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CHARLOTTE, NORTH CAROLINA
KNOXVILLE, TENNESSEE

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

FILE NO.: 55638.000002
DIRECT DIAL: (202) 955-1500

October 5, 1999

BY HAND DELIVERY

D.C. Board of Zoning Adjustment
c/o Sheri M. Pruitt-Williams
441 - 4th Street, N.W.
Suite 210
Washington, D.C. 20001

OCT 5 '99 PM 5:29
DISTRICT OF COLUMBIA
BOARD OF ZONING

Re: BZA Application No. 16443
(Area Variance for 2964 Newark Street, N.W.)

Ladies and Gentlemen:

I draw to your attention the following facts, rules of the Board and D.C. statutes regarding this application , set for hearing on October 6, 1999, and the request for consolidation with the infraction decision:

I. THE INFRACTION DECISION

a) Jurisdiction

By letter dated July 20, 1999, counsel (Mr. Montgomery) for applicant Kraus sought to have this Board consolidate the hearing on the area variance with an infraction hearing. Specifically, the infraction hearing related to an appeal of a decision and order by an attorney examiner for DCRA finding that applicant Kraus had violated D.C. zoning and building regulations in constructing the two (2) illegal parking pads for which he now seeks an area variance.

We submit that the applicant has failed to perfect the appeal of the infraction decision and, therefore, the Board has no jurisdiction to hear the appeal, for the following reasons:

The infraction decision clearly states that an appeal must be made to the appropriate appellate body, in this case, the BZA. Kraus'

BZA
CASE No. 16443
EXHIBIT No. 40

Board of Zoning Adjustment
District of Columbia
CASE NO.16443
EXHIBIT NO.40

appeal was made to the Office of Adjudication, DCRA, instead of to this Board. Kraus' counsel admits that a special form had to be filed with BZA (See Exh. A). However, no such form was ever filed. As the 15 days required to file an appeal from the infraction decision have expired, the Board is without jurisdiction to hear this case.

We note that applicant's new counsel (Mr. Gell) advised both Mr. Bergstein of Corporation Counsel's office and me (counsel for Mr. Selfe) that he had no intention of appealing the infraction, which is consistent with Mr. Montgomery's failure to file the proper appeal form with the BZA.

b) Standard of Review

If the BZA is inclined to hear and consolidate the infraction decision with the area variance sought, Corporation Counsel has asked for information regarding the scope/standard of review. D.C. Code § 6-2723 clearly sets forth that appeals of an attorney examiner decision, as is the case here, shall be determined by the reviewing agency on the basis of the record. The order of the attorney examiner must be supported by a preponderance of the record and the reviewing agency shall have the power to affirm, reverse or modify the decision below. Thus, the procedure to be taken by the Board is similar to that of an appellate court that hears argument of counsel based on the record below and is **NOT *DE NOVO.*** See Exh. B (statutes involved).

The burden of ordering and paying for the transcript on appeal to the BZA is that of Mr. Kraus and his counsel. See D.C. Code § 6-2722 (Exh. B). To our knowledge, no transcript has been ordered which is consistent with the fact that we have been led to believe that no appeal of the infraction decision would be taken.

II. THE VARIANCE CASE

a) Posting

Sec. 3317 of the Zoning Regulations (Pre-Hearing Procedure for Applications: Notice) requires that the applicant file with the Board not less than 5 days prior to the public hearing, a sworn affidavit demonstrating that notices of the public hearing have been continuously posted on the property for which a variance is sought. No such affidavit has been filed and we are prepared to present testimony that the notice of public hearing has been removed from the property for some time. Accordingly, the Board should dismiss the application for failure to comply with its procedural rules. See Exh. C.

b) Filings

New counsel for Mr. Kraus (Mr. Gell) filed additional statements in the record today, just one day prior to the hearing. The Board should decline to permit him to do so under Section 3316.6, which requires that additional statements be filed 14 days prior to the hearing date. As this is the 2nd extension of this case (originally scheduled for hearing on April 21, 1999, then continued to July 21, 1999, and finally to October 6, 1999 - no further extensions), and Mr. Kraus has had over 5 months to meet this requirement, the Board should not grant him leave to do so. Mr. Montgomery advised me after the July 21, 1999 meeting that Mr. Gell had been retained to continue the case, giving Mr. Gell ample opportunity to meet the 14 day rule.

For these reasons, both the appeal of the infraction decision and the application for area variance should be dismissed.

In the alternative, the Board should review the transcript of the contested case hearing conducted by the attorney examiner who found Kraus guilty of 2 infractions as an appellate body. Applicant Kraus should be given 30 days to order and pay for the transcript or the BZA should dismiss the case. With respect to the variance request, if allowed to proceed despite lack of posting, the applicant should not be allowed to amend his application with additional facts past the 14 day rule, to the detriment of his opponents.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia

cc: Alan Bergstein, Esq.
(Corporation Counsel's Office)

Stephen N. Gell
(Attorney for Applicant Kraus)

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RICHARD L. AGUGLIA
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FILE NO.: 55638.000002
DIRECT DIAL: (202) 955-1500

October 5, 1999

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
99 OCT 5 P 3:34

BY HAND DELIVERY

D.C. Board of Zoning Adjustment
c/o Sheri M. Pruitt-Williams
441 - 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: BZA Application No. 16443
(Area Variance for 2964 Newark Street, N.W.)

Ladies and Gentlemen:

The parties are close to a settlement. However, out of an abundance of caution, the following letter is being filed in the event the proceedings go forward tomorrow as scheduled.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia

cc: Alan Bergstein, Esq.
Stephen Gell, Esq.



JAMES L. MONTGOMERY
ATTORNEY AT LAW
3744 BRANDYWINE STREET, N.W.
WASHINGTON, D.C. 20008

July 20, 1999 (202) 244-8068

FAX to:

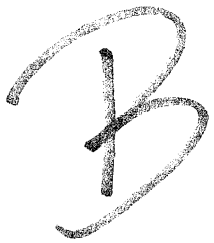
Richard L. Aguglia, Esq.
Hunton & Williams

FAX # 778-2201

Attached is letter delivered this morning to BZA.

Also, notice of appeal. However, I learned on delivering this that a special form is required by BZA.

Two pages plus this page.



§ 6-2705. Regulations.

The Mayor may issue rules and regulations necessary to carry out the purposes of this act. (Oct. 5, 1985, D.C. Law 6-42, § 105, 32 DCR 4450.)

Cross references. — As to purposes of Law 6-42, see § 6-2701.

Legislative history of Law 6-42. — See note to § 6-2701.

References in text. — "This act," referred to at the end of the section, is D.C. Law 6-42.

§ 6-2706. Summary action.

(a) If the Mayor determines, after investigation, that the conduct of a licensee presents an imminent danger to the health or safety of the residents of the District, the Mayor may order the sealing of the premises upon which the respondent is engaged in the unlawful conduct, provided that the premises are primarily used for the unlawful activity.

(b) At the time of the sealing of the premises, the Mayor shall provide the licensee with written notice stating the action being taken, the basis for the action, and the right of the licensee to request a hearing.

(c) A licensee shall have the right to request a hearing within 72 hours after service of notice of the sealing of the premises. The Mayor shall hold a hearing within 72 hours of receipt of a timely request, and shall issue a decision within 72 hours after the hearing.

(d) Every decision and order adverse to a licensee shall be accompanied by findings of fact and conclusions of law. The findings shall be supported by, and in accordance with, reliable, probative, and substantial evidence. The Mayor shall provide a copy of the decision and order and accompanying findings of fact and conclusions of law to each party to a case or to each party's attorney of record.

(e) Any person aggrieved by a final summary action may seek judicial review in accordance with subchapter I of Chapter 15 of Title 1. (Oct. 5, 1985, D.C. Law 6-42, § 106, as added Mar. 8, 1991, D.C. Law 8-237, § 2(d), 38 DCR 314.)

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Subchapter II. Procedures.

§ 6-2711. Notice of infraction.

(a) In order to initiate a proceeding under subchapters I and II of this chapter, the Mayor shall serve a notice of infraction upon a respondent. The Mayor shall retain a copy of the notice of infraction, which shall bear a certification attesting to the matters set forth in the notice.

(b) The Mayor shall prepare the notice of infraction, which shall contain:

(1) The name and address of the respondent;

(2) A citation of the law or regulation alleged to have been violated;

(3) The nature, time, and place of the infraction;

(4) Where appropriate, the date by which the respondent must comply to avoid incurring a fine or penalty;

(5) The amount of the fine applicable to the infraction;

(6) The manner, place, and time in which the fine and penalties, if any, may be paid;

(7) Notice that failure to pay monetary sanctions may result in suspension of respondent's permit or license;

(8) Notice that failure to answer the notice of infraction within 15 calendar days from the date of service, or other period which the Mayor may establish by rule or regulation, may result in penalties, and the amount of those penalties; and

(9) Notice of the respondent's right to request a hearing with respect to the infraction, and the procedure for requesting a hearing.

(c) If an administrative law judge or attorney examiner determines that a notice of infraction is defective on its face, the administrative law judge or attorney examiner shall enter an order dismissing the notice of infraction and shall promptly notify the respondent. (Oct. 5, 1985, D.C. Law 6-42, § 201, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(e), (f), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

§ 6-2712. Answer.

(a) In answer to a notice of infraction a respondent may:

(1) Admit the infraction;

(2) Admit the infraction with an explanation which the hearing examiner may take into account in the imposition of a sanction for the infraction; or

(3) Deny commission of the infraction.

(b) A respondent who responds to a notice of infraction but fails to indicate whether the respondent admits, admits with explanation, or denies the infraction shall be considered to have admitted the infraction if the respondent pays the appropriate fine and penalties, and shall otherwise be considered to have denied the infraction.

(c) A respondent may answer the notice of infraction by mail or in person.

(d) A respondent admitting an infraction shall, at the time the respondent submits an answer, pay the applicable civil fine established pursuant to § 6-2704(a)(1), and any applicable penalties pursuant to § 6-2704(a)(2).

(e) A respondent shall answer a notice of infraction within 15 calendar days of the date the notice of infraction was served, or within any other time period the Mayor may establish by rule or regulation.

(f) If a respondent has been served a notice of infraction and fails, without good cause, to answer within the time period established in subsection (e) of this section, the respondent shall be liable for the penalty established pursuant

to § 6-27[redacted](2)(A). The Mayor shall then serve a s[redacted]nd notice of infraction upon the respondent. If the respondent fails to answer the second notice of infraction within 15 calendar days of service, or within any other time period the Mayor may establish by rule or regulation, the respondent shall be liable for the penalty established pursuant to § 6-2704(a)(2)(B).

(g) No notice of infraction issued pursuant to subchapters I and II of this chapter shall abridge or abrogate any time periods established by the laws and regulations amended by title IV regarding cure of an infraction. (Oct. 5, 1985, D.C. Law 6-42, § 202, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(h), 38 DCR 314.)

Section references. — This section is referred to in § 6-2704.

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

References in text. — "Title IV," referred to in (g), is Title IV of D.C. Law 6-42.

§ 6-2713. Hearing.

(a) The administrative law judge or attorney examiner shall conduct a hearing on a notice of infraction in accordance with Chapter 15 of Title 1, except as otherwise provided by this act. The Mayor shall bear the burden of establishing an infraction by a preponderance of the evidence.

(b) If a respondent fails, without good cause, to appear at a hearing of which the respondent has been served a notice, the administrative law judge or attorney examiner may proceed with the hearing and enter a final order in the case.

(c) After due consideration of the evidence and arguments, the administrative law judge or attorney examiner shall determine whether the Mayor has established the infraction. Where the Mayor has not established the infraction, the administrative law judge or attorney examiner shall enter an order dismissing the notice of infraction. Where the Mayor has established the infraction, the administrative law judge or attorney examiner shall enter an appropriate written order, which shall set forth findings of fact, conclusions of law, and a sanction.

(d) An order entered pursuant to this section is civil in nature.

(e) Upon a finding that the respondent has committed the infraction, the administrative law judge or attorney examiner may order the respondent to pay a civil fine and, where appropriate, penalties pursuant to § 6-2704(a)(2) and costs pursuant to § 6-2704(b).

(f) The administrative law judge or attorney examiner may suspend any permit or license which authorizes the respondent to engage in the activity to which the infraction relates if the respondent fails to pay any fines, penalties, or costs in accordance with the administrative law judge's or attorney examiner's order. Suspension of the permit or license shall continue until the respondent complies with the administrative law judge's or attorney examiner's order.

(g) Upon request of the respondent, the administrative law judge or attorney examiner may stay the imposition of any sanction imposed pending administrative review.

(h) The Mayor may cause to be entered any final order requiring a respondent to pay fines, penalties, or costs as a judgement against the respondent in the Civil Actions Branch of the Civil Division of the Superior Court of the District of Columbia. The Mayor may enforce the judgement in the same manner as any other civil judgement may be enforced under District law.

(i) The Mayor may place liens on property for nonpayment of fines, penalties, and costs as follows:

(1) Whenever the owner of real property in the District of Columbia fails to pay all fines, penalties, or costs associated with a final adjudication under this chapter, the District shall have a continuing lien upon the property and upon any improvements on the property in the amount of the outstanding charges;

(2) These liens shall have priority over all other liens except liens for District taxes and District water charges; and

(3) If outstanding charges remain unpaid 90 days after the date to appeal a final adjudication, and no appeal has been taken, the property may be sold for costs at the next tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if the outstanding charges, together with penalties and costs, have not been paid in full prior to the sale. (Oct. 5, 1985, D.C. Law 6-42, § 203, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(i), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

References in text. — "This act," referred to in the first sentence of subsection (a), is D.C. Law 6-42.

"This chapter," referred to in (i)(1), is D.C. Law 6-42 as amended by D.C. Law 8-237.

§ 6-2714. Final decision.

(a) The order of the administrative law judge or attorney examiner shall become final 15 calendar days after service of the order upon the respondent, unless within that time the party files an administrative appeal pursuant to subchapter III of this chapter.

(b) The Mayor may prepare a listing of delinquent respondents who have not paid or appealed within 15 days of service, fines, penalties, or costs resulting from final decisions issued by attorney examiners and may periodically publish such a list in one or more general circulation newspapers published in the District of Columbia. (Oct. 5, 1985, D.C. Law 6-42, § 204, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(j), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

§ 6-2715. Service.

Any notice or order served upon a respondent or other person pursuant to subchapters I through III of this chapter may be personally served, delivered to the respondent's or other person's last known home or business address and left with a person of suitable age and discretion residing or employed therein,

or mailed to the respondent or other person by first class mail to the respondent's last known home or business address. When service is by mail, 5 additional days shall be added to the time period within which the respondent or other person may, or is required to, take any action specified in the notice or order. (Oct. 5, 1985, D.C. Law 6-42, § 205, 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 6-2701.

Subchapter III. Administrative Review.

§ 6-2721. Jurisdiction to hear appeal.

The District of Columbia Board of Appeals and Review shall entertain and determine appeals timely filed by persons aggrieved by orders issued by hearing examiners pursuant to this chapter or by the Mayor, except that appeals involving infractions of Chapter 4 of Title 5, or the District of Columbia Zoning Regulations shall be entertained and determined by the District of Columbia Board of Zoning Adjustment; appeals involving infractions of Chapter 1 of Title 25, or of any regulation issued under the authority of that chapter shall be entertained and determined by the District of Columbia Alcoholic Beverage Control Board; appeals involving infractions of laws governing occupations and professions or of regulations issued under the authority of those laws shall be entertained and determined by the appropriate occupational or professional board or commission; and appeals involving infractions of Chapter 25 of Title 45, or of any regulation issued under the authority of that chapter shall be entertained and determined by the District of Columbia Rental Housing Commission. (Oct. 5, 1985, D.C. Law 6-42, § 301, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(k), 38 DCR 314.)

Section references. — This section is referred to in § 6-2722.

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

§ 6-2722. Right to administrative appeal and costs of appeal.

Any person aggrieved by an order of an administrative law judge or attorney examiner issued pursuant to subchapters I and II of this chapter, or the Mayor, may appeal to the reviewing agency specified in § 6-2721. The costs of any appeal, including, but not limited to, the expense of providing a transcript of the hearing, shall be borne by the appellant unless excused by the Mayor pursuant to rules issued by the Mayor. (Oct. 5, 1985, D.C. Law 6-42, § 302, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(l), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

§ 6-2723. Scope of review.

The reviewing agency shall make a determination of each appeal on the basis of the record established before the administrative law judge or attorney examiner. The reviewing agency shall set aside any administrative law judge or attorney examiner order that is without observance of procedure required by law or regulations, including any applicable procedure required by subchapters I and II of this chapter, or any administrative law judge or attorney examiner order that is unsupported by a preponderance of the evidence on the record. The reviewing agency shall apply the rule of harmless error, and shall have power to affirm, reverse, or modify the order of the administrative law judge or attorney examiner. The reviewing agency may remand a case for further proceedings before the administrative law judge or attorney examiner. A reviewing agency may not modify a monetary sanction imposed by an administrative law judge or attorney examiner if that sanction is within the limits established by law or regulation. (Oct. 5, 1985, D.C. Law 6-42, § 303, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(m), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.



DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), AS OF DECEMBER 31, 1994, AND NOTES TO DECISIONS THROUGH MARCH 1, 1995

VOLUME 4

1995 REPLACEMENT

TITLE 6—HEALTH AND SAFETY

Prepared and Published Under Authority of the Council of the District of Columbia as supervised by the Office of the General Counsel,
Charlotte M. Brookins-Hudson, General Counsel.
Benjamin F. Bryant, Jr., Codification Counsel.
Karen R. Westbrook, Codification Assistant.

Edited and Annotated by the Editorial Staff of the Publishers
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Barry L. Bridges, and
Lynn P. Seuffert.

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1995

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Section references. — This section is referred to in § 6-2722.

Legislative history of Law 6-42. — See note to § 6-2701.

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Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

Exhibit 1

Before the Board of Zoning Adjustment, D. C.

Application No. 11934 of Rainer K. Kraus pursuant to Section 8207.1 of the Zoning Regulations, for a variance from Section 7205.12 of Regulations, to permit parking in front of an existing dwelling in the R-1-B zone at the premises 2964 Newark Street, N. W., lot 29, Square 2082.

HEARING DATE: July 16, 1975
DECISION DATE: August 6, 1975

ORDER

Upon consideration of the above application, which is uncontested, the Board finds that the owner/applicant of the subject property suffers a practical difficulty in providing off-street parking to his residence, and that the granting of this area variance will not adversely affect nearby or adjoining property owners or impair the purpose and intent of the Zoning Regulations and Maps. Accordingly, pursuant to Section 8207.11 of the Regulations, It is hereby ordered; that the above application be granted consistent with exhibit Plan A of Record.

VOTE: 4-0 (Lilla Burt Cummings, Esquire not voting, not having heard the case).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: James E. Miller
JAMES E. MILLER,
Secretary to the Board

FINAL DATE OF ORDER: 9/29/75

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

#12

Exhibit 2

Date 1-20-76 (Type) DRIVEWAY PERMIT NO.

Address of work: 2964 NEWARK ST., N.W. Lot Square

Permission is hereby granted to: RAINER K. KRAUS PERMIT FEE $ 8.00

to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

TO CONSTRUCT 1-9' DRIVEWAY LOCATED AT 2964 NEWARK ST., N.W., DRIVEWAY WILL LEAS TO OFF ST. PARKING AND WILL BE PAVED TO BACK TO SIDEWALK.
REINFOCED CONCRETE AT OWNERS EXPENSE OF 6 --INCH WILL BE USED.
ZONED R-1-B
NO RELEASES NECESSARY.

ALL DRIVEWAYS TO BE INSTALLED UNDER INSPECTION
AND TO THE GRADES FURNISHED ON THE CUT & FILL
SHEETS BY D.O. HIGHWAY DEPT. CALL 629-5272 TO
OBTAIN GRADE SHEET BEFORE STARTING WORK.

O.H. Drawing No. Cut No.

Job No.

Chief, Permit Branch

THIS PERMIT EXPIRES: 4-20-76 By: E. WISE

DEP'T. OF ECONOMIC DEVELOPMENT, GOV'T. OF DIST. OF COL. Permit Clerk.

OFFICE COPY

SPACE PERMIT - COPY PERMIT NO.

ED-P-209
erly 209-CPB
2/15/57

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF ECONOMIC DEVELOPMENT
LICENSE AND PERMIT DIVISION
PERMIT BRANCH

B-279319
Permit No. A
Permit Fee $ 9.00

APPLICATION TO CONSTRUCT OR REPAIR DRIVEWAY

(Write with typewriter or ink)

Washington, D. C., _____, 19____

APPLICATION IS HEREBY MADE FOR PERMISSION TO CONST 1-9
(construct or repair driveway)
WIDE DRIVEWAY 2964 NEWARK ST. N.W,

AS PER PLANS SUBMITTED WITH THIS APPLICATION.

CONDITIONS OF APPLICATION AND PERMIT

The applicant, or the applicant's authorized agent, in affixing his or its signature hereto and in accepting any permit issued on the basis of this application, agrees that the applicant and any person, firm or corporation employed by the applicant, when working on or occupying public space as authorized by the said permit, whether such work or occupancy is on, under, or above the surface of such space will comply with the following conditions:

(1) That the performance of such work or the occupancy of such space shall be strictly in accordance with the conditions set forth herein and on both sides of the permit authorizing such work or occupancy of public space.

(2) That the performance of such work or the occupancy of such space as authorized by the said permit shall be in full compliance with all applicable laws and regulations of the District of Columbia.

(3) That the applicant, at the applicant's risk and expense, guarantees that the public space occupied by the applicant or required for the performance of the work authorized by the said permit, at all times will be kept in a safe condition, and where the work aforesaid results in any excavation in any street, alley, sidewalk, or other public space, the applicant will insure that such excavation is kept in a safe condition until such street, alley, sidewalk, or other public space has been repaired or resurfaced by the District of Columbia. The repair or resurfacing of the street, alley, sidewalk or other public space made necessary by the excavation, will be performed by the District of Columbia at the expense of the applicant.

(Read additional Conditions on reverse side)

DO NOT CUT OR INJURE SHADE TREES, OR PILE EARTH OR OTHER MATERIAL WITHIN THREE (3) FEET OF TREES. THE PERMIT WILL BE REVOCABLE AT THE DISCRETION OF THE COMMISSIONERS, D. C. THE PERMIT MUST BE KEPT ON THE SITE DURING THE PROGRESS OF WORK.

B.C.S.

JAN 30 1976

RESERVED FOR APPROVALS

DEPARTMENT OF HIGHWAYS & TRAFFIC, D. C.

[illegible] DEPARTMENT OF
[illegible]NG
DEC 16
INITIAL

DEPT. OF ENVIRONMENTAL SERVICES
NO OBJECTION
JAN - 9 1976
W.F.B.
DESIGN & ENGINEERING DIVISION

I HAVE READ AND UNDERSTAND THE CONDITIONS SET FORTH ON THIS APPLICATION, AND I FURTHER UNDERSTAND THAT PENALTIES ARE PROVIDED FOR FURNISHING FALSE INFORMATION.

Rainer K. Kraus
(Please print. Name of owner of property to be served by driveway)

Rainer K Kraus
(Signature (in ink) of owner of property)

2964 Newark St. N.W
(Address of owner of property)

(Please print. Name of Owner's authorized agent)

(Signature of owner's authorized agent (contractor))

(Address of owner's authorized agent (contractor))

P-4183

Exhibit 3

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF COMPLIANCE

PERSONAL SERVICE STAMP

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Personally served upon Ellen Kraus

by the undersigned this 25 day of September, 1998.

[ ] Personal Service Attempted (Date September 24, 1998 Time 8:10pm

Comments

Mr. Rainer Kraus
2964 Newark Street, N.W.
Washington, D.C. 20008

NOTICE TO DISCONTINUE USE

Dear Mr. Kraus:

Please be advised that you are in violation of Title 11, District of Columbia Municipal Regulation, Section 2116.2, which governs the location of parking spaces in the District of Columbia.

An ongoing investigation of your property (Sq. 2082, Lot 29) by the Department of Consumer and Regulatory Affairs (DCRA) has uncovered two extensions to your parking pad, one built in 1993 and the other in 1996. Per your letter of June 18, 1996 to the Office of Adjudication, and the DCRA's permit records, a permit was issued to you on January 20, 1976 to construct a one car parking pad. The DCRA has no record of a permit being issued to you for the 1993 extension to that parking pad. The DCRA has a record of a permit issued to you on September 26, 1996 to extend the parking pad, however, DCRA has evidence showing that the 1996 permit was issued to extend the pad for use as a walkway not for the parking of additional vehicles.

It is clear from the DCRA file that the 1993 parking pad extension was illegally constructed without a permit and should removed and restored to ground as soon as possible. Additionally, you may not park vehicles on your property anywhere other than on the original one car parking pad which was authorized by the January 20, 1996 permit.

You are hereby ordered to cease and desist parking vehicles on your property anywhere other than in the one car parking pad on the front of your property. Vehicles parked on your property other than on the one car parking pad will be subject to ticketing. Additionally, the DCRA hereby orders that you remove the illegally constructed 1993 parking pad extension within 60 days of the date of this letter. In the event that you do not remove the pad, the DCRA will refer this matter to the Office of Corporation Counsel for immediate civil action.

FEB 04 '99 12:50PM DCRA ENF DIV

If you have any questions on the above, please contact Ms. Karen Edwards, Program Manager of the Enforcement Division at (202) 727-7770. We appreciate your attention to this important matter and expect your immediate compliance with the above orders.

Sincerely,

John E. McKenzie
Chief

CC: Karen Edwards

FEB 04 '99 12:50PM DCRA ENF DIV

Exhibit 4

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPT. OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION

NOTICE OF INFRACTION

030773

Issuing Administration
A ☐ HRA E ☐ BLRA I ☐ FIRE
B ☐ IA F ☐ OPLA J ☐
C ☐ SFRA G ☐ OCOM K ☐
D ☐ BRA H ☐ ERA L ☐

Date of Service: / /

12/4/98
Date of Infraction

11:00 ☒ a.m. ☐ p.m.
Time of Infraction

WARD NO: 3

Place of Infraction (Street Address): 2964 Newark St NW

Business/Company Name: Kraus Ramsey LLC Telephone No.

Respondent's Full Name (Last, First, Middle): 2964 Newark St NW Telephone No.

Respondent's Street Address

Wash. DC, 20008
Respondent's City State Zip Code

Formal I.D. ☐ Yes ☐ No Recidivist ☐ Yes ☐ No

Bus. Lic. Type Bus. Lic. No.

Bus. Permit Type Bus. Permit No.

Respondent's Social Security No. ___ - ___ - ___

You are charged with violating the District of Columbia laws set out below. You must indicate below each infraction listed, whether you admit the infraction, admit the infraction with an explanation, or deny the infraction. You have the right to request a hearing.

Code		Regulation	Fine Amount
53201		5-426	$ 500.00

Nature of Infraction: Constructing without permit
Can packs

☐ Admit ☐ Admit with Explanation ☒ Deny

Code		Regulation	Fine Amount
			$

Nature of Infraction

☐ Admit ☐ Admit with Explanation ☐ Deny

Code		Regulation	Fine Amount
			$

Nature of Infraction

☐ Admit ☐ Admit with Explanation ☐ Deny

Code		Regulation	Fine Amount
			$

Nature of Infraction

☐ Admit ☐ Admit with Explanation ☐ Deny

Total fine(s) amount applicable to the above infraction(s) $ 500.00

WARNING: If you do not pay the required fine(s) or request a hearing or an adjudication by mail (see reverse side) within 15 days of the date of service of this notice, you will be subject to the maximum penalties permitted by law, suspension of your license/permit, a lien being placed on your property and/or sealing of your business. The fine amount will double if payment has not been received within 15 days. If this is not your first infraction, you will be subject to an increased fine.

I personally observed or investigated the commission of the infraction(s) noted above.

Inspector's/Investigator's Signature Badge No. 516

I hereby acknowledge receipt of this Notice of Infraction.

RESPONDENT'S SIGNATURE DATE

OAD COPY

pd. 2/10/1 pd. 2/10/99

FEB 04 '99 12:52PM DCRA ENF DIV

Exhibit 5

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

RECEIVED
FEB 24 1 44 PM '99
OFFICE OF
ADJUDICATION

TO: Judge James Harmon
Office of Adjudication

Re: 2964 Newark Street, NW

During late winter, again late summer and then early Fall of 1998, I visited 2964 Newark Street, NW to inspect the property for building/zoning code violations. Mr. Rainer Krause was parking three vehicles on a parking pad in front of his home. Mr. Krause explained why the three vehicles existed at his home and the reasons he wanted to maintain the vehicles. The following is the information I shared with Mr. Rainer Kraus and the steps I took to assist Mr. Krause come into compliance during several inspection visits to his home:

1. **VEHICLE #1**—I encouraged Mr. Krause to apply for a special handicap parking space *in front of his home* for his van. In speaking with the Department of Public Works, Parking Enforcement Branch, I was informed that the space could have a special permit number designated solely for Mr. Krause's use. This would prevent other handicap-designated vehicles from parking in the space.

2. **VEHILCE #2**—I encouraged Mr. Krause to get a residential parking permit for another vehicle registered to a company in Maryland In speaking with DPW, I was informed that Mr. Krause could get an additional parking permit for another vehicle that is in his name. This would mean that one of the vehicles registered to a company in Maryland would have to be re titled and registered in Mr. Krause's name. In this manner, he could get a residential parking permit for vehicle number two.

3. **VEHICLE #3**—Vehicle number three (3) belongs to a female guest of the home. If Mr. Krause places vehicle #1 and Vehicle #2 in the street then vehicle #3 could be parked on his parking pad. Otherwise, she would have to park in the street. *Her vehicle would have to be removed before 7a.m. when residential parking restriction takes place.* Mr. Krause informed me that the female leaves way before 7a.m. . What Mr. Krause did object to was having the female guest park too far away from the home. He states that, due to the theater around the corner, home guest sometimes must park one to two blocks away. This in an inconvenience for guests.

4. When discussing the parking pad with Mr. Krause, he stated the following to me: He applied for an extension of an existing pad. He stated that the purpose of the extension for to park another vehicle on the pad. . . in his words "Why else would I apply for an extension?" "If government did not bother to ask the correct questions, I should not be held accountable for their mistake!" I explained that if he would have stated his true intent, it is possible that the building permit for the pad extension would have been denied.

At no time did I ever inform Mr. Krause he may park more that one vehicle on the parking pad in front of his home. What I did say was for him to follow my instructions for parking vehicles legally and have the best of all conditions.

I DECLARE THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: 23 FEBRUARY 1999 ***BUILDING INSPECTOR JAMES DELGADO #541***

James Delgado

Sworn and Subscribed
before me this 23rd
day of February 1999

Lmmm Simon

03/12/99 11:20 FAX 9180035483 67 D C R A/OIS 002

Exhibit 6

2964 Newark St., NW
(Applicant Kraus' home)



2968 Newark St., NW
(Neighbor Selfe's home)





2964 Newark St., NW
Sample overcrowding of vehicles parked on applicant Kraus's illegally extended parking pads



2968 Newark St., NW
View of single parking pad in front of neighbor Selfe's home





Entrance to 2968 Newark St., NW (neighbor Selfe) on right and entrance to 2964 Newark St., NW (applicant Kraus on left)



SEPTEMBER 1999 PHOTO SHOWING NO BZA HEARING NOTICE

Flagstone walk between 2964 and 2968 Newark St., NW



View from Mr. Selfe's front window at 2968 Newark St., NW onto vehicle parked on illegally extended pad



Flagstone walk between 2964 and 2968 Newark St., NW

