Government of the District of Columbia

OFFICE OF ZONING

441 4TH STREET, N.W.
SUITE 210
WASHINGTON, D.C. 20001
(202) 727-6311

MEMORANDUM

TO: Michael D. Johnson
Zoning Administrator

FROM: Jerrily R. Kress, FAIA
Director

DATE: June 25, 2001

RE: Letter dated June 4, 2001, from Sarah Canzoneri Concerning Alleged Zoning Violations at the Alban Towers Rear Construction Site and BZA Order # 16586.

The above cited letter (attached) was received by the Office of Zoning on June 19, 2001. I am forwarding this letter to you as it references alleged zoning and building code violations that fall under the purview of your office. Please look into the allegations, and feel free to telephone Richard S. Nero, Jr., Special Assistant on (202) 727-6311, if we can be of further assistance in this matter.

Attachment
cc: Sarah Canzoneri
Sheila Cross Reid
BZA Case File # 16586

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Board of Zoning Adjustment
District of Columbia
CASE NO.16586
EXHIBIT NO.45

R. Sockwell

Sarah Canzoneri
3716 Garfield Street, NW
Washington, DC 20007
(202) 625-2124

RECEIVED
D.C. OFFICE OF ZONING
2001 MAY 19 PM 2:30

June 4, 2001

Mr. Jim S. Kane
Charles E. Smith Realty Companies
2345 Crystal Drive, Crystal City
Arlington, VA 22202

Re: Alban Rear Site Construction

Dear Jim:

This is in response to your certified letter of May 16, which we received on May 19.

In my recent e mails to you and in conversations with DC government officials, I have raised the concerns about: (1) your contractor's use of Garfield Street; (2) the lack of a dust control program; (3) construction workers parking on streets covered by the permit parking program; and (4) construction work going on at the project after the hours set in the BZA order. I'll briefly review our concerns below.

1) *Your contractors' use of the 3700 block of Garfield Street and the corner of 38th and Garfield.* As I noted to you in my e mails, the street has, essentially, become part of the construction site. The North half of Garfield Street is regularly used as an area to park, stage, load, and unload construction vehicles. Trucks are constantly parked, blocking traffic on the North side of the street for the entire length of the block from Wisconsin Ave to 38th Street. When the roll on dumpsters are exchanged, they are left in the street. Though District law requires that most vehicles may not park and idle for more than three minutes, trucks do so frequently. One day recently, a diesel truck was parked, idling, for three hours on Garfield Street. Other days, dump trucks have been parked, idling at length, on the corner of 38th and Garfield.

Some days, concrete trucks are lined up in the street (facing in the wrong direction) with engines idling, waiting to enter the site. One day, the contractors began the day with a concrete truck in the street emptying concrete into the bucket to be lifted by the crane. Only after concrete had splattered onto my husband's car (which was parked in front of our house across the street from the project) did the contractors decide to move the trucks out of the street to empty them. During the last two weeks, the trucks have been parked with their cabs sticking out into the street across from our house as they pour. This means that they obstruct traffic, and that we have to listen to their constant noise all day. (Under District regulations, concrete trucks may idle in order to power their drums.)

Today, Southland Concrete set up a noisy crane in front of the garage entrance so close to Garfield Street that some of it was in the street. The concrete trucks parked beside it, extending into the street to be emptied. This arrangement meant that the noise for neighbors was maximized. When I asked why the crane and trucks could not have been put in the alley behind the Alban Towers building further from our house, I was told that the subcontractor was not allowed to put them there, though the alley was not being used by other construction equipment.

In addition to using the North half of Garfield Street, construction workers and construction vehicles have been parking on the South side of the street. I pointed out to you that, given that construction vehicles were blocking the North side of the rather narrow street, it would help if your workers did not also use the South side of the street. This, though, is part of the larger problem of construction workers parking on streets with permit parking.

2) Lack of a dust control program. The BZA order provides that "contractors shall maintain a program of dust control along 38th and Garfield Streets, periodic watering of soil, daily cleaning of 38th and Garfield Streets, and daily washing of truck tires and undercarrages." Nonetheless, the contractors have done almost nothing to keep dust down on the project site.

Prevailing winds blow to the South and the project is at street level on Garfield. Moreover, both the roll-on dumpster used to collect demolition debris from the building and the dumpster used for debris from the garage project are located beside Garfield Street. Thus, the apartment building and homes on the South side of Garfield are particularly impacted by dust from the project.

Your contractors have never had a program to wash trucks or water down the site. The street has not been hosed. At times, Garfield Street has, literally, been brown because there was so much soil on the pavement. Even on weekends, when there was no one working on the site, dust would constantly be swirling in the street as cars passed. I have complained to you for months now about the lack of a dust control program at the project, with no results .

Last fall, at the height of the drought, you told me that water trucks would be used to clean the street, but they never showed up. Recently, there has been a man with a push broom sweeping the North side of the street. What he does is to sweep dust back on to the project site, from where it is almost immediately blown or tracked into the street again. In traveling around the city, I have yet to see another construction site where the nearby street is as dusty and dirty as Garfield has been.

Last Thursday morning, men using a loud electric saw to cut concrete blocks for the garage started working beside the street. Dust billowed up and was blown out toward the houses on the south side of the street. I complained to Officer Rogers and he got the men to go inside the garage. However, on Friday morning, they were outside again and he could not get them to move. They continued to cut blocks there through the day. I spoke to John Ball, the project supervisor, about the problem to no avail.

This morning, the men with the saws were there again, and I spoke to John Ball again. He said the men couldn't move, so I asked if there was some way they could use water to lessen the dust. He told me he could bring in a water table and reluctantly agreed to do so. No water table appeared today, though, and dust from the sawing of concrete blocks rose from the site all day. Later in the day, I learned that it is normal practice to use water tables for such sawing.

As you know, the BZA Order states that "[c]ontractors shall work with the Neighbors to minimize disturbances during construction to keep to a minimum noise, vibrations, air pollution, and other adverse effects from construction." We are not seeing this cooperation.

3) Construction workers' illegal parking. The BZA Order provides that "[c]onstruction workers shall be required to park on-site, in parking facilities designated by the Applicant, or on public on-street spaces not covered by the District of Columbia residential parking permit program." In my e mails, I pointed out that workers are routinely parking on Garfield and 38th Streets, though both streets are covered by the permit parking program, and that the workers are parking not only on these streets near the project, but up and down the streets as well.

In addition to construction workers parking on permit parking streets, we have had problems with construction workers and vehicles parking illegally close to corners, blocking the alley behind the Garfield House Apartments and obstructing fire hydrants. As discussed below, John Ball has made it a regular practice to park in front of the hydrant at 38th and Garfield for one to two hours at a time.

4) Construction Activity outside the hours specified in the BZA Order. As you know, the BZA order specifies that "construction and construction-related activities may not start before 7:00 a.m. nor continue after 5:00 p.m." on weekdays. Nonetheless, it is routine for construction workers to arrive and begin work related activities before 7 am. Moreover, work has continued past 5:00 p.m. on numerous occasions. It is particularly troubling when this happens on a day when the work has already been noisy and disruptive all day (e.g. when there have been a lot of concrete trucks.) On April 26, a police officer came at 5:10 when three concrete trucks were lined up in the street and two more were on the way. When told about the BZA Order, the subcontractor's supervisor on duty said he thought his men could work until 7 pm. That day, the subcontractor was permitted to work until all five trucks were emptied. That took until 6:45.

The same day, I contacted you and asked you to please make sure that all of your contractors and subcontractors knew about the work hours specified in the BZA order so that this would not happen again. Nonetheless, work has continued at the project after 5 pm on at least thirteen (of 25) weekdays after that. On several of these occasions, the work has involved the use of diesel equipment. Moreover, it is clear from their comments that subcontractors think they can work until 7 p.m. and Foulger Pratt seems to ignore the 5 pm cut off time. Last Wednesday, work was going on at the site until 6. Thursday, work with diesel equipment continued until after 7. On both days, John Ball was on site at the time. Tonight, I spoke to a subcontractor who was on site after 5. He told me that he had been told that he could work until 7.

In your letter you list five actions that Alban Towers L.L.C. has taken "[i]n response to the specific concerns [I] raised". My husband and I do not think that the things you list effectively respond to our concerns. Each of your actions are discussed below.

"Hired a full time person to sweep the street (by hand)." The BZA order provides that "contractors shall maintain a program of dust control along 38th and Garfield Streets, periodic watering of soil, daily cleaning of 38th and Garfield Streets, and daily washing of truck tires and undercarrages." This certainly contemplates more than a man with a push broom hired months after the project was started.

"Hired a uniformed DC police officer for 3 hours a day to help direct traffic and discourage construction related parking." We have had a number of conversations with Officer Rodgers regarding construction worker parking. He informed us that he cannot ticket the construction workers who park on permit streets until they have been there for two hours. He is not normally on duty long enough to do that. Moreover, as I noted in an e mail to you on May 4, Officer Rogers apparently told John Ball he could park in front of the fire hydrant. Since then, Mr. Ball has parked there frequently. Officer Rogers may help direct traffic, but he does not discourage construction related parking.

"Installed signs, in English and Spanish, asking the construction workers, for both projects, not to park on surrounding streets." When work began, signs were put up on the fences on the North side of Garfield Street and the East side of 38th street saying "No parking for Alban Towers Construction Vehicles or Personal Vehicles of Construction Site Personnel". These signs, by their own terms, say nothing about surrounding streets. Moreover, almost since the beginning of work on the project, and certainly now, these signs are routinely ignored by construction workers.

"We will be installing signs, in English and Spanish, in front of your house, asking that no construction related parking, for either project, occur." These signs have been installed and they seem to have some effect – at least in the early morning when Officer Rogers tries to enforce them. As I suggested to you months ago, when these signs are honored it helps with the traffic on Garfield because the spaces tend to be empty when construction workers are not using them. (We and our neighbors are not anxious to use the spaces during the day, because of all the trucks and dust in the street.) However, the signs are frequently ignored. Finally, I would note that the spaces in front of our house are not the only permit spaces on the street.

"Redoubled our efforts to educate all workers on the garage project, of the BZA requirements, especially parking in front of your house." As the discussion above makes clear, parking in front of our house is a small part of our concerns. As the discussion above also makes clear, the violations I have complained about continue. Whatever your "redoubled" efforts are, they are not having an effect.

In your letter, you seem to suggest that we should not call the police with complaints about your contractors' behavior.[1] When we consulted city officials and the police, though, we were told that if we were concerned that the contractors were not complying with their public use permit for the street and the BZA order, we should call the police. We were informed that the police would ask to see the permits and, if the contractor was in violation, the police would take appropriate action. Moreover, on one occasion when I showed a policeman the BZA order provision regarding working hours, he seemed to believe that he could enforce the order. We would not, of course, be calling the police if your contractors were voluntarily complying with the order you agreed to.

In your letter, you say that "while I appreciate receiving information from you concerning conditions at the site, the ANC, the BZA, and Alban Towers L.L.C. envisioned concerns being addressed through the liaison committee established for the duration of the construction of the parking facility."[2]

Frankly, I am confused by your comment about the liaison committee. Does your comment mean that Smith Company cannot resolve the matters we have raised and wants us to take these matters to the Liaison Committee? If so, could you inform us how to do so? The BZA order provides for the "Neighbors" (which includes us) to select representatives to the liaison committee, but no one has ever informed us that members were being selected or how we could take part in the selection. Before getting your letter, no one had even suggested to us that a liaison committee had actually been formed.[3]

In any case, the BZA order clearly does not limit us to using the liaison committee to seek redress of violations of the order. Moreover, it is difficult to see what the liaison committee could

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[1]You say "[c]ompliance with [conditions in the BZA order] is a joint effort of the community, zoning officials and Alban Towers L.L.C. Since the Metropolitan Police Department does not have such similar authority it maybe counter-productive to involve them as distinct from the appropriate parties."

[2]Paragraph 12 of the BZA Order provides that "to facilitate resolution of complaints from the Neighbors pertaining to the terms of this order or other matters, the Applicant shall maintain the following procedures:

b. The Applicant shall use reasonable or best efforts to resolve the issue as promptly as possible.

c. If an issue is not resolved, the person or party raising the issue or the Applicant shall notify the Liaison Committee. ...

[3]Your letter notes a cc to "38th Street Liaison Committee Members." However, the committee described in the BZA order is supposed to represent "Neighbors" which "includes any resident within two blocks of the site" not just residents of 38th Street.

do to resolve such concerns. Only public authorities have the power to determine if you are not complying with the order and to take action for any noncompliance. Furthermore, our concerns about your contractor's use of the street are covered by the contractor's public use permit.

In your letter, you write "[a]s we have stated on many occasions, Alban Towers L.L.C.... is committed to complying with its agreements with the community and the conditions set forth in the order issued by the Board of Zoning Adjustment." I wish that Matt and I believed that your words would be matched by actions. Unfortunately, our experience does not suggest that they will.

Sincerely,

Sally Canzoneri

Sarah Canzoneri

cc: Rosalyn Doggett, ANC 3C08
Paul Hart, BZA Staff
Phil Heinrich, DC Neighborhood Services Coordinator
Lars Hydle, ANC 3C05
Nancy MacWood, ANC Chair
Richard Nettler, Attorney for Charles E. Smith Co.
Kathy Patterson, DC Council
Sheila Cross Reid, BZA Vice-Chair
Robert H. Smith, Charles E. Smith Residential Reality Co.
Robert Sockwell, BZA Chairman

We agree with the complaints about the Alban Towers construction discussed in Sarah Canzoneri's letter.

Name	Address
FRANK MIKALONIS	2814 38TH (NW) WASH. DC.
BILL BRANDT	2814 38TH (NW) WASH. D.C.
DR. Edward Green	2807 38th NW WASH. D.C.
Mrs. Susie McLaughlin Green	2801 38th St. NW Wash. DC
[illegible]	3805 Fulton St NW Wash DC
[illegible]	2816 38th Street NW 20007
Rebecca J. Pearson	2816 38th St. NW 20007
Paul & Holly Pellenjer	3713 Fulton St NW 20007-1843
Terry Browne	3721 Fulton St, NW 20007
Colleen Fitzgerald	3721 Fulton St, NW 20007
[illegible]	2801 38th St, NW 20007
Angelida D. Zaia	2812 38th St NW 20007
[illegible]	2812 38TH St. N.W. 20007
[illegible]	3818 38th St. NW. 20007

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Name	Address
Meredith Daubert	3712 Garfield St.
Matthew Brehm	3712 Garfield St.
Nicolas Johnson	3712 Garfield St.
Brian Leatherman	3712 Garfield St.
Ryan Faintich	3712 Garfield St.
Matt Canzoneri	3716 Garfield St.

We agree with the complaints about the Alban Towers construction discussed in Sarah Canzoneri's letter.

Name	Address
Ann Robinson	3844 Wisconsin Ave NW #106
Janet Bissell	"
Caroline Brown	"
Mollie Bissell	"
[illegible]	"
Sue Barton	"
Janet Hunt	"
Richard Pearson	"
[illegible]	"

We agree with the complaints about the Alban Towers construction discussed in Sarah Canzoneri's letter.

Name	Address
Richard Stewart	2812 38th St NW Wash DC 20007
[signature]	3808 GARFIELD ST NW —
Kathleen Wach	3810 Garfield St. NW WDC 20007
[signature]	3810 GARFIELD ST NW WDC 20007