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FILE NO.: 55638.000002
DIRECT DIAL: (202) 955-1634

April 20, 1999

'99 APR 20 P3:53
OFFICE OF ZONING
DISTRICT OF COLUMBIA

Chairman Sheila Cross Reid
Board of Zoning Adjustment
441 Fourth Street, N.W.
Room 410
Washington, D.C. 20001

Re: BZA Application No. 16443 (Area Variance for 2694 Newark Street, N.W.)

Dear Chairman Reid:

This letter will serve to clarify a statement in our April 13, 1999 opposition to the above-described application. At page 3, we stated as follows:

> To reiterate, it is our position that a special handicap space exclusively for his use on the street and one legal parking pad on site for nurses/guests is sufficient to accommodate his medical needs. This position was also taken by the SMD for this area, Ruth Ann Miller, at the ANC 3C hearing on this case. (The ANC itself officially took no position on this application). The two extensions sought are unwarranted and an intrusion on his neighbors' privacy, especially that of Mr. Selfe's, and present a crowded parking lot appearance antithetical to an historic neighborhood.

On April 15, 1999, Ms. Miller advised the Board by letter that she recommended to the ANC that it not take a position in this case. That is correct as stated in our opposition. However, Ms. Miller goes on to state in her letter that she did not take a position, at the public hearing, separate from the ANC as the Commissioner for this SMD.

I have talked with Ms. Miller regarding this latter statement and she has confirmed that while she did not take a position on this case, particularly with respect to altering the parking pad, she did express the view that an exclusive handicap parking space on the street, which we would assist Mr. Kraus in obtaining, might be a solution to the problem and she encouraged the parties to explore that option.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia

cc: James Montgomery, Esq.
Counsel for Mr. Kraus
Ruthanne Miller, Esq.

BZA
CASE No. 16443
EXHIBIT No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO.16443
EXHIBIT NO.32

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VIA HAND DELIVERY

Chairman Sheila Cross Reid
Board of Zoning Adjustment
441 Fourth Street, N.W.
Room 410
Washington, D.C. 20001

'99 APR 20 P3:53
OFFICE OF ZONING
DISTRICT OF COLUMBIA

Re: BZA Application No. 16443 (Area Variance for 2694 Newark Street, N.W.)

Dear Chairman Reid:

The following response is made to the Statement of Attorney for Applicant filed April 6, 1999 with accompanying Statement of Medical Need by Applicant's Sister Ellen Kraus, for a "medical" variance.

First, there is no such thing as a "medical" or "lifetime" variance and no citation is given to support this request.

Second, this is tantamount to a request for a variance that runs to a person, rather than to the property, which has been found to be illegal by the D.C. courts on several occasions. See, National Black Child Development Institute v. District of Columbia, 483 A.2d 687 (D.C. 1984), where the BZA limited the use variance granted to the owner, and provided for termination of the variance upon transfer of title. The court overturned the BZA's decision and stated in that case:

> Personal conditions impermissibly regulate the business conduct of the owner, rather than the use of his property, and are unlawful **per se**. (Emphasis the court's;)

(A copy of this case is attached for convenience.) See also French v. BZA, 658 A.2d 1023 (D.C. 1995) for the same proposition.

BZA
CASE No. 16443
EXHIBIT No. 32

It is important to state what this case is not about. This case is not about Mr. Kraus' disability. Mr. Kraus' disability can be suitably handled by one legal parking pad on site, and one exclusive handicap van parking space off site. The papers filed in support of this application are a smoke screen to obscure the fact that up to 3 cars have been parked on the one legal pad and two unlawfully extended pads. Only one such vehicle ostensibly is for the use of Mr. Kraus' live-in caretaker.[1] No explanation is given as to why these vehicles, which are sport type vehicles, are or have been parked overnight on a continuous basis most with out of state license plates. Mr. Kraus, or someone on his behalf, has simply abused the situation, created a parking lot like atmosphere directly in front of Mr. Selfe's home at 2968 Newark St., N.W. without government approvals and now seeks a ruling which will retroactively sanction the illegal extensions of the original parking pad. The Board should refuse to condone such a practice.

We also draw to the Board's attention that the illegal First Extension runs both north and south of the flagstone walk, not just "North of the sidewalk, as now exissts [sic]" as alleged in Mr. Montgomery's statement. See attached photo.

For these additional reasons, the grant of a medical variance should be denied.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia

cc: James Montgomery, Esq. (via facsimile)

[1] The person who acts as a live-in caretaker has not been identified, nor why such person has Maryland license tags and not District of Columbia tags.