

TAB E

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

Appeal of ANC 3C, et al.

Appeal No. 19155

Hearing Date: January 12, 2016

AFFIDAVIT OF STEVEN E. SHER

Steven E. Sher, having been duly sworn, states under oath as follows:

1. I am the Director of Zoning and Land Use Services at the law firm of Holland & Knight LLP.
2. I have appeared and been qualified hundreds of times by the Board of Zoning Adjustment and the Zoning Commission as an expert in zoning and land use matters in the District of Columbia, including the application and interpretation of the District of Columbia Zoning Regulations.
3. I have reviewed the Appellants' filings in this case, and find that their assertions are contrary to the express language of the Zoning Regulations, and to long-standing interpretations and applications of the Zoning Regulations.
4. There is only one nonconforming use of the subject property, and that is the apartment house use.
5. Accessory parking is permitted as a matter of right in the R-2 zone, per Sections 300.2 and 301.1(c) of the Zoning Regulations. A use that is permitted by the Zoning Regulations is not a nonconforming use, according to the definition of "nonconforming use" in Section 199 of the Zoning Regulations. Accessory parking in the R-2 zone is therefore not a nonconforming use.
6. There is nothing in Section 300.2, or in Section 301.1(c), or otherwise in Chapter 3, or Chapter 20, that prohibits the addition of accessory parking for nonconforming uses in the R-2 zone. The addition of 10 accessory parking spaces to the subject property is not a prohibited extension/enlargement/expansion or change of the nonconforming apartment house use of the property. The terms "extension", "enlargement", "expansion" and "change" of a nonconforming use have historically been interpreted under Section 2000.5 to refer to the use within a building, and to the use of land, including when there is a structure accessory to the use of the land. The nonconforming apartment house use has not been extended, enlarged, expanded or changed to another nonconforming use by the addition of matter of right accessory parking.

7. The Zoning Regulations do not impose a maximum limitation on the number of accessory parking spaces that may be provided. Section 2101.1 imposes minimum parking requirements for the uses listed in that section. Section 2101.2 allows an owner to provide more parking than the minimum number specified in Section 2101.1. Section 2101.3 allows an owner to provide accessory parking even in instances where Section 2101.1 does not require any accessory parking.

8. Based on the above, the addition of 10 accessory parking spaces to the subject property is permitted as a matter of right under the DC Zoning Regulations.

I declare under penalty of perjury that the foregoing is true and correct.

St E Sher

Steven E. Sher

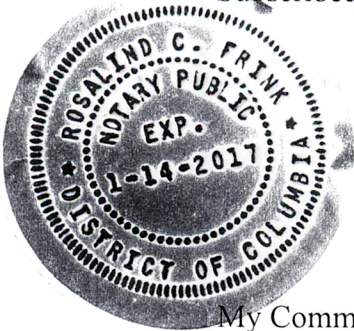
1/6/16

Date

NOTARY PUBLIC:

DISTRICT OF COLUMBIA, ss:

Subscribed and sworn to before me in my presence this *6th* day of January, 2016.



Rosalind Frink
NOTARY PUBLIC

My Commission Expires:

Jan. 14, 2017

ROSALIND C. FRINK
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires January 14, 2017

EXHIBIT E