

SULLIVAN & BARROS, LLP

Real Estate | Zoning | Litigation | Business Law

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October 23, 2012

By Electronic Filing

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

Re: Affidavit of Rochelle Joseph, Permitting Consultant for Appellant Susan Lynch.

Dear Members of the Board,

Enclosed is the affidavit of Rochelle B. Joseph, a permitting consultant, testifying that the building permit applications and plans and other documentation underlying Building Permits No. RW1200113 and RW1200111 were not available to the Appellant, nor to the general public, prior to July 6, 2012. As asserted in the appeal hearing, pursuant to BZA Appeal No. 17411 of Paul A. Basken and Joshua S. Meyer (March 23, 2006), aff'd, Basken v. D.C. Board of Zoning Adjustment, 946 A.2d 356 (D.C. 2008), an appellant has sixty days from the date when its ability to file an appeal was no longer impaired; in this case, July 6, 2012.

In addition, it's important to note that upon the internal Zoning Division approval, the permit applicant received no permission whatsoever to take any action requested under the subject permit applications. If there was no permission to act on the part of the permit applicant, then there effectively was no administrative decision prior to issuance of the permits on June 29, 2012. To find otherwise could lead to a situation where an appeal period runs before an applicant even has approval to move forward, or before a building permit is even issued. In the Basken case, that building permit was issued six months before the sixty (60) day deadline began to run, as provided by the Board.

Under either rationale, this Appeal was timely filed and deserves full consideration on the merits.

Sincerely,


Martin P. Sullivan

Board of Zoning Adjustment
District of Columbia
CASE NO.18469
EXHIBIT NO.25
www.sullivanbarros.com

**BOARD OF ZONING ADJUSTMENT
APPEAL NO. 18469 OF SUSAN LYNCH**

AFFIDAVIT OF ROCHELLE B. JOSEPH

I, Rochelle B. Joseph, hereby present this Affidavit for the purpose of providing testimony to the Board of Zoning Adjustment in Appeal No. 18469 of Susan Lynch:

- 1) I am a professional permit consultant who provides permit consulting services in the District of Columbia for people and companies that need to acquire, or obtain information about, building permits and other regulatory entitlements in the District of Columbia;
- 2) My practice primarily involves interaction with the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA");
- 3) Prior to beginning practice as a consultant approximately two (2) years ago, I spent approximately ten (10) years as an employee of DCRA, including approximately eight (8) years within the Zoning Division of DCRA; the final three (3) years as Deputy Zoning Administrator.
- 4) I have provided services to Sullivan & Barros, LLP, on several occasions for various clients of theirs. In January, 2012, I was retained by Sullivan & Barros, LLP, to provide certain services on behalf of Ms. Susan Lynch, the appellant. In general, I was to act on behalf of Ms. Lynch and try to obtain information from DCRA regarding building permit applications for properties located adjacent to hers, at 2338 and 2334 King Place, NW.
- 5) Regarding the permit plans and applications underlying what was eventually known to be Retaining Wall Permits No. RW1200113 and RW1200111, the permits underlying this Appeal (the "Permits"), I was asked by Mr. Sullivan to obtain information about the subject permit applications and plans and other documentation underlying the Permits (the "Permit Applications").
- 6) On June 7, 2012, Mr. Sullivan forwarded to me an e-mail from Ms. Lynch, in which Ms. Lynch asked if the Permit Applications were a matter of public record and legally available to her or her representatives.
- 7) Based on my considerable and relevant experience and knowledge, the current internal policy of DCRA regarding requests for information for building permit applications in progress, is that such applications and their underlying documentation are not available for viewing or copying by any person other than the building permit applicant or their authorized representative. This was also the consistent policy throughout my ten (10) years working at DCRA.
- 8) Based on my experience, a sign-off by any particular division within DCRA was not final until the building permit or certificate of occupancy was issued, and such sign-offs were often

rescinded in response to comments from other disciplines, and a permit applicant, in any event, did not have permission to act until such building permit was issued.

9) Because of my certain knowledge of this internal policy, I informed Mr. Sullivan that the requested building permit applications would not be available to us until such permits had been issued. Specifically, I wrote to Mr. Sullivan in a June 7, 2012 e-mail (copy attached), that:

“As for the availability of the plans and application submission, the permit and approved plans become a matter of public record once the permit has been issued rather than when each discipline approves. There are components of the plan and application that may require revision prior to final approval in its entirety and permit issuance. So Records Management will not release the documents to the public until the process is complete.

We are just waiting on Structural approval at this point, and then I will be able to request a copy of the approved application and plans.”

10) Based on my experience and knowledge, to provide the general public access to permit applications while they are still being circulated and evaluated by the different disciplines within DCRA would be an unreasonable hindrance on the efficient processing of such applications, and this was my understanding of the reason behind that policy.

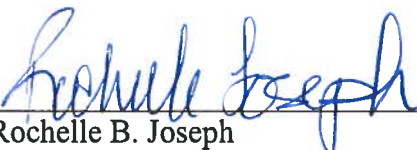
11) After June 7, 2012, I continued to monitor the progress of the review by the Structural Division of DCRA, so that I could request a copy of the subject Permits and Permit Applications as soon as possible after they were made available.

12) Beginning on June 27, 2012, and continuing through July 5, 2012, I made four separate requests of DCRA Records Management, asking for access to view and copy the Permits and Permit Applications.

13) On July 5, 2012, Mr. Sullivan informed me that an attorney for another adjacent neighbor had secured a meeting for himself and Mr. Sullivan with DCRA Zoning Division staff, Mr. Rohan Reid, to view the subject Permits and Permit Applications.

14) Mr. Sullivan also informed me that he had reviewed the Permits and Permit Applications at the July 6th meeting, and that he had received a copy of significant portions of the Permit Applications. He instructed me to try to obtain a full set of the Plans, which I managed to do by July 12, 2012.

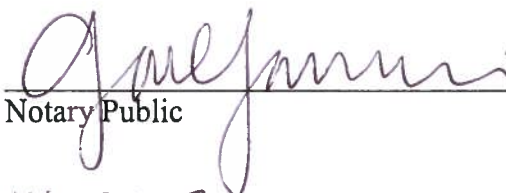
[Signature on the Following Page]


Rochelle B. Joseph

DISTRICT OF COLUMBIA) ss:

I, GAIL JANKOWSKI, a Notary Public in and for the jurisdiction aforesaid do hereby certify that Rochelle B. Joseph, who is personally known to me, personally appeared before me in the jurisdiction aforesaid.

WITNESS my hand and official seal this 22nd day of October, 2012.


Notary Public

[Notarial Seal]

My commission expires: 9-14-2017



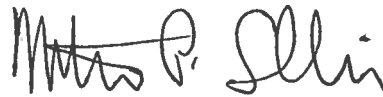
CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2012, a copy of this Cover Letter and Affidavit was delivered to the following, via e-mail:

Jay A. Surabian, Esq.
Assistant Attorney General
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024
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SSB 2338 King LLC
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Advisory Neighborhood Commission 3D
PO Box 40846 Palisades Station
Washington, DC 20016
c/o Stuart Ross, Chair, ANC 3D
Email: Stuart.Ross@troutmansanders.com

A handwritten signature in black ink, appearing to read "Martin P. Sullivan", written over a horizontal line.

Martin P. Sullivan