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'00 FEB 22 AM 1:50
DISTRICT OF COLUMBIA
OFFICE OF ZONING

February 21, 2000

VIA FACSIMILE (202) 452-1410

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

Re: BZA Appeal No. 16533;
4512 28th Street, N.W.

Dear Pat:

I have received your letter dated February 18, 2000. While I understand your client's anxiety to reach a settlement, as I told you, it is not my practice to discuss potential settlement in correspondence with the decision maker (see generally Federal Rule of Evidence 408).

As I told you on the phone on Friday, however, I think it is unfortunate that you have attached only one letter out of a series in a futile effort to try to make the Appellants look unreasonable. Because you have made an incomplete disclosure, for the record, as I told you I would, I am attaching to this letter copies of my two letters to you dated December 8, 1999, which respond to your letter of December 3, 1999 (which was attached to your letter of February 18, 2000). You'll note that the shorter of my December 8 letters asks again for the plans for the regrading, which you promised to the ANC on November 15, 1999, and which were requested in my letters to you of November 17 and November 28, 1999 (those two letters are also attached to this one.)

As you know, your clients refused to provide information concerning the regrading in front of the property for nearly two months, despite promises to the ANC and us that it would be

BZA
Case No. 16533
Exhibit No. 22

Board of Zoning Adjustment
District of Columbia
CASE NO.16533
EXHIBIT NO.22
DCLIB-0204145.01-GRCLARK
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forthcoming. At the same time, unbeknownst to us, Forest Hills was filing an application for a new permit for that regrading.

We told you in several letters that receiving those plans was a prerequisite to any discussions. Instead of providing those plans, neither you nor Forest Hills notified anyone that a new application had been filed or issued. While that was your client's prerogative, it certainly is not evidence of any sincere attempt to resolve this matter.

The longer of my two December 8, 1999 letters raises three other questions to which you and your client have never responded. Likewise I was forced to write to you again on December 27, 1999 and January 4, 2000 before copies of the plans for the regrading were finally made available to us immediately before the January 10, 2000 ANC meeting. Copies of those two letters are also attached to this one. The fact that Forest Hills provided only incomplete information after five requests for it over a two-month period, after promising that information to the ANC, speaks more about the situation than any more words I could put in a letter.

As I mentioned on Friday, I will be providing a copy of our timeline and index to additional exhibits, some of which were used on February 2, to you and the BZA tomorrow when they are completed.

Sincerely yours,

George R. Clark

GRC/ydw

cc: Mr. Philip Kogan, ANC 3F
The Board of Zoning Adjustment

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December 8, 1999

VIA FACSIMILE (202) 452-1410

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

Re: BZA Appeal No. 16533;
4512 28th Street, N.W.

Dear Pat:

Thanks very much for your hand delivery of Friday, which included a copy of the plans approved in the permitting process.

Just to clear up one thing, it was my understanding from the November 15, 1999 ANC meeting that you would make available copies of the plans for regrading the front of the property both to the Neighbors and the ANC. After our portion of the meeting concluded, your client indicated that there were no actual plans for the regrading but that some would be drawn up. Those are the plans which I have referred to in my letters to you of November 17 and November 28, 1999. We would still appreciate receiving those at the earliest possible date, especially given the continued ANC meeting for January 10, 2000.

Your scheduling information for the BZA is consistent with what we have heard.

Sincerely yours,

George R. Clark

GRC/ydw
cc: Mr. Philip Kogan

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December 8, 1999

VIA FACSIMILE (202) 452-1410

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

Re: BZA Appeal No. 16533;
4512 28th Street, N.W.

Dear Pat:

Thank you for your December 3, 1999 response to my letter of November 28, 1999. Obviously the question of plans is addressed in my other letter to you of today's date.

I have delivered copies of your letters to the Neighbors, and pointed out your third paragraph. But there is little use in having such a meeting absent definitive plans concerning the regrading.

Assuming that such a meeting takes place, one of the issues which we have always focused on is that the house will be four stories even after the regrading because of the garage. It is no secret that this is part of our argument to the BZA and one that everyone feels strongly about. I mention this because landscaping cannot solve this problem. In fact, proper landscaping is made more difficult by the presence of the garage.

We also appreciate your statements concerning compliance with all applicable laws and regulations and approvals in the construction process. My letter of November 17, however, asked a slightly different question:

I may also have misunderstood something you said during your presentation to the ANC. Is it your view and commitment on behalf of your clients that a certificate of occupancy is needed for the property and that a condition of the issuance of the certificate includes certification by DCRA of compliance with the three-story and height limitations, in addition to all other requirements and restrictions?

We also need to know an answer to this question to evaluate any proposal which your client might make.

We would appreciate any survey which you have which shows compliance with the 15 ft. building line restriction in the front and the addition for the recirculating fireplace on the southeast side. Likewise we request a copy of any engineering report which shows the sufficiency of the foundation for the building, including after removal of the steel support beam at the front of the garage.

I understand your position that approval of the plans means that they are in conformity with law. I also understood your client's position before the ANC to be that it is up to DCRA to investigate and prove that plans are not in compliance with law, even when the plans submitted are not what is actually being done or do not readily disclose what is taking place. Therefore, we can gain little comfort from your assurances.

I look forward hearing from you.

Sincerely yours,

George R. Clark

GRC/ydw

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November 17, 1999

John Patrick Brown, Esquire
Greenstein DeLorme & Luchs, P.C.
1650 L Street, N.W., Suite 900
Washington, D.C. 20036

Re: 4512 28th Street, N.W.

Dear Pat:

It was a pleasure meeting you at Monday night's "short" ANC meeting. As we discussed, enclosed is a copy of the notebook which I presented to the ANC Commissioners. Someday I may learn to count to 8!

I also appreciate your willingness to get us a copy of the current plans for the regrading in front of the house. I will admit to being concerned when after the meeting I learned that there is no elevation for the regrading, and that the only plans are an overhead view. It seems difficult to have construction in accordance with plans when there is little detail to those plans.

I may also have misunderstood something you said during your presentation to the ANC. Is it your view and commitment on behalf of your clients that a certificate of occupancy is needed for the property and that a condition of the issuance of the certificate includes certification by DCRA of compliance with the three-story and height limitations, in addition to all other requirements and restrictions?

Finally, you have agreed that you will work with me and the ANC to make sure that its views will be presented to the BZA in a timely fashion.

I appreciate your courtesies and look forward to working with you in the future.

Sincerely yours,

George R. Clark

GRC/ydw

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November 28, 1999

Via Facsimile
John Patrick Brown, Esquire
Greenstein DeLorme & Luchs, P.C.
1650 L Street, N.W., Suite 900
Washington, D.C. 20036

Re: 4512 28th Street, N.W.

Dear Pat:

Thought I'd drop you a note in the hopes of avoiding a potential issue. This morning I noticed the "no parking" signs for this upcoming week nailed to the two remaining trees in front of 4512 and one in front of the adjacent property to the north.

Each of those signs has a handwritten notation "will tow" in addition to the hours. As I am sure you know, and as the Second District of the Metropolitan Police confirmed today, the police department did not issue the "will tow" instruction. While I suspect that there will not be any issue because no one parks in front of the property because of the large number of flat tires which all of the neighbors have received even parking in front of their own houses (nine at last count), your clients may be used to different rules in Potomac.

Your clients have no authority to tow any vehicle anywhere, no matter how short the distance. At most they can request that the Department of Public Works tow any illegally parked car a short distance, perhaps around the corner. No charge can be imposed for that service. I am certain you will make sure that there are no problems in this regard.

I am assuming, perhaps incorrectly, that the no parking signs are in conjunction with the regrading work in front of the property. If that is the case, I hope that you can immediately forward to me copies of the plans which have been drawn up by your client for that regrading.

I did notice one other thing over the weekend which is perhaps related to the no parking issue. I see that your client has decided to tear down part of the foundation around the garage in an apparent attempt to widen the opening. I would be interested in seeing the engineering plans which show that this is safe. I would also be interested in knowing what section of the D.C. zoning regulations authorizes this in light of the contrary representations made in the permitting process.

It also appears that your client plans on placing a "mini-deck" over the front door. That protrudes well beyond the front of the house, and invades the building restriction line. Can you please tell me what section of the D.C. zoning regulations authorize this? I know that no zoning exception or variance was sought, and a permit cannot authorize this.

One last thing about the no parking signs. All of the signs were nailed or stapled to the trees, placing them under even greater stress than the construction already has. As you know, the Metropolitan Police Department requests that the signs be affixed to trees either with string or tape. While your client is legally free to kill or cut down all of the trees on its property (the regrading in the back will certainly kill the remaining ones), it is not free to do so to the ones in the tree lot, especially on adjacent property. I cite this as a further example of your client's cavalier disregard for the neighborhood. At the same time it advertises the wonderful tree-lined block in its efforts to sell the house, it has done what it can to destroy that character built-up and paid for by others.

Hope you had a good Thanksgiving.

Sincerely yours,

George R. Clark

GRC/ydw

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December 27, 1999

VIA FACSIMILE (202) 452-1410

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

Re: BZA Appeal No. 16533;
4512 28th Street, N.W.

Dear Pat:

Thanks for arranging for a peaceful Christmas and what we expect will be an equally quiet New Year. I hope you had a very good holiday.

Work on the new walkway in front of the house is going forward at a rapid pace. Thus, I would hope that you could finally provide to us a copy of the plans for the regrading and the new walkway to the street. This is something you promised to us and the ANC back on November 15, 1999, and about which I have written you on at least three other occasions.

Our concern is that the work is proceeding very much on an ad hoc basis. On several occasions I have seen the work crew redirect where it is placing certain elements of the walkway. Sometimes this seems to be on their own, and at other times it seems to be in response to Mr. Cohen or other supervisors. It really appears to me that this is an effort to construct the walkway "on-the-fly" with the hope that it will work. This is contrary to the representations made not only to DCRA in obtaining the revised permit, but also to the ANC. Can you please provide those plans to me today?

For your information, today I received notice from the BZA that the hearing in this case will be on February 2, 2000,

between hours of 1 p.m. and 6 p.m. I wanted you to have this information as soon as I was aware of it. A copy is enclosed.

Sincerely yours,

George R. Clark

GRC/ydw

Enclosure

cc: Mr. Philip Kogan

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January 4, 2000

VIA FACSIMILE (202) 452-1410

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

Re: BZA Appeal No. 16533;
4512 28th Street, N.W.

Dear Pat:

Happy 2000!

On Sunday January 2, 2000, while chasing away a worker before 8 a.m., I noticed another new permit posted at the property. That permit was issued December 9, 1999 and relates to the work being done on the regrading and the new walkway. Thus it would appear that there should now be plans available for that work.

Nonetheless, despite requests for these plans in letters to you dated November 17, November 28, December 8, and December 27, 1999, I have yet to receive these plans which were promised to me and the ANC at the ANC meeting of November 15, 1999. At this point I would appreciate the professional courtesy of a reply to tell me whether I need to pick them up at DCRA so that I can hopefully have them before the January 10, 2000 ANC meeting.

The January 2 incident is instructive with respect to the instructions which your client gives to the workers at the property concerning Sunday work. The person told me that he was the drywall contractor and that he wasn't working (apparently the property is now a vacation home with no certificate of occupancy), and that Murray had asked him to come out because

the contractor had been on vacation. Only when he saw me go across the street to call the police did he leave.

The lack of cooperation with respect to the plans and constant need to police the work at the property gives us little comfort that we can rely on any other representations which your client may make.

Sincerely yours,

George R. Clark

GRC/ydw

Enclosure

cc: Mr. Philip Kogan