

**BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

APPEAL NO. 19092—1120 PARK STREET, N.E.

**PROPERTY OWNERS' MOTION TO DISMISS
FOR FAILURE TO TIMELY FILE APPEAL**

Andrew Daly and Patty Jordan (the “Property Owners”), through their undersigned counsel, submit this Motion to Dismiss Appellant Patricia Schaub’s Appeal for her failure to comply with the timeliness requirements of 11 D.C.M.R. § 3112.2.

Under § 3112.2:

Any person aggrieved by any order, requirement, decision, determination, or refusal made by an administrative officer or body, including the Mayor of the District of Columbia, in the administration or enforcement of the Zoning Regulations may file a timely appeal with the Board as follows:

- (a) An appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision 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 D.C. Court of Appeals has held that this “question of timeliness is jurisdictional; if the appeal was not timely filed, the Board [is] without power to consider it.” *Goto v. Board of Zoning Adjustment*, 423 A.2d 917 (1980). Therefore, if Ms. Schaub’s appeal was even a single day late, then it must be dismissed outright.

The Permit in question (G1500009, the “Permit”) was issued on May 20, 2015. Ms. Schaub filed this appeal 61 days later, on July 20, 2015. Based on her longstanding knowledge of the Property Owners’ construction project, Ms. Schaub had notice, or “reasonably should have had notice of knowledge” of the Permit on the day it issued. The Property Owners’ ample notice to Ms. Schaub, and her actions in response, evince her knowledge of the Permit’s status,

including its issuance. If she had wanted to raise any issues with the Permit, her 60 days to do so began on May 20, 2015 and ended July 19, 2015. Even if she had not identified the issue she now raises with the Permit, she had every reason to know that it was issued on May 20, 2015 and that it was available for review on that date.

Ms. Schaub gained actual and constructive knowledge that the Permit was pending during the course of the Property Owners' efforts to plan the garage project. Specifically, she signed a Letter of Notification dated May 15, 2015 (Exhibit 21), which expressly stated that Property Owners were seeking a Permit for their garage construction.¹ She also wrote a letter in February 2013 (Exhibit 20) stating her support for the garage project, and she wrote a similar email in September 2014 (Exhibit 26) in support of the roof deck specifically. Further, Mr. Daly had previously applied for a permit for the garage, of which Ms. Schaub had at least constructive knowledge. Therefore, even if the May 15, 2015 Letter of Notification was the first Ms. Schaub knew specifically of the pending Permit, this Appeal is untimely and must be dismissed.

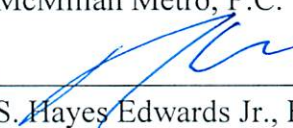
Further, Ms. Schaub had access to the approval process for this appeal through DCRA's website, so she had at least constructive knowledge of the Approval as of May 20, 2015. As Ms. Schaub's papers make clear, she has been an active observer of Mr. Daly's garage project, and has given her written approval of the project on three different occasions. She should be credited with knowledge of the Permit on the day of its issuance.

CONCLUSION

For the reasons discussed above, Ms. Schaub's Appeal must be dismissed outright.

¹ Mr. Daly steadfastly denies that Ms. Schaub's name was forged on the Letter of Notification.

McMillan Metro, P.C.

By: 

S. Hayes Edwards Jr., Esq.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Property Owners' Motion to Dismiss for Failure to Timely File Appeal was filed electronically with the Office of Zoning and was served by electronic mail as indicated, this 3rd of November, 2015, upon the following:

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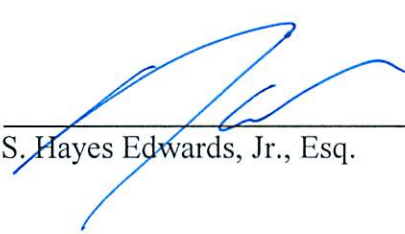
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