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27 May 2010

District of Columbia Board of Zoning Adjustment
441 Fourth Street, NW Suite 200 South
Washington, DC 20001

Re: Appeal of Stephen R. Bruce, Appeal No. 17966

Dear members of the Board:

Intervenor Maryam Mashayekhi, as trustee of the owner of the house at issue here, respectfully urges the Board to deny the request for reconsideration or rehearing from appellant Stephen R. Bruce dated 17 May 2010. Ms. Mashayekhi submits the following points for the Board's consideration and otherwise joins the Zoning Administrator's response.

1. The service date of the order here is 30 March 2010, but Mr. Bruce states "under penalty of perjury" that he did not receive the misaddressed order until 11 May 2010. This assertion is not under oath, however, and the details he offers are sketchy. For example, he does not state if the decision was ultimately delivered in the same envelope or a new envelope that he failed to provide. Moreover, and although the Board's decision was posted on the Office of Zoning website for several weeks before that date, he avoids saying when he learned of the Board's decision, regardless of when he ultimately received the mailed copy.

2. As to the Board's analysis of untimeliness, Mr. Bruce offers no new or newly available evidence. Instead, he launches a nitpicking attack on statements by Ms. Mashayekhi's contractor, Kazem Alavi, whose testimony demonstrated that the building permit was posted shortly after it was issued, that work began in mid-February 2009 and that this activity was sufficiently obvious that a next-door neighbor would have known what was happening. Unable to rebut Mr. Alavi's testimony despite an opportunity to cross-examine him, Mr. Bruce now resorts to trivial objections, e.g., a "dumpster" was placed on the driveway on 19 February 2009, whereas an earlier permit said that construction debris would be removed by a "pick-up truck," and this dumpster blocked any view of the permit. To clinch the point, Mr. Bruce points to a picture of a dumpster occupying the driveway – yet he

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fails to draw the obvious conclusion if one sees a dumpster next door, namely, that construction is or soon will be under way.¹

3. But suppose that all this is wrong and that Mr. Bruce truly had no reason to know of the proposed construction until 26 February 2009, when he says that he noticed the presence of building materials on the site (Tr. at 97). His appeal, though dated 27 April 2009, was not filed until 28 April 2009, which is more than 60 days after he admits that he knew something was afoot. Thus, without conceding the point, even if the Board should grant reconsideration and start the 60-day clock on 26 February 2009, Mr. Bruce's appeal was still untimely *on his own terms*.

4. Apparently recognizing that he waited too long to appeal the building permit, Mr. Bruce tries to pin jurisdiction on (a) subsequent permits for electrical work, plumbing, and the like that have nothing to do with zoning, and (b) DCRA's refusal to take enforcement action on his various complaints. This effort must fail. His contention rests on language in section 3112.2 of the Zoning Regulations, which he reads as broadly conferring jurisdiction to appeal "any order, requirement decision, determination, or refusal made by an administrative officer" as to zoning matters. The problem with this argument, as Mr. Bruce appears to acknowledge, is that the Board's ruling in *Appeal No. 16982 of J. Brendan Herron, Jr.* declined to read section 3112.2 as allowing a neighbor to re-start the clock for an appeal simply by making an enforcement request that is denied. To get around this problem, Mr. Bruce argues that *Herron* was overruled when the Zoning Commission rewrote section 3112.2 in 2003 and by the decisions in *Basken v. BZA*, 946 A.2d 356 (D.C. 2008) and *Economides v. BZA*, 954 A.3d 427 (D.C. 2008). This argument lacks merit because the 2003 rulemaking did not alter the quoted language upon which he seizes. Indeed, as the Commission explained in its 2003 order, and as *Basken* and *Economides* acknowledged, that rulemaking focused solely on codifying what was a "reasonable" time for a party to file an appeal, not what types of decisions may be appealed.

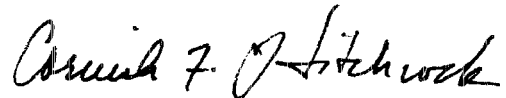
In conclusion, Mr. Bruce's has waged a relentless campaign against an interior renovation that does not change the height, density or footprint of this single-family home – but that does afford him greater privacy by closing a window that

¹ We are constrained to note that Mr. Bruce's sworn testimony about his knowledge of events next door was at times inconsistent. Thus he testified several times under oath that he was unaware that the building permit had been posted on the gates leading to Ms. Mashayekhi's garage because those gates were "open all the time" and "24 hours a day" (Tr. 101-02). When his testimony was contradicted by a photograph that he submitted showing the gates as closed with the permit clearly visible, his only comeback was that to claim that the gates were open 24 hours a day, but not seven days a week – whatever that may mean (Tr. 104). The Board is charged with resolving factual disputes and making credibility determinations, and nothing in Mr. Bruce's litany of objections warrants a re-examination of the factual issues here.

faces his house. This crusade has spawned multiple inspections and review by the Zoning Administrator and DCRA inspection personnel, as well as a full hearing before the Board. Despite these efforts, no error in the permit process has ever been found. It is now time to bring this matter to a close.

For these reasons, as well as those stated in our earlier submission, appellant's request for reconsideration or rehearing should be denied.

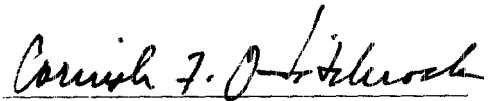
Respectfully submitted,



Cornish F. Hitchcock
Attorney for Maryam
Mashayekhi Trust

CERTIFICATE OF SERVICE

I hereby certify that a copy of this letter was served by postage prepaid, this 27th day of May, 2010 upon Stephen R. Bruce, 2701 31st Street, NW, Washington, DC 20008; Doris Parker-Woolridge and Jay A. Surabian, 1100 4th Street, SW, 5th Floor Washington, DC 20024, and Advisory Neighborhood Commission 3C, 4025 Brandywine St, NW, Washington, DC 20016.



Cornish F. Hitchcock