ANC 3F

Advisory Neighborhood Commission 3F
NORTH CLEVELAND PARK / FOREST HILLS

3F01 - Phil Kogan
3F02 - Karen L. Perry
3F03 - Robert V. Maudlin
3F04 - David J. Bardin
3F05 - Doug Mitchell
3F06 - Phil Heinrich
3F07 - Duane Fitzgerald

16 January 2000

Sheila Cross-Reid, Chair
Board of Zoning Adjustment
441 4th Street, NW, Room 210S
Washington, DC 20001

[Phone: 727-6311; fax: 727-6072]

DISTRICT OF COLUMBIA
JAN 18 00
BOARD OF ZONING ADJUSTMENT

Re: BZA Appeal No. 16533

Dear Chair Cross-Reid:

In response to the notice of December 18 and letter dated December 23, 1999, Advisory Neighborhood Commission 3F (ANC 3F) submits this written report, consisting of the attached resolution as amplified by this letter. Mr. George R. Clark filed this appeal on November 3, 1999, on behalf of himself and Mary Clark, Stuart Sloame and Ellen Seeherman, and D. James and Emily Baker. Each of these individuals is a resident of ANC 3F and the subject property at 4512 28th Street is within the boundaries of ANC 3F.

1. ANC 3F approved the the attached resolution at its regular business meeting on January 10, 1999, after due public notice to the community and specific notice to Mr. Clark, counsel for the appellant neighbors, and to Mr. John Patrick Brown, counsel for the respondent developers (Forest Hills LLC).

a. Six of the seven commissioners were present (whereas four commissioners constitute a quorum), and all six commissioners voted in favor of the resolution, which states ANC 3F's position on the appeal.

b. ANC 3F recommends that the BZA (a) grant the appeal, (b) hold that the Department

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BZA
Case No. 16533
Exhibit No. 16

Board of Zoning Adjustment
District of Columbia
CASE NO.16533
EXHIBIT NO.16

of Consumer and Regulatory Affairs (DCRA) issued both permits erroneously, (c) require the respondent developers, Forest Hills, LLC, to remove the fourth level of the building at issue in order to conform to the three-story limit established by the zoning regulations for this property, and (d) direct DCRA to retain an independent surveyor to assist in resolving the issue of the appropriate width of the side yards.

c. ANC 3F also approved on January 10 a resolution authorizing Commissioner Phil Kogan to present ANC 3F's report to the BZA by a vote of six in favor, zero opposed, and zero abstentions.

2. Previously, ANC 3F gave preliminary consideration to the appeal on November 15, 1999, again after due public notice and specific notice to both sides and with a quorum present.

3. At both meetings, ANC 3F had the benefit of presentations by Mr. Clark and Mr. Brown. Moreover, principal members of Forest Hills, LLC, attended these meetings and they, as well as several neighbors, supplemented information supplied by counsel. In addition, several commissioners have inspected the site.

4. Our resolution reflects ANC 3F's concern that DCRA made serious errors in reviewing the application of Forest Hills, LLC, and acted incorrectly in issuing both permits at issue in this appeal. In a nutshell, DCRA appears to have twice approved construction by Forest Hills, LLC, of a four-story structure in an R-1-A zone where residential buildings are restricted to three stories. DCRA issued one permit – which the agency now admits was in error – before demolition of the previous residence began. Then, after Forest Hills, LLC, had already constructed four stories, DCRA recognized its error in issuing the first permit but, instead of holding Forest Hills, LLC, to comply with the zoning regulations (or to apply for a zoning variance), DCRA cooperated with Forest Hills, LLC, to perpetuate the error. Forest Hills, LLC, submitted and DCRA granted a second, almost identical permit application retroactively authorizing the construction already in place with only cosmetic modification – namely a "regrading" by piling some soil next to the southeast end of the building so as to bring the "grade" at the center of the building up a few feet (while leaving the full-story garage at one side of the building well below this contrived "grade").

a. Permit No. B424294, issued on June 7, 1999, authorized demolition to the foundation of the single family structure at 4512 28th Street and construction of three floors and an addition to the existing footprint with a new, one-story garage. The application *text* said "CONSTRUCT 3 FLOORS AND EXIST. FOOTPRINT. NEW 1 STORY GARAGE." The *text* did not spell out that it referred to "3 FLOORS" *plus* "ONE STORY GARAGE" *underneath* which, with the 3 stories above, comprises a 4 story structure. But one of the *drawings* accompanying

the application (an elevation) plainly shows a four-story structure. DCRA approved that specific drawing.

b. The practical result of issuance of the first permit is that Forest Hills, LLC, constructed a four-story structure in an R-1-A zone where residential buildings are restricted to three stories. However, while the text of Permit No. 424294 (which tracked the text of the application) seemingly authorized Forest Hills, LLC, to build a three-story structure, DCRA, in fact, acted incorrectly in issuing this permit since the drawings approved along with the permit show a four story building. And in a September 10, 1999, letter to Councilmember Kathy Patterson, Mr. Armando Lourenco, Director of DCRA's Building and Land Regulations Administration, states that "the structure, as it now stands . . . is technically a four story building." Issuance of the permit constituted a serious error on the part of DCRA. As noted, submission of the application involved internal discrepancies in the application, if not outright misrepresentation, on the part of the builder, Forest Hills, LLC.

c. ANC 3F had no chance to help DCRA catch its error because DCRA, in violation of the plain mandate of D.C. Code § 1-261(c)(3), failed to provide the ANC notice of Forest Hills, LLC's applications for permits to demolish and to construct. Moreover, DCRA prevented ANC 3F from performing its neighborhood-notification role in the scheme of District of Columbia government, thus frustrating timely notice and prior review by the ANC and the neighborhood before any zoning violation occurred and making it costly to the neighbors to repair the damage done to their community.

d. DCRA's error came to light when neighbors on 28th Street discovered that Forest Hill, LLC's construction did not stop at three stories but proceeded one extra story. This situation was made worse when Mr. Clark and his neighbors complained to DCRA directly and through the office of Councilmember Patterson. These complaints resulted in an application from Forest Hills, LLC dated August 25 for a revised permit and DCRA's issuance of revised Building Permit No. B426784 on September 17, 1999. The effect of these actions was to "revise Building Permit No. B424294 to change the finished grade to convert basement to cellar." In other words, Forest Hills, LLC, and DCRA propose to conform with and apply the zoning regulations by placing a soil berm against the southeast side of the building at 4512 28th Street, making no structural changes to the building whatsoever, and asserting that a full story basement is now a cellar that does not count as a story for purposes of zoning rules.

e. ANC 3F's resolution strongly objects to DCRA's approach on this matter. The structure at 4512 28th Street was approved as an addition to the existing foundation and plans were submitted showing the existing grade of that foundation.

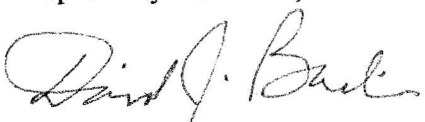
f. We recommend that the BZA take a very hard, critical look at the strange position taken by DCRA in favor of Forest Hills, LLC, in this case.

g. ANC 3F trusts that the BZA will thoughtfully examine and reject the determinations of DCRA.

5. ANC 3F's resolution observes that there are also issues as to whether or not the structure recently built at 4512 28th Street extends past the pre-existing footprint and whether or not the walls of the structure at 4512 28th Street are within the minimum allowable five feet from the adjacent properties and recommends that DCRA contract for a surveyor. In the circumstances of this case, where (a) the *text* of a developer's application (which was intended to be – and was – copied into the permit) failed to state plainly that developer sought a four-story structure on three-story-zoned property, (b) a developer failed to seek a zoning variance, (c) the DCRA erred in issuing its permit, and (d) the DCRA seemed determined to help a developer evade the zoning regulations at all costs, instead of dispassionately applying the regulations and requiring the developer to seek a zoning variance or alter its plans, ANC 3F recommends that the BZA conclude it was reasonable for Mr. Clark and the other appellants to ask DCRA to determine the disputed facts by bringing in an independent surveyor and it was unreasonable, inappropriate and erroneous for the DCRA to refuse.

7. Finally, ANC 3F recommends that in hearing this appeal, making its determinations, and thoughtfully explaining its conclusions, the BZA take the opportunity to demonstrate that District of Columbia government respects the rule of law.

Respectfully submitted,



Chairperson

Attachment: ANC 3F Resolution adopted January 10, 2000

copies to:

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January 10, 2000

WHEREAS,

The Department of Consumer and Regulatory Affairs (DCRA) incorrectly issued Building Permit No. B424294 on June 7, 1999, to Forest Hills, LLC, authorizing demolition of the structure at 4512 28th Street, construction of 3 floors, and the addition of a new one story garage on the existing foundation;

The DCRA issued a revised Building Permit No. B426784 on September 17, 1999, to allow a change to the finished grade and acknowledged that the structure as previously approved was four stories;

The DCRA's revised permit was issued **following** construction of a four story structure;

The DCRA's revised permit was issued to enable Forest Hills, LLC, to avoid the three story height limitation of 11 DCMR §400.1;

The revised permit does not change the fact that the structure built in accordance with the initial incorrect permit is a four story structure; and

WHEREAS,

The DCRA has not adequately addressed the following issues: (1) whether the structure at 4512 28th Street improperly extends beyond the pre-existing footprint; and (2) whether the structure meets the minimum requirement by being five feet distant from the adjacent properties;

The issue of ensuring that construction of so-called "tear down" properties is in compliance with the zoning regulations and the character of the surrounding community is of great importance in this ANC;

The DCRA in violation of the DC Code failed to notify the ANC of any Forest Hills, LLC, applications to demolish an existing structure, construct a new structure, and perform other work at the 4512 28th Street site, thereby denying timely notice and precluding prior review by the ANC and the neighborhood before any zoning violation occurred; and

WHEREAS,

George and Mary Clark, Stuart Sloame and Ellen Seeherman, and D. James and Emily Baker have appealed to the Board of Zoning Adjustment (BZA), Docket No. 16533, objecting to the DCRA's actions in (1) incorrectly issuing Building Permit No. B424294 on June 7, 1999, to Forest Hills, LLC, which enabled Forest Hills, LLC, to construct a four story structure, and (2) subsequently issuing revised Building Permit No. B426784 on September 17, 1999, to allow a change to the finished grade to a level different from the level of the existing grade as shown in Building Permit No. B424294, in order to avoid the three story limit in the DCMR.

RESOLVED that ANC 3F, at the duly noticed regular monthly business meeting held on January 10, 2000, with six of seven elected commissioners present thereby constituting a quorum, finds by a vote of six in favor, zero opposed and zero dissenting, that

The appeal of George and Mary Clark, Stuart Sloame and Ellen Seeherman, and D. James and Emily Baker, Docket No. 16533, to the Board of Zoning Adjustment (BZA) has merit in that the DCRA incorrectly issued a building permit that enabled Forest Hills, LLC, to construct a four story structure, and acted in such a manner as to avoid and evade the three story limit in the DCMR;

The BZA should uphold the appeal of George and Mary Clark, Stuart Sloame and Ellen Seeherman, and D. James and Emily Baker; and

The BZA should direct DCRA to ensure that Forest Hills, LLC, modifies its structure so that it complies with the height limitation of 11DCMR §400.1.

IT IS FURTHER RESOLVED THAT

The BZA should direct DCRA to contract with an independent surveyor to obtain an impartial third party survey that will establish:

1. Whether or not the structure recently built at 4512 28th Street extends past the pre-existing footprint;
2. Whether or not the walls of the structure at 4512 28th Street are within the minimum allowable five feet from the adjacent properties; and,

The BZA should direct the DCRA to use the results of this third party survey to determine whether or not the structure at 4512 28th Street conforms with the requirements of the zoning regulations and ensure that any variations from these regulations are corrected by Forest Hills, LLC.

Chair

Secretary