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FILE NO: 68783.000002

August 7, 2007

BOARD OF ZONING ADJUSTMENT
District of Columbia

By Hand

CASE NO. 17645
EXHIBIT NO. 20

Ruthanne G. Miller, Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W.
Washington, D.C. 20001

Re: Appeal No. 17645 (Objection to Request for Continuance)

Dear Chairperson Miller and Members of the Board:

On behalf of Michael and Ally Banks, owners of the real property which is the subject of this appeal by the Dexter Street Trust ("Trust"), we hereby request permission to intervene in opposition to this appeal in the event that the Board determines they are not automatically parties to the appeal. Agent authorization is attached. We continue to object to the request for a continuance.

Our original written opposition of July 27, 2007, to the request for a continuance by the Trust was prompted by a call from counsel for the Trust for consent to such a continuance since, as the Banks own the property in question, they are automatically parties to the appeal. This is corroborated by the fact that as counsel for the owners, I received notice from the BZA staff dated June 8, 2007 of the impending hearing on September 4, 2007 as a party pursuant to 11 DCMR § 3112.14(b). See Exhibit A. Counsel for the Trust's allegation in her July 31, 2007 letter to the Board reiterating her request for a continuance of this appeal that

"Mr. and Mrs. Banks are not parties to this case, and did not state in their letter any intent to intervene as such. That said, Mr. and Mrs. Banks' opposition to the requested continuance has no relevance to this case."

is belied by the fact she (Ms. Dumas) called me as counsel for the owners as parties to the appeal to request a consent to the continuance which prompted the opposition. In any event, this letter serves as a request on behalf of the property owners to intervene in opposition to the appeal and thus moots any question of party status.

FILED
AUG 7 2007
CLERK OF SUPERIOR COURT
DISTRICT OF COLUMBIA

Ruthanne G. Miller, Chairperson
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Counsel for the Trust's statement in her July 31, 2007 letter that: "To the best of our knowledge, the Banks have clear and marketable title and the house can be conveyed without restriction, other than what has been on the title records since it was constructed" is misleading and that a continuance "will not prejudice any party or person" is flatly false.

In addition to alleging that the Banks' application for a building permit violates the zoning regulations, the Trust has advised the Banks per counsel that they allegedly cannot build any addition to the existing house or a new house on the lot in question or, for that matter "other changes to existing improvements" without their permission given a 1946 covenant of record. See Exhibit B. Rather than commence costly litigation to declare invalid these covenants which we submit are unenforceable as a matter of law, have not been enforced in many years and whose trustees are long deceased or out of business with no "substitution of new trustees", the Banks decided to put their house up for sale. However, the existence of the so called covenants has "put off" all potential buyers and the house remains vacant and has been vacant since December of 2005. So the owners are in the unenviable position of not being able to sell their antiquated 1950 house which most brokers have advised them is a "tear down" because of the alleged covenants raised by the Trust or build a new house because of the "cloud" of this appeal over the proposed height, side yard and tree issues. The continuance of this case for another 3-4 months will have a serious economic effect on the Banks who are carrying two mortgages, one of which is on their current home in Maryland, and another on this property.

Further, Counsel for the Trust has not revealed the details of the "unavoidable scheduling conflict" of the Trust's so called expert, who is a neighbor/architect who has an inherent bias in this case as a nearby property owner.

The Trust has had notice of the appeal hearing since June 8, 2007, and should not be allowed to obtain a continuance for an unknown scheduling conflict at this late date to the substantial financial detriment of the property owners who have clear standing to oppose this request.

Sincerely,


Richard L. Aguglia

cc: By Mail
Kinley Dumas, Esq.
Michael and Ally Banks
ANC 3D
Matt LeGrant, Acting Zoning Administrator
Charles Thomas, Assistant Attorney General

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Richard Aguglia, Esq.
c/o Michael and Allyson Banks
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20007

JUN 08 2007

Re: BZA Appeal No. 17645

Dear Mr. Aguglia:

This is to advise you that a public hearing has been scheduled by the Board of Zoning Adjustment involving property that you own and or lease, on Tuesday, September 4, 2007, at 441 4th Street, N.W., Suite 220, Washington, D.C., 20001, concerning the following appeal:

Appeal of The Dexter Street Trust, pursuant to 11 DCMR §§ 3100 and 3101, from the decision of the Zoning Administrator (ZA) to issue Building Permit No. B94022, allowing the construction of a new single-family dwelling and free-standing garage that allegedly violates building height, side yard and Wesley Heights Overlay tree protection provisions, in the WH/R-1-A District at premises 4840 Dexter Street, N.W. (Square 1397, Lot 6).

This case is in Advisory Neighborhood Commission 3D. This case will be heard between 1:00 p.m. and 6:00 p.m.

You should be aware that items may be submitted to the Board by other individuals, organizations and government agencies both in support of and in opposition to your appeal. Approximately one week prior to the public hearing, you should review the file in your appeal so that you are prepared to respond to any issues that may be raised regarding your appeal. Further, if you are not clear about what information you must present to the Board in support of your appeal, please contact the Office of Zoning as soon as possible.

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: zoning@dc.gov

Web Site: www.dca.dc.gov

If you have any questions or require any additional information, feel free to call the Office of Zoning at (202) 727-6311.

SINCERELY,



JERRILY R. KRESS, FAIA
Director



EXHIBIT B

ROBINS, KAPLAN, MILLER & CIRESI LLP

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WASHINGTON, D.C. 20006-1307
TEL: 202-775-0725 FAX: 202-223-8004
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ATTORNEYS AT LAW

RICHARD B. NETTLER
(202) 736-2720/2721

KINLEY R. DUMAS
(202) 736-2659

October 13, 2006

VIA OVERNIGHT MAIL

Michael and Allyson Banks
3805 Taylor Street
Chevy Chase, MD 20815

Re: 4840 Dexter Street, N.W., Washington D.C.

Dear Mr. and Mrs. Banks:

We represent Mrs. Ann Brown, owner of 4848 Dexter Street, N.W., Washington D.C. Mrs. Brown has asked us to review the site plan for your proposed home at 4840 Dexter Street, and other potential issues that may impact her property rights as you move forward to permitting and construction of your home. We write on behalf of Mrs. Brown and several of her neighbors, including James and Deborah Fallows, Richard and Justine Kingham, Doug and Lori Beresford, and Drs. Ernest and Monica Lack, who have authorized us to send their letter on their behalf as well.

First of all, while Mrs. Brown and her family are certainly concerned about your project and the impact on the Brown home, they are also mindful of your own property rights and desire to make your new home on Dexter Street. As you are aware, the Browns have previously expressed their concerns and asked questions about your project, many of which have been answered (but not necessarily satisfactorily) by your engineers. This letter should serve as a continuing invitation to discuss the Brown's concerns and your project and to work toward a mutually agreeable outcome so that you may proceed expeditiously with permitting and construction.

Mrs. Brown's chief concerns lie with the stormwater management system proposed for your property. While our client has been informed by you or your engineer that this system meets or exceeds the requirements of the D.C. Code with respect to such systems, based on previous experience and observations of the drainage from your property and others along the higher elevations on Dexter Street, we continue to be deeply concerned about both the sufficiency and reliability of such a system in handling stormwater. We also remain concerned about the design of the home, namely, the height of the building, the gross floor area, and the location of the rear garage, as well as the significant planned grade changes overall. Height is an issue because the significant change in grade between the west side of your property and the beginning of the Brown property along the shared property line will exacerbate the apparent size

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or scale of your proposed home. Every increase in height and grade magnifies, not minimizes, this problem.

We are also unsure whether the proposed home meets the requirements of the Wesley Heights overlay with respect to gross floor area. Based on your lot size, the maximum gross floor area and cellar floor area (excluding 600 square feet of your garage) is approximately 9080 square feet. We have not seen a plan that shows the total proposed gross floor area and cellar floor area. Finally, the garage seems to be located within the required side yard setback in violation of the zoning regulations. Again, we believe these are issues that may be best addressed by a conversation among neighbors and their expert advisors, and we hope that we can come to a mutually agreeable outcome.

Lastly, we want to make sure that you are aware that your property, along with all of the other properties on Dexter Street and Dexter Terrace, are subject to certain covenants for the benefit of all of the owners of the former Blanchard Estate. Specifically, the restrictions located in the covenants which were part of the Deed¹ from the Estate of Susie E. Curran to Woodrow D. and Judith C. Marriott, your immediate predecessors in interest, state:

"No line, fence or wall of any kind shall be erected, placed or suffered to remain upon said premises, unless and until the written consent of [George E. Hamilton, Jr. and Union Trust Company of the District of Columbia, Trustees under the Will of Susie E. Curran, deceased] or their successors be first had and obtained therefor...[and] that no improvements of any character shall be erected or installed or suffered to remain upon the said land, unless and until the plans and specifications, design, color scheme and location of said improvements on said land shall have been approved in writing by the said [George E. Hamilton, Jr. and Union Trust Company of the District of Columbia, Trustees under the Will of Susie E. Curran, deceased], or their successors, and that no change shall be made in the elevation, design, color scheme, or location of any improvements on said land after original construction has begun without such written consent being first had and obtained."

Mrs. Brown and all of the other property owners on Dexter Street are the successors in interest of the Estate of Susie E. Curran, and are therefore the beneficiaries of the covenants on your property. Thus, please be on **immediate notice** that under these covenants, you have an affirmative duty to secure the consent and approval of Mrs. Brown and her neighbors similarly situated **before commencing** any demolition, re-grading, new construction, improvements, or other changes to existing improvements.

¹ Recorded among the land records for the District of Columbia in Liber 8368 at folio 475 on November 6, 1946.

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Again, on behalf of Mrs. Brown and other neighbors, we sincerely hope that the concerns Mrs. Brown and others have expressed to you can be addressed through the design of your home and the stormwater management system that will serve it. We look forward to meeting with you soon to resolve these issues.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



Richard B. Nettler



Kinley R. Dumas

Cc: Mrs. Ann Brown
Janet Brown and Michael Brewer
James and Deborah Fallows
Justine and Richard Kingham
Doug and Lori Beresford

EXHIBIT C

HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
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RICHARD L. AGUGLIA
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FILE NO: 68783.000002

August 3, 2007

By Hand

Ruthanne G. Miller, Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W.
Washington, D.C. 20001

Re: Appeal No. 17645 (Objection to Request for Continuance)

Dear Chairperson Miller and Members of the Board:

Please be advised that Richard L. Aguglia, Esq. of Hunton & Williams LLP is our designated attorney agent in this case and has the power to bind us before the Board.

Sincerely,



Michael Banks



Ally Banks

cc: Richard L. Aguglia, Esq.