LAW OFFICES OF
ROY I. NIEDERMAYER

7475 WISCONSIN AVENUE, SUITE 500
BETHESDA, MARYLAND 20814

TELEPHONE: 301-951-4456
TELECOPIER: 301-951-0585

E-MAIL: RIN @ RINLAW.COM
HTTP://www.lawyers.com/RINLAW

October 15, 2000

'00 OCT 16 P1:01
OFFICE OF ZONING
DISTRICT OF COLUMBIA

D.C. Office of Zoning
Board of Zoning Adjustment
441 4th Street, N.W., Suite 210
Washington, DC 20001

Re: BZA Case No. 16588: Potter-4852 Indian Lane, N.W. and Ghafoorian-4900 Indian Lane, N.W.

Gentlemen:

Enclosed please find an original and eight copies of a Memorandum of Mohammed Ghafoorian on Side and Rear Yard Setbacks, Building Height and Building Size Issues: D.C. Zoning Regulations Applicable to 4900 Indian Lane, N.W., Chronology of Events in Support of Motion To Dismiss Appeal as Untimely under 11 DCMR§3315.2, and Notice of Participation Pursuant to 11 DCMR §3022.3. In addition, several photographs have been enclosed.

Thank you for your cooperation in making this part of the record for the above appeal which is set for hearing on October 31, 2000.

Sincerely yours,

Roy I. Niedermayer

RIN:

BZA
Case No. 16588
Exhibit No. 30

Board of Zoning Adjustment
District of Columbia
CASE NO.16588
EXHIBIT NO.30

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal

Appeal of EDWARD M. POTTER	)	
	)	
Appellant,	)	BZA Appeal No. 16588
	)	
	)	

NOTICE OF PARTICIPATION PURSUANT TO 11 DCMR §3022.3

Mohammed Ghafoorian, the property owner of 4900 Indian Lane, N.W. which is the subject of this appeal and a person with a direct interest in this appeal, requests this Board to allow him to intervene in this appeal and participate as an party. In support of this Request, the following information in 11 DCMR §3022.3 is provided.

1. Mohammed Ghafoorian, 4900 Indian Lane, N.W., Washington, D.C.

2. Mr. Ghafoorian will appear as an opponent of the appeal.

3. Mr. Ghafoorian will appear through the undersigned legal counsel.

4. Mr. Ghafoorian does not intend to offer any witnesses in this matter other than himself, but may adopt the testimony of a representative of the Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs and/or Armando Lourenco.

5. Mr. Ghafoorian is the owner of the property at 4900 Indian Lane, N.W., Washington, D.C. which is the very subject of this appeal. The garage is located in the rear yard four feet from the common lot line with the appellant. The apparent objective of the appeal is the destruction and removal of Mr. Ghafoorian's garage on his property. The garage was constructed in accordance with duly issued and authorized building permits obtained from the District of Columbia and which were reviewed by the Building and Land Regulation Administration and the Superior Court on several occasions. In no case were

any zoning violations found.

The garage is now complete. The relief requested by appellants would cause the loss to Mr. Ghafoorian of the use of any garage on his property and residence. In addition, Mr. Ghafoorian would suffer an economic loss of approximately $30,000-40,000, being the costs of construction and demolition, if the garage were removed.

6. Mr. Ghafoorian was recognized as a party-participant by the Board at the earlier hearing on this matter.

7. Accompanying this Notice are materials Mr. Ghafoorian presents to the Board for consideration at the hearing of this matters and which were requested by the Board after the earlier hearing.

Roy I. Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Mohammed Ghafoorian

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal

Appeal of EDWARD M. POTTER	)	
	)	
Appellant,	)	BZA Appeal No. 16588
	)	
	)	

MEMORANDUM OF MOHAMMED GHAFOORIAN ON SIDE AND REAR YARD SETBACKS, BUILDING HEIGHT AND BUILDING SIZE ISSUES: D.C. ZONING REGULATIONS APPLICABLE TO 4900 INDIAN LANE, N.W.

Mohammed Ghafoorian, the owner of 4900 Indian Lane, N.W., submits the following discussion of the application of the D.C. Regulations ("Regulations") to the matters raised before the BZA by the appeal of Edward Potter. A reduced as-built site plan is attached as Exhibit A with a second copy showing the side and rear yards attached as Exhibit B.

1. SIDE YARD SETBACK.

In § 199 at page 1-25, a side yard is defined as "a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure." A yard itself is "an exterior space . . . on the same lot with a building or other structure. . . . open to the sky from the ground up, and shall not be covered by any building or structure, except as specifically provided in this title." Based on these definitions, the eastern side yard at 4900 Indian Lane (the "Side Lot") is the area generally shown in black hatching on the Exhibit B.

Section 405.9 of the zoning Regulations require the distance between the Side Lot line and any building or structure in the Side Lot to be a minimum of 8 feet. Pursuant to

§ 199 at page 1-11, a building is a "structure having a roof supported by columns or walls for the shelter support or enclosure of persons, animals or chattel." A structure is "anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including, among other things, ... retaining walls." A building is therefore a structure, but a structure is not necessarily a building. The only man-made construction in the Side Lot is the concrete parking slab.[1/] This construction consists of several retaining walls and a concrete slab built over dirt within the retaining walls. There is no express prohibition in the Regulations on raising the grade of a lot by using dirt and placing a concrete or asphalt slab on top of it; nor has the complaint or any else ever identified such a provision.

The retaining walls with the slab and dirt are a structure under the Regulations. Section 2503.2 provides, however, that "a structure, not including a building, no part of which is more than four feet (4 ft.) above the grade at any point may occupy any yard required under the provisions of this title." Similarly, § 2503.3 states: "a . . . retaining wall constructed in accordance with the D.C. Building Code may occupy any yard required under the provisions of this title." Retaining walls of any size may be constructed in the Side Lot and, therefore, their presence does not constitute a violation of the side yard setbacks. Similarly, the concrete topping is not more than four (4') feet above the grade and it too does not violate the side yard setbacks.

Taken together, the entire structure, therefore, does not violate the setback requirements

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[1/] Although Mr. Potter and his counsel regularly refer to this construction as a "platform," for whatever prejudicial effect the use of that term may engender, the term platform is not found in nor defined in the Regulations. The issue is not what the construction in the Side Lot is called but whether in complies with the D.C. Regulations.

of § 405 of the Regulations. Similarly, §§ 2503.2 and 2503.3 make this construction permissible and not in violation of the side yard setbacks even were it connected to the house or the garage since there is no exception or prohibition in § 2503 precluding this arrangement.

Finally, under the Regulations, the garage is not deemed to be connected the house at 4900 Indian Lane, N.W. for purposes of placing it in the Side Lot. There is no roofed communication or passageway, or common roof, between the garage and the house. The area marked in red on Exhibit B is not covered and therefore does not make the garage attached to the house and thereby place in the side yard.

Based on these provisions of the Regulations, there is no side lot setback violation.

2. REAR YARD SETBACK.

Section 404.1 provides for a 25 foot setback from the rear lot line of 4900 Indian Lane. According to § 199 at page 1-25, the rear yard is "a yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title. The rear yard shall be the full width of the lot and shall be unoccupied, except as specifically authorized in this title." The rear yard is shown on Exhibit B in purple hatching. Certain exceptions exist to the absolute rear yard setback requirements.

Under §199 at page 1-17, the garage at 4900 Indian Lane qualifies as a private garage because it is "a building or structure, . . . not exceeding 900 square feet (900 ft.^{2}) in area, used for the parking of motor vehicles without repair or service facilities. The term parking garage may include a parking garage accessory to the principal use, but shall not

include a mechanical parking garage." An accessory use, according to §199 at page 1-24, is "a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use. Since the garage here meets the criteria, it is an accessory building under § 204 of the Regulations, being incidental to the primary use of the lot for the residential building.

Section 2500.2 provides that an accessory building, such as this garage, shall be located only in a rear yard with certain inapplicable exceptions. Section 2300.2 also provides that the private garage as an accessory building "shall be subject to the following special regulations in regard to its location: (a) It may be located . . . within a rear yard. . . ."

In this case, the private garage is completely within the rear yard, being located south of the extension of the rear building wall of the residence extended easterly to the side lot line as represented in Exhibit A. Because of this location within the rear yard, there is no restriction or rear yard setback requirement for this accessory building, which may be located on the rear and side lot lines without any violation of the Regulations.

Based on these provisions of the Regulations, there is no rear lot setback violation.

3. SIZE OF THE GARAGE.

It is factually agreed that the square footage of the garage exceeds 450 square feet but is less than 900 square feet. By Regulation definition, a private garage may not exceed 900 square feet. §199 at page 1-17. Under §204, the private garage here is an accessory building as already discussed above. Since the garage is an accessory

structure/building and since it may be up to 900 square feet in area, its current size does not violate the Regulations for an accessory use building.

This view is supported by a consistent reading and interpretations of other applicable Regulations. Section 201.1 describes uses to which a lot may be put as the primary or principal use. The uses described in §201.1 are principal uses of the lot, not accessory uses.[2/] See the previous discussion. The corollary use to principal use is an accessory use. Where a private garage is the principal use of a lot, then it is restricted to the number of vehicles and square footage in §201.1. Where it is not the principal use, the Regulations do not restrict the private garage to only two motor vehicles and an area not exceeding 450 square feet.

This interpretation makes is in harmony with other provisions of the Regulations and applying common sense. Nowhere in the Regulations is principal use explicitly defined, but its definition can be understood by looking at other portions of the Regulations and applying common sense to the objectives of the Regulations. For example, §2300.6 refers to "a private garage permitted in a residence district as a principal use on a lot" thereby recognizing that there are occasions when a private garage is a principal use and occasions where a private garage is not a principal use. In cases where a private garage is not an accessory use, a private garage must be a principal use. In those cases, the provisions of § 201 do apply. It is evident that the garage at 4900 Indian Lane is not the principal use of that lot. The principal use is the residence.

[2/] This interpretation that §201.1 lists principal uses is suggested by the use of the "accessory structure" term in subpart §201.1(m)(2) which contrasts with the principal uses in the main part.

Further, an interpretation applying the limitations of §201 to this garage deprives § 204.1 of any effective meaning. Section 204.1 permits a private garage to be an accessory building which, in turn, can be up to 900 square feet. But under a definition that a private garage is limited to two vehicles and 450 square feet, there could be no "private garage" as that term is defined that could ever be an accessory building even though accessory buildings are permitted in this zone and qualify for exemption. Thus, an interpretation limiting the private garage here to 2 cars and 450 square feet by definition means there could never be a "private garage" in this area.

This view is also supported by § 2300.3 which helps in interpreting the size of the private garage permitted in this zone. Section 2300. 3 permits the use of a private garage that is an accessory building for an artist studio in this zone, but limits it to one a person and apprentice for each 450 square feet of gross floor area. If a garage in this zone could only be 450 square feet or less, there would be no need to provide in the Regulations the requirement that there be 450 feet for each person because there could never be a garage used for a studio over 450 square feet. Thus, the Regulations must contemplate accessory structures and private garages of over 450 square feet.

An interpretation of the Regulations that does not effectively make one section a nullity is a preferable one. Read consistently and applying all the definitions, the private garage in this case does not exceed the square foot area permitted and can have room for 3 cars.

Based on these provisions of the Regulations, there is no zoning violation by the size of the garage.

4. BUILDING HEIGHT.

The height of the garage as an accessory building is controlled by Regulation § 2500.5, which provides that

> "An accessory building in any district should not exceed one (1) story or fifteen feet (15 ft.) in height. . . .The height is to be measured from the finished grade at the middle of the side of the accessory building that faces the main building to the highest point of the roof of the building."

§ 2500.7. In this case, neither the side of the garage with the doors (north wall) nor the west wall faces the house.[3/] Either wall could deemed to face the main building and be the measuring side. Based upon long-standing practice of the Building and Land Regulation Administration, the north wall was chosen as the measuring wall as consistent with the goal of the Regulations to compare the height of the accessory building to the principal building. This would seem to be most logical because it also reflects consideration of (1) appearance from the street which the residence faces and (2) the already existing height of the principal use. There is no clear mandate in the Regulations as to which wall to utilize and therefore resort to application of the consistent practice of the Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs has the virtue of uniformity and equality between the current situation and other owners in past years.

The suggestion that the actual grade in front of the north face of the garage cannot be used because this area has been raised by adding dirt within the retaining walls is not

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[3/] Any argument based upon an angle of observation from either wall is not found in the Regulations nor is in determinative of the question. Facing west from the west wall of the garage and looking at a 45-degree angle to the northwest brings the house into view. Standing in the middle of the north wall and looking northwest 45-degrees to the left also brings the house into view.

supported by the language of § 2500.7[4/] measuring point. The Regulation refers to "finished grade" not pre-existing or original grade. "Finished" thus contemplates changes to the grade in the use of the lot and in a construction process. Changes in the grade as part of the construction process on a lot are not prohibited by the Regulations. Any suggestion that the "original grade" must be utilized in determining the points from which the height measurement is not found anywhere in the explicit language of the Regulations and is contradicted by this reference in the specific section in question to "finished" grade.

Based on these provisions of the Regulations, the building height complies with the limitations of the Regulations.

Roy L. Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Mohammed Ghafoorian

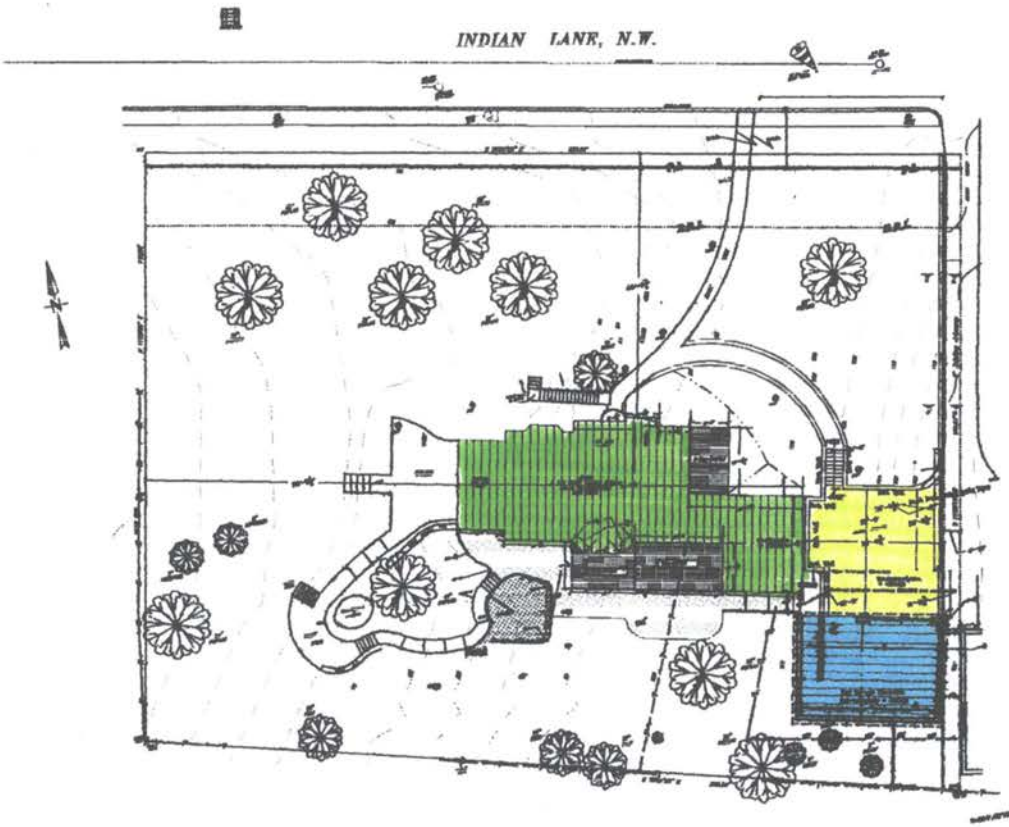
Of course, the easternmost area of the Side Lot was at the same elevation as the existing garage and had no dirt placed on it. As such, it is the same elevation as the remainder of the Side Lot. There is no logical reason why this portion of the Side Lot cannot be used to determine the grade elevation from which the height is measured and avoid the entire issue of the retaining walls and dirt fill, although this approach is not necessary under applicable interpretations of the Regulations.

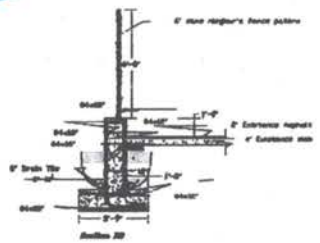
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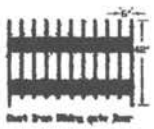
4900 Indian Lane

Washington D.C. 20016

Square 1512 *Lot 33*







Old Building

New garage

Slab on the grade
To access to new
Garage

4900 Indian Lane, NW. Wash. D.C. 20016
Tel.: (202) 362 3969

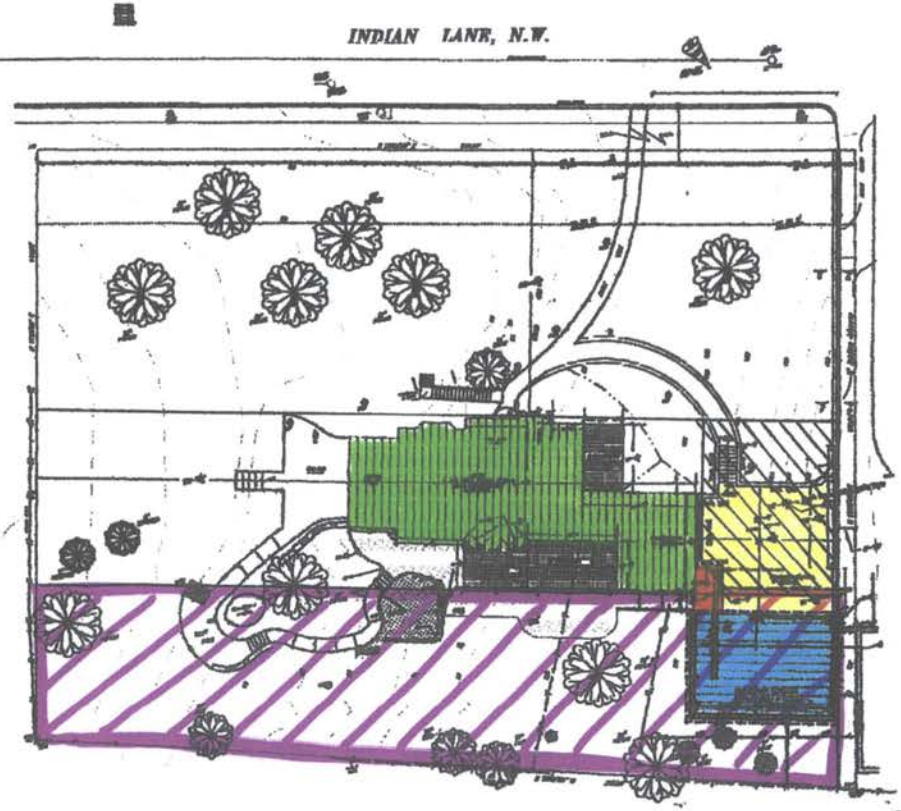
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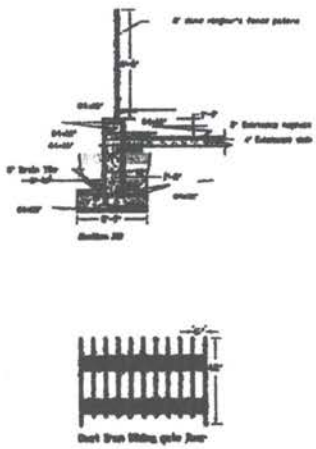
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4900 Indian Lane

Washington D.C. 20016

Square 1512 *Lot 33*





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BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal

Appeal of EDWARD M. POTTER	)	
	)	
Appellant,	)	BZA Appeal No. 16588
	)	
	)	

CHRONOLOGY OF EVENTS IN SUPPORT OF MOTION TO DISMISS APPEAL AS UNTIMELY UNDER 11 DCMR §3315.2

Mohammed Ghafoorian, the property owner of 4900 Indian Lane, N.W. which is the subject of this appeal and a person with a direct interest in this appeal, moves this Board in accordance with the provisions of 11 DCMR §3315.2 to dismiss this appeal of appellant Edward M. Potter ("Potter") as untimely. Pursuant to the request of the Board, the following chronology of events is submitted. Citations to numbered exhibits refer to exhibits previously submitted with the Ghafoorian Motion to Dismiss Appeal as Untimely Under 11 DCMR §3315.2. Citations to lettered exhibits are attached to this Chronology.

CHRONOLOGY OF EVENTS.

DATE	EVENT	EXHIBIT
November 1997	Mohammed Ghafoorian ("Ghafoorian") purchases 4900 Indian Lane, N.W. (the "Property") for renovation and use as his personal residence.	
Summer 1998	Permits for renovation were obtained in the summer of 1998, and interior renovations begun on the Property at that time. Building Permit B145922.	1
Spring 1999	Ghafoorian applies for a building permit to change the existing garage at the Property and to build a new three-car garage. The building permit accompanies construction plans for the new garage, showing its site location, dimensions, and location of retaining walls and related structures. The construction plans show the distance of the new garage from the side lot line and rear lot line of the Property. Building Permit B422926.	2

April 1999	Substantial construction began on the new garage.	
April 5, 1999	Potter claims under oath to have discovered construction of garage at Property.	3 at ¶ 6
April 1999 through May 1999	The building permit applications and construction plans are continuously on file with the Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs ("DCRA") and public knowledge.	
April 5-April 15, 1999	Potter complains to DCRA regarding construction of garage.	
April 16, 1999	Robert Shelton, a D.C. construction inspector, issues a stop work order.	
April 16-18, 1999	Stop order vacated.	
April 19, 1999	The DCRA through Vincent Ford, the zoning inspector, issues a second stop work order but it is later vacated.	
April 1999	Potters take no appeal from vacating of stop work orders or issuance of Building Permit B422926	
May 7, 1999	Potter files a suit in the Superior Court of the District of Columbia seeking to halt construction at the Property based upon violations of the same D.C. Municipal Zoning Regulations for which Potter had sought the earlier stop orders.	3
May 11, 1999	Potter obtains an *ex parte* temporary restraining order from the Court preventing further construction at the Property	
May 14 ,17-18, 1999	Potter testimony at hearing and presence for testimony of others evidences knowledge about garage location, size, height, as well as relationship with house and slab on grade, stairs, and retaining wall.	A
May 19, 1999	Superior Court Judge Herbert Dixon subsequently vacates the TRO and denieds a preliminary injunction, finding no violations of the D.C. Municipal Zoning Regulations.	4

May 19-June 18, 1999	Potter does not appeal Judge Dixon's findings of fact or ruling.	
May 24, 1999	Construction continues on the new garage and Ghafoorian applies for and receives Building Permit No. B423964 making corrections to the earlier permit.	5
May 24, 1999	The permit application was accompanied by corrected construction plans. The construction plans did not change the location, dimensions, height or other elements of the new garage.	6
May 1999	Potter elects not to appeal issuance of revised building permits.	
September 13, 1999	Potter complains to his Advisory Neighborhood Commission about the alleged Zoning Regulation violations involving rear and side yard setbacks, building height, and building area, exhibiting his knowledge and awareness of the existence of these matters at that date.	7
December 1999	Potter again asks the DCRA to stop construction based on claims of the same violations of the D.C. Municipal Zoning Regulations previously denied by Judge Dixon and shown in the construction plans and covered by Building Permits.	
December 7, 1999	The DCRA, Building and Land Regulation Administration, Building Inspection Division again issues a stop work order.	8
December 9, 1999	After review by Edgar T. Nunley and James Shelton, the Chief Building Inspector and Chief, Zoning for Building and Land Regulation Administration, Building Inspection Division, the stop work order is released.	8
March 2000	Hearing on a preliminary injunction to halt construction at the Property by reason of the same violations of the D.C. Municipal Zoning Regulations which are the subject of this appeal were heard before Superior Court Judge Richard Levie.	

March 2000	Potter present during hearing where issues of rear and side yard setbacks, building height, and building area presented. Potter offers own expert on same issues.	
	Judge Levie denied the preliminary injunction, ruling there were no violations of the D.C. Municipal Zoning Regulations.	9
April 10, 2000	Potter files appeal from the December 1999 actions of the Building and Land Regulation Administration, Building Inspection Division in vacating the stop work orders.	
April 10, 2000	Construction of the new garage substantially completed.	

Roy L. Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Mohammed Ghafoorian

Height of the Garage

(From Gordon Forester direct examination of Mr. Edward Potter before Judge Dixon on May 17 & 18, 1999)

(Page 28 line 6) Q . . . Are you aware of height of the garage that's being built?

(Page 28 line 12) A Fifteen feet height.

(Page 28 line 24) Q Wait a minute. The height of what wood.

(Page 28 line 25) A The wood on our pool wall, the lattice pool wall, is about 6-1/2 to 7 feet. This height being 15 feet is extending 8 feet above. The height of this garage is 8 feet above our pool wall and it's only 4 feet away.

(From Gordon Forester Cross examination Armando Lourenco testimony before Judge Dixon on May 17 & 18, 1999)

(Page 112 line 20) Q What would be the height of this garage in the finished structure?

(Page 112 line 22) A The drawing shows 15 feet. The zoning regulation allow 15 feet.

Size of the Garage

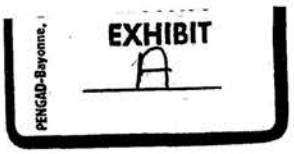
(From Gordon Forester direct examination of Edward Potter before Judge Dixon on May 17 & 18, 1999)

(Page 28 line 18) A . . . It's a huge structure with wall approximately 10 feet high.

(From Roy. Niedermayer cross examination of Mr. Potter before Judge Dixon on May 17 & 18, 1999)

(Page 37 line 2) Q Do you have any idea what the final structure on the property that's going to be this garage look like?

(Page 37 line 5) A Well, with wall 10 feet high, with the concrete reinforcements that are going to build the wall with the imprint of brick, with the face that he is absolutely on this – on the easement line, with the fact that it's going to be 5 – I'd say 8 feet over our wall and the fact that the whole thing is



15 feet high and approximately 35 feet by 26 feet, this is a mammoth structure that's sitting there with this wall.

Size of the slab on the grade

(From Gordon Forester examination Mr. Armando Lourenco before Judge Dixon on May 17 & 18, 1999)

(Page 102 line 25) Q Looking – directing your attention to the front part of this garage which is on the inside of these walls, what is going in the front part there?

(Page 103 line 3) A Front what I can see in the drawing, it will be an area to maneuver coming out of the garage. So it would be just a paved area.

(Page 103 line 8) Q And can you tell what the dimensions of that paved area are going to be?

(Page 103 line 10) A Thirty-two feet from the front of the garage to the retaining wall, 39 feet from the new side wall of the house to the property line.

(Page 104 line 7) Q So the pavement in that section 32 by 39, would that be reinforced concrete.

(Page 103 line 10) A It doesn't show as such

(From Judge Herbert Dixon opinion on May 19, 1999)

(Page 4 line 2) According to the plaintiffs, the new garage that's being constructed may be seen from the street. It's placement on the lot of the next door neighbor is out of character with the neighborhood, a huge approximately 32-by-39 foot paved area will apparently be a part of this construction plan; and it is unlike any type of paved area that's visible on any property in the nearby area,

Minimum depth of each side yard

(From Gordon Forester examination Armando Lourenco before Judge Dixon on May 17 & 18, 1999)

(Page 86 line 20) Q I'm sorry, Boar Of Zoning adjustment. Let me ask you, also, when the regulations, particularly 405.9, state minimum – for R-1-A minimum depth of each side yard 8 feet, does that mean 8 feet of the side yard?

(Page 86 line 25) A It mean 8 feet from the outermost point of the main structure to the sidewalk line.

(Page 87 line 2) Q All right.

Here's my question, Mr. Lourenco. If the property line is a Right-of- way covered by 8 feet of asphalt, would not the side yard end at the beginning of the asphalt to comply with the 8 foot setback?

(Page 86 line 7) A No.

(Page 87 line 8) Q You wold measure it from –

(Page 86 line 9) A the property –

(Page 86 line 10) Q -- The center of the –

(Page 86 line 11) A The property Line

(From Roy Niedermayer examination Mr. Armando Lourenco before Judge Dixon on May 17 & 18, 1999)

(Page 126 line 22) Q All right.

Now, the garage itself is located entirely in the rear yard, isn't it?

(Page 126 line 25) A That's correct.

(Page 127 line 1) Q And being located there, the setback requirements of the zoning for this neighborhood do not apply?

(Page 127 line 4) A You mean the side yard setback?

(Page 127 line 1) Q Side yard setback.

(Page 127 line 6) A No.

(Page 127 line 7) Q And, also, the rear yard setbacks don't apply either, do they?

(Page 127 line 9) A They don't apply to this, to the accessory structure.

(Armando Lourenco answering Judge Dixon direct question on May 17 & 18, 1999)

(Page 142 line 12) Q The Court: Now, with respect to an accessory structure, what, generally, is an accessory structure or an accessory building?

(Page 142 line 15) A The witness: A garage, a shed, within the garage – for single-family dwelling.

(Page 142 line 25) Q The court: In an area that is zoned R-1-A, for an accessory structure, what setbacks, if any apply for rear yard and side yard?

(Page 143 line 3) A The witness: The accessory structure may be located on the rear yard and there's really no setbacks for the structure that's in the rear yard. The rear yard is measured from the main structure to the rear lot line.

Stair from slab on the grade for access from slab to existing house.

(From Gordon Forester examination Mr. Armando Lourenco before Judge Dixon on May 17 & 18, 1999)

(Page 117 line 4) Q Now, sir, as acting zoning administrator, when you' re considering plans, you or your office, plans such as this that's going to have 15-foot building with new walls, with a retaining wall out front, two sets of steps and a concrete pad, I believe 32 by 38, whether to approve this permit, does not a judgement factor enter in over and above the strict interoperation of the zoning regulations?

(Page 125 line 3) Q Now, when you referred to the wall that's around that walkway being connected to the garage, you just meant it physically touches the garage, isn't that right?

(Page 125 line 7) A I meant it's showing as touching the garage, that's correct.

(Page 125 line 9) Q And the other walls that we've – that you talked about as being connected, what you meant was they physically touch some structure that's next to them.

(Page 125 line 13) A At least that, yes

(Page 125 line 14) Q None of the connections or the touching of all of those walls that we've talked about change the character of he garage from an accessory building, do they?

(Page 125 line 20) A Not the way I understand these walls. When we review a project from the zoning point of view, in order to determine whether we have two structures or one structure, we look at the structures above grade that may connect those two structures. If there's any structure above grade that is roofed over that provides a connection between two structures, then the two structures become one.

This has been standard practice for years in the application of the zoning regulations. It's actually a little trick that sometimes people use to make two buildings into one because of other restrictions that the zoning regulations impose.

Zoning

(From Gordon Forester examination Armando Lourenco before Judge Dixon on May 17 & 18, 1999)

(Page 84 line 6) Q R-I-A, the zoning commission is concerned that the addition that's being built would comport with the neighborhood and fit in with the neighborhood. To quote specifically: The addition, together with the original building, as viewed from the street, alley and other public way, shall not substantially and visually intrude upon the character, scale and pattern of houses along the subject street footage.

(Page 84 line 16) A You realize that section doesn't apply to this project.

(Page 84 line 22) Q Well, assuming this is not a variance – if it is a variance, it would apply, correct?

(Page 84 line 24) A If it were a variance, would this be taken into consideration in issuance a variance?

(Page 85 line 13) Q The witness: When an applicant is proposing to build something that is not matter of the right, the applicant need to go to the Board Of Zoning adjustment and request relief from the provision of the code that in not complied with so that he can obtain a variance and do something beyond what is matter of right.

What that section sets out is criteria for the Board Of Zoning adjustment to evaluate the extent to which the proposed construction exceeds what is matter of the right, and that is where those criteria are used.

The Board of Zoning adjustment is just not in the picture for anything that is Matter-Of-Right construction, and building an accessory structure entirely in the rear yard, entirely within the property to the extent that it's show here – there are some other criteria that need to be met, and in this particular case, it does – is Matter-Of –Right development. Matter-Of –Right development is not subject to that criteria.

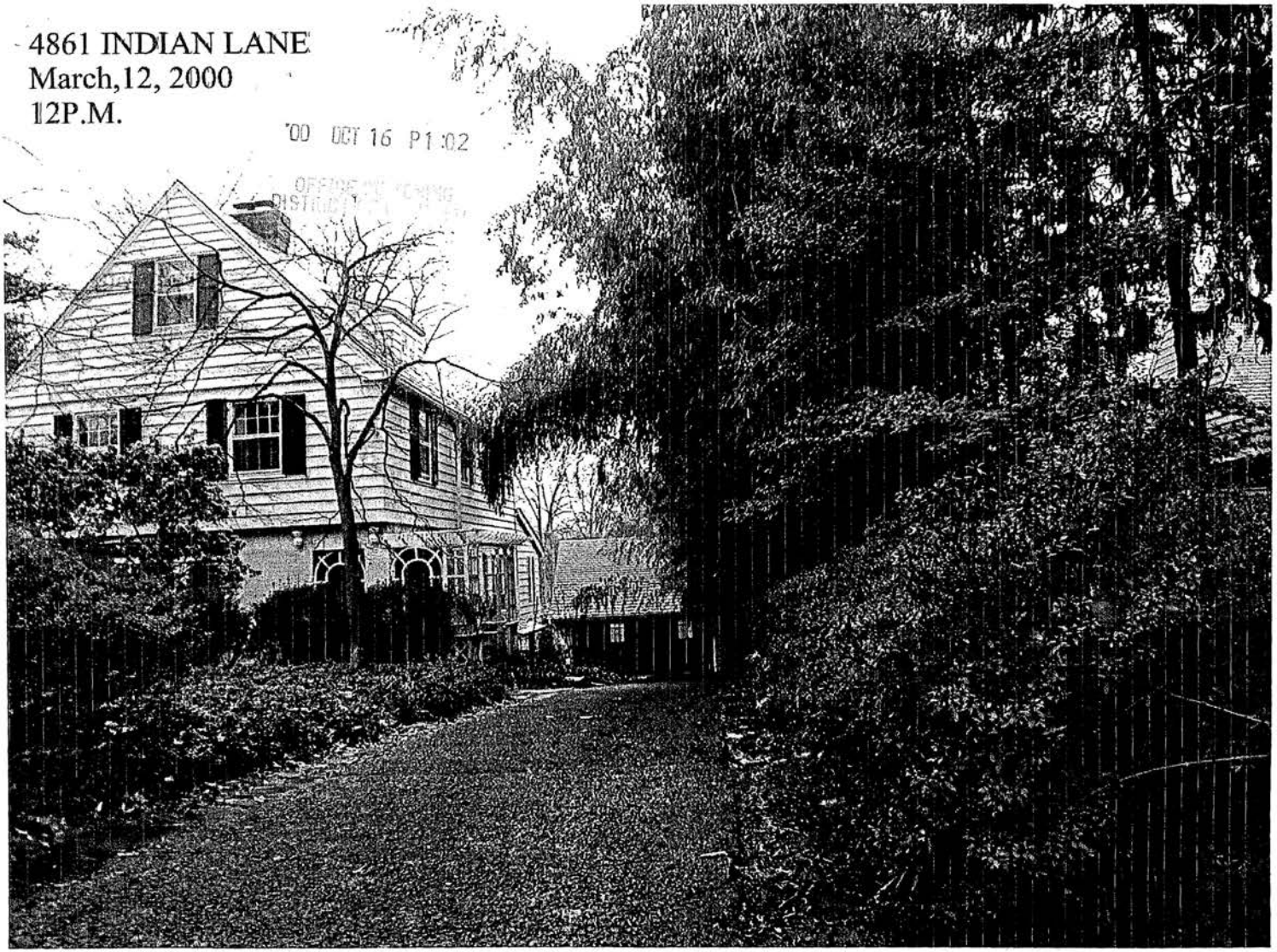
(Page 86 line 9) A Would it be a variance, sure that criteria will be taken into account by the Board Of Zoning adjustment, which is an independent body.

(Page 86 line 12) Q If this new garage is connected to the exiting structure, then it's not construction of right, is it? It would require a variance?

(Page 86 line 15) A If it were connected, that's correct.

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