

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

Appeal of:  
Todd Boley and ANC 3E  
From the Decision of the Zoning  
Administrator Approving Building  
Permits for Four Semi-Detached  
Dwellings at 4319, 4319 1/2, 4321, and  
4321 1/2 Fessenden Street, N.W.  
Square 1655, Lots 17-20

Appeal No. 17631

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**Department of Consumer and Regulatory Affairs' Responses to Appellants' Points of  
Appeal, a/ka "Thirteen Assertions"**

**POSITION STATEMENT**

Appellee, District of Columbia Department of Consumer and Regulatory Affairs ("Agency") takes the position that the instant appeal should be dismissed for the following reasons:

**Appellants' Claims**

The Department of Consumer and Regulatory Affairs opposes the appeal filed by Todd D. Boley and the Advisory Neighborhood Commission 3E (Appellants) challenging the issuance by the Zoning Administrator of permits for four semi-detached dwellings at 4319, 4319 1/2, 4321, and 4321 1/2 Fessenden Street, N.W. Washington, D.C. (Fessenden). The Appellants' claim that the common driveway easement at Fessenden violates the street frontage dimensions and parking space access and location requirements under the Zoning Regulations are in contravention of those regulations. This bold assertion is not accurate. The Board of Zoning Adjustments (BZA) has recognized the value of easements in providing vehicular and pedestrian access to adjoining properties in matter-of-right developments and has no effect on lot width. More specifically, the Appellants' misreading of the parking

BOARD OF ZONING ADJUSTMENT

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EXHIBIT NO. 25

Board of Zoning Adjustment  
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requirements has led them to incorrectly conclude that the locations of the parking spaces do not comply with the provisions of Chapter 21. More specifically section 2116.1 of the regulations provides that “all parking spaces shall be located on the same lot with the building or structure it is intended to serve.” The appellants claim that the parking spaces provided are impermissible as they are located in the front yard of houses on Lots 17 and 18 at the rear of Fessenden in violation of 2116.2 and 2116.4. Those sections provide that parking spaces shall be located in either (1) a garage or carport; (2) the rear yard or (3) side yard, and shall not be located “in the area between the building line and lot line abutting the street.” All required parking spaces are located on the same lot with the building or structure it is intended to serve. The space required for Lots 17 and 18 are located in the garages incorporated into the facades of the structures. The space required for Lots 19 and 20 are located in the rear yard of each house. It should be noted that contrary to Appellants’ assertion the parking spaces provided in front of the house on Lot 18 are not located “in the area between the building line and lot line abutting the street.” A building line according to 11 DCMR § 199.1 (building line) is a line beyond which a property owner has no legal or vested right to extend a building or part of a building without special permission and approval of the proper authorities; ordinarily a line or demarcation between public and private property, but also applied to building restriction lines, when recorded in the records, of the Office of the Surveyor.

### **Response to Appellants’ Points of Appeal, a/k/a “Thirteen Assertions”**

During the course of the hearing conducted before the BZA the Board requested that the Zoning Administrator place its testimonial responses to the “Thirteen Assertions” of the

Appellants' in the record, more specifically a written response of its oral answers given to the "Thirteen Assertions." To that end please note as follows:

**Appellant's Assertions and Zoning Administrator's Responses:**

- 1) Zoning Regulation §401.6 requires that each lot have a street frontage of at least 14 feet.

Lot 18 on paper includes a panhandle or rat-tail with 14 foot street frontage. However, that frontage has from the outset been subject to a perpetual use "easement" from Developer to itself for the exclusive benefit of Lot 19 but apparently to be used for storm water management from the entire property. As a result, Lot 18 has no street frontage. This violates §401.6.

**Zoning Administrator's Response:** The presence of an easement on that portion of lot 18 that fronts on Fessenden Street does not extinguish that lot's approved frontage. The 14' approved frontage does meet 11 DCMR Section 401.6.

- 2) Lot 17 is the second rat-tail lot. (Both rear lots are rat-tail lots.) It also has a paper street frontage of 14 feet. However, that frontage has from the outset been subject to a perpetual non-exclusive ingress and egress "easement" from the Developer to itself for the benefit of all four lots. Lot 17's street frontage has never been its own. This, too, violates §401.6.

**Zoning Administrator's Response:** As noted above for Lot 18, the presence of an easement on that portion of lot 17 that fronts on Fessenden Street does not extinguish that lot's approved frontage; The 14' approved frontage does meet 11 DCMR Section 401.6.

- 3) The driveway established by this ingress/egress "easement" would appear to be only 13 feet wide because the storm water management facilities the Developer will install on what is ostensibly Lot 18 will encroach upon the width of the driveway. This also violates §401.6

**Zoning Administrator's Response:** The applicable minimum driveway width is set forth in 11 DCMR Section 2117.8 as 12 feet. This is a separate issue from the easement width noted in the complaint, but nevertheless exceeds the minimum by one foot. In

addition, this also does not affect the minimum lot frontage requirement set forth in 11 DCMR Section 401.6.; Therefore, no violation has occurred.

- 4) If one ignores the way the “easements” define the lots, the frontage for both rear lots, presumably required for the purpose of providing ingress and egress to their garages, becomes only about 11 feet when each lot’s rat-tail turns east to provide garage access. This violates §401.6.

**Zoning Administrator’s Response:** Lot 18 does narrow to 11 feet; however 11 DCMR Section 401.6 specifies a minimum street frontage width “...measured along the street...” of not less than 14 feet, which the approved subdivision does show; therefore, it is not a violation.

- 5) Zoning Regulations §2117.4 requires that each separate required parking space – one is required for each lot – be accessible via its own driveway. By virtue of a perpetual non-exclusive ingress and egress “easement” from the Developer to it self for the benefit of all four lots, no lot’s required parking space is accessible via the lot’s own driveway. This violates §2117.4.

**Zoning Administrator’s Response:** The appellant incorrectly interprets 11 DCMR Section 2117.4 that each parking space is to be accessible by its ‘own’ driveway. Instead, the section states:

*“...each required parking space shall be accessible at all times directly from improved streets and alleys via graded and unobstructed private driveways that form an all weather improved streets or alleys providing access to required spaces shall have a minimum width of ten feet (10 ft. ) and be paved in compliance with the standards of the Department of Transportation.”*

There is no explicit or suggested requirement that each space has to have an exclusive driveway; Therefore, it is not a violation.

- 6) Further, if one ignores the way the “easement” define the lots, there is no means of ingress and egress to the required parking spaces for Lots 19 and 20. This violates §2117.4.

**Zoning Administrator's Response:** Ignoring the easements that provide for driveway and parking access would violate the recorded easement requirement and would be a civil matter enforceable by the property owners of lots 17-20 themselves. Preserving the easements does allow for the required driveway ingress and egress so as to comply with 11 DCMR Section 2117.4

- 7) Zoning Regulations §2116.1 requires all parking spaces to be located on the same lot with the building they are intended to serve. By perpetual exclusive parking "easements" from Developer to itself, however, Lot 18 has one, and Lot 17 has two, parking spaces other than on the same lot as the house the parking space will serve. This violates §2116.1.

**Zoning Administrator's Response:** Each lot has at least one off street parking space for the house it serves which does comply with 11 DCMR Section 2101.1. There is no prohibition to allow additional off-street parking spaces beyond the requirement to be on other lots (if so arranged by easement); No violation of has occurred.

- 8) Zoning Regulations §2116.2(b) bars any parking space within a front yard, but it would appear that in addition to the garages for Lots 17 and 18 additional open-air parking will be available in the front yards of those properties. This violates §2116.2 (b).

**Zoning Administrator's Response:** There is no front yard requirement in the subject R-2 district, and, therefore, no front yards are required of the subject lots. The parking shown on the approved plat for Lots 19 and 20 is in the rear yard. 11 DCMR Section 2116.4 prohibits parking "between a building line and lot line abutting a street", and no parking is approved for this area. The plan compiles and no violations are found for 11 DCMR Sections 2116.2(b) or 2116.4.

- 9) Zoning Regulations §401.3 requires a minimum lot size of 3000sq. ft. By virtue of perpetual exclusive parking "easements" from Developer to itself for the benefit of Lots 17 and 18, Lot 19 is not 3,024 sq. ft. in area but rather to 2,494 sq. ft. This violates §401.3

**Zoning Administrator's Response:** The provisions of easement do not subtract areas from lot size calculations, and OZA does not deduct these areas as there is no zoning regulation specifying for such deductions. Therefore, no violation of 11 DCMR Section 401.3 (lot size) has occurred.

10) Zoning Regulations §404.1 requires a rear yard with a minimum depth of 20ft. By virtue of perpetual exclusive parking “easements” from Developer to itself for the benefit of Lots 17 and 18, the depth of Lot 19’s rear yard is a fraction less than 20ft. This violates §404.1

**Zoning Administrator’s Response:** The provisions of easement do not subtract areas from rear yard calculations, and OZA does not deduct these areas as there is no zoning regulation specifying for such deductions. Therefore, no violation of 11 DCMR Section 404.1 (rear yard) has occurred.

11) Zoning Regulation §403.2 requires that the building on Lot 19 occupy no more than 40% of the Lot. By virtue of perpetual exclusive parking “easements” from Developer to itself, for the benefit of Lots 17 and 18, the portion of Lot 19 occupied by the building is at least 45%. This violates §403.2.

**Zoning Administrator’s Response:** The provisions of easement do not subtract areas from lot occupancy calculations, and OZA does not deduct these areas as there is no zoning regulation specifying for such deductions. Therefore, no violation of 11 DCMR Section 403.2 (lot occupancy) has occurred.

12) Even if the land granted by “easement” for the benefit of the other lots is included in the area of Lot 19, the building occupies, including its bay window in the front, about 42.5% of the lot in violation of §403.2, and the same is true with regard to Lot 20, which includes no land subject to the “easements”.

**Zoning Administrator’s Response:** According to the wall test report dated 3/22/ 07 for lot 19, I calculated the actual lot occupancy at 39.34% which complies with the 40% lot occupancy limit set forth for R-2 districts. The cited bay window feature projects into the public space of Fessenden Street and is not counted as part of the subject lot’s occupancy calculation. This is true also for lot 20; therefore, no violation of 11 DCMR §403.2 (lot occupancy) has occurred.

13) Zoning Regulations §405.9 requires each lot to have a side yard at least 8 ft. wide. Each building has an outside stairway to the basement built into the foundation of the structure.

Each stairway takes up about half of the width of what otherwise would be an 8ft. (barely) side yard for each building. This violates §405.9.

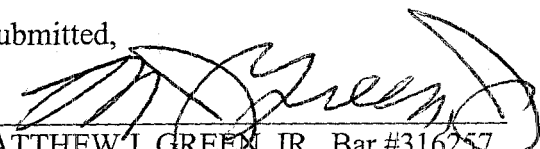
**Zoning Administrator's Response:** An areaway within a side yard (an areaway being an opening to the ground below grade) does not violate side yard or any yard requirements. Yard requirements apply to buildings and structures 4 feet or more above grade; no violation of 11 DCMR §405.9 has occurred.

### Conclusion

Based on the foregoing the Board should find in the instant matter that the Zoning Administrator did not commit any error in approving the subdivision and building permits for Lots 17-20 in Square 1655. Consequently the appeal of Todd Boley and ANC 3E should be dismissed with prejudice.

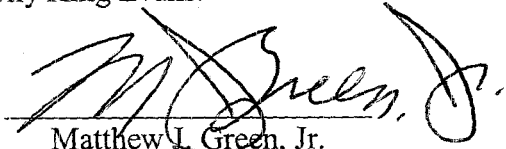
Respectfully submitted,

BY:

  
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### CERTIFICATE OF SERVICE

I HERBY CERTIFY that a copy of the foregoing Responses to Appellants' Points of Appeal, a/k/a Thirteen Assertions was sent via fax to this 19<sup>th</sup> Day of July 19, 2007; to Benjamin W. Boley, Esq., Goodwin Proctor 901 New York Avenue, N.W., Washington, D.C. 20001, Mary Carolyn Brown, Esq., Holland & Knight, LLP, 2099 Pennsylvania Ave., N.W. Washington, D.C. 20006, and Advisory Neighborhood Commission 3E Lisner Home, 5425 Western Ave., N.W., Washington, D.C. 20008, Attn: Polly King Evans.

  
Matthew J. Green, Jr.