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May 16, 2000

'00 MAY 16 P3:20

VIA HAND-DELIVERED

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

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

Dear Ms. Reid:

Enclosed please find the original and nine copies of Appellants' Opposition to Intervenor's Request for Further Hearing. I have also enclosed a copy to be stamped in as received and returned.

Thank you for your courtesies in this matter. Please feel free to contact me if you have any questions.

Sincerely yours,

George R. Clark

GRC/ydw
Enclosures

cc: Whayne S. Quin, Esquire
Mr. Michael Johnson
Mr. Phillip Kogan

BZA
Case No. 16533
Exhibit No. 45

Board of Zoning Adjustment
District of Columbia
CASE NO.16533
EXHIBIT NO.45

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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

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APPELLANTS' OPPOSITION TO
INTERVENOR'S REQUEST FOR FURTHER HEARING

Intervenor's May 8, 2000[1] request to reopen the record should be seen as nothing more than an attempt to forestall the issuance of the Order which was voted upon at the April 18, 2000 public meeting of the Board. Intervenor's request incorrectly assumes that the Board's written Order will do nothing more than repeat the discussion of April 18, 2000 without further elaboration. As such, it ignores the purposes behind a written Order. Moreover, to the very limited extent Intervenor's request tries to raise new issues, it is an attempt to avoid the prohibitions of 11 DCMR §3126.6 which limits a request for rehearing to new evidence which could not have been reasonably submitted at the original hearing. Each of the points raised by the Intervenor could have been raised in the original hearing, and thus could not be the basis for a motion for rehearing after the issuance of a written Order.

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[1] Although Intervenor's request states that it was served by hand on May 8, 2000, that inadvertently was not done, and Appellants did not receive it until May 10, 2000.

Moreover, Intervenor offers no cogent reason for reopening the hearing and is simply incorrect in several of its assertions. Two of the alleged reasons for reopening the hearing were raised by the Appellants, and the other two reasons could have been raised by Intervenor. Therefore Intervenor's request should be denied, and the Board should proceed to the issuance of a written Order.

ARGUMENT

1. Intervenor's position with respect to the November 1999 repeal of 12 DCMR §105.2 ignores the fact that exactly the same language (except for a change in citation) was re-enacted as 12 DCMR §110.2. Thus whatever impact the Board may give to this regulation in its Order can be done today. Moreover, the September 1999 permit allowing regrading to try to bury the fourth story was issued prior to the November 1999 repeal.

2. Intervenor again assumes too much when it presumes that the Board has ignored 11 DCMR §401.1. First, Appellants discussed this regulation in their prehearing statement of January 19, 2000 (pp. 23-24) and in their April 10, 2000 post-hearing findings of fact (pp. 61-62). Although the Intervenor may feel it appropriate to conclude that the Board

has ignored and will ignore these arguments, Appellants are not so presumptuous. To the extent that Intervenor is saying that it did not make an argument concerning this regulation and now wants to do so, again it is trying to obtain a rehearing based upon an insufficient ground.

Moreover, 11 DCMR §401.1 states that a new building cannot be constructed unless it complies with all of the provisions of the then current zoning code. This is consistent with well-established District of Columbia law that one of the major purposes of the zoning regulations is the gradual elimination of existing nonconforming structures. Lenkin v. District of Columbia Board of Zoning Adjustment, 428 A.2d 356, 358 (D.C. 1981); Wood v. District of Columbia, 39 A.2d 67,69 (D.C. App. 1944). There is a clear regulatory objective against nonconforming structures. Silverstone v. District of Columbia Board of Zoning Adjustment, 372 A.2d 1286, 1290 (1977), affirmed, 396 A.2d 992 (D.C. 1979); Sheridan-Kalorama Neighborhood Council v. District of Columbia Board of Zoning Adjustment, 411 A.2d 959, 963 (D.C. 1979). Intervenor's argument would result in perpetuating new nonconforming structures indefinitely into the future.

3. Intervenor also raises an issue with respect to the "legislative history" of 11 DCMR §405.8. Again, this could have been presented at the original hearing. And once again, this argument does nothing to address the Appellants' position that there was no building that has been added to or enlarged, such that §405.8 even comes into play. Moreover, when figures three through five from that legislative history are examined, it is even clearer that there must be an existing building in order for this provision to apply.[2]

4. Finally, there was extensive questioning about the interpretation of "finished grade" at the hearing. Once again, the subject was addressed in Appellants' post-hearing findings (pp. 23, 55-56). And the specific testimony at the hearing (as opposed to general assertions) about this practice referred only to commercial properties, not residential. Moreover, there is no evidence that any interpretation adopted by the Board would have an adverse impact on any residential or commercial development. And adopting Intervenor's position would allow 10 story buildings in the R-1-A zones.

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[2] These pages were not attached to Intervenor's request but were supplied to counsel for Appellants upon his request, and are attached to this Opposition.

Appellants respectfully request that Intervenor's request for reopening the hearing be denied, and that the Board proceed forthwith to issue its Order.

Respectfully submitted,

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Attorney for Appellants

May 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have on May 16, 2000 hand-delivered a true copy of the foregoing Opposition to Intervenor's Request for Further Hearing to the parties listed below.

VIA HAND-DELIVERY
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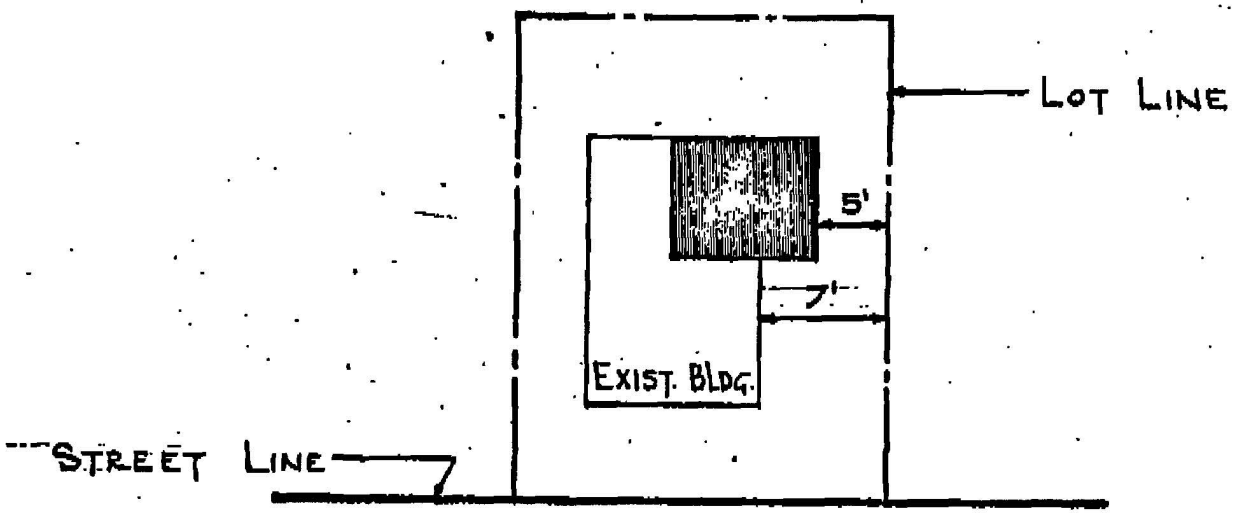


FIGURE 3 ~ NOT PERMITTED

SCALE: N.T.S.

NOTE:

PROPOSED ADDITION

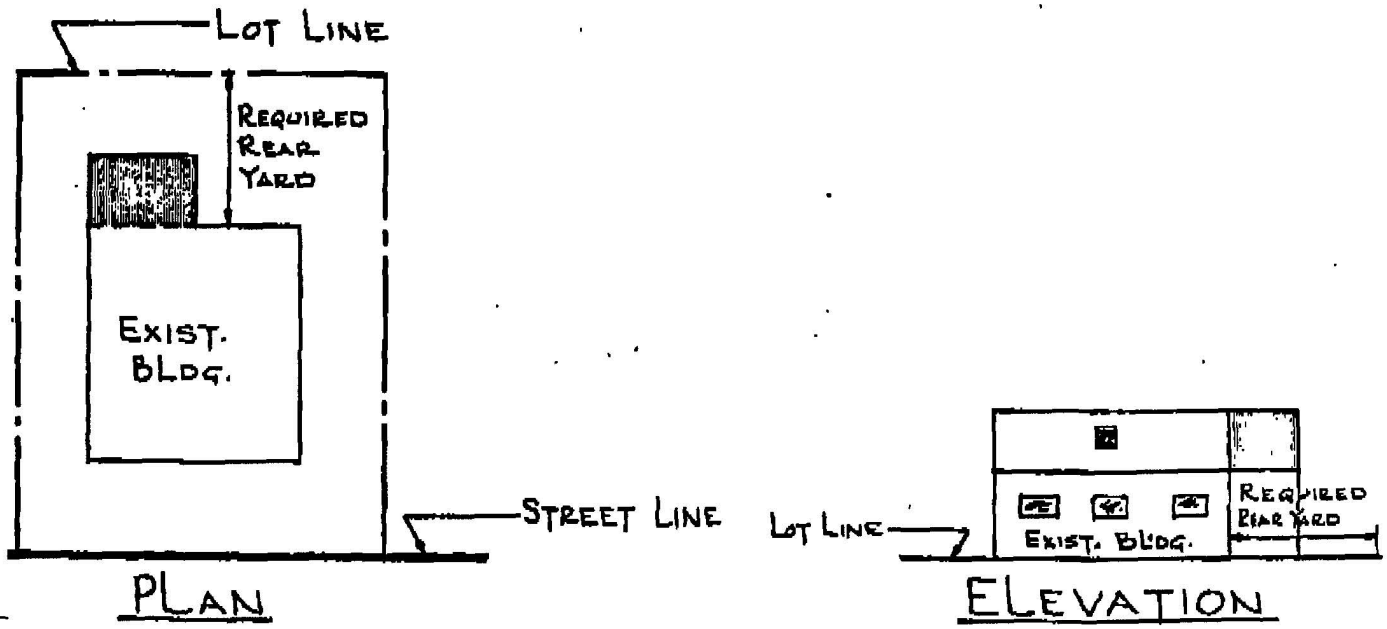


FIGURE 4 ~ PERMITTED

SCALE: N.T.S.

NOTE: