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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APPELLANTS' MOTION TO STRIKE

The Board left the record open in this matter for the sole purpose of addressing the issue of what the DPW' role should be in the processing of building permits. Appellants abided by that limitation in the Record Supplement they filed on January 16, 2001. In filing the Response to Appellants' Record Supplement, the Intervenor has disregarded those limitations and has both argued, and submitted new information, with respect to the other two issues in this matter. Pages three and four of the Intervenor's Response, down to the Conclusion, are not in response to anything the Appellants said in their Record Supplement, are outside the scope permitted by the Board in allowing the record to remain open, and should be stricken.

Indeed, the actual "response" to Appellants' addition to the record is a single paragraph of argument, in which the Intervenor and his counsel attempt to tell this Board what someone else said.[1] This is not evidence, and should not be treated as such by the Board. Intervenor argues that the DPW's role or authority with respect to the permit process does not have to be decided

[1] Intervenor continues to argue about the 1992 permit application. First, it is entirely unclear on this record whether the permit issued in 1992 was for both the house and garage. No detailed plans for a garage were submitted in 1992. The building permit application is for 3,200 sq. ft of floor space, while the 2000 building permit application shows the house and garage at 5,200 square feet. Also, if the 1992 permit was to build both a house and garage, and no garage was constructed some further action with the Building permit office was required, which the intervenor admits never having done. Most importantly though is Title 11 §3202.4(a) of the Zoning Regulations which requires all construction to be completed within two years of the date on which a permit is issued or the permit process starts over. What is clear on the record here is that the Intervenor made a new application for a building permit, no DPW approval was obtained, and DPW does want a portion of Intervenor's land that is within the Highway Plan.

BZA
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Exhibit No. 36

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District of Columbia
CASE NO.16646
EXHIBIT NO.36

by this Board. First, the record was left open for the sole purpose of addressing this issue. Second, we now have a letter from Ms. Pourciau, the Deputy Director of the Division of Transportation of DPW, stating that DPW review and clearance in the permit process is necessary. It should be noted that Intervenor submits no evidence to contradict DPW's position as stated by Ms. Pourciau. But the issue for this Board is now beyond simply deciding whether the permit process was regular. Now what has happened is that the DPW has decided that it needs Intervenor's property for the street and for a sidewalk. Ms. Pourciau's letter says, "Dedication for the paved area plus additional land for a sidewalk, needs to be accomplished immediately" (emphasis added). Her letter also indicates that DPW is exploring the question of the established building restriction line that has been created for all other adjacent parcels, to see whether that is applicable. Since the Intervenor's garage is built well within the existing Highway Plan, we cannot know whether it violates any setback, or building restriction lines until the DPW has been given the opportunity to complete its work. Work that should, and would, have been completed before construction began, if DPW had been notified as a part of the permit process. Complying with setbacks and building restriction lines are clearly with the purview of this Board. This Board should either hold that the permits were not properly issued, or, at a minimum, withhold ruling until it is clear what property the Intervenor continues to own.

Respectfully Submitted,

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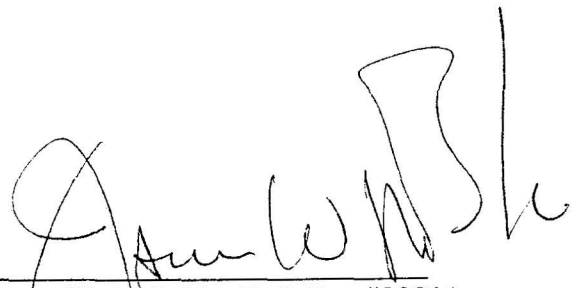
February 5, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have on February 5, 2001 sent by first class mail a true copy of the foregoing Motion to Strike pursuant to 11 DCMR § 3112.10 to the parties listed below:

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