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April 26, 2000

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
'00 APR 27 A10:13

VIA TELECOPIER AND HAND DELIVERY

Ms. Sheila Cross-Reid
Chairperons
Board of Zoning Adjustment
Room 210
441 Fourth Street, N.W.
Washington, D.C. 20001

RE: BZA Application No. 16521
3020 43rd Street, N.W.

Dear Ms. Reid:

This firm is counsel for Mrs. Mildred R. Crary, the owner of the immediately adjacent property in the above-referenced matter. As the Board is aware, Mrs. Crary was the successful Appellant in the underlying appeal case, BZA Appeal No. 16405 (Mr. Sisson has challenged the Board's granting of the Appeal and the matter is pending in the D.C. Court of Appeals). Mrs. Crary is also a "party" in this matter, having requested in writing (on November 23, 1999, attached), been recognized as a party by the Board and actively participated in the December 14, 1999 hearing in this matter.

Mrs. Crary respectfully requests that the pending application be dismissed or in alternative the hearing continued for failure of the Applicant to comply with the Board's Rules and fundamental fairness.

The Appellant failed to provide (although requested) a copy of the revised application to the parties, including Mrs. Crary

BZA
Case No. 16521
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO.16521
EXHIBIT NO.35

and Advisory Neighborhood Commission 3D, which has been an active participant in this case and underlying appeal. Similarly, it was confirmed this afternoon that the Applicant filed a pre-hearing statement on April 19, 2000, but again chose not provide copies to the Advisory Neighborhood Commission 3D and the undersigned as counsel for Mrs. Crary in clear violation of the Board's Rules.

Finally, Mrs. Crary adopts and repeats her objections to this matter as premature and/or not ripe for consideration as set forth in the attached letters of November 30, 1999 (from ANC 3D) and December 7, 1999. More than five (5) months later, this case remains substantially in the same procedural posture and should be dismissed as requested previously.

For the foregoing reasons, Mrs. Crary respectfully requests that this matter be dismissed for failure to comply with the Board's Rules and/or the May 3rd hearing continued to allow the established parties to fairly and meaningfully participate in this proceeding.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

JPB/dmh:135599
Enclosure

cc: Advisory Neighborhood Commission 3D
Mr. George Watson, Wesley Heights Historical Society
Mr. William Harrop, Spring Valley-Wesley Heights Citizens Assn.
Maureen E. Dwyer, Esq.

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November 24, 1999

VIA FACSIMILE AND FIRST CLASS MAIL

Maureen E. Dwyer, Esq.
Wilkes, Artis, Hedrick & Lane, P.C.
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006

Re: **BZA Application No. 16521**

Dear Maureen:

I am forwarding a copy of Mrs. Crary's request to intervene as a Party in the above-referenced Application.

As Mrs. Crary's counsel, I would greatly appreciate receiving a copy by messenger of the Applicant's Pre-Hearing Statement which is due by Wednesday, November 24, 1999. This will enable my review of this document during the Thanksgiving holiday with Mrs. Crary's response due by Wednesday, December 1, 1999. A similar courtesy of hand-delivery to the other interested parties, ANC 3D, the Wesley Heights Historical Society, and the Spring Valley-Wesley Heights Citizen's Association would be greatly appreciated as well.

With the BZA Appeal still pending, and this application likely to be strongly contested, I still believe that settlement discussions are in the best interest of Mr. Sisson, Mrs. Crary and the other interested community groups. Despite the passage of time and your recent categorical rejection, settlement discussions are feasible and would be in keeping with Mrs. Crary's long-standing (since July 1998) willingness to enter into such discussions and the Board's encouragement during the Appeal hearing of such a common sense resolution. A global settlement which encompasses the full-range of outstanding issues, including at least zoning compliance, easement rights, false claims, and civil money penalties, would appear appropriate.

If Mr. Sisson reconsiders the advisably of at least attempting settlement discussions, please feel free to contact me.

Best wishes for a safe and Happy Thanksgiving holiday.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

JPB/dmh 126702
Enclosure

cc: Mrs. Mildred R. Crary
Advisory Neighborhood Commission 3D
Mr. George Watson, Wesley Heights Historical Society
Mr. William Harrop, Spring Valley Wesley Heights Citizen's Association

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November 23, 1999

VIA FACSIMILE and FIRST CLASS MAIL

Ms. Sherri Pruitt-Williams, Secretary
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 220
Washington, D.C. 20001

RE: BZA Application No. 16521;
3020 43rd Street, N.W.

Dear Ms. Pruitt-Williams:

This firm is counsel for Mrs. Mildred R. Crary, the owner of the immediately adjacent property at 3010 New Mexico Avenue, N.W., and the Appellant in BZA Appeal No. 16405. As you are aware, BZA Appeal No. 16405 is still pending with the Board having not issued its written decision.

Mrs. Crary, through counsel, respectfully requests to intervene in the above-referenced Application as a Party in opposition pursuant to 11 DCMR 3106.2. It cannot be disputed that Mrs. Crary is entitled to Party status as a result of being the most immediately impacted neighbor and having brought the still pending Appeal involving the same property.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

JPB/dmh 122299
cc: Mrs. Mildred R. Crary
Advisory Neighborhood Commission 3D
Mr. George Watson, Wesley Heights Historical Society
Mr. William Harrop, Spring Valley - Wesley Heights Citizens Assoc.
Maureen E. Dwyer, Esq. (via fax)

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December 7, 1999

BY FACSIMILE AND
HAND-DELIVERY

Ms. Sheila Cross Reid
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W.
Room 220
Washington, D.C. 20001

Re: BZA Application No. 16521
3020 43rd Street, N.W.

Dear Ms. Reid and Members of the Board:

This firm is counsel for Mrs. Mildred R. Crary in the above-referenced application as well as the underlying and still pending BZA Appeal No. 16405. As the Board is aware, no written decision has been issued in the appeal case.

Mrs. Crary, the immediately adjacent property owner and Appellant in the appeal, has, through counsel, requested in writing to intervene as a party in the current application case. Mrs. Crary respectfully requests the Board to dismiss the current application pursuant to 11 DCMR 3113.11 or deny the application pursuant to 11 DCMR 3126.11. In support of this motion, Mrs. Crary states as follows:

1. The Board has not issued its written decision in BZA Appeal No. 16405 and, as a result, this application is premature for legal and practical reasons. First, the Board lacks jurisdiction because an order has not been issued establishing a zoning violation requiring relief from the Board. Second, the Zoning Administrator and the Board can not consider this application without the findings of fact and conclusions of law which will be set forth in the Board's appeal order.

2. The Applicant, through counsel, has clearly indicated that he intends to pursue a motion for reconsideration of the appeal order and/or seek review in the Court of Appeals. See attached November 5, 1999 e-mail from Maureen E. Dwyer, Esquire. Again, it would be premature and likely to result in conflicting and overlapping decisions if this application was allowed to proceed prior to final adjudication of the appeal case which the Applicant has promised to challenge.

3. The Applicant, through counsel, filed this application on October 7, 1999. At that time, the Applicant knew that the underlying appeal had not been decided and knew or should have known that the application submitted was incomplete because it lacked a clear statement of the zoning relief required either through the self-certification process or a memorandum from the Zoning Administrator. Any application which does not meet the minimum standards for setting forth the relief requested must be dismissed and/or denied.

4. At the last minute, the Applicant has acknowledged the deficiency of the application and requested a postponement of the hearing to allow the Zoning Administrator to complete preparation of the required zoning memorandum. See November 24, 1999 letter from Maureen E. Dwyer, Esquire to the Board. The Zoning Administrator has reported to the Board that his office is unable to provide the zoning memorandum requested. First, without a final written decision in the appeal case, no determination of the zoning relief is possible or appropriate. Second and in apparent contradiction with Ms. Dwyer's November 24th letter to the Board, the Applicant has not submitted the information, including as-built construction drawings and other materials, necessary for the completion of zoning computations and identification of the required zoning relief by the Zoning Administrator.

5. The Applicant bears the burden of filing a complete application and proving its case. In this case, the Applicant has filed and attempted to advance an admittedly incomplete application. Having failed to identify the relief requested, the Applicant has failed to meet its burden of proof for the zoning relief. Accordingly, the application must be denied.

6. Given the Applicant's failure to proceed to file and prosecute a legally recognizable and complete application, postponement of the hearing is not an appropriate remedy. The Board can only speculate on

when the appeal decision will be issued and the nature, duration and result of any reconsideration or appellate review. Further, no review by the Zoning Administrator is possible until there has been a final adjudication on the appeal. Based on that decision and eventual submission of the required materials by the Applicant, the necessary zoning computations can only then be completed. Given the lengthy delays that are not only possible, but likely under the circumstances, this application should be denied and/or dismissed, not postponed indefinitely.

For the Board's convenience, I am also enclosing Advisory Neighborhood Commission 3D's November 30, 1999 letter which is entitled to be afforded "great weight." In its letter, the Commission finds that this application is premature because there has been no final decision in the underlying appeal and that application as filed is inadequate without a zoning memorandum prepared by the Zoning Administrator.

Finally, Mrs. Crary wishes to inform the Board (and Mr. Sisson) of her continued willingness and desire to reach a settlement of this matter. Unfortunately, the Applicant and his counsel have repeatedly and categorically rejected any settlement discussions. See November 24, 1999 letter to Ms. Dwyer.

For the foregoing reasons, Mrs. Crary respectfully requests the Board to deny and/or dismiss the current application.

Thank you for your attention to this matter.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

JPB/dmh
Enclosures

cc: Mrs. Mildred Crary

Advisory Neighborhood Commission 3D
Mr. Michael Johnson, Zoning Administrator
Mr. George Watson, Wesley Heights Historical Society
Mr. William C. Harrop, Spring Valley - Wesley Heights Citizen's; Association
Maureen E. Dwyer, Esq.

1273679

Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

November 30, 1999

VIA FACSIMILE and FIRST CLASS MAIL

Ms. Sherri Pruitt-Williams, Secretary
Board of Zoning Adjustment
441 Fourth Street, NW, Room 220
Washington, D.C. 20001

RE: BZA Application No. 16521;
3020 43rd Street, NW

Dear Ms. Pruitt-Williams:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on November 8, 1999 at the Ernst Auditorium, Sibley Memorial Hospital. Notice of this meeting was published in local newspapers, meeting notices were placed in each single member district and were sent to residents of the community at least seven (7) days in advance of the meeting. A quorum (4 Commissioners) was present at all times.

One of the items on our agenda was the above-referenced BZA application filed by Mr. Charles Sisson for special exception and variance relief for the addition previously completed at 3020 43rd Street, NW As the Board is aware, Mr. Sisson's addition involved five (5) separate building permits over a period of ten (10) months, including at least three (3) permits for work that was begun and/or completed prior to seeking the required permits. These five (5) building permits were the subject of BZA Appeal No. 16405 which was granted in June, but no final written decision has been issued. ANC 3D supported the Appeal in numerous filings with the Board and expressed great concerns about the accuracy of the building permit applications submitted by Mr. Sisson as well as the handling of those applications by the Zoning Administrator's Office.

The Commission heard a brief presentation from Mr. Sisson's counsel, Allison C. Prince, Esq. from Wilkes, Artis, Hedrick & Lane who was appearing on behalf of Maureen E. Dwyer, Esq. The Commission also heard a presentation from Patrick Brown, Esq., counsel for Mrs. Mildred R. Crary, the immediately adjacent property owner and Appellant in the still pending Appeal. Mr. George Watson, President of the Wesley-Heights Historic Society and one of the leading participants in the enactment of the Wesley-Heights Overlay District also provided information. As a result of the information provided, the Commissioner's voted unanimously, 5-0-0 by motion to communicate the following information to the Board:

1. This application for a variance and special exception is premature because the underlying BZA Appeal is still pending with the final written order having not been issued. The

Board's findings of fact and conclusions of law, which will be set out in the Appeal final order, are critical to defining and considering this remedial BZA Application. Further, Mr. Sisson, through counsel, has indicated his plan to seek reconsideration and/or Court of Appeals review of the BZA Appeal decision. Accordingly, proceeding with this application while the Appeal is undecided is not appropriate and overly burdensome on the community and Board.

2. The BZA application as filed is only three (3) pages long, including the application form, self-certification form and Surveyor's plat and does not provide the specific information required for a complete review by this Commission and other interested members of the community. In this case, self certification is not a sufficient or appropriate method for determining the zoning relief required, especially without the Board's order in the Appeal and the apparent inconsistencies among the original five (5) building permit applications and the discrepancies with the current Surveyor's plat purportedly showing the completed addition. At the Commission's meeting, Ms. Prince promised to provide to the us and Mr. Brown a copy of a lengthy letter authored by Ms. Dwyer and countersigned by the Zoning Administrator purportedly discussing the zoning issues and relief required. To date, Ms. Dwyer as promised has not provided that letter. Given the uncertain facts and complexity of the many applicable zoning requirements, this application should not proceed until the Zoning Administrator has completed a detailed review and issued the customary detailed Zoning memorandum to the Board.

3. The Commission is greatly concerned about the negative impact of this case on Mrs. Crary, the immediately adjacent neighbor, and on the Wesley Heights Overlay District which was enacted by the Zoning Commission with this Commissions' active support to directly address important issues involving the character of the neighborhood.

4. This application, at a minimum involves at least one if not other violations of specific and integral provisions of the Wesley Heights Overlay District. Granting a variance or other zoning relief in violation of the overlay district would set a very dangerous precedent for future development, particularly involving after-the-fact approval of improvements constructed without the proper permits.

Thank you for your cooperation and affording the Commission the "great weight" to which it is entitled by law. The Commission looks forward to continuing its long-standing involvement in this case and further opportunity to comment on this application when it is ripe for consideration by the Board after the Appeal has been finalized and a Zoning memorandum produced which provides a specific and detailed review of the applicable Zoning Regulations and zoning relief required.

Sincerely,

Eleanor Roberts Lewis
Chair, ANC3D

cc: John Patrick Brown, Jr., Esq.
Mr. George Watson, Wesley Heights Historical Society
Mr. William Harrop, Spring Valley - Wesley Heights Citizens Assoc.
Maureen E. Dwyer, Esq.