BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Re: **Appeal of George R. Clark, Esq. and Mary Clark, Stuart Sloame and Mary Seeherman, James D. and Emily Baker**

BZA Appeal No. 16533
Public Hearing: 2/2/2000
ANC 3F

OFFICE OF ZONING
DISTRICT OF COLUMBIA
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OPPOSITION STATEMENT OF INTERVENOR,
FOREST HILLS, LLC

Forest Hills, LLC (the "Intervenor") is the owner of 4512 28th Street, N.W. (Square 2251, Lot 29)(the "Property"). By letter to the Board of Zoning Adjustment ("Board" or "BZA") dated November 16, 1999, Forest Hills, LLC, through undersigned counsel, requested to intervene as a party in this appeal filed by George R. Clark, Esquire[1] and Mary Clark, Stuart Sloame and Ellen Seeherman, and James D. Baker and Emily Baker (collectively, the "Appellants"). The Appeal, as filed on November 3, 1999, raises a limited set of issues involving a June 7, 1999 building permit and September 17, 1999 permit revising the original permit, including: a) improper application of the thee-story height limitation; b) construction not an extension or addition to an existing building; c) no wall check showing compliance with the side yard restrictions; d) incorrect issuance of permits and construction not in accordance with permits; and e) extension of an existing side yard beyond original structure.

[1] Mr. Clark has acted as "Attorney for Appellants."

BZA
CASE No. 16533
EXHIBIT No. 21

Board of Zoning Adjustment
District of Columbia
CASE NO.16533
EXHIBIT NO.21A1

Intervenor, through undersigned counsel, submits the following opposition to this appeal and respectfully requests that the Board deny the appeal as without merit, untimely, and legally barred.

I. SUMMARY OF OPPOSITION

As set forth in detail by Intervenor, the following conclusions are inescapable:

1. This appeal was untimely and must be dismissed because the Board of Zoning Adjustment lacks jurisdiction.

2. This appeal is barred by the legal doctrine of laches and must be dismissed.

3. Appellants' opposition to this project is based on their personal and subjective standards which, although very real to them, are not relevant to this appeal and the enforcement of the Zoning Regulations by the Department of Consumer and Regulatory Affairs ("DCRA") and the Board.

4. Intervenor has acted at all times in good faith, based on detailed and accurate information provided to the District, in order to ensure compliance with the Zoning Regulations and in reasonable and costly reliance upon the repeated approvals granted by the District.

5. Intervenor, through its license architect and builder, made an honest and unintentional mistake regarding the number of "stories" in its original permit application. Immediately upon being made aware of this mistake, Intervenor consulted with DCRA, made minor revisions to the plans and received District authorization to continue construction. This revised building permit would have been issued originally if it had been requested.

6. This appeal must be judged solely on the objective and well-defined standards of the existing Zoning Regulations.

7. This project has been subjected to an unprecedented level of regulatory, political and community scrutiny and has been found by DCRA to be in compliance with each and every provision of the Zoning Regulations.

II. STATEMENT OF FACTS

In early 1999, Intervenor acquired the Property located in a R-1-A zone, which contained a two-story rambler,[2] constructed in 1956. The existing house contained a lower level partially out of grade in the front, a garage built into the lower level with access from a front driveway to 28th Street, and a main level which contained a living room, dining room, kitchen, three (3) bedrooms and two (2) bathrooms. Above the main level there was an attic or crawl space which did not contain any habitable rooms. See 1955 Constructions Drawings attached as Exhibit 1.

Intervenor hired an experienced and licensed District of Columbia architect, Neal Alan Duncan, to design the improvements to the existing house.

On April 26, 1999, Intervenor, through its architect and permit expediter, submitted a building permit application (Exhibit 2), including detailed architectural and construction drawings. Exhibit 3. The application form clearly sets forth the following:

Item 11. Type of Proposed Work: The "Addition" box is checked.

Item 12. Description of Proposed Work: "Demolish existing SFD [single-family dwelling] to foundation (Basement to Remain). Construct 3 Floors and Addition to Exist. Footprint. New 1 Story Garage."

Item 14. Ex. No. of Stories of Bldg.: "2".

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[2] Appellants incorrectly refer to the existing house as a "three-story single-family home." Appellants' Brief at p.7

Item 17. Prop. No. of Stories of Bldg.: "3".

Item 42. Total Lot Area: "7,494.25".

The application form does not stand alone, but is reviewed based on the detailed architectural and construction drawings which are the heart of any building permit application. A careful review of the drawings submitted and approved by DCRA show the following specific elements of this project:

- Remove the main floor and attic so that the existing lower level foundation and walls, first floor joists and first floor subfloor were retained. Exhibit 3.

- Construct a three-story addition above the existing foundation, lower level walls, and first level subfloor. Exhibit 3.

- Maintain the existing more than five (5) foot side-yard setbacks established by the east and west walls of the existing structure. A gas fireplace and vent was to be added to the west-side of the existing house. Exhibit 3.

- Construct an addition on the eastern side of the front house cantilevered out from the existing first floor joists on the front wall that is 23.5 feet long and 1.5 feet in depth and rising to the top of the second story. This addition is constructed within the 15 foot Building Restriction Line. Exhibit 3.

- Construct an open Balcony above the front porch. Exhibit 3.

- Construct a rear addition which maintains both the existing side-yards, including: a) 49.4' x 6.6' two-story addition which contains only crawl space below; and b) a one-story on grade frame addition to house a family room and breakfast area. Exhibit 3.

- Construct a new one-story detached garage at the rear of the site with access from the existing public alley. Exhibit 3.

Before issuance, this permit application was subjected to a standard review process spanning forty-three (43) days and approval by the full range of DCRA construction branches, including Zoning, Department of Public Works, Environmental Regulation Administration

(Erosion Control and Stormwater Management), Mechanical Engineering, Plumbing Engineering, Electrical Engineering, Structural Engineering and Quality Control. Exhibit 2, Page 4.

The following detailed chronology is critical to establishing the facts and legal rights of this case:

June 7, 1999: Building Permit No. B424294 ("Permit No. 1") issued to Intervenor authorizing it to "DEMOLISH EXIST SFD TO FOUNDATION. (BASMT TO REMAIN) CONSTRUCT 3 FLOORS AND ADDITION TO EXIST. FOOTPRINT. NEW 1 STORY GARAGE..." Exhibit 4.

June, 1999: Appellants meet with Intervenor to discuss project. Intervenor provided a copy of its plans. Appellants' Brief at Page 9.

July 1, 1999: Intervenor begins site preparation work. Appellant, Mr. Stuart Sloame, visits site to verify that trees on Intervenor's property, but providing shade to his adjoining house would not be disturbed.

July 12, 1999: Removal of roof and top story of existing house started.

July 27, 1999: Intervenor is informed by its permit expediter that a stop work order was issued. No record of any stop work order is ever produced.

July 27, 1999: Appellant, Mr. George Clark, visits site and expresses his architectural concerns, including suggestions to move the top story dormers to the rear and eliminate the second story open balcony.

July 28, 1999: In response to the reported stop work order, Intervenor meets with Mr. Toye Bellow, Zoning Technician to review side yard and height issues. Mr. Bellow advised Intervenor that no side yard issues exist and that a revision to finished grade will comply with the height requirements. Mr. Bellow advises Intervenor that it is permitted to continue construction at the site while the revised building permit application is submitted and approved by DCRA.

August 3, 1999: Footings poured for rear-yard addition.

August 3, 1999: Approved D.C. Construction Branch inspection of footing, addition and basement. Wall check requested. Exhibit 5.

August 11, 1999: Concrete block delivered for rear addition crawlspace.

August 12, 1999: Foundation for rear addition started.

August 16, 1999 Carpenters begin framing house.

August 19, 1999: Floor trusses for second floor delivered to site.

August 25, 1999: Floor trusses and joists for top story delivered to site.

August 25, 1999: Appellants' August 20 letter received by Intervenor (Mr. Murray Cohen) by hand-delivery to the site by Mr. Sloame. In this letter, Appellants allege violations of side-yard and height restrictions based on their review of plans voluntarily provided to them by Intervenor. Appellants state they have contacted DCRA and obtained a stop work order. Exhibit 6.

August 25, 1999: Appellants write to Mr. Edgar T. Nunley, Chief, Zoning Review Branch, acknowledging that work is continuing at the site and that a new stop work order should be issued. Exhibit 7. No Stop Work order is issued.

August 25, 1999: Intervenor submits revised Building Permit application based on advice of DCRA to "REVISE BUILDING PERMIT #B424294. CHANGE FINISHED GRADE TO CONVERT BASEMENT TO CELLAR." The permit application states that the building as proposed will have 3 stories. Exhibits 8 and 9. Appellants' focus on the application which was corrected from "3 ½" to "3" stories is irrelevant.

August 26, 1999: Second story walls installed.

September 1, 1999: Top story floor joists installed.

September 2, 1999: Roof plywood delivered to site.

September 2, 1999: Appellants write to Mr. Nunley following up an August 27, 1999 telephone conversation with him. Appellants acknowledge knowing that Intervenor has submitted a revised set of plans which would change the finished grade. Apparently, Mr. Clark had also talked to Mr. Toye Bellow, a Zoning Technician, who had also informed him of the proposal to modify the finished grade which would bring the project into compliance with the height limitation. Exhibit 10.

September 2, 1999: The Appellants write to Mr. Michael D. Johnson, the Zoning Administrator, seeking his assistance. Exhibit 11.

September 7, 1999: Framing of the first, second and part of the third story is completed. Exhibit 12.

September 8, 1999: Appellants write to Mr. Michael Johnson acknowledging that: a) they were informed the previous evening by Council member Kathy Patterson that DCRA had approved the revised plans; and b) received a voice mail that morning from Mr. Johnson that the project **"had no zoning issues and was approved."** Exhibit 13 (emphasis added).

September 8, 1999: Intervenor meets with Mr. Lourenco at D.C. Liaison Committee meeting at the National Association of Home Builder's headquarters. At that meeting, Mr. Lourenco indicated after a site inspection that the revised permit application to change finished grade was acceptable and the revised permit would be issued. Exhibit 14.

September 8, 1999: Council member Kathy Patterson writes to Mr. Lloyd J. Jordan, Director, DCRA, indicating that her staff had been informed by Mr. Armando Lourenco that based on a change in the finished grade, the height of the house was in compliance with the Zoning Regulations. A copy of this letter was provided to Mr. Clark. Exhibit 15.

September 10, 1999: Appellants write to Mr. Michael Johnson, the Zoning Administrator, acknowledging receipt of September 8 voice mail from Mr. Johnson stating that the **"department saw no violations and approved amended permits for this property."** Mr. Clark recognized his obligation to act in a timely manner by stating: **"we also need to have some evidence of a decision from the department so that we can file an appeal with the Board of Zoning Adjustment to overturn this arbitrary and capricious decision."** Mr. Clark also noted that Mr. Jordan told him the day before that "he has sent his best inspectors to the property this week and everything is fine." Exhibit 16 (emphasis added).

September 10, 1999: Mr. Armando Lourenco writes to Council member Kathy Patterson, after a September 7 site visit, to state the following: a) Intervenor revised plans regrading the finished grade to create a non-story "cellar" will be in compliance with the height restrictions; b) finished grade can not be finally determined until the end of construction, but will be monitored by DCRA; c) the distance above the sidewalk is irrelevant to the height determination; d) a wall check conducted by a licensed Surveyor determined that the side yards at the narrowest points are 5' ll" and 5' 2",

respectively; e) the existing house is not a non-conforming structure because the side yards which existed prior to 1958 were greater than 5' 0"; f) additions and alterations are permitted to the existing house provided the existing side yards are maintained; g) preservation of the existing foundation and walls up to the level of the first floor and therefore the side yards have been maintained. Exhibit 17.

Mr. Lourenco concludes by stating, **"considerations of appropriateness of the style of the project for the neighborhood are beyond our regulatory reach. I emphathize [sic] 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."** Exhibit 17 (emphasis added).

September 13, 1999: Council member Kathy Patterson writes to Mr. Jordan, confirming a lengthy letter from Mr. Lourenco dated September 10, which found no zoning violation. A copy of this letter was provided to Mr. Clark. Exhibit 18.

September 14, 1999: Appellants write to Mr. Jordan acknowledging receipt of Mr. Lourenco's September 10 letter concluding that there was no violation of the Zoning Regulations. Mr. Clark also requests confirmation that DCRA has approved the revised building permit and on what date. Exhibit 19.

September 17,1999: Revised Building Permit No. B426784 ("Permit No. 2") issued to Intervenor to allow an approximately two (2) foot change in finished grade in compliance with the three-story height limitation. Exhibit 20.

September 20,1999: Mr. Lloyd Jordan writes to Council member Kathy Patterson stating that the **"regulations do allow property owners to regrade their lots as they see fit, including raising finished grade. This has been a practice allowed by the Zoning Administrator, for years."** Exhibit 21 (emphasis added).

November 3, 1999: Appellants file BZA Appeal No. 16533 challenging Permit No. 1, dated June 7, 1999 and Permit No.2, dated September 17, 1999.

November 11, 1999: Intervenor retains counsel, Greenstein DeLorme & Luchs, P.C.

December 9, 1999: District issues Building Permit No. B423539 ("Permit No. 3") which authorizes installation of new and widened front steps, new walkway, and

minor addition to existing retaining wall in the front and a new retaining wall in the backyard to facilitate a new rear patio and stairs leading to the upper level of the site and parking pad from the public alley. Permit No. 3 does not affect any of the issues set forth by Appellants and is not part of this appeal. Exhibit 22.

III. LEGAL ARGUMENT

A. Appellants' Appeal is Untimely.

Section 3315.2 of the Zoning Regulations requires that an appeal to the Board must be timely filed. 11 DCMR §3315.2. However, as the Zoning Regulations do not set forth a specific time limit on appeals, a standard of reasonableness is applied in determining whether an appeal is timely. Mendelson v. District of Columbia Board of Zoning Adjustment, 645 A.2d 1090, 1093 (D.C. 1994); Goto v. District of Columbia Board of Zoning Adjustment, 423 A.2d 917, 923 (D.C. 1980). Under this "reasonableness standard", the time for filing an appeal "commences when the party appealing is chargeable with notice or knowledge of the decision complained of." Id.; see also Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment, 490 A.2d 628, 636 (D.C. 1985).

The initial building permit (Permit No. 1) was issued on June 7, 1999. Work on the Property began no later than July 1, 1999, and demolition of the first story of the existing structure began on July 12, 1999. Appellants', aware of the activity at the property, requested and had a meeting with representatives of Intervenor in June 1999, at which time Intervenor provided Appellants with a copy of its plans and renderings of the addition to the property. Appellants' Brief at Pg. 9. At the time of the June 1999 meeting, Appellants formed the belief that the proposed house did not comply with the Zoning Regulations, as it was "too large for the

lot." Id. Subsequent to the June 1999 meeting, Appellants began their investigation into the proposed house and its compliance with the Zoning Regulations. Id. at 10.

In July 1999, in response to Appellants' complaints to the Zoning Administrator that the construction and plans violated the Zoning Regulations, a stop work order was apparently issued on July 27, 1999. However, after discussions with Intervenor regarding the proposed improvements to the existing house, the Zoning Administrator advised Intervenor that it could continue with construction, so long as Intervenor provided revised plans which complied with the Zoning Regulations. To achieve compliance with the Zoning Regulations, the Zoning Administrator advised Intervenor that it should complete a minor regrading to the front of the property so as to bring the improvements to the existing house into compliance. As a result of this advice from the Zoning Administrator, construction continued, virtually uninterrupted.

1. Appellants Were Charged With Notice of the Alleged Side Yard Requirement Violations in June 1999.

As demonstrated above, Appellants were aware of the proposed plans, the Zoning Administrator's approval of such plans and had, themselves, reviewed such plans, in June 1999. As Permit No. 2 did not effect the side yards, the time for the running of an appeal with regard to the alleged side-yard violations began to run as early as June 7, 1999, with the issuance of the Permit No. 1, or, at the latest, at the time of the meeting with Intervenor in late June 1999. The filing of the appeal with regard to the side-yard requirements almost four months after Appellants' actual knowledge of the actions of the Zoning Administrator in issuing Permit No. 1, is clearly untimely.

2. **Appellants Were Charged With Notice of the Alleged Zoning Regulation Violations Regarding the Height and Number of Stories of the Improvements to the House as Early as June 1999, or, at the Latest, in Early September 1999.**

Although Appellants argue that they withheld filing an appeal until they received "some evidence of a decision from the department," regarding the Zoning Administrator's decision that the building permits were validly authorized and that the proposed improvements to the house where not in violation of the Zoning Regulations (see Appellants' Exhibit 12), this argument fails for several reasons.

First, Appellants were charged with knowledge of any alleged violations at the time of the issuance of the building permits on June 7, 1999, and September 17, 1999. The issuance of an allegedly illegal building permit is a "decision" which is appealable to the BZA pursuant to 11 DCMR §3100.3.

Second, at the time of the commencement of construction, Appellants were put on notice of the alleged violations and, in fact, Appellants requested and held a meeting with Intervenor. Additionally, almost three months prior to the filing of their appeal, Appellants initiated communications with the Zoning Administrator regarding the allegedly illegal construction.

Third, assuming the posting of the building permits and commencement of construction[3] at the property did not "charge" Appellants with notice or knowledge of the alleged violations, as of September 7, 1999, it is undisputed that Appellants were aware of the Zoning Administrator's decision that the construction was approved and not illegal. See Appellants' Brief at p. 13;

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[3] The Appellants have closely monitored the site, including routine visits without authorization to tour the construction site and interior of the existing house. During these visits, Appellants have taken measurements. Appellants' Exhibit 23.

Intervenor's Exhibit 15. As set forth in Appellants' brief, on September 8, 1999, they received a telephone call from Mr. Michael Johnson, the Zoning Administrator, during which Mr. Johnson stated that it was the Zoning Department's position that the proposed building contained "no violations" of the zoning code and that the amended permit for the property had been approved. See Appellants' Exhibit 12; Intervenor's Exhibit 16. A verbal decision, such as the one issued by the Zoning Administrator on September 8, 1999, is an appealable order which begins the running of the time for appeal. Goto, 423 A.2d at 924; see also Beins v. District of Columbia Board of Zoning Adjustment, 572 A.2d 122, 127 n.5 (D.C. 1990).

As further evidence of Appellants' knowledge of the position of the Zoning Administrator that the proposed house did not violate the Zoning Regulations is Appellants' August 25, 1999 correspondence to the Chief of Zoning Review Branch, in which Appellants' complained that the stop work order issued on July 27, 1999, should not have been lifted before "new and conforming plans were approved." Appellants' Exhibit 7; Intervenors' Exhibit 7.

It is abundantly clear from Appellants' correspondence with the District during July, August and early September, 1999, that Appellants were aware of the Zoning Administrator's decision that the improvements to the house were in compliance with the Zoning Regulations. Consequently, at the very latest, Appellants were put on notice of the Zoning Administrator's decision in late July or August or early September, 1999, triggering the time in which to file their appeal. If (although it is highly improbable), Appellants had any question as to the Zoning Administrator's position on the legality of the building permits and/or compliance of the improvements to the house with the Zoning Regulations, Lloyd J. Jordan's, Director, DCRA,

correspondence of September 20, 1999, resolved any outstanding issues. See Appellants' Exhibit 17. Specifically, Mr. Jordan states that:

> a. The [zoning] regulations do allow property owners to regrade their lots as they see fit, including raising the finished grade. **This has been a practice allowed by the Zoning Administrator for years.**
>
> b. The Zoning Regulations do not restrict the way in which berming at the front of a residence is accomplished . . .
>
> c. In the particular case of third-party wall checks by D.C. registered professional land surveyors, more than ten years of experience have proven to be very successful, therefore **we see no reason to believe that this particular survey (copy attached) is flawed**.

Appellants' Exhibit 17; Intervenor's Exhibit 19.

3. **Appellants' Allegations That They Did Not Receive All Documents Needed To File Their Appeal Until October 1999, Is Unsubstantiated and Irrelevant To the Issue of the Untimely Filing of Their Appeal.**

Appellants claim that they did not receive "copies of all the relevant papers" needed to file their brief until October 1999, and that, as a consequence, their November 3, 1999 filing was timely. Appellants' Brief at Page 16. However, Appellants fail to substantiate this claim. Significantly, Appellants, in a lengthy brief, fail to identify what these "relevant" documents were and why the absence of these documents, in light of their actual and repeated knowledge of the Zoning Administrator's decision, precluded them from timely filing their appeal.

More important, however, is the standard by which the timeliness of filing an appeal is judged: that is, when a party is "put on notice", not when the party subjectively deems it has all relevant documents regarding the action taken. Appellants were clearly put on notice and any

documents they may have sought were almost immediately available from DCRA through the Records Management Branch.

In the instant case, as illustrated above, several events put Appellants on notice of the Zoning Administrator's decision, including:

a. The issuance of the first building permit (June 7, 1999);

b. Meeting and receipt of plans from Intervenor (June 1999);

c. Commencement of construction (July 1, 1999);

d. Continued construction with the Zoning Administrator's approval after the issuance of the stop-work order (July 28, 1999);

e. Continued construction after Appellants requested a second stop work order (August 25, 1999); and

f. The Zoning Administrator's verbal decision communicated to Appellants on September 7, 1999.

Once Appellants' were put on knowledge of the alleged violations and the District's decision regarding the alleged violations, had they acted with reasonable diligence, they should have filed their appeal with regard to both the alleged violations of the side yard requirements, as well as the alleged violations of the height and number of stories of the improvements to the existing house, before construction was under way. At the very latest, Appellants had all the necessary information to file their appeal as early as September 7, 1999. Appellants' threats of action followed by prolonged inaction are no substitute for timely filing of an appeal, particularly in light of the District's repeated and unequivocal approvals of this project.

In light of the foregoing, Appellants' did not timely file their appeal with the BZA, as they waited over two (2) months from the notification of the District's decision evidenced in

Permit No. 2 and over four (4) months after being put on notice of the alleged violations. Consequently, the BZA lacks jurisdiction to hear this appeal and must dismiss the case.

B. Appellants' Are Barred By the Doctrine of Laches.

Laches is "a species of estoppel,"[4] being defined as the omission to assert a right for an unreasonable and unsatisfactorily explained length of time under circumstances prejudicial to the party asserting laches." Weick, 383 A.2d at 11. The two (2) elements of laches are the unreasonableness of the delay and the resulting prejudice to the party asserting the defense. See e.g. American University Park Citizens Association v. Burka, (D.C. 1979) 400 A.2d 737, 741

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[4] The elements of estoppel are: (1) expensive and permanent improvements; (2) made in good faith; (3) in justifiable and reasonable reliance upon; (4) affirmative acts of the District government; (5) without notice that the improvements might violate the zoning regulations; and (6) equities that strongly favor the party asserting the defense. Weick v. District of Columbia Board of Zoning Adjustment, 383 A.2d 7, 11 (D.C. 1978); Rafferty v. District of Columbia Zoning Commission, 662 A.2d 191, 194 (1995). It is not clear whether estoppel can bar an appeal brought by a neighboring landowner, as is the case in the instant matter. See Goto, 423 A.2d at 925 n.15. If estoppel were applicable in this case, Intervenor has met all the necessary requirements for this defense in that it has made expensive and permanent improvements to the Property in good faith reliance on the acts and representations of the Zoning Administrator in issuing it the building permit, as well as the Zoning Administrator's repeated and numerous decisions that the construction and proposed plans were legal. Additionally, Intervenor acted in good-faith in relying on the Zoning Administrator's representations, including representations that the Zoning Regulations permitted regrading so that the basement would be converted to a cellar within the definitions of the Zoning Regulations. As a result of the extensive governmental review of the property, proposed construction and building permits, Intervenor was justified in its belief that its actions with regard to the property did not violate the Zoning Regulations. Appellants' extensive delay in filing their appeal, the level of scrutiny Intervenors plans and construction received from the District government, and the extent of the improvements to the property, equities favor the defense of estoppel.

Although the estoppel defense may not be available against the Appellants, clearly, the defense would be available against the Zoning Administrator. Goto, 423 A.2d at 925 n.15 (add cites). The Court of Appeals of the District of Columbia has questioned, in cases such as this, whether the BZA could compel Appellant to observe zoning requirements that the Zoning Administrator is estopped to enforce. Id.

(D.C. 1979). The "entire course of events," not merely the period from the zoning official's decision to the filing of an appeal, is relevant when determining the validity of a laches defense. Goto 423 A.2d at 925, n.16.

As illustrated above in Section III.A., Appellants were charged with notice of the alleged violations set forth in their appeal as early as June 7, 1999, or, at the latest, September 7, 1999. Despite this knowledge, Appellants unreasonably and inexcusably delayed the filing of their appeal until November 3, 1999, at which time Intervenor had already expended large sums of money, time and labor in improving the property.

1. Unreasonableness of Appellants' Delay in Filing Their Appeal.

Implicit in the requirement that a party not unreasonably delay the filing of their appeal is the duty of an injured party to act diligently in investigating their complaints. See Goto, 423 A.2d at 926. In the instant matter, Appellants did not act diligently in their investigation leading up to the filing of their appeal. Appellants offer no explanation for their unexcused delay in filing their appeal.

That Appellants were aware that the timely filing of an appeal was necessary is apparent from their own correspondence, as outlined below:

a. Letter dated August 25, 1999, to Edgar T. Nunley, Chief of zoning Review Branch. Appellants state "We believe that the situation is reaching a critical stage." Exhibit 7.

b. Letter dated September 2, 1999, to Mr. Nunley. Appellants acknowledge that "the issues at this property have been pending for some time." Appellants go on to cite the amount of construction which has taken place at the site.[5] Exhibit 10.

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[5] Appellants, on numerous occasions, make the outlandish accusation that Intervenor "raced" along with the construction and that Intervenor's work habits illustrate "guilty

c. Letter dated September 2, 1999, to Mr. Michael Johnson, Zoning Administrator. Appellants acknowledge that construction is continuing. Exhibit 11.

d. Letter dated September 8, 1999, to Mr. Johnson. Appellants point out that the three stories added to the foundation have been framed. Exhibit 13.

e. Letter dated September 8, 1999, to Mr. Lloyd J. Jordan, Director, DCRA, from Council member Kathy Patterson on behalf of Applicants. Ms. Patterson states that "Time is of the essence." Exhibit 15.

f. Letter dated September 10, 1999, to Mr. Johnson. Appellants acknowledge that they have received (via a voice mail message from the Zoning Administrator) the Zoning Administrator's decision regarding the property and the alleged violations but erroneously claim they need "some evidence" of the Zoning Administrator's decision in order to file an appeal. Exhibit 16.

See also Appellants' Exhibits 7 through 12, respectively.

Appellants were not only aware of the Zoning Administrator's decision regarding the alleged violations complained of in their appeal well in advance of the filing of the appeal, Appellants were aware that the time was of the essence, as construction at the property was underway. Moreover, throughout June, July and August 1999, and into early September 1999, the District made clear its decisions that the construction was not in violation of the Zoning

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knowledge of wrongdoing". However, what Appellants fail to recognize is that Intervenor, justifiably relying on the Zoning Administrator's issuance of the building permits, advice to continue with construction and that minor regrading was permitted in order to bring the improvements to the existing house into compliance with the Zoning Regulations, proceeded with the construction in accordance with its timetable for the construction, which included the contracting for materials and subcontractors at specified points in the construction process. The evidence will refute any allegation that Intervenor "raced" to complete the construction. Furthermore, Intervenor has acknowledged that it made an error in its original building permit in it belief that the basement of the existing structure did not constitute a "story". This error was unintentional and was not made with the purpose of attempting to circumvent the Zoning Regulations.

Regulations.[6] Despite their knowledge of the alleged violations and the District's unequivocal opinion, Appellants failed to take any action other than to inundate DCRA and the Zoning Administrator with correspondence and attempts to enlist their Council member's assistance in swaying the District's decisions. The appropriate action would have been to file their appeal to preserve their rights, provide fair and timely notice to Intervenor, as well as to ensure prompt and proper enforcement of the Zoning Regulations.

Curiously, despite having acknowledged receiving the District's decision that the construction was legal in August and September 1999, Appellants' allege that they did not receive "copies of all the relevant papers until October [1999]". However, their inability or unwillingness to obtain these unidentified documents does not constitute just cause in delaying the filing of their appeal. All documents regarding the building permits and the applications therefore were public record, which Appellants could have reviewed and obtained simply by making a trip to DCRA. This argument is even more disingenuous in light of the fact that Intervenor voluntarily submitted many of these documents to Appellants for their review as early as June, 1999. Appellants' failure to timely investigate their claims and reliance on the District in sending them copies of these documents (assuming this is the avenue they elected to take) cannot be countenanced by the BZA.

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[6] Even with the discovery of the mistake that the original plans showed four (4) stories, as the basement was more than four (4) feet above grade, it is clear that the District's position, evidenced as early as August 1999, is that minor regrading to the Property, so as to leave less than four (4) feet exposed, would correct this error and bring the construction into compliance with the Zoning Regulations.

Appellants' delay in filing is unexplained. In light of the foregoing facts, as well as Appellant Clark's position as an experienced and nationally-known litigator with more than twenty-seven (27) years experience, professionally knowledgeable of the importance of timely filing requirements and standards of reasonableness, the delay in filing is unreasonable.

2. **Allowing Appellants to Proceed With Their Appeal After Appellants' Inexcusable and Unreasonable Delay in the Filing of the Appeal Would Result in Prejudice to Intervenor.**

The Court of Appeals for the District of Columbia has recognized that "the principal element in applying the doctrine of laches is the resulting prejudice to the defendant, rather than the delay itself." Goto, 423 A.2d at 925. Fairness, however, will bar the application of the doctrine of laches where the result would be unjust. Beins v. District of Columbia Board of Zoning Adjustment, 572 A.2d 122, 126 (D.C. 1990).

In this case, Intervenor proceeded with its construction of the additions to the existing house upon justified reliance on the District's issuance of building permits and decisions that the construction did not violate the Zoning Regulations. Meanwhile, Appellants "stood by and watched [Intervenor] spend time and money [for] months before pressing their objections with the BZA." See Goto, 423 A.2d at 926. Intervenor is prejudiced by the subject appeal, not only by its expenditures to date, but also by the fact that, as a result of Appellants' delay, construction has proceeded beyond a point where changes can be made to the improvements which would satisfy Appellants subjective concerns without demolishing much of the new construction.[7]

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[7] Should the BZA decide that the Zoning Administrator's long standing position that a property owner may regrade his property is no longer to be enforced, such a decision should not be applied retroactively, as Intervenor would be prejudiced by such a ruling. See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1031-1032 (1995).

C. Intervenor Acted In A Good Faith, Accurate, Honest And Timely Manner To Fully Comply With The Zoning Regulations.

As a diversionary tactic and perhaps motivated by frustration, Appellants have unsuccessfully attempted to portray Intervenor's actions as fraudulent, misleading and otherwise not entitled to the protections afforded by fundamental fairness, the law and the Zoning Regulations. Without offering any evidence, Appellants challenge Intervenor's motives and conduct. However, on the facts, it can not be disputed that Intervenor acted responsibly and ensured that this project complied with every aspect of the Zoning Regulations.

The original permit application and constructions drawings were prepared by a licensed and experienced architect, Neal Allan Duncan, who diligently sought to ensure compliance with the Zoning Regulations and other applicable codes. Upon careful and knowledgeable review, the application and construction plans painstakingly set forth each and every element of the proposed project without any attempt to mislead, misrepresent or not disclose. The architect's complete candor in his work is self-evident from the plans which in retrospect clearly show a structure which includes a non-"cellar" story and three additional stories.

Hindsight being 20-20, the architect honestly now admits that he mistakenly failed to take into consideration that the existing lower-level of the house would count for purposes of the applicable three-story limitation. At the same time, the proposed project complied with the forty-foot height limit also imposed. Despite suggestions to the contrary by Appellants, the architect's actions were not in pursuit of illegal advantage or gain, but simply a human error. Given the ease and minor nature with which compliance was subsequently achieved and the extraordinary financial and other costs which resulted from this mistake, it defies logic that this

was a deliberate act. No advantage, economic or otherwise, was sought or achieved through this mistake.

Having acted diligently and responsibly in the preparation and processing of the building permit application, Intervenor was fully entitled to rely on the approvals from the District obtained by Permit No. 1. Immediately upon receiving unofficial notice of a stop work order, Intervenor voluntarily ceased work and contacted DCRA to determine the nature of the problem that had arisen, accepted the guidance provided, took the required steps to correct the deficiency and achieve compliance with the Zoning Regulations, and obtained authorization to proceed with the ongoing construction. As a practical matter, had Intervenor submitted the revised Permit No. 2 originally, that application would have been approved in the same manner that actually occurred and would not have been subjected to further or different review by DCRA.

Appellants repeatedly complain that Intervenor's permit applications requested authorization to do one thing and then proceeded to construct an entirely undisclosed, different or additional (and illegal) set of improvements. Nothing can be further from the truth. Intervenor in its building permit applications clearly, and in detail, disclosed every element of the project and then proceeded to complete those same approved improvements, including:

- Remove the main floor and attic so that the existing lower level foundation and walls, first floor joists and first floor subfloor were retained. Exhibit 3.
- Construct a three-story addition above the existing foundation, lower level walls, and first level subfloor. Exhibits 3.
- Maintain the existing more than five (5) foot side-yard setbacks established by the east and west walls of the existing structure. A gas fireplace and vent was to be added to the west-side of the existing house. Exhibit 3.

- Construct an addition on the eastern side of the front house cantilevered out from the existing first floor joists on the front wall that is 23.5 feet long and 1.5 feet in depth and rising to the top of the second story. This addition is constructed within the 15 foot Building Restriction Line. Exhibit 3.

- Construct an open Balcony above the front porch. Exhibit 3.

- Construct a rear addition which maintains both the existing side-yards, including: a) 49.4' x 6.6' two-story addition which contains only crawl space below; and b) a one-story on grade frame addition to house a family room and breakfast area. Exhibit 3.

- Construct a new one-story detached garage at the rear of the site with access from the existing public alley. Exhibit 3.

It is beyond dispute, that the very things Appellants complain that Intervenor constructed without authorization are the very same things that were specifically requested and approved by the District.

D. <u>Appellants' Subjective Complaints Are Irrelevant To This Appeal</u>.

There is no dispute that Appellants do not like this house and view it as an intrusion into their neighborhood. Additionally, Appellants, supported by Advisory Neighborhood Commission 3F, honestly and fervently believe that the current Zoning Regulations which were enacted in 1958, are no longer appropriate and advocate there unilateral and post hoc amendment by the Board. In support, Appellants cite the threat of "tear down" houses, mansionization and a host of worst-case hypotheticals which are improbable, if not silly, and have no bearing on the specific facts of this case.[8]

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[8] Appellants reliance on sensational hypotheticals (e.g. 7 or 10 story house, 7 story berms, etc.) unsuccessfully attempt to divert attention from the specific details of this project.

More importantly, the Board's jurisdiction and responsibility in this case is narrow. Amendment of the Zoning Regulations is the exclusive jurisdiction of the Zoning Commission. Both DCRA, in issuing the building permits, and the Board in reviewing the Zoning Administrator's decisions, share the same responsibility- enforcement of the Zoning Regulations in an fair and objective manner. There is no room for emotional, subjective or personal criteria.

This project has been subjected to unprecedented and longstanding regulatory, political and community scrutiny. At every stage of this exhaustive oversight process which defies any allegations of "cover-up", compliance with the current Zoning Regulations has been the one and only relevant and operative criteria. At every level of the DCRA hierarchy, this project has been reviewed, inspected, subjected to outside scrutiny and reviewed again. Specifically, this has been a bottom up review by DCRA. Mr. Toye Bellow, the Zoning Technician, has been involved in every stage and closely supervised by his superiors, Mr. Edgar T. Nunley, Chief, Zoning Review Branch; Mr. Michael D. Johnson, the Zoning Administrator; Mr. Armando Lourenco, the Administrator of the Building and Land Regulation Administration; and Mr. Lloyd Jordan, the Director of the Department of Consumer and Regulatory Affairs. Great care was taken by the entire DCRA hierarchy, including unusual site inspections by at least Messrs. Lourenco and Johnson. At every stage of this exhaustive process, DCRA has been steadfast in its regulatory responsibility, often faced with extreme political and community pressure. To its credit, DCRA acted professionally and in a fair and even-handed manner despite what is clearly an unpopular decision.

Intervenor is proud of this house. It is an attractive and first-class rehabilitation of an existing house. The finished product will be in keeping with the upscale character of the neighborhood and provide an exceptional home for a family moving into the area.

IV. ZONING COMPLIANCE

A. This Project Is An Addition, Not A Total Demolition And New Construction.

Under the Building Code, an "Addition" is defined as "[a]n extension or increase in the floor area or height of a building or structure." 12 DCMR 201.1 (1986). As clearly set forth in the building permit application and actual construction, Intervenor maintained the existing foundation, lower-level and walls, first floor joists, and subfloor of the main floor and added or extended the height of the building, as well as the other improvements. DCRA correctly recognized that a substantial portion of the existing house was preserved as an integral basis of the improvements which were made.

B. This Project Complies With The Applicable Side-Yard Restrictions.

The Property is zoned R-1-A and was built in 1956, prior to enactment of the current Zoning Regulations. The applicable side-yard restrictions are clear:

> 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.).

11 DCMR 405.8 (emphasis added).

"Side yard" is defined as a "yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure." 11 DCMR 199.1.

Applying these standards, it is clear that Intervenor has complied with the side-yard restrictions for the following reasons:

1. The existing house was constructed in 1956.

2. The existing house had a side yard of less than eight feet, but more than five feet on each side. A 1998 house location survey, second independent survey and wall check test all prepared by licensed professional surveyors confirm the existing conditions. Exhibits 23, 24, and 25.

3. The additions to the property do not decrease the existing side-yards, as confirmed by an independent survey and separate wall check test. Visually, this can be demonstrated by a parallel line running along each side boundary line for a depth that is equal to or greater than the side-yard measurements for the existing house. Exhibit 24 and 25.

4. The minor addition to the front (1.5 foot cantilevered) and the more extensive addition to the rear of the property do not decrease the existing side-yards and, in fact, exceed the existing 5 feet plus side-yards. Exhibit 3.

5. The "direct vent gas log fireplace" constructed in the west side-yard was clearly shown on the approved construction plans and does not decrease or encroach on the existing side yard. Even if the fireplace extended beyond the existing side-yard (which it does not) it would be a permitted side-yard projection. 11 DCMR 2502.8, provides that a chimney, smoke stack or flue may project in any require side yard for a distance not to exceed 2 feet. As set forth by Appellants, the fireplace is 2 feet deep and would be permitted in its entirety. Exhibits 3 and 26.

C. <u>The Project Complies With the Three-Story And Forty Foot Height Restrictions</u>.

In the R-1-A zone in which this property is located, building height is subject to a dual standard: a) Forty (40) feet; and b) Three (3) stories. 11 DCMR 400.1.

For purposes of both measurements, the measuring point is defined as the "**<u>finished grade level at the middle of the front of the building to the ceiling of the top story.</u>**" 11 DCMR 199.1 (emphasis added). As clearly established by DCRA, "finished grade" can be changed by the builder. In drafting the Zoning Regulations, the word "finished" was specifically

used rather than "existing," "natural" or other adjectives to desirable "grade." In this case, the measuring point is the front door of the existing house.

"Story" is defined as the "the space between two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing ... For purposes of determining the maximum number of permitted stories, **the term 'story' shall not include cellars,** stair or elevator penthouse or other roof structures; ... 11 DCMR 199.1 (emphasis added).

"Cellar" is defined as "that portion of a story , the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade. 11 DCMR 199.1 (emphasis added).

Based on these clearly defined standards, the height of the building is:

1. **33.5 feet** as measured from the finished grade at the center of the front to the ceiling of the top story. Exhibit 9.

2. **Three (3) stories**.[9] The ceiling of the lower level is three (3) feet, six (6) inches above the finished grade. Exhibit 26. As shown on the Exhibit 9, the top of the first floor is 3'-10" inches above the finished grade. Appellants photographic evidence (Appellants' Exhibit 23) clearly demonstrates that the lower level is a "cellar" because the tape measure used by Appellants shows less than forty-eight (48) inches to the top of the ceiling of the lower level which is located below the horizontal coarse of stone shown in the picture. Exhibit 26.

3. The lower level is a "cellar" and does not count as a story based on the approved plan and the architect's field measurement.

4. The finished grade is level across the front of the building for a distance of approximately fifty (50) feet running from the western property line to the east of the center of the front of the house. Because this project is not a total demolition as set forth in the building Code, 12 DCMR 105.3, "restoration of established grades" is not required, contrary to the Zoning Regulations and unenforceable by the Board.

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[9] Appellants also seek to rely on Intervenor's marketing (e.g. four levels, four finished floors, six bedrooms) to establish a violation of the Zoning Regulations. Imprecise marketing terms cannot substitute for the specific definitions set forth in the Zoning Regulations. Here, a "four level" house has only three stories.

D. The Lot Complies With The Minimum Lot Area Requirement.

In the R-1-A zone, a lot must have an area of 7,500 square feet. 11 DCMR 401.1. This property has a lot area of 7,494.25 square feet. However, addition to the "non-conforming structure"[10] is clearly permitted as a matter-of right, subject to compliance with the following conditions:

a. The structure shall conform to the percentage of lot occupancy requirements; and

b. the addition or enlargement itself shall conform to use and structure requirements; and

c. The addition or enlargement itself shall not increase or extend any existing non-conforming aspect of the structure, and shall not create any new nonconformity of structure and addition combine.

11 DCMR 2001.3.

In this case, each of the conditions are satisfied:

1. The maximum lot occupancy permitted is forty percent (40%) of 7,494.25 square feet or 2,997.7 square feet. The lot occupancy provided is 2,742.92 square feet or 36.6 percent, including the detached garage which was approved, but has not been built.

2. The additions and enlargements provided comply with the use (single-family dwelling) and structure requirements, including side-yard, rear yard, lot width and height requirements.[11]

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[10] "Non-conforming structure" is defined as a structure, lawfully existing at the time this title or any amendment to this title become 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. (Emphasis added.)

[11] Despite Appellants assertion, there is no violation of the fifteen foot Building Restriction Line from the front porch or open balcony (with the same footprint). Exhibit 26.

3. The addition or enlargement does not increase any non-conformity. In this case, lot area is the only non-conformity. There is no side-yard non-conformity based on the provisions of 11 DCMR 405.8 which establishes a specific side yard requirement for this property other than eight feet. As set forth, Intervenor has complied with the aplicable provisions of 11 DCMR 405.8.

Although, it is not necessary to establish lot area compliance in this case, 11 DCMR 407.1 provides:

> The Zoning Administrator is authorized to permit a deviation not to exceed two percent (2%) of the area requirements of sections 401 and 403 of this chapter; a deviation not to exceed ten percent (10%) of the linear requirements of sections 404 and 405 of this chapter; and a deviation of the requirements of section 406 of this chapter, not to exceed **either** two percent (2%) of the area standard **or** ten percent (10%) of the width standard; Provided that:
>
> (a) A building shall be allowed to deviate from the requirements of no more than two (2) of the sections identified in this subsection; and
>
> (b) The deviation or deviations shall be deemed by the Zoning Administrator not to impair the purpose of the otherwise applicable regulations.

11 DCMR 407 (emphasis in original).

Under this provision, the Zoning Administrator is authorized to make minor deviations in the zoning requirements for lot area (Section 401) of not more than two percent or 150 square feet. In this case, the lot area deviation is only 5.75 square feet or .00076 percent and would be within the permitted authority of the Zoning Administrator. In making this determination, there is no requirement that the Zoning Administrator to consult 11 DCMR 223,[12] which is applicable only on the Board in circumstances which do not exist or apply in this case.

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[12] 11 DCMR 223 does not apply because this matter is not before the Board as a special exception application.

CONCLUSION

1. The Appeal is untimely and must be dismissed for lack of Board jurisdiction .

2. The Appeal is barred by the doctrine of laches and must be dismissed.

3. Appellants have the burden of proof in this Appeal. 11 DCMR 3119.2. Appellants[13] have not established a violation of the Zoning Regulations and the appeal must be denied.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

John Patrick Brown, Jr.

Jeannine Rustad

Attorneys for Intervenor

130319

[13] ANC 3F is entitled to "great weight" from the Board. However, in this case the Board's determination that Intervenor complied with the Zoning Regulations is the only consideration required.

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Re: **Appeal of George R. Clark, Esq. and Mary Clark, Stuart Sloame and Mary Seeherman, James D. and Emily Baker**

BZA Appeal No. 16533
Public Hearing: 2/2/2000
ANC 3F

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Opposition Statement of Intervenor Forest Hills, LLC was served by hand delivery, this 27 day of January, 2000 upon:

George R. Clark, Esq.
Reed Smith Shaw & McClay, LLP
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, DC 20005-3317

Mr. Philip Kogan
Advisory Neighborhood Commission 3F
3634 Veazey Street, N.W.
Washington, D.C.

Mr. Michael D. Johnson
Zoning Administrator
Room 2000
941 N. Capitol Street, N.W.
Washington, D.C. 20002

John Patrick Brown, Jr.

130427

EXHIBIT 1

EXHIBIT 2

99-000 35 OK Appd-5/6/99 DR

310B

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
P.A.D.C. No.:	O.G. No.:	R-1-A		B434294	By:
H.P.A. No.:	S.L. No.:	Ward No.:	Receipt No.:	Date: 6/7/99	Receipt No.:

★ ★ ★ GOVERNMENT OF THE DISTRICT OF COLUMBIA

BLRA-33 (Rev. 10/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (727-7050)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY

(PRINT IN INK OR TYPE. DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

5311

By: _____ Date _____

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. Address of Proposed Work:	Suite No.:	2. Lot:	3. Square:	4. Application Date:
4512 28TH ST, NW		29	2251	4/23/99

5. Owner of Building or Property:	6. Address: *(include Zip)*	7. Phone:
FOREST HILLS, LLC	PO BOX 34208 BETHESDA 20827	Work: 301 - Home: 906-9116

8. Agent for Owner: *(if applicable)*	9. Address: *(include Zip)*	10. Phone:
RICK GANGLOFF	13312 ORIENTAL ST, ROCKVILLE, MD 20853	Work: 301 - Home: 941-6199

11. Type of Proposed Work *(check all applicable boxes)*:

- ☐ New Building
- ☒ Addition
- ☐ Alteration and Repair
- ☐ Raze Building
- ☐ Retaining Wall
- ☐ Fence
- ☐ Shed
- ☐ Awning
- ☐ Garage
- ☐ Sign
- ☐ Other *(Specify)* _____

12. Description of Proposed Work:

DEMOLISH EXIST SFD TO FOUNDATION. (BSMT TO REMAIN)
CONSTRUCT 3 FLOORS AND ADDITION TO EXIST. FOOTPRINT.
NEW 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

13. Existing Use(s) of Building or Property:	14. Ex. No. of Stories of Bldg.:	15. Ex. No. of Dwelling Units:	Official Use Only: Miscellaneous FEE $ / By: / Date:
SFD	2	1	
16. Proposed Use(s) of Building or Property:	**17. Prop. No. of Stories of Bldg.:**	**18. Prop. No. of Dwelling Units:**	
SFD	3	1	

19. Starting Date of 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**

23. Is the area of disturbed earth 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).

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

2-0307 wd-375

OFFICIAL USE ONLY

	R	P	H	A
M	BR	5/10	5/10	5/11
P	BR	5/10	5/10	5/11
E	NA	5/11	—	5/11
F				
S	NA	4/08	4/28	6/4

310B

W ☐ Yes ☐ No

PLANS ☐ No ☐ Sm. ☐ Lg.

NO

AK

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

28. Architect's Name:	29. Lic. No.:	30. Architect's Address: *(include Zip)*	31. Phone:
NEIL DUNCAN			
32. Engineer's Name:	33. Lic. No.:	34 Engineer's Address: *(include Zip)*	35. Phone:
36. Building Contractor's Name:	36A. Lic. No.:	37. Contractor's Address:	38. Phone:

39. Type of Construction	40. Fire Suppression	41 [illegible]	Breakdown of Lot Area (= 100%):
☐ Masonry ☐ Steel	☐ Fully Sprinklered ☐ Standpipe System	☐ New	a. Building: %
☒ Wood ☐ Other	☐ Partially Sprinklered ☒ None	☐ Existing	b. Paved Area: 1/0 %
☐ Concrete	☐ Other:	☐ None	c. Greenery: 59% %
		sq. ft.	

44. Present Gross Floor Area of Bldg.:	45. Proposed Gross Floor Area of Bldg:	46. Floors involved in this permit:	47. Projection beyond building line?
7,100 sq. ft.	2,250/FLOOR sq. ft.	☒ All ☐ Floors	☐ Yes, answer q. 48-52
			☒ No, SKIP q. 48-52

48. Number and type of projection:	49. Distance of projection:	50. Width of projection:	51. Width of building frontage: ft.
			52. Signature of Owner (projection only):

53. Water or Sewer Excavation?	54. Driveway Construction?	55. Sheeting/Shoring Necessary?	56. Elevators involved?	57. No. and type of elev.:	58. Plans Certified by Engineer?
☐ Yes	☐ Yes	☐ Yes	☐ Yes, answer q. 57		☒ Yes, cert. is attached
☒ No	☒ No	☒ No	☒ No, SKIP q. 57		☐ No

59. Estimated Cost of Work:
(a) New/Add.: $ 202,647.00
(b) Alt/Rep.: $ 70,720.00
Total: $ 273,367.00

OFFICIAL USE ONLY

Alter/Repair FEE	New Const. FEE	Filing Fee	TOTAL PERMIT FEE
1444.40 34	$ 476.42	$ 274.00	1546.82
$ ~~1471.74~~			$ ~~1523.74~~
By: Date: 04/99	By: Date: 4/99	By: Date: 4/8/99	By: Date: 6/4/99

60. Volume of New Bldg. or Addition: 23,821 cubic ft.

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:	62. Contractor's Address: *(include Zip)*	63. Phone:

64. Insurance Company:	65. Policy or Certif. No.:	66. Expir. Date:	67. Raze Method:

68. Building Material:	69. Raze Entire Building?	70. Building Condemned?	70A. Building Vacant?	71. Public Space Vault?	72. Disconnect Water and/or Sewer?	73. Size of Water Connection:
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	in.

74. Plumber's Name:	75. Lic. No.:	76. Length: ft.	77. Width: ft.	78. Height: ft.	79. Volume: cu. ft.	80. Party Wall?
						☐ Yes ☐ No

81. Asbestos in the Building?	82. Raze Contractor Signature:	OFFICIAL USE ONLY
☐ No ☐ Yes, Location	83. Owner's Signature:	FEE By Date

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations

84. Cost of Work:	85. Material:	86. Height:	87. Color:	88. Location:
$		ft.		☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

89. Signature of Adjoining Owner:	90. Phone: Work / Home	OFFICIAL USE ONLY
		FEE By Date
91. Address of Adjoining Owner:	92. Lot:	93. Square:

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations

Height	Color	
ft.		☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land *

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

98. Signature of Adjoining Owner:	99. Phone: Work	OFFICIAL USE ONLY FEE	By:	Date:
100. Address of Adjoining Owner:	101. Lot:	102. Square:	$	

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number:	104. Length:	105. Width:	106. Area:	107. Height:	108. Volume:	109. Estimated Cost of Work:	OFFICIAL USE ONLY FEE
1	24 ft.	22 ft.	528 sq. ft.	ft.	3280 cu. ft.	$	$ 50.00

110. Material of Roof:	111. Material of Sides:	112. Wall thickness::	113. Color:	By:	Date:
SHINGLES	WOOD	☒ External (4") inches ☐ Party __ ( ) inches			6/4/99

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color:	116. Type:	117. Projections:	118. Height of lowest part of awning:	OFFICIAL USE ONLY FEE
		☐ Folding ☐ Fixed	Beyond bldg. line _____ in. Beyond pt. of attachm. _____ in.	(a) _____ ft above sidewalk (b) _____ ft above parking (c) _____ ft above grade	$

119. Material of Frame:	120. Material of Covering:	121. Lettering on Awning?	122. Fixed posts?	123. Over sidewalk cafe?	By:	Date:
		☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No		

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number:	125. Electric Signs?	126. Type:	127. Power	128. Electrical Contractor:
	☐ Yes, answer q. 126-132 ☐ No, SKIP q. 126-132	☐ Incandes. ☐ Fluoresc. ☐ Neon	_____ VA	Lic. No.:

129. Address of Electrical Contractor *(include Zip)*	130. Signature of Licensed Electrician:	131. Phone:	132. License No.:

133. Height relative to building and ground:	134. Material of Sign:	135. Type of Sign:	136. Color:
(a) _____ ft _____ in above sidewalk (b) _____ ft _____ in above roof (c) _____ ft _____ in is bldg height (d) _____ ft _____ in above projection or window (e) _____ ft _____ in from roof to sign's bottom			

137. Width:	138. Length:	139. Area of Sign:	140. Width of Business Frontage:
ft.	ft.	sq. ft.	ft.

141. C of O Number for Building:	142. Sign Contractor Lic. No.:	143. Sign Contractor's Address:	144. Phone:

OFFICIAL USE ONLY					
Sign FEE		Elect. FEE		Total FEE	
$		$		$	
By:	Date:	By:	Date:	BY:	Date:

(I) APPLICANT'S SIGNATURE:

A. **OWNER:** I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner: _____ Address: _____ Date: _____

B. **AGENT:** I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent: [signature] Address: 1332 ORIENTAL ST Date: 4/28/99

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

- ☐ 1. Fine Arts by: _____ Date: _____
- ☐ 2. Historic by: _____ Date: _____
- ☐ 3. PADC by: _____ Date: _____
- ☐ 4. Cap. Gateway by: _____ Date: _____
- ☐ 5. W.H./ Obs. Precinct by: _____ Date: _____
- ☐ 6. Flood Control by: _____ Date: _____
- ☐ 7. WMATA by: _____ Date: _____
- ☐ 8. Condem. by: _____ Date: _____
- ☐ 9. RLA by: _____ Date: _____
- ☐ 10. Rental Accom. by: _____ Date: _____
- ☐ 11. Chinatown Distr. by: _____ Date: _____
- ☐ 12. Utility Clearance by: _____ Date: _____
- ☐ 13. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☐ 1. Zoning by: _____ Date: _____
- ☐ 2. DPW — Permit and Records Division
  Access to Parking Street ☐ Street ☐ Alley
  Cleared by: _____ Date: _____
- ☐ 3. DPW - Consumer Engineer
  Cleared by: _____ Date: _____
- ☐ 4. ERA - Erosion Control
  Cleared by: RAE/AO Date: 4.26.99

Restrictions of the Permit:

SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED

C. PLANS AND APPLICATION APPROVAL

- ☑ 1. Information Counter by: Rpage Date: 4/26/99
- ☐ 2. Information Center by: _____ Date: _____
  - ☐ (a) ABC Board by: _____ Date: _____
  - ☐ (b) Noise Control by: _____ Date: _____
  - ☐ (c) Industrial Safety by: _____ Date: _____
  - ☐ (d) Vector Control by: _____ Date: _____
  - ☐ (e) D.C. Animal by: _____ Date: _____
  - ☐ (f) Police Dept. by: _____ Date: 6/26/99
- ☑ 3. Zoning by: _____ Date: _____
  Zoning Update by: _____ Date: _____
- ☐ 4. DPW - Permit and Records Division/Deposit #
  Sidewalk Deposit $_____ Driveway Deposit $_____
  by: mc Date: 6-2-99
- ☐ 5. Water/Sewer Design Branch
  Consumer Eng. by: _____ Date: _____
- ☑ 6. Environmental Regulation Administration
  - ☐ Environmental Policy Review
    Control No.: _____
    by: _____ Date: _____
  - ☐ Erosion Control by: RAE Date: 5-17-99
  - ☐ Storm Water Mgmt. by: _____ Date: _____
    Plan No. S-99-100
- ☑ 7. Mechanical Eng. Review by: RM Date: 5/26/99
- ☑ 8. Plumbing Eng. Review by: MM Date: 5/26/99
- ☑ 9. Electrical Eng. Review by: [signature] Date: 5/11/99
- ☐ 10. Health Plan Review
  - ☐ (a) Food Plan Review by: _____ Date: _____
  - ☐ (b) Medical X-ray Plan Rev. by: _____ Date: _____
- ☐ 11. D.C. Fire Dept. (Fire Prevention Plan Review Section) by: _____ Date: _____
- ☐ 12. Elevator Plan Rev. Sec. by: _____ Date: _____
- ☐ 13. Plumbing Insp. Rev. by: _____ Date: _____
- ☐ 14. Construction Insp. Branch (Field Check) by: _____ Date: _____
- ☐ 15. Historic Pres. Div. by: _____ Date: _____
- ☑ 16. Structural Eng. by: _____ Date: 6/4/99
- ☐ 17. Permit and Certificate Issuance Counter By: _____ Date: _____

- ☑ 18. Q.C. By: _____ Date: _____

ZONING

C of O Number _____ Date _____
Existing Use(s) SFD

- ☐ New bldg.
- ☐ P.O.D.
- ☐ File in room 329

Job No.:	BZA Case No.:	PUD Order No.:

DPW — PUBLIC SPACE

Street Name: _____
Street Width: _____
Road Width: _____
Sidewalk Width: _____
Parking: _____
Restrictions: _____

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

2. Footings, Foundation

All footings installed per plan to sizes as shown; concrete strength as specified.
Block (8") below grade and 4" block with brick veneer (4") foundation wall above grade per plan for addition.
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 provides 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 on rear elevation
Supply and install exhaust fans for all baths
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 Certaineed 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 Hanlon

Date 4-16-99

DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH ADMINISTRATION

BUILDING PERMIT APPLICATION SUPPLEMENTAL FORM - ENVIRONMENTAL QUESTIONNAIRE

PROJECT ADDRESS: 4512 28th Street NW LOT C SQUARE 2751

Note: please answer all 9 questions in this questionnaire, by checking either column "Yes"or "No" for each question. If you 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 [signature] Name (print) Eric Gaylord

Address 1331 2 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 NECESSAR

EXHIBIT 3

EXHIBIT 4

PERMIT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B424294

Date 6/7/99 (Type) ADD

Address of work 4512 28TH ST N.W.

Lot 29 Square 2251

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

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

NO.

TOTAL PERMIT FEE $1,920.82

FILING FEE $ 274.00

DATE

FEE PAYABLE $ 1,646.82

Authorized work and conditions of performance thereof:

DEMOLISH EXIST SFD TO FOUNDAITON. (BSMT TO REMAIN) INSPECTIONS CALL XXXXX442-4641
CONSTRUCT 3 FLOORS AND ADDITION TO EXIST. FOOTPRINT. NEW 1 STORY GARAGE.
SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE
REQUIRED.

Builder—

Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories 3

Zone R-1-A To be occupied as SFD

Height of terrace above grade Projections:

Address of owner PO BOX 34208

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Chief, Permit Issuance Branch

By L. Barksdale
Permit Clerk

L. JORDAN
DIRECTOR

RL 1017

EXHIBIT 5

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BLRA-56
(Rev. 10/87)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

B4324294

APPROVED

Address: 2512 28th St NW

Type of Inspection: Footing addition & Basement
Set wall check

☑ Construction Branch 727-7562	☐ Electrical Branch 727-7532	☐ Plumbing Branch 727-7519	☐ Elevator Branch 727-7544	☐ Boiler Branch 727-7554

Time	Date	Official
	8.3.99	

8-0390 wd-231

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,

Gary R Clark 4525 28th Street NW
Stuart C. Stearns 4501 28th St., NW
Tom Lathi 4517 28th ST., NW
Brian 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

FS

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
PADC No.	OG No.	A		B424794	By:
HPA No.	SL No.	Watch No.	Receipt No.:	Date: 9/17/99	Receipt No.:

★ ★ ★ GOVERNMENT OF THE DISTRICT OF COLUMBIA

BLRA-33 (Rev. 10/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (727-7050)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY

9703

(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

CLEARANCE TO FILE
By: Date:

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

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1. Address of Proposed Work:	Suite No.:	2. Lot:	3. Square:	4. Application Date:
4512 28th STREET, N.W.		29	2251	8/25/99

5. Owner of Building or Property:	6. Address: (include Zip)	7. Phone:
FOREST HILLS, LLC	PO BOX 34208 BETHESDA, MD 20827	Work: 301- Home: 231-5092
8. Agent for Owner: (if applicable)	**9. Address: (include Zip)**	**10. Phone:**
RICK GANGLOFF	13312 ORIENTAL ST ROCKVILLE, MD 20853	Work: 301- Home: 949-6089

11. Type of Proposed Work *(check all applicable boxes)*:

- ☐ New Building
- ☐ Addition
- ☐ Alteration and Repair
- ☐ Raze Building
- ☐ Retaining Wall
- ☐ Fence
- ☐ Shed
- ☐ Awning
- ☐ Garage
- ☐ Sign
- ☒ Other *(Specify)* REVISION

12. Description of Proposed Work:

REVISE BUILDING PERMIT # B424294.
CHANGE FINISHED GRADE TO CONVERT BASEMENT TO CELLAR. PM.

13. Existing Use(s) of Building or Property:	14. Ex. No. of Stories of Bldg.:	15. Ex. No. of Dwelling Units:	OFFICIAL USE ONLY
SFD	3½	1	Use Group: R-3
16. Proposed Use(s) of Building or Property:	**17. Prop. No. of Stories of Bldg.:**	**18. Prop. No. of Dwelling Units:**	By: Date:
SFD	3½	1	

19. Starting Date of 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**

23. Is the area of disturbed earth 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).

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

OFFICIAL USE ONLY
W/ PLANS ☐ Yes ☐ No
☐ Sm. ☐ Lg.

2-0307 wd-375

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

32. Engineer's Name:	33. Lic. No.:	34. Engineer's Address: *(include Zip)*	35. Phone:
36. Building Contractor's Name:	36A. Lic. No.:	37. Contractor's Address:	38. Phone:

39. Type of Construction ☐ Masonry ☐ Steel ☐ Wood ☐ Other: ☐ Concrete	40. Fire Suppression: ☐ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☐ None ☐ Other: _____	41. Booster Pump ☐ New ☐ Existing ☐ None	42. Total Lot Area sq. ft.	43. Breakdown of Lot Area (= 100%) a. Building: ____ % b. Paved Area: ____ % c. Greenery: ____ %

44. Present Gross Floor Area of Bldg.: sq. ft.	45. Proposed Gross Floor Area of Bldg: sq. ft.	46. Floors involved in this permit: ☐ All ☐ Floors _____	47. **Projection beyond building line?** ☐ Yes, answer **q. 48-52** ☐ No, SKIP **q. 48-52**

48. Number and type of **projection:**	49. Distance of **projection:**	50. Width of **projection:**	51. Width of building frontage: ft. 52. Signature of Owner **(projection only):**	

53. Water or Sewer Excavation? ☐ Yes ☐ No	54. Driveway Construction? ☐ Yes ☐ No	55. Sheeting/Shoring Necessary? ☐ Yes ☐ No	56. Elevators involved? ☐ Yes, answer **q. 57** ☐ No, SKIP **q. 57**	57. No. and type of elev.:	58. Plans Certified by Engineer? ☐ Yes, cert. is attached ☐ No

59. Estimated Cost of Work:
(a) New/Add.: $ _____
(b) Alt/Rep.: $ _____
Total: $

60. Volume of New Bldg. or Addition:
cubic ft.

OFFICIAL USE ONLY

Alter/Repair FEE		New Const. FEE		Filing Fee		TOTAL PERMIT FEE	
$		$		$		$	
By:	Date:	By:	Date:	By:	Date:	By:	Date:

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:	62. Contractor's Address: *(include Zip)*	63. Phone:

64. Insurance Company:	65. Policy or Certif. No.:	66. Expir. Date:	67. Raze Method:

68. Building Material:	69. Raze Entire Building? ☐ Yes ☐ No	70. Building Condemned? ☐ Yes ☐ No	70A. Building Vacant? ☐ Yes ☐ No	71. Public Space Vault? ☐ Yes ☐ No	72. Disconnect Water and/or Sewer? ☐ Yes ☐ No	73. Size of Water Connection: in.

74. Plumber's Name:	75. Lic. No.	76. Length: ft.	77. Width: ft.	78. Height: ft.	79. Volume: cu. ft.	80. Party Wall? ☐ Yes ☐ No

81. Asbestos in the Building?
☐ No ☐ Yes, Location _____

82. Raze Contractor Signature:

83. Owner's Signature:

OFFICIAL USE ONLY

FEE	By:	Date:
$		

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations

84. Cost of Work: $	85. Material:	86. Height: ft.	87. Color:	88. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

89. Signature of Adjoining Owner:	90. Phone: Work Home	
91. Address of Adjoining Owner:	92. Lot:	93. Square:

OFFICIAL USE ONLY

FEE	By:	Date:

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations

94. Material and Type	95. Height: ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land *

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

98. Signature of Adjoining Owner:	99. Phone: Work / Home	OFFICIAL USE ONLY: FEE	By:	Date:
100. Address of Adjoining Owner:	101. Lot:	102. Square:	$	

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number:	104. Length: ft.	105. Width: ft.	106. Area: sq. ft.	107. Height: ft.	108. Volume: cu. ft.	109. Estimated Cost of Work: $	OFFICIAL USE ONLY: FEE $ By: Date:
110. Material of Roof:	111. Material of Sides:	112. Wall thickness:: ☐ External ( ) inches ☐ Party ( ) inches				113. Color:	

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color:	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line _____ in. Beyond pt. of attachm. _____ in.	118. Height of lowest part of awning: (a) _____ ft above sidewalk (b) _____ ft above parking (c) _____ ft above grade	OFFICIAL USE ONLY: FEE $ By: Date:

119. Material of Frame:	120. Material of Covering:	121. Lettering on Awning? ☐ Yes ☐ No	122. Fixed posts? ☐ Yes ☐ No	123. Over sidewalk cafe? ☐ Yes ☐ No

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number:	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No, SKIP q. 126-132	126. Type: ☐ Incandes. ☐ Fluoresc. ☐ Neon	127. Power _____ VA	128. Electrical Contractor: Lic. No.:

129. Address of Electrical Contractor *(include Zip)*	130. Signature of Licensed Electrician:	131. Phone:	132. License No.:

133. Height relative to building and ground: (a) _____ ft _____ in above sidewalk (b) _____ ft _____ in above roof (c) _____ ft _____ in is bldg height (d) _____ ft _____ in above projection or window (e) _____ ft _____ in from roof to sign's bottom	134. Material of Sign:	135. Type of Sign:	136. Color:

137. Width: ft.	138. Length: ft.	139. Area of Sign: sq. ft.	140. Width of Business Frontage: ft.

141. C of O Number for Building:	142. Sign Contractor Lic. No.:	OFFICIAL USE ONLY: Sign FEE $ By: Date:	Elect. FEE $ By: Date:	Total FEE $ BY: Date:
143. Sign Contractor's Address:	144. Phone:			

(I) APPLICANT'S SIGNATURE:

A. **OWNER:** I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner:_____ Address:_____ Date:_____

B. **AGENT:** I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent: [signature] Address: 13312 ORIENTAL ST ROCKVILLE, MD 20853 Date: 8/25/99

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

- ☐ 1. Fine Arts by: _____ Date: _____
- ☐ 2. Historic by: _____ Date: _____
- ☐ 3. PADC by: _____ Date: _____
- ☐ 4. Cap. Gateway by: _____ Date: _____
- ☐ 5. W.H./Obs. Precinct by: _____ Date: _____
- ☐ 6. Flood Control by: _____ Date: _____
- ☐ 7. WMATA by: _____ Date: _____
- ☐ 8. Condem. by: _____ Date: _____
- ☐ 9. RLA by: _____ Date: _____
- ☐ 10. Rental Accom. by: _____ Date: _____
- ☐ 11. Chinatown Distr. by: _____ Date: _____
- ☐ 12. Utility Clearance by: _____ Date: _____
- ☐ 13. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☐ 1. Zoning by: _____ Date: _____
- ☐ 2. DPW — Permit and Records Division
  - Access to Parking Street ☐ Street ☐ Alley
  - Cleared by: _____ Date: _____
- ☐ 3. DPW - Consumer Engineer
  - Cleared by: _____ Date: _____
- ☐ 4. ERA - Erosion Control
  - Cleared by: _____ Date: _____

Restrictions of the Permit:

C. PLANS AND APPLICATION APPROVAL

- ☑ 1. Information Counter by: E Smith Date: 8/23/99
- ☐ 2. Information Center by: _____ Date: _____
  - ☐ (a) ABC Board by: _____ Date: _____
  - ☐ (b) Noise Control by: _____ Date: _____
  - ☐ (c) Industrial Safety by: _____ Date: _____
  - ☐ (d) Vector Control by: _____ Date: _____
  - ☐ (e) D.C. Animal by: _____ Date: _____
  - ☐ (f) Police Dept. by: _____ Date: _____
- ☑ 3. Zoning by: Sean Mac Date: 8/27/99
  - Zoning Update by: _____ Date: _____
- ☐ 4. DPW - Permit and Records Division/Deposit #
  - Sidewalk Deposit $ _____ Driveway Deposit $ _____
  - by: _____ Date: _____
- ☐ 5. Water/Sewer Design Branch
  - Consumer Eng. by: _____ Date: _____
- ☐ 6. Environmental Regulation Administration
  - ☐ Environmental Policy Review
    - Control No.: _____
    - by: _____ Date: _____
  - ☐ Erosion Control by: _____ Date: _____
  - ☐ Storm Water Mgmt. by: _____ Date: _____
  - Plan No. _____
- ☐ 7. Mechanical Eng. Review by: _____ Date: _____
- ☐ 8. Plumbing Eng. Review by: _____ Date: _____
- ☐ 9. Electrical Eng. Review by: _____ Date: _____
- ☐ 10. Health Plan Review
  - ☐ (a) Food Plan Review by: _____ Date: _____
  - ☐ (b) Medical X-ray Plan Rev. by: _____ Date: _____
- ☐ 11. D.C. Fire Dept. (Fire Prevention Plan Review Section) by: _____ Date: _____
- ☐ 12. Elevator Plan Rev. Sec. by: _____ Date: _____
- ☐ 13. Plumbing Insp. Rev. by: _____ Date: _____
- ☐ 14. Construction Insp. Branch (Field Check) by: _____ Date: _____
- ☐ 15. Historic Pres. Div. by: _____ Date: _____
- ☐ 16. Structural Eng. by: _____ Date: 8/27/99
- ☐ 17. Permit and Certificate Issuance Counter By: _____ Date: _____
- ☐ 18. [illegible] By: _____ Date: _____

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

ZONING

C of O Number _____ Date _____

Existing Use(s) _____

SFD

- ☐ New bldg.
- ☐ P.O.D.
- ☐ File in room 329

Job No.: | BZA Case No.: | PUD Order No.:

DPW — PUBLIC SPACE

Street Name: _____

Street Width: _____

Road Width: _____

Sidewalk Width: _____

Parking: _____

Restrictions: _____

DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH ADMINISTRATION
BUILDING PERMIT APPLICATION SUPPLEMENTAL FORM - ENVIRONMENTAL QUESTIONNAIRE

PROJECT ADDRESS: [illegible] LOT: _____ SQUARE [illegible]

Note: please answer all 10 questions in this questionnaire, by checking either column "Yes" or "No" for each question. If you 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	
10. Will the proposed project involve the removal, handling, transportation, disposal, or encapsulation of asbestos?		✓	(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 [signature] Name (print) Ricic GANGLOFF

Address 13312 ORIENTAL ST ROCKVILLE, MD 20853 Date 8/25/99 Phone 301-949-6089

OFFICE USE ONLY

EHA APPROVAL BY _____ NAME (Print) _____

CONTACT NUMBER : (202) _____ DATE: _____

COMMENTS AND PERMIT RESTRICTIONS: _____

EXHIBIT 9

EXHIBIT 10

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 11

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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EXHIBIT 12



9-7-99
4512 28TH ST NW

EXHIBIT 13

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:

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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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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 8, 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:

Late on the afternoon of September 7, 1999, I received a message via Kathy Patterson's office that you and your department had approved the construction of a four-story house at 4512 28th Street N.W. As we are both aware, the D.C. zoning code prohibits structures of more than three stories in an R-1-A zone. We were informed that the structure was being approved because it is less than 40 feet in height, even though it is four stories.

This morning I received your voicemail that this "purportedly" four story house had no zoning issues and was approved, despite the fact that it "looks very awkward." I very much appreciate your call and look forward to meeting with you in the immediate future as you suggested. I hope we can do as soon as today.

In the interim, I must write to protest this illegal action which goes beyond the authority of the department. Under the code, only three stories are allowed, and the permit approves the construction of only three stories. There is no doubt that the building being constructed has four stories. As previous correspondence has explained, the full basement is a story because it is more than four feet out of the ground at the measuring point. DCRA did not dispute this prior to today.