Statement of Phil Kogan, Commissioner, ANC 3F to the Board of Zoning Appeal
February 2, 2000
Re: Docket No. 16533
4512 28th Street NW

I am here today to represent ANC 3F in the matter involving the appeal of George Clark and others to the issuance of permits by the Department of Consumer and Regulatory Affairs (DCRA) on June 7, 1999, and September 17, 1999 relative to the property at 4512 28th Street.

On January 10, 2000, ANC 3F voted unanimously – six in favor, zero opposed, and zero abstaining – to support a resolution finding that:

1. The DCRA incorrectly issued Building Permit No. B424294 on June 7, 1999, to Forest Hills, LLC, authorizing demolition of the structure at 4512 28th Street, construction of 3 floors, and the addition of a new one story garage on the existing foundation;
2. The DCRA issued a revised Building Permit No. B426784 on September 17, 1999, to allow a change to the finished grade and acknowledged that the structure as previously approved was, in fact, four stories;
3. The DCRA's revised permit was issued ***following*** construction of a four story structure;
4. The DCRA's revised permit was issued to enable Forest Hills, LLC, to avoid the three story height limitation of 11 DCMR §400.1; and
5. The revised permit does not change the fact that the structure built in accordance with the initial incorrect permit is a four story structure.

The ANC also found that the DCRA had not adequately addressed the issues of (1) whether the structure at 4512 28th Street improperly extends beyond the pre-existing footprint; and (2) whether the side yards of the structure comply with the minimum requirements for distance from the adjacent properties.

The issue of ensuring that construction of "tear down" properties is in compliance with the zoning regulations and the character of the surrounding community is of great importance to our ANC. As residents of the District of Columbia, the ANC and our neighbors believe that it is our neighborhoods which make the District such an attractive place to live. And what makes our neighborhoods great is their people and their character including existing homes. Tear down/rebuild development can undermine our neighborhoods and that is why we must be vigilant about this type of development.

I want to be clear. ANC 3F and our Forest Hills/North Cleveland Park neighbors do not oppose development in our neighborhood. We do not oppose all tear down/rebuild projects. But we do 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. The ANC finds that Mr. Clark and his neighbors have made strong and

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compelling arguments this is not the case in this situation.

This case raises very serious questions about DCRA's behavior and the manner in which both permits for this tear down/rebuild project were handled. In fact, it sends a chill up the spine of homeowners to see the DCRA acting as carelessly as it has in the permitting process. As we pointed out in our resolution and our report, the DCRA, in violation of the DCMR, failed to notify the ANC of any Forest Hills, LLC, applications to demolish an existing structure, construct a new structure, and perform other work at the 4512 28th Street site. Nor did DCRA notify the ANC of any application to regrade this site following construction. DCRA, by violating the DCMR, thereby denied timely notice to our ANC and precluded review by the ANC and the neighborhood prior to any zoning violation occurring.

It is now clear that the June 7, 1999, permit for demolition and construction at 4512 28th Street was incorrectly issued by DCRA and Mr. Pat Brown now acknowledges that the permit was issued on the basis of a "mistake" in the application. Given that the application for the permit requested authority to build a four story house and that zoning rules allow structures of only three stories, there should be little doubt that this permit should never have been issued.

But it is DCRA's actions after the permit was issued to which the ANC and our neighbors take ***very strong exception***. Upon hearing the complaints from Mr. Clark and others and receiving inquiries from Council Member Kathy Patterson about the matter, DCRA officials and Forest Hills, LLC, principals landed upon a convoluted scheme to allow the developer to heap some soil onto the side of the new structure at 4512 28th Street, call this a berm created by a regrading, and thereby miraculously – ***if not mischievously*** – recreate what had been a one story basement into what DCRA would now have us believe is a cellar. In this clever maneuver, DCRA perhaps hoped it could avoid the consequences of its own error in issuing the original permit. Advisory Neighborhood Commission 3F finds this kind of misbehavior unacceptable from public officials paid with our tax dollars to enforce the law. The BZA needs to send a strong message to DCRA that the District of Columbia government does, in fact, respect the rule of law and that this kind of msibehavior will not be tolerated.

As we stated in our resolution, the appeal of George Clark and his neighbors has merit in that the DCRA incorrectly issued a building permit which enabled Forest Hills, LLC, to construct a four story structure, and DCRA then acted in such a manner as to avoid and evade the three story limit in the DCMR;

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

The ANC is also very concerned that DCRA's response to complaints about this project from Mr. Clark, his neighbors, and Councilmember Patterson was wholly inadequate. We've heard talk from DCRA officials about the "new DCRA" but frankly, we haven't seen much evidence of this. For this reason, as we state in our resolution and our report, the BZA should direct DCRA

to do what it should have done in the first place: To contract with an independent surveyor and obtain an impartial third party survey that will establish two facts:

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

We also request that the BZA direct the DCRA to report back to it on (1) the results of this third party survey; (2) on DCRA's determination of whether or not these results indicate that the structure at 4512 28th Street fails to meet requirements of the zoning regulations; and (3) the steps DCRA proposes to take to address such violations.

(c) The Council shall accept or reject such a petition within 3 months after its receipt.

History
(1973 Ed., § 1-171g; Oct. 10, 1975, D.C. Law 1-21, § 10, 22 DCR 2071; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952.)

§ 1-260. Conduct of elections.
Statute text
(a) The Board is authorized to conduct the elections provided for in this act and to adopt, amend, repeal, and enforce such regulations as are deemed necessary to carry out the provisions of this act. The Board shall conduct such elections in the same manner as elections held under Chapter 13 of this title.

(b) For the purposes of this act, the term "registered qualified elector" means a qualified elector, as defined in § 1-1302, registered under § 1-1311.

History
(1973 Ed., § 1-171h; Oct. 10, 1975, D.C. Law 1-21, § 11, 22 DCR 2072; June 19, 1976, D.C. Law 1-72, § 7, 23 DCR 578.)

§ 1-261. Advisory Neighborhood Commissions - Duties and responsibilities.
Statute text
(a) Each Advisory Neighborhood Commission (hereinafter in §§ 1-261 to 1-264 the "Commission") may advise the Council of the District of Columbia, the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning, streets, recreation, social services programs, education, health, safety and sanitation which affect that Commission area. For the purposes of this act, proposed actions of District government policy shall be the same as those for which prior notice of proposed rulemaking is required pursuant to § 1-1506(a) or as pertains to the Council of the District of Columbia.

(b) Thirty days written notice of such District government actions or proposed actions shall be given by mail to each Commission affected by said actions, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. The Register shall be made available, without cost, to each Commission.

(c) (1) Proposed District government actions covered by this act shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or independent agency. In addition to those notices required in subsection (a) of this section, each agency, board and commission shall, before the award of any grant funds to a citizen

organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals, and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section. Each District of Columbia agency shall maintain a record of such notices sent to each Commission.

(2) The Alcoholic Beverage Control Board shall give notice to Advisory Neighborhood Commissions at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location. The notice shall be given to the Advisory Neighborhood Commission representing the area in which the applicant's establishment is located. The Board shall give notice by first-class mail, posted not less than 5 calendar days prior to the first day of the 45-calendar-day notice period, and addressed to the Commission office, with sufficient copies of the notice for distribution to each Commission member, the Chairperson of the Commission at his or her home address of record, and the Commission member in whose single-member district the establishment is located at his or her home address of record. In addition, the Board shall provide to each Commission office, on a quarterly basis, a printed list of all ABC licenses due to expire in the ensuing 6 months. An Advisory Neighborhood Commission may object to the application in the manner set forth in § 25-115(c) and (e).

(3) The Department of Licenses, Investigation and Inspections shall ensure that each affected Advisory Neighborhood Commission is provided regularly by mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission.

(d) Each Commission so notified pursuant to subsections (b) and (c) of this section of proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with § 1-262(c) which is open to the public in accordance with § 1-262(g). At the close of business of the 31st day from mailing of such written notice or earlier if such limited publication has been provided, the affected District government entity may proceed to make its decision. The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken. "Great weight" requires acknowledgement of the Commission as the source of the recommendations, and requires explicit reference to each ANC issue and concern as such as well as specific findings and conclusions with respect to each.

(e) Repealed.

(f) Each Commission may present its views to any federal or District agency.

301.6 The notice shall be given to the Advisory Neighborhood Commission representing the area in which the applicant's establishment is located.

301.7 The Board shall give notice by 1st class mail, posted not less than 5 calendar days prior to the 1st day of the 45-calendar-day notice period, and addressed to the Commssion office, with sufficient copies of the notice for distribution to each Commission member, the Chairperson of the Commission at his or her home address of record, and the Commission member in whose single-member district the establishment is located at his or her home address of record.

301.8 In addition, the Board shall provide to each Commission office, on a quarterly basis, a printed list of all ABC licenses due to expire in the ensuing 6 months.

301.9 An Advisory Neighborhood Commission may object to the application in the manner set forth in D.C. Code §25-115(c) and (e))."

301.10 The Department of Licenses, Investigation and Inspections[1] shall ensure that each affected Advisory Neighborhood Commission is provided regularly by mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission.

SOURCE:§13 of the Advisory Neighborhood Councils (Commissions) Act of 1975, effective October 10, 1975, D.C. Law 1-21, as amended by D.C. Law 1-27, D.C. Law 2-30, D.C. Law 1-58 , and D.C. Law 9-174, D.C. Code Sec. 1-261 (1992 Repl. Vol.)

302 ANC ACTION FOLLOWING NOTICE (D.C. Code §1-261(d))

302.1 Each Commission so notified pursuant to subsections 301.1 - 301.4 of proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with section 402 which is open to the public in accordance with section 401.6.

302.2 No official action may be taken by a Commission unless a majority of the elected representatives of the Commission is present.

302.3 At the close of business of the 31st day from mailing of such written notice or earlier if such limited publication has been provided, the affected District government entity may proceed to make its decision.

SOURCE: §13 of the Advisory Neighborhood Councils (Commissions) Act of 1975, effective October 10, 1975, D.C. Law 1-21, as amended by D.C. Law 8-203, D.C. Code Sec. 1-261 (1992 Repl. Vol.)

303 GREAT WEIGHT (D.C. Code §1-261(d))

303.1 The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the governmental agency and those

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[1]The Department of Licenses, Investigation and Inspections is now the Department of Consumer and Regulatory Affairs by virtue of Reorganization Plan No. 1 of 1983, effective March 31, 1983.