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, 2/23/00
ANC 3F

'00 FEB 23 A8:51

INTERVENOR'S HIGHLIGHTS OF FEBRUARY 2, 2000 PUBLIC HEARING AND REVISED CHRONOLOGY OF EVENTS

Forest Hills, LLC (the "Intervenor") is the owner of 4512 28th Street, N.W. (Square 2251, Lot 29)(the "Property"). To facilitate the Board's continued review of this appeal, the Intervenor, through counsel, respectfully submits the following updated information to reflect the Board's public hearing on February 2, 2000.

I. SUMMARY OF OPPOSITION

As set forth in detail by Intervenor in its pre-hearing statement and based on the sworn testimony at the February 2, 2000 public hearing, 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

BZA
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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 oversight regarding the number of "stories" in its original permit application. Immediately upon being made aware of this oversight, 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. HIGHLIGHTS OF SWORN TESTIMONY

The following are highlights (paraphrased and/or verbatim text as noted) of the sworn testimony heard at the hearing:

1. **Mr. Philip Kogan, ANC 3F:**

> "We do not oppose teardown/rebuild projects, but we feel very strongly that tear-down/rebuild projects must be carefully reviewed and scrutinized to ensure that they

comply with those District laws and regulations that are designed to protect our neighborhoods." Transcript, pp. 60-61.

2. **George R. Clark, Esq., Appellant and counsel for all the Appellants:**

"Continuous pursuit [by the neighbors] of it [the project] from July . . ." Transcript, p.71.

In June 1999, Mr. Cohen told neighbors that the project was a matter-of-right. Transcript, p. 74. The Appellants made copies of the "renderings" and the plat. Transcript, p. 74.

As a result of the June meeting with Mr. Cohen, "we decided we'd better start to look at the Zoning, which we did." Transcript, p. 75.

On September 7, Mr. Clark acknowledged learning of the Zoning Administrator's "decision" to approve the revised permit to change the finished grade. Transcript, pp. 114-115.

Mr. Lourenco's letter of September 10, 1999 saying that there are no zoning violations is the "decision", Transcript, p. 76.

3. **Stuart Sloame, Esq., Appellant:**

On "August 3, 4 or 5, Mr. Sloame went to DCRA, obtained copies of the original permit application and . . . the permit itself" and met with Mr. Toye Bello, Zoning Technician. Transcript, p. 81.

On August 31, Mr. Sloame talked by telephone with Mr. Bello who informed him that Intervenor had submitted revised plans for a change in finished grade and that Zoning Administrator would review and decide that week. Transcript, p. 86.

On September 7, Mr. Sloame had a telephone conversation with Kathy Patterson's office and learned that revised plans had been approved. "Thereafter, I contacted the BZA." Transcript, pp. 92-93, 102, 113-115.

On September 22, 1999, Mr. Sloame requested and received by fax from the BZA a copy of the appeal form and regulations. Thereafter, . . . Mr. Clark wrote "a memo to the neighbors disclosing the - Oh, we finally found out about the permit." Transcript, pp. 105, 120.

The side yard is now five feet. Transcript, p. 116.

4. **Mr. Robert Sockwell, Vice Chairperson:**

"Cellar" and "basement" are "specifically defined within this city's Zoning ordinance. It has been the definition since 1958. Nothing is new." Transcript, p. 96.

"Regardless of number of stories, it could be a one-story 40-foot high house." Transcript, p. 118.

5. **Mr. Toye Bello, Zoning Technician:**

No stop work order was ever issued. Transcript, p. 137.

Intervenor given opportunity to revise permit to obtain compliance by changing finished grade. Transcript, p. 40.

In response to several questions about whether he was ever misled by Intervenor or its application, Mr. Bello responded, "**ABSOLUTELY NOT**." [emphasis added]. Transcript, pp. 142, 149-150.

The project was a partial demolition and addition to an existing structure. Transcript, pp. 143, 151-152, 178.

Permit No. 2 for the revised finished grade would have been approved if it had been sought originally. Transcript, p. 151.

The side yard which is greater than five feet complies with the Zoning Regulations and has been confirmed by the wall check submitted. Transcript, pp. 152, 183.

Raising finished grade to establish a "cellar" is done "regularly." and "is not illegal." Transcript, pp. 152-153.

Lot area is in compliance. Transcript, p. 157.

Issuance of Permit No. 1 signified that D.C. considered the plans submitted to be in compliance with the Zoning Regulations. Transcript, p. 162.

Mr. Bello had several meetings with Mr. Sloame and "I kept him abreast of every development along the way." Transcript, p. 164.

On July 28, 1999, Mr. Bello was satisfied that Intervenor was making good faith efforts toward coming into compliance. Transcript, pp. 165-167.

11 DCMR 223.1 requiring BZA approval of a special exception does not apply in this case because the project complies with the other Zoning Regulations, including minimum lot size, lot width, side yard. Transcript, p. 176.

The project complies with 11 DCMR 401.1 which allows an addition to a lot which is less than 7,500 square feet. Transcript, pp. 177, 178.

Five (5) feet or more of side yard is in compliance with 11 DCMR 405.8 . Transcript, p. 177.

6. **Mr. Armando Lourenco, Director of BLRA, former Acting Zoning Administrator:**

This case was more closely monitored than any other matter in the office. Transcript, p. 146. Mr. Lourenco has inspected the site twice and visited four or five times. Transcript, p. 146.

There are currently 3 "valid" building permits for this site. Transcript, p. 147.

The approved practice of allowing changes in finished grade goes back to 1958 when the current Regulations were adopted. Transcript, p. 154. There are no zoning restrictions regarding changing finished grades. Transcript, pp. 154, 156.

Nearby houses, 4542 and 4536 28th Street have steeper grades than the subject property. Transcript, p. 155. 4542 28th Street has at least 33 steps from sidewalk to the front door. 4536 28th Street has 28 steps and then three (3) full stories above. Transcript, p. 190.

DCRA did everything by the "book", but cannot change the Zoning Regulations. We can only enforce the Zoning Regulations. Transcript, pp. 156, 191-192.

12 DCMR 105.2 regarding total demolition is not part of the Zoning Regulations and not enforced by the Zoning Administrator. Transcript, p. 171.

"My interaction with the [Intervenor] after we found the discrepancy is such that **I do not believe there was any intent to mislead."** Transcript, p. 193 (emphasis added).

"It [building Permit No. 1] may have been issued with an error and there are several ways of fixing an error once the permit is issued. Our first line of duty is to try to get the applicant into compliance. . . I believe the [Intervenor] was cooperative in trying to get to a solution." Transcript, p. 193 (emphasis added).

"We have to be cognizant also that it's difficult to get an applicant to get this issue of the stories right, as Mr. Sockwell very well knows, because depending on you who you are talking to, you get different answers." Transcript, p. 194.

"The most important document [in determining the number of stories], to me, are the plans" [not the building permit application form, Lines 14 and 17].
Transcript, pp. 195, 197.

"That is the discrepancy [stories above grade] that was found. That was what was brought to the attention of the applicant. He could not have a four-story building. The options that the applicant had at that point were, one, leave everything as it was and come before the Board of Zoning Adjustment to get relief; two, change the grade so as to make the lower level of the building become a cellar; three, modify, the project so as to make the top floor disappear. Those were the three options that were on the table."

"One of the reasons why we let the construction continue while this issue was being resolved was because the construction had not reached the point where we couldn't force the applicant to take some remedial steps, and we felt that the applicant was diligently pursuing one such solution." Transcript, p. 197. . . .

"Even thought I don't think, with the berm as it is now or as it was before, there is no issue of reaching the 40 feet. I think the building is well below that." Transcript, p. 198.

* * *

"Vice Chairperson Sockwell: There really wasn't any confusion there. The original – if I might just say this, just so we get that clear. The original finished grade was at 108. The original basement slab was at 106. Adding all the floors and all of the interstitial space up to the ceiling of the top story, the building complied with zoning for height under any circumstance."

"Mr. Lourenco: Yes. So that was really a nonissue. Obviously, there is this issue of does the lower level count as a story or not. My contention is that – I'm sorry that Ms. Renshaw is not here, because my contention is that at this point no one can tell."

"The construction isn't finished. I don't know where the ceiling of the basement or cellar is going to be. So I don't know where to measure, but certainly, I believe that where the grade is now, the finished grade, to the floor of the first story, there is less than four feet, which means that, no matter where you put the ceiling of the cellar, it will be a cellar, not a story. Therefore, this building has three stories."

* * *

"I was the Zoning Administrator when this first permit was issued. I think it was my prerogative to rule that five square feet short of 7500 is not an unreasonable relief to provide without coming to the Board of Zoning Adjustment." Transcript, p. 200 . . . .

"I believe that this project stretches to the limit, almost to the limit, the ability to develop this property. Personally, I'm not very happy with the end result and, as I stated before, we will be preparing some documentation to forward to the Office of Zoning, to the Zoning Commission, with some of our ideas of the result of the zoning regulations as they stand right now, and some ideas on how the Zoning Commission can address that." Transcript, p. 201.

"Until then [Zoning Commission amends the Zoning Regulations], **both the Office of Zoning Administrator and the Board of Zoning Adjustment can only apply what's in the regs, and I think we applied them correctly, accurately, and consistent with the way we have been applying the regulations for many years."**
Transcript, p. 201 (emphasis added).

"In this particular case, I think the essence of the first floor [the former basement] remained intact. This is what some of these pictures show. So I have no problems in determining that this building wasn't razed to the ground, that a portion of the building was retained, and then an addition to it was built." Transcript, p. 207.

* * *

"Mr. Clark: Doesn't, in fact, that show new joists over on the left side of the --"

"Mr. Lourenco: Sure, it does." Transcript, p. 220. . . .

"Mr. Clark: . . . Doesn't it show on the preexisting footprint that there is a large portion of the subfloor missing that's going to be new?"

"Mr. Lourenco: Sure." Transcript, p. 221.

"Mr. Clark: And doesn't it show a large number of new floor joists?"

"Mr. Lourenco: Sure, it does."

"Mr. Clark: And does that have any effect on your decision whether, in fact, there was a demolition?"

"Mr. Lourenco: No, it doesn't." Transcript, p. 222.

* * *

"Mr. Clark: Well, did DCRA tell or warn Mr. Cohen that if he built before a permit review was completed, he did so at his own risk?"

"Mr. Lourenco: In this particular case, I don't believe so."

"Mr. Clark: He's an experienced builder. Right?"

"Mr. Lourenco: Yes. He was working another permit, a permit that we did not revoke. So it was a valid permit, had a floor had to be fixed. We called him in to make sure he fixed it. . . ." Transcript, p. 230.

"Mr. Clark: Well, aren't you required to apply Section 223 to this property?"

"Mr. Lourenco: I don't believe so."

"Mr. Clark: Why not?"

"Mr. Lourenco: Because this is not the case before the Board of Zoning Adjustment requiring an area variance, which is clearly the intent of the Zoning Commission when these provisions were passed, to provide a legal basis for making reasonable additions to single family dwellings where the strict test associated with an area variance are unattainable." Transcript, pp. 230-231.

"As long as – Two percent of 7500 square feet is what, 150 square feet? As long as the size of the lot complies with less than 150 square feet --"

"As long as it complies with less than 150 square feet difference --" Transcript, p. 234.

* * *

"I explained before that this issue of berming up has some inherent automatic controls. Common sense will say that no one is going to build a 70 foot high mound just to put the house on top of the mound and then have to climb up 70 foot of steps to get to the front door." Transcript, p. 237.

"Common sense will state that." Transcript, p. 237.

* * *

"Mr. Clark: I thought that I could regrade to whatever height I wanted."

"Mr. Lourenco: Under the zoning regulations, there are no limitations. That's what I said." Transcript, p. 238 . . . .

"Vice Chairperson Sockwell: If I might interrupt just briefly, again the contextual issues here are such that I think what has been made apparent is that the zoning **regulation does**

not specifically prohibit the use of a berming situation, does not specifically limit the extent of berming but would in context with other regulatory issues and other law possibly be contextually not possible in certain circumstances."
Transcript, p. 239 (emphasis added).

* * *

"Mr. Lourenco: Other than the fact that I don't have a lot of latitude to factor in the concerns of the neighbors because I'm bound by very strict rules, I do think I understand the concerns of the neighbors, and I wish we could reach some agreeable solution here."

"Mr. Brown: Having recognized and understood their concerns, your duty was to enforce the zoning regulations."

"Mr. Lourenco: That's correct." Transcript, p. 243.

III. REVISED CHRONOLOGY OF EVENTS

The following detailed chronology is critical to establishing the facts and legal rights of this case. Based on the hearing transcript ("Transcript") from the February 2, 2000 public hearing and other information, Intervenor has revised its chronology. Revisions have been *italicized* for clarity. Unless otherwise noted, references to Exhibits are to Intervenor's Exhibits in its pre-hearing submission.

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. *Appellants did not challenge this permit, including issues not involved in the September 17, 1999 permit, until November 3, 1999 or almost five (5) months later.*

June, 1999: Appellants meet with Intervenor to discuss project. Intervenor provided a copy of its plans. Appellants' Brief at Page 9. *The plans provided were not schematics, but reduced sized copies of the actual scaled elevations*

from Permit No. 1 and site plan. See Appellants' Exhibit 3 and 5. Transcript, pp. 73-74. Mrs. Clark made a copy of the plat. Transcript, p. 74.

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. *Based on testimony at the hearing, it appears that no stop work order was ever issued. Transcript, pp. 137, 163.*

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 3, 4 or 5, 1999: *Appellant, Mr. Sloame visits DCRA, obtains copy of Permit No. 1 application and meets with Mr. Toye Bello, Zoning Technician. Transcript, p. 81.*

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

August 11, 1999: *Appellant, Mr. Sloame confers by telephone with Mr. Bello. Mr. Sloame is informed that Intervenor can continue construction provided revised plans are submitted to revise the "furnished grade." Transcript, pp. 83-84.*

August 12, 1999: Foundation for rear addition started.

August 16, 1999 Carpenters begin framing house. *Transcript, p. 86.*

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

August 23 or 30, 1999: *Appellant, Mrs. Emily Baker, contacts ANC 3F. Mrs. Baker expresses neighbors' concerns regarding the building's height, footprint and side yard setback and compliance with Zoning Regulations. Neighbors would call back once they learned DCRA's position on second permit. See ANC 3F chronology.*

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. *Transcript, p. 84.*

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.

August 27, 1999: *First construction draw (15%) paid for work completed previously. This draw includes building permit and location survey required, demolition and foundation complete.*

August 31, 1999: *Mr. Toye Bello tells Mr. Sloame that revised plans have been submitted and Zoning Administrator would make decision "that week." Transcript, p. 86.*

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: *Mr. Clark learns of Zoning Administrator's "decision" to approve revised permits. Transcript, p. 115. See also ANC 3F chronology.*

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). *Transcript, p. 102.*

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 emphasize [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).

September 22, 1999: *Mr. Sloame receives appeal form and regulations by fax from BZA. Transcript, pp. 105, 120.*

About Week of October 4, 1999: *Mr. Clark received a copy of Permit No. 2 from DCRA. See ANC 3F chronology.*

October 8, 1999: *Second construction draw (20%) paid for work completed previously bringing expenditures to 35% of construction amount. This draw includes framing completed, exterior sheathing completed, roof trusses and roof sheathed.*

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 8, 1999: *ANC 3F Commissioner leaves message for Mr. Murray Cohen, Intervenor, informing him of BZA Appeal and November 15, 1999 ANC 3F meeting. See ANC 3F chronology.*

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.

December 29, 1999: *Third construction draw (15%) paid for work completed previously bringing expenditures to 50% of the construction amount. This draw includes interior studs, plumbing, heating, and electric rough-in complete and inspected, bath tubs set, roof shingled, doors and windows installed, and building closed to weather.*

February 15, 2000: *Fourth construction draw (15%) paid bringing expenditures to 65% of construction amount. This draw includes exterior siding/brick complete, exterior trim/fascia/soffit complete, interior drywall/plaster complete and basement slab.*

IV. CONCLUSION

1. The Appeal is untimely and must be dismissed for lack of Board jurisdiction .
2. The Appeal is barred by the doctrines of estoppel and laches and must be dismissed.
3. Appellants have the burden of proof in this Appeal. 11 DCMR 3119.2. Appellants 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

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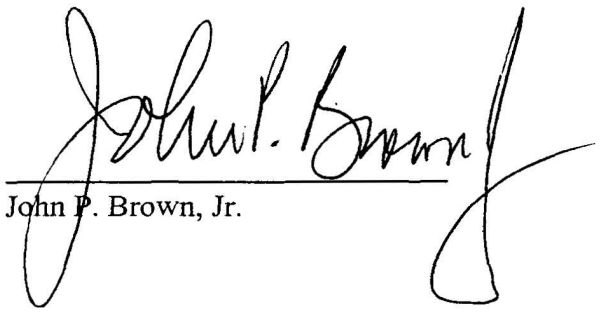
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Intervenor's Highlights of February 2, 2000, Public Hearing and Revised Chronology of Events was sent by hand-delivery this 22nd day of February, 2000 to:

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