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OFFICE OF ZONING
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October 26, 2000

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:

During the earlier hearing, the Board requested copies of photographs showing construction process. Recently, Mr. Ghafoorian was able to locate some pictures of the early construction. Enclosed please find an original and eight copies of these photographs. Unfortunately, only the originals are in color with the remainder being reproduction copies.

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. I regret we were unable to find these photographs for inclusion our earlier submission.

Copies have been provided to the appellant and Corporation Counsel.

Also enclosed is an original and eight copies of a Response to Appellants Brief.

Sincerely yours,

Roy I. Niedermayer

RIN:
Encl.

BZA
Case No. 16588
Exhibit No. 37

Board of Zoning Adjustment
District of Columbia
CASE NO.16588
EXHIBIT NO.37

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal

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

RESPONSE TO BRIEF OF APPELLANTS

The purpose of this appeal is the determination of whether the construction at 4900 Indian Lane, N.W. complies with the Zoning Regulations and their consistent interpretation by the Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs ("BLRA").

On several prior occasions, the Potters have failed to convince the BLRA inspectors and administrators of the correctness of their interpretation of the Zoning Regulations or two different judges of the Superior Court of the District of Columbia at two separate evidentiary hearings of the validity of their interpretation of the Zoning Regulations. Frustrated by these failures, the Potters now apparently engaged in a campaign against the owner of 4900 Indian Lane, N.W. ("Owner"), characterized by the raising of irrelevant matters for prejudicial effect only, and misstatements by incompleteness and omission.

This appeal is <u>not</u> about these irrelevant matters inserted solely as any appeal to emotion and do not contribute a fair determination on the merits. The Owner believes the Board is entitled to know what these irrelevancies are and what this case is <u>not</u> about.

Irrelevant Matters.

1. It is not relevant that the Owner may or may not be ". . . a real estate

developer with other holdings in the District of Columbia and California." All persons are entitled to the same fair, impartial and equal treatment before the Board as a matter of law and to have the Zoning Regulations applied to them in the same manner as all other citizens.

2. It is not relevant that construction may have started ". . . [w]hile the Potters were away on vacation."

3. The characterization of the structure as a "platform" is irrelevant because that term used by the Potters is. Moreover, the term "elevated" is a editorial characterization rather than a defined term in the Regulations.

4. Any alleged damage to the Potters driveway is not a matter relevant to a determination of a zoning violation of the Zoning Regulations.

5. As long as it complies with the Regulations, whether the garage ". . . towers over the Potters' back yard. . . ." is irrelevant.

6. Any argument or characterization about the Owner's status as a licensed architect, while relevant in other contexts[1/], does not answer whether the structure violates or complies with the Regulations.

7. Whatever the claimed loss of use and enjoyment of their home and invasion of privacy the Potters claim is a matter of their separate lawsuit pending in the Superior Court of the District of Columbia and irrelevant to this appeal.

8. The ". . . Forest Hills case . . ." and a copy of a *Washington Post* newspaper article are not probative or relevant to the present case because the issues and applicable

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[1/] Indeed, despite the Potters' reporting Ghafoorian to the licensing authorities, Mr. Ghafoorian has never been cited or sanctioned for practicing architecture without a license, although the Potters made it their mission to report him to the licensing authorities.

regulations were different.

9. Not only is any claim of ". . .a serious and health and safety hazard. . . " impeding the "Potter children . . . play in their driveway. . . " irrelevant, to the Zoning Regulations, but the Court ruled the Potters did not have such a right to play there. See a copy of Judge Levy's opinion attached to the submissions of Mr. Ghafoorian.

10. The matter about the ". . . 4-foot . . . rebar. . ." is not a zoning violation matter and as of the present time is not the current condition at the site.

Misstatements.

1. The as-built is not garage is 900 square feet. The Owner agrees garage is greater than 450 square feet in area but the Potters misstate this repeatedly when the calculations in their own submissions (in Exhibit 10) show otherwise.

2. None of the permit applications suggest the consent of the Potters for the construction. Nowhere in the April 1999 permit is there any section which purports to be the consent of any adjacent land owner, much less the Potters. In the application for Permit B 423964 in May 1999, Section E deals with fences and has the signature of the Owner in box 98. But this section has been crossed-out as inapplicable and was obviously filled in error since the signature of an adjoining owner is only needed if there is a party fence. Nothing in Section E relates to the Potters' property whether by street address or lot and square.

3. While "[n]either . . . permit specifically allow[s] the parking platform or the staircase. . ," none prohibits it specifically and the slab and stair elements were shown on sets of plans on file at the permit from the very beginning.

4. Water collection ". . . on . . . the Potter driveway" has been cured by the

construction of an inlet to carry water away and curb and gutters also channeling the water off of the driveway to the street.

Acknowledgments.

1. The Potters acknowledge that plans for the garage existed as early as December 1998.

2. The Potters acknowledge they discovered the garage was not in compliance with the Zoning Regulations as early as April-May 1999 and made complaints to BLRA officials about the violation of the Zoning Regulations, but failed to follow appeal procedures.

Final Observation.

The Potters' brief does ultimately address the substantive issues before the Board regarding Zoning Regulations when the irrelevancies and misstatements designed only to create improper prejudice in this Board's mind are ignored.

What is more revealing is that the underlying reliance by the Potters adhere to a so-called "outlaw" theory of law. The Potters argue that because the Owner is claimed to be in an unpopular category of persons, committed allegedly improper or illegal acts not directly relevant to the Regulations, he has thereby put himself outside the law. Once outside the law as a result of these violations, he is not entitled to be judged on the substantive issues in accordance with the law, but should be dealt with as an outlaw no deserving of the rights of citizens under the Regulations. This approach runs contrary to all sense of justice and fair play.

The Owner trusts the Board will ignore these things and deal with the substantive issues about which there is enough dispute already.

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