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May 8, 2000

HAND-DELIVERY

Ms. Sherri Pruitt
Secretary
Board of Zoning Adjustment
441 4th Street, N.W., Room 210
Washington, D.C. 20001

Re: Appeal of Administrative Decision Regarding 3020 43rd Street, N.W.; Related to BZA Application No. 16521

Dear Ms. Pruitt:

Enclosed please find the original and eight (8) copies of a BZA Appeal of the February 29, 2000 administrative decision of Mr. Edgar T. Nunley, Chief of the Zoning Review Branch. This Appeal is filed on behalf of the Spring Valley-Wesley Heights Citizen's Association ("Association"). As a not-for-profit "citizens association", the Association is entitled to file this Appeal with no filing fee pursuant to 11 DCMR 3180.4(c). The Association has been routinely found to be exempt from the appeal filing fee. See BZA Appeal Nos. 16220 and 16222.

Please note that a copy of this Appeal should also be filed in the record for BZA Application No. 16521.

This administrative decision purports to be a determination of the zoning relief required for the illegally constructed improvements at the subject property. However, as set forth in

BZA
Case No. 16521
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
CASE NO.16521
EXHIBIT NO.38

more detail in the attached Appeal, the decision is fundamentally and fatally flawed in **at least** the following respects:

1. Premature based on the pending Court of Appeals challenge by Mr. Sisson to the underlying Board decision in BZA Appeal No. 16405;

2. Inconsistent with the Board's decision in BZA Appeal No. 16405;

3. Fails to identify at least five (5) additional violations of the Zoning Regulations requiring variance relief;

4. Contains clearly incorrect information (e.g., wrong lot width) about the subject property which makes accurate zoning review impossible; and

5. Not based on "As-Built" drawings of the illegally constructed improvements as requested by the Zoning Administrator.

The Association's review in this matter is ongoing and likely to identify additional critical errors and violations of the Zoning Regulations. This review and analysis has been delayed and hampered by the property owner's failure to provide this administrative decision and other subsequent documents to the "parties" (as required by Board Rules) in the related BZA Application No. 16521. The Association expressly reserves the right to supplement and provide additional grounds for this Appeal as they are identified.

Thank you for your continued assistance in this matter. If you have any questions, please feel free to contact me.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

Attorney for Spring Valley-
Wesley Heights Citizens
Association

JPB/mlm:136145
Enclosures

cc: Advisory Neighborhood Commission 3D (by fax/mail)
Mr. Michael D. Johnson (by mail)
Mr. Edgar T. Nunley (by mail)
Mr. George Watson (by mail)
Allison c. Prince, Esq. (by fax/mail)

SPRING VALLEY-WESLEY HEIGHTS CITIZEN'S ASSOCIATION
3615 49TH STREET, N.W.
WASHINGTON, D.C. 20016
(202) 966-1071

May 5, 2000

Ms. Sherri Pruitt
Secretary
Board of Zoning Adjustment
441 Fourth Street, N.W.
Suite 210
Washington, D.C. 20001

RE: 3020 43rd Street, N.W.

Dear Ms. Pruitt:

The Spring Valley-Wesley Heights Citizen's Association ("Association") hereby authorizes the law firm of Greenstein DeLorme & Luchs, P.C. and John Patrick Brown, Jr., Esquire to file and prosecute a BZA Appeal of the February 29, 2000 decision of Mr. Edgar T. Nunley, Chief of the Zoning Review Branch involving the above-referenced property.

The Association is a non-profit citizens association representing the neighborhoods of Wesley Heights (where the subject property is located) and Spring Valley. As such, the Association is exempt from the $800.00 filing fee pursuant to 11 DCMR 3180.4(c). In the past, the Board has readily allowed the Association to file fee-exempt appeals. See BZA Appeal Nos. 16220 and 16222.

Thank you for your assistance in accepting and processing this appeal.

Sincerely,

William C. Harrop
President

cc: John Patrick Brown, Jr., Esq.
Advisory Neighborhood Commission 3D
Mr. George Watson, Wesley Heights Historical Society

BZA APPEAL NO. _____
By
Spring Valley-Wesley Heights Citizen's Association

Regarding 3020 43rd Street, N.W.
(Lot 70, Square 1621)

The administrative decision of Mr. Edgar T. Nunley, Chief of the Zoning Review Branch, dated February 29, 2000 (attached as Exhibit A) is in error for **at least** the following reasons:

1. The zoning relief set forth is clearly inconsistent with the BZA's written decision in Appeal No. 16405 (attached as Exhibit B). *See* 11 DCMR 2117.4 (access to required parking from private driveway) and 2117.8 (private driveway violates: maximum grade of 12%; and minimum width of 14 feet).

2. The zoning relief set forth is incomplete because it fails to identify at least the following additional violations of the applicable Zoning Regulations. *See* 11 DCMR 2500.3 (garage exceeds maximum of 30% of required rear yard may be occupied by an accessory building) and 2500.4 (garage exceeds maximum height of 15 feet as measured pursuant to 11 DCMR 2500.7).

3. The zoning computations prepared and submitted **incorrectly** show the lot width as 59.33 feet, but the lot is actually only 52.50 feet wide as shown on the Applicant's Building Plat and construction plans. *See* Exhibit A, Notes and Computations. This fundamental error in determining the correct lot width makes it impossible to properly calculate that the garage violates 11 DCMR 2500.3.

4. The preparation and submission of this zoning decision is contrary to the Zoning Administrator's December 8, 1999 letter to the Board (attached as Exhibit C).

5. The zoning review and decision was improperly based on the original construction drawings, not the as-built drawings specifically requested by the Zoning Administrator. *See* Exhibit C, paragraph 3. As set

forth in BZA Appeal No. 16405, the improvements which were completed were not in accordance with construction plans and five improperly sought and issued building permits. No correct zoning review and decision is possible until the property owner provides as-built drawings and an as-built survey of the property.

6. This zoning decision is premature until there has been a final adjudication in the underlying BZA Appeal 16405. *See* Exhibit C, paragraphs 1,2 and 3. Mr. Sisson has chosen to challenge the Board's unanimous decision in Appeal No. 16405 and the matter is currently pending before the District of Columbia Court of Appeals, Case No. 00-AA-97. *See* Exhibit D.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

Attorney for the Spring Valley-Wesley Heights Citizen's Association

May 8, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Board of Zoning Adjustment Appeal was transmitted by mail first-class, postage prepaid this 8th day of May 2000 to:

Eleanor Roberts Lewis, Esq., Chairperson
Advisory Neighborhood Commission 3D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016
(Also by telecopier)

Allison C. Prince, Esq.
Wilkes, Artis, Hedrick & Lane, P.C.
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006
(Also by telecopier)

Mr. Michael D. Johnson
Zoning Administrator
941 North Capitol Street, N.E.
Second Floor
Washington, D.C. 20002

Mr. Edgar T. Nunley
Chief, Zoning Review Branch
941 North Capitol Street, N.E.
Room 2000
Washington, D.C. 20002

Mr. George Watson, President
Wesley Heights Historical Society
4323 Cathedral Avenue, N.W.
Washington, D.C. 20016

John P. Brown, Jr.

1358713

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

February 29, 2000

MEMORANDUM

TO : Board of Zoning Adjustment

FROM : Edgar T. Nunley, Chief
Zoning Review Branch

SUBJECT : Proposed Construction of a Front Porch, Rear Addition and Accessory Garage at premises 3020 43rd Street, NW, Lot(s) 70, in Square 1621, Zoned WHOD/R-1-A

Review of plans for the proposed construction at the above subject premises indicates that the Board of Zoning Adjustment approval is required as follows:

1. Variance from the front yard setback requirements (Section 1543.4) of the Wesley Heights Overlay District (Section 3103.2).

2. Variance from the allowable percentage of lot occupancy (Section 1543.2) for a dwelling in the Wesley Heights Overlay District. (Section 3103.2)

PENGAD-Bayonne, N. J.
EXHIBIT
A

003

NOTES AND COMPUTATIONS

ADDRESS: **3020 43rd Street, NW** LOT(S): **70** SQUARE: **1621**

ZONED: **WHOD/R-1-A**

	REQUIRED	ALLOWED	PROVIDED	VARIANCE
LOT AREA	7500 sq. ft.		6562.5 sq. ft. (existing)	937.5 (existing)
LOT WIDTH	75 feet		59.33 feet (existing	15.67 feet (existing)
LOT OCCUPANCY (%)		2000 sq. ft. (Sec. 1543.2)	2253 sq. ft.	253 sq. ft. (12.7%)
GROSS FLOOR AREA		4625 sq. ft. (Sec. 1543.3)	3448.64 sq. ft.	
PARKING SPACES	1		2	
LOADING BERTHS	N/A			
FRONT YARD	21 feet		17.7 feet	3.3 feet (15.7%)
REAR YARD	25 feet		59.33 feet	
SIDE YARD	8' x 8'		6.5' x 4.34' (existing)	1.5' (19%) x 3.66' (45.7%) (existing)
COURT, OPEN	N/A			
COURT, CLOSED	N/A			

03/01/00 11:19 FAX 2024424871

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 16405 of Mildred Rodgers Crary, pursuant to 11 DCMR § 3105 (new 3100.2), from the administrative decision of the Zoning Administrator to issue the following building permits allowing various alterations and additions to the subject property: Permit No. B413166, dated January 29, 1998, for a two-story addition on the rear; Permit No. B413424, dated February 9, 1998, for an addition to a garage, length 20 feet, width 20 feet, height 14 feet; Permit No. B415675 dated May 27, 1998, for a new garage to be located on the same spot as previous garage, length 20 feet, width 10 feet 9 inches, height 8 feet; Permit No. B417814, dated August 17, 1998, for repair of existing roof, roof in place, no structural change; and Permit No. B419108, dated October 5, 1998, to build new porch roof as per plans. The Appellant also challenges the R-1-B zoning classification attributed to the property by the Zoning Administrator. These permits were issued for property located at premises 3020 43rd Street, N.W. (Square 1621, Lot 810).

HEARING DATES: December 16, 1998, February 17, 1999, April 21, 1999, May 5, 1999, May 19, 1999 and May 26, 1999

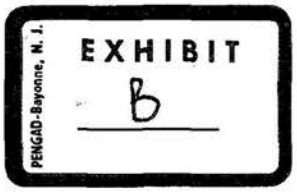
DECISION DATE: June 16, 1999

ORDER

PRELIMINARY AND PROCEDURAL MATTERS:

This Appeal was brought by Mildred R. Crary, the owner of property abutting the subject property. At the Board's December 16, 1998 public hearing, Charles Sisson, owner of the subject property, requested Intervenor status and postponement of the hearing because of a previously scheduled overseas trip. The Board granted both requests.

At the hearing held February 17, 1999, the Appellant sought to amend the Appeal to include two building permits that were discovered after the Appeal, which initially challenged three permits, was filed. The Board determined that the two newly discovered building permits were germane and directed readvertisement of the Appeal to include all five permits. Also at the February 17, 1999 hearing, the Intervenor requested dismissal of the Appeal because it was not timely filed and was also barred by the doctrines of laches and estoppel. The Board denied



Intervenor's estoppel claim on May 5, 1999,[1] but determined that the facts of the case must be heard before addressing the issues of timeliness and laches.

The Appeal was heard on May 26, 1999. Testimony was received from Mr. Edgar Nunley, chief of the Zoning Review Branch in the Department of Consumer and Regulatory Affairs, Advisory Neighborhood Commission ("ANC") 3D, and Mr. George Watson, president of the Wesley Heights Historical Society, in addition to the Appellant and the Intervenor.

FINDINGS OF FACT

1. The subject property is located at 3020 43rd Street, N.W. (Square 1621, Lot 810) in the Wesley Heights neighborhood of Ward 3. The streets that surround the property are Cathedral Avenue to the north, New Mexico Avenue and 43rd Street to the east, Hawthorne Street to the south, and 44th Street to the west.

2. The property contains 6,563 square feet of land area and is developed with a single-family, detached dwelling that was constructed in 1926. The building contains a gross floor area of 2,876 square feet.

3. The subject property is zoned WHOD/R-1-A. The Wesley Heights Overlay District (WHOD) was established to preserve and enhance the low-density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area. 11 DCMR § 1541.1. The purposes of the WHOD are: (1) to preserve in general the current density of the neighborhood; (2) to allow reasonable opportunities for owners to expand their dwellings; and (3) to preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood. 11 DCMR § 1541.3.

4. The WHOD zoning requirements apply in combination with the requirements of the R-1-A District. 11 DCMR § 1542.1. The zoning requirements applicable to the Intervenor's property are summarized in the following chart:

---

[1] The elements of estoppel are: (1) expensive and permanent improvements, (2) made in good faith, (3) in justifiable and reasonable reliance upon, (4) affirmative acts of the District government, (5) without notice that the improvements might violate the zoning regulations, and (6) equities that strongly favor the party asserting the defense. *Wieck v. District of Columbia Board of Zoning Adjustment*, 383 A.2d 7, 11 (D.C. 1978). In denying Intervenor's estoppel claim, the Board relied upon the principle that an innocent third party properly cannot be estopped from challenging the government's mistaken issuance of a permit, even when there has been reliance by the permittee. The Board has previously held that estoppel cannot bar a neighboring property owner (as distinct from the District government) from asserting rights under the zoning regulations. The Court of Appeals has noted that the Board has adopted this position in *Beins v. District of Columbia Board of Zoning Adjustment*, 572 A.2d 122, 125 (D.C. 1990.) This position has been accepted in other jurisdictions as well. *See Lithe v. Hidalgo*, 536 S.W.2n 898, 901-02 (Mo.App. 1976) ("unconscionable to hold that aggrieved private parties could be prejudiced by the conduct of city officials with whom they are not in privity"); *Boyd v. Donelon*, 193 So.2d 291, 298 (La. App. 1966) (citations omitted) ("neighboring property owners . . . are not estopped by any permission or representations made by the municipal employees"): *Pascale v. Board of Zoning Appeals of City of New Haven*, 186 A.2d 377, 380 (1962) (assuming that a city may be estopped from enforcing a regulation because it issued a building permit, such estoppel will not defeat the rights of an aggrieved property owner).

Zoning Requirements	**R-1-A**	**WHOD/R-1-A**	**Site**
Minimum Lot Area	7,500 s.f.	7,500 s.f.	6,563 s.f. (existing)
Minimum Lot Width	75 ft.	75 ft.	53 ft. (existing)
Lot Occupancy	40%	2,000 s.f., where lot size is between 5,000 s.f. and 6,667 s.f.	2,145 s.f. (existing)
Floor Area Ratio	None Prescribed	Gross floor area shall not exceed the sum of 2,000 s.f. plus 40% of lot area, with exceptions for open porches and garages	2,876 s.f.
Minimum Front Yard	None Prescribed	Equal to or greater than the average setback of all structures on the same side of the street in the same block; 21 ft. in this case	25 ft. (prior to addition); 17 ft. (after porch construction)
Minimum Rear Yard	25 ft.	25 ft.	N.A.
Minimum Side Yard	8 ft. each	8 ft. each	6 ft. each (existing)
Off –street parking	One space, accessible directly from improved street or alley or via a graded and unobstructed private driveway	One space, accessible directly from improved street or alley or via a graded and unobstructed private driveway	

5. The subject property is nonconforming because its lot area, lot width, and setbacks are smaller than the minimums prescribed in the WHOD/R-1-A zone, and because its lot occupancy is higher than the prescribed maximum.

6. The Appeal challenges five permits issued between January and October 1998 for construction at the subject property, whose main elements were a covered front porch, a rear two-story addition, and a new garage. The five permits at issue are:

(1) Building Permit No. B413166, dated January 29, 1998, for a two-story addition on the rear;
(2) Building Permit No. B413424, dated February 9, 1998, for an addition to a garage, length 20 feet, width 20 feet, height 14 feet;
(3) Building Permit No. B415675, dated May 27, 1998, for a new garage to be located on the same spot as previous garage – length 20 feet, width 10 feet 9 inches, height 8 feet;
(4) Building Permit No. B417814, dated August 17, 1998, for repair of existing roof, roof in place, no structural change;
(5) Building Permit No. B419108, dated October 5, 1998, to build new porch roof as per plans.

7. The first permit, pertaining to the rear addition, incorrectly identified the zoning classification applicable to the subject property as R-1-B instead of WHOD/R-1-A.

8. Plans submitted by the Intervenor as part of his application for the first permit did not reflect all of the construction work that the Intervenor planned to perform at the site. The Intervenor's project was developed in a piecemeal manner and the various applications were often incomplete or otherwise misleading in that they did not always reflect the Intervenor's plans for the garage, rear addition, and front porch consistently and accurately.

9. The second permit, pertaining to an addition to the existing garage, also applied the wrong zoning classification, this time R-1-A instead of WHOD/R-1-A.

10. Although the second permit authorized an addition to an existing garage, the garage was demolished without authorization, purportedly because the Intervenor's contractor discovered that the footings to the existing garage were decayed.

11. A new garage was constructed on the subject property that was larger than the approved garage addition. The second permit approved a garage with dimensions of 20 feet in length and 14 feet in height, but the dimensions of the new garage were approximately 23 feet long, 21 feet wide, and 16 feet high.

12. The third permit, for a new garage in the same location as the previous garage, was issued after the new garage was already substantially completed. The large size of the new garage also exceeded the dimensions allowed by the third building permit.

13. The Zoning Regulations require that off-street parking spaces must be accessible at all times directly from improved streets or alleys or accessible from improved streets and alleys via graded and unobstructed private driveways. 11 DCMR § 2117.4.

14. A driveway providing access to required parking spaces must meet certain standards, including that a driveway serving more than one parking space must be at least 12 feet wide if designed for one-way circulation or at least 14 feet wide if designed for two-way circulation. 11 DCMR § 2117.8.

15. A private easement extends from Hawthorne Street, along the rear of four neighboring properties, and terminates at the Intervenor's property. Following construction of the new garage, the easement is eight feet wide.

16. The Intervenor's new garage is accessible only by means of the private easement.

17. The fourth permit, pertaining to roof repair, again applied the wrong zoning classification, in this instance R-1-B instead of WHOD/R-1-A.

18. The fourth permit was issued for repairs to an existing roof over the porch but, at the time the permit was issued, the porch was open and did not have a roof. The Intervenor was instructed to obtain a new building permit after DCRA discovered that there was no roof in place.

19. The fifth building permit authorized construction of a new porch roof.

CONCLUSIONS OF LAW AND OPINION:

An appeal to the Board may be taken by any person aggrieved by any decision of DCRA granting a building permit, or any other administrative decision based on the Zoning Regulations. D.C. Code § 5-424; 11 DCMR § 3202.2. The Board's powers with regard to appeals include to decide allegations of error in any decision made by DCRA in carrying out or enforcement of any zoning regulation. D.C. Code § 5-424.

The Zoning Regulations provide that an appeal must be "timely." 11 DCMR § 3315.2. Because the Board's rules do not adopt a specific time limit on appeals, a standard of reasonableness is applicable to determine whether an appeal is timely. *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 923 (D.C. 1980). In applying the reasonableness standard, courts have consistently held that the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the decision complained of. *Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628, 636 (D.C. 1985). *See also, e.g., Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994).

The Board concludes that the Appeal was timely with respect to all five permits. The Intervenor submitted five separate applications for building permits that all related to work performed on a single property. Because of the cumulative, piecemeal nature of the applications, the full extent of the Intervenor's construction project could not be discerned as each individual permit was issued and therefore they must be considered as a whole. The Appellant has alleged violations of the zoning regulations, such as failure to comply with lot occupancy and setback requirements, that pertain to the full extent of the work performed on the Intervenor's property, rather than merely concerning the individual components of the project. The Board is not persuaded that the first permit put the Appellant on notice of all the work to be done on the Intervenor's property or, therefore, that the work allegedly violated the Zoning Regulations.

Other factors also support our conclusion that the Appellant was not "chargeable with notice" as soon as the first permit was issued. The Intervenor's various permit applications contained errors of omission or were otherwise misleading in that they did not reflect all existing and planned improvements accurately and consistently. For example, the garage was not depicted accurately on the first application, concerning the rear addition, and the fourth application indicated that the front porch was not open but had an existing roof. Because of these errors, zoning violations arising from the failure to comply with lot occupancy and setback requirements of the Wesley Heights overlay, in particular, were not apparent until the work was substantially completed on the Intervenor's property. Moreover, some work was performed beyond the scope of the permit, as with the demolition of the existing garage and the construction of a new garage larger than the dimensions specified on the permit, and two of the permits (the third and fifth) were issued for work that was undertaken prior to receiving the permits. Therefore, the Board concludes that the Appellant was not chargeable with notice of the entire scope of work performed at the Intervenor's property until all of the permits were issued.[2]

The Intervenor argues that the Appeal is barred by laches. "Laches is a species of estoppel, being defined as the omission to assert a right for an unreasonable and unsatisfactorily explained length of time under circumstances prejudicial to the party asserting laches." *Wieck v. District of Columbia Board of Zoning Adjustment*, 383 A.2d 7, 11 (D.C. 1978), *quoting* 3 RATHKOPF, LAW OF ZONING AND PLANNING, at 67-1 (3d ed. 1972). "Laches is the principle that 'equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant." *American University Park Citizens Association v. Burka*, 400 A.2d 737, 740 (D.C. 1979), *quoting Russell v. Todd*, 309 U.S. 280, 287, 84 L. Ed. 754, 60 S. Ct. 527 (1940). The two elements of laches are the unreasonableness of the delay and the resulting prejudice to the party asserting the defense. *See, e.g., American University Park Citizens Association v. Burka*, 400 A.2d at 741. The "entire course of events," not merely the period from the zoning official's decision to the filing of an appeal, is relevant when determining the validity of a laches defense. *Goto v. District of Columbia Board of Zoning Adjustment,* 423 A.2d at 925, n.16.

The Board finds no merit in the Intervenor's argument. As discussed above with respect to timeliness, the Appellant did not unreasonably delay the filing of the Appeal. Rather, the Appeal was filed as soon as Appellant realized the entire scope of work being performed at the Intervenor's property. The Board concludes that the Appellant did not omit to assert her right to appeal for an unreasonable and unsatisfactorily explained length of time. Any delay in filing the appeal was not unreasonable but resulted from the fact that the Intervenor applied for separate building permits for each component of the construction on his property. Thus, there was no "unexcused delay." Accordingly, because the Intervenor failed to demonstrate the first element of laches – an unreasonable delay in bringing the appeal – the Board denies Intervenor's motion to dismiss the Appeal on grounds of laches.

---

[2] The fifth permit, which was issued after the appeal was filed, authorized construction of a new porch roof. That permit was purportedly issued to correct the fourth permit, which had authorized repairs to an existing porch roof, but in fact no roof was in existence when the permit was issued.

Turning to the merits of the Appeal, the five permits issued to the Intervenor violate the zoning regulations in several respects. The applicable zone district was misidentified on three of the five permits. Twice, the underlying zone was incorrectly identified as R-1-B; however, because of the similarity between R-1-A and R-1-B requirements that mistake likely had no substantive effect. A more significant oversight was the failure to recognize that the Intervenor's property is located within the Wesley Heights Overlay District. Thus, the more stringent WHOD provisions were not applied, and permits were issued that purported to allow work that does not comply with relevant lot occupancy and setback requirements. This oversight was compounded by the fact that the full scope of the work planned for the Intervenor's property was not depicted consistently and accurately on all permit applications, thus precluding an assessment of each individual permit application within the context of all existing and planned improvements.

Moreover, the Intervenor's property is nonconforming because its lot area, lot width, and setbacks are smaller than the minimums prescribed in the WHOD/R-1-A zone, and because its lot occupancy is higher than the prescribed maximum. Structural alterations to nonconforming structures are permitted. 11 DCMR § 2001.2. However, enlargements or additions made to nonconforming structures must comply with certain conditions, including that the structure must conform to percentage of lot occupancy requirements, and the addition or enlargement itself must not increase or extend any existing, nonconforming aspect of the structure, or create any new nonconformity of structure and addition combined. 11 DCMR § 2001.3. The Board concludes that the work performed on the Intervenor's property increased its nonconforming aspect with respect to setbacks and lot occupancy.

As Mr. Nunley acknowledged at the public hearing, the permits for the garage should not have been issued if the garage did not provide access in conformance with the zoning regulations. The two-car garage is accessible only through an easement that, at a width of eight feet, is narrower than the minimum width of 14 feet specified in the zoning regulations for a driveway with two-way circulation serving a parking space. 11 DCMR § 2117.8.

The Board concludes that the Zoning Administrator erred in issuing the five building permits to the Intervenor. The Zoning Administrator's decisions were not based on complete and accurate information about the Intervenor's property, reflecting all existing and planned improvements. The Zoning Administrator also failed to apply the correct zoning classification, which resulted in the issuance of permits that did not conform to applicable zoning provisions, especially the Wesley Heights Overlay District, in several material respects. The violations stemming from erroneously issued permits were compounded in this case by the fact that some work, with respect to the garage and front porch, was not performed strictly in compliance with the permits.

The motion to **DISMISS** the Appeal based on timeliness and laches is **DENIED.**

VOTE: 4-0 (Angel Clarens, Betty King, Sheila Cross Reid and Jerry Gilreath to deny.)

The Zoning Administrator erred in issuing Building Permit Nos. B413166, B413424, B415675, B417814 and B419108. Therefore, it is hereby **ORDERED** that the Appeal be **GRANTED.**

VOTE: 4-0 (Angel Clarens, Betty King, Sheila Cross Reid and Jerry Gilreath to grant.)

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

ATTESTED BY: _____
JERRILY R. KRESS
DIRECTOR

FINAL DATE OF ORDER: DEC 28 1999

UNDER 11 DCMR 3103.1 "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPEAL NO. 16405

As Director of the Office of Zoning, I hereby certify and attest that on DEC 28 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John Patrick Brown, Jr.
Greenstein DeLorme and Luchs, P.C.
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1666 K Street, N.W.
Washington, D.C. 20006-2897

Eleanor Roberts Lewi, Chairperson
Advisory Neighborhood Commission 3D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
DIRECTOR

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

December 8, 1999

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

Dear Ms. Reid and Members of the Board:

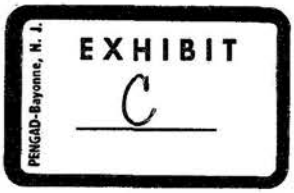
On Friday, December 3, I learned of the direct relationship between this BZA Application and BZA Appeal No. 16405. More importantly, I realized that the Board has not issued its final written order in the underlying appeal case.

As a result of this information, this office believes it would be premature to proceed with this application at this time for the following reasons:

1. The Board has not issued its final decision and order, including findings of fact and conclusions of law, in Appeal No. 16405. Further, the Board's order in the Appeal case will be subject to motions for reconsideration and review by the Court of Appeals before the matter is final.

2. Any action by this office on the current application is likely to result in decisions and actions, which may ultimately be determined to be inconsistent with the Board's decision in the underlying appeal case.

3. At this time, this office is also unable to prepare a zoning memorandum for the Board because it lacks the necessary information to proceed without first receiving a final decision in the appeal case. Second, the Applicant or his counsel have not submitted the information, including as-built construction drawings and other materials, required to make the necessary zoning computations and prepare the resulting zoning memorandum.



The Zoning Administrator's Office looks forward to continuing to provide assistance to the Board in this case at such time as it is appropriate and all the information necessary for review is made available.

If you have any questions, please do not hesitate to contact me. At the December 8, 1999 hearing, I have asked Mr. Edgar T. Nunley, Chief of the Zoning Review Branch, to attend in my place as a result of my attendance at an all day mandatory training conference. Mr. Nunley represented this office in the appeal hearing and is fully capable and authorized to provide information to the Board.

Respectfully,

Michael D. Johnson
Zoning Administrator

cc: Jerrily Kress, Director, Office of Zoning
Sheri Pruitt-Williams
Armando Lourenco, Administrator, BLRA
Edgar T. Nunley, Chief, Zoning Review Branch
Maureen E. Dwyer, Esq.
John Patrick Brown, Jr., Esq.
Advisory Neighborhood Commission 3D

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

CHARLES SISSON,	:	
Petitioner,	:	
v.	:	No. 00-AA-97
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT	:	
Respondent.	:	
	:	

MOTION FOR LEAVE TO FILE ADMINISTRATIVE RECORD

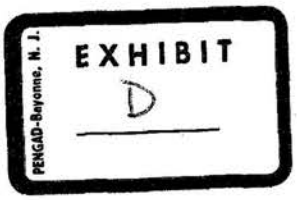
The respondent, District of Columbia Board of Zoning Adjustment, moves for leave to file the administrative record in the above referenced case.

Due to workload of the person chiefly responsible for compiling the record, the record could not be completed before this time.

Counsel for petitioner consents to this motion. We were not able contact counsel for intervenor consent to get his consent.

Respectfully submitted,

ROBERT R. RIGSBY
Corporation Counsel, D.C.



By: 

CHARLES L. REISCHEL
Deputy Corporation Counsel
Appellate Division

Office of the Corporation Counsel
441 4th Street, N.W.
Sixth Floor South
Washington, D.C. 20001
Telephone: (202) 724-5665

CERTIFCATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed, postage prepaid this 28th day of April, 2000, to Maureen Ellen Dwyer, Esquire, Paul J. Kiernan, Esquire, 1666 K Street, N.W., Suite 1100, Washington, D.C. 20006; John Patrick Brown, Jr., Esquire, Jeannine Rustad, Esquire, 1620 L Street, N.W., Suite 900, Washington, D.C. 20036.



CHARLES L. REISCHEL
Deputy Corporation Counsel
Appellate