

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**
441 4th Street, N.W.
Washington D.C. 20001

Appeal of Stephen Bruce

Appeal No. 17966

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**DCRA'S OPPOSITION TO APPELLANT'S MOTION FOR RECONSIDERATION OR
REHEARING**

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("Appellee" or "DCRA"), by and through undersigned counsel, respectfully submits its statement in opposition to the Appellant's Motion for Reconsideration or Rehearing filed on May 17, 2010. DCRA asks the Board to deny the motion as Appellant has not submitted new evidence as required by 11 DCMR § 3126.6 and has failed to show that the Board erred in determining that BZA Appeal No. 17966 was untimely.

1) The Board must deny the Motion for Reconsideration

Appellant's request for reconsideration must be denied as Appellant has failed to show, under 11 DCMR § 3126.4, that the Board erred in its March 30, 2010 order. In the March 30th Order, the Board concluded that because the permit was posted on the gate on February 12 or 13, 2009 and the demolition work, including removal of the garage door began on February 18, the Appellant knew or should have known of the decision complained of, no later than February 18. See BZA Order No. 17966 at p.2-4. Here, the decision Appellant complained of is DCRA's approval of the conversion of a garage at 2709 31st St., NW ("the subject property") into a bedroom. This conversion was permitted under building permit no. B0903245, which was issued

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17966
EXHIBIT NO. 29

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by DCRA on February 11, 2009. The 'description of the work' portion of the building permit plainly states, "Change the garage to one bedroom." At the October 20, 2009 hearing, the Board denied the appeal as untimely, because it had been filed on April 28, 2009, which was over sixty days from the date Appellant should have known of the decision to convert the garage. *See* BZA Order No. 17966 at p.4.

In his May 17, 2010 motion, Appellant makes a desperate attempt to find error in the Board's decision, but identifies none. First, the Board was correct that there were no new appealable decisions made by the DCRA after February 11, 2009. In the appeal, Appellant attempted to use emails by the Zoning Administrator, which affirmed the decision to issue building permit no. B0903245 as a separate basis for appeal. The Board rejected this. *See* BZA Order No. 17966 at p.4. Now, Appellant is attempting to refashion the same failed argument by using a different document. He has submitted building permit no. B0904181, which was issued on March 18, 2010. The permit states, "Revision to permit B0903245 addition of electrical dwg. [drawing]." *See* App. Mot. for Reconsideration and Rehearing at Exhibit B. This permit simply revised permit no. B0903245, which was the prior permit approving the conversion of the garage. Similar to the April 7 and April 17 emails, the issuance of the revised building permit does not contain any "new" zoning decisions. It is merely a reiteration of a previous decision and does not create a new basis for appeal.

Second, the Appellant claims that his appeal was timely because under *Basken v. D.C. Bd. of Zoning Adjustment*, the building permits at issue are ambiguous. The purported ambiguity is that in the 'Existing Use' and 'Proposed Use' sections of the permits, the designation 'R-3' is written. Appellant believes this is a mistake because the subject property is located in an R-1-A zoning district. In fact, there is no ambiguity or error on the permits. Appellant is simply

uninformed. The 'R-3' on the building permits refers to a designation under the Construction Codes, of which the subject property is correctly classified. *See* Exhibit A attached hereto. It has nothing to do with zoning. Further, building permit no. B0903245, states "Change the garage to one bedroom." That language is unequivocally clear as to what was permitted by DCRA. There was no ambiguity as to the nature of the work occurring at the subject property or its bearing on the zoning regulations.

Third, the Board was correct in using the "should have known" standard in determining that the appeal was untimely. Appellant claims that he did not have actual knowledge of the construction until February 27, 2009; however, "actual knowledge" is not the standard that the Board must use. Under 11 DCMR 3112.2(a), the appeal must be filed with sixty days from the date the person "reasonably should have had notice or knowledge of the decision complained of."

Lastly, the Appellant has failed to demonstrate that the Board erred in concluding that Appellant reasonably should have known of the construction by February 18. The facts the Board used to reach that conclusion were that the permit was posted no later than February 13 and that demolition began on February 18. *See* BZA Order No. 17966 at p 2. Despite his attempts to impeach the testimony of Mr. Alavi, Appellant presents no evidence contradicting the Board's findings of fact. Neither at the hearing nor in his Motion for Reconsideration did the Appellant present any contradicting facts that would allow the Board to conclude that the building permit was not posted on the gate by February 13. Although Appellant points to a line in the transcript where Mr. Alavi shows uncertainty about the date of the demolition, the Board was correct to credit Mr. Alavi's later, clarifying testimony that the demolition, including the removal garage door, began on February 18. *See* Tr. at p. 112-4. Further, there is no evidence in

the record contradicting Mr. Alavi's testimony on that point. As the Motion for Reconsideration fails to disturb any of the Board's findings of fact, Appellant has not shown that the Board erred and the motion must be denied.

2) The Board must deny the Motion for Rehearing

Under 11 DCMR § 3126.6, "No request for rehearing shall be considered by the Board unless new evidence is submitted that could not reasonably have been presented at the original hearing." Here, all of the documents Appellant has attached to his May 17, 2010 motion are documents that could have been presented at the original hearing. Appellant's Exhibit B (the revised building permit), Exhibit C (the plumbing, electrical, and air conditioning permits), and Exhibit F (the plumbing inspection report) are all public records that were in existence for more than 7 months before the hearing. Appellant's Exhibit D (the email and letter) are documents that he either had in his possession or created himself before May 4, 2009.

Further, none of these documents are relevant to the jurisdictional issue decided by the Board in the March 30th Order. In finding the Appeal untimely, the Board concluded that Appellant should have been aware of the construction by February 18. The Appellant contends that he was not actually aware of it until February 27. The earliest date on any of the documents in Exhibits B, C, D, and F is March 3, 2009. Therefore, none of these documents are relevant to the timeliness issue as they do not shed any light on the date Appellant knew or should have known about the construction.

Accordingly, the Board must deny the Appellant's Motion for Reconsideration or Rehearing.

Respectfully Submitted,

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May 26, 2010



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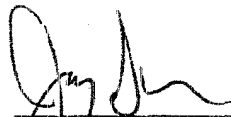
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition was served by first class mail,
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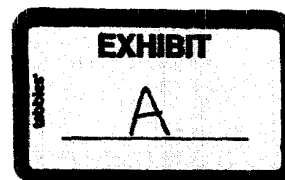
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CHAPTER 3

USE AND OCCUPANCY CLASSIFICATION

SECTION 301 GENERAL

- ★ **301.1 Scope.** The provisions of this chapter shall control the classification of all buildings and structures as to use and occupancy.

SECTION 302 CLASSIFICATION

302.1 General. Structures or portions of structures shall be classified with respect to occupancy in one or more of the groups listed below. A room or space that is intended to be occupied at different times for different purposes shall comply with all of the requirements that are applicable to each of the purposes for which the room or space will be occupied. Structures with multiple occupancies or uses shall comply with Section 508. Where a structure is proposed for a purpose that is not specifically provided for in this code, such structure shall be classified in the group that the occupancy most nearly resembles, according to the fire safety and relative hazard involved.

1. Assembly (see Section 303): Groups A-1, A-2, A-3, A-4 and A-5
2. Business (see Section 304): Group B
3. Educational (see Section 305): Group E
4. Factory and Industrial (see Section 306): Groups F-1 and F-2
5. High Hazard (see Section 307): Groups H-1, H-2, H-3, H-4 and H-5
6. Institutional (see Section 308): Groups I-1, I-2, I-3 and I-4
7. Mercantile (see Section 309): Group M
- ★ 8. Residential (see Section 310): Groups R-1, R-2, R-3 and R-4
9. Storage (see Section 311): Groups S-1 and S-2
10. Utility and Miscellaneous (see Section 312): Group U

SECTION 303 ASSEMBLY GROUP A

303.1 Assembly Group A. Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption; or awaiting transportation.

Exceptions:

1. A building or tenant space used for assembly purposes with an occupant load of less than 50 persons shall be classified as a Group B occupancy.

2. A room or space used for assembly purposes with an occupant load of less than 50 persons and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.
3. A room or space used for assembly purposes that is less than 750 square feet (70 m²) in area and is accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.

Assembly occupancies shall include the following:

A-1 Assembly uses, usually with fixed seating, intended for the production and viewing of the performing arts or motion pictures including, but not limited to:

Motion picture theaters
Symphony and concert halls
Television and radio studios admitting an audience
Theaters

A-2 Assembly uses intended for food and/or drink consumption including, but not limited to:

Banquet halls
Night clubs
Restaurants
Taverns and bars

A-3 Assembly uses intended for worship, recreation or amusement and other assembly uses not classified elsewhere in Group A including, but not limited to:

Amusement arcades
Art galleries
Bowling alleys
Places of religious worship
Community halls
Courtrooms
Dance halls (not including food or drink consumption)
Exhibition halls
Funeral parlors
Gymnasiums (without spectator seating)
Indoor swimming pools (without spectator seating)
Indoor tennis courts (without spectator seating)
Lecture halls
Libraries
Museums
Waiting areas in transportation terminals
Pool and billiard parlors

A-4 Assembly uses intended for viewing of indoor sporting events and activities with spectator seating including, but not limited to:

Arenas
Skating rinks
Swimming pools
Tennis courts

USE AND OCCUPANCY CLASSIFICATION

308.5 Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage or adoption, and in a place other than the home of the person cared for. A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2. Places of worship during religious functions are not included.

308.5.1 Adult care facility. A facility that provides accommodations for less than 24 hours for more than five unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

Exception: A facility where occupants are capable of responding to an emergency situation without physical assistance from the staff shall be classified as Group A-3.

308.5.2 Child care facility. A facility that provides supervision and personal care on less than a 24-hour basis for more than five children 2½ years of age or less shall be classified as Group I-4.

Exception: A child day care facility that provides care for more than five but no more than 100 children 2½ years or less of age, when the rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.

SECTION 309 MERCANTILE GROUP M

309.1 Mercantile Group M. Mercantile Group M occupancy includes, among others, buildings and structures or a portion thereof, for the display and sale of merchandise, and involves stocks of goods, wares or merchandise incidental to such purposes and accessible to the public. Mercantile occupancies shall include, but not be limited to, the following:

- Department stores
- Drug stores
- Markets
- Motor fuel-dispensing facilities
- Retail or wholesale stores
- Sales rooms

309.2 Quantity of hazardous materials. The aggregate quantity of nonflammable solid and nonflammable or noncombustible liquid hazardous materials stored or displayed in a single control area of a Group M occupancy shall not exceed the quantities in Table 414.2.5(1).

SECTION 310 RESIDENTIAL GROUP R

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *International Resi-*

dential Code in accordance with Section 101.2. Residential occupancies shall include the following:

R-1 Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:

- Boarding houses (transient)
- Hotels (transient)
- Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

- Apartment houses
- Boarding houses (not transient)
- Convents
- Dormitories
- Fraternities and sororities
- Hotels (nontransient)
- Monasteries
- Motels (nontransient)
- Vacation timeshare properties

Congregate living facilities with 16 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

★ R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including:

- Buildings that do not contain more than two dwelling units.

- Adult care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.

- Child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.

- Congregate living facilities with 16 or fewer persons.

Adult and child care facilities that are within a single-family home are permitted to comply with the *International Residential Code*.

R-4 Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code, or shall comply with the *International Residential Code*.

310.2 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

BOARDING HOUSE. A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.