GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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'00 MAY 24 P3:55

May 10, 2000

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

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

Dear Mr. Clark:

This will respond to your letter dated April 28, 2000, alleging that there has been an *ex parte* meeting between Armando Lourenco of the Department of Consumer and Regulatory Affairs (DCRA), the Zoning Commission chairperson, and myself regarding the above-referenced case. From your letter, it is clear that there have been some misunderstandings about a meeting that took place between myself, Zoning Commission Vice-Chairperson Carol Mitten, and the Zoning Administrator, Michael Johnson, in Mr. Johnson's office on April 25, 2000.

Let me begin by saying that there has never been a meeting between Mr. Lourenco, the Zoning Commission chairperson, and myself. Mr. Lourenco poked his head in the door of Mr. Johnson's office for a moment on April 25th to speak briefly with Mr. Johnson, and acknowledged Ms. Mitten and me only by saying "hello." Mr. Johnson had requested the April 25th meeting because he was concerned, based upon a newspaper article published after the Board's decision meeting on your appeal, that the Board had ordered DCRA to take immediate action with respect to the house at 4512 28th Street, N.W., and that DCRA needed to improve the permitting process. Neither Mr. Lourenco nor the Zoning Commission Chairperson, Anthony Hood, were present for the meeting, and neither Mr. Hood, Ms. Mitten, nor I have ever had any conversations with Mr. Lourenco involving your appeal.

BZA
Case No. 16533
Exhibit No. 49

Board of Zoning Adjustment
District of Columbia
CASE NO.16533
EXHIBIT NO.49

The following general topics were discussed at the April 25th meeting:

1. There was a general discussion of zoning regulations which needed to be considered for amendment. Ms. Mitten furnished a copy of a section of the Fairfax County regulations, a copy of which is enclosed, relating to grading, drainage, erosion, and sedimentation;

2. There was a general discussion relating to concerns about the DCRA permitting process, including the need for staff training, and improving the enforcement of the Board's orders;

3. Mr. Johnson asked whether the Board had ordered specific remedies or provided specific instructions to DCRA relating to the house at 4512 28th Street. Ms. Mitten and I advised Mr. Johnson that the Board did not order specific remedies or provide specific instructions to DCRA with respect to the course of action to be taken after the appeal hearing; and

4. Mr. Johnson asked whether the final decision and order in Appeal No. 16533 would state with clarity the Board's order, and was told that the final order would be written with the assistance of the Office of the Corporation Counsel and, therefore, would clearly state the Board's order.

The above constitutes full disclosure of the communications that took place at the April 25th meeting. At no time did we discuss the specifics of your appeal, our interpretation of the Board's decision, or anything else bearing on the merits of the appeal or the substance of the written decision and order to be issued. In light of the nature and substance of the communications that took place at the April 25th meeting, my role and Ms. Mitten's role in bringing about needed improvements to the zoning process, and Ms. Mitten's role as a member of the Zoning Commission in recommending changes to the Zoning Regulations, I do not believe that the April 25th meeting has had or will have any impact whatsoever on any further consideration of the issues in this case, including the drafting, discussion, or review of the Board's written decision. The intent of the meeting, rather, was to look at what could be done to improve our regulations and permitting process, utilizing the relevant sections of the regulations of neighboring jurisdictions as guidance.

By copy of this letter, all the parties to this case will be afforded the opportunity to make a written submission to the Board responding to the information that has been disclosed in this letter. Written submissions are due no later than May 23, 2000. The written submissions will be included in the record, together with this letter and your April 28, 2000, letter, and reviewed by the Board at its June 7, 2000, public meeting to determine

whether further action is warranted. **Any written submissions must be limited to a response to the last two items disclosed above relating to this case; that is, item number 3, pertaining to Mr. Johnson's question as to whether or not the Board, at its April 18, 2000, decision meeting, had ordered specific remedies or provided specific instructions to DCRA relating to the house at 4512 28th Street; and item number 4, pertaining to Mr. Johnson's request that there be clarity in the Board's written order. Pursuant to Rule 3121.9 of the Board's Rules of Practice and Procedure, any other information or arguments bearing upon the substance of the appeal will not be accepted for inclusion in the record.**

It is unfortunate that Mr. Lourenco's comments at the Guy Mason Recreation Center have resulted in confusion about the handling of your case. However, to reiterate, I do not believe that any of the communications that took place at the meeting between Mr. Johnson, Ms. Mitten, and myself would deprive any of the parties to this case of their right to a fair and impartial hearing and decision or would require me or Ms. Mitten to recuse ourselves from further participation in this case.

Sincerely,

Sheila Cross-Reid, Chairperson
Board of Zoning Adjustment

Enclosure (1)

cc: Michael Johnson, Zoning Administrator

Whayne S. Quin
Attorney for Forest Hills, LLC

David J. Bardin, Chairperson, ANC 3F

Jerrily R. Kress, Director
Office of Zoning

Anthony Hood, Chairperson, ZC
Carol Mitten, Vice-Chairperson, ZC

PART 6 2-600 LAND REGULATIONS

2-601 Limitation on the Removal and Addition of Soil

No soil shall be removed from or added to any lot in any zoning district except in accordance with one of the following provisions:

1. Sod and soil may be removed from or added to any lot to a depth of not more than eighteen (18) inches but only in an area not exceeding 5,000 square feet; provided, however, that this provision shall not apply to the temporary storage of top soil by plant nurseries. In a floodplain, sod and soil may be removed in accordance with this paragraph, however, the addition of sod and soil shall only be permitted in accordance with the provisions of Part 9 below; or

2. Removal, dumping, filling, or excavation necessary for construction shall be permitted when such is in accordance with an approved site plan or approved plans and profiles for a subdivision; or

3. Grading of land shall be permitted in accordance with a grading plan approved by the Director. The Director shall determine that the amount of soil removal or fill and proposed grading is necessary for the establishment of a use permitted in the zoning district in which located, and that the grading plan shall provide for even finished grades which meet adjacent properties' grades and do not substantially alter natural drainage, and which plans include siltation and erosion control measures in conformance with the provisions of Chapter 104 of The Code; or

4. Any other grading, excavating, mining, burrowing and/or filling of land not listed above shall be permitted only in accordance with the provisions of Part 1 of Article 8 or the approval of a landfill in accordance with the provisions of Part 2 of Article 9.

2-602 Drainage, Floodplains and Wetlands

1. Notwithstanding the provisions of Sect. 601 above, no building shall be erected on any land and no change shall be made in the existing contours of any land, including any change in the course, width or elevation of any natural or other drainage channel, in any manner that will obstruct, interfere with, or change the drainage of such land, taking into account land development that may take place in the vicinity under the provisions of this Ordinance, without providing adequate drainage in connection therewith as determined by the Director in accordance with the provisions of the Public Facilities Manual.

2. There shall be no filling, change of contours or establishment of any use in any floodplain except as may be permitted by the provisions of Par. 1 of Sect. 601 above, or Part 9 below.

3. There shall be no filling, change of contours, or establishment of any use or activity in any wetlands except as may be permitted by the provisions of Part 10 below.

2-603 Erosion and Sedimentation Control Regulations

For the purpose of alleviating harmful and/or damaging effects of on-site erosion and siltation on neighboring downhill and/or downstream properties during and after de-

velopment, adequate controls of erosion and sedimentation of both a temporary and permanent nature shall be provided by the property owner during all phases of clearing, filling, grading and construction. Plans and specifications for such controls shall be submitted to and approved by the Director in accordance with the provisions of the Public Facilities Manual.

2-604 **Pro-Rata Share of Costs for Drainage Facilities**

1. A subdivider or developer of land shall be required to pay a pro-rata share of the cost of providing reasonable and necessary drainage facilities, located outside the property limits of the land owned or controlled by the subdivider or developer, but necessitated or required, at least in part, by the construction or improvement of his subdivision or development.

2. When directed to do so by the County Executive, the Director of Public Works shall study and compute the total estimated cost of ultimate drainage facilities required to serve a drainage shed when and if such drainage shed is fully developed in accordance with the adopted comprehensive plan for the shed. The computation of estimated costs shall include any engineering study for the shed, and the total cost of such construction, and easement and floodplain easement acquisition cost where necessary. When this total cost is computed it shall be updated every six (6) months by applying the Engineering News-Record cost index factor to the construction costs. The above study with its attendant cost figures shall constitute the general drainage improvement program for the affected drainage shed.

3. When a general drainage improvement program has been established pursuant to Par. 2 above, a pro-rata share of the total cost of the program shall be determined as follows:

   A. The estimated increased volume and velocity of storm water run-off for the drainage shed when fully developed in accordance with the adopted comprehensive plan shall be computed.

   B. The increased volume and velocity of storm water run-off caused by a subdivision or development shall be computed.

   C. The ratio of the volume and velocity of storm water run-off caused by a subdivision or development to the estimated total volume and velocity of storm water run-off for the drainage shed, expressed as a percentage, shall be applied to the total cost of the drainage improvement program for the drainage shed. The resultant figure shall be the pro-rata share for the subdivision or development.

4. The payment of the applicable pro-rata share calculated pursuant to Par. 3 above shall be a condition precedent to the approval by the County of a subdivision plat or, where a subdivision has been previously approved or where the subdivision of land does not occur, prior to issuance of any Building Permit for the development.

5. Payments received pursuant to this Section shall be expended only for the construction of those drainage facilities for which payment was required. Until so expended, payments shall be held in an interest-bearing account for the benefit of the subdivider or developer of land.

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