GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENTS

IN RE:	**5655 Moreland Street, N.W.** **Square 2307, Lots 801 and 802**	)	
Appeal of		)	**Appeal No. 16646**
James W. McBride **Daniel Serwer**		)	

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RECORD SUPPLEMENT OF APPELLANTS

This matter was heard on December 19, 2000. One of the issues raised by Appellants concerned the fact that the subject property has been constructed within the Highway Plan and that the Department of Public Works (DPW) had never given approval on the Building Permit Application. At the close of the proof there remained a question as to whether DPW approval was required. The record was left open to allow Appellants time to provide additional information concerning DPW's approval. Accordingly the Appellants provide the following:

1. Letter from Michelle Pourciau, Deputy Director of the Department of Public Works, Division of Transportation (Attached as Exhibit A). Ms. Pourciau states unequivocally that determination of the varying needs of property under the Highway Plan involves the review and clearance by the DPW, Division of Transportation through the building permit process. Such clearance was never provided in this case, and building began before full and thorough investigation by DPW could take place. Indeed, Ms. Pourciau's letter indicates that there is a record of condemnation proceedings having been begun to acquire this property in 1965, but that investigations are still underway to see what happened with that process. More importantly,

BZA
Case No. 16646
Exhibit No. 33

Board of Zoning Adjustment
District of Columbia
CASE NO.16646
EXHIBIT NO.33

however, the letter indicates that some of the land at 5655 Moreland that is within the Highway Plan is needed for roadway purposes, and will be acquired immediately; and

2. Affidavit of Daniel Serwer (Attached as Exhibit B). Mr. Serwer is one of the Appellants in this matter. His affidavit points out that he was repeatedly told by zoning officials that DPW approval for a building permit to build within the Highway Plan was required. His affidavit further points out that Department of Consumer and Regulatory Affairs (DCRA) officials zoning officials within DCRA were the focal point of all discussions concerning the efficacy of the building permit process. Zoning officials assured him that all requirements of the building permit process would be met. Appellants relied on representations of DCRA and actions of the Zoning Administration in dealing exclusively with Zoning on questions involving the efficacy of the permits at issue.

CONCLUSION

This is a matter in which a building permit was erroneously issued for construction to take place within the Highway Plan because DPW was never consulted prior to issuance. Ms. Pourciau's letter makes clear that review and clearance through the building permit process is key to DPW decisions concerning property that is part of the Highway Plan. This case is a perfect example of why DPW clearance is necessary before building is allowed within the Highway Plan. It has become increasingly clear in the process of investigating this matter that the city simply overlooked this one piece of property when it assembled the right-of-way for Northampton Street. The city, in fact, began condemnation proceedings in 1965, but because DPW was not properly notified in this case that matter has not yet been thoroughly investigated. What is critical to this proceeding is that DPW, now having looked at the matter, says that it needs some or all of the property located within the Highway Plan at 5655 Moreland. Indeed,

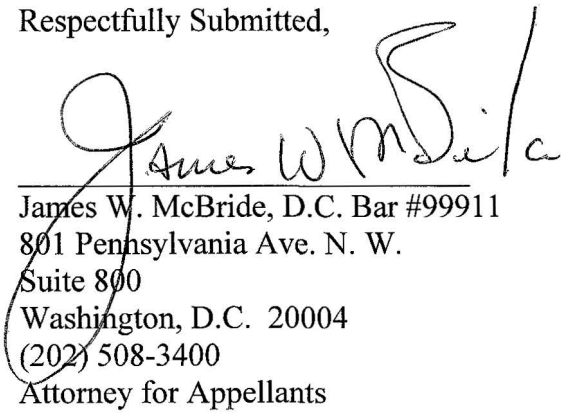
Ms. Pourciau's letter indicates that certain of the land within the Highway Plan needs to be taken immediately.

This is a matter on which this Board should decide. While it is true that D.C. Code Section 7-114 does provide general guidance to the effect that an owner may build on land within the Highway Plan prior to condemnation, that Section does not override the administrative requirements that DPW be allowed to make the decision concerning its needs for the land before a building permit is issued. DPW approval is part of the administrative framework for obtaining building permits where the Highway Plan is involved. No approval was ever obtained, and this Board should not approve a building permit that has been irregularly obtained. Additionally, the failure to have DPW approval on the permit application is a Zoning error in the context of this case. The testimony of the Zoning Administrator's representative in this matter that he is not at fault because "someone other than the Zoning Administrator is responsible for obtaining DPW signatures" is amazing. When Appellants, as citizens, had problems with irregular building permits they began discussions with DCRA generally and were told to discuss those matters with the Zoning officials. That happened in this case. The Appellants had frequent discussions with zoning officials and actually met several times with representatives of the Zoning Administration, including the Administrator, to discuss irregularities with the permits and were told repeatedly that Zoning was making certain that all requirements were met. Appellants relied on those representations. For the Zoning Administrator to appear before this Board and claim that he had no responsibility to see that proper procedures were followed in issuing the building permit here is reprehensible.

Because DPW was never asked for approval in this case and because it has now said it intends to take the land under the paved roadway plus additional land for sidewalk purposes, and

because DPW is still considering the question of a set-back to comply with the existing building restriction line, the building permits should be revoked.

Respectfully Submitted,



James W. McBride, D.C. Bar #99911
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Suite 800
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(202) 508-3400
Attorney for Appellants

January 16, 2001

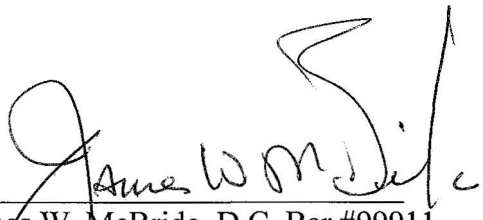
CERTIFICATE OF SERVICE

I hereby certify that I have on January 16, 2001 hand-delivered a true copy of the foregoing Statement of Appellants pursuant to 11 DCMR § 3112.10 to the parties listed below:

Mr. and Mrs. Thomas Shiner
5655 Moreland St., N.W.
Washington, D.C. 20015

Cynthia A. Giordano
Arnold & Porter
Thurman Arnold Building
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202

Zoning Administrator
DCRA/BLRA
Zoning Division
941 North Capital Street, N.E.
Suite 2200
Washington, D.C. 20002



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January 16, 2001

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS
2000 - 14TH STREET, N.W.
6TH FLOOR
WASHINGTON, D.C. 20009



REPLY TO:
DISTRICT DIVISION OF TRANSPORTATION

James W. McBride
Attorney at Law
Baker, Donelson,
Bearson and Caldwell
801 Pennsylvania Ave., N.W.
Suite 800
Washington, D.C. 20004

January 12, 2001

Dear Mr. McBride:

Thank you for taking the time to investigate the status of the roadway system surrounding 5655 Moreland Street, N.W. During our discussions it became clear that two items required further clarification. This letter is being provided to clarify these items.

1. What is the process for addressing highway plan designations when development is proposed? The highway plan designation on the base map of the District of Columbia indicates a long-standing proposal to complete the highway system. The current need to implement or construct these designations or plans varies by location. The case by case process for making this determination involves the review and clearance by the Department of Public Works (DPW), Division of Transportation (DOT) through the building permit process. In the case of 5655 Moreland St., it appears that clearance by DPW, DOT was not provided. Records show that a portion of privately owned land at this address is currently being used for a public road on Northampton Street. Records also show that the District Government began condemnation procedures to acquire this land in 1965, but we have not yet determined if these procedures were completed or if not, what prevented the transfer of land. DPW, DOT notification of proposed development of this site through the building permit process would have alerted our office of the need to complete this procedure or acquire the land by purchase or dedication pursuant to D.C. Code, Section 7-442.

2. Does the District need the area within the highway plan designation? The land under the paved roadway is needed for roadway purposes and being used for the public good to provide access. Dedication of the paved area, plus additional land for a sidewalk, needs to be accomplished immediately. The owner of the land under the paved area retains liability until the land is transferred and is responsible for

EXHIBIT A

maintenance and the care of the land. It would be in the best interest of the property owner to work with the District toward an expedited transfer. DPW, DOT does not need all of the land within the highway plan designation area for roadway purposes, but the established building restriction line that has been created on all adjacent parcels due to pre-existing right-of-way designation may present other reasons for the need for a set-back.

Thank you for bringing this to our attention. We will continue our investigation and proceed toward acquiring the needed right-of-way. Please do not hesitate to contact me at (202)671-2226, if you require additional information.

Sincerely,

Michelle Pourciau

Michelle Pourciau
Deputy Director

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		)

AFFIDAVIT OF DANIEL SERWER

CITY OF WASHINGTON)
)
DISTRICT OF COLUMBIA)

The undersigned, Daniel Serwer, being of lawful age and duly sworn, states as follows:

1. My name is Daniel Serwer. I reside at 2701 Northampton Street, N.W. and am one of the Appellants in the referenced matter.

2. During the course of my investigations into the correctness of the building permits issued for 5655 Moreland Street I was assured by two separate zoning officials that since this property was encumbered by the Highway Plan, the Department of Public Works had to review and clear any permit application. I was told this on different occasions by both Mr. Edgar Nunley and Mr. Toye Belo.

3. In August, Appellants contacted Mr. Lloyd Jordan, director of the Department of Consumer and Regulatory Affairs (DCRA) concerning this matter, and were told that zoning officials would deal with it. We also contacted the Building and Land Regulation Administration directly concerning this matter and were again told that zoning officials would work with us on this matter. Since mid-August we have dealt exclusively with zoning officials

EXHIBIT B

in attempting to determine whether the building permits for 5655 Moreland were properly issued. In fact, I have personally had at least two meetings with Michael Johnson, the Zoning Administrator, and have been given written assurances that "compliance" would be met.

4. Appellants relied on the representations of the Director of DCRA and from Building and Land Regulations that the Zoning Officials were the proper persons to be dealing with on this matter. At no time did anyone connected with DCRA suggest that officials other than at Zoning be contacted regarding this matter. Based upon actions taken by the Zoning Administrator, and by officials working for Zoning, Appellants were led to believe that Zoning was dealing with all of the matters necessary for a valid building permit. In light of this, the Testimony of Mr. Belo, that someone other than the Zoning Administrator was responsible for obtaining DPW signatures, is inexplicable.

SUBSCRIBED and SWORN to before me on January 16, 2001.

Daniel Serwer

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public

My Commission Expires:

4-30-04

Linda S. Butcher
Notary Public, District of Columbia
My Commission Expires 4-30-04