

Erie Associates, LLC

2424 18th Street, NW
Washington, DC 20009
202-986-8965

April 30, 2008

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 200S
Washington, DC 20001

Re: **BZA Appeal No. 17746**

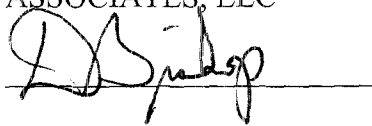
To Whom It May Concern:

Enclosed are 20 copies of a package that we have prepared for inclusion with any materials to be send to BZA Members in advance of the scheduled hearing for the above referenced appeal, to take place on Tuesday, May 6, 2008.

Respectfully submitted,

ERIE ASSOCIATES, LLC

By



BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17746

EXHIBIT NO. 14

2008 APR 30 PM 3:05

DC OFFICE OF ZONING

RECEIVED

Erie Associates, LLC

2424 18th Street, NW
Washington, DC 20009
202-986-8966

April 29, 2008

Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2008 APR 30 PM 3:06

Re: BZA Appeal No. 17746---Opposition by Erie Associates, LLC (property owner and party to this case)

Honorable Members of the Board:

Erie Associates, LLC is the owner of the property that is the subject of this appeal. For the following reasons, the appeal by the Reed Cooke Neighborhood Association (RCNA) is without merit and should be denied or dismissed by the Board.

1. The BZA is not authorized to review this appeal.

Chapter 31 of the Zoning Regulations contains the BZA's "Rules of Practice and Procedure". Section 3100.2 of that chapter, which governs appeals, states that "The Board, pursuant to the Zoning Act, shall also hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations, Title 11". The Zoning Act, referred to in this regulation, is included as Section 6-641.07 of the DC Code. Subsection (f) of that section states that "Appeals to the Board of Adjustment may be taken by any person aggrieved...by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map...". Subsection (g)(1) of that Section has similar language.

The only information from the BZA record in this case that was available to Erie Associates LLC was the appeal form filed by RCNA with one "Additional Appellant Declaration" sheet. The form indicates that RCNA is appealing "the administrative decision of DDOT Office of Public Space, made on 2/22/07, to the effect that application for curb cut was granted at 2351 Champlain Street, NW in conjunction with the use of non-conforming curb cut in existence at 2357 Champlain Street, NW". The additional sheet indicates that the parking provided is in excess of the requirements of Section 2101 of the Zoning Regulations, which is in contradiction to Sections 1440.4 and 1400.2(a) and (c).

There is no allegation that the decision made by the DDOT Office of Public Space was based in any way upon the Zoning Regulations or Map. The DDOT Office of Public Space does not administer or enforce the Zoning Regulations. For these reasons alone, the appeal should be dismissed.

In addition, the appellant quotes the purposes of the Reed Cooke Overlay in Section 1400.2, but does not point to any specific provision in the Reed Cooke Overlay zoning regulations as support for the claim that there was an error by the DDOT Public Space Office, or anyone else for that matter, in the enforcement of the zoning regulations. There is nothing in the Reed Cooke Overlay regulations prohibiting curb cuts for access to parking spaces. If the Zoning Commission had intended to include a limitation on curb cuts, they could have done so. For instance, see Section 1505 (Dupont Circle Overlay), and Section 1701.4 (Downtown Development District Overlay).

2. The Appeal was not filed timely.

The Appeal Form indicates that the "administrative decision" was made by the DOT Office of Public Space on 2/22/07, which was the date of our public hearing before the Public Space Committee (PSC), in which they gave a bench decision approving the curb cut for our project at 2351 Champlain Street, NW. Councilmember Graham wrote a letter dated January 23, 2007, in support of the application to the PSC. (Copy attached). The ANC attended the February 22, 2007 PSC hearing and testified in opposition. The ANC then filed an appeal of the PSC decision to the Director of DDOT by letter dated March 2, 2007. (Copy attached). I attended the Reed Cooke Neighborhood Association's March 2007 monthly public meeting, in which they voted to support the ANC's appeal to the DDOT Director. The issue of this curb cut was the subject of an article in the March 14, 2007 edition of the The Current newspapers, in which it was mentioned that the Reed Cooke Neighborhood Association "might sue to block the curb cut." (Copy attached). The Dupont Current ran an editorial in its March 21, 2007 edition in support of the PSC decision. (Copy attached). The ANC wrote to the Zoning Commission on March 22, 2007, requesting reconsideration and rehearing of the PSC decision to approve the curb cut. (Copy attached). The Director of the Office of Zoning responded on that same day, indicating that the commission does not hear appeals, but that the BZA hears "appeals of actions taken by administrative officers or bodies where said actions are *specific to the administration or enforcement of the Zoning Regulations...*". (Emphasis in original)(Copy attached).

Even with all of this neighborhood activity going on in the spring of 2007, which activity was well-known to the public, and was published in the local media, the RCNA's appeal to the BZA was not filed until October 19, 2007, eight months after the PSC decision. Assuming that the BZA has authority to hear this appeal from a decision of the DDOT Public Space Committee, and assuming that the appeal states a valid basis for a challenge, the BZA nonetheless still has no jurisdiction to hear this appeal. Section 3112.2 of the Zoning Regulations requires that the appeal must be filed within 60 days from the date that the person appealing "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." The 60 day limit can be extended only if there are "exceptional circumstances outside of the appellant's control and could not have reasonably been anticipated that substantially impaired the appellant's ability to file an appeal..., and the extension of time will not prejudice the parties to the appeal...". As illustrated above, the decision by the PSC to approve a curb cut for the owner's property was well-known to the appellant many months before the appeal was filed.

The appeal was not filed timely, and the RCNA cannot give any reason, nor have they attempted to do so, to excuse their late filing of this appeal eight months after the decision they seek to challenge. Moreover, the curb cut that is challenged in this appeal is now in place and provides access to the parking in the lower level of the residential building on the property. There would be substantial prejudice to the property owner if this appeal was allowed to proceed.

3. Conclusion

For all of the above reasons, the BZA should deny or dismiss this appeal.

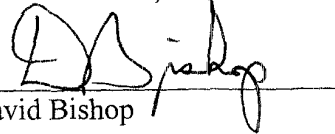
Thank you.

Sincerely,

ERIE ASSOCIATES, LLC

By:

David Bishop

A handwritten signature in black ink, appearing to read "David Bishop", is written over a horizontal line. The signature is stylized with a large "D" and a long, sweeping tail.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DISTRICT DEPARTMENT OF TRANSPORTATION



Office of Public Space
Management Administration

Date: 10/16/2006

Chairperson, ANC-1C

Pursuant to the District of Columbia Self Government and Governmental Reorganization Act, Section 738 (d), this is to notify you of an application to occupy public space for the purpose of constructing a driveway at 2351 & 2357 CHAMPLAIN ST NW (WARD 1)

Enclosed is a drawing showing the proposed driveway project. It is requested that you indicate your comments on this memorandum and return it to this office within thirty (30) business days from the date you receive this notice and whether or not you offer any objections to such use.

If a response is not received within (30) business days, we will assume that you have no objections to the applicants request and we will proceed with its approval process.

Please Note: For your ANC response to carry "Great Weight," this request must be voted on by the commission as a whole

If you have any questions, please feel free to contact José L. Colón at (202) 442-4670 or FAX: 202-442-4867. You can also email me at jose.colon@dc.gov. Thank you.

Sincerely,
**José L. Colón, Lead Civil Engineering Tech.
Public Space Permits and Records Branch
941 North Capitol Street, NE
Washington, D.C. 20002**

ENDORSEMENT

Date of ANC Vote: 11/1/06
(attach resolution, if available)

To: JOSÉ L. COLÓN

No Objection ()

Objection (☒)

Signature:

(name & title) CHAIRPERSON, ANC 1C

Date: 11/13/06

Please State Objection:

SEE ENCLOSED LETTER, RESOLUTION, AND ADDITIONAL MATERIALS



JIM GRAHAM
COUNCILMEMBER, WARD ONE
COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004



1350 Pennsylvania Avenue, N.W.,
Suite 105
Washington, D.C. 20004

202-724-8181
202-724-8109 fax

jgraham@dccouncil.us
jim@grahamwone.com
www.grahamwone.com

Chairperson
Committee on
Public Works and The Environment

Voting Member
Board of Directors, Washington
Metropolitan Area Transit Authority

January 23, 2007

Ms. Ann Simpson-Mason
Acting Associate Director
Public Space Management Administration
2000 14th St, NW
Washington, DC 20009

Dear Ms. Simpson-Mason,

The purpose of this letter is to support the driveway application for 2351 Champlain Street, NW. The application makes use of an existing driveway, and the overall project does not request any zoning variances, and is within the height, FAR, and lot coverage restrictions of the R-5-B zoning regulations and further regulations of the Reed Cooke Overlay district.

Without this plan, four additional cars would be added to the daily jockeying for on-street parking spaces, thereby forcing more residents than is necessary to find parking even further away from their place of residence.

Please feel free to contact me if I can be of any further assistance.

Sincerely,

JG/jy





Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009

202-332-2630 • www.anc1c.org

March 2, 2007

Commissioners:

Chairperson
Bryan Weaver (1C03)

Vice Chairperson
M. Mindy Moretti (1C04)

Secretary
Katherine Boettrich (1C08)

Treasurer
Wilson Reynolds (1C07)

Barry Weise (1C01)

Emily Mechner (1C02)

J. Michael Logsdon (1C05)

Nancy Shia (1C06)

Emeka Moneme, Acting Director
District Department of Transportation
2000 14th St., NW, 6th Floor
Washington, D.C. 20009

Dear Acting Director Moneme,

Please accept this letter as a formal request for reconsideration and rehearing in the decision by the Public Space Committee, which, by a 3 to 1 vote on Feb. 22, 2007, voted to allow a curb cut at 2351 & 2357 Champlain St., NW.

Grounds for Reconsideration and Rehearing:

1) The PS Committee could not possibly have given the ANC's views great weight as required by the ANC Act because the ANC never received, nor had an opportunity to review and comment on the actual plans presented to the PS Committee. Plans submitted by DDOT to ANC1C on October 16, 2006 were not the plans discussed at the Public Space Committee hearing on February 22, 2007. Instead, the Committee reviewed and acted on a different set of plans — a revised proposal submitted Feb. 15, 2007, a mere seven days prior to the scheduled hearing and far short of the required 30-day review time for the ANC as afforded by the ANC Act. At a minimum, the Committee's decision needs to be vacated and the plans sent to the ANC for a recommendation before the case is decided.

2) Even assuming the ANC is given, or had been given, the opportunity to review the plans presented at the hearing, the ANC Act requires the PS Committee to explain its decision in writing and the reason why it chose not to follow the ANC's recommendation. Failure to do so is a violation of the ANC Act. To-date, the PS Committee has failed to explain its decision either verbally or in formal correspondence.

3) The PS Committee hearing violated the ANC's procedural due process rights. Due process, at a minimum, entitles the ANC to "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319 (1976). But this is the first time to our knowledge and in the memory of former ANC Commissioners who have dealt with curb cut applications in our neighborhoods that a curb cut application was referred to the Public Space Committee. The procedures and precedents of the Public Space Committee for the handling of curb cut applications are therefore completely unknown to us. Indeed,

— more —

we are not even certain whether the Public Space Committee has jurisdiction or authority to decide curb cut cases at all. But if it does, then we were entitled to fair notice of the procedures that would be followed by the Committee in hearing the case and in making its decision, including what evidence would be permitted from the applicant and what evidence we would be required to submit in rebuttal. Instead of being given fair notice of how the Committee would conduct the hearing, we were surprised to learn – at the hearing, for the first time – that the applicant would be permitted to present testimony from a supposed expert. We were therefore not in a position to test the witness's credentials or otherwise to effectively cross-examine him, nor were we given any notice of the potential need for us to present our own expert testimony in response. The applicant appeared with skilled counsel, whereas we were not even informed beforehand that a litigation-style, adversarial hearing was the procedure contemplated by the Committee. Under these circumstances, we are entitled on due process grounds to a rehearing of the case, with agreed-upon and published procedures to be communicated equally to both sides in advance of the hearing.

Therefore, ANC1C would like this case reopened and reheard so ANC1C may submit expert testimony to rebut experts brought in by the applicant that back elements of their plan, again, plans ANC1C did not see until the day of the hearing.

In addition, ANC1C has protested this curb cut application time and time again because the property has enough parking in the alley to meet DDOT regulations for off-street parking for the development. The location of the application also falls within the boundaries of the Chapter 14 Reed-Cooke Overlay District (Title 11, PPG's 14-1 to 14-5). The location is zoned R-5-B. Having met the requirements under Title 11 § 2101 by providing one parking place for each two dwelling units, the additional four parking spaces are in contradiction, and in violation of Title 11 § 1400.4.

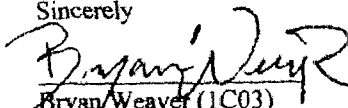
Three times ANC1C has opposed this curb-cut because of the removal of existing public parking spaces for the narrow benefit of those who can afford and are willing to pay the applicant for private parking.

We are particularly distressed that in October 2003 ANC1C voted to oppose this curb cut and DDOT subsequently refused to grant the curb cut application submitted in 2003 – a decision which has now been reversed by the Public Space Committee.

In the past, ANC1C would have appealed this decision to the Office of Administrative Hearings (OAH). Recently however, OAH has refused to hear public space cases. In light that, we are left with two choices: one, an appeal the District Court of Appeals or two, a direct appeal to you, the Director of the Department of Transportation. As a first step, we are requesting that DDOT temporarily put a halt to the installation of the curb cut and re-open this issue for further review.

Thank you for your consideration in this matter. We are available to meet at any time on this matter and we look forward to hearing from you.

Sincerely


Bryan Weaver (IC03)
ANC1C Chair

CC: Ann-Simpson Mason
Dennis Lee



Wilson Reynolds (IC07)
Planning, Zoning & Transportation Comm. Chair

Denise Wiktor
CM Jim Graham

3/14/07

Council member backs Champlain Street curb cut despite ANC concerns

By **BERNIE BECKER**
Current Correspondent

Amid a fight over parking spaces and how to avoid attracting more cars, Adams Morgan advisory neighborhood commissioners last week criticized a city decision to let condominium developers construct a curb cut that would eliminate one to two street parking spaces on Champlain Street.

The D.C. Public Space Committee's decision last month cleared the way for Capital Design Group to build an underground park-

ing garage for its planned eight-unit condominium building at 2351 Champlain St. The five-space garage would be accessible from Champlain. Four parking spaces in a rear alley are already available for the building.

Chief financial officer David Bishop said his company plans to proceed despite the protest and that it recently broke ground on the project. And in a move that surprised some commissioners, Ward 1 Council member Jim Graham recently endorsed Capital Design's planned garage.

Neighborhood commissioner Wilson

Reynolds, whose single-member district includes the building, said he asked Graham last summer to oppose the curb cut and was "truly disappointed" by Graham's support for it.

In a letter written after the Public Space Committee's decision, Reynolds told Graham, "Your message and your support will encourage every developer to bring the maximum number of vehicles they can to their projects to allow more profit and leave behind more congestion."

Graham countered in an interview, saying,

"Of course I encourage people to move into Adams Morgan without cars. The point here is that this property can't be developed without the curb cut."

Graham said the decision was a "tough call" and added that he has great respect for the neighborhood commission. But he ultimately sympathized with the developers, who told him the alley was too steep to make it financially viable for them to build an entrance there. Graham said ensuring that more cars are off the street and encouraging

See **Champlain**, Page 34

CHAMPLAIN

From Page 7

housing in the neighborhood overrode other concerns.

Chan Bryan Weaver said the neighborhood commission has historically opposed all curb cuts sought by developers. "It's terrible public policy to take away public spaces for private gain," he said.

Zoning regulations for the Reed-Cooke Overlay District, in which the Champlain Street site is located, say one private parking space must be available for every two units in a condominium building. The four alley spaces fulfill that requirement.

Capital Design could build the garage with access from the alley in the rear, which wouldn't require a curb cut, Bishop said, but he noted that would allow only a two-car garage and eliminate two alley spaces.

He defended the curb cut at last week's meeting, noting the garage will create a net gain of three to four parking spaces in the cramped neighborhood.

But Reynolds called that argument "a Trojan horse." That only makes sense "on the assumption a human needs an automobile," said Reynolds. "We need to encourage people to move into this dense area without an automobile" and instead use car-sharing businesses like Flexcar or public transportation, said Reynolds.

Weaver said he believes this was the first time in recent years that the Public Space Committee has granted a curb cut in Adams Morgan, so there is no precedent

for how the commission's appeal will be handled.

Commissioners said the Public Space Committee didn't give the neighborhood commission the legally required explanation for why it ruled against the group's wishes. Weaver hopes the committee will reopen the case, but if it does not, the Reed-Cooke Neighborhood Association might sue to block the curb cut, he said.

This was not the first time the Champlain Street property attracted attention. The Washington City Paper reported last year that residents in a number of buildings around the District, including 2351 Champlain St., had been denied their legal right to buy the units.

Under the District's Tenant Opportunity to Purchase Act, residents must be given the first opportunity to buy their apartments after their building is sold. But landlords used a loophole in the law by first selling a portion of their buildings and later transferring the remaining portion — what is known as a "95/5" sale. At the time, city regulators did not define such transactions as a sale.

Capital Design's Dennis Lee bought 50 percent of the property in early 2001 when it was a 12-unit apartment building. According to the Washington City Paper, the building's tenants hired lawyers to fight for their rights but left the building after two years of legal wrangling. Lee said he gave the tenants ample opportunity to buy the property for \$1.4 million.

Graham helped pass an amendment that ended "95/5" sales. Some have complained that allowing Capital Design to take public space is akin to rewarding it for bad behavior.

3/21/07

THE DUPONT CURRENT

Davis Kennedy/Publisher & Editor

Chris Kain/Managing Editor

Of parking and curb cuts

The dispute over the planned curb cut at 2351 Champlain St. is about more than just a patch of concrete.

The Adams Morgan advisory neighborhood commission is criticizing the D.C. Public Space Committee's recent decision approving a public-space permit for the Adams Morgan driveway. Capital Design Group, the builder, wants to construct an underground parking garage for its planned eight-unit condominium building.

The garage would add five spaces. There are four spaces in the rear alley already available.

We understand the neighborhood commission's concern about authorizing a profusion of curb cuts in the neighborhood, already short on parking. It is always frustrating to drive up to what appears to be a parking space and to find a driveway that makes it illegal to park there.

It certainly would not make sense to permit new driveways to serve individual homes. In this case, however, the driveway would lead to a five-space garage. Even with the loss of one or two on-street spaces, that marks a net gain.

If the local geography permitted access from the alley, that would clearly be preferable. In this case, according to Ward 1 Council member Jim Graham, doing so would mean the underground garage could accommodate fewer cars.

The commission is right about the need to encourage alternative forms of transportation in Adams Morgan, including making the streets safer for pedestrians and more conducive to mass transit.

But we agree with Mr. Graham's response to the commission's criticism: This is a distinct case. Rejecting the curb cut would be unlikely to result in fewer cars in the neighborhood — just more demand for scarce on-street parking.



Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009

202-332-2630 • www.anc1c.org

March 22, 2007

Commissioners:

Chairperson
Bryan Weaver (1C03)

Vice Chairperson
M. Mindy Moretti (1C04)

Secretary
Katherine Boettlich (1C08)

Treasurer
Wilson Reynolds (1C07)

Barry Weise (1C01)

Emily Machner (1C02)

J. Michael Logsdon (1C05)

Nancy Shie (1C06)

Carol Mitten, Chair, Zoning Commission
Office of Zoning
441 Fourth Street, NW, Ste. 210S
Washington, D.C. 20001

Dear Chairwoman Mitten,

Please accept this letter as a formal request for reconsideration and rehearing in the decision by the Public Space Committee, which, by a 3 to 1 vote on Feb. 22, 2007, voted to allow a curb cut at 2351 & 2357 Champlain St., NW.

Grounds for Reconsideration and Rehearing:

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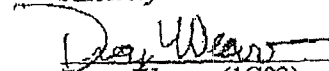
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Thank you for your consideration in this matter. We are available to meet at any time on this matter and we look forward to hearing from you.

Sincerely


Bryan Weaver (1C03)
ANC1C Chair

CC: Ann-Simpson Mason
Dennis Lee

Denise Wiktor
CM Jim Graham

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MAR 22 2007

BY FAX

Bryan Weaver
Chairperson
Advisory Neighborhood Commission 1C
P.O. Box 21009
Washington, D.C. 20009

Re: Appeal of Public Space Committee Decision (2351 & 2357
Champlain Street, N.W.) ANC 1C

Dear Chairperson Weaver:

The Office of Zoning ("OZ") received your faxed letter (attached) dated March 22, 2007, requesting that the Zoning Commission ("Commission") hear an appeal of a decision made by the Public Space Committee (Department of Transportation) to approve an application for a curb cut. Please be advised that the Commission does not hear such appeals. As Mr. Nero discussed with you by telephone, the OZ also provides administrative and technical support to the Board of Zoning Adjustment ("Board"). The Board does hear appeals of actions taken by administrative officers or bodies where said actions are specific to the administration or enforcement of the Zoning Regulations, in accordance with 11 DCMR section 3112. If you are certain that your appeal falls within the Board's jurisdiction, please submit a BZA Appeal Form 125 in person to the OZ, being certain to follow the instructions on the reverse side of the form. The Zoning Regulations and Form 125 can be viewed and downloaded from OZ's informative web-site at www.dcoz.dc.gov.

Please call Richard S. Nero, Jr., Deputy Director of Operations, at (202) 727-2806, if you have any questions relevant to the foregoing.

SINCERELY,

JERRILY R. KRESS, FAIA
DIRECTOR

Attachment
rsn

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

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov