PROVISIONS OF SEC. 1-601, ET SEQ; D. C. CODE, 1973 ED; AND THE DISTRICT OF COLUMBIA SUBDIVISION REGULATIONS PROMULGATED PURSUANT TO SEC. 1-601, 6-613 OF THE CODE”
- A RECORD LOT IS CREATED BY SUBDIVISION AND EACH LOT MUST COMPLY WITH CRITERIA SET FORTH UNDER RELEVANT SECTIONS OF THE ZONING REGULATIONS IN ORDER TO BE SO DESIGNATED AND RECORDED
- “THE PURPOSE AND INTENT OF THE RECORD LOT SYSTEM IS TO IMPLEMENT THE ORDERLY DEVELOPMENT OF LAND BY PROVIDING FOR SPECIFIC LAND SUBDIVISION CONTROLS”
- “THIS SYSTEM IS THE GROUND FLOOR ON WHICH THE SPECIFIC LAND USE CONTROLS OF THE ZONING REGULATIONS ARE BUILT”
- THEREFORE THE ZONING REGULATIONS PROVIDE THAT BUILDING PERMITS FOR ERECTION, CONSTRUCTION OR ALTERATION OF STRUCTURES WILL NOT BE ISSUED UNLESS SUCH STRUCTURES ARE LOCATED ON RECORD LOTS (SEC. 8103.2 ZR58 PRECURSOR TO SUBTITLE A, § 301.3)

1977 CORPORATION COUNSEL OPINION (CONT'D)

- “THUS, IT IS CLEAR THAT THE RECORD LOT SYSTEM AND THE ZONING REGULATIONS ARE INTEGRAL PARTS OF A REGULATORY SCHEME TO CONTROL DEVELOPMENT IN THE DISTRICT OF COLUMBIA AND OWNERSHIP OF LAND PLAYS NO PART IN THIS SCHEME”
- “A & T LOTS, ON THE OTHER HAND, SERVE NO LAND CONTROL PURPOSE, BUT ARE MERELY OWNERSHIP DESCRIPTIONS FOR ASSESSMENT AND TAXATION PURPOSE. THE DESIGNATION OF A & T LOTS IS GOVERNED BY SECS. 47-701 AND 47-703. DC CODE 1973 ED”

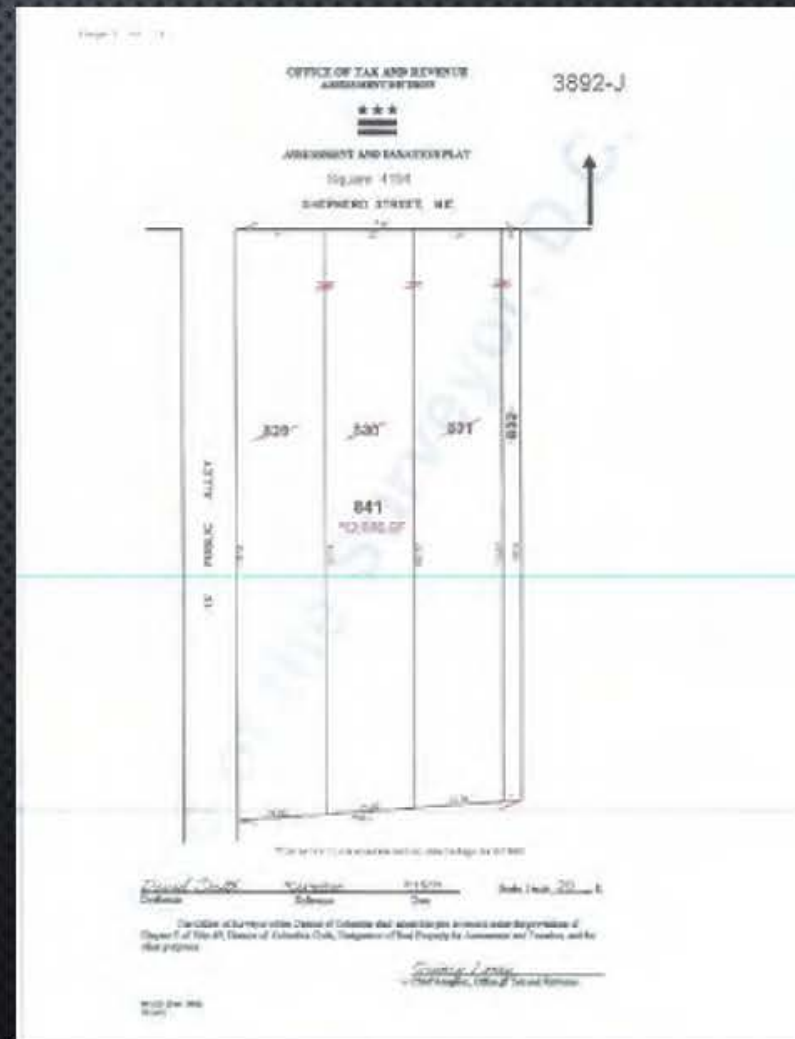
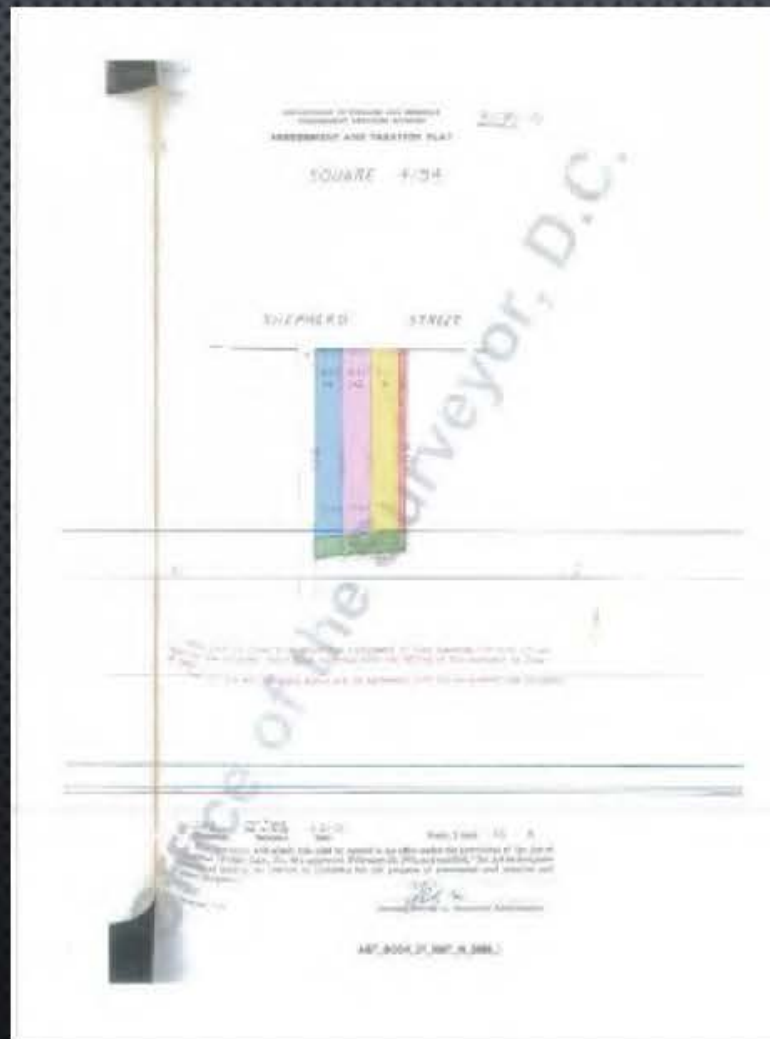
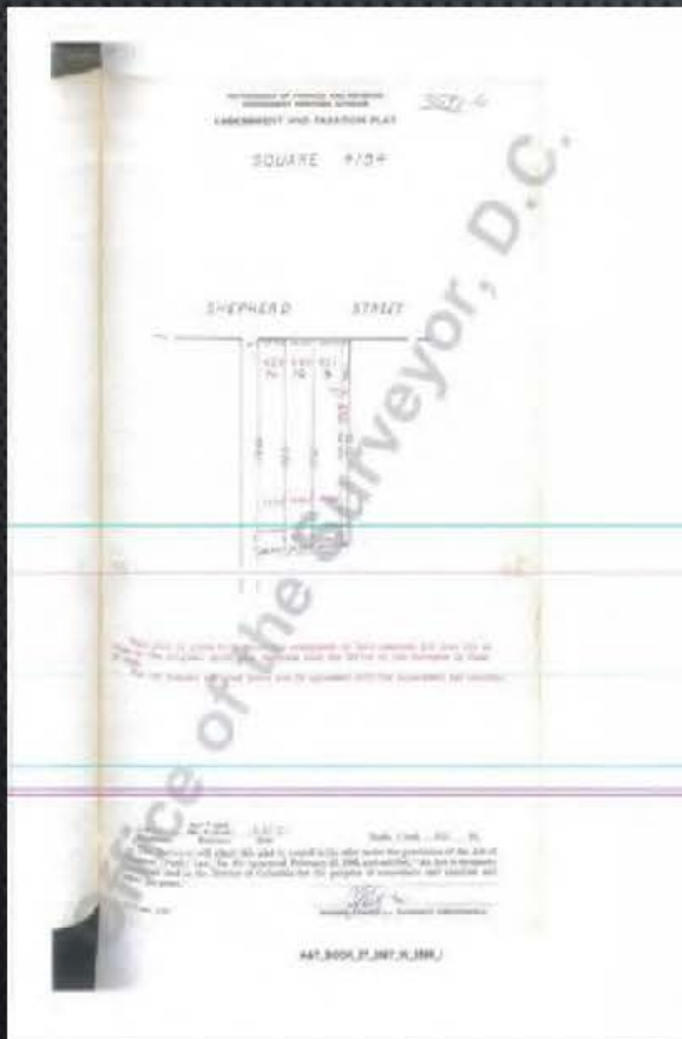
A & T DIVISION OF SUBJECT PROPERTY IS NOT RELEVANT TO THE ZONING REGULATIONS

- WHEREAS THE WORD “LOT” IN SUBTITLE C §302.1 MAY BE CONSTRUED TO INCLUDE A & T LOTS, NOT SO THE WORD “DIVIDE” WHICH REFERS ONLY TO THE SUBDIVISION PROCESS BY WHICH RECORD LOTS ARE CREATED.
- “THE CREATION OF AN A & T LOT IS NOT A “DIVISION” IT IS MERELY THE RECOGNITION OF OWNERSHIP OF A PARTICULAR PIECE OF REAL PROPERTY FOR ASSESSMENT AND TAXATION PURPOSES AS REQUIRED BY LAW”
- APPLICANT ASSERTS THAT IT IS THEREFORE MISLEADING FOR PURPOSES OF THE SUBDIVISION RELIEF SOUGHT, TO VIEW THE PROPERTY IN THE CONTEXT OF IT’S A & T CONFIGURATION RATHER THAN ITS RECORD LOTS CONFIGURATION.
- THE APPLICATION BEFORE THE BOARD IS THE RECONFIGURATION OF THREE SUBSTANTIALLY NONCONFORMING RECORD LOTS AND A SLIVER OF AN A & T INTO TWO MORE OR BETTER CONFORMING RECORD LOTS IN COMPATIBILITY WITH THE AVERAGE WIDTH OF ALL OTHER LOTS IN ITS SQUARE OF LOCATION (SEE EXHIBIT # 30 FOR AVERAGE WIDTH OF LOT & SIDE YARD IN THE 1900 BLOCK OF SHEPHERD STREET NE)

A & T LOT 0841 WAS CREATED IN THE TAX ASSESSOR'S RECORDS IN 1971

- RELEVANT BECAUSE THE SUBJECT PROPERTY IS UNIQUELY THE ONLY PROPERTY TO HAVE UNDERTAKEN AN A & T "DIVISION" REGIME IN ITS SQUARE OF LOCATION AFTER MAY 12, 1958
- THE A & T DIVISION IN FACT MADE MORE NONCONFORMING ALL THREE RECORD LOTS AND THE SLIVER OF A & T LOT BY REDUCTION IN RESPECTIVE LOT AREA
- A & T LOT 0833 EFFECTIVELY REDUCED THE LOT AREA OF LOTS 9, 10, 11 AND FORMER LOT 0801
- ARTICLE I, SEC 4 (C) OF THE SUBDIVISION REGULATIONS STATES "NO PART OF A LOT OF RECORD SHALL BE SOLD OR TRANSFERRED UNLESS, PRIOR THERETO, SUCH LOT SHALL BE SUBDIVIDED IN CONFORMITY WITH THESE REGULATIONS NOR SHALL ANY SUBDIVISION CONTAINING ANY PART OF SUCH LOT BE ADMITTED TO RECORD UNLESS THE REQUIREMENTS OF THIS PARAGRAPH HAVE BEEN COMPLIED WITH"
- SUBTITLE C, §302.1 (A) AND (B), THE ZR16 SUCCESSOR TO ZR58 SEC. 1302.2 NOW PERMITS RECORDATION OF LOTS NOT IN COMPLIANCE WITH DENSITY LOT CONTROLS UNDER SPECIFIED CONDITIONS NEITHER OF WHICH APPLIES TO THE SUBJECT PROPERTY
- A & T LOT 0833 HAS BEEN SOLD TO A SEPARATE PARTY, HENCE THE APPLICANT'S PRACTICAL DIFFICULTY

1971 TAX AND ASSESSMENT PLAT



HISTORY OF LOT DIVISION IN SQUARE 4194

- SUBJECT PROPERTY IS UNIQUELY THE ONLY PROPERTY FOR WHICH AN A & T LOT DIVISION WAS UNDERTAKEN AFTER MAY 12, 1958
- A & T LOT 0833 WAS CREATED IN 1971 AND CARVED OUT OF RECORD LOTS 9, 10, 11 AND FORMER A & T LOT 0801
- A & T LOT 0833 IS NOT OWNED BY THE CURRENT OWNER OF A & T 0841
- A & T LOT 0833 IS NOW PART OF A & T LOT 0836. A & T LOT 0836 CONSISTS OF RECORD LOTS 39, 40 AND A & T LOT 0833
- A & T LOT 0836 DOES NOT EXIST IN THE RECORDS OF THE DISTRICT OF COLUMBIA SURVEYOR
- THE CREATION OF A & T LOT 0836 DOES NOT CONSTITUTE A RECORD LOT SUBDIVISION, SO RECORD LOTS 39 AND 40 REMAIN VALID AND ARE TRANSFERABLE FEE SIMPLE

APPLICABILITY OF SUBTITLE C, § 302.1

- 302.1

“WHERE A LOT IS DIVIDED, THE DIVISION SHALL BE EFFECTED IN A MANNER THAT WILL NOT VIOLATE THE PROVISION OF THIS TITLE FOR YARDS, COURTS, OTHER OPEN SPACE, MINIMUM LOT WIDTH, MINIMUM LOT AREA, FLOOR AREA RATIO, PERCENTAGE OF LOT OCCUPANCY, PARKING SPACES, OR LOADING BERTHS APPLICABLE TO THAT LOT OR ANY LOT CREATED; EXCEPT THAT:

- (a) A NON-ALLEY LOT RECORDED AS A TAX LOT WITH THE OFFICE OF TAX AND REVENUE PRIOR TO MAY 12, 1958, WHICH SHARED AN UNDERLYING RECORD LOT WITH AN ALLEY TAX LOT THAT HAS BEEN CONVERTED TO AN ALLEY RECORD LOT UNDER SUBTITLE C § 306.3, MAY BE CONVERTED TO A RECORD LOT WITHOUT COMPLYING WITH THESE DEVELOPMENT STANDARDS; AND
- (b) A NON-ALLEY LOT RECORDED AS A TAX LOT WITH THE OFFICE OF TAX AND REVENUE PRIOR TO SEPTEMBER 6, 2016, WHICH SHARED AN UNDERLYING RECORD LOT WITH AN ALLEY TAX LOT THAT HAS BEEN CONVERTED TO AN ALLEY RECORD LOT UNDER SUBTITLE C § 306.4, MAY BE CONVERTED TO A RECORD LOT IF GRANTED BY THE BOARD OF ZONING ADJUSTMENT AS A SPECIAL EXCEPTION PURSUANT TO SUBTITLE X, CHAPTER 9”

APPLICABILITY OF SUBTITLE C, § 302.1

- SUBTITLE C, § 302.1 IS A GENERAL PROVISION AND NOT A SPECIFIC PROVISION
- APPLICATION SEEKS RELIEF FOR THE SPECIFIC PROVISIONS THE PROPOSED SUBDIVISION WILL NOT COMPLY WITH; THAT IS THE LOT WIDTH MINIMUM AND SIDE YARD SETBACK SET FORTH UNDER SUBTITLE D, §§206.2 AND 302.1 RESPECTIVELY.
- THE APPLICATION IS SELF-CERTIFIED
- C, § 302.1 (A) IS INAPPLICABLE BECAUSE THE SUBJECT PROPERTY IS NOT A TAX LOT RECORDED IN OTR RECORDS PRIOR TO MAY 12, 1958
- C, § 302.1 (B) IS INAPPLICABLE BECAUSE SUBJECT PROPERTY DOES NOT SHARE AN UNDERLYING RECORD LOT WITH AN ALLEY TAX LOT THAT HAS BEEN CONVERTED TO AN ALLEY RECORD LOT UNDER SUBTITLE C, § 306.4

COMPLIANCE WITH THE THREE STANDARDS SET FORTH UNDER X, § 901.2 (A), (B), AND (C)

(A). WILL BE IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ZONING REGULATIONS AND ZONING MAPS

- THE USE OF THE EXISTING STRUCTURE REMAINS A SINGLE-FAMILY DWELLING, USE PERMITTED IN THE UNDERLYING R-1-B WITHIN WHICH SUBJECT PROPERTY IS LOCATED
- THE CLOSEST PART OF THE EXISTING BUILDING IS AN OPEN UNENCLOSED PORCH HENCE THE LIGHT AND AIR OF ADJOINING BUILDING OR THE EXISTING BUILDING WILL NOT BE UNDULY
- THE FACES OF THE EXISTING AND PROPOSED BUILDING ARE SEPARATED BY A DISTANCE OF FIFTEEN AND ONE-HALF FEET FOR A SUBSTANTIAL DISTANCE OF BUILDING DEPTH
- THE PROPOSED SUBDIVISION CORRECTS THE ANOMALY OF THE EXISTING BUILDING STRADDLING RECORD LOTS 9 AND 10

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF. SPECIAL EXCEPTION

(B). WILL NOT TEND TO AFFECT ADVERSELY, THE USE OF NEIGHBORING PROPERTY IN ACCORDANCE WITH THE ZONING REGULATIONS AND ZONING MAPS;

- THE GENERAL NEIGHBORHOOD IS CHARACTERIZED BY SINGLE-FAMILY DETACHED STRUCTURES SITTING ON SIMILAR LOT SIZES AND LOT WIDTH ON AVERAGE
- THE USE OF THE EXISTING BUILDING REMAINS A SINGLE-FAMILY DWELLING
- NEIGHBORING PROPERTIES TO THE NORTH ARE SEPARATED BY SHEPHERD STREET, TO THE WEST IS THE PROPOSED NEW BUILDING WHICH ACTS AS BUFFER TO THOSE PROPERTIES SEPARATED BY A 15 FEET PUBLIC ALLEY
- THERE IS NO NET CHANGE TO THE EXISTING SIDE YARD TO THE EAST OF SUBJECT PROPERTY PROPOSED.

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF. SPECIAL EXCEPTION

(C). WILL MEET SUCH SPECIAL CONDITIONS AS MAY BE SPECIFIED IN THIS TITLE.

- THE SPECIAL CONDITIONS SPECIFIED FOR SPECIAL EXCEPTION RELIEF FROM SUBTITLE D, § 5201.1 ARE SET FORTH UNDER §§ 5201.4 THROUGH 5201.7 AND APPLICANT SETS FORTH BELOW HOW THE APPLICATION COMPLIES WITH EACH

SPECIAL CONDITIONS

D § 5201.4

(A) THE LIGHT AND AIR AVAILABLE TO NEIGHBORING PROPERTIES SHALL NOT BE UNDULY AFFECTED;

- THE SINGLE ADJOINING NEIGHBORING PROPERTY IS WEST OF PROPOSED LOT A, WHICH IS THE SUBJECT OF SIDE YARD RELIEF.
- THE PROPOSED SIDE YARD RELIEF IS REMOVED A DISTANCE OF 90 + FEET FOR ABUTTING LOTS SOUTH OF SUBJECT PROPERTY
- THE PROPOSED LOT B, IF APPROVED WILL HOUSE A BUILDING WHICH COMPLIES WITH THE SIDE YARD SET BACK REQUIRED
- THE CLOSEST PORTION OF THE EXISTING BUILDING TO THE NEWLY PROPOSED SIDE DIVISION LOT LINE IS AN UNENCLOSED OPEN PORCH
- THE SEPARATION BETWEEN THE FACE OF LIVING SPACE BETWEEN THE BUILDINGS ON ADJACENT LOTS IS IN EXCESS OF 15 FEET.

SPECIAL CONDITIONS

D § 5201.4

(B) THE PRIVACY OF USE AND ENJOYMENT OF NEIGHBORING PROPERTIES SHALL NOT BE UNDULY COMPROMISED;

- THE PROPOSED SUBDIVISION SEEKS TO ESTABLISH A NEW LOT (LOT B) WHICH COMPLIES WITH THE MINIMUM LOT AREA PRESCRIBED FOR THE UNDERLYING R-1-B ZONE DISTRICT WITHIN WHICH IT IS LOCATED
- THE REMAINDER LOT UPON WHICH THE EXISTING BUILDING AND ACCESSORY STRUCTURE WILL BE ISOLATED IS APPROXIMATELY 2,300 SF. IN EXCESS OF THE REQUIRED MINIMUM LOT AREA
- ALL PROPERTIES WEST OF LOT A ARE SEPARATED BY LOT B AND A 15 FEET PUBLIC ALLEY. THOSE LOTS IN FACT FRONT AND 19TH STREET SUCH THAT LOT ID ADJACENT TO THE REAR YARDS ACROSS THE ALLEY
- THERE IS NOT NET CHANGE TO THE EXISTING CONDITION OF THE PROPERTY EAST OF PROPOSED LOT A, CONDITION WHICH HAS BEEN IN EXISTENCE PRIOR TO MAY 12, 1958

SPECIAL CONDITIONS

D § 5201.4

(C) THE PROPOSED ADDITION OR ACCESSORY STRUCTURE, TOGETHER WITH THE ORIGINAL BUILDING, OR THE NEW PRINCIPAL BUILDING, AS VIEWED FROM THE STREET, ALLEY, AND OTHER PUBLIC WAY, SHALL NOT SUBSTANTIALLY VISUALLY INTRUDE UPON THE CHARACTER, SCALE, AND PATTERN OF HOUSES ALONG THE STREET OR ALLEY FRONTAGE;

- THE EXISTING BUILDING IS NOT PROPOSED TO BE ALTERED AND WILL RETAIN PRE-EXISTING EXTERNAL ARCHITECTURAL LOOK
- THE SIDE YARD RELIEF IS THE RESULT OF SUBDIVISION RECONFIGURATION WHICH IMPROVES THE SEVERITY OF NONCONFORMING RECORD LOTS AND CORRECTS THE ANOMALY OF THE EXISTING BUILDING STRADDLING LOT LINES
- THE PROPOSED NEW BUILDING ON LOT B IS A TWO-STORY BUILDING THAT IS ARCHITECTURALLY COMPATIBLE AND DOES NOT VISUALLY INTRUDE UPON THE CHARACTER, SCALE, AND PATTERN OF HOUSES ALONG THE STREET OR ALLEY FRONTAGE

SPECIAL CONDITIONS

D, § 5201.4

(D) IN DEMONSTRATING COMPLIANCE WITH PARAGRAPHS (A), (B), AND (C) OF THIS SUBSECTION, THE APPLICANT SHALL USE GRAPHICAL REPRESENTATIONS SUCH AS PLANS, PHOTOGRAPHS, OR ELEVATION AND SECTION DRAWINGS SUFFICIENT TO REPRESENT THE RELATIONSHIP OF THE PROPOSED ADDITION, NEW BUILDING, OR ACCESSORY STRUCTURE TO ADJACENT BUILDINGS AND VIEWS FROM PUBLIC WAYS.

- APPLICANT HAS SUBMITTED GRAPHIC ILLUSTRATION. PHOTOGRAPHS IN THE FOLLOWING SLIDE

PHOTOGRAPHS



OFFICE OF PLANNING REPORT (OP)

- IN ACCORDANCE WITH THE 1977 CORPORATION COUNSEL OPINION A&T OR TAX LOTS ARE NOT AN INSTRUMENT OF THE ZONING REGULATIONS HENCE THE RECORD LOTS REMAIN VALID
- APPLICANT CONTENDS THAT THE SUBJECT PROPERTY SHOULD BE VIEWED FROM THE CONTEXT OF THE EXISTING RECORD LOT CONFIGURATION – THAT IS AS THREE RECORD LOTS EACH WITH NONCONFORMING LOT WIDTHS OF 25 FEET AND LOT AREA FAR LESS THAN PRESCRIBED
- HENCE THE PROPOSED SUBDIVISION IS AKIN TO REALIGNMENT LOT CONFIGURATION TO ELIMINATE THE ANOMALY OF LOT LINE STRADDLING THE EXISTING STRUCTURE AND LOT WIDTH AND AREA CONSISTENT WITH THE PREVAILING AVERAGE IN THE SQUARE
- OP'S REPORT DID NOT WEIGH RELEVANT CASE LAW, THE UNIQUE HISTORY OF THE POST-1958 A&T LOT PLAT OF COMPUTATION AND THE CONTEXT OF THE 1977 CORPORATION COUNSEL OPINION
- THE LOT OP REFERS TO AS BEING 13,000 SQUARE FEET PLUS IN AREA IS BASED ON IT'S A & T(A & T LOT 0836) OWNERSHIP STRUCTURE AND NOT ON THE RECORDS OF THE DC SURVEYOR OR LOT OF RECORD

CONCLUSION

- APPLICANT SUBMITS THAT APPLICANT HAS MET THE BURDEN OF PROOF FOR THE GRANTING OF THE RELIEF AND RESPECTFULLY REQUEST THAT THE REQUESTED RELIEF(S) BE GRANTED FOR THE FOLLOWING REASONS:
- CONSISTENT WITH CASE LAWS CITED SUBJECT PROPERTY'S EXTRAORDINARY SITUATION OR CONDITION OF PROPERTY IS THE RESULT OF A ITS ZONING HISTORY OF A&T PLAT COMPUTATION WHICH EFFECTIVELY ALTERED THE OWNERSHIP STRUCTURE OF OTHERWISE VALID RECORD LOTS WHICH HAVE NO TO SATE UNDERTAKEN A TRUE ZONING RELATED RECORD LOT SUBDIVISION
- APPLICANT CONTENDS THAT THE CORPORATION COUNSEL OPINION CONSTRAINS THE BZA TO REVIEW OF THE PROPOSED SUBDIVISION IN THE CONTEXT OF THE INSTRUMENT SPECIFIC TO THE PURPOSE OF THE ZONING REGULATIONS; THAT IS THE RECORD LOT CONFIGURATION AND NOT THE A & T CONFIGURATION.
- THE SUBDIVISION EFFECTIVELY IMPROVES UPON THE NONCONFORMING CONFIGURATION OF THE EXISTING RECORD LOTS AND ALIGNS WITH THE PREVAILING AVERAGE LOT WIDTH IN ITS SQUARE OF LOCATION IN RESPECTIVE RECORD LOT CONFIGURATION
- THE PROPOSED LOT WIDTH IS CONSISTENT WITH THE PREVAILING AVERAGE LOT WIDTH IN THE SQUARE OF LOCATION
- SUBTITLE C, § 301.1 PERMITS SUBSTANDARD RECORD LOTS TO BE IMPROVED AS A MATTER OF RIGHT REGARDLESS OF SIZE, SUBJECT TO SPECIFIED CONDITIONS.
- THE ADDITIONAL HOUSING PRODUCED IS CONSISTENT WITH THE GENERAL GOAL OF INCREASING THE NUMBER OF RESIDENTS IN THE DISTRICT