TESTIMONY OF THE ADMINISTRATOR
OF BUILDING AND LAND REGULATION ADMINISTRATION
ARMANDO LOURENCO
BEFORE THE BOARD OF ZONING ADJUSTMENT
ON CASE NUMBER 16588

4900 INDIAN LANE, NW
July 11, 2000

GOOD AFTERNOON MADAM CHAIR
GOOD AFTERNOON MEMBERS OF THE BOARD,
LADIES AND GENTLEMEN

MY NAME IS ARMANDO LOURENÇO;
I AM THE ADMINISTRATOR OF BUILDING AND LAND REGULATION ADMINISTRATION (BLRA);
AND TODAY I AM HERE TO TESTIFY BEFORE THE BOARD OF ZONING ADJUSTMENT ON CASE NUMBER 16588, ON BEHALF OF THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS (DCRA).

THE PURPOSE OF MY TESTIMONY IS TO STATE, FOR THE RECORD, THE RATIONALE FOLLOWED BY THE ADMINISTRATION IN THE APPROVAL OF THE PROJECT THAT IS THE OBJECT OF THIS APPEAL. MY STATEMENT WILL ADDRESS ALL ASPECTS OF THE APPELLANTS'S ARGUMENTS ON THE RECORD, WITHOUT REGARD FOR WHETHER OR NOT IT IS APPROPRIATE FOR THIS BOARD TO HEAR EACH OF THOSE ARGUMENTS.

THEREFORE, I WILL NOT ADDRESS IN MY STATEMENT MATTERS OF
(A) TIMELINESS OF THE APPEAL;
(B) BZA JURISDICTION OVER DECISIONS OF THE ADMINISTRATOR OF BLRA ON MATTERS REGULATED BY THE DISTRICT OF COLUMBIA CONSTRUCTION CODES; OR
THIS SHOULD NOT BE CONSTRUED AS IMPLICIT OR EXPLICIT ACCEPTANCE OF THOSE MATTERS, THAT ARE MORE APPROPRIATELY ADDRESSED BY CORPORATION COUNSEL.

1. FIRST, I WANT TO CLARIFY THE MATTER OF THE STOP WORK ORDER.

THE TITLE OF THE STATEMENT SUBMITTED BY THE APPELLANTS IN SUPPORT OF THEIR APPEAL SUGGESTS THAT MY DECISION TO LIFT A STOP WORK ORDER IS WHAT IS BEING APPEALED, SINCE IT IS THAT DECISION THAT IS ALLEGED TO BE AT THE SOURCE OF THEIR GRIEVANCE.
THE AUTHORITY TO ISSUE AND REMOVE STOP WORK ORDERS EXISTS ONLY UNDER TITLE 12 OF THE DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR), THE D.C. CONSTRUCTION CODES. THAT AUTHORITY IS

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NOT DELEGATED TO THE ZONING ADMINISTRATOR, NOR ADMINISTERED UNDER TITLE 11 OF DCMR. THIS IS PLAINLY CLEAR ON THE COPY OF THE STOP WORK ORDER IN QUESTION, SUBMITTED FOR THE RECORD. A QUICK GLANCE AT THIS FORM REVEALS THAT IT IS USED BY THE BUILDING INSPECTION DIVISION OF BLRA (NOT THE ZONING DIVISION), THAT IT WAS ISSUED BY A CONSTRUCTION INSPECTOR (NOT A ZONING INSPECTOR), THAT IT WAS ISSUED PURSUANT TO SECTION 111.1 OF THE D.C. CONSTRUCTION CODES (NOT OF THE ZONING REGULATIONS THAT DO NOT HAVE A SECTION NUMBER 111.1).

IN THE COURSE OF THE DAY-TO-DAY ACTIVITIES OF BLRA, STOP WORK ORDERS ARE ISSUED ROUTINELY AS A PREVENTIVE MEASURE, TO PRESERVE THE STATUS QUO, WHEN A SITUATION IS DETECTED BY AN INSPECTOR THAT MAY INVOLVE A VIOLATION OF ONE OR MORE ASPECTS OF THE APPLICABLE REGULATIONS. ROUTINELY, STOP WORK ORDERS ARE USED TO HALT CONSTRUCTION OPERATIONS WHEN A SITUATION IS UNCLEAR, WHILE A CHECK OF THE REGULATORY APPROVALS IS COMPLETED. ROUTINELY ALSO, THESE STOP WORK ORDERS ARE SUMMARILY LIFTED ONCE THE ENTITY INVOLVED IN THE CONSTRUCTION CORRECTS THE CONDITION OR BLRA DETERMINES THAT THE PROJECT COMPLIES WITH THE RELEVANT REGULATORY REQUIREMENTS.

SUCH WAS THE CASE OF THE STOP WORK ORDER IN QUESTION.

INSPECTORS IN THE FIELD WERE UNCLEAR ABOUT THE FULL SCOPE OF THE WORK. WITHOUT THE BENEFIT OF ACCESS TO APPROVED DOCUMENTS, A DECISION WAS MADE TO REQUEST THE CONSTRUCTION INSPECTION BRANCH TO ISSUE A STOP WORK ORDER TO MR. GHAFOORIAN, ON DECEMBER 7, 1999, UNTIL THE SITUATION COULD BE CLARIFIED.

ONCE THE PERMIT RECORDS WERE RETRIEVED FROM FILE AND REVIEWED, A DETERMINATION WAS MADE IN BLRA THAT THE CONSTRUCTION WAS CONSISTENT WITH THE PERMITS APPROVED IN APRIL AND MAY OF 1999 AND, AS THE ADMINISTRATOR OF BLRA, I ORDERED THE STOP WORK ORDER LIFTED, BY THE AUTHORITY DELEGATED TO ME UNDER TITLE 12 OF DCMR. THIS IS THE FULL EXTENT OF THE DECISION OF THE BLRA ADMINISTRATOR ON OR ABOUT DECEMBER 7, 1999. THE ZONING ADMINISTRATOR, MR. MICHAEL JOHNSON, PLAYED NO PART IN THIS DECISION.

2. SECONDLY, IF I MAY, LET ME RECAP THE RATIONALE BEHIND THE ZONING APPROVAL OF THE PERMITS ISSUED IN APRIL AND MAY OF 1999 FOR THE CONSTRUCTION IN QUESTION, WHICH I BELIEVE TO BE OF GREAT INTEREST TO THE BOARD'S DECISIONS. AT THE TIME THE PERMITS WERE ISSUED, I WAS THE ACTING ZONING ADMINISTRATOR.

TO UNDERSTAND WELL THE ELEMENTS OF THIS PROJECT, IT IS IMPORTANT THAT THE TOPOGRAPHY OF THE SITE BE CONSIDERED. MR. GHAFOORIAN'S LAND IS SLOPED IN TWO DIRECTIONS. AT THE EAST PROPERTY LINE, WHERE IT MEETS THE POTTERS'S PROPERTY, IT SLOPES DOWN FROM THE REAR TO INDIAN LANE. IN THE OTHER DIRECTION, IT SLOPES DOWN STEEPLY FROM THE POTTERS'S PROPERTY TOWARDS WEST. AS A RESULT, THE REAR CORNER OF THE GHAFOORIAN PROPERTY, WHERE THE NEW GARAGE WAS BUILT, WAS AND IS THE HIGHEST CORNER OF THE PROPERTY. ALSO, IN GENERAL, WHERE THE TWO PROPERTIES ABUT, THE LAND SLOPES DOWN FROM THE POTTERS TO THE GHAFOORIAN'S PROPERTY. THE SLOPED SITE EXPLAINS THE USE OF RETAINING WALLS AND CERTAIN FEATURES OF THE PROJECT WERE AIMED AT RESOLVING PRE-EXISTING DRAINAGE PROBLEMS.

THE PERMITS ISSUED IN APRIL AND MAY OF 1999 ALLOW, AMONG OTHER LESS RELEVANT ITEMS, THE FOLLOWING:

(A) CONVERSION OF THE EXISTING ATTACHED GARAGE TO AN EXTENSION OF THE HABITABLE SPACE OF THE PRINCIPAL RESIDENTIAL STRUCTURE.

(B) CONSTRUCTION OF A NEW DETACHED ACCESSORY BUILDING TO BE USED AS A PRIVATE GARAGE.

(C) CONSTRUCTION OF A NEW SLAB-ON-GRADE STRUCTURE TO SERVE AS THE VEHICULAR ACCESS TO THE NEW GARAGE, FROM THE SHARED DRIVEWAY.

(D) RAISING AND LEVELING OF THE AREA OF VEHICULAR ACCESS, TO CORRECT A PREVIOUSLY EXISTING STORM WATER DRAINAGE DEFICIENCY THAT ALLOWED ALL THE RAIN WATER COLLECTED ON THE VEHICULAR ACCESS AREAS FOR BOTH MR. GHAFOORIAN'S AND THE POTTERS'S GARAGES TO DRAIN TOWARDS MR. GHAFOORIAN'S HOUSE.

(E) CONSTRUCTION OF A REINFORCED CONCRETE RETAINING WALL AND STEPS ON THE NORTH SIDE OF THE NEW ACCESS AREA SLAB, FACING THE FRONT YARD.

(F) CONSTRUCTION OF A REINFORCED CONCRETE RETAINING WALL ON THE WEST SIDE OF THE NEW ACCESS AREA SLAB, FACING THE REAR YARD AND THE PRINCIPAL RESIDENCE.

THE DETACHED PRIVATE GARAGE IS A ONE-STORY STRUCTURE, 870 SQUARE FEET IN AREA, LESS THAN 14FT-6IN HIGH AND LOCATED ENTIRELY WITHIN THE REAR YARD. IT IS A BUILDING ACCESSORY TO THE PRINCIPAL STRUCTURE, A ONE-FAMILY DWELLING.

AS AN ACCESSORY BUILDING, IT IS ALLOWED IN R-1 BY SECTION 204.1, AS A PRIVATE GARAGE, INCIDENTAL TO THE PRINCIPAL USE OF ONE-FAMILY

DETACHED DWELLING ALLOWED BY SECTION 201.1(A), AND SUBJECT TO THE SPECIAL PROVISIONS OF CHAPTER 23. SECTION 2300.2(A) ALLOWS THE LOCATION OF THIS PRIVATE GARAGE ACCESSORY BUILDING WITHIN THE REAR YARD WITHOUT ANY OTHER LIMITATIONS. THIS IS CONFIRMED BY THE GENERAL REQUISITE OF SECTION 2500.2.

AT 870 SQUARE FEET, THIS ACCESSORY BUILDING FITS INTO THE DEFINITION OF "PRIVATE GARAGE" CONTAINED IN SECTION 199.1. THE ABSENCE OF ANY COMMUNICATION, BELOW OR ABOVE GRADE, BETWEEN THE GARAGE AND THE RESIDENCE CLEARLY QUALIFIES THE GARAGE, BEYOND ANY DOUBT, AS A SEPARATE BUILDING, BASED ON THE DEFINITION OF "BUILDING" OF SECTION 199.1.

SECTION 2500.4 ALLOWS A ONE-STORY ACCESSORY BUILDING NOT TO EXCEED 15-FT IN HEIGHT. THE HEIGHT OF LESS THAN 14FT-6IN WAS MEASURED AS SPECIFIED IN SECTION 2500.7, ON THE SIDE THAT FACES THE MAIN BUILDING LOCATED TO THE FRONT OF THE LOT, FROM THE FINISHED SLAB TO THE ROOF RIDGE. THE GARAGE, THEREFORE, COMPLIES WITH 2500.4, CONTRARY TO WHAT THE APPEAL FORM STATES.

THE PAVED VEHICULAR ACCESS AREA IS A CONCRETE SLAB-ON-GRADE STRUCTURE, PARTLY LOCATED ON THE SIDE YARD, PARTLY ON THE REAR YARD. THIS STRUCTURE, BUILT ON GRADE, IS CLEARLY ALLOWED IN EITHER YARD PURSUANT TO THE EXCEPTION OF SECTION 2503.2.

THE RETAINING WALLS ARE LOCATED ON THE SIDE YARD AND ON THE REAR YARD AND SERVE TO SUPPORT AND STABILIZE THE SOIL UNDER THE NEW PAVED VEHICULAR ACCESS AREA. ONE OF THE RETAINING WALLS RUNS EAST-WEST FROM THE HOUSE TO THE COMMON DRIVEWAY. THE OTHER RUNS NORTH-SOUTH FROM THE HOUSE TO THE GARAGE AND ALSO PROTECTS THE HOUSE FROM SETTLEMENT OF THE SLAB ON GRADE.

RETAINING WALLS OF ANY HEIGHT ARE CLEARLY ALLOWED TO ENCROACH INTO ANY YARD, PURSUANT TO THE EXCEPTION OF SECTION 2503.3.

IT SHOULD BE NOTED THAT, AFTER MAY27, 1999, THERE WERE NO OTHER ZONING ADMINISTRATOR DECISIONS PERTAINING TO THE APPROVAL OF THIS PROJECT.

3. THIRD, I WOULD LIKE TO ADDRESS THE SECTIONS SPECIFICALLY CITED BY MR. POTTER AND ALLEGED TO HAVE BEEN VIOLATED BY THE PROJECT:

11DCMR §101 - THERE IS NO VIOLATION OF ANY PROVISION OF THE SEVEN SUBSECTIONS OF §101.

11DCMR §199, STRUCTURE - THERE CAN BE NO VIOLATION OF THIS DEFINITION. THE GARAGE IS A STRUCTURE AND A BUILDING; THE CONCRETE SLAB PAVED AREA IS A STRUCTURE; THE RETAINING WALLS ARE STRUCTURES.

11DCMR §199, YARD, SIDE - THERE CAN BE NO VIOLATION OF THIS DEFINITION. THERE IS NO ENCROACHMENT INTO THE SIDE YARD BUT FOR EXEMPTED STRUCTURES (SLAB ON GRADE AND RETAINING WALLS).

11DCMR §200 - THERE IS NO VIOLATION OF ANY OF THE FOUR SUBSECTIONS. THE PRINCIPAL USE IS ONE-FAMILY DETACHED DWELLING. THE PRIVATE GARAGE IS AN INCIDENTAL USE PERMITTED UNDER §204.1(A).

11DCMR §201(H) - SECTION 201.1(H) DOES NOT APPLY BECAUSE "PRIVATE GARAGE" IS NOT THE PRINCIPAL USE IN THE PROPERTY (WHICH, FOR EXAMPLE, WOULD ALSO TRIGGER APPLICATION OF SECTIONS 2300.6 AND 2300.7). INSTEAD, SECTIONS 201.1(A) AND 204.1(A) APPLY.

11DCMR §404.1 (REAR YARD) - THE REAR YARD EXCEEDS THE REQUIRED 25FT; THE SLAB ON GRADE, THE RETAINING WALL AND THE ACCESSORY DETACHED GARAGE ARE ALL ALLOWED TO ENCROACH IN THE REAR YARD BY SECTIONS 2503.2, 2503.3 AND 2300.2(A).

11DCMR §405.9 (SIDE YARD) - THE SIDE YARD FAR EXCEEDS THGE REQUIRED 8FT; THE SLAB ON GRADE AND THE RETAINING WALL ARE ALLOWED TO ENCROACH IN THE SIDE YARD BY SECTIONS 2503.2 AND 2503.3.

11DCMR §2500.4 - THE ONE-STORY ACCESSORY GARAGE BUILDING COMPLIES ENTIRELY WITH THIS SECTION, AS RECOGNIZED BY THE APPELLANT WHO STATES THAT IT IS "SLIGHTLY UNDER FIFTEEN FEET ABOVE THE TOP SURFACE" OF THE PAVED VEHICULAR ACCESS AREA.

4. FINALLY, I WOULD LIKE TO ADDRESS BRIEFLY THE SPECIFIC FIVE CHARGES CONTAINED IN THE APPELLANT'S STATEMENT (WHERE I WILL ASSUME THAT THE TERM "DEFENDANT" REFERS TO MR. GHAFOORIAN):

1. MOST OF THE ISSUES RAISED BY THE APPELLANT FALL UNDER THE CATEGORY OF DAMAGES THAT ARE BEST ADDRESSED IN A CIVIL SUIT. DCRA DOES NOT HAVE A POSITION ON THESE MATTERS, ONE WAY OR THE OTHER.

2. MR. GHAFOORIAN'S PAVED AREA IS SLIGHTLY SLOPED AWAY FROM HIS HOUSE AND TOWARDS A STORM AREA DRAIN IN HIS PROPERTY, NEAR THE SHARED DRIVEWAY. THIS IS CONSISTENT WITH GOOD ENGINEERING DESIGN AND WAS APPROVED BY THE WATERSHED DIVISION OF THE DEPARTMENT OF HEALTH. IT SHOULD BE NOTED THAT APPELLANT'S VEHICULAR ACCESS TO HIS GARAGE IS ALSO AN IMPERVIOUS PAVED AREA, STEEPLY SLOPED TOWARDS THE PROPERTY LINE, AND THE NEW AREA DRAIN IN MR. GHAFOORIAN'S PROPERTY WILL ALSO DRAIN MR. POTTER'S STORM WATER OVERFLOW.

3. THE SO-CALLED "PARKING PLATFORM" IS A SIDE YARD STRUCTURE, AS WELL AS A REAR YARD STRUCTURE, BUILT ON GRADE, WHICH IS ALLOWED TO ENCROACH ON ANY YARD, THEREFORE COMPLIES WITH THE ZONING REGULATIONS AS INDICATED BEFORE.

4. THERE IS NO 450 SQUARE FOOT SIZE LIMITATION EXCEPT FOR THE SPECIFIC CASE OF A PRIVATE GARAGE AS THE PRINCIPAL USE IN THE LOT, WHICH IS NOT THIS CASE. PRIVATE GARAGES, IN GENERAL, ARE ALLOWED TO BE 900 SQUARE FEET, BY DEFINITION.

5. THE GARAGE DOES NOT EXCEED THE 15 FOOT HEIGHT LIMITATION. ITS HEIGHT IS LESS THAN 14FT-6IN.

THIS CONCLUDES MY TESTIMONY. I WILL BE GLAD TO ANSWER ANY QUESTIONS THE BOARD MAY HAVE ABOUT MY TESTIMONY OR ANY OTHER ASPECT OF THIS CASE OF WHICH I MAY HAVE DIRECT KNOWLEDGE.