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'00 JAN 19 P4:38
OFFICE OF ZONING
DISTRICT OF COLUMBIA

January 19, 2000

VIA HAND-DELIVERED

Sheila Cross-Reid, Chairperson
District of Columbia
The Board of Zoning Adjustment
441 4th Street
Room 210-South
Washington, DC 20001

Re: BZA Appeal No. 16533
4512 28th Street, N.W.
Square 2251, Lot 29

Dear Ms. Reid:

Enclosed for filing are the original and nine copies of Appellant's Prehearing Statement in the above-referenced matter which is scheduled for hearing on February 2, 2000. I have also enclosed a copy to be stamped in as received and returned. Thank you for your courtesies in this matter.

Please feel free to contact me if you have any questions.

Sincerely yours,

George R. Clark

GRC/ydw
Enclosures

BZA
Case No. 16533
Exhibit No. 17

Board of Zoning Adjustment
District of Columbia
CASE NO.16533
EXHIBIT NO.17A1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

IN RE: 4512 28th Street, N.W. Square 2251, Lot 29	)	BZA Appeal No. 16533
Appeal of	)	
George and Mary Clark Stuart Sloame and Ellen Seeherman James D. and Emily Baker	)	

'00 JAN 21 P4:53

ERRATA SHEET

Appellants submit this Errata Sheet to correct typographical errors in Appellant's Prehearing Statement filed on January 19, 2000.

1. Page 7, Paragraph 1, Line 5 after "Exhibit 3" insert "(p.1)"

2. Page 7, Paragraph 1, Line 6 after "Exhibit 3" insert "(p.2)"

3. Page 14, Paragraph 3, Line 5 "Exhibit 11" should read "Exhibit 1"

4. Page 19, Paragraph # 2, Line 2 "Exhibit 1" should read "Exhibit 17"

5. Page 23, Line 5 insert "(Exhibit 22)" at end of sentence

6. Page 24, Paragraph 2, Line 1 "Lourencoco" should read "Lourenco"

7. Page 25, Line 1 "Lourencoco" should read "Lourenco"

8. Page 25, Paragraph 1, "Lourencoco" should read "Lourenco"

9. Page 26, Paragraph 1, Line 6 insert "(Exhibit 22)" at end of sentence

BZA
Case No. 16533
Exhibit No. 17

10. Page 26, Paragraph 3, Line 2 "Lourencoco" should read "Lourenco"

11. Page 33, Paragraph 2, Line 13 "claim" should read "claimed"

Respectfully submitted,

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Attorney for Appellants

January 21, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have on January 21, 2000 hand-delivered a true copy of the foregoing Errata Sheet to correct typographical errors in Appellant's Prehearing Statement filed on January 19, 2000 to the parties listed below.

VIA FACSIMILE
John Patrick Brown, Esquire
Greenstein DeLorme & Luchs, P.C.
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VIA FACSIMILE & HAND-DELIVERY
Mr. Michael Johnson
Zoning Administrator
DCRA/BLRA
Zoning Division
941 North Capital Street, N.E.
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Washington, D.C. 20002

George R. Clark

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

IN RE: 4512 28th Street, N.W.	)	
Square 2251, Lot 29	)	BZA Appeal No. 16533
	)	
Appeal of	)	
	)	
George and Mary Clark	)	
Stuart Sloame and Ellen Seeherman	)	
James D. and Emily Baker	)	

PRE-HEARING STATEMENT OF APPELLANTS

'00 JAN 19 P4:39
DISTRICT OF

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January 19, 2000

BZA
Case No. 16533
Exhibit No. 17

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

IN RE: 4512 28th Street, N.W.	)	
Square 2251, Lot 29	)	BZA Appeal No. 16533
	)	
Appeal of	)	
	)	
George and Mary Clark	)	
Stuart Sloame and Ellen Seeherman	)	
James D. and Emily Baker	)	

PRE-HEARING STATEMENT OF APPELLANTS

INTRODUCTION

This matter is about the DCRA turning the zoning code on its head by (1) permitting, even encouraging, the construction of a four-story residence in an R-1-A zone which has a three-story limitation, and (2) misinterpreting the exception which permits limited additions to nonconforming structures by applying it to "tear down" houses.

4512 28th Street N.W. ("4512") is a four-story house illegally constructed and approved in an R-1-A zone which allows only three stories (11 DCMR §400.1). Armando Lourenco, administrator of the Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs ("DCRA") explicitly stated that 4512 is a four-story house in a September 10, 1999 letter to Councilmember Kathy Patterson ("Exhibit 1"). His solution to the violation, however, was not to enforce the zoning regulations as written. Instead he suggested and

authorized a dramatic change to the grade to "bury" part of the basement story in an interpretation that guts the three story limitation. DCRA has admitted both to the Appellants and to Councilmember Patterson's office that under its interpretation seven or even 10 story "houses" could be constructed in R-1-A zones. DCRA is not authorized to do this and its interpretation of the zoning regulations must be reversed.

4512 also violates the limited exception to the side yard provisions in 11 DCMR §405. 4512 is a so-called "tear down" property, originally constructed in 1956 and is a nonconforming structure under the current code. DCRA claims that 11 DCMR § 405.8 allows it to approve the construction of a new building as an extension or addition. This strained and illegal interpretation would allow the entire zoning code to be evaded for new construction on a site on which there once was a nonconforming building. This interpretation must be reversed.

The permit applications and approved permits for 4512 were based upon false and misleading representations. The application and permit state, and show in the attached plans, that the developer would "demolish existing SFD to foundation (basement to remain). Construct 3 floors and addition to existing footprint." But a three floor addition to an entirely new expanded foundation, rather than the existing foundation, is what was actually contemplated and built. Because the permit application made false statements concerning (1) restricting building to the existing footprint (other than a one-story

addition); and (2) the number of stories in the prior building, as well as in the new building, it should not have been approved.

The Advisory Neighborhood Commission ("ANC") for 4512 has had two meetings (November 15, 1999 and January 10, 2000) concerning these issues. The ANC has adopted a resolution, dated January 10, 2000 (Exhibit 2) calling on the BZA to reverse the interpretation of DCRA and to disallow the four story house and for the BZA to require 4512 to come into compliance with the Code. The ANC has also expressed its concern about the interpretation being given to the zoning regulations by DCRA in the case of "tear down" properties. Of course, the BZA is to give "great weight" to the views of the ANC. D.C. Code §1-261(d).

The ANC meetings have been instructive in at least one other respect. The developer, Forest Hills LLC ("Forest Hills"), in each meeting stated its view of how the permit application and grant process works. The developer's view is that it can put anything it wants in the permit application and that is up to DCRA to "catch it" to make sure that it is in compliance with the law. This view, which is that the developer has no responsibility for the accuracy of its representations, is antithetical to proper permit and zoning procedures. Allowing 4512 to remain as built would approve this twisted view of zoning law compliance.

Quick Regulatory Overview

The following definitions are of particular significance in this matter. All are contained in 11 DCMR §199.

Basement - that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade.

Building - a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel.

Building, height of - the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet.

In those districts in which the height of building is limited to forty feet (40 ft.), the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story.

Cellar - that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade.

Nonconforming structure - a structure, lawfully existing at the time this title or any amendment to this title became effective, which does not conform to all provisions of

this title or the amendment, other than use, parking, loading, and roof structure requirements. Regulatory standards that create nonconformity of structures include, but are not limited to, height of building, lot area, width of lot, floor area ratio, lot occupancy, yard, court, and residential recreation space requirements.

Story - the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured.

For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars, stair or elevator penthouses, or other roof structures;

The following additional zoning regulations have particular applicability here:

(1) 11 DCMR §400.1, restricting height in the R-1-A zone to forty feet or three stories;

(2) 11 DCMR §401.1 & .3, creating a minimum lot area of 7,500 square feet in the R-1-A zone, and stating that a nonconforming building existing as of May 12, 1958 "may not be enlarged or replaced by a new building unless it complies with all other provisions of this title."

(3) 11 DCMR §405.8: "in the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building: Provided, that the width of the existing side yard shall not be decreased; and Provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.)."

(4) 12 DCMR §105.2: "Lot regulation: whenever a structure is demolished or removed, the premises shall be maintained free from all unsafe or hazardous conditions by the proper regulation of the lot, **restoration of established grades** and the erection of the necessary retaining walls and fences in accordance with the provisions of Article 30 of the Building Code." (Emphasis added.)

(5) 11 DCMR §2001.3(c): "The addition or enlargement itself shall not increase or extend any existing, nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined."

FACTUAL BACKGROUND

The Fraudulent Plans

The developer acquired 4512 for $372,000 from an estate in early 1999. 4512 was a three-story single-family home built in 1956, consisting of a finished basement with garage, a single primary living floor and an attic story. The pre-existing footprint of the house is shown on Exhibit 3, in the cross hatched area. Exhibit 3, without the cross hatching, was submitted by the developer as part of its original permit application dated April 23, 1999 (Exhibit 4).

The application and plans for the original permit are materially false and misleading in several respects:

(1) The application states that the developer planned to "demolish existing SFD to foundation. (Bsmt to remain). Construct 3 floors and addition to exist. footprint. New 1 story garage."

(2) As is shown on Exhibit 3, the plat which was submitted by Forest Hills stated there was a pre-existing two and one-half story frame and basement structure, all outlined by a solid black line. This was a successful attempt to fool DCRA into believing that the "existing footprint" coincided with the black outline. But the existing footprint was not within the solid black line. In fact, the solid black lined area contains an undisclosed three-story addition which is 49.4' x 6.6'. This

is the area outside the cross hatching in Exhibit 3 (not including the single story addition).

(3) The original application (in box 14) states that the existing building was two stories, and in box 17 says that the proposed building would be three stories. These representations cannot be reconciled with the facts. The plans provided for a four-story building, but the permit application claimed that it was only three. The developer's excuse, as stated at the ANC meetings, is that DCRA should have conducted detailed measurements on the architectural drawings to determine that the existing lowest floor was in fact a story. The developer says it had no duty to disclose that the basement was a story.

(4) Exhibit 3 also discloses a building restriction line of 15 feet. The Exhibit discloses that the house is exactly at the building restriction line at its southeast corner. Exhibit 3 does not show that the developer was planning on a balcony which intrudes upon the building restriction line.

(5) Exhibit 3 also fails to disclose that the developer has not restricted building to the original footprint, even over the pre-existing foundation. As the full architectural plans on file reveal, there is a 3 and one-half foot Dee expansion beyond the original footprint for 23.5 feet along the front of the house. The new building also reduces the existing side yard because it includes a 2'x 8' intrusion along

the south side of the new building for a recirculating fireplace (i.e., there is no chimney, flue or smokestack).

Construction Begins

In June 1999, shortly after the date of the issuance of the original permit on June 7, 1999, the Appellants noticed that there was activity at the site. The developer had not met with any of the neighbors and had not notified any of them, or the ANC, of its plans to demolish the existing home and build a new one.

The first activity by the developer was taking down several trees 75 feet or more in height so that the expansion to the existing foundation, which was not revealed on the permit or its application, could be accomplished.

When it appeared that demolition would take place, the Appellants sought out the developer and asked for a meeting. The meeting took place that same night in June. The developer was asked whether it could build "as of right." Mr. Murray Cohen, one of the partners in Forest Hills, explained that he was an experienced developer and knew for certain that he could build the proposed building as of right. He claimed that it met all zoning ordinances, including those for height.

Mr. Cohen showed the neighbors renderings of the proposed new house (Exhibit 5). The neighbors commented that they thought it was too large for the lot and the neighborhood,

and suggested that perhaps both sides could get together with a proposal for how to reduce the scale of the house. Mr. Cohen rejected the suggestion.

The Appellants then investigated the zoning regulations, including regulations concerning building height. It was determined that the existing basement constituted a story because it was partly below grade and its ceiling was far more than four feet above the adjacent finished grade. In fact, the ceiling was six or more feet above the finished grade at the measuring point for height.

Armed with this information, the Appellants contacted DCRA. Mr. Toye Bellow took a closer look at the plans and determined that the house, which was still not being framed, was four stories in height. A stop order on construction was issued for a brief period of time. Mr. Edgar Nunley of DCRA confirmed that the house as proposed was four stories in height and illegal.

According to Mr. Bellow, DCRA then suggested to the developer that if Forest Hills changed the grade so as to have fewer than four feet of the basement exposed, the basement would become a cellar, and would not count as a story for purposes of the height limitation. In fact, the revised permit explicitly states "change finished grades to convert basement to cellar as per Robert Chen." (Exhibit 16). Robert Chen is a DCRA employee. Mr. Nunley stated, upon hearing that DCRA had suggested that the

fourth floor could be eliminated by placing a dirt "berm" in an attempt to convert the basement to a cellar, that would not be proper under the zoning regulations.

On August 20, 1999 the Appellants delivered a letter to Mr. Cohen at the site, notifying him that his construction did not conform with the zoning regulations in at least two material respects (Exhibit 6). The Appellants pointed out that the new building did not meet the side yard requirements because it was not an addition to the existing footprint, and that it was four stories in height. **At the time of delivery of this letter, Forest Hills had completed the demolition work at the property but had not yet begun to frame any of the four floors proposed for 4512.** The letter concluded that "your continued unlawful construction is **at your own risk.**" (Exhibit 6) (Emphasis added).

Forest Hills resumed construction even before it filed for a new permit on August 25, 1999. Forest Hills raced to frame the house, completing it in less than three weeks, working in hurricanes, rain, on weekends and on Labor Day.

Appellants continued to attempt contact with DCRA on almost a daily basis, and contacted Councilmember Patterson's office to seek help when DCRA failed to return phone calls and refused to have meetings. On August 25, 1999, Appellants wrote to Mr. Nunley, pointing out that the house was being advertised as containing four floors and that construction was proceeding

even without a new permit (Exhibit 7). DCRA refused to issue a stop order even while the developer was building what DCRA would later admit was a completely illegal structure.

On September 2, 1999 the Appellants again wrote Mr. Nunley and pointed out that construction was racing ahead, even though no new permits had issued. (Exhibit 8). The letter pointed out further that 4512 was already taller than any house on the block even without the fourth story. Appellants also pointed out that to construe the DC zoning regulations as allowing the elimination of the story by regrading to place a small berm in front of the house at the measuring point would completely undermine the integrity of the regulations.

This evasion of the regulations was pointed out in a conversation by one of the Appellants with Mr. Toye Bellow. Mr. Bellow told one of the Appellants that a builder could put up a 10 story house in an R-1-A without violating zoning regulations as long as he put a 7 story berm in front of it. Councilmember Patterson confirmed, in a letter to Lloyd Jordan dated September 8, 1999 (Exhibit 11), a similar statement made to her office by DCRA.

Thus it is apparent that DCRA intends to interpret the zoning regulation to allow buildings of any height and with any number of stories in the R-1-A so as long as the building is only three stories or 40 feet at the single small measuring

point. This will completely destroy the integrity of the height limitations not only in R-1-A zones, but throughout the City.

On September 2, 1999 the Appellants also wrote to Mr. Michael Johnson asking for a meeting concerning the illegal four-story home. (Exhibit 9). They attached a copy of an advertisement for the house, advertising it as a six bedroom home with four finished floors.

On September 7, 1999 Councilmember Patterson's office received a message that the zoning administrator had approved the construction of the four-story house at 4512 and was going to allow the issuance of new permits. The next day Appellants wrote to Mr. Johnson and asked him to reconsider his action (Exhibit 10). They pointed out that any berm would have to descend to the street at a 45 degree angle, which still later plans submitted by the developer and actually built as of today have proven to be true. There is a 45 degree slope from the front of 4512 to the top of the retaining wall, which is itself four feet above the sidewalk level. (See plans submitted for December 1999 permit). Exhibit 10 also pointed out to Mr. Johnson that the original application was false when it claimed that the construction would be on the existing footprint.

On September 8, 1999 Mr. Johnson left a voicemail for Appellants, stating that the "purported" four story house had no zoning issues even though it "looks very awkward." Although he

offered to have a meeting, eventually he refused any more phone calls and no meeting was ever held.

Also on September 8, 1999 Councilmember Patterson wrote to Lloyd Jordan asking when a final decision would be reached. Councilmember Patterson added a handwritten note asking "and when will you return my calls?!" (Exhibit 11).

On September 10, 1999, Appellants again wrote to Mr. Michael Johnson asking for some evidence of the decision from the department so that an appeal could be filed with the BZA (Exhibit 12). Construction was continuing even though there were no permits posted on the site.

On September 10, 1999 Armando Lourenco wrote to Kathy Patterson to inform her of his decision. Mr. Lourenco admitted as follows: "The structure, as it now stands and if nothing was done to remedy it, is technically a four-story building." (Exhibit 11). Mr. Lourenco stated that "I empathize with the neighbors" but instead of enforcing the regulations struggled to find a way to retroactively approve what was admittedly an illegally granted permit.

On September 13, 1999 Councilmember Patterson again wrote to Lloyd Jordan about 4512 (Exhibit 13). She requested a copy of the survey to which Mr. Lourenco had referred and eventually that was made available to her (Exhibit 14, attached as Exhibit E-2 to the appeal).

Appellants wrote to Mr. Lloyd Jordan on September 14, 1999 asking why DCRA had allowed construction to proceed at the site without a permit and why it was going out of its way to favor a builder who had admittedly misrepresented its project in its initial permit application (Exhibit 15).

Later Appellants were able to obtain a copy of the application for the new permit (Exhibit 16). That application states that it is to "change finished grade to convert basement to cellar." Even though the number of stories was obviously an important question at this point, the application itself states that the number of stories was "3 1/2." Someone, either at DCRA or the developer, crossed out the more accurate "1/2" and changed the number of stories again to "3." Once again the developer failed to fill in box 24 concerning soil erosion control and once again DCRA did not require compliance with that part of the law. The approved revised permit dutifully tracks the language of the application "change finished grade to convert basement to cellar as per Robert Chen." (Exhibit 16).

On September 20, 1999 Lloyd Jordan again wrote to Councilmember Patterson, enclosing a copy of the wall test survey (Exhibit 17). He also noted that in his view the regulations allow property owners to regrade their lots in any fashion they choose without any permission. He made no mention of 12 DCMR §105.2 which requires that the original grade be restored after the type of demolition which was done here.

Finally he stated that he would be opposed to requiring regulatory approval for regrading.

Appellants were finally able to get copies of all the relevant papers in October, and filed this appeal on November 3, 1999.

Subsequently, in December 1999 another permit was issued at 4512, this time for regarding the property. The plans for the regrading in front of 4512 have been obtained (Exhibit 18). They show that the regrading has resulted in a 45 degree slope in front of 4512, which has already begun to fall of its own weight, and has erosion problems. (Exhibit 19). (See also Exhibits 20-22).

ARGUMENT

I. 4512 Violates the Height Regulations

It is uncontested by DCRA that the original permit for 4512 approved the building of a four-story house. This is because the basement is a story as it is more than four feet out of the ground. DCRA and the developer claim that the basement has been converted to a cellar because after extensive regrading at the single measuring point for height the basement is now less than four feet out of the ground. In other words, filling in a dirt strip a few inches wide in front of half of the house has removed a story. This "Alice in Wonderland" argument fails for several reasons:

1. 4512 remains a four-story house at any point at which it is measured except for the single measuring point for height. The most obvious place where the building is clearly four stories is the garage, which is fully exposed, and is a story by any view or measurement (see Exhibit 20). Even at the measuring point, the berm which magically converts the basement into a cellar is not even one foot deep, and then drops off at a severe angle (Exhibit 21). What DCRA has approved is an interpretation that says that as long as the number of stories is in compliance at the one measuring point, the rest of the house can be any number of stories and any number of feet in height. This is an absurd interpretation of the zoning regulations and will render them meaningless.[1]

Nevertheless, this is the interpretation which DCRA has orally given to the Appellants, and to Councilmember Patterson. DCRA has clearly stated on more than one occasion that as far as it is concerned, the developer could build a 10 story house as long as there was a 7 story berm in front of it at the measuring point. DCRA has also stated that the developer should be allowed to adjust the grade to any level it wants. This interpretation is wrong for three reasons.

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[1] There is also a question as to whether the current berm leaves less than four feet exposed at the measuring point, or in any other spot along the basement (Exhibit 23).

First, this interpretation would allow the developer to build a 10 story house, 90 feet in height, in a R-1-A zone as long as the house was only three stories or 40 feet in height at the single measuring point. DCRA will be estopped from trying to enforce the zoning regulations in this hypothetical situation based upon its interpretation in this case. And the situation will not remain hypothetical for long, given the number of present and projected tear downs in the District. Allowing a developer to evade the zoning requirements in this fashion violates the law. All regulations and statutes are to be interpreted in a reasonable fashion so was to bring about a reasonable result. DCRA's interpretation brings about an absurd result, and should be struck down.

Second, as even the developer has admitted in front of the ANC, under this interpretation an owner could remove the berm at all spots along the building except at the measuring point, and remain in compliance with the law with respect to stories and height. At this property, for example, a buyer could dig out the berm on the left side of the property, and put in a door for a walkout basement because the building would only be four stories at the single measuring point. DCRA will be powerless to stop this type of activity under the strained interpretation of the zoning regulations which it has adopted here.

Third, the developer and DCRA claim that the phrase "finished grade" means the grade after all construction has

ended. They point to nothing to support this interpretation, and at least one member of DCRA's zoning staff has questioned whether "finished grade" does not mean the grade at the beginning of the project rather than after it has been completed. A simple example will show why "finished grade" means the grade at the beginning of the project.

Under DCRA's interpretation, the owner of a completely flat piece of property could construct a 20 foot high earthen berm at the front of the proposed structure. The owner could then build a five-story house (perhaps, like here, with a garage alongside the berm), with the front showing only 3 stories. According to DCRA, the builder can do this as of right, and neither it nor the neighbors would have any right to object, even though a 20 foot hill and 50 foot house had been added to the property. If the construction was an expansion of a tear down, the analogy would be complete. DCRA would thus effectively rewrite the zoning laws for R-1-A zones.

2. DCRA claims that imposing a rule of reason on re-grading by landowners will impair development (Exhibit 1). There are two answers to this claim.

(A) As was demonstrated above, if DCRA's interpretation is allowed to stand, developers will be free to build houses of any height they desire in the R-1-A zone. The more logical interpretation is to allow developers to come to

BZA for a variance when they want to readjust the grade of the property so as to change the number of stories.

(B) DCRA's interpretation fails to take into account 12 DCMR §105.2, set forth above, which requires that "whenever a structure is demolished" the premises are to be free from unsafe or hazardous conditions by "restoration of established grades." The permit here provided that the developer would "demolish existing" single-family dwelling. Under this regulation, the developer was required to restore the established grade. It is not given freedom to establish any new grade which it wants.

Relief

The BZA should order that the fourth floor of 4512 be removed. As is shown later, the developer has only itself to blame for any possible hardship it may allege this relief will cause.

II. 4512 Is Not Built upon the Existing Footprint

The original permit grants permission, based on the application, to "construct 3 floors and addition to existing footprint." This means precisely what it says - three floors would be constructed on the existing foundation and a single story addition would also be constructed. As is shown on

Exhibit 3, this is not what the developer planned on doing, nor what it did do.

Mr. Toye Bellow of DCRA has told the Appellants that the original application was misleading and should not have been approved because the detailed plans showed a nonconforming addition beyond the existing footprint and would have four floors rather than the three which are allowed.

This fact is significant because DCRA claims that this "new home," as it is advertised on the site by the developer, is just an addition or extension of an existing building. As is shown in Section IV below, this simply is not true.

III. The Permits for 4512 Were Based upon Fraudulent Applications

The application and plans for the original permit are materially false and misleading in several respects:

(1) The application states that the developer planned to "demolish existing SFD to foundation. (Basement to remain). Construct 3 floors and addition to exist. footprint. New 1 story garage."

(2) As is shown on Exhibit 3, the plat which was submitted by Forest Hills stated there was a pre-existing two and one-half story frame and basement structure, all outlined by

a solid black line. This was a successful attempt to fool DCRA into believing that the "existing footprint" coincided with the black outline. But the existing footprint was not within the solid black line. In fact, the solid black lined area contains an undisclosed three-story addition which is 49.4' x 6.6'. This is the area outside the cross hatching in Exhibit 3 (not including the single story addition).

(3) The original application (in box 14) states that the existing building was two stories, and in box 17 says that the proposed building would be three stories. These representations cannot be reconciled with the facts. The plans provided for a four-story building, but the permit application claimed that it was only three. The developer's excuse, as stated at the ANC meetings, is that DCRA should have conducted detailed measurements on the architectural drawings to determine that the existing lowest floor was in fact a story.

(4) Exhibit 3 also discloses a building restriction line of 15 feet. The Exhibit discloses that the house is exactly at the building restriction line at its southeast corner. Exhibit 3 does not show that the developer was planning on a balcony which intrudes upon the building restriction line.

(5) Exhibit 3 also fails to disclose that the developer has not restricted building to the original footprint, even over the pre-existing foundation. As the full architectural plans on file reveal, there is a 3 and one-half

foot deep expansion beyond the original footprint for 23.5 feet along the front of the house. The new building also reduces the existing side yard because it includes a 2'x 8' intrusion along the south side of the new building for a recirculating fireplace (i.e., there is no chimney, flue or smokestack).

IV. 4512 Is Not an Extension or Addition Made to an Existing Building

A. DCRA Is Wrong on the Facts about 4512

Under 11 DCMR §199, 4512 as it existed prior to its demolition was a "nonconforming structure" because it did not conform to the provisions of the zoning code in a number of respects, including lot area and side yards. Under 11 DCMR § 2001.3(c), an addition or enlargement to a nonconforming structure "shall not increase or extend any existing, nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined."

The lot at 4512, as Exhibit 3 shows, is 7,494.25 square feet. Under 11 DCMR §401.3, the minimum building lot size in an R-1-A zone is 7,500 square feet. The side yards at 4512 are less than eight feet, and thus do not meet the requirements of 11 DCMR §405. Thus 4512 was by definition a "nonconforming structure."

Under 11 DCMR §401.1, in the case of a building located on a lot which is too small, as is 4512, "the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title."[2] 4512 does not comply with all the zoning provisions, including most conspicuously the lot size, side yard and height provisions. Thus no permit can issue unless some other provision of the zoning code is applicable.

Armando Lourencoco, in his September 10, 1999 letter (Exhibit 1), asserts that 11 DCMR §405.8[3] permits this new building because the alterations or additions do not reduce the side yards and the side yards are at least five feet. He asserts that "the sides of the house remain at the same location

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2 4512 is not saved by the provisions of 11 DCMR §407.1 which authorize the Zoning Administrator to permit a deviation not to exceed two percent of the area requirement of §401, as well as other deviations. First, the Zoning Administrator authorized no such deviation here. Second, in considering such a deviation, the Zoning Administrator is required to consider whether the deviation will "impair the purpose of the otherwise applicable regulations." 11 DCMR §407.1(b). The Zoning Administrator made no findings with respect to this issue, including the purposes of the height and minimum side yards rules.

Moreover, in granting any such deviation, the Zoning Administrator should be required to consider the factors contained 11 DCMR §223. Those factors include the light and air available to neighboring properties, the privacy of use and enjoyment of neighboring properties, and the visual intrusion upon the character, scale and pattern of houses along the street. 11 DCMR §223.2(a)-(c).

3 Although Mr. Lourenco does not refer to this section by number, the text of his letter makes it clear that this is the provision to which he is referring.

as before." Mr. Lourencoco not only is factually incorrect, but his reasoning is wrong on at least three separate grounds.

Mr. Lourencoco is factually incorrect because the sides of the house do not remain at the same location as before. The house has four sides. All four of them have been expanded, with one of them expanded two times.

The West Side of the house has been expanded by a 6.6-foot deep, three-story addition.[4] Both Exhibit 3 and the survey appended as Exhibit E-2 to the appeal show that extension yields side yards of less than eight feet. Both side yards are in fact less than six feet. At the closest point to the property lines, the side yards purport to be barely six feet on the survey submitted by the developer. The ANC has requested that an independent survey be taken to see whether these measurements are correct. The BZA should grant the ANC's request.

Aside from any question of the size of the side yards vis-a-vis the three story extension and the closeness of the extension to adjacent properties, there is no dispute that the

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4 Although it is difficult at first to see how DCRA missed this, it must be remembered that the original permit application showed this expansion as part of the existing footprint. The application violated 11 DCMR §3202.2(b)(1) because it did not show all existing and proposed structures accurately.

pre-existing foundation has been expanded to the west for the 3 story extension.[5]

The structure was also expanded to the south. The plans and picture show a recirculating fireplace, which is at least a two-foot intrusion into the side yard. It is another expansion and is not for a chimney, smokestack or flue.

The structure has also been expanded to the east. There is an overhang three stories in height built over the pre-existing foundation for the entire width of the house from the front door northward. According to the plans, this is an expansion of 3 1/2 feet beyond the pre-existing house.[6]

B. <u>DCRA Is Wrong on the Law about 4512</u>

Pre-existing 4512 was a nonconforming structure. Mr. Lourencoco asserts in Exhibit 1 (page 3) that 4512 was not nonconforming because the pre-existing development was grandfathered. But that misapprehends the definition of *nonconforming structure*. 4512 was *nonconforming* because, in the words of the definition, it "does not conform to all provisions

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5 The 10 foot wide single story addition to the back may also be nonconforming, in that it extends into the eight-foot side yard on the northwest side This is another "expansion" that Mr. Lourenco somehow missed.

6 The wall test report does not show whether this three and 1/2 foot deep expansion violates the building restriction line. (Exhibit 14) The BZA should require a showing by an independent survey that the expansion has not impinged upon the building restriction line.

of this title." 11 DCMR §199. The definition contemplates that a conforming structure becomes nonconforming by reason of changing regulatory standards. That does not change whether the structure is grandfathered, but only determines whether other provisions come into play for additions or expansions. See Beins v. District of Columbia Board of Zoning Adjustment, 572 A.2d 122, 124 (D.C. 1990) (house was nonconforming structure because it was built before 1958 but did not meet current zoning regulations).

Whether a structure is nonconforming by definition is determined by reference to the current code. Any other result would mean that a structure could be added to or modified based on the old code rather than the one currently in effect.

Apparently Mr. Lourenco believes that there is a provision in the current regulations that authorizes five foot side yards. He is incorrect. There is a provision which deals with extending or adding to buildings which had less than eight foot side yards as of May 12, 1958, (11 DCMR § 405.8). But that provision does not aid the developer here for four separate reasons.

(1) The work at 4512 was not an addition or expansion to an existing building. Section 405.8 allows "an extension or addition … to the building" existing on or before May 12, 1958. But as the application and permit state, the previous single-family dwelling was demolished. Part of the plans (see page A2

of the approved plans) provide that the developer was to "remove roof above completely." Once the roof was removed, there was no building remaining at the site within the zoning definitions. A building is a "structure having a roof supported by columns and walls for the shelter, support, or enclosure of persons...." (Emphasis added). Because there was no building to be added to or expanded, section 405.8 is inapplicable because it applies only to extensions or additions to a building.

There is an obvious reason for Section 405.8 to read this way. The developer and DCRA read Section 405.8 to allow what amounts to a brand new building that does not comply with the current code because some part of it was on a pre-existing foundation. The mischief behind this interpretation is readily apparent.

Under DCRA's view, a developer can build a new building which is entirely a nonconforming structure, as long as the developer calls it an addition. The new building at 4512 is no addition or expansion. Indeed the developer has advertised 4512 as a "stunning **new** six bedroom home"(emphasis added, Exhibit (7).[7] To call this entirely new structure an addition or

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[7] The developer is also advertising 4512 as a six bedroom home even though the approved plans only call for five bedrooms. The reason is that the sixth bedroom is in the basement, and cannot lawfully be occupied as such. Moreover, if indeed the lowest floor is a cellar, there is even more reason why the basement bedroom cannot be occupied. At the ANC meeting the developer claimed that one of the two rooms on the fourth floor could be the sixth bedroom. A simple review of the plans (and a site visit)

Continued on following page

as at the northeast corner of the pre-existing porch, and perilously close to it everywhere else. Significantly, 4512 violates the building restriction line.

The plans for 4512 show a balcony above the front door on the third-floor of the building. This balcony is not shown on the plat which shows the building restriction line. But the balcony as shown on the building plans extends beyond the pre-existing porch, which was at the 15 foot building restriction line (see Exhibit 3 and pages A2 & 3 of the plans). Therefore the balcony, which is to be supported by beams, necessarily extends beyond the 15 foot building restriction line in violation of 12A DCMR § 506.10.2.

(4) Section 405.8 also does not aid the developer because there is a reduction of the side yard on the south side of the house. This is the extension into the side yard for the recirculating fireplace which is clearly shown on the plans and on the attached photograph (Exhibit 22). Section 405.8 says that the "width of the existing side yard shall not be decreased." Because the width of the sideyard is undeniably decreased, section 405.8 is of no help.

V. The Developer Built 4512 With Full Knowledge That It Had No Valid Permit

Forest Hills filed its application and proceeded to build at 4512 with full knowledge that it was violating the three-story limitation. Its architect is licensed in the District of Columbia and is thus charged with knowledge of the three-story limitation. The plans which were submitted state that "all work shall conform to the District of Columbia building codes and all other applicable laws, rules and regulations." (Page A1).

In addition, the developer was placed on written notice on August 20, 1999, that 4512 as planned violated the height limitation. The developer was further placed on notice that the Appellants would proceed with this appeal. All of this took place prior to the time that the fourth story was added to 4512.

A property owner cannot rely upon issuance of a building permit approved in violation of District of Columbia regulations. Rafferty v. D.C. Zoning Commission, 662 A.2d 191, 192 (D.C. 1995); Murray v. D.C. Board of Zoning Adjustment, 572, A.2d 1055 (D.C. 1990). Any alledged financial hardship on the developer caused by requiring 4512 to come into compliance is "self-created hardship" and precludes a claim by Forest Hills that it relied in good faith on the Zoning Administrators ruling. Id. at 1058.

VI. The BZA Must Grant Great Weight to the ANC's Conclusion That 4512 Is Illegal

The ANC for 4512 has passed a resolution that the DCRA has incorrectly issued a building permit allowing a four-story house, and "acted in such a manner as to avoid and evade the three-story limit in the DCMR.." (Exhibit 2 at p. 2). The BZA is required to give "great weight" to this decision of the ANC. D.C. Code §1-261(h); Levy v. D.C. Board of Zoning Adjustment, 570 A.2d 739, 746 (D.C. 1990).

The ANC has resolved that the BZA should require that 4512 come into compliance with the zoning regulations. The only way to do this is to remove the top floor and that portion of the three-story addition which does not conform to the eight foot side yard requirement. As the ANC notes, the revised permit was issued only after the fourth floor was constructed.

The ANC notes further that the issue of alleged additions to properties which have been torn down is one which requires careful consideration by the BZA. The BZA must give great weight to the ANC's conclusion that the zoning regulations must be read carefully and applied correctly with respect to so-called "tear down" properties, or else the regulations will have no integrity at all. Failure to do so is reversible error. Neighbors United for a Safer Community v. D.C. Board of Zoning Adjustment, 647 A.2d 793, 797-798 (D.C. 1994).

VII. The Developer Is Not Entitled To Rely Upon An Improperly Issued Permit

The developer is entitled to no sympathy here. It filed an application to build an illegal structure with a hope that DCRA would not discover that fact. The developer was successful in initially getting its false application past DCRA. When the developer was caught, it still could have applied to build a lawful structure without removing any portion of the building. Instead of complying with the law, however, it chose to gamble and ask for the zoning regulations to be interpreted in a completely illogical way. The developer has no one to blame but itself for its illegal actions.

If the DCRA bent over backwards in approving the revised permit application out of some misguided sense of guilt in wrongfully granting the first permit, or to cover up its mistake, the builder has no equitable claim of reliance. Not only did the builder mislead the DCRA, but also it was put on notice of the proposed illegal construction by the neighbors prior to framing and was warned that it was continuing construction pursuant to the original plans at its own risk. The builder's response was to redouble its construction efforts, even having work performed on Labor Day and during a hurricane, in an effort to create "facts on the ground." To allow the builder to succeed in this charade is tantamount to taking pity on the boy who murdered his parents and claims that the court should have sympathy for him because he was an orphan.

On the other hand, Appellants proceeded with their appeal as expediously as possible. If fact, the appeal was unduly delayed by the tardy actions of the DCRA, which despite repeated calls and letters from Appellants and Councilmember Patterson, delayed in issuing a written, appealable decision.

The result sought here will have no adverse impact on proper development of tear down properties. In fact there is a new zoning regulation which applies to exactly the situation presented here. Under 11 DCMR § 223, additions to single-family dwellings that do not comply with the lot size and side yard requirements are to be permitted only if approved by the BZA. In considering additions, the BZA is to take into account certain considerations which show exactly why construction like that done here should not be a matter of right.

A single-family dwelling which is in violation of the lot size and side yard requirements is not allowed if it has an adverse effect on several factors which are relevant here. First, the light and air available to neighboring properties shall not be unduly affected. 4512 is so high above the other properties that it has removed all winter sunlight from the property across the street (4525). Second, the privacy and use and enjoyment of neighboring properties shall not be unduly compromised. 4512 now looks down into the most private rooms at 4508, as well as onto the patio of 4508 which contains a hot tub.

Third, the addition as viewed from the street is not to substantially visually intrude upon the character, scale and pattern of houses along the street. Even Michael Johnson stated that 4512 "looks very awkward." (September 8, 1999 voicemail message) Even Armando Lourenco agrees that 4512 "will certainly be the most conspicuous structure to anyone walking along the block." (Exhibit 1 at p. 3). Even he "empathize[s] with the neighbors in this respect." (Exhibit 1 at p. 3).

Conclusion

The citizens of the District of Columbia are entitled to more than empathy when it comes to enforcement of the zoning regulations. The developer here filed a false application in the hope that it could "sneak one by." Even after it was caught by vigilant citizens, it has refused to comply with the law and instead has sought what amounts to a special exception via the permit process.

The BZA should require the zoning laws be enforced instead of evaded by vacating the revised building permit and ordering removal of (1)the fourth story, (2)that part of the three-story addition that does not conform to the eight foot side yards requirement, (3)the front overhang and (4)the south side extension.

Respectfully submitted,

George R. Clark, D.C. Bar #179747
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
(202) 414-9215
(202) 414-9299
Attorney for Appellants

January 19, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have on January 19, 2000 hand-delivered a true copy of the foregoing Statement of Appellants Under 11 DCMR § 3112.10 to the parties listed below.

VIA HAND-DELIVERY
John Patrick Brown, Esquire
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, D.C. 20036-5605

Mr. Michael Johnson
Zoning Administrator
DCRA/BLRA
Zoning Division
941 North Capital Street, N.E.
Suite 2200
Washington, D.C. 20002

George R. Clark

INDEX TO EXHIBITS

1. September 10, 1999 Letter from Armando Lourenco to Kathy Patterson

2. January 10, 2000 ANC Resolution in Support of Appellants

3. Plat for 4512

4. June 7, 1999 Original Permit Application

5. Renderings of 4512

6. August 20, 1999 Letter from Appellants to Murray Cohen

7. August 25, 1999 Letter from George Clark to Edgar Nunley

8. September 2, 1999 Letter from George Clark to Edgar Nunley

9. September 2, 1999 Letter from George Clark to Michael Johnson

10. September 8, 1999 Letter from George Clark to Michael Johnson

11. September 8, 1999 Letter from Kathy Patterson to Lloyd Jordan

12. September 10, 1999 Letter from George Clark to Michael Johnson

13. September 13, 1999 Letter from Kathy Patterson to Lloyd Jordan

14. Wall Test Report Survey

15. September 14, 1999 Letter from George Clark to Michael Johnson

16. September 17, 1999 Application for Permit

17. September 20, 1999 Letter from Lloyd Jordon to Kathy Patterson

18. December 1999 Plans for Regrading 4512

19. Photographs of berm falling and eroding

20. Photographs of house and garage

21. Photographs of berm

22. Photograph of extension

23. Photographs of berm at basement

Exhibit 1

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

September 10, 1999

Honorable Kathy Patterson
Councilmember, Ward 3
Council of the District of Columbia
441 4th Street, N.W. - Suite 709
Washington, D.C. 20001

Re: 4512 28th Street, NW

Dear Councilmember Patterson:

This is to provide you with an update on the situation of the permitting and construction at the above referenced site. As you know, several neighbors have expressed concerns about the volume, appropriateness, height, number of stories and other zoning requirements that the project, as permitted, would violate. Mr. George Clark's letter of September 8 addresses all of those concerns.

As a result of the complaints received, the permit records were reviewed by me and staff, and I visited the site on Tuesday, September 7, 1999. The purpose of my visit was to ascertain, in the field, whether the construction significantly deviated from the approved plans and to have a better feeling for the topography of the site and the placement of the building on the site.

After reviewing all the information now available, it is my opinion that the only aspect in which the approved project is questionable, based on the provisions of the Zoning Regulations, is the matter of the number of stories. The zone (R-1-A) allow only three-story structures to be erected, to a maximum height of 40 ft. The structure, as it now stands and if nothing was done to remedy it, is technically a four story building. As Mr.

Clark well remarked, there is a 4 foot thresho d to determine whether a level in a building is a story or not, even though it is not measured as Mr. Clark seems to believe.

The Zoning Regulations establish that the height of a building in a district where the height is limited to 40 feet (as is the case of R-1-A) is measured "from the finished grade at the middle of the front of the building to the ceiling of the top story." The regulations also establish, under the definition of "Story" the following:

> "(...) The number of stories shall be counted at the point from which the height of the building is measured. For the purpose of determining the maximum number of permitted stories, the term story sha l not include cellars, (...)"

The definition of "cellar" further reads: 'that portion of a story, the ceiling of which is less than four feet (4 ft) above the adjacent finished grade."

The owner has already been made aware of the fact that the approved plans appeared to show the proposed finished grade, at the front of the building, more than 4 feet below the ceiling of the lower level of the building. As a result, the owner filed an application to revise the profile of the existing berm, at the front of the building, to bring the finished grade to four feet below the level of the main floor of the building. With this revision, the ceiling of the lower level will be clearly less than 4 feet above the finished grade, therefore that level constitutes a cellar and does not count for the number of stories. Obviously, until the project is completed the finished grade may not be at the correct level, but our office will keep monitoring this site to ensure compliance of the final construction. I would like to point out that this house is located on a hillside lot and the grade at the sides and rear are much higher than in the front.

The City Council will soon be considering the adoption of the new version of the Construction Codes (12DCMR). The proposed amendments to Section 118.0, Certificates of Occupancy, will require new single-family dwellings to have a Certificate of Occupancy that will certify final compliance with these and other code requirements. This provision will ensure that a final construction inspection will verify completion of all required items, such as final regrading.

It is true that the main level of the house is approximately 14 or 15 feet above the sidewalk. The other houses in the block, north of the house in question, are also at least as high above the sidewalk. But as I explained above, that is irrelevant to the application of the zoning regulations. I also measured the floor-to-floor dimensions of the framing and the distance between the first and the third floors is approximately 21 feet. The ceiling height of the top floor will be less than 10 feet, therefore, the height of the finished building, with the regraded front berm, will be approximately 35 ft.

A professional land surveyor performed a survey of the walls and the respective wall test plat indicates the closest points to be 5'-11" and 5'-2" from the side property lines. Therefore, the side yards, at their narrowest points, are more than 5 feet wide. I have

to rely on the results of this survey. A measurement taken from the fence, on the field, will never be as accurate as a professional survey.

The original building at 4512 28th Street NW was built in 1956, which preceded the Zoning Regulations (May 1958). Several aspects of the pre-existing development of the lot are grandfathered. Because the side yards were at least 5 ft wide, the structure was never considered a "non-conforming structure." The provisions that regulate additions to a non-conforming structure are not applicable to this project. As a conforming structure, alterations or additions to it are allowed, and the side yard condition may remain even though an entirely new structure is required to have a minimum of 8 feet side yard, as long as the alterations or additions do not reduce the side yard and the side yards are at least 5 ft wide The project preserved the foundations and walls up to the level of the main floor, therefore the sides of the house remain at the same location as before.

Because 4512 28th Street NW is not located in any district enjoying special protection under the Historic Preservation Law or the Shipstead-Luce Act, considerations of appropriateness of the style of the project for the neighborhood are beyond our regulatory reach. I empathize with the neighbors in this respect. This house will certainly be the most conspicuous structure to anyone walking along the block, but none of these considerations amount to a violation of the applicable regulations that would warrant any enforcement action on our part.

If I can be of further assistance on this or any other matter, please call me at (202) 442-4677. Mr. Michael D. Johnson, Zoning Administrator, can also be reached at (202) 442-4560, for further clarification on this matter in the event that I am not immediately available.

Sincerely yours,

Armando M. Lourenco
Administrator

cc: Lloyd J. Jordan, Director
Michael D. Johnson, Zoning Administrator

Exhibit 2

ADVISORY NEIGHBORHOOD COMMISSION 3F
North Cleveland Park & Forest Hills
P.O. Box 39290
Washington, DC 20016-9290
Phone: (202) 362-6120
Fax: (202) 686-7237
www.DC.net/maudlin

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:

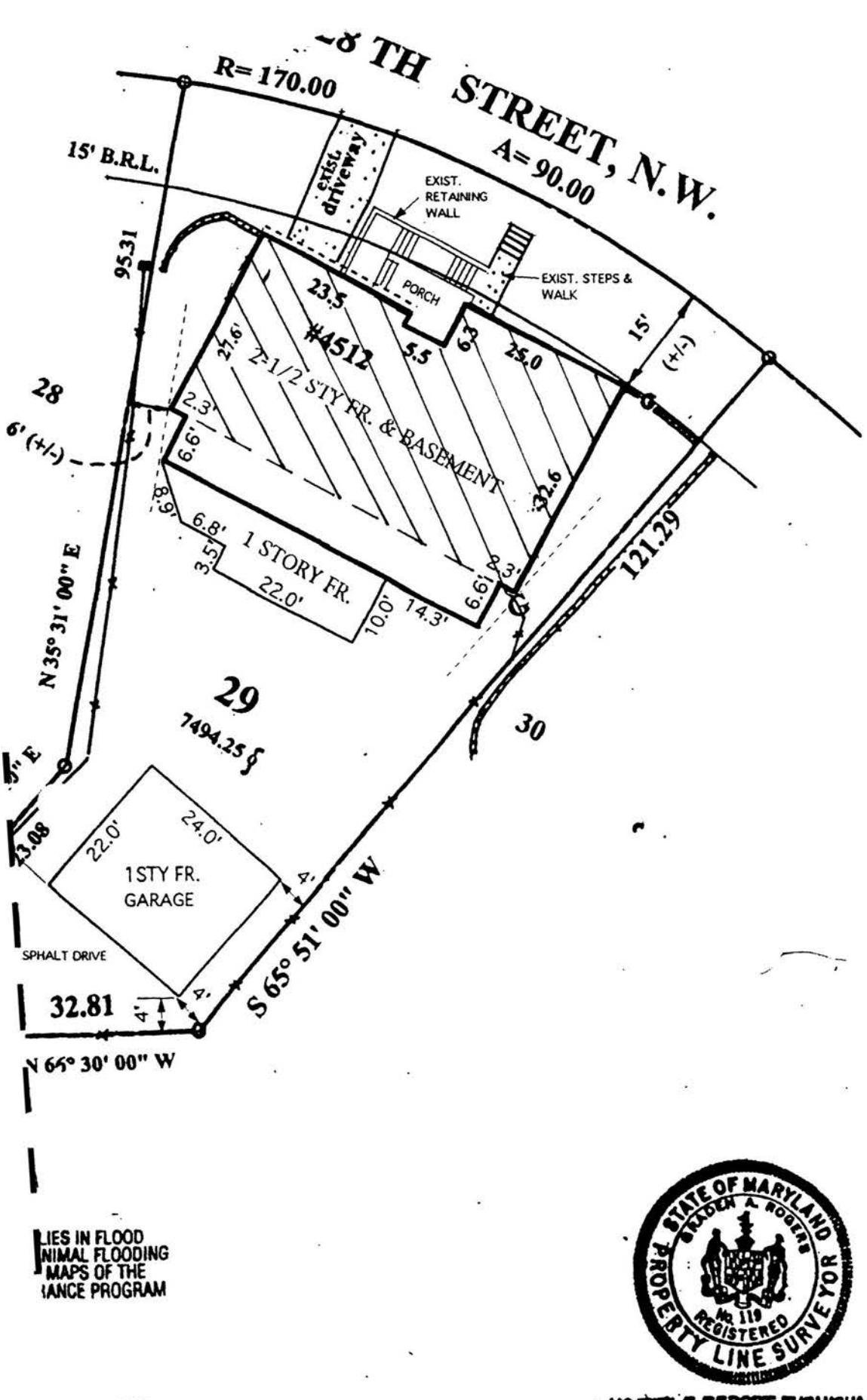
1. Whether or not the structure recently built at 4512 28th Street extends past the pre-existing footprint;
2. Whether or not the walls of the structure at 4512 28th Street are within the minimum allowable five feet from the adjacent properties; and,

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

Exhibit 3



LIES IN FLOOD
NIMAL FLOODING
MAPS OF THE
ANCE PROGRAM

STATE OF MARYLAND
BRADEN A. ROGERS
No. 119
REGISTERED
PROPERTY LINE SURVEYOR

NO TITLE REPORT FURNISHED

LOT: 29	SQUARE: 2251
LIBER: 83	FOLIO:
DATE: 12-22-98	SCALE:

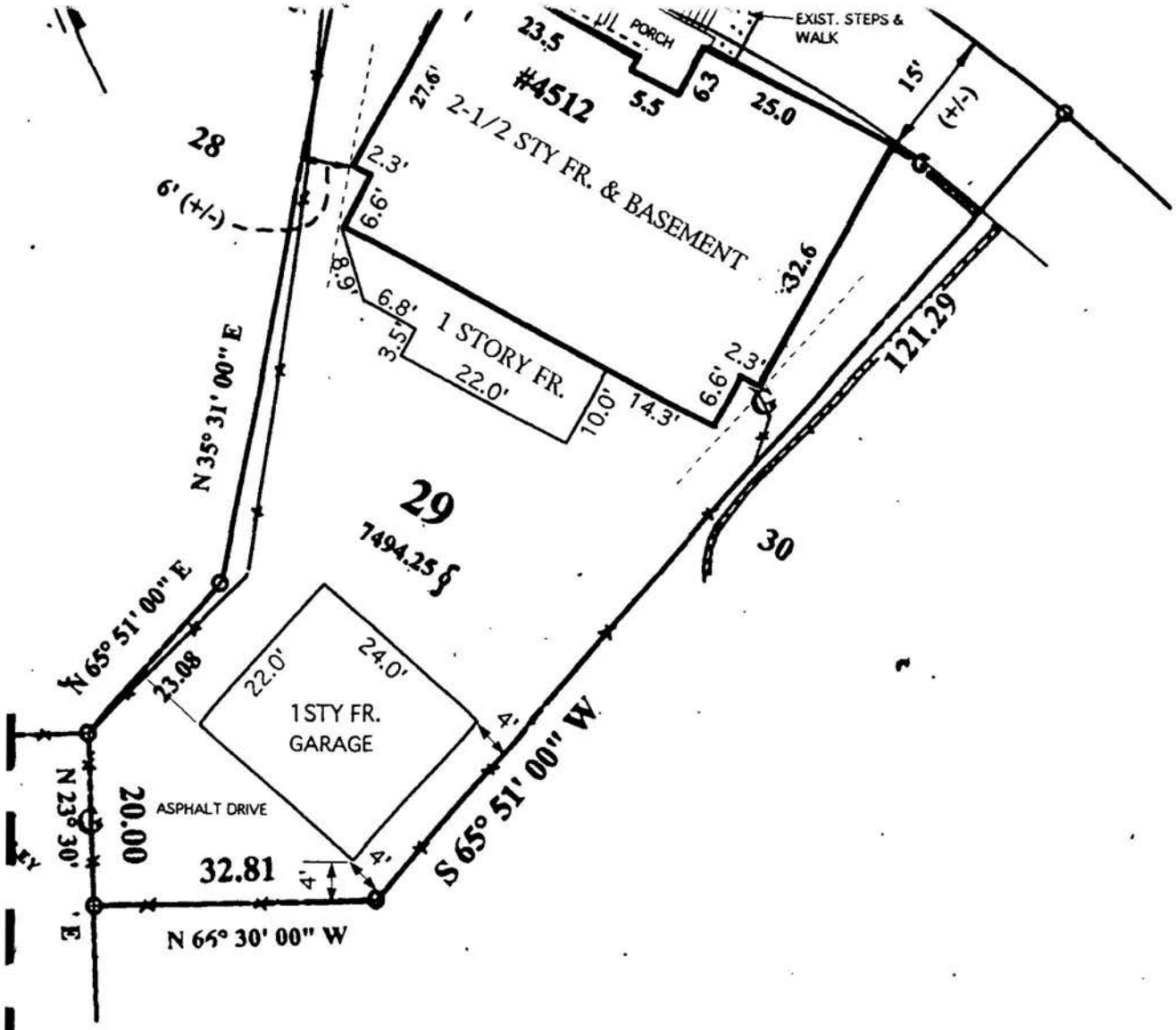
RESIDE
4512 28TH ST
WASHING

NEAL ALAN DUNCAN ARCHITECT
1789 Lanier Place N W Suite B2
Washington DC 20009 [202] 667-1494

GENERAL

4-12-99

1



E: THIS PROPERTY LIES IN FLOOD
NE C, AN AREA OF MINIMAL FLOODING
DELINEATED ON THE MAPS OF THE
IONAL FLOOD INSURANCE PROGRAM

STATE OF MARYLAND
BRADEN A. ROGERS
No. 119
REGISTERED
PROPERTY LINE SURVEYOR

NO TITLE REPORT FURNISHED

SURVEY OF
TREET, N.W.
TON, D.C.

LOT: 29
LIBER: 83
DATE: 12-22-98
CASE NO:

SQUARE: 2251
FOLIO: 44
SCALE: 1" = 20'
FILE NO: AT-98141

NEAL ALAN DUNCAN ARCHITECT
1789 Lanier Place NW Suite B2
Washington DC 20009 [202] 667-1494

GENERAL

4-12-99

A1

Exhibit 4

09/13/1999 19:22 2023539227 STUART C. SLOANE PAGE 01

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 10

To: Grant Clark | From: J. Sloane

Co. | Co.

Dept. | Phone #

Fax # | Fax #

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

Form BLRA-10 (Rev. 8/30/91)

BUILDING PERMIT

PERMIT NO. B424294

PERMIT

Date 6/7/99 (Type) ADD

Address of work 4512 28TH ST N.W. Lot 29 Square 2237

Permission is hereby granted to FOREST HILLS, LLC (Owner)

TOTAL PERMIT FEE 1,920.82

FILING FEE 274.00

DATE

FEE PAYABLE $1,646.82

This is authorized to perform the work described herein at the location stated in strict accordance with the conditions stated on BOTH sides of this permit.

Authorized work and conditions of performance thereof:

DEMOLISH EXIST SFD TO FOUNDAITON, (EXIST TO REMAIN) CONSTRUCT 3 FLOORS AND ADDITION TO EXIST. FOOTPRINT, NEW 1 STORY GARAGE. SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED.

INSPECTIONS CALL 727-442-4641

Builder

Width of Bldg. Length Height No. of Stories 3

Zone R-1-A To be occupied as SFD

Height of terrace above grade

Address of owner PO BOX 34288

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Issued by

DIRECTOR

Clerk, Permit Issuance Branch

Permit Clerk

RECEIVED
DISTRICT OF COLUMBIA
GOVERNMENT
OFFICE OF FINANCE & TREAS
6/7/99 at 12:32 CLK# 11
Application# $1,646.82
(BUILDING STRUCTURE & ELEC)

[redacted]

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (223-7000)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY
(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

5311

ERASING, CROSSING OUT, WRITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1. s of Proposed Work:	Suite No.:	2. Lot:	3. Square:	4. Application Date:
28TH ST, NW		29	225	4/23/99

of Building or Property:	6. Address: (include Zip)	7. Phone:
EST HILLS, LLC	PO BOX 34208 BETHESDA 20827	301- Work: Home: 806-9116
for Owner: (if applicable)	**9. Address: (include Zip)**	**10. Phone:**
K GANGLOFF	13312 ORIENTAL ST, ROCKVILLE, MD 20853	301 - Work: Home: 949-6089

of Proposed Work (check all applicable boxes):

lew Building	☐ Retaining Wall	☐ Garage
ddition	☐ Fence	☐ Sign
lteration and Repair	☐ Shed	☐ Other (Specify)
laze Building	☐ Awning	

cription of Proposed Work:

MOLISH EXIST SFD TO FOUNDATION. (BSMT TO REMAIN)
ISTRUCT 3 FLOORS AND
ITION TO EXIST. FOOTPRINT
N 1 STORY GARAGE

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICE OR OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639

ting Use(s) of Building or Property:	14. Ex. No. of Stories of Bldg.:	15. Ex. No. of Dwelling Units:
1	2	1
posed Use(s) of Building or Property:	**17. Prop. No. of Stories of Bldg.:**	**18. Prop. No. of Dwelling Units:**
1	3	1

rting Date Work:	20. Completion Date of Work:	21. Method of Removing Construction Debris:	22. Does the proposed work involve disturbing the earth or razing a building?
ASAP	ASAP	☑ Pick-up Truck ☐ Dumpster ☐ Other (specify):	☒ Yes, answer q. 23 ☐ No, SKIP q. 23-27

the area of disturbed rth more than 50 sq. ft.?	24. Soil Erosion Control Methods:	25. Area of Offsite Drainage:	26. No. of Footings or Columns:	27. Size of Footings of Columns:
☐ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25		sq. ft.		sq. ft.

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I).

ite Section B if the proposed work is **new building, addition or alteration.** (Page 2)
ite Section C if the proposed work is **razing a building.** (Page 2)
ite Section D if the proposed work is a **retaining wall.** (Page 2)
ite Section E if the proposed work is a **fence.** (Page 3)
ite Section F if the proposed work is a **shed/garage.** (Page 3)
ite Section G if the proposed work is an **awning.** (Page 3)
ite Section H if the proposed work is a **sign.** (Page 3)

NO

-378

DEPARTMENT OF HEALTH

ENVIRONMENTAL HEALTH ADMINISTRATION

BUILDING PERMIT APPLICATION SUPPLEMENTAL FORM - ENVIRONMENTAL QUESTIONNAIRE

PROJECT ADDRESS: 4512 28th St NW LOT 29 SQUARE 2251

Note: please answer all 9 questions in this questionnaire, by checking either column "Yes"or "No" for each question. If yo answer "Yes" to any of the questions, you should contact the corresponding office(s) indicated in column 'contact person/office' as soon as possible. Until this application is reviewed and approved by the concerned office(s), the permit will not be issued.

SCOPE OF PROJECT	YES	NO	CONTACT PERSON/OFFICE	OFFICE USE
1. Does the total cost of the project exceed $1 million? This does not apply if project is for internal (tenant space) renovation only and there will be no change in the use of the building.		✓	(202) 645-6617, EIS Coordinator, EHA	
2. Will the work to be performed involve the installation, removal, abandonment, or repair of an underground storage tank (UST) system?			(202) 645-6080, Underground Storage Tank Division, EHA	
3. Will the work to be performed involve the assessment Or clean-up of soils associated with the release of materials from an underground storage tank (UST)?			(202) 645-6080, Underground Storage Tank Division, EHA (202) 645-6093, Air Quality Division, EHA	
4 Will the work to be performed involve the assessment or clean-up of groundwater associated with the release of materials from an underground storage tank (UST)?			(202) 645-6080, Underground Storage Tank Division, EHA (202) 645-6093, Air Quality Division, EHA (202) 645-6601, Water Quality Division, EHA	
5. Will the proposed project involve the installation or drilling of wells other than for the purposes stated in questions 3 and 4?			(202) 645-6601, Water Quality Division, EHA (202) 645-6093, Air Quality Division, EHA	
6. Will the proposed project involve the generation, treatment, storage, disposal or transportation of chemicals or other substances which may be considered hazardous?			(202) 645-6080, Hazardous Waste Division, EHA	
7. Will the proposed project involve construction which will disturb the sediment in rivers, streams or wetlands?			(202) 645-6601, Water Quality Division, EHA	
8. Will the proposed use involve the construction of a facility for the handling, transfer, storage, disposal or treatment of solid waste, medical waste, or recyclable materials?			(202) 645-6617, EIS Coordinator, EHA	
9. Will the proposed project result in the discharge into the air of gases, dust, or the creation of any objectionable odors?			(202) 645-6093, Air Quality Division, EHA	

AFFIDAVIT

I hereby certify that I have the authority of the owner of the property to make this application. I declare that the answers to the above questions in this Questionnaire are complete and correct to the best of my knowledge.

Signature R Gangloff Name (print) Rick Gangloff

Address 1312 Oriental St Date 4/23/99 Phone

OFFICE USE ONLY

EHA APPROVAL BY _____ NAME (Print) _____

CONTACT NUMBER (202) _____ DATE: _____

COMMENTS AND PERMIT RESTRICTIONS: _____

(USE REVERSE IF NECESSARY)

09/13/1999 19:22 2023639227 STUART C. SLOANE PAGE 03

April 16, 1999

Hanlon Design / Build Group
4927 Eskridge Terrace
Washington, D.C. 20016
DC License # 4166

Mr. Murray A. Cohen
PO Box 34208
Bethesda, Maryland 20827

Re: 4512 28th Street, NW
Washington, D.C.

Dear Mr. Cohen,

We propose to furnish material, labor and supervision to complete the renovations and addition as outlined below in accordance with plans from Architect Neal Duncan dated 4-12-99.

A. Plans and Specifications

1. All plans and specifications have been prepared by Architect under separate agreement and are not part of this proposal. Some modifications may be requested by owner under separate agreement or change orders.

B. Building Permit

1. Owner is responsible for obtaining all permits from governmental agencies necessary to complete scope of work.
2. Owner to pay all fees and expenses incurred in obtaining permits.

C. Demolition

1. All demolition work to ready property for construction is responsibility of Rodgers Brothers under separate contract to owner. All expenses of material removal from demolition are not part of this agreement and paid by owner to demolition contractor.
2. All permit fees to be paid by owner.
3. All existing utilities to be capped in basement for re-use after new construction.

D. Construction

1. Build addition in accordance with plans and specifications.
2. All building materials to be premium grade and guaranteed to be as specified.
3. All work to be completed in a professional manner in accordance with highest standards of the industry.
4. Detached two car garage is included in proposal

E. Scope of Work

1. Excavation

Excavate for new addition footing to bearing soil a minimum of 30" below grade
All excess fill to be stockpiled for later use

09/13/1999 19:22 2023639227 STUART C. SLOANE PAGE 04

2. Footings, Foundation

All footings installed per plan to size as shown; concrete strength as specified.
Block (8") below grade and 4" block with brick veneer (4") foundation wall above grade per plan for elevation.
Parge and waterproof foundation below grade
Install foundation drain tile

3. Framing

Frame exterior and interior, floors and roof per plans and specifications
Walls: 2x4's @ 16" on center with ½" OSB sheathing on exterior; 2x4's @ 16" interior
Floors: 2x10's @ 16" on center for 1st floor with ¾" tongue and groove fir plywood
11-7/8" TJI joists @ 16" on center for 2nd floor
Roof: 11-7/8" TJI joists for conventionally framed roof with 5/8" tongue and groove plywood

4. Plumbing

Waste and vents: PVC
Water lines: copper; water service 1" copper
Rough-in per plan; fixtures to be Kohler; trim to be Moen for all baths except master
Master Bath: Grohe shower valve and Kohler trim; Whirlpool tub, Pearl
Kitchen: Stainless bowl and Grohe faucet, ice maker, gas line to range, DW and disposer
Gas line to fireplace in LR and family room
Gas line to furnace in basement and attic
Install 2 non-freeze hose bibbs (front, rear)
75 gallon gas water heater
Fixture allowance ($5000.00)

5. HVAC

Gas units for heating; electric A/C; 2 systems for 1st floor and basement and 1 unit for 2nd floor and attic
Equipment to be high efficiency
Return air ducts from all major floor areas for each of three systems
Three separate thermostats
Vent all bath fans and range ducts
Exterior A/C units to be installed on concrete pads

6. Electrical

Provide 600 AMP underground service to service panel
All wiring to be copper
Electrical wiring, outlets and switches installed according to code
GFI switches provided in baths and kitchen
Hook-ups for all appliances on separate circuits per code
Provide phone jacks, cable outlets, per owner location
Provide 2 flood outlets
Supply and install exhaust fans
Provide security and fire system

7. Insulation

Install R-13 (3-5/8") fiberglass batts in exterior walls

Install R-30 (9") fiberglass batts in ceiling joists
Install R-19 (6") fiberglass batts in joist ends and bandboards
Air seal around windows, doors, plates and corners

8. Walls and ceilings

Install ½" drywall, glued and screwed on interior walls and ceilings; taped and blocked three coats and sanded
Fire-code drywall on garage ceiling
Install ceramic tile over ½" cement board in showers and over tubs
Exterior walls to have painted cedar shiplap siding installed over ½" OSB sheathing

9. Interior painting

Walls to receive primer coat and 2 coats of finished latex
Drywall point-up after prime coat
Interior trim; primer and 2 coats of oil based enamel

10. Exterior painting

Primed windows to receive 2 coats of latex enamel
Doors to be primed plus 2 coats of latex enamel
Siding to be pre-painted and trim to receive 2 coats over primer

11. Floors

Basement floor bedroom to be carpeted
Basement recreation room to have ceramic tile
Hardwood floors, (3" oak) installed on 1st, 2nd and attic floors; sanded, stained and sealed with 2 coats of polyurethane. Oak stairs to be sanded, stained and finished with 2 coats of polyurethane
Bath floors to be ceramic over cement base

12. Exterior Doors and Windows

Windows to be Caradco double hung primed wood insulated (low E) units with screens
French door units to be Caradco "Hallmark" units with transoms
Front door to be 6 panel oak door stained

13. Roofing

Roof to be Certainteed 420# Asphalt Grand Shangle applied over 15# felt

14. Interior Doors and Trim

Door units to be 6 panel or custom molded solid core doors; Windsor style with Adams 3-1/2" casing, with plinth blocks
Casing and stool to be 3-1/2" Adams
Baseboard to be 5-1/2" ogee
Crown in living room, dining room and master bedroom
Panel molding in dining room with chairrail

15. Hardware

Interior locksets from Schlage
Front door hardware from Baldwin or Omnia

16. Kitchen Cabinets and Appliances

Custom cabinets from Signature or equal; 10" high
Countertop to be granite
Appliances : Thermador range and oven; Bosch dishwasher, Sub Zero or equal refrigerator, GE microwave

17. Fireplaces

Masonry fireplace in family room; Majestic manufactured unit in living room; optional Majestic unit available at extra cost in master bedroom; gas lines available to each

NO LANDSCAPING INCLUDED IN BID, ONLY ROUGH GRADING

THE ABOVE SPECIFICATIONS ARE SUBJECT TO REVIEW AND SOME CHANGE ORDERS MAY BE NECESSARY

IN ACCORDANCE WITH ABOVE SPECIFICATIONS, WE PROPOSE TO FURNISH MATERIAL, LABOR AND SUPERVISION TO COMPLETE PROJECT FOR THE SUM OF:

TWO HUNDRED AND SEVENTY THREE THOUSAND, THREE HUNDRED AND SIXTY SEVEN DOLLARS

$ 273,367.00

Authorized Signature John J Hall

Date 4-16-99

Exhibit 5



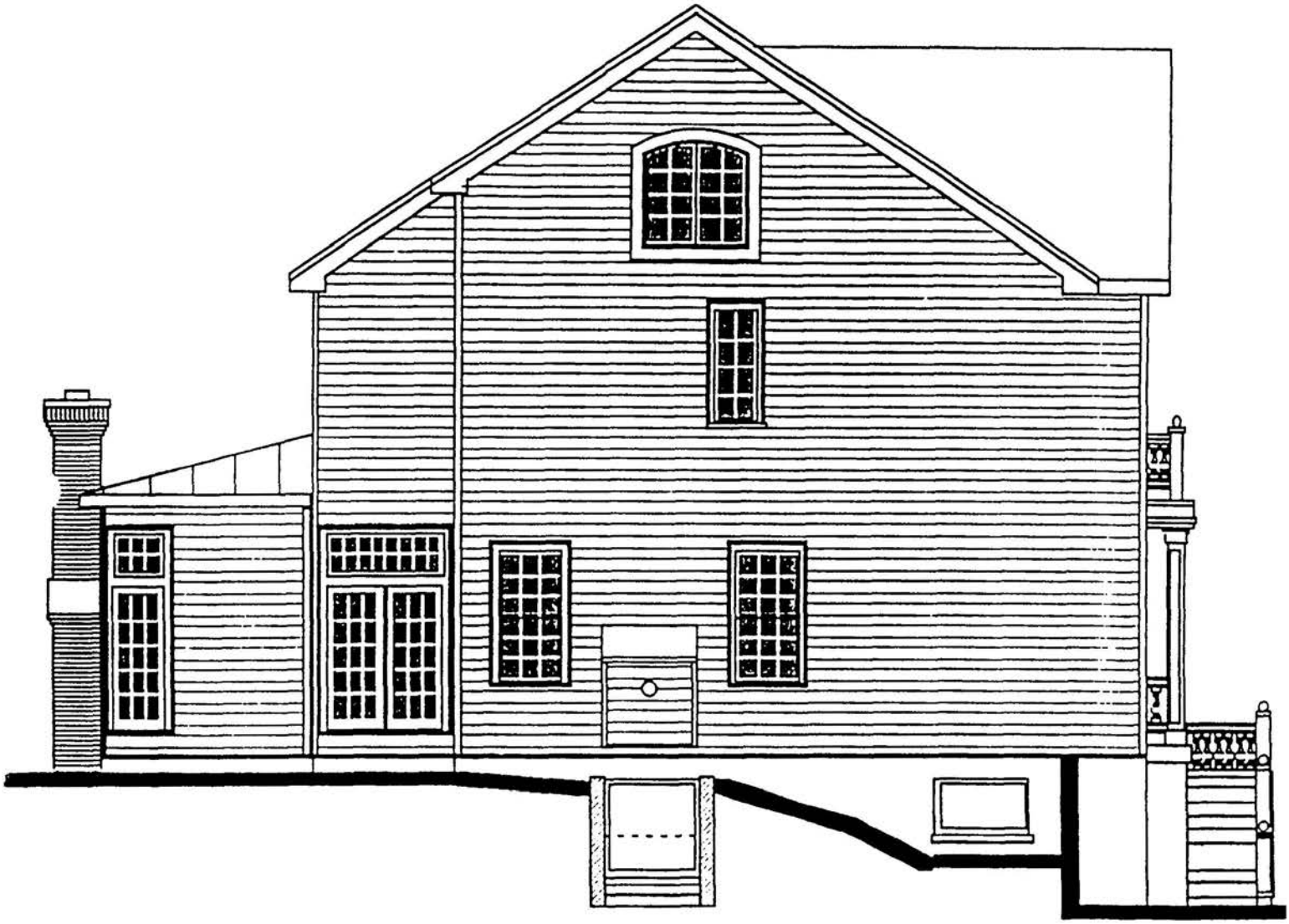
FRONT ELEVATION

1/8" = 1'-0"

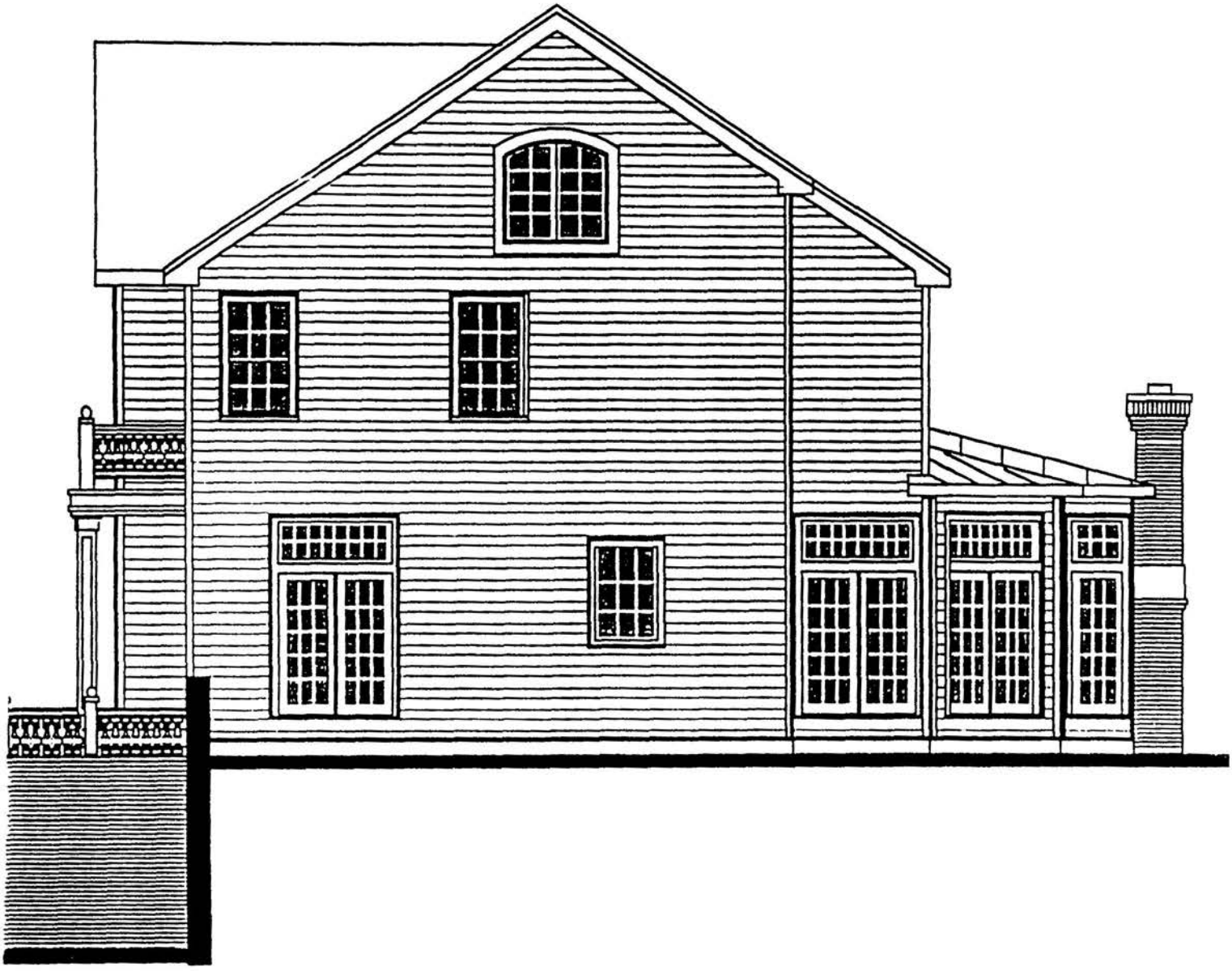


REAR ELEVATION

1 8" = 1'-0"



LEFT SIDE



RIGHT SIDE

Exhibit 6

August 20, 1999

BY HAND

Murray A. Cohen
Murray Cohen Custom Builder
P.O. Box 34208
Bethesda, MD 20827

Re: 4512 28th St., N.W.

Dear Mr. Cohen:

The undersigned are residents of the 4500 block, adjacent to the single family dwelling you are constructing. The purpose of this letter is to inform you that we believe that your construction is unlawful under Title XI , section 400 et seq of the D.C. Municipal Regulations ("Regulations") and, further, that we have so advised the Department of Consumer and Regulatory Affairs.

Specifically, (1) the "addition to existing footprint" set forth in your permit is non-conforming at least with respect to the width of the side yard; and (2) your plans indicate a completed structure of four stories, contrary both to the regulations and to the language of your permit ("construct 3 floors and addition to exist. footprint"). In fact, your plans call for the construction of three floors over a full, above grade basement.

Immediately upon review of the plans you provided to us, we contacted the D.C. Building and Land Regulatory Affairs Division ("Division"). That office then issued a stop order based upon the discrepancy between the permit issued upon your application and what you in fact are attempting to build. The stop order was lifted on the understanding that you would revise your plans so that they would conform to Regulations. Despite the fact that to the best of our knowledge the Division has not approved any such plans, you are continuing construction

pursuant to the original plans. Accordingly, your continued unlawful construction is at your own risk.

Very truly yours,

Greg R Clark 4525 28th Street NW
Stuart C. Sloane 4501 28th St., NW
Tom Lathi 4517 28th ST., NW
Brigid Ford Baker 4531 28th St., N.W.
Helen Kempton 4511 28th St NW

Cc: Edgar Nunley, Chief Zoning Review Branch, Building and Land Regulatory Affairs Division
Kathy Patterson, Member D.C. City Council

Exhibit 7

REED SMITH SHAW & MCCLAY LLP

1301 K STREET, N.W.

SUITE 1100 - EAST TOWER

WASHINGTON, D.C. 20005-3317

202-414-9200

FAX 202-414-9299

HARRISBURG PA
McLEAN VA
NEW YORK NY
NEWARK NJ
PHILADELPHIA PA
PITTSBURGH PA
PRINCETON NJ

GEORGE R. CLARK
202-414-9215
e-mail: grclark@rssm.com

August 25, 1999

VIA FACSIMILE (202) 442-4871

Edgar T. Nunley
Chief of Zoning Review Branch
Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.W.
Suite 2000
Washington, D.C. 20002

Re: 4512 28th Street N.W.

Dear Mr. Nunley:

In connection with your review of the zoning and permits at 4512 28th Street N.W., I have attached a copy of a postcard which the builder's real estate agent has circulated this week in the neighborhood (although apparently not to anyone who lives on the "beautiful street" where the house is being built). You will note that it states there will be four finished floors. The drawing also clearly shows that the builder is planning a four-story house, which is not permitted under the D.C. zoning regulations. The basement is at least six feet out of the ground at the measuring point in front.

I am writing today because construction is continuing on the site. The builder has been working rapidly this week, even in inclement weather.

We believe that the situation is reaching a critical stage. As we understand it, the builder does not have approved plans for four-story house, although he continues to build and is now advertising as if he does.

We request that the department issue a stop order on construction until this issue is resolved, including the right of the neighbors to meet with you if approval is granted. We believe that

the earlier stop order should not have been lifted before new and comforming plans were approved.

As you know from our earlier discussions, and as the department acknowledged in its stop order, the builder is not constructing three floors on the existing footprint, although that is all his permit allows. It is four floors. The builder has also expanded the existing nonconforming use (the side yards are far less than eight feet) and he is putting three floors on that nonconforming expansion. The side yards at the point of expansion are less than five feet.

The builder has also taken down the center supporting wall in the basement (see the pictures delivered yesterday). While two 2x4s now form the support for the beam, an architect tells me there is a serious question as to whether the full weight of three floors can be supported on that existing foundation which was built for a single floor with a crawl space attic.

I also request that you please fax to me, or tell me how I can simply obtain, the zoning computation sheet for the property.

The other neighbors and I thank you for your assistance.

Sincerely yours,

George R. Clark

GRC/ydl

Enclosure

cc: Michael Johnson, Zoning Administrator (via fax/202-448-4863)
Kathy Patterson, Councilperson (via fax/202-724-8118)

4512 28th Street, NW
In Forest Hills

"Fit for an Ambassador!"
STUNNING NEW 6 BR, 5 5 BA HOME on beautiful street in great neighborhood w/4 finished floors, top-of-the-line finishes! For more information, please call:

Barbara Lenkin Zuckerman
202-363-5093 (h) 202-364-5200 (o)
Visit my website - barbaraz.com
E-mail: barbarazdc@aol.com
Top 1% Nationwide
1% of my proceeds go to children's causes

5101 Wisconsin Ave, NW
Washington, DC 20016

PAID
LONG & FOSTER

[522] *****ECRLOT**C029
Neighbor
[redacted] Brandywine St NW
Washington DC 20008-2136

This is not intended as a solicitation if your home is currently listed with another agent.

JUST LISTED!



4512 28TH STREET, NW

Exhibit 8

REED SMITH SHAW & MCCLAY LLP

1301 K STREET, N.W.

SUITE 1100 - EAST TOWER

WASHINGTON, D.C. 20005-3317

202-414-9200

FAX 202-414-9299

HARRISBURG PA
McLEAN VA
NEW YORK NY
NEWARK NJ
PHILADELPHIA PA
PITTSBURGH PA
PRINCETON NJ

GEORGE R. CLARK
202-414-9215
e-mail: grclark@rssm.com

September 2, 1999

VIA FACSIMILE (202) 442-4871

Edgar T. Nunley
Chief of Zoning Review Branch
Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.W.
Suite 2000
Washington, D.C. 20002

Re: 4512 28th Street N.W.

Dear Mr. Nunley:

Thank you for calling me on Friday August 27, 1999 about this property. Unfortunately, I have not been able to reach you this week to find out the status.

As you acknowledged on August 27, you wanted to get back to me because the issues at this property have been pending for some time. When we first spoke, there were no walls up. The builder now is ready to put up the fourth story on the house, and as we understand it, he does not have approved plans for that construction. And unless he builds something dramatically different than he is currently building, he cannot have approval under the zoning code because four stories are not allowed.

I hope you were able to visit the property over last weekend, as you had planned. I do know that Mr. Neal has visited the property. As you know, the builder is also not constructing the structure for which he has a permit, and the side yards are less than five feet.

I have heard, however, that the developer has submitted a new set of plans providing for a "berm" in front of the basement story. Mr. Bellow told another of the neighbors (I am afraid only partly tongue in cheek) that a builder could put up a 10 story house in an R-1-A zone as long as he put a 7 story berm in front of it. Obviously, the law does not allow that.

But that is in effect what is taking place at 4512. With only the two stories already on top of the basement story, the house is already taller than any house on the block. And the roof story is planned to be 15 feet at the peak according to the drawings we have obtained from the builder. The front door of the house already sits 15 feet above the street level. The garage will remain open to the street level so that at least half of the house cannot have a berm in front of it. If all the builder has to do is put four feet of dirt in front of a three foot section of the house, the D.C. zoning code becomes meaningless.

I also request that you please fax to me, or tell me how I can simply obtain, the zoning computation sheet for the property.

Thank you for your assistance.

Sincerely yours,

George R. Clark

GRC/ydl

cc: Michael Johnson, Zoning Administrator (via fax/202-442-4863)
Kathy Patterson, Councilperson (via fax/202-724-8118)

Exhibit 9

REED SMITH SHAW & MCCLAY LLP

1301 K STREET, N.W.
SUITE 1100 - EAST TOWER
WASHINGTON, D.C. 20005-3317
202-414-9200
FAX 202-414-9299

HARRISBURG, PA
McLEAN, VA
NEW YORK, NY
NEWARK, NJ
PHILADELPHIA, PA
PITTSBURGH, PA
PRINCETON, NJ

GEORGE R. CLARK
202-414-9215
e-mail: grclark@rssm.com

September 2, 1999

VIA FACSIMILE (202) 442-4863

Mr. Michael Johnson
Zoning Administrator
DCRA/BLRA
Zoning Division
941 North Capital Street, N.E.
Suite 2200
Washington, D.C. 20002

Re: 4512 28th Street, N.W.

Dear Mr. Johnson:

A number of neighbors and I have been trying to work with the zoning division about a four-story house which is being constructed at the above location in an R-1-A zone, which permits only three stories. This week none of us have been able to get a call returned to discover the actual status of the division's approval process (the inspector has called us to tell us of his visit). Councilperson Patterson's office tells us that their calls are not being returned either.

We know that you are new to your position. As long time D.C. residents, we perhaps are too easily frustrated because of the long-time nonresponsiveness of the D.C. Government. We are all hoping that that has changed.

In the meantime, construction of the illegal house continues, as is shown in my letters of August 25 and September 2. This is not a hard issue. Can you help us?

Sincerely yours,

George R. Clark

GRC/ydl
cc: Kathy Patterson, Councilperson (via fax/202-724-8118)



interior - walls of glass in living room, dining room and family room overlooking lovely, private, professionally landscaped yard! Large rooms, new kitchen, 1st floor family room, 2 fireplaces, hardwood floors, Master bedroom w/private deck and new bath w/Jacuzzi & separate shower! 2-story foyer! 2-car garage, decks, patio! **$749,000.**

Virtual Tour click here



FOREST HILLS, DC "Fit for an Ambassador!" Stunning new 6 BR, 5.5 BA home on beautiful street in great neighborhood. 4 finished floors, top-of-the-line finishes! $1,359,000



KENSINGTON, MD - Stunning 4-bedroom, 2.5 bath 4-year-old Victorian "painted lady" home on private cul-de-sac in historic Capitol View Park. Fabulous kitchen with cooking island and all the goodies, 1st floor family room w/French doors to patio and yard, hardwood floors and 9 ft. ceilings on 1st floor, large rooms, 2 bay windows, 1 fireplace, 2-car garage with shop area, beautifully landscaped yard! **$439,900.**

Virtual Tour click here

BACK



Talk to Barbara!

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