

Arent Fox

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17645
EXHIBIT NO. 21

August 10, 2007

BY HAND

Ruthanne G. Miller, Chairperson
District of Columbia Board of Zoning Adjustment
441 Fourth Street N.W., Suite 210S
Washington D.C. 20001

Re: Appeal No. 17645, Appeal of the Dexter Street Trust, **Motion to Strike August 7, 2007 letter from Richard Aguglia on behalf of Michael & Ally Banks**

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Reference Number
029671.00001

Dear Chairperson Miller and Members of the Board:

We are in receipt of a letter dated August 7, 2007 from Richard Aguglia on behalf of Michael and Ally Banks, owners of the property that is the subject of the above-referenced appeal. We hereby Move to Strike Mr. Aguglia's entire submission including its exhibits, or, in the alternative, portions of the submission as explained herein, on the following grounds:

First, Michael and Allyson Banks are not, as asserted by Mr. Aguglia, automatic parties to this appeal.¹ Section 3106.2 of the Zoning Regulations states "[e]xcept for the appellant, applicant, or the ANC, to participate as a party in a proceeding before the Board, *any affected person* shall file with the Board...[a] written statement setting forth why the person should be granted party status..." Mr. Aguglia is incorrect when he states that Michael and Allyson Banks were automatically parties to the appeal. He simply confuses the Board's requirement that notice of a filed appeal include the property owner. *See* Sections 3112.13 and 3112.14 of the Zoning Regulations. The Regulations specifically state and in fact reiterate in Section 3112.15 that a property owner must take additional action to intervene in an appeal:

"At the time of the hearing on the appeal, the Board, *in its discretion and for good cause shown*, may permit persons who have a specific right or interest that will be affected by action on the appeal to *intervene* in the appeal for such general or limited purpose as the Board may specify."

(emphasis added).

¹ Mr. Aguglia's assertion that a call by counsel for the Dexter Street Trust to him requesting consent for a continuance is false. Ms. Dumas phoned Mr. Aguglia after the request for continuance had already been filed as a professional courtesy, given the ongoing dealings between each of our clients and since no request for intervention had yet been filed. No such request for consent was made, nor was one necessary.

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Mr. Aguglia's filing also exceeds a simple request to intervene in opposition to the instant appeal. The letter makes certain statements about the communication between attorneys for Mr. and Mrs. Banks and the Dexter Street Trust which are both untrue and irrelevant to the Board's consideration of this case or the appellant's requested continuance. Moreover, the Board's rules of procedure do not permit any further response by Mr. Aguglia beyond his opposition to the requested continuance, which he has already noted in a July 27, 2007 letter.

Second, Mr. Aguglia's letter and its exhibits should be stricken because the submission addresses a private matter between the Banks' and the Dexter Street Trust which has no bearing on this matter before the Board of Zoning Adjustment. Mr. Aguglia's attempts to morph enforcement of a private covenant on his property with a zoning appeal are irrelevant and fall completely outside the bounds of this action. The truth is that Mr. and Mrs. Banks applied for and the Zoning Administrator issued a building permit which is inconsistent with the applicable provisions of the Zoning Regulations, and that is the only matter this Board is permitted under its delegated authority to consider. This appeal does not, as a matter of law, stay the building permit, and until this Board decides otherwise, nothing but their own peril is preventing Mr. and Mrs. Banks from commencing work.

Finally, it should be noted for the record that although Mr. Aguglia's assertion that the Trust and other neighbors along Dexter Street have advised Mr. and Mrs. Banks that a private covenant affecting the property requires the collective consent of the Dexter Street neighbors is correct, the Trust and the neighbors have outlined their specific concerns over the proposed construction (which go beyond the subject of this appeal) and, in February of 2007, explicitly set forth for Mr. and Mrs. Banks what changes to their plans would be required before such consent will be granted. It is the Banks who have failed to respond, and who have, to their own detriment, delayed the alteration of their plans and the construction of their new home such that they have ended up in their current financial situation. Neither this action nor the private covenant place any restriction on the sale of the property.

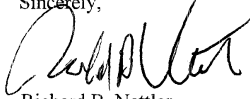
The Trust has made every effort to make all necessary parties and witnesses available for the September 4, 2007 hearing, however, neither Justine Kingham, AIA, nor Mark Stires, P.E. of Bowman Consulting Group, both of whom were identified as witnesses in the original filing of the appeal, are able to be present to testify. Likewise, not all of the Trustees of the Dexter Street Trust are able to be present due to summer travel schedules, as the hearing is scheduled for the day after the Labor Day holiday. As soon as it became apparent that we could not accommodate the schedules of all required witnesses, we provided notice to the Board, through the Office of Zoning's Director of Operations, Richard Nero, as well as the parties in this matter, Advisory Neighborhood Commission 3D and the Zoning Administrator for the District of Columbia,

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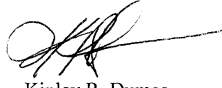
neither of whom objected to the continuance of this matter.² Notice was provided to the property owner as a professional courtesy, as well as to the parties well in advance (in fact, more than six weeks in advance) of the hearing date.

Mr. Aguglia's filing goes well beyond the simple request for intervention as an interested party that was required, and should be stricken from the Board's record in this case. In the alternative, we request that portions of Mr. Aguglia's letter which do not set forth a basis upon which a request for party status can be granted, including all exhibits to the letter, be stricken from the record in this case.

Sincerely,



Richard B. Nettler



Kinley R. Dumas

cc: The Dexter Street Trust
Advisory Neighborhood Commission 3D
Elizabeth Sandza, Commissioner, Advisory Neighborhood Commission 3D
Alma Gates, Commissioner, Advisory Neighborhood Commission 3D
Matthew LeGrant, Acting Zoning Administrator
Charles Thompson, Assistant Attorney General for the District of Columbia

² It should also be noted that although the hearing notice is dated June 8, 2007, the appellant did not receive the notice from the Office of Zoning until July 9, 2007, when it arrived in the mail. The appellant admits, however, that it had actual knowledge of the hearing date prior to July 9, 2007, which it obtained via telephone conversation with the staff of the Office of Zoning.