

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

APPEAL OF:

Advisory Neighborhood Commission 2E from	)	
the Administrative Decision of the Zoning	)	
Administrator, DCRA, to issue Building Permit	)	BZA Appeal No. 17513
No. 88614, allowing additions to an existing	)	
single-family dwelling allegedly in violation of	)	Hearing: October 10, 2006
of the lot occupancy (§403) and nonconforming	)	
structures provisions (§2001.3) for the property	)	
at 1242 Potomac St., N.W., in the R-3 District	)	

PROPERTY OWNER'S MOTION TO DISMISS

**I.
INTRODUCTION**

Harry L. and Anne A. Gutman, through undersigned counsel, hereby move to dismiss as untimely Board of Zoning Adjustment ("BZA" or "Board") Appeal No. 17513 filed by Advisory Neighborhood Commission 2E ("ANC" or "Appellant") pursuant to section 3112 of the Zoning Regulations and the doctrine of laches. ANC 2E waited 88 days after issuance of Building Permit No. 88614 (the "Permit") to file its appeal, well after the requisite 60-day time period under section 3112.2(a) of the Zoning Regulations. By virtue of its own delay, the ANC has divested the Board of jurisdiction over this matter and the appeal should be dismissed.

**II.
FACTS**

The property that is the subject of this appeal is located in the Georgetown Historic District on Lot 45 in Square 1219, premises address 1242 Potomac Street, N.W., Washington, D.C. It is presently improved with a two-story clapboard house that faces east on Potomac Street

The north wall of the house is constructed to the property line, while pergola and shed, ten feet in

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width, span the open area to the south from the exterior wall of the house to the property line. The property is located in the R-3 District, which permits a lot occupancy of 40% for semi-detached dwellings and 60% for attached dwellings.

The construction work authorized under the Permit is virtually complete, with only the interior finishes to be installed and certain exterior elements completed, including the re-installation of a pergola that will be attached to the south wall of the house and will extend to a shed that in turn extends to the south the property line. Upon reinstallation of the pergola, which will include Plexiglas attached to the underside of its roof, the one side yard will be eliminated and an open court created, which will be used as a parking space. Because the house will no longer include any side yards, it will be deemed a row dwelling under the Zoning Regulations. (See 11 DCMR § 199.1 (a row dwelling is a one-family dwelling having no side yards)).

The Gutmans initiated plans for an addition to their house in early 2005. The first concept contemplated a large addition at the rear of the house that would be connected by an enclosed passageway to the existing free-standing carriage house at the rear of the property. (See Exhibit A attached hereto). The Gutmans shared these plans with their neighbors and received several letters in support, while others objected to the plans. The Gutmans also consulted with the ANC and the Citizens Association with Georgetown. (See copies of email correspondence between the Gutmans and the ANC and neighbors, attached hereto as Exhibit B). The ANC considered the proposal at its March 1st meeting and recommended denial of the addition as too large for the site. However, ANC member Bill Skelsey indicated that the Gutmans should not be precluded from making any changes to the property.

The Old Georgetown Board ("OGB") reviewed the first scheme on March 3, 2005, and recommended that the addition be reduced in size. In response, the Gutmans substantially

revised their plans and returned to their neighbors and the ANC to solicit comments and support for the project. This second scheme reduced the size of the addition by 60%, eliminated the connector between the main house and carriage house and reinstallation of the existing shed and pergola – also referred to as the "trellis" – to extend from the side of the main house to the south property line. (See Exhibit C attached hereto). The pergola was contemplated to be covered garden entrance with plantings and seating, utility shed and could be accessed.

The Gutmans shared the revised drawings with their neighbors to the south, on May 5, 2005, and the following day with the former neighbor to the north, who has since sold his house and moved out of the area. Initially, the neighbors to the south indicated they would not object to the revised scheme if the addition were set back an additional six inches from the south property line. The Gutmans agreed to consult with the architect to produce a new plan for review. However, upon learning that former neighbor to the north was not supportive of the new scheme and before the Gutmans' architect could produce a new plan, the south neighbors informed the Gutmans on May 25, 2005, that they had changed their position and would continue to oppose the project. (See Exhibit B.)

As a result of the continuing objections from the two abutting neighbors, the ANC again recommended denial of the second scheme at its May 31, 2005, meeting. In rejecting the proposal, the ANC also noted that the Gutmans' architect claimed, "much to the dismay of neighbors and several Commissioners, that the trellis qualified the home as a row house and not a semi-detached house." The ANC further stated that "it does not appreciate the manner in which the applicant is trying to increase their [sic] lot coverage." See ANC Meeting Minutes, May 31, 2005, a copy of which is attached as Exhibit D. A representative of the Citizens

Association of Georgetown ("CAG") was present at the meeting and also spoke in opposition to the pergola connection as a violation of the zoning regulations.

OGB considered the revised scheme at its July 7, 2005, meeting and recommended approval of the project in concept, including the pergola and shed extending to the south property line, tying into the utility shed with only minor modifications. The ANC and CAG were present at the meeting, and the neighbor to the south also spoke in opposition. The Commission of Fine Arts adopted the OGB recommendation to approve the project at its July 21, 2005, meeting.

The Gutmans applied for a building permit several months later, which was referred to OGB for final review at its November 4, 2005, meeting. The final drawings included the pergola connection, as shown on the building plat included with the drawings. OGB recommended approval of the permit and the CFA adopted that recommendation on November 17, 2005. (See Exhibit E, attached hereto). The ANC was also represented at the November 4, 2005, OGB meeting where the permit application was discussed.

In seeking issuance of the necessary building permit, the Gutmans retained the services of a "third party inspector" to review the final plans for compliance with the D.C. Construction Codes.¹ Because third party inspections are limited to the disciplines of construction, mechanical, electrical, plumbing, elevator and fire protection, the zoning review was conducted independently by the Zoning Review Branch under the direction of the Zoning Administrator. The Zoning Review Branch approved the permit for zoning compliance on December 23, 2005, as evidenced by the stamp and signature of that office on the building plat and construction drawings. (See Exhibit C).

¹Pursuant section 113.2.1 of the D.C. Construction Codes, DCRA established a Third Party Inspection Program whereby the "code official shall accept reports of third party approved inspection agencies on all field inspection disciplines under the Construction Codes..." The code official may then rely in these inspections, instead of those performed by DCRA employees, in issuing building and other types of permits. 12A DCMR 113.2.1 (2002).

In anticipation of the imminent release of the building permit, the Gutmans' architect notified the neighbors to either side on January 11, 2006, that construction was to begin soon and that the neighboring properties would be protected during construction. (See Exhibit F). Shortly thereafter, on January 17, the neighbor to the south, approached the contractor undertaking other authorized work at the site to inquire whether the permit had been issued. Upon learning that it was still pending, the neighbor informed the contractor that the permit would not be issued once he made a few telephone calls.

On January 20, 2006, DCRA issued the building permit for the renovations and addition to the Gutmans' residence, and the permit was then posted in the front window of the house on January 24, 2006. Because the house abuts the public sidewalk, the permit was and still is clearly visible to any citizen or member of the ANC walking by the property. In fact, the neighbor to the south contacted the architect for the project on February 1, 2006, to inquire whether the plans approved under the building permit were the same as those approved by OGB. The architect informed the neighbor that there were indeed the same drawings and that copies should be available through the public record at DCRA. The neighbor did not contact the Gutmans or the contractor to review the stamped set of drawings located next door to him at the job site. Similarly, no member of the ANC attempted to speak with the Gutmans, the architect or the contractor about reviewing the approved set of drawings.

Based on the emails attached to the ANC's statement in support of its appeal, the ANC and other members of the community began consulting with the Zoning Administrator's Office shortly after issuance of the permit in February to discuss the sufficiency of the pergola connection in creating a row dwelling that would allow 60% lot coverage. They continued to consult with DCRA throughout March and April. However, despite clear knowledge of the

proposed work, as fully discussed in numerous publicly noticed meetings, including the ANC meetings, the ANC waited until April 19th – 88 days after issuance of the building permit – to file its appeal, instead of the requisite 60 days dictated by the Zoning Regulations.

II. ARGUMENT

A. The ANC Appeal Is Untimely

Despite its active participation in and review of the Gutmans' proposed addition since at least May 31, 2005, including scrutiny of the pergola connection and rejection of the Gutmans' zoning analysis, the ANC failed to file its appeal within the requisite 60 days after issuance of the January 20th building permit. Instead, it waited 88 days before submitting its complaint to the Board, during which time it made several inquiries to the Zoning Administrator. These efforts to review the DCRA file on the project, or discuss the matter with the Zoning Administrator, however, did not absolve the ANC from complying with the jurisdictional time deadline. Consequently, the appeal should be dismissed.

B. The ANC Appeal Failed to Comply with the Zoning Regulations on Timeliness

Under section 3112.2 of the Zoning Regulations, an appeal must be filed within 60 days from either the date the appellant had notice or knowledge of the decision complained of, or the date the appellant reasonably should have known of such complaint. Zoning Commission Order No. 02-01, February 7, 2003, at 3-4. *See also 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"). The requirement for a timely appeal is jurisdictional. If any appellant misses the deadline, the Board is without power to consider the

appeal. *Goto v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 917, 923 (D.C. 1980); *Mendelson v. District of Columbia Bd. of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994).

In analyzing whether an appeal is timely, the reviewing agency or court must determine: (i) the official decision complained of that triggers the start of the 60-day clock; (ii) whether the appellant had notice or knowledge of that decision, or should have reasonably known of it, *whichever is earlier*; and (iii) whether there were any exceptional circumstances beyond the control of the appellant that would have substantially impaired its ability to file an appeal.² Each is discussed in turn below.

1. The Official Decision Complained Of

The appellant takes exception with the zoning approval for the proposed addition, which was granted as part of the building permit review process. As the ANC itself acknowledges in its appeal, the official decision complained of is the issuance of Building Permit No. 88614 on January 20, 2006. There is no dispute, then, that the time period for filing an appeal began to run

²Section 3112.2 provides that any person aggrieved by a decision of an administrative officer in the administration of the Zoning Regulations may file a timely appeal as follows:

- (a) An appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier.

* * *

- (c) Notwithstanding paragraphs (a) and (b) of this subsection, for purposes of establishing the timeliness of an appeal under this subsection, an appellant shall have a minimum of sixty (60) days from the date of the administrative decision complained of in which to file an appeal.
- (d) The Board may extend the sixty- (60) day deadline for the filing of an appeal only if the appellant demonstrates that:
 - (1) There are exceptional circumstances that are outside of the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and
 - (2) The extension of time will not prejudice the parties to the appeal, as identified in § 3199.1.

11 DCMR § 3112.2, Zoning Commission Order No. 02-01, February 7, 2003 (emphasis added).

on that date and, in order to be timely, the appeal should have been lodged no later than March 21, 2006. Here, however, the appeal was not filed until April 19, 2006 – 28 days too late.

2. Knowledge of the Official Decision

There can also be no dispute that the ANC knew or should have know of the permit issuance. The ANC was actively involved in the scrutiny of this project, beginning with its initial review on March 1, 2005, and its subsequent review in May of that year. Moreover, the ANC was particularly aware of the zoning issue complained of, because its minutes from the May meeting specifically reflect its disagreement with the architect's representation that "the trellis qualified the home as a row house and not a semi-detached dwelling." Further, the ANC resolution stated that "ANC 2E does not appreciate the manner in which the applicant is trying to increase their lot coverage."

From that moment, the ANC was on notice that zoning approval might be granted for the pergola connection and a permit issued, and that it should monitor this case through the review process. This fact was reinforced on June 2, 2005, when the Gutmans specifically discussed the 54% lot occupancy at the OGB meeting, and neighbors objected to the Gutmans' interpretation of the zoning regulations, and again on July 7, 2005, when OGB recommended approval of the project, *with* the pergola connection, at its regular public meeting. The ANC attended both meetings and spoke in opposition. The ANC was also put on notice of the zoning issue when OGB considered the *final* permit application at its November 4, 2005, which was then endorsed by CFA at its November 17, 2005, meeting. The project was clearly listed on the OGB and CFA agendas, which were available to the public in advance of the meetings. Moreover, in recommending final approval and in response to the zoning controversy, CFA highlighted for the ANC that the "permit application is pending final zoning review. Any modifications to the

approved design as a result of further review in the permit process must be submitted to the Commission for approval." See Old Georgetown Board Appendix, November 17, 2005, a copy of which is attached hereto as Exhibit E.

The ANC routinely receives copies of the OGB agenda, monitors the OGB website, attends the OGB monthly meeting, and checks the OGB files. In fact, the ANC website provides a link to the OGB website, and provides the following advice to visitors:

To find out what happens at ANC meetings, read our meeting overview.

Although the ANC reviews many projects before the Old Georgetown Board, ANC does not review ALL the projects on the monthly Old Georgetown Board agenda. Check out their agenda monthly so that you know what is being reviewed by them: Old Georgetown Board Next Meeting Agenda.

<http://www.anc2e.com/index.html>.

Thus, there is no question that the ANC knew the project was making its way through the approval process and that a permit application was pending. The ANC was fully aware of the zoning rationale behind the proposed lot occupancy, and that permit issuance was likely. Additionally, the Gutmans' two neighbors, who are represented by the ANC, were specifically notified by mail of the imminent issuance of the permit on January 11, 2006. In fact, one neighbor indicated that he would make calls to try to prevent issuance of the permit. When the permit was finally released on January 20th and posted in the window on January 24th, the entire community was put on notice of the approved project, and the time for filing an appeal began to run from the permit issuance date. It is clear, then, that the second prong of the timeliness test has been met: the ANC knew of the decision complained of – the permit issuance – and, in fact, spoke against its issuance based on the very zoning issue it challenges before the Board in its appeal.

3. No Exceptional Circumstances Exist to Toll the 60-Day Deadline

Finally, there are no exceptional circumstances beyond the control of the ANC that would warrant the tolling the 60-day deadline. For example, there were no trees impeding the public's view of the building permit posted in the front window of the Gutmans' house or the construction taking place at the property. *See* BZA Order in Appeal No. 17285 (Economides Residence), March 24, 2006 (extent of construction activity not visible from appellant's distant property by virtue of leaves that had not yet fallen from the intervening deciduous trees, such that appellant would have notice of the decision complained of). Given the general rowhouse character of the Georgetown Historic District and this block of Potomac Street, in particular, the permit was plainly visible and the construction activity clearly apparent.

Similarly, the zoning analysis used by the Gutmans was fully discussed in numerous public meetings, including the May 31, 2005, ANC meeting. In fact, the ANC admits knowing of the Gutmans' zoning interpretations in its meeting minutes and through its vocal opposition to this particular aspect of the project at both the ANC and OGB meetings. The building plat submitted with the permit application and construction drawings for final review by OGB, CFA and HPRB clearly identified the connecting shed and pergola that were the focal point of the zoning dispute. Thus, the ANC cannot be heard to claim the drawings were unavailable to them, thereby hindering its ability to file an appeal.

While the Board has found that missing files at the Zoning Administrator's office or at DCRA may constitute exceptional circumstances preventing a timely appeal, those circumstances do not exist here. For example, in BZA Appeal No. 17310 (Stancioff Appeal), the Board determined that, even though the appellant knew of building permit on the day it was issued, she could not have known of the lot occupancy calculations until she met with the Zoning

Administrator several months later. The Board found that she had made diligent efforts to obtain the requested calculations from both the property owner and DCRA, and that while other construction information was available, the appellant could not ascertain the necessary zoning information from those documents. Accordingly, the Board ruled that exceptional circumstances existed that allowed the appellant to file over 40 days late. The Board held that the appellant "had no notice nor should she have known from any other available information that the zoning error alleged in this appeal may have occurred." (Emphasis added).

In sharp contrast to the Stancioff Appeal, the ANC in this case already had all the necessary information on the zoning calculations for the property. The Gutmans, their architect and/or zoning counsel fully disclosed the lot occupancy calculations at the May ANC meeting and at the June and July OGB meetings. The public was specifically informed that the existing lot occupancy of the house was 48% and that by virtue of the pergola connection, the proposed addition could achieve a lot occupancy of 54% as a matter-of-right. More important, the ANC specifically objected to these calculations at both the ANC meeting and before OGB.

This extensive public disclosure of the zoning calculations was missing from the Stancioff Appeal, in part because the property in question was not in the Georgetown Historic District and or otherwise subject to any discretionary approvals or public review processes. Because the zoning information was missing, the Board found that this was an exceptional circumstance that prevented the appellant from filing a timely appeal. Here, however, the requested information was readily available from the ANC and OGB public meetings, the CFA office, which retains a copy of the approved construction drawings with the zoning calculations on the front page, and from the Gutmans themselves or their contractor or architect. Yet, the ANC *never* made any "diligent efforts" to get any of the requested information from any of the

other readily available sources. The stamped-approved drawings and the approved building plat, with the zoning calculations clearly noted in the margin, have been at the Gutmans' property since the permit was posted on January 24th, yet no one from the ANC or any neighbor contacted the Gutmans. Had the ANC requested copies, the Gutmans would have willingly shared them, particularly if copies were not available from DCRA. Instead, the ANC chose not to pursue these alternative avenues at all.

Significantly, the unavailability of the drawings or zoning calculations did not prevent the ANC from filing a timely appeal. By its own admission, the ANC knew that the existing house had a lot occupancy of 48% such that *any addition*, under its theory of the case, would exceed the lot occupancy requirements for a semi-detached house, regardless of size. Consequently, the need for precise zoning calculations is irrelevant to filing the necessary appeal papers. To the extent the Zoning Administrator's calculations were necessary, the unavailability of those calculations only prevented the BZA from proceeding with a hearing and had no bearing on the timely submission of the appeal.

Thus, for example, in BZA Appeal No. 17502, the appellant challenged the zoning calculations for a house in the Wesley Heights Overlay within the requisite 60 days even though DCRA has misplaced the permit file for the property. When the matter came before the BZA for hearing, the Board acknowledged that the appellant was prevented from prosecuting his appeal due to the missing files and that additional continuances might be granted if the necessary zoning information was not produced.

Here, the ANC could have lodged its appeal in a timely fashion based on the overwhelming information it already had on the zoning calculations and allowed DCRA to continue looking for its files. In fact, this is the precise advice the Zoning Administrator gave to

the ANC. Unfortunately for the ANC, however, they did not even meet with the Zoning Administrator until *after* the 60 days had lapsed, and there was no way to become timely after the fact. Moreover, it is not incumbent upon the Zoning Administrator to advise the ANC on whether it should or should not appeal a decision of his office. Further, under the second prong of the timeliness test, the appellant is charged with notice either when the appellant knew, *or should have known*, of the decision complained. Assuming, *arguendo*, that the decision complained of is the determination that the pergola and shed are sufficient to create a row dwelling for zoning purposes, the ANC should have known that the permit was issued on this basis due to the extensive disclosure of this fact at every public meeting and every set of drawings since May 2005 when the second scheme was first distributed in concept form and then as final form in October 2005.

4. Gutmans Will Be Prejudiced if The Deadline Is Extended

Even if exceptional circumstances existed in this case, which they do not, the Gutmans would be severely prejudiced by any extension in the requisite 60-day filing deadline.

The purpose in prescribing time limits is

a salutary one. It provides a period after which the permittee knows that he may proceed safely in accordance with the permit. Where the permit is denied, it gives those opposing its issuance assurance that the applicant who has been denied the permit may no longer secure a review, and a possible reversal, by the board of appeals, and that their vigilance need no longer be maintained.

Waste Management, 775 A.2d at 1122, fn. 6.

Here, the Gutmans were aware of the ANC's objections to the zoning calculations and knew that any appeal would have to be filed no later than March 21, 2006. When that day came and went without any such action, they confidently proceeded with their construction efforts.

The addition is virtually completed, and is consistent with long-standing interpretations of the zoning regulations and past decisions of the Board and the courts.

This jurisdiction has consistently held that a prospective appellant is not excused from its duty to file a timely appeal because he chooses to pursue other avenues of resolution that appear more promising than an appeal. Such various avenues can and should be pursued simultaneously. *Id.* at 1123 1123 ("DCRA did not preclude Waste Management from taking a prompt appeal from the February 1996 denial if the company was of a mind to do so. Indeed, Waste Management could have taken such an appeal and applied for a variance or special exception simultaneously..."); *see also Woodley Park Community Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 490 A.2d 628, 638 (efforts to resolve dispute through negotiations did not excuse delay in filing appeal, even where adversary is less than fully candid); *accord* BZA Order in Appeal No. 17411, March 23, 2006 ("a party who chooses to engage in negotiations or other ways to resolve a dispute does not thereby extend its time for filing an appeal"); *see also* BZA Order in Appeal No. 17127, June 2, 2005 ("[a]lthough it may have been difficult for the Appellant to obtain details from DCRA regarding the revised permits and plans, there is no evidence that DCRA's actions substantially impaired Appellant's ability to file an appeal", particularly where the Appellant knew of the permit issuance).

The ANC in this case pursued alternative avenues with the Zoning Administrator, and in particular, sought revocation of the building permit. As demonstrated by its email correspondence with the Zoning Administrator attached as Exhibit 9 to its prehearing statement, the ANC even posited that "DCRA would revoke [the Gutmans'] permit if their permit was based on a trellis to convert their residence to a row house." (See copies of emails attached hereto as Exhibit G.) The ANC also clearly knew of the permit issuance date and its appeal rights, and

indicated to the Zoning Administrator that it wanted to keep its options viable in case it wished to appeal the permit. See email from Ed Solomon, Chair, ANC2E, to Zoning Administrator, March 7, 2006. Nevertheless, through its own actions, the ANC failed to preserve its appeal rights.

The ANC must now suffer the consequences of its untimeliness, and the appeal should be dismissed. It would be patently unfair and work a great hardship on the Gutmans if the Board were to depart from past precedent and find that the ANC's efforts to pursue other alternatives excusable delay.

C. The Appeal is Also Barred Under the Doctrine of Laches

The appeal should also be dismissed under the equitable doctrine of laches. The equitable doctrine of laches is based upon the maxim that equity aids the vigilant and not those who slumber on their rights. See *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 925 (D.C. 1980); see also *Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356 (D.C. 1975); *Lyke v. DC BZA*, 383 A.2d 7 (D.C. 1978). Laches is defined as the neglect to assert a right or claim which, taken together with a lapse of time and other circumstances, cause prejudice to another party. With laches, the entire chain of events must be considered. See *Goto* at 925.

Here, despite clear knowledge that the building permit had been issued and construction had started, and contrary to the explicit 60-day deadline set forth in the Zoning Regulations, the ANC determined to let the time period lapse for filing its appeal. See Chronology of Events and Contacts with Advisory Neighborhood Commission 2E, attached hereto as Exhibit H. The ANC was actively involved in the review of this project as early as March 1, 2005, and followed its evolution through multiple public reviews before the ANC, the OGB and CFA for the remainder

of 2005. Further, the ANC was in constant contact with DCRA since permit issuance on January 20, 2006, but still chose not to act in a timely fashion. The Gutmans were aware that the ANC and their neighbors objected to the plans. They took seriously the threat of their neighbor to the south that he would attempt to stop the project. When the time frame for appeal expired without any filing to the BZA, the Gutmans appropriately reposed confidence that their addition could no longer be contested.

In reviewing the entire chain of events, the ANC unreasonably delayed in challenging the permit issuance, which has resulted in severe prejudice to the Gutmans. The Gutmans relied on DCRA's approval of the permit and on the time limits for appeals, proceeded in confidence on the affirmative acts of the District and have expended significant sums on permanent improvements to their home. The delayed action of the ANC should not negate the protections afforded by the regulations to the Gutmans and long-standing interpretation of this jurisdiction.

VI. CONCLUSION

WHEREFORE, based on the foregoing, the Board should dismiss the appeal on the grounds of untimeliness.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: Whayne S. Quin
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October 5, 2006

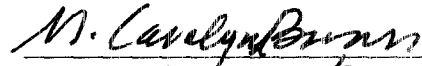
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Dismiss was served this 5th day of October, 2006, via email or first-class mail, postage prepaid, upon the following:

Ed Solomon, Chair
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007
anc2e@erols.com

Office of the General Counsel
D.C. Department of Consumer and
Regulatory Affairs
941 North Capitol St., N.E., 9th Floor
Washington, D.C. 20002

Bill Crews
Zoning Administrator
D.C. Department of Consumer and
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Mary Carolyn Brown *by WSCP*

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., October 24, 2003

Plat for Building Permit of SQUARE 1219 SITE PER SUB

Scale: 1 inch = 20 feet

Receipt No. 07578

Furnished to: AMY SANDERSON

Robert P. Dwyer
Surveyor, D.C.

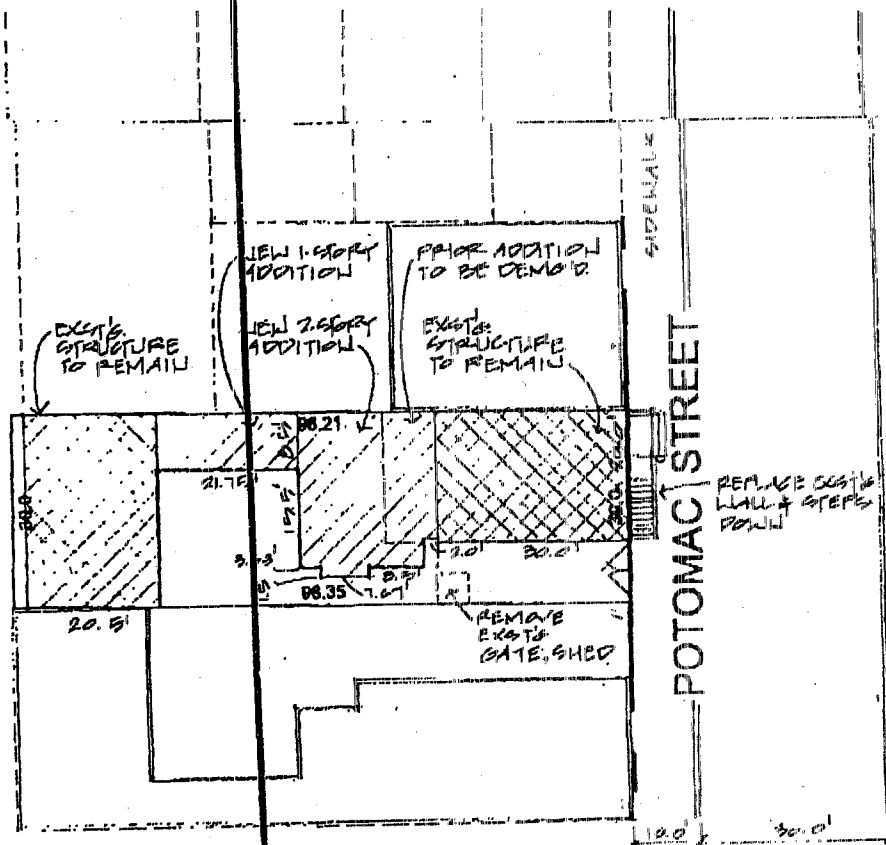
By: L.M.A.

I hereby certify that all existing improvements shown herein are completely dimensioned, and are correctly plotted; that all proposed buildings or structures, or parts thereof, including covered porches, are correctly dimensioned and plotted and agree with plans accompanying the application; that the foundation plans as shown herein are correct, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown herein the site of any existing lot or premises is not encroached to an area less than is required by the Zoning Regulations for light and ventilation; and I further certify and agree that accessible parking areas where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this plan has been carefully drawn and dimensioned herein. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along curb-line of driveway at any point on private property in excess of 20% for single-family dwellings or lots, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 2/1/05

[Signature]
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation of Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



PROJECT DATA

Zone: R-3
Use: SF Residential

	Allowed	Existing	Proposed
Footprint Area:	3,000 sf	1,381 sf	1,718 sf
Lot Area:	40% 0%	2,888 sf	2,888 sf
Lot Occupancy:		48%	66.5%
Number of Stories:	3	2 + 1	2 + 2
Building Height:	40'	24'	24'
Side Yard:	8'	10'	N/A
Rear Yard:	20'	35.26'	2.13'

From: Gutman, Harry L [hgutman@kpmg.com]
Sent: Tuesday, April 05, 2005 11:40 AM
To: billskelseyanc@aol.com
Cc: hankgutman@aol.com; searsarchitects@erols.com; Brown, M Carolyn (WAS - X75990); bill2E06@hotmail.com
Subject: RE: 1242 Potomac St.

Dear Mr. Skelsey,

Thanks for your response.

I fully intend to invite my immediate neighbors to discuss our revised project, keeping in mind your comments at the ANC meeting that we should not take the ANC rejection of our original plan as a prohibition against any addition and the indication from the OGB that a scaled back addition could be acceptable. I will keep you posted on our progress.

Hank Gutman

-----Original Message-----

From: billskelseyanc@aol.com [mailto:billskelseyanc@aol.com]
Sent: Monday, April 04, 2005 3:49 PM
To: Gutman, Harry L
Subject: Re: 1242 Potomac St.

Mr. Gutman,

My apologies for not getting back to you sooner. I have been on the road extensively lately but am back and focused on your project.

I think your proposal to get together with your architect to discuss options is a fine one, except that you should find some way to do so with the adjacent neighbors, rather than me.

I will mention to your neighbors your offer to meet and will encourage them to take you up on it.

with best regards,

Bill Skelsey

-----Original Message-----

From: Gutman, Harry L <hgutman@kpmg.com>
To: 'BillSkelseyANC@aol.com' <BillSkelseyANC@aol.com>
Cc: 'hankgutman@aol.com' <hankgutman@aol.com>; 'searsarchitects@erols.com' <searsarchitects@erols.com>; 'carolyn.brown@hklaw.com' <carolyn.brown@hklaw.com>; 'bill2e06@hotmail.com' <bill2e06@hotmail.com>
Sent: Mon, 28 Mar 2005 09:59:21 -0600
Subject: FW: 1242 Potomac St.

Dear Mr. Skelsey,

I sent the attached two weeks ago and have not heard from you. We are in the process of evaluating our options with respect to this property and would appreciate your input if that is appropriate.

Sincerely,

Hank Gutman

-----Original Message-----

From: Gutman, Harry L

Sent: Monday, March 14, 2005 12:11 PM

To: 'BillSkelseyANC@aol.com'

Cc: 'agutman@nps-dc.org'; 'hankgutman@aol.com'; 'searsarchitects@erols.com'; 'carolyn.brown@hklaw.com'; 'bill2e06@hotmail.com'

Subject: 1242 Potomac St.

Dear Mr. Skelsey,

Thank you for your time last week. As I mentioned to you on the telephone, my wife and I were hoping to get together with you and our architect to discuss renovation options at our new house.

We paid particular attention to your remarks at the ANC meeting and we have every intention of inviting our immediate neighbors to discuss our plans once we have developed options. As we mentioned at the meeting, the Cooleys had previously rejected our invitation to discuss changes to our plans, taking the position that we could do nothing to our property. We were heartened by your statement that, in your view, we would not be constrained to do nothing and we have a number of ideas that we believe are responsive to the concerns of the immediate neighbors. While we know that you cannot speak either for our neighbors or the ANC, we would appreciate your informal input and assistance.

For your information, the OGB denied our proposal to connect our house and carriage house. We are disappointed (in light of the existing precedent directly next door) but we accept their decision. The Board did, however, indicate that our proposed addition to the existing house might be acceptable with the caveat that it was too large. The options that we are developing take that caveat into account.

You mentioned that you had previously made a site visit. I do not think that visit included an inspection of our property, which we believe might be useful to get a more comprehensive picture of our objectives and the objective validity of the stated opposition to our plans. Might I suggest that we get together at our new house at your convenience to pursue this further? You can reach me by reply email (hgutman@kpmg.com) or by telephone at 202-533-3044.

Sincerely,

Hank Gutman

From: Gutman, Harry L [hgutman@kpmg.com]
Sent: Thursday, April 14, 2005 6:21 PM
To: stephen_w._cooley@hud.gov; betsycooley@cagtown.org
Cc: hankgutman@aol.com; searsarchitects@erols.com
Subject: 1242 Potomac St.

Dear Betsy and Steve,

In light of the OGB determination that we cannot connect our house to the carriage house we are evaluating whether to sell the house, live in it or retain it as rental property. Our decision will be determined in large measure by what renovations we can make.

We began this process by proposing our ideal outcome. We were fully cognizant of the fact that, in light of the concerns expressed by you and Gary, alterations would be required.

The ANC indicated its strong preference that we, as neighbors, try to reach an accommodation and that is the course we would like to take. With our architect we have revised the original plans to address your concerns and the OGB comments. The size of the proposed addition has been reduced substantially. We would be pleased to discuss our ideas with you. Unfortunately I have a terrible travel schedule for the next several weeks, but I was hoping we could meet in the evening of April 27. Do let us know whether this is a course you are interested in pursuing and if so, whether the 27th works for you.

Hank and Anne

From: Gutman, Harry L [hgutman@kpmg.com]
Sent: Tuesday, April 19, 2005 11:27 AM
To: GFHeurich@foggybottom.com
Cc: hankgutman@aol.com; seararchitects@erols.com
Subject: 1242 Potomac St.

Dear Gary:

In light of the OGB determination that we cannot connect our house to the carriage house we are evaluating whether to sell the house, live in it or retain it as rental property. Our decision will be determined in large measure by what renovations we can make.

We began this process by proposing our ideal outcome. We were fully cognizant of the fact that, in light of the concerns expressed by you and the Cooleys, alterations would be required.

The ANC indicated its strong preference that we, as neighbors, try to reach an accommodation and that is the course we would like to take. With our architect we have revised the original plans to address your concerns and the OGB comments. The size of the proposed addition has been reduced substantially. We would be pleased to discuss our ideas with you. Unfortunately I have a terrible travel schedule for the next several weeks, but I was hoping we could meet at 4:00 p.m. on May 6. Do let us know whether this is a course you are interested in pursuing and if so, whether the 6th works for you.

Hank and Anne

From: Gutman, Harry L [hgutman@kpmg.com]
Sent: Wednesday, May 25, 2005 6:08 PM
To: 'Carolyn Brown'
Cc: 'Amy Sanderson'
Subject: FW: RE: 1242 Potomac St.

Attachments: pic17530.gif; graycol.gif; ecblank.gif



pic17530.gif (1 KB) graycol.gif (169 B) ecblank.gif (109 B)

Amy-No sense doing revised plans.

-----Original Message-----

From: stephen_w._cooley@hud.gov [mailto:stephen_w._cooley@hud.gov]
Sent: Wed May 25 14:52:03 2005
To: Gutman, Harry L
Subject: RE: 1242 Potomac St.

Hank:

I'm sorry to say that our position regarding the acceptability of a "6' flush" addition, with the commensurate reduction in proposed lot coverage, has changed since we communicated last.

We have come to the conclusion that we cannot "not object" to that approach. That is, we would "oppose" that alternative on the basis of its adverse effects upon the neighbor <<graycol.gif>> ing property (Gary's property) to your nor <<ecblank.gif>> th. We already have discussed the fact that we oppose the current submission to the ANC, which is dated May 10 (I believe).

I regret the inconvenience this imposes on you.
"Gutman, Harry L" <hgutman@kpmg.com>

"Gutman, Harry L" <hgutman@kpmg.com>

05/23/2005 02:06 PM

To: "stephen_w._cooley@hud.gov" <stephen_w._cooley@hud.gov>
cc: "Anne Gutman" <agutman@nps-dc.org>, "Anne Gutman" <hankgutman@aol.com>, "Carolyn Brown" <carolyn.brown@hklaw.com>, "Amy Sanderson" <searsarchitects@erols.com>
Subject: RE: 1242 Potomac St.

Steve-- I'm sorry we did not talk this morning. I am now out of town until Thursday.

We have asked Amy to come up with a design within the parameters you have suggested. Hopefully she can. If so we will substitute it for those already submitted for OGB consideration. We will keep you informed.

Hank

-----Original Message-----

From: stephen_w._cooley@hud.gov [mailto:stephen_w._cooley@hud.gov]
Sent: Fri May 20 11:58:28 2005
To: Gutman, Harry L
Subject: RE: 1242 Potomac St.

Yes. A 6' foot addition flush with the existing dwelling (e.g., no bump towards us) is "acceptable to Betsy and me and we would not object to that...."

I'll give you a ring Monday. Thanks.
"Gutman, Harry L" <hgutman@kpmg.com>

"Gutman, Harry L" <hgutman@kpmg.com>

05/20/2005 11:33 AM

To: "stephen_w._cooley@hud.gov" <stephen_w._cooley@hud.gov>
cc:
Subject: RE: 1242 Potomac St.

Steve--I see how the mix-up occurred. I sent this on Wed and you got it on Thursday. Anyway, I trust you had a good birthday!

Thanks for filling us in on your alternative. To reconfirm, you told us that you would support a 6 foot addition that remained flush with the existing building. That is very promising.

I have to rush off to a Memorial service now, but will be my office on Monday and could talk at 11 if that is convenient for you. My office number is 202-533-3044. I look forward to hearing from you.

Hank

From: stephen_w._cooley@hud.gov
[mailto:stephen_w._cooley@hud.gov]
Sent: Thursday, May 19, 2005 10:43 AM
To: Gutman, Harry L
Subject: Re: 1242 Potomac St.

I think that would be good. Should I come over between 7:30 and 8? I am assuming that the new plans have not been submitted at this point. See you then.
"Gutman, Harry L" <hgutman@kpmg.com>

"Gutman, Harry L"
<hgutman@kpmg.com>

05/18/2005 07:45 PM

To: "stephen_w._cooley@hud.gov"
<stephen_w._cooley@hud.gov>
cc: "Anne Gutman" <hankgutman@aol.com>
Subject: Re: 1242 Potomac St.

Steve-I fully understand. I will be around tomorrow evening
about 8 if
that is convenient.

Hank

-----Original Message-----

From: stephen_w._cooley@hud.gov
[mailto:stephen_w._cooley@hud.gov <mailto:stephen_w._cooley@hud.gov>]
Sent: Wed May 18 15:26:19 2005
To: Gutman, Harry L
Subject: Re: 1242 Potomac St.

Hank: I'm sorry that we did not get back to you sooner.
Meredith came
home from Africa last week and we have had a houseguest this
week. We have
thought about the new plans and I would like to talk with
you shortly.

"Gutman, Harry L"

<hgutman@kpmg.com To:
"stephen_w._cooley@hud.gov" <stephen_w._cooley@hud.gov>,
> "betsycooley@aol.com"
<betsycooley@aol.com>
cc:
"carolyn.brown@hklaw.com" <carolyn.brown@hklaw.com>,

05/17/2005 11:28
"searsarchitects@erols.com" <searsarchitects@erols.com>,
"hankgutman@aol.com"
PM <hankgutman@aol.com>

Subject: 1242 Potomac St.

Dear Betsy and Steve- We appreciate the time you took to
review our plans.
Do you have any reactions to share? We hope to hear from
you. Hank

*

From: Gary F. Heurich [GFHeurich@foggybottom.com]

Sent: Tuesday, May 24, 2005 8:26 AM

To: hankgutman@aol.com

Subject: Proposed Addition #2

Hank...with my thanks for your time and the information you shared with respect to your second design for an addition, I regret to tell you that I will oppose your application...it would simply impact too greatly on the open space and block way too much of the light in my back yard and rear windows...Gary

DISTRICT OF COLUMBIA GOVERNMENT OFFICE OF THE SURVEYOR

Washington, D.C., February 10, 2005

Plat for Building Permit of SQUARE 1219 LOT 45

Scale: 1 inch = 20 feet

Recorded in Book 198 Page 16

Receipt No. 17270

Furnished to: AMY SANDERSON

[Signature]
Surveyor, D.C.

By: L.E.S. *[Signature]*

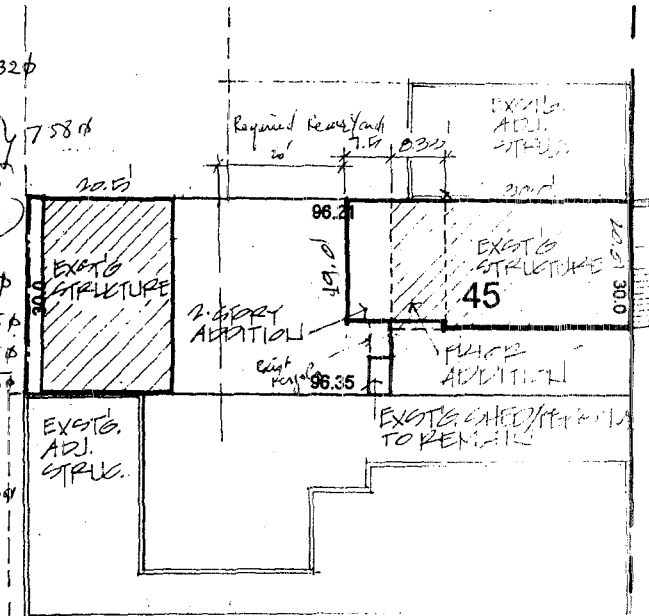
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted, and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat, and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 10/12/05

[Signature]
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

Zone: R-3
Area: 2.888 ϕ
Occ 60% = 1.732 ϕ
20' x 20' = 600 ϕ
8.75' x 19' = 158 ϕ
7.50' x 19' = 143 ϕ
Structure 901 ϕ
20.5' x 30' = 615 ϕ
3.5' x 5.5' = 19.25 ϕ
3.5' x 5.5' = 19.25 ϕ
(6.52 ϕ) = 652.50 ϕ
Add.
7.5' x 19' = 143 ϕ
2.55 ϕ = 4370



APPROVED
Commission of Fine Arts
OCT 14 2005
0866 007

DCRA / OFFICE OF THE SURVEYOR
ADMINISTRATIVE
WITH
ZONING

[Signature] 12/23/05

**Minutes for the Meeting of
Advisory Neighborhood Commission 2E**

May 31, 2005

Georgetown Visitation School, 35th and Volta Place, Heritage Room

The meeting was called to order at 6:37 PM by the Chair, Commissioner Solomon, with Commissioners Eason, Moore, Starrels, and Clements present, constituting a quorum.

ADMINISTRATIVE

Minutes: The minutes of the May 3, 2005 meeting were unanimously approved as distributed by Commissioner Clements.

ANC 2E Quarterly Financial Report: The report was delayed until the arrival of Commissioner Lever.

Change of Date for Next Meeting: It was announced that the meeting previously scheduled for July 5, 2005 would be moved to June 28, 2005 in celebration of the 4th of July holiday weekend.

COMMUNITY COMMENT

Commissioner Skelsey arrived at this time.

Police Report: Sergeant Bundy of the Metropolitan Police Department presented the police report for the month of May. He indicated that most of the crime over the past month had been burglaries, particularly on the Georgetown University campus. In most cases, door and windows had been left unlocked. He reminded everyone that simple precautions could reduce these kinds of incidents. Laptop computers tended to be the main target. Neighbors raised the issue of excessive speeding along 35th Street. Sergeant Bundy noted that he would look into extra enforcement. He also said that this was the type of issue that would be well suited for the monthly PPS meeting. Generally it is held the last Wednesday of each month. The result of last month's meeting would be new radar guns and the repair of old radar guns for PSA 206.

Commissioner Lever arrived at this time.

Georgetown Project Update: Len Levine informed ANC 2E that work was going well. Pepco was working this week on completing all service connections. WASA ran into a small problem with the water main tie-in on 33rd Street, but was working to overcome this. Soon, all sidewalks north of Q Street would be completed. The schedule for final paving would be determined by the weather. It was also announced that DDOT would be activating the new multi-bay parking meters in the next week. Commissioner Skelsey inquired about additional trees on M Street. Although outside of the Georgetown Project,

* * *

1242 Potomac Street (OGB 05-182): The architect for the project presented revised plans for the addition. The new proposal was 60% smaller than the previous version. Thus, due to the wooden trellis structure currently existing on the south side of the home, a special exception would no longer be needed as lot occupancy would be 54%. The architect claimed, much to the dismay of neighbors and several Commissioners, that the trellis qualified the home as a row house and not a semi-detached house. The neighbors to the north and the south opposed the plans due to loss of light and open space in their backyards. Other aesthetic and structural changes to the existing carriage house were proposed. Commissioner Starrels moved (Clements Second) for the following which passed by a vote of 7-0:

ANC 2E has no objections to the alterations to the carriage house.

In addition, the following resolution was proposed. Commissioner Starrels moved (Lever Second) for the following which passed by a vote of 7-0:

Because of the negative impact on the light and open space of the abutting neighbors, especially the neighbor at 1244 Potomac Street, ANC 2E cannot endorse the plans as presented. Also, ANC 2E does not appreciate the manner in which the applicant is trying to increase their lot coverage.

3108 M Street (OGB 05-160): No representative for the property appeared to make a presentation at the ANC meeting. Commissioner Starrels moved (Lever Second) for the following which passed by a vote of 7-0:

ANC 2E cannot support the revised plans for 3108 M Street, due to no representation regarding the proposed plans

3251 Prospect Street (OGB 05-157): Noting that this project had been reviewed previously by the ANC, it was moved to the consent calendar.

Consent Calendar for the Old Georgetown Board: Commissioner Clements moved (Moore Second) to accept the consent calendar which passed by a vote of 7-0. The consent calendar contained the following projects:

OGB 05-173, 1419 33rd Street
OGB 05-157, 3251 Prospect Street

3209 M Street (OGB 05-179): Plans were presented for a new sign reflecting a change of name for the business. A few minor changes to the lighting would also occur. Commissioner Starrels moved (Solomon Second) for the following which passed by a vote of 5-2 (Lever and Solomon opposing):

ANC 2E supports a 12" sign scheme plus the alterations to the storefront and the proposed lighting.

3106 M Street (OGB 05-176): The owner of Dahn Yoga presented a drawing for a wooden blade sign that would be placed on the second floor of the building. Details regarding color, size, letter height, and specific materials were unknown at the time. Commissioner Starrels moved (Clements Second) for the following which passed by a vote of 7-0:

Although 3106 M Street was represented at the meeting there was not enough information to take a position so we defer to the Old Georgetown Board.

3256 Prospect Street (OGB 05-180): The architects for this investment property presented plans to make several exterior changes to the existing structure. Windows and shutters would be replaced and several planters would be added beneath the windows. Interior renovations would include to new conference room spaces on the first floor. The exterior would be painted hunter green. Also, the owners wished to extend the length of the second floor by discarding the current patio scheme. Several Commissioner voiced concerns over the proposed changes to the second floor. Commissioner Starrels moved (Eason Second) for the following which passed by a vote of 7-0:

ANC 2E has no objection to Exhibit 1 as presented at our meeting but has strong opposition to a fully filled in addition design as shown in Exhibit 2.

3263 P Street (OGB 05-177): The owners and their architect presented plans for restoration to the front façade and a three-story addition to the rear. The current aluminum siding would be replaced with milled wood siding. The rear addition would be slighting depressed and would not rise three full stories above ground. The neighbors to the east had much concern over the attachment of portions of the house that were not already connected. They also worried about the structural integrity of their basement during excavation for the rear addition. Commissioner Skelsey moved (Clements Second) for the following which passed by a vote of 7-0:

ANC 2E offers limited support to the project with regard to the extension, and we offer significant concern to the structural integrity of the neighbor's house.

At 11:19 PM, with no further matters on the agenda, Commissioner Clements moved (Solomon Second) to adjourn this public session of ANC 2E. The motion passed with a 7-0 vote.

Submitted for the Approval of ANC 2E,

Brett F. Clements
Secretary, ANC 2E

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Old Georgetown Appendix 17 November 2005

OG Number: O.G. 05-261

HPA Number: HPA 05-442

Address: 1519 Wisconsin Avenue, NW

Owner(s): Gopac Inc - Erwin Gomez Salon

Description: Alterations to storefront and sign - Concept

RECOMMENDATION: No objection to general concept design for proposed alterations to storefront shown in Option A of supplemental drawings received and dated 21 October 2005. Recommend further simplification of design by eliminating steel beam and study of door location. File new submission of working drawings, including dimensions, details and material samples, with permit application for review by the Commission when ready.

OG Number: O.G. 05-263

HPA Number: HPA 05-444

Address: 2712 P Street, NW

Owner(s): Ramona Greene -

Description: One-story rear addition of screened porch - in progress - Permit

RECOMMENDATION: No objection to issuance of permit for rear addition of screened porch at first floor level to replace existing structure as shown in supplemental drawings received and dated 11 November 2005 which indicate traditional detailing will be used on cedar wood railing and steps. Planter on Poplar Lane is to be installed as previously approved. Note is made that permit application is pending final zoning review. Any modifications to the approved design as a result of further review in the permit process must be submitted to the Commission for approval. The Commission regrets that work was initiated prior to review and without a permit.

OG Number: O.G. 05-284

HPA Number: HPA 05-487

Address: 1419 33rd Street, NW

Owner(s): John Bradshaw -

Description: One-story rear addition on side yard - Permit

RECOMMENDATION: No objection to issuance of permit for proposed alterations to areaway and stairs to the basement entrance and for one-story bay addition on side of rear wing to match detail of existing bay as shown in supplemental drawings received and dated 23 November 2005. A one-story addition to cover the stairs was NOT approved and has been deleted from this permit application. Any modifications to the approved design as a result of further review in the permit process must be submitted to the Commission for approval.



OG Number: O.G. 06-002

HPA Number: HPA 06-003

Address: 3040 P Street, NW

Owner(s): Schemo-Breele -

Description: Replacement 7-ft high board fence in rear yard - Permit

RECOMMENDATION: Returned without Action. Submitted materials and a site visit of 17 October indicate that proposed 7-ft high replacement board fence at rear yard will not be visible from pul thoroughfare. Refer to the Historic Preservation Review Board.

OG Number: O.G. 06-005

HPA Number: HPA 06-005

Address: 1030 Wisconsin Avenue, NW

Owner(s): Jilma Prada - Prada Gallery

Description: Awning and sign - Permit

RECOMMENDATION: No objection to issuance of permit for proposed black canvas awning with s composed of 9-inch high letters reading "Prada Gallery" limited to the 12-inch valance. Note is r that permit application is pending final zoning review. Any modifications to the approved design result of further review in the permit process must be submitted to the Commission for approval

OG Number: O.G. 06-006

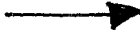
HPA Number: HPA 06-006

Address: 1605 Suters Lane, NW

Owner(s): Hong Joo Hahm -

Description: Replacement windows - existing - Permit

RECOMMENDATION: Recommend **AGAINST** issuance of permit for existing replacement window which are inappropriate for this row of buildings. Recommend further study of new replacement windows that match original 6/12 configuration with exterior muntins as shown in adjoining resid with the use of half screens. Commission regrets that work was completed prior to review and w a permit. A new submission of detailed drawings with permit application for a proposal of approp window replacements must be submitted for review no later than 28 February 2006.

 **OG Number:** O.G. 06-007

HPA Number: HPA 06-008

Address: 1242 Potomac Street, NW

Owner(s): Harry and Anne Gutman -

Description: Remove rear addition and re-construct two-story rear addition with basement, alterations to side window openings - Permit

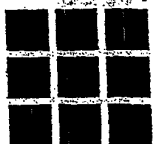
RECOMMENDATION: No objection to issuance of permit for proposed two-story rear addition as s in supplemental drawings received and dated 26 October 2005. Working drawings conform to approved concept. See previous Recommendation (O.G. 05-182). Note is made that permit appli is pending final zoning review. Any modifications to the approved design as a result of further re in the permit process must be submitted to the Commission for approval.

OG Number: O.G. 06-008

HPA Number: HPA 06-009

Address: 1819 35th Street, NW

Owner(s): DC Public Schools - Hardy Middle School



**RUSSELL SEARS
& ASSOCIATES**
ARCHITECTS

11 January 2006

Mr. Gary Heurich
1244 Potomac Street NW
Washington, DC 20007

Dear Mr. Heurich,

Pursuant to section 3307.2 of the District of Columbia Building Code (the "Code"), I am providing notification that construction will commence on an addition to the property at 1242 Potomac Street NW ten days from the date hereof.

Pursuant to section 3307.1 of the Code your property will be protected from any damage during the construction period.

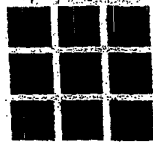
All construction will comply with applicable zoning and building code requirements.

Yours sincerely,

Amy T. Sanderson
Architect

Cc: DC Building Code Official
Ms. Carolyn Brown, Holland & Knight, LLP
Mr. Hank & Mrs. Anne Gutman

2627 Connecticut Avenue, N.W. ■ Suite 200 ■ Washington, D.C. 20008
T. 202 265-0600 ■ searsarchitects@erols.com ■ F. 202 265 7528



**RUSSELL SEARS
& ASSOCIATES**
ARCHITECTS

11 January 2006

Mr. and Mrs. Stephen Cooley
1236 Potomac Street NW
Washington, DC 20007

Dear Mr. and Mrs. Cooley

Pursuant to section 3307.2 of the District of Columbia Building Code (the "Code"), I am providing notification that construction will commence on an addition to the property at 1242 Potomac Street NW ten days from the date hereof.

Pursuant to section 3307.1 of the Code your property will be protected from any damage during the construction period.

All construction will comply with applicable zoning and building code requirements.

Yours sincerely,

Amy T. Sanderson
Architect

Cc: DC Building Code Official
Ms. Carolyn Brown, Holland & Knight, LLP
Mr. Hank & Mrs. Anne Gutman

2627 Connecticut Avenue, N.W. ■ Suite 200 ■ Washington, D.C. 20008
T. 202 265-0600 ■ searsarchitects@erols.com ■ F. 202 265 7528

From: DCTUXEDO@aol.com
To: Bill.Crews@dc.gov
Cc: anc2e@erols.com ; sgrant@dccouncil.washington.dc.us
Sent: Tuesday, March 07, 2006 11:22 AM
Subject: Request for permit info

Bill Crews
Zoning Administrator for the District of Columbia
Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE Suite 2000
Washington, DC 20002
202.442.4576 Office
202.442.4871 Fax
bill.crews@dc.gov

Bill

It has been about a month since I requested a copy of the permit application for the work being done at 1242 Potomac. Any success in finding the application? This issue is whether a trellis was used as the basis for granting a permit for a semidetached house currently over the 40% building allowance. The permit #88614 was issued on January 20, 2006. I want to keep our ANC option viable in case we wish to appeal the permit.

I'm thanking you in advance for a quick response.
Ed Solomon
Chair
ANC2E
202-333-5762

From: Crews, Bill (DCRA)
To: DCTUXEDO@aol.com ; Crews, Bill (DCRA)
Cc: anc2e@erols.com ; sgrant@dccouncil.washington.dc.us
Sent: Wednesday, March 08, 2006 8:43 PM
Subject: RE: Request for permit info

Ed,

Sorry for the delay, but we have found the permit file. Based upon the plat drawings, it appears that they are replying on an existing shed/ pergola.

I am also checking on another issue with the application. After I check this out, I'll give you a call.

Best regards,

Bill Crews

Zoning Administrator for the District of Columbia
Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE Suite 2000
Washington, DC 20002
202.442.4576 Office
202.442.4871 Fax
bill.crews@dc.gov

The Office of the Zoning Administrator is looking for additional zoning review technicians. If you or someone you know might be interested, please review the job description posting reference #3217 on the District Office of Personnel website www.dcop.dc.gov and contact the Zoning Administrator

From: DCTUXEDO@aol.com
To: Bill.Crews@dc.gov
Cc: anc2e@erols.com
Sent: Tuesday, April 04, 2006 12:14 PM
Subject: Followup to meeting with our ANC

Bill

Thanks for meeting with our ANC Commissioners and community leaders. The feedback that I received was very positive.

I took your advise and placed the appeal issue of the permit for 1242 Potomac on our ANC2E General Meeting Agenda. The meeting is tonight, April 4 at 6:30.

Is there any new info concerning your internal process to a stop work order? The permit info you submitted to me doesn't address the trellis issue. We also didn't receive a copy of the plans which may have addressed this issue.

Thanks for any update to this property at 1242 Potomac.

Again, I appreciate the time afforded our group and look forward to future meetings.

Thanks
Ed Solomon
Chair
ANC2E

From: DCTUXEDO@aol.com

To: Bill.Crews@dc.gov

Cc: DCTUXEDO@aol.com ; anc2e@erols.com ; john.lever@verizon.net ; bfc9@georgetown.edu ; bill.starrels@wamu.net ; Pmooreanc2e06@aol.com ; BillskelseyANC@aol.com ; Commish@cadwalader.us ; ZARTMANBJ@aol.com ; sgrant@dccouncil.washington.dc.us ; cag-president@cagtown.org

Sent: Monday, April 17, 2006 11:25 AM

Subject: ANC2E request for Update on 3256 N St. and 1242 Potomac

Zoning Administrator for the District of Columbia

Consumer and Regulatory Affairs

2000

202.442.4576 Office

202.442.4871 Fax

Washington, DC 20002

Department of

941 N. Capitol St. NE Suite

bill.crews@dc.gov

Bill

Would you please update me on the response to your letter from the owner of 3256 N St. regarding multi family status. The issue being continual occupancy as a multi family property. The owner must supply documentation to you by April 7 that indeed this property deserves this classification. If proper documentation is not received, the property reverts back to a single family status.

Also, what is the status on the permit for the property at 1242 Potomac St. (Gutman Residence.) Although ANC2E is in the process of filing an appeal to this permit, this appeal may be moot if the permit is withdrawn by DCRA. At our meeting you advised our community leaders that the basis of a trellis to justify this permit would not stand.

I'm thanking you in advance to a timely reply.

Ed Solomon

Chair

ANC2E

To: Bill.Crews@dc.gov

Cc: cag-president@cagtown.org ; anc2e@erols.com ; john.lever@verizon.net ; bfc9@georgetown.edu ; bill.starrels@wamu.net ; BillskelseyANC@aol.com ; Commish@cadwalader.us ; ZARTMANBJ@aol.com ; rixey@erols.com ; lenore.rubino@gmail.com ; Eric.Rogers@dc.gov

Sent: Wednesday, June 14, 2006 11:29 AM

Subject: Re: Zoning issues for Georgetown/Burleith - ANC2E

Bill

Item #3 Stancioff order was posted on Tuesday June 13, 2006. BZA order # 17310. In light of this order, the Gutman property at 1242 Potomac would be in violation of Zoning for a semi-detached house. You may recall from our meeting in your office, DCRA would revoke their permit if their permit was based on a trellis to convert their residence to a row house.

Thanks for the update on 3256 N St. and the other items.

Ed Solomon
Chair
ANC2E

In a message dated 6/13/2006 10:34:04 PM Eastern Standard Time, Bill.Crews@dc.gov writes:

Commissioners,

I apologize for the delay. I'll need a couple more days to track down some progress on the two trellis properties

3256 N. St. NW has not responded and I have requested our attorneys to prepare a revocation of the certificate of occupancy.

Best regards,

Bill Crews

Zoning Administrator for the District of Columbia

Department of Consumer and Regulatory Affairs

941 N. Capitol St. NE Suite 2000

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Chronology of Events and Contact with Advisory Neighborhood Commission 2E

Date	Event
Early 2005	The Gutmans initiated plans for an addition to their house. The first concept contemplated a large addition at the rear of the house that would be connected by an enclosed passageway to the existing free-standing garage at the rear of the property.
March 1, 2005	The ANC considered the proposal and recommended denial of the addition as too large for the site. ANC Chairman Bill Skelsey indicated that the Gutmans would not be precluded from making any changes to the property.
March 3, 2005	The Old Georgetown Board ("OGB") reviewed the first scheme and recommended that the addition be reduced in size.
May 5, 2005 – May 6, 2005	The Gutmans shared the revised drawings with their neighbors to the south, the Cooleys, and with their former neighbor to the north, Gary Heurich (who has since sold his home and moved out of the area). The revised drawings reduced the size of the addition by 60%, eliminated the connector between the main house and garage, and relocated and rebuilt the existing shed and pergola— also referred to as the "trellis"— to extend from the side of the main house to the south property line. The Cooleys indicated that they would not object to the revised scheme if the addition were set back an additional six inches from the south property line. The Gutmans agreed to make the additional refinement to the plans.
May 25, 2005	Upon learning that Mr. Heurich was not supportive of the new scheme, the Cooleys informed the Gutmans that they had changed their position and would oppose the project.
May 31, 2005	The ANC, as a result of the continuing objections from the two abutting neighbors, again recommended denial of the second scheme. Barbara Zartman of the Citizens Association of Georgetown ("CAG") was present at the ANC meeting and spoke in opposition to the pergola connection as a violation of the zoning regulations.

BZA Appeal No. 17513

Chronology of Events and Contact with ANC 2E

June 2, 2005	The Gutmans specifically discussed the 54% lot occupancy at the OGB meeting and neighbors objected to the Gutmans' interpretation of the zoning regulations.
July 7, 2005	The OGB considered the revised scheme and recommended approval of the project in concept, including the pergola extending to the south property line, with only minor modifications. The ANC and CAG were present at the OGB meeting. Stephen Cooley spoke in opposition of the project.
July 21, 2005	The Commission of Fine Arts ("CFA") adopted OGB's recommendation to approve the project.
October 2005	The Gutmans applied for a building permit.
November 4, 2005	The OGB considered the project for final review and recommended approval of the permit. The final drawings included the pergola connection. The OGB recommended approval of the permit. The ANC was present at the meeting of the OGB.
November 17, 2005	The CFA adopted OGB's recommendations to approve the permit.
December 23, 2005	The Zoning Review Branch under the direction of the Office of the Zoning Administrator approved the permit for zoning compliance. In seeking issuance of the necessary building permit, the Gutmans retained the services of a "third party inspector" to review the final plans for compliance with the D.C. Construction Codes. Because third party inspections are limited to the disciplines of construction, mechanical, electrical, plumbing, elevator and fire protection, the zoning review was conducted by the Zoning Review Branch.
January 11, 2006	The Gutmans, in anticipation of the imminent release of the building permit, notified the neighbors to either side that the construction was to begin soon and that the neighboring properties would be protected during construction.

BZA Appeal No. 17513**Chronology of Events and Contact with ANC 2E**

January 17, 2006	Mr. Cooley, the neighbor to the south, approached the contractor undertaking other authorized work at the site to inquire whether the permit had been issued. Upon learning that the permit was still pending, Mr. Cooley informed the contractor that the permit would not be issued once he made a few telephone calls.
January 20, 2006	The Department of Consumer and Regulator Affairs ("DCRA") issued the building permit for the renovations and addition to the Gutmans' residence.
January 24, 2006	The permit was posted in the front window of the Gutmans home. Because the house abuts the public sidewalk, the permit was and still is clearly visible to any person or member of the ANC walking by the property.
February 1, 2006	Mr. Cooley contacted the architect for the project to inquire whether the plans approved under the building permit were the same as those approved by the OGB. The architect informed Mr. Cooley that the plans were indeed the same drawings and that copies should be available through the public record at DCRA. Mr. Cooley did not contact the Gutmans or the contractor to review the stamped set of drawing located next door to him at the job site. Similarly, no member of the ANC attempted to speak with the Gutmans or the contractor about reviewing the approved set of drawings.
March 7, 2006	ANC 2E Chairman Ed Solomon e-mailed Zoning Administrator Bill Crews to follow-up with Zoning Administrator Crews regarding Chairman Solomon's request for a copy of the permit application for the work being done at 1242 Potomac Street, NW.
March 8, 2006	Zoning Administrator Crews replied to Chairman Solomon stating that he had found the permit file and would give Chairman Solomon a telephone call after Zoning Administrator Crews checked into another issue with the application.

BZA Appeal No. 17513

Chronology of Events and Contact with ANC 2E

March 21, 2006	Deadline for appeal from the ANC.
April 4, 2006	Chairman Solomon e-mailed Zoning Administrator Crews thanking Zoning Administrator Crews for meeting with ANC 2E Commissioners and community leaders. Chairman Solomon stated that the appeal of the permit is on the April 4 th Agenda for the ANC 2E General Meeting. Chairman Solomon asked Zoning Administrator Crews if he had any new information concerning the internal process to a stop work order. Chairman Solomon informed Zoning Administrator Crews that the permit information Zoning Administrator Crews provided does not address the trellis issue and that the ANC did not receive a copy of the plans which may have addressed the trellis issue.
April 17, 2006	Chairman Solomon e-mailed Zoning Administrator Crews to inquire about the status of the permit. Chairman Solomon stated that "[a]lthough ANC 2E is in the process of filing an appeal to this permit, this appeal [may] be moot if the permit is withdrawn by DCRA." Chairman Solomon also stated that "[a]t our meeting [Zoning Administrator Crews] advised community leaders that the basis of a trellis to justify this permit would not stand."
April 19, 2006	Despite clear knowledge of the proposed work, as fully discussed in numerous publicly noticed meetings, including ANC meetings, the ANC waited 88 days after the issuance of the building permit to file its appeal. The filing of the ANC's appeal violated the requisite 60-day time period for filing an appeal. The ANC's appeal was 28 days too late.

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