

January 19, 2016

BY IZIZ ELECTRONIC FILING (bzsubmissions@dc.gov)

Marnique Y. Heath, AIA
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: Appellant's Supplemental Prehearing Statement
BZA Appeal No. 19092
1120 Park Street, N.E.
Square 0987, Lot 0008 ("Property")

Dear Chairperson Heath and Members of the Board:

On behalf of the Appellant, Ms. Patricia A. Schaub, please accept this letter as the Appellant's Supplemental Prehearing Statement.

Garage Permit Should Be Revoked by DCRA and/or Surrendered and Voided By Property Owner.

On the undisputed facts, further prosecution of this Appeal by Ms. Schaub should be entirely unnecessary and the Board's limited hearing resources protected.

There can be no dispute that the Garage Permit is invalid on its face. Although the Garage Permit states that a roof deck was authorized, the Permit Plans and all the facts show that no roof deck was properly approved. DCRA has the clear authority and compelling responsibility to unilaterally revoke the Garage Permit as issued in error. 12A DCMR 105.6.

Similarly, the Property Owner has acknowledged that: 1) the roof deck was not approved by the Garage Permit and requires future HPRB approval before any permit can be submitted; and 2) the Permit Plans do not comply with the BZA approved plans. Under these circumstances, the Property Owner also is duty bound to surrender to DCRA and void the Garage Permit that is invalid on its face.

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Timely Appeal Filed:

Under all circumstances, the Appeal was filed in a timely manner fully in compliance with the Board's applicable Rules. 11 DCMR §3110.02 and 3112.2.

The Garage Permit was dated May 20, 2015. Prior to the beginning of construction on June, 5, 2015, Ms. Schaub had no actual knowledge, notice or reason to believe that the Garage Permit had been issued. As Ms. Schaub will testify, she did not receive (or countersign) the May 15, 2015 Letter of Notification from the Property Owner's Architect and the Garage Permit was not posted at the site prior to or even after the beginning of construction.

It is undisputed that this Appeal was filed on Monday, July 21, 2015 by Ms. Schaub's original counsel after close consultation and coordination with the Director of the Office of Zoning, Ms. Sara Bardin, to confirm the timeliness of the Appeal and overcome technical difficulties with the IZIS filing system. Based on Ms. Schaub having actual notice of the Garage Permit on June 5, 2015, the Appeal was timely filed forty-five (45) days later. Further, even if the time for the Appeal is measured from the issuance of the Garage Permit on May 20, 2015, the Appeal was timely filed on Monday, July 21, 2015 – on the sixty-first (61st) day. The Board's Rules clearly provide that when as in this case a deadline falls on a Sunday, the time period shall run until the next business day. No prejudice to any party can be claimed as a result of the filing of this Appeal on the sixty-first day in accordance with the Board's own Rules.

The Board's Rules clearly establish the requirements for a timely appeal. 11 DCMR § 3112.2 provides:

- 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.
 - (c) Notwithstanding paragraphs (a) and (b) of this subsection, for purposes of establishing the timeliness of an appeal under this subsection, an appellant shall have a minimum of sixty (60) days from the date of the administrative decision complained of in which to file an appeal.

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- (d) The Board may extend the sixty- (60) day deadline for the filing of an appeal only if the appellant demonstrates that:
 - (1) There are exceptional circumstances that are outside of the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and
 - (2) The extension of time will not prejudice the parties to the appeal, as identified in § 3199.1.

3110.1 In computing any period of time specified in this chapter, calendar days shall be counted.

3110.2 In computing any period of time specified in this chapter, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which event the period shall run until the end of the next day that is neither a Saturday, Sunday, nor official holiday. (Emphasis added)

Garage Permit Usurps the Board's Authority

The Property Owner concedes that the Garage Permit exceeds the BZA approved height of the garage and roof deck by at least one (1) foot, but claims that this discrepancy is "immaterial". However, the Board is singularly vested with the authority to approve applications subject to the plans submitted. Any modifications to the approved plans must be requested, reviewed and approved by the Board after notice, including to the affected ANC. The Property Owner does not have the authority to unilaterally change the approved plans and/or determine what is a material or immaterial change. Any change to the approved plans requires a careful review of the impact on light, air and privacy to adjoining property owner. In this case of a row dwelling, the impact of an increase in height of the garage and roof deck requires consideration of the impact on Ms. Schaub's property as shown in the attached photographs from her house to the proposed construction. Exhibit A.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.



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John Patrick Brown, Jr.



Kate M. Olson

Enclosure (Exhibit A).

By Electronic Mail

cc: Ms. Patricia A. Schaub
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EXHIBIT A





