HUNTON & WILLIAMS
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109
TELEPHONE (202) 955-1500
FACSIMILE (202) 778-2201

BRUSSELS, BELGIUM
WARSAW, POLAND
HONG KONG, CHINA
BANGKOK, THAILAND
NEW YORK, NEW YORK
ATLANTA, GEORGIA

RICHMOND, VIRGINIA
MCLEAN, VIRGINIA
NORFOLK, VIRGINIA
RALEIGH, NORTH CAROLINA
CHARLOTTE, NORTH CAROLINA
KNOXVILLE, TENNESSEE

RICHARD L. AGUGLIA
E-MAIL: RAGUGLIA@HUNTON.COM

'99 JUL 19 P3:29

OFFICE OF ZONING
DISTRICT

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

July 19, 1999

BY HAND

Board of Zoning Adjustment
c/o Ms. Sheri Pruitt-Williams
One Judiciary Square
Room 210
441 - 4th Street, N.W.
Washington, DC 20001

Re: Application No. 16443
(Kraus-area variance for 2694 Newark Street, NW)

Dear Ms. Pruitt-Williams:

Please be advised that the Board set a new hearing date of July 21, 1999 at its April 21, 1999 hearing on this application (No. 16443) at the request of the applicant. Please call me immediately and advise me if the case has been placed on the Board's calendar for July 21, 1999.

Second, I am enclosing the decision of Attorney Examiner Harmon citing the applicant in this case, Mr. Kraus, for violations of the zoning regulations related to the two illegal parking pads for which he is seeking a variance. In sum, the decision, which imposes a $1,090 fine on Mr. Kraus, cites Mr. Kraus for building two extensions to his original parking pad without obtaining a building permit with all necessary approvals.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia

Enclosure
cc: James Montgomery, Esq.
Roger Selfe, Esq.

Board of Zoning Adjustment
District of Columbia
CASE NO.16443
EXHIBIT NO.35

#35

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
941 NORTH CAPITOL STREET, NE - ROOM #9100
P.O. Box 37140
WASHINGTON, DC 20013-7200
(202) 442-8167

DECISION AND ORDER

Department of Consumer and Regulatory Affairs

vs.

Rainer Kraus
c/o James L. Montgomery, Esq.
2744 Brandywine Street, NW
Washington, DC 20008

Respondent

Case Numbers OAD 99-1052E & 99-1003G

Location of infraction (if different from Respondent's address at left):

2964 Newark Street, NW
Washington, DC 20008

Parties present:
[x] Respondent [x] Counsel Rainer Kraus - Respondent; James L. Montgomery, Esq. - Counsel
[x] Government Atty: Doris Parker-Woolridge, Esq. Insp/Inv: Robert Shelton & Dion Henderson Other: _____

Hearing Date: 2-22-99 Infraction Dates: 1993 & 9-25-96; 10-28-98
Service Dates: 12-9-98; 10-28-98

NOI Nos. 30773 & 34357 SNOI Service Date: / /
[] Served [] Posted

INFRACTIONS ALLEGED

(Notice of Infraction #30773)

1) DCMR
D.C. Code 5-426
Fines $ 500
Constructing without a permit
Answer[x]Deny[]Admit with Explanation

2) DCMR
D.C. Code 5-426
Fines $ 500
Constructing without a permit
Answer[x]Deny[]Admit with Explanation

(Notice of Infraction #34357)

1) 11 DCMR 2116.2 Improper parking spaces
D.C. Code
Fines $ 50.00 Answer[x]Deny[]Admit with Explanation

PRELIMINARY MATTERS

The respondent, Rainer Kraus, appeared in person at the administrative hearing held on February 22, 1999. In these consolidated cases, the respondent was represented by James L. Montgomery, Esq. The government was represented by Doris Parker-Woolridge, Esq. At the conclusion of the hearing, the Court held the record open until March 1, 1999, for the filing of an affidavit from James Delgado, building inspector for the Department of Consumer and Regulatory Affairs, relating to the subject property. The government filed the Affidavit of James Delgado on February 24, 1999. Further, the Court ordered the parties to submit Proposed Findings of Fact and Conclusions of Law on or before March 15, 1999. On March 12, 1999, the government filed a motion for extension of time to file its Proposed Findings of Fact and Conclusions of Law. On March 15, 1999, the Court granted the government's motion for an extension of time to file. On April 2, 1999, both parties filed their Proposed Findings of Fact and Conclusions of Law with the Office of Adjudication.

As a preliminary matter, the government moved to amend Notice of Infraction #30773. Specifically, the government moved to amend NOI #30773 to reflect that Charge 1 related to the construction, in 1993, of an extension to the original parking pad located in front of the respondent's home located at 2964 Newark Street, N.W., Washington, D.C., and that Charge 2 related to the construction of a second extension to the original parking pad on September 25, 1996. Subsequently, on February 24, 1999, the government filed a written motion to amend NOI #30773 to include the date of the second infraction, i.e., September 25, 1996. Respondent, through counsel, objected to the amendments on the basis that to allow such amendments would be a violation of the respondent's 5th Amendment right to Due Process under the United States Constitution. The government countered by arguing that the respondent was on notice as to the multiple nature of the violations because on the face of the NOI the inspector described the violation as "[c]onstructing without permit - car pads" (Emphasis added). The District of Columbia further argues that the respondent was put on notice prior to the hearing date that the District of Columbia would be moving to amend the NOI, and that the NOI relates to an alleged violation of law that the agency has been addressing for several years. The Court took the motions under advisement.

As a further preliminary matter, the respondent, through counsel, moved to stay an Order to remove a parking pad at his home located at 2964 Newark Street, NW, Washington, D.C.

The Court will address each motion below.

MOTIONS

A. **Respondent's Motion to Stay Order to Remove Parking Pad Extension**

Respondent, through counsel, moved to stay an Order to remove a parking pad at the respondent's home located at 2964 Newark Street, NW, Washington, DC pending review by the Board of Zoning Adjustment.

Because, under the Civil Infractions Act, D.C. Code Section 6-2701 et seq., and its implementing rules and regulations, which are set forth at 16 DCMR Chapters 31 and 32, the Court has jurisdiction over the Notice of Infraction citations, i.e., NOI Nos. 30773 and 34357 only, the Court denied the respondent's motion for a stay.

B. **Petitioner's Motions to Amend Notice of Infraction #30773**

The government has moved to amend Notice of Infraction #30773 to reflect that there are two (2) charges. Charge 1 relates to the alleged illegal 1993 extension to an existing parking pad at 2964 Newark Street, NW, Washington, DC. Charge 2 relates to the construction of an extension (i.e., the second extension) to the original parking pad at the foregoing address on September 25, 1996. Both charges are considered Class 2 infractions under the Civil Infractions Act of 1985 and carry a fine in the amount of Five Hundred Dollars ($500.00) for each violation.

The respondent argues that to allow an amendment would violate his Constitutional right to Due Process under the 5th Amendment. The respondent further argues that the government is estopped from proceeding against him regarding the 1993 charge. Contrariwise, the government argues that it put the respondent on notice as to the proposed amendment when it advised counsel for the respondent of the proposed amendment prior to the commencement of the instant hearing, and that the amendment relates to a violation of District law that the government has been investigating for the past several years.

The proposed amendment to NOI #30773 raises several legal issues. They are as follows:

1. Whether or not the allowance of the amendment would violate the respondent's 5th Amendment right to Due

Process;

2. Whether or not the proposed amendment should be denied because of the estoppel doctrine;

3. Whether or not the proposed amendment should be denied because of the laches doctrine; and

4. Whether or not the proposed amendment should be denied because of the statute of limitations.

Due Process Rights

It is a well-settled principle of law in this jurisdiction that procedural due process is comprised of two (2) elements: notice of the charge(s) and an opportunity to be heard before a tribunal that is fair, impartial and legally constituted. (*See In re Roundtree*, 467 A2d 143 (D.C. 1983) *citing Goss v. Lopez*, 419 U.S. 565 (1975); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313-315 (1950)).

A careful reading of the NOI #30773 reveals that the charge set forth in the NOI relates to the construction of **car pads** without a permit. It is undisputed that the referenced car pads related to the construction of two (2) extensions of an existing car pad at 2964 Newark Street, N.W., Washington, D.C., i.e., a 1993 and a 1996 extension. The record further reflects that the respondent, pursuant to a Notice to Discontinue Use, was put on notice as to the alleged construction of the 1993 and 1996 extensions of the original car pad, and that the respondent did not obtain the required permits prior to the construction of said car pads. Simply stated, the Notice of Infraction was sufficient to put the respondent on notice that the citation related to the building of two (2) car pads, in that the only extension of car pads that were constructed were those built in 1993 and 1996. Accordingly, the respondent cannot persuasively and successfully argue that he was not put on notice as to the nature or the time-frame as to when the violations of District law occurred. Further, there is no dispute that the 1996 extension was being built on or around September 25, 1996 when the government inspector issued a stop work order.

With respect to the second element of procedural due process, it is clear that the respondent had full and ample opportunity to present a defense to the charges before an administrative forum that was legally constituted pursuant to the Civil Infractions Act of 1985, D.C. Code Section 6-2701 *et seq.*, and that a trial-type proceeding was conducted in this matter.

Because of the foregoing, the court finds that the respondent's Due Process rights under the Fifth Amendment to the United States Constitution will not be trampled upon by the granting of the government's oral and written motions to amend NOI #30773.

Doctrine of Estoppel

The respondent argues that the government is equitably estopped from bringing an action against him relating to the 1993 extension of the parking pad.

The term equitable estoppel or *estoppel in pais*[1] relates to "[t]he doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had" (*See Black's Law Dictionary* (5th ed. 1979).

In this jurisdiction, the elements of equitable estoppel are set forth in *Parker v. Sager,* 174 F.2d 657, 661 (D.C. Cir. 1949). The Court in *Parker, supra,* stated that, as to a party who claims estoppel, the essential elements are:

(1) Lack of knowledge of the truth as to the facts in question;

(2) Reliance upon the conduct of the party estopped; and

(3) Action based thereon of such a character as to change his position prejudicially.

In applying the above-stated legal elements to the case at bar, the Court believes that the respondent cannot persuasively argue that the government is estopped from administratively prosecuting the instant matter. Specifically, the respondent has not demonstrated that he relied to his detriment on any type of conduct by the government. While the respondent has asserted in these proceedings that a government official had informed him that he did not have to have a permit to add on to or to extend his original parking pad, the respondent has failed to state who that official was or to demonstrate that he, the respondent, informed the official that the extension to the parking pad was to be used to park additional vehicle(s), or that the respondent's property was located in an historic district, which would require action and approval by the District of Columbia Historic Preservation Review Board under D.C. Law 2-144 before alterations to the site could be made. Moreover, the respondent cannot argue that he changed his position prejudicially when he himself failed to divulge that the purpose of his extension to the original car pad was to park additional vehicles.

---

[1] Estoppels at common law are sometimes said to be of three kinds: (1) by deed; (2) by matter of record; (3) by matter *in pais*. The first two are also called legal estoppels, as distinguished from the last kind, known as equitable estoppels (*See, e.g. Black's Law Dictionary* (5th ed. 1979).

Clearly, the respondent does not have clean hands in this scenario and cannot persuasively argue that the government has ratified his wrongful conduct. What is more, the respondent proceeded to build the extension to the original car pad after he had been informed by a neighbor, who had consulted with officials at DCRA, that he, the respondent, needed a zoning variance, approval from the Historic Preservation Division at DCRA and a building/construction permit.

Doctrine of Laches

While the respondent has not directly asserted as an affirmative defense that the government is barred from bringing an action related to the 1993 parking pad extension, the Court will discuss this doctrine as it is related to the equitable estoppel argument.

As stated at 27A *Am Jur 2d, Equity*, Section 155 (1998):

> While in some cases involving state government actions, the bar to applying laches against the state is not discussed, a general rule prevails that laches does not apply to state government actions and that states are not chargeable with the laches of their officials. Paralleling the Federal Government action cases, laches generally is inapplicable against state government actions that assert or seek to enforce public rights or interests, or where the state government is acting in its governmental capacity, in the exercise of a governmental function, or is pursuing a suit founded on a sovereign right. *The considerable reluctance to apply laches may impair the functioning of the government body, and that valuable public interests may be jeopardized or lost by the negligence, mistakes, or inattention of public officials* (footnotes omitted) (emphasis added).

In applying the above-stated legal concept to the case at bar, it is clear that the District of Columbia is not barred from taking legal action against the respondent who, allegedly, has violated existing construction and zoning rules and regulations. Indeed, in commencing legal action against the respondent, the government is clearly performing a governmental function, in that it is exercising its authority to enforce the District's construction and zoning rules and regulations. What is more, the fact that governmental officials delayed in taking legal action against the respondent for approximately five (5) years does not legally preclude the government from pursuing the instant action against the respondent. That argument cannot be used to bar the legal action because to do so would certainly jeopardize the government's ability to enforce valuable public interests due to the failure of public officials to act in a less than expeditious manner.

Because of the foregoing, the Court firmly believes that the Doctrine of Laches does not present a legal impediment against the government's legal action against the respondent in the instant matter.

Statute of Limitations

A review of the Civil Infractions Act of 1985 and its implementing rules and regulations reveals that there is no limitations of actions set forth in either the Act or its implementing regulations. Further, while not controlling in the case at bar, a review of the general limitations of action statute regarding civil actions in the District of Columbia, which is set forth at D.C. Code Section 12-301, reveals that that provision does not apply "to actions brought by the District of Columbia government." What is more, under the *nellum tempus* doctrine, which is applicable in the District of Columbia, when a municipality is performing a public function, it is not barred from bringing an action because of the passage of time (*See District of Columbia v. Owens-Corning, 572 A2d 394, 401 (D.C. 1989)*). It is clear in the case at bar that the government in bringing the instant action was performing a public function, in that it was attempting to enforce and gain compliance with its laws as it relates to construction without proper permits and the parking of vehicles where not legally permitted. Accordingly, the government is not time-barred from bringing the instant action.

FINDINGS OF FACT

1. Respondent, Rainer Kraus, has owned the premises located at 2964 Newark Street, N.W., Washington, D.C. since 1963 (Testimony of Rainer Kraus - the respondent).

2. Respondent's home at 2964 Newark Street, N.W., Washington, D.C. is located in Cleveland Park, which has been designated an historic district (Testimony of Building Inspector Robert Shelton; Stephen Raiche and Gladys Hicks).

3. In or around January 1976, the respondent applied for and obtained a permit[2] from the Department of Consumer and Regulatory Affairs (hereinafter "DCRA") to construct a driveway in front of his home located at 2964 Newark Street, N.W., Washington, D.C. (Testimony of Rainer Kraus - the respondent; Govt.'s Exh. 23).

---

[2] The permit allowed the respondent to do the following:

> To construct 1-9' driveway located at 2964 Newark Street, N.W. Driveway will leas (sic) to off st. parking and will be paved to back to sidewalk. Reinfoced (sic) concrete at owners' expense of 6 - inch will be used....

4. In May 1993, Scott Spear, who resides at respondent's home, and his brother built a brick extension to the original parking pad[3] at the respondent's residence located at 2964 Newark Street, NW, Washington, D.C. without the respondent having first obtained a permit from the District of Columbia Department of Consumer and Regulatory Affairs (Testimony of Roger Selfe and Scott Spear).

5. The May 1993 extension to the original pad measured approximately 8 ft. in width and 12 ft. in length (Testimony of Scott Spear).

6. The May 1993 extension doubled the size of the original parking pad and extended the parking pad almost to the front of the respondent's home located at 2964 Newark Street, N.W., Washington, D.C. (Testimony of Roger Selfe; Govt.'s Exh. 13).

7. In September 1996, Scott Spear built a second extension to the original parking pad without first obtaining a permit from DCRA (Testimony of Rainer Kraus - the respondent; Testimony of Scott Spear).

8. The respondent, who is disabled and uses a wheelchair as the result of losing a portion of his left leg in 1994, maintains that he needs additional parking space to accommodate nurses and physical therapists who come to his home to provide medical care (Testimony of Rainer Kraus - the respondent; Resp.'s Exh. 1; Govt.'s Exh. 33).

9. The respondent paid a fine in the amount of One Hundred Dollars ($100.00) for noncompliance with parking space requirements as it related to a Notice of Infraction (#3000) served on him by DCRA. The infraction date on the NOI was July 23, 1996 (Stipulation of Rainer Kraus - the respondent; Govt.'s Exh. 24).

10. The respondent's next door neighbor, Roger Selfe, who has resided at 2968 Newark Street, N.W., Washington, D.C. since 1990, advised the respondent in or around May 1993 that he, the respondent, could not extend the original parking pad at his residence without first obtaining a zoning variance from the District of Columbia, approval from the Historic Preservation Division at DCRA and a construction permit. Such information was conveyed to the respondent after Mr. Selfe had spoken to personnel in the Zoning Inspection Branch at the Department of Consumer and Regulatory Affairs (Testimony of Roger Selfe; Govt.'s Exh. 13).

11. The respondent's home and his neighbor Roger Selfe's home located at 2968 Newark Street, N.W., Washington, D.C. are identical, are on narrow lots and face each other (Testimony of Roger Selfe; Govt's Exhs 3, 5, 7, 9 & 10).

---

[3] The respondent, Rainer Kraus, testified at the hearing that the original parking pad was built in front of his home in or around 1976.

12. During the period of June 1996 to January 1999, the respondent's neighbor, Roger Selfe, filed written complaints with District officials concerning extensions to the respondent's parking pad without the securing of a permit and the alleged illegal parking of vehicles on the parking pads (Testimony of Roger Selfe; Govt.'s Exhs. 11, 12, 13, 14, 15, 17, 18, 19 and 20).

13. In either the Spring of 1995 or the Spring or Summer of 1996, the respondent's next door neighbor, Roger Selfe, took photographs documenting the parking of more than one (1) vehicle in front of the respondent's home (Testimony of Roger Selfe; Govt.'s Exhs. 9 & 10).

14. In December 1997, the respondent's neighbor, Roger Selfe, took photographs documenting the parking of more than one (1) vehicle in front of the respondent's home (Govt.'s Exhs. 2, 3, 4, 5, 6 & 7).

15. The distance between Roger Selfe's living room window and the 1993 extension to the respondent's original car pad is approximately ten (10) feet (Testimony of Roger Selfe).

16. According to Roger Selfe, the parking of vehicles on the 1993 and 1996 extensions to the original parking pad (i.e., the parking pad closest to Newark Street, NW) lowers his property value, and that when several vehicles are parked on the original parking pad and its 1993 and 1996 extensions, one cannot even see his home from the street (Testimony of Roger Selfe).

17. According to the respondent, prior to extending the original parking pad in 1993, he spoke to an official at DCRA regarding the procedure for "slightly extend[ing] an existing car pad." According to the respondent, he was informed that if the addition were on the same level and the same type of material were used - no permit was necessary (Testimony of Rainer Kraus - the respondent).

18. The May 1993 extension to the original parking pad was built to allow more space for the parking of two (2) vehicles and to prevent a "mud problem" that existed when vehicles were not parked entirely on the brick parking pad (Testimony of Rainer Kraus - the respondent).

19. By Decision and Order dated August 15, 1996, Rohulamin Quander, who is an Attorney Examiner at the Office of Adjudication, DCRA, advised the respondent "that if he wish[ed] to regularly, or even occasionally park a third vehicle at the site [i.e., 2964 Newark Street, N.W., Washington, D.C.], and given the difficult on-street parking situation, he need[ed] to obtain the relevant construction permit, and if need be, a zoning variance, and then widen the parking pad to better accommodate the situation." (Govt.'s Exh. 26).

20. On or around September 25, 1996, Robert Shelton, who is a construction inspector at the Department and Consumer and Regulatory Affairs, observed that brick pavers were being laid in the respondent's front yard in order to build a parking pad at the respondent's home. At

this time, Inspector Shelton issued a stop work order (Testimony of Robert Shelton; Testimony of Rainer Kraus - the respondent; Testimony of Scott Spear).

21. Upon searching the files at DCRA on September 25, 1996, Inspector Shelton discovered that the respondent did not have a permit to build a parking pad at 2964 Newark Street, N.W., Washington, D.C. (Testimony of Inspector Robert Shelton).

22. By an undated and unsigned application, the respondent applied for a construction to "extend existing parking pad 4' x length: 4x12 brick on ground. No structural improvement." Said application was filed with DCRA on or about September 26, 1996 (Govt.'s Exh. 29).

23. On September 26, 1996, the respondent applied for and obtained from DCRA a building permit to "extend existing parking pad 4' length by 4 x 12 brick on ground no structural improvement no (sic) subject to D.C. Law 2-144 private property only." Said application was not dated nor was it signed by the respondent or the respondent's agent (Testimony of Rainer Kraus - the respondent; Testimony of Scott Spear; Govt.'s Exh. 29).

24. On page three (3) of the respondent's Application for Construction Permits on Private Property, it provides that the owner of the subject property must certify that any construction must conform to the "D.C. Construction Codes, the Zoning Regulations and other applicable laws and regulations of the District of Columbia." (Govt.'s Exh. 29).

25. On September 25, 1996, Stephen J. Raiche, who is Chief of the Historic Preservation Division, Building and Land Regulation Administration at DCRA, initialed and signed off on the respondent's application for a permit to extend a parking pad at 2964 Newark Street, N.W., Washington, D.C. Mr. Raiche, however, noted in his log-in book that what he signed off on was a permit to build a brick walkway/patio, and that the person who presented the application to him on September 25, 1996 stated that the purpose of the application was to obtain a permit to build a walkway/patio. (Testimony of Stephen J. Raiche; Govt.'s Exh. 34).

26. Mr. Stephen Raiche noted in a memorandum dated April 3, 1997, that had he known that the respondent's "intention was to 'extend existing parking pad' [he] would have most likely requested the [respondent] file for the Review Board, since the construction of a permanent driveway/parking pad is customarily treated as an 'alteration' under [D.C. Law 2-144], as it results in the introduction of vehicles into the greenspace within historic districts (Testimony of Stephen Raiche; Govt's Exh. 31).

27. Because there was a stop work order issued on the respondent's property located at 2964 Newark Street, NW, Washington, DC, the respondent's application to "extend existing parking pad" should have

come before the Building Inspection Division of the Building and Land Regulation Administration at DCRA for review. Such application was not approved by the Building Inspection Division of BLRA (Testimony of Vincent Ford)[4].

28. By memorandum dated January 17, 1995 (sic), Gladys Hicks, who, at the time, was the Acting Zoning Administrator at the Department of Consumer and Regulatory Affairs[5], noted that the "[e]xpansion of an existing nonconforming parking pad in the front yard would need approval from the Board of Zoning Adjustment (Public Hearing) and approval from Historic Preservation" (Testimony of Gladys Hicks; Govt.'s Exh. 32).

29. The building permit issued in 1996 for the extension of a parking pad was improperly issued because, prior to the issuance, the respondent would have had to have obtained the approval of the District of Columbia Board of Zoning Adjustment and the District of Columbia Historic Preservation Review Board (Testimony of Gladys Hicks).

30. When discussing the 1996 extension to the original parking pad at the respondent's home with Building Inspector James Delgado in 1998, the respondent informed Inspector Delgado that "if the government did not bother to ask the correct question, I should not be held accountable for their mistake [in granting a permit for the 1996 extension] (Post-hearing submission (Affidavit of James Delgado)).

31. On October 28, 1998, Dion Henderson, who is an investigator at the Department of Consumer and Regulatory Affairs, observed that there were two (2) vehicles, i.e., a white ford and a red mercedes parked in front of the respondent's home at 2964 Newark Street, N.W., Washington, D.C. The investigator noted that the property had a parking space only for one (1) vehicle (Testimony of Investigator Dion Henderson).

CONCLUSIONS OF LAW

1. Pursuant to D.C. Code Section 5-426, "[i]t shall be unlawful to erect, construct, reconstruct, convert, or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit from the Inspector of Buildings...."

---

[4] Mr. Ford, who is the Chief of the Building Inspection Division at the Department of Consumer and Regulatory Affairs, further testified that such application should have come before the Building Inspection Division for the assessment of a fifty percent (50%) penalty on the [application] fee.

[5] Ms. Hicks is currently the Deputy Zoning Administrator.

2. Pursuant to 11 DCMR Section 2116.2[6], "[p]arking spaces shall be located in one (1) of the following ways:

(a) Within a permitted garage or carport, subject to the special provisions of chapter 23; or

(b) On an open area of the lot as follows:

(1) Within a rear yard;

(2) Within a side yard; or

(3) Except in an SP District, elsewhere on the lot if accessory to a commercial or industrial use.

3. The respondent, Rainer Kraus, has violated D.C. Code Section 5-426, in that in or around May 1993 and on September 25, 1996, he built, or had built, two (2) extensions to the original parking pad at 2964 Newark Street, N.W., Washington, D.C. without having first obtained building permits from the Department of Consumer and Regulatory Affairs.

4. The respondent, Rainer Kraus, has violated 11 DCMR Section 2116.2, in that on October 28, 1998, he permitted the parking of two (2) vehicles in front of his home located at 2964 Newark Street, N.W., Washington, D.C. when he knew, or should have known, that only one (1) vehicle could be parked in front of his home.

DECISION AND ORDER

1. The respondent, Rainer Kraus, has violated Charge 1 of NOI #30773. Accordingly, the respondent shall pay a fine in the amount of Five Hundred Dollars ($500.00).

2. The respondent, Rainer Kraus, has violated Charge 2 of NOI #30773. Accordingly, the respondent shall pay a fine in the amount of Five Hundred Dollars ($500.00).

3. The respondent, Rainer Kraus, has violated Charge 1 of NOI #34357. Accordingly, the respondent shall pay a fine in the amount of Fifty Dollars ($50.00).

The Court does not believe that there are extenuating or mitigating circumstances in the case at bar that would warrant either a reduction or a suspension of the fines in the instant

---

[6] The final rulemaking for Section 2116 was published in the *D.C. Register* at 31 DCR 6585, 6603 on December 28, 1984, and became effective on March 1, 1985.

case. Indeed, the evidence demonstrates that, even after being put on notice that he required a zoning variance and an approval from the District of Columbia Historic Preservation Division to build extensions to his original parking pad, the respondent proceeded to build such extensions without first securing a zoning variance, approval from the Historic Preservation Division or the Historic Preservation Review Board or obtaining construction/building permits. Further, with respect to the 1996 extension, the evidence demonstrates that, a DCRA official was informed that the purpose of the extension was to build a walkway/patio and not an extension to park vehicles.

Instead of requesting a variance, as provided for under the Zoning Regulations at 11 DCMR Section 3107, prior to commencing the illegal building of extensions to his original parking pad at 2964 Newark Street, N.W., Washington, D.C., the respondent chose to proceed without going through established procedures for requesting and obtaining the above-referenced variance to allow him, if granted, to legally build the extensions to his original parking pad. This action by the respondent is clearly a violation of District law.

Court costs in the matter are forty dollars ($40.00). Therefore, the total amount that is due and owing the District of Columbia in the case at bar is One Thousand Ninety Dollars ($1,090.00).

FINES	$	1,050.00
PENALTY	$	0.00
COSTS	$	40.00
TOTAL	$	1,090.00

Dated: 7-19-99

: : : Seal : By: _____ [X]Decision Served
: : ATTORNEY EXAMINER, D.C. []Decision Forwarded to AVPD for service

IMPORTANT NOTICE

Respondent's failure to appeal this decision or to arrange for payment of all fines, penalties and costs within fifteen (15) calendar days of service of this decision SHALL OPERATE TO SUSPEND AUTOMATICALLY THE LICENSE OR PERMIT until the fines, penalties and costs are paid, thereby subjecting Respondent to subsequent and enhanced violations for unlicensed activity. Admits with Explanation are appealable only to the

extent that the Attorney Examiner has imposed an illegal sanction(s) under the Civil Infractions Act or its implementing regulations.

APPEAL RIGHTS

UPON EXPIRATION OF THE ABOVE-NOTED FIFTEEN (15) CALENDAR DAYS, THIS DECISION AND ORDER WILL BE FINAL. THE RESPONDENT HAS A RIGHT TO APPEAL AS DESCRIBED BELOW.

HOW TO APPEAL

Please read this notice carefully if you decide to appeal the decision.

In general all civil infraction orders are appealable to the BOARD OF APPEALS AND REVIEW. There are a few exceptions.

If your matter concerns a violation of the Alcoholic Beverage Control Act (for example, failure to supervise, or failure to have the appropriate lettering on the front of the establishment) then your matter is appealable to the ALCOHOLIC BEVERAGE CONTROL BOARD.

If your matter concerns a violation of D.C. Zoning Regulations or Chapter 4 (Zoning and Height of Buildings) of Title 5 of the D.C. Code, then your matter is appealable to the BOARD OF ZONING ADJUSTMENT.

If you hold an occupational or professional license, except related to a health occupation, and the matter concerns a violation of a professional or occupational regulation, then your matter is appealable to the appropriate Board or Commission in the Occupational and Professional Licensing Administration.

If you are licensed in a health occupation, and the matter concerns a violation of a health occupation law or regulation, then your matter is appealable to the appropriate Board or Commission in the Licensing Regulation Administration of the Department of Health.

If you are not licensed or your occupation or profession is not regulated by a Board or Commission, then your matter is appealable to the BOARD OF APPEALS AND REVIEW.

The following addresses and telephone numbers are for the appropriate appellate body:

BOARD OF APPEALS AND REVIEW
441 4th Street, N.W.
Suite 540S
Washington, D.C. 20001
(202) 727-9412

ALCOHOLIC BEVERAGE CONTROL BOARD
941 North Capitol Street, N.E.
Room 7W30
Washington, D.C. 20002
(202) 442-4445

BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Suite 210S
Washington, D.C. 20001
(202) 727-6311

OCCUPATIONAL AND PROFESSIONAL
LICENSING ADMINISTRATION
941 North Capitol Street, N.E.
Room 7W46
Washington, D.C. 20002
(202) 442-4320

LICENSING REGULATION
ADMINISTRATION
DEPARTMENT OF HEALTH
825 North Capitol Street, N.E.
Room 2164
Washington, D.C. 20002
(202) 442-5888