

STEPHEN R. BRUCE LAW OFFICES

805 FIFTEENTH ST., NW, SUITE 210

WASHINGTON, D.C. 20005

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May 17, 2010

By Messenger

Richard S. Nero, Jr.
Deputy Director, Office of Zoning
441 4th St., NW, Suite 200/210-S
Washington, DC 20001

Re: BZA Appeal No. 17966 (2709 31st St., NW) Stephen Bruce

Dear Mr. Nero:

Enclosed are 20 copies of Appellants' Motion for Reconsideration or Rehearing of the Decision and Order of the Board of Zoning Adjustment, with New Exhibits A-F, and the Certificate of Service. As stated at the start of the Motion, although the Board's Decision and Order is dated March 30, 2010, service was ineffective due to an incorrect mailing address.

Please call if you have any questions. Thank you.

Sincerely,



Stephen R. Bruce

Enclosures

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17966

EXHIBIT NO. 28

Board of Zoning Adjustment
District of Columbia
CASE NO. 17966
EXHIBIT NO. 28

**DISTRICT OF COLUMBIA
Board of Zoning Adjustment**

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Stephen Bruce,	)	
Appellant,	)	
	)	
v.	)	BZA Appeal No. 17966
	)	
District of Columbia Department of	)	
Consumer and Regulatory Affairs,	)	
Appellee,	)	
	)	
Maryam Mashayekhi Trust,	)	
Owner/Intervenor,	)	
	)	
Advisory Neighborhood	)	
Commission 3C,	)	
Interested Party.	)	
_____	)	

**Appellant's Motion for Reconsideration or Rehearing of
Decision and Order of the Board of Zoning Adjustment**

Pursuant to DCMR 11-3126, Appellant respectfully requests that the Board of Zoning Adjustment ("BZA") reconsider or rehear its Decision and Order in Appeal No. 17966. This appeal concerns the conversion of a non-conforming garage at 2709 31st St., NW into a bedroom with the western wall of the bedroom sitting directly on a side lot line. The Appellant resides next door at 2701 31st St., NW. The Residence District for these properties is zoned "R-1" for single-family "detached" housing.

As a preliminary matter, the BZA's Decision and Order dated March 30, 2010 was not properly or effectively served on the Appellant until May 11, 2010. Both the certificate of service and the envelope in which the Decision and Order was mailed show it was addressed to the Appellant at "2710 31st Street, N.W." New Ex. A (attached). Appellant's correct address, as shown in Appeal No. 17966 and all of the Office of Zoning's other records, is "2701 31st St., NW." The 2700 block of 31st Street NW, does not have a 2710 31st Street, NW; in fact, there are no even-numbered houses on this block.¹ The envelope in which the Decision and Order was mailed to the Appellant bears

¹ There is a house at 2710 31st Place, NW, one block over from the 2700 block of 31st Street, NW, which is owned by the Australian Government and is unoccupied.

a postmark, moreover, of April 8, 2010, not March 30, 2010 as the certificate of service attests. *Id.* A handwritten notation on the envelope shows that sometime after April 8, 2010, someone wrote “WRONG ADDRESS – PLEASE RE-DIRECT” on the envelope. *Id.* The undersigned Appellant hereby attests, under penalty of perjury, that the U.S. Postal Service did not deliver the envelope with the Decision and Order until May 11, 2010.

DCMR 11-3125.4 provides that notice of an order “shall be given to any party to the appeal ... by serving the party with a copy of the decision or order ... by first class mail, postage prepaid. DCMR 11-3125.6 provides that “a decision or order shall be and become final upon its filing in the record and service upon the parties” and DCMR 11-3125.9 provides that “No order of the Board shall take effect until ten (10) days after it becomes final pursuant to §3125.6.” Mistakes like this obviously can and do occur, but it goes without saying that service is ineffective and the Decision and Order does become “final” when it is sent to an incorrect mailing address.

Turning to the Decision and Order, the BZA raised the issue of the timeliness of Appeal No. 17966 at the October 20, 2009 hearing *sua sponte*. Neither the DCRA nor the owner/intervenor raised this issue in their submissions, nor was it raised as an issue on which ANC 3C could take a position. Appellant respectfully submits that the BZA should reopen or reconsider its decision in light of the following:

1. The DCRA’s October 15, 2009 submission neglected to furnish the Office of Zoning or the Appellant with all of the building permits and permit applications related to the conversion of the non-conforming garage at 2709 31st St., NW, into a bedroom in an R-1 District. In particular, the DCRA’s submission neglected to provide the BZA with a revised building permit for “alteration and repair” (B0904181) issued by DCRA on March 18, 2009, less than 60 days before the appeal was filed on April 28, 2009. A copy of the revised permit is attached as New Exhibit B.²
2. Appellant requested the permit and plans from the Zoning Administrator in a May 4, 2009 emailed letter, New Ex. D, but only received the permit and application dated February 11, and February 3, 2009, respectively. In its October 15, 2009 submission, the DCRA also only provided the BZA with the February 11, 2009 permit and February 3, 2009 application. Ex. 23,

² DCRA also issued four related permits in March: For plumbing work (March 3, 2009), electrical work (March 12 and 19), and air conditioning (March 16). New Ex. C.

Attachments 3 and 4.

3. In ruling that the appeal was untimely, the Decision and Order states that the Zoning Administrator's decisions as reflected in the April 7, and April 17, 2009 communications from the Office of the Zoning Administrator do not constitute administrative decisions for purposes of DCMR 11-3112.2(c) following *Basken v. DC BZA*, 946 A.2d 356 (D.C. 2008). Decision and Order at 4. Appellant respectfully submits that DCMR 11-3112.2 covers "any ... decision, determination, or refusal made by an administrative officer or body ... in the administration or enforcement of the Zoning Regulations." Emph. added.³ Appellant further submits that *Basken* holds that "the zoning statute and regulations do *not* tie the time for appealing to the BZA to the issuance of a specified type of notice" and that "a letter from DCRA or the Zoning Administrator conveying a zoning decision may be an appealable order." 946 A.2d at 366 (emph. added).
4. In *Basken*, the first building permit was issued on September 9, 2004 and a revised building permit was issued on December 17, 2004. *Id.* at 358. The Court of Appeals held that "the revised building permit was ambiguous," but "there was no ambiguity" in a May 26, 2005 letter that "stated clearly that the zoning decision had been made." *Id.* at 365. The Court ruled that "[t]his conclusion is consistent with our case law establishing that '[i]n situations where ambiguity exists regarding the date of an order or decision,' we will 'resolve[] the ambiguity in favor of the party seeking review.'" *Id.* (citing cases).⁴
5. Here, the February 11, 2009 permit was ambiguous because it stated that

³ As the regulatory preamble states, "Section 8 of the Zoning Act [D.C. Code §6-641.07(g)(1)] authorizes the Board to hear and decide appeals where an aggrieved person alleges that there is an error in *any* order, requirement, decision, determination, or refusal by the Zoning Administrator or other administrative official in carrying out or enforcing the Zoning Regulations." 50 DCR 1200 (emph. added).

⁴ Appellant respectfully submits that the limits on the right to an administrative appeal from certain decisions in *BZA Order, Appeal No. 16982 of J. Brendan Herron, Jr. and ANC 3F*, 52 DCR 3904, 3913 (2005), were superseded by the Court of Appeals' decision in *Basken* in 2008. The decisions or refusals to take enforcement actions at issue in *Herron* also predate the DCMR 11-3112.2 regulations, which were adopted on February 7, 2003. See 50 DCR 1200.

the existing and proposed uses were for a single family dwelling in an “R-3” District. Ex. 11, Attachment 1, and Ex. 23, Attachment 3. “R-3” is the designation for Residence Districts “designed essentially for row dwellings,” DCMR 11-320.1, which are *not* required to have any side yards, and which have different rear yard and percentage of lot occupancy requirements than those that apply to detached one-family residences in R-1 Districts. DCMR 11-405.9, 11-404.1, and 11-403.2. Unlike the first permit, the March 18, 2009 permit included the correct zoning district (“TSP/R-1-A”) at the top, but it continued to list the existing and proposed uses as in an “R-3” District. New Ex. B. Despite the Appellant’s complaints about the conversion not being permitted in a district designed for one-family detached housing and the incomplete correction of the zoning district in the March 18, 2009 permit, the Office of the Zoning Administrator nevertheless conveyed unambiguous decisions on March 27, 2009, April 7, 2009, and April 17, 2009, that there were no zoning violations, each time for different reasons. Ex. 2, Attachments 4, 5 and 6. Prior to those decisions, the Office of the Zoning Administrator stated that inspectors had looked into zoning violations and were authorized to stop work and, if necessary, fine the owner. *Id.* and Tr. at 72. All three of those dates are within 60 days of the appeal.

6. Even if *Basken* had not ruled that “the zoning statute and regulations do not tie the time for appealing to the BZA to the issuance of a specified type of notice,” the March 18, 2009 revised building permit is another administrative decision on the application to “alter or repair” the garage. It was made after the Appellant complained that the conversion of the garage into a bedroom sitting on the side lot line violated the zoning regulations for detached one-family residences by telephone on February 27, 2009 and email dated March 11, 2009. Finding Nos. 10 and 12; Ex. 2, Attachment 2. According to emails from the Office of the Zoning Administrator and the statement of DCRA’s counsel at the BZA hearing, inspections by building and zoning inspectors were conducted before the revised building permit was issued on March 18, 2009. Finding No. 11; Ex. 2, Attachments 3, 4 and 6; and Tr. 75 (statement of Mr. Surabian). As indicated, the March 18, 2009 permit shows the correct R-1 zoning district at the top and it bears new issuance and expiration dates of March 18, 2009 and March 18, 2010, respectfully. New Ex. B. The April 28, 2009 appeal is therefore within 60 days of an administrative decision to issue a revised building permit on March 18, 2009, notwithstanding complaints of zoning violations for uses in an R-1 District, and notwithstanding an intervening building and zoning

inspection to determine if there were violations.

7. Under *Economides v. DC BZA*, 954 A.2d 427, 434-40 (D.C. 2008), the appeal is also timely because it is within 60 days of the February 27, 2009 date on which the Appellant had knowledge of the nature of the “construction activities” challenged in the appeal. Nothing in the BZA’s Decision and Order suggests that the Appellant had actual knowledge that the garage was being converted into a bedroom on the side lot line prior to this date. In *Economides*, a permit was posted and construction was begun in June 2004, but the Appellant was not on notice of what was being constructed “in the rear yard” until mid- to late October 2004. 954 A.2d at 433, 436-38. Here, Appellant testified that some construction materials were placed in the driveway in the day or days before February 27, 2009, but he was not on notice of the nature of the construction activities until jack-hammering started in the garage in the morning of February 27, 2009, and he went over to look. Tr. 93, 97, 109, 123. It was on that date that he first saw a permit and immediately spent the morning calling DCRA to protest that the work on the property violated the zoning regulations. *Id.*
8. The BZA’s suggestion that the Appellant “should have known of the permit issuance” by at least February 18, 2009 reflects a different standard than established in *Basken* and *Economides*. It is furthermore based entirely on a chronology of events to which the owner of the construction company, Mr. Kazem Alavi, testified during the October 20, 2009 hearing. Mr. Alavi was not the project supervisor, and his testimony was unsupported by any records or other documentary evidence. Mr. Alavi’s testimony is inconsistent with the permits and permit applications to which he certified, as well as being inconsistent with other permit records, the Appellant’s testimony, and photographic evidence:
 - A. At the hearing, Mr. Alavi testified that the construction work on this project started on February 18, 2009. 10/20/09 Tr. at 84. However, the first page of the building permit application to which Mr. Alavi certified on February 4, 2009 states that the “starting date” of the construction work is “March 2009.” Ex. 11, Attachment 1, and Ex. 23, Attachment 4. The “Lead Hazard Control Permit Questionnaire” to which Mr. Alavi separately certified on February 6, 2009 contains

the same declaration of a “March 09” “project start date.” *Id.*⁵ Consistent with the permit application and lead hazard questionnaire, Appellant testified that there were no visible construction activities before February 27, 2009 (the last work day before the start of March) that indicated the nature of the project. Tr. at 93, 97, 109, 123.

- B. Mr. Alavi’s testimony on whether there was any “exterior” demolition before February 27, 2009 was inconsistent not only with his certifications in the permit application, but also inconsistent internally. In response to Chairman Loud’s question about whether the activities before February 27th involved interior or exterior demolition, or both, Mr. Alavi said: “We demo-ed some stuff *inside* the garage [and] some stuff *inside* the house.” Tr. 112-13 (emph. added). Mr. Alavi then added “We took the garage door off.” *Id.* But in response to an earlier question from the Appellant, he said he was “not sure” when the garage door was taken out. Tr. 86. In his opening statement, counsel for the owner who offered Mr. Alavi as her only witness stated: “I believe that it was not until actually the garage door started to get removed ... that he [Appellant] raised a concern.” Tr. 78.
- C. As evidence of exterior activities, Mr. Alavi further testified that a “dumpster” was placed in the driveway on February 19, 2009. Tr. at 84, 87. But the February 4, 2009 permit application certifies that the method of removing construction debris is by “pick-up truck,” rather than a “dumpster” or “other” method. Ex. 11, Attachment 2, and Ex. 23, Attachment 4. The Appellant testified that a pick-up truck was used to remove debris beginning shortly after February 27, 2009 and that a dumpster was not placed on the site until “several days or a week” after February 27th. Tr. at 96, 98-101, 108-9. Photographs of a dumpster taken by the Appellant on March 17, 2009 also shows that had it been in place on February 19, 2009, as Mr. Alavi testified, it would have blocked both vision and access to any notice posted on the gate behind it. New Ex. E (previously submitted in Ex. 20, Attachment 1) (showing top of a notice barely visible behind

⁵ Making a false statement in a permit application is punishable under DCMR 12A-105A.

dumpster).⁶

- D. Mr. Alavi's testimony about "providing" or "putting the plumbing" "within the first week or two" after February 18, 2009 before setting up "floor joists" (Tr. 88-90) is also contradicted by the March 3, 2009 date of the plumbing permit issued to Mr. Joseph S. Colish (New Ex. C) and the March 11, 2009 date of the DCRA's plumbing inspection report (New Ex. F).
- E. Mr. Alavi's testimony about posting the building permit on February 12 or 13, 2009 was not based on personal knowledge, but a purported "practice" of his company. Tr. 85-86. Again, his testimony is not consistent with the "March 2009" starting date to which he certified in the permit application, Ex. 11, Attachment 2, and Ex. 23, Attachment 4, and is based on a presumption about what his project supervisor did. Tr. 116-17. The March 17, 2009 photographs of the dumpster are also inconsistent with Mr. Alavi's testimony about the visibility and accessibility of a notice on the gate behind it.
- F. Even if Mr. Alavi's testimony about his company's "practice" was not contradicted by the certifications in his permit application and the photographic evidence about the dumpster, it is undisputed that the Appellant did not see any notice posted prior to February 27, 2009. Tr. 97, 100. As the photographs show, a row of hedges goes up to the public sidewalk, leaving no line of sight from the street in front of Appellant's property at 2701 31st Street. New Ex. E, second page (previously submitted as Ex. 11, Attachment 3 and Ex. 20, Attachment 1). As the Appellant demonstrated during the hearing by using the distance between where Ms. Monroe was sitting behind the dias and the witness tables, a notice posted at a distance of over 15' from a public sidewalk is not readable. Tr. 123-24. For those reasons and based on experience, Chairman Loud declined to equate posting with notice. Tr. 129-30.

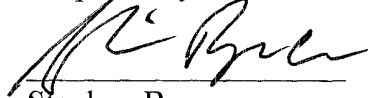
DCMR 11-3112.2(a) and *Economides* provide that the date the 60-day appeal

⁶ The photographs of a dumpster that Appellant previously submitted in Ex. 20, Attachment 1, were taken on March 17, 2009, as shown by the camera's date stamping display option. New Ex. E.

period begins to run is no earlier than the date when the Appellant had knowledge, or reasonably should have had knowledge, of the nature of the "construction activities" and zoning violations complained of. In this case, whether the 60-day period dates from February 27, 2009, when the Appellant noticed the nature of the construction activities and the zoning violations, the March 18, 2009 date of issuance of a revised building permit based on a correct zoning classification but still showing existing and proposed uses for an "R-3" District, or the dates of the March 27, 2009, April 7 or April 17, 2009 decisions by the Zoning Administrator refusing to find any zoning violations for an "R-1" District, this appeal is timely.

Dated: May 17, 2010

Respectfully submitted,



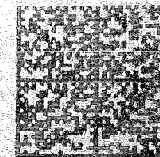
Stephen Bruce
2701 31st St., NW
Washington, DC 20008
(202) 371-8013
(202) 371-0121 (fax)
stephen.bruce@prodigy.net

New Exhibits:

- A. Envelope showing incorrect 2710 31st Street address, April 8, 2010 postmark date, and handwritten notation "WRONG ADDRESS – PLEASE RE-DIRECT."
- B. Revised building permit for 2709 31st St., NW, issued March 18, 2009.
- C. Plumbing, electrical, and air conditioning permits for 2709 31st St., NW construction, issued March 3, 12, 16, and 19, 2009.
- D. May 4, 2009 request to Zoning Administrator for building permit and plans, and April 28, 2009 request from Office of Zoning that the record be supplemented with "the DCRA building permit(s)."
- E. First page: Photographs of dumpster showing date stamp of March 17, 2009 (previously submitted as Ex. 20, Attachment 1).
Second page: Photograph of hedges going up to public sidewalk, blocking view of front of gate from street in front of 2701 31st Street NW (previously submitted in Ex. 11, Attachment 3, and Ex. 20, Attachment 1).
- F. DCRA plumbing inspection report dated March 11, 2009.

INMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF ZONING
414th STREET, N.W. SUITE 200-S/210-S
WASHINGTON, D.C. 20001

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Stephen Bruce
2710 31st Street, N.W.
Washington, D.C. 20008

NR 016
ADDRESS -
PLEASE
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Exhibit A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 17966 of Stephen Bruce, pursuant to 11 DCMR §§ 3100 and 3101, from a determination of the Office of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to allow the conversion of a nonconforming one-family detached dwelling by adding an apartment within the garage in the R-1-A District at premises 2709 31st Street NW (Square 2125, Lot 815).

HEARING DATE: October 20, 2009
DECISION DATE: October 20, 2009

DECISION AND ORDER DISMISSING APPEAL

On April 28, 2009, this appeal was filed by Stephen Bruce ("Appellant") challenging two decisions by the Zoning Administrator ("ZA") of the District of Columbia Department of Consumer and Regulatory Affairs. The decisions which the Appellant claimed to be appealing were made on April 7, 2009 and April 17, 2009. Both "decisions" were statements by the ZA to the Appellant reassuring him that the ZA had not made any errors in issuing Building Permit No. B0903245. Permit No. B0903245 had been issued on February 11, 2009 to allow the Appellant's neighbor, at 2709 31st Street NW ("subject property"), to "change [a] garage to one bedroom." Exhibit No. 23, Attachment.

The Board held a public hearing on the appeal on October 20, 2009, and concluded that it had not been filed in a timely manner. Therefore, the Board voted 3-0-2 to dismiss the appeal as untimely.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated April 28, 2009, the Office of Zoning ("OZ") provided notice of the filing of the appeal to the ZA at the D.C. Department of Consumer and Regulatory Affairs ("DCRA"), the Appellee herein, the D.C. Office of Planning, Advisory Neighborhood Commission ("ANC") 3C, the ANC within which the subject property is located, Single Member District 3C08, and the Council Member for Ward 3. Pursuant to 11 DCMR § 3112.14, OZ published notice of the hearing on the appeal in the *D.C. Register*, and, on July 24, 2009, provided such notice to the Appellant, the ZA, and ANC 3C.

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Web Site: www.dcoz.dc.gov

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Requests for Party Status. Consistent with 11 DCMR § 3199.1, the parties in this proceeding were the Appellant, DCRA, the owner of the subject property, and ANC 3C. There were no requests for party status.

ANC Report. ANC 3C filed a letter with the Board dated October 8, 2009, in which it discussed the issues on appeal, but took no position on the merits of the appeal. The ANC letter emphasized that mistakes may have been made in the past with regard to construction at the subject property, leading to the concerns expressed in this appeal, but the ANC made no recommendation as to whether the appeal should or should not be granted. Exhibit No. 22.

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at address 2709 31st Street NW, Square 2125, Lot 0815, in an R-1-A zone district.
2. On the subject property is a detached one-family dwelling that was built in 1941 and is nonconforming as to lot area.
3. Also on the subject property is a garage, part of whose eastern side wall is a party wall shared with the dwelling.
4. On February 11, 2009, DCRA issued Building Permit No. B0903245 to the owner of the subject property, permitting it to “change the garage to one bedroom.” Exhibit No. 23, Attachment.
5. On February 12 or February 13, 2009, the permit was posted on the outside of the large gate in front of the garage. The postings therefore faced 31st Street and would have been visible to a person from the street when the gate was closed.
6. Demolition work, including the removal of the garage door, began on the property on February 18, 2009, and a dumpster was first on-site on February 19, 2009, then removed, and replaced with a new one on February 26, 2009.
7. On February 26, 2009, supplies were dropped off at the subject property and on February 27, 2009, the concrete floor of the garage was jack-hammered to allow the placement of plumbing materials and the installation of new floor joists.
8. The Appellant lives next door to the subject property, at 2701 31st Street NW, and occasionally parks his car on 31st Street within sight of the subject property or walks his dog in front of the subject property.
9. On February 27, 2009, the Appellant entered the subject property and looked at the posted permit, from which he copied DCRA’s telephone number.

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10. The Appellant called DCRA on February 27, 2009 to complain that, in his opinion, the work on the subject property was in violation of the Zoning Regulations.
11. Sometime between February 27, 2009 and March 11, 2009, DCRA sent a Zoning Inspector to the subject property.
12. On March 11th, the Inspector told the Appellant that the plans had been approved by the ZA, and that same day, the Appellant contacted the ZA by e-mail, expressing his opinion that the construction at the property was improper. Exhibit No. 2, Attachment No. 2.
13. On March 11, 2009, the ZA replied to the Appellant and referred the matter to DCRA's enforcement staff for another inspection.
14. On March 27, 2009, DCRA's Zoning Enforcement Officer replied to the Appellant and informed him that the property had been inspected and no violations had been found. Exhibit No. 2, Attachment No. 4.
15. The Enforcement Officer visited the property again on March 29, 2009, and while on-site, discussed the work being done with the Appellant.
16. On April 7, 2009, the Enforcement Officer e-mailed the Appellant and reiterated that the ZA found no zoning violations at the property. Exhibit No. 2, Attachment No. 5.
17. On April 17, 2009, the Enforcement Officer again e-mailed the Appellant and informed him that an inspection had not turned up any evidence that the garage on the property was to be used as an accessory apartment. On that same date, the Enforcement Officer also informed the Appellant of his appeal rights and venues. Exhibit No. 2, Attachment No. 6.
18. The Appellant filed this appeal with the Office of Zoning on April 28, 2009. Exhibit No. 5.

CONCLUSIONS OF LAW

The Board is authorized by Section 7 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2001), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by an administrative officer in the administration of the Zoning Regulations. Pursuant to 11 DCMR § 3112.2(a), an appeal must be filed within 60 days of the date the person appealing an administrative decision interpreting the Zoning Regulations had notice or knowledge of the decision complained of, or reasonably should have had such notice or knowledge, whichever is earlier. The Board may extend this 60-day deadline if unanticipated exceptional circumstances outside the appellant's control impaired his ability to file the appeal and no party will be prejudiced. 11 DCMR § 3112.2 (d). If, however, the Board finds an appeal to have been filed in an untimely manner, the Board lacks jurisdiction to hear it. *Economides v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 427, 434-435 (D.C. 2008); *Waste Mgmt. of Md., Inc. v. D.C. Bd. of Zoning Adjustment*, 775 A.2d 1117, 1121 (D.C. 2001).

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There is also consistent precedent of this Board that once a building permit is issued, no subsequent communication from DCRA may be appealed unless it contains a new decision. *See, BZA Order, Appeal No. 16982 of J. Brendan Herron, Jr. and ANC 3F*, 52 DCR 3904 (2005); *BZA Order, Appeal No. 17411 of Paul A. Basken and Joshua S. Meyer*, 53 DCR 2495 (2006), *affirmed, Basken v. D.C. Bd. of Zoning Adjustment*, 946 A.2d 356 (D.C. 2008).

The decisions ostensibly on appeal here are those made by the ZA, through the DCRA Enforcement Officer, dated April 7, 2009, and April 17, 2009. Those “decisions,” however, were not really decisions, but merely affirmations of the decision made by the issuance of the building permit on February 11, 2009. The April 7th and 17th statements by the Enforcement Officer reiterated what had to have already been determined by the ZA – that the issuance of the permit on February 11, 2009 would not result in construction or a use not permitted by the Zoning Regulations. The real decision on appeal is the decision to issue the building permit, which allowed the conversion of the garage on the subject property into a bedroom. This decision was made on February 11, 2009, with the issuance of the permit.

The Board concludes that the Appellant knew or should have known of the permit issuance at some point between February 13th, when the permit was posted on the property, and February 18, when actual demolition work began there. The Appellant lives immediately next door to the subject property, sees it daily, and should have been aware of these activities during this period. Even using the latest date of February 18th as the starting point for computing the 60-day period, the appeal would still be untimely filed. The 60th day under this scenario would have fallen on April 19th and the appeal was filed nine days later on April 28th.

The Board cannot extend this time period because there is no evidence that exceptional circumstances outside of the Appellant’s control prevented him from filing the appeal by April 19th, nor has he argued that this was the case. The Board is therefore bound to find the filing of the appeal untimely, and because untimeliness divests the Board of jurisdiction, the appeal must be dismissed. *Waste Mgt. of Md., Inc.*, 775 A.2d at 1121.

The Board is required to give “great weight” to issues and concerns raised by ANC 3C in this proceeding. D.C. Official Code § 1-309.10(d). Great weight means acknowledgement of the ANC’s issues and concerns and an explanation of why the Board did or did not find its views persuasive. ANC 3C states in a general way that it “objects to the incidence of illegal construction,” and that some of the issues in this appeal “should have been resolved in 2001” when earlier construction was done to the subject garage. Exhibit No. 22. The ANC did not, however, make a recommendation as to the merits and, even if it had, the recommendation would not have been legally relevant because the Board disposed of the appeal on a procedural basis. *See, Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993) (great weight requirement extends only to issues and concerns that are legally relevant).

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For the reasons stated above, the Board, on its own motion, hereby **ORDERS** that this appeal from the February 11, 2009 issuance of Building Permit No. B0903245, and from the subsequent April 7, and April 17, 2009 affirmations of that issuance, be **DISMISSED**.

VOTE: **3-0-2** (Marc D. Loud, Meridith H. Moldenhauer, Anthony J. Hood, to Dismiss; Shane L. Dettman not present, not voting; one Mayoral appointee (vacant) not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board members approved the issuance of this order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 30 2010

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

LM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPEAL NO. 17966

As Director of the Office of Zoning, I hereby certify and attest that on MAR 30 2010, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Stephen Bruce
2710 31st Street, N.W.
Washington, D.C. 20008

Maryam Mashayekhi Trust
2709 31st Street, N.W.
Washington, D.C. 20008

Cornish F. Hitchcock, Esq.
Hitchcock Law Firm PLLC
1200 G Street, N.W., Suite 800
Washington, D.C. 20005-6705

Matthew LeGrant, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Jay A. Surabian, Esq.
Assistant Attorney General
Office of General Counsel
Dept. of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 940
Washington, D.C. 20002

Chairperson
Advisory Neighborhood Commission 3C
4025 Brandywine Street, N.W.
Washington, D.C. 20016

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

BZA APPEAL NO. 17966
PAGE NO. 2

Single Member District Commissioner 3C08
Advisory Neighborhood Commission 3C
4025 Brandywine Street, N.W.
Washington, D.C. 20016

Mary Cheh, Councilmember
Ward One
1350 Pennsylvania Avenue, N.W., Suite 108
Washington, D.C. 20004

Melinda Bolling, Esq.
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

Department of Consumer and Regulatory Affairs

Permit Operations Division

941 North Capitol Street NE Room 2100

Washington DC 20002

Tel. (202) 442 - 4589 Fax (202) 442 - 4862

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557

Exhibit B

B

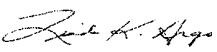
BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK
UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 03/18/2009

PERMIT NO. **B0904181** ✓

Expiration Date: 03/18/2010

Address of Project: 2709 31ST ST NW		Zone: TSP/R-1-A	Ward: 3	Square: 2125	Suffix:	Lot: 0815
Description Of Work: REVISION TO PERMIT B0903245 ADDITION OF ELECTRICAL DWG.						
Permission Is Hereby Granted To: Maryam Mashayekhi Trustee		Owner Address: 2709 31ST ST NW WASHINGTON, DC 20008-3522		PERMIT FEE: \$70.00		
Permit Type: Alteration and Repair	Existing Use: Residential 5 or less for less than 24 Hr - R-3		Proposed Use: Residential 5 or less for less than 24 Hr - R-3		Plans: Yes	
Agent Name: Karem Alani	Agent Address: 6105 SHADY OAK LANE BETHESDA, MD	Existing Dwell Units: 1	Proposed Dwell Units: 1	No. of Stories: 2	Floor(s) Involved:	
Conditions/ Restrictions: This Permit Expires If no Construction is Started Within 1 Year or If the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.						
Director: Linda K. Argo 		Permit Clerk Lucretia Hackney				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

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Page 1 of 7
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Department of Consumer and Regulatory Affairs

Permit Operations Division

941 North Capitol Street NE Room 2100

Washington DC 20002

Tel. (202) 442 - 4589 Fax (202) 442 - 4862

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557

E**ELECTRICAL PERMIT**THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF
WORK UNTIL WORK IS COMPLETED AND APPROVED

Bldg Permit:

Issue Date: 03/12/2009

Expiration Date: 03/12/2010

PERMIT NO. E0903358 ✓

Address of Project: 2709 31ST ST NW		Zone: TSP/R-1-A	Ward: 3	Square: 2125	Suffix:	Lot: 0815
Permission Is Hereby Granted To: Lee'S Electric Service		Electrical Contractor Address: 4319 57TH AVENUE,#9, BLADENSBURG, MD 20710		Electrical Contractor Phone No.: ()-		PERMIT FEE: \$106.00
Permit Type: Electrical		Existing Use: Single Family Dwelling - R-3		Proposed Use: Single Family Dwelling - R-3		Plans:
Owner Name: Maryam Mashayekhi Trustee	Owner Address: 2709 31ST ST NW WASHINGTON, DC 20008-3522	Existing Dwell Units:	Proposed Dwell Units:	No. of Stories:	Floor(s) Involved:	
Master Electrician Name: Ralph E. Threatt	Master Electrician Lic.No. DM665	Master Electrician Address: 4319 57TH AVENUE,#9, BLADENSBURG, MD 20710				
Agent Name: Ralph E. Threatt	Agent Address: 4319 57TH AVENUE,#9 BLADENSBURG, MD 20710					
Description Of Work: 15 Group 01 - Wiring Only (Receptacle & Switch Outlets) 1 Group 13 - Clothes Dryer (Residential) 1 Group 06 - Over 1 HP through 5 HP range						
Conditions/ Restrictions: This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.						
Director: Linda K. Argo		Permit Clerk: Doris Minor				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557						

Department of Consumer and Regulatory Affairs

Permit Operations Division

941 North Capitol Street NE Room 2100

Washington DC 20002

Tel. (202) 442 - 4589 Fax (202) 442 - 4862

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557

AC**AIR CONDITIONING PERMIT**THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS
OF WORK UNTIL WORK IS COMPLETED AND APPROVED

Bldg Permit:

Issue Date: 03/16/2009

Expiration Date: 03/16/2010

PERMIT NO. M0900762

Address of Project: 2709 31ST ST NW		Zone: TSP/R-1-A	Ward: 3	Square: 2125	Suffix:	Lot: 0815
Description Of Work:						
Existing Use: Single Family Dwelling - R-3		Proposed Use: Single Family Dwelling - R-3		Type of Work: New		
Permisson Is Hereby Granted To: Maryam Mashayekhi Trustee		Owner Address: 2709 31ST ST NW WASHINGTON, DC 20008-3522			PERMIT FEE: \$46.00	
Quantity:	Condenser Location:	Refrigerant Type: R-410	Refrigerant Effect		Number of Compressors:	
Cooling Method: Air	Equipment Maker:		Class A (Over 2,400,000 BTU/h) Class B (1,200,001 - 2,400,000 BTU/h) Class C (600,001 - 1,200,000 BTU/h) Class D (120,001 - 600,000 BTU/h) Class E (0 - 120,000 BTU/h)		1	
Equipment Model:						
Contractor Name: Dung L Tran	Contractor Lic. No: DLM901747		Contractor Address: Airtech Specialist, 6424 Quander Road Alexandria, VA 22307			
Conditions/ Restrictions: This permit is associated with the building permit number . This permit expires if no construction is started within 1 year or if the last inspection is over 1 year. All construction done according to the current construction codes and zoning regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one (1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.						
Director: Linda K. Argo		Permit clerk Stacie Williams				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557						

Department of Consumer and Regulatory Affairs

Permit Operations Division

941 North Capitol Street NE Room 2100

Washington DC 20002

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TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557

ELECTRICAL PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED

E

Bldg Permit:

Issue Date: 03/19/2009

Expiration Date: 03/19/2010

PERMIT NO. E0903504

Address of Project: 2709 31ST ST NW		Zone: TSP/R-1-A	Ward: 3	Square: 2125	Suffix:	Lot: 0815
Permission Is Hereby Granted To: Lee'S Electric Service		Electrical Contractor Address: 4319 57TH AVENUE,#9, BLADENSBURG, MD 20710		Electrical Contractor Phone No.: () -		PERMIT FEE: \$79.00
Permit Type: Electrical		Existing Use: Single Family Dwelling - R-3		Proposed Use: Single Family Dwelling - R-3		Plans:
Owner Name: Maryam Mashayekhi Trustee	Owner Address: 2709 31ST ST NW WASHINGTON, DC 20008-3522	Existing Dwell Units:	Proposed Dwell Units:	No. of Stories:	Floor(s) Involved:	
Master Electrician Name: Ralph E. Threatt	Master Electrician Lic.No. DM665	Master Electrician Address: 4319 57TH AVENUE,#9, BLADENSBURG, MD 20710				
Agent Name: Ralph E. Threatt	Agent Address: 4319 57TH AVENUE,#9 BLADENSBURG, MD 20710					
Description Of Work:						
1 Group 08 - Up through 200 Amp range 2 Group 13 - Fire Alarm Smoke & Heat Detectors 1 Group 07 - Service Conductor						
Conditions/ Restrictions:						
This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.						
Director: Linda K. Argo		Permit Clerk: Doris Minor				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557						

Subject: BZA Appeal No. 17966 (2709 31st St., NW)

From: "Stephen R. Bruce" <stephen.bruce@prodigy.net>

Date: Mon, 04 May 2009 15:08:13 -0400

To: "Pemberton, Reuben (DCRA)" <reuben.pemberton2@dc.gov>

Exhibit D

Dear Mr. Pemberton:

I received a letter from Mr. Nero, the Acting Director of the Office of Zoning, acknowledging receipt of Appeal No. 17966 and requesting that the filing be supplemented to assist with the BZA's understanding of the case to include:

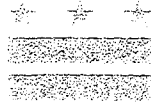
1. A copy of the DCRA building permit.
2. A surveyor's plat and/or architectural plans.

Can you please supply these to me for inclusion with the filing? I can cover any copying costs and send a messenger to pick up if the architectural plans are on oversize paper. If you want to fax documents, the fax number is 202-371-0121. Thanks in advance for your cooperation.

Sincerely,

Stephen Bruce

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



Stephen Bruce
2701 31st Street, N.W.
Washington, D.C. 20008

April 28, 2009

Re: BZA Appeal No. 17966 (2709 31st Street, N.W.) Stephen Bruce

Dear Mr. Bruce:

The Office of Zoning received the above-cited appeal on April 28, 2009. Your appeal challenges the Office of the Zoning Administrator's decision to allow the conversion of a garage located within an existing one-family semi-detached dwelling into a one bedroom apartment. The appeal alleges violations of several R-1-A District area requirements including the side yard provisions.

To assist with the Board of Zoning Adjustment's understanding of your case please supplement your filing with the following information:

1. A copy of the DCRA building permit(s) you are appealing.
2. A dimensioned surveyor's plat and or architectural plans to graphically explain the alleged zoning violations.
3. Color photographs.

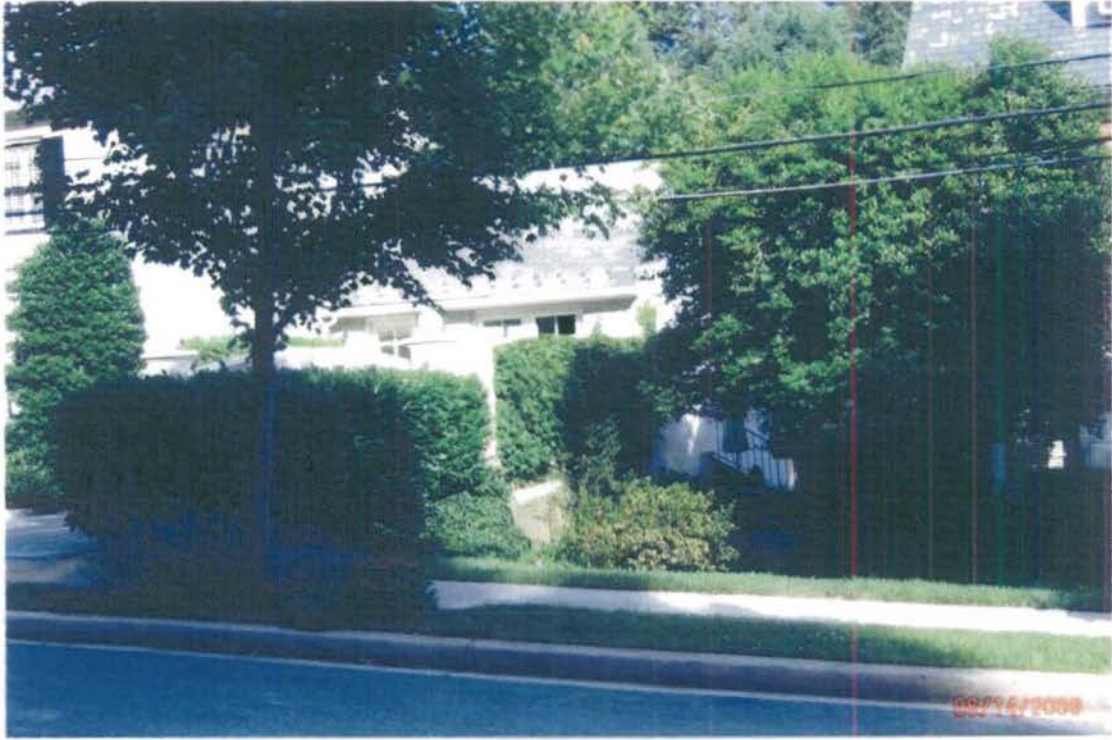
Please call me on (202) 727-6311, if you have any questions about the foregoing.

SINCERELY,


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

Exhibit E





Department of Consumer and Regulatory Affairs
Inspections and Compliance Administration
 1900 Massachusetts Ave, SE; Washington, DC 20019

Inspection Report & Correction Order

Property Address & Unit Number		2709 31st NW	
Customer			
Site Representative		MIKE 437-0891	
Inspector name		GERALD KEYS	
Date & Time of inspection		3/11/09	
CAP id #/ Permit #		P0902394	
Inspection Type: (Check below or list) →			
☐ Building	☐ Int. Demo	☐ Part. Demo	☐ Raze
☐ Specialty	☐ Misc.	☐ Suppl.	☐ Elec.
☐ Illegal Const.	☐ Const Compl.	☐ Fire	☐ Zoning
☐ Sign	☐ Mech.	☐ Elevator	☐ Projection
☐ Pub. Space	☐ Gas	☐ Prop Maint.	☒ Plumb. CLOSE-IN Boiler

Item #	Description
	DWV - SLOPES (ON)
	CLEANOUT @ W.C.
	SUPPLY - CPVC
	PASSED INSPECTION
	M / S

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2010, a copy of the foregoing Motion for Reconsideration or Rehearing of the Decision and Order of the Board of Zoning Adjustment, with New Exhibits A-F, was sent by first-class mail, postage prepaid, to:

Melinda Bolling, Esq.
Acting General Counsel
Dept. of Consumer and Regulatory Affairs
941 North Capitol St., NE, Suite 9400
Washington, DC 20002

Jay A. Surabian, Esq.
Doris Parker-Woolridge, Esq.
Assistant General Counsel
Office of the General Counsel
Dept. of Consumer and Regulatory Affairs
941 North Capitol St., NE, Suite 9400
Washington, DC 20002

Matthew LeGrant, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol St., NE, Suite 2000
Washington, DC 20002

Cornish F. Hitchcock, Esq.
Hitchcock Law Firm PLLC
1200 G Street, NW, Suite 800
Washington, DC 20005-6705

Maryam Mashayekhi Trust
2709 31st St., NW
Washington, DC 20008

Ann Marie Bairstow, Chairperson
Advisory Neighborhood Commission 3C
Single Member District 3C08
4025 Brandywine St., NW
Washington, DC 20016

Mary Chen, Councilmember
Ward Three
1350 Pennsylvania Ave., NW, Suite 108
Washington, DC 20004


Stephen Bruce