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OF COUNSEL
MARK J. ZWEIFLER

ADMITTED IN NEW YORK
AND NEW JERSEY ONLY

September 7, 2001

BY FACSIMILE AND HAND DELIVERY

Ms. Sheila Cross-Reid
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W.
Room 210
Washington, D.C. 20001

Re: BZA Appeal 16679

Dear Chairperson Reid:

This firm and the undersigned are *pro bono* counsel for the Appellant, the Spring Valley-Wesley Heights Citizens' Association (the "SV-WHCA") in the above-referenced Appeal. Copy enclosed.

Mr. Charles Sisson, the property owner, has filed a Motion to Dismiss the Appeal as Moot. This Motion is without any substantive merit and procedurally premature and should be **DENIED**.

Consideration of this Motion requires a fuller review of the tortured background of this case than provided by Mr. Sisson. Beginning in January 1998, Mr. Sisson filed and obtained no less than five (5) separate building permits for the consolidated renovation (new front porch, rear addition and new enlarged garage) of the premises at 3020 43rd Street, N.W. Mr. Sisson has never occupied these premises although he appears to have rented the property and continued to enjoy the Homestead Exemption (owner-occupied) real estate tax discount for more than three years. As later determined by the Board, these five permits were found to have been obtained based on incomplete and misleading information provided by Mr. Sisson and work completed prior to issuance of the permits or beyond the scope of those permits.

In BZA Appeal No. 16405, brought by the immediately adjacent property owner, Mrs.

BZA
Case No. 16679
Exhibit No. 13

Board of Zoning Adjustment
District of Columbia
CASE NO. 16679
EXHIBIT NO. 13

Mildred R. Crary, the Board revoked each of the five (5) building permits in a detailed order which was issued on December 28, 1999. Copy enclosed. Mr. Sisson has challenged the Board's decision in BZA Appeal No. 16405 in the D.C. Court of Appeals. This judicial appeal is pending. More than two months prior to the issuance of the Board's order in Appeal No. 16405, Mr. Sisson filed BZA Application No. 16521 attempting by self-certification to seek the required zoning relief for the illegally constructed improvements on the property. After issuance of the Appeal Order No. 16405, Mr. Sisson was forced to amend Application No. 16521 to include zoning relief not previously requested based on a memorandum from the Zoning Administrator. Repeated hearings before the Board were then required in order for Mr. Sisson to provide accurate information on the property demanded by the Board. Based on this reluctantly provided information, the Zoning Administrator added additional required zoning relief, but also confirmed on at least two separate occasions that it was his "**conclusion that Mr. Session (sic) constructed the front porch addition outside the scope of DCRA permits and zoning approval. Also, my investigation concluded that DCRA/OZA staff reviewed the approved permits based upon misinformation provided by the applicant.**" A year after filing BZA Application No. 16521, Mr. Sisson attempted an end run on the Board process and the community by obtaining Building Permit no. B430091 (October 11, 2000) which purported to authorize all of the illegally constructed improvements except the covered front porch, which was constructed prior to obtaining a building permit. In November 2000, the SV-WHCA filed Appeal No. 16679 challenging the issuance of Building Permit No. B430091 to Mr. Sisson.

On July 31, 2001, the Board denied Application No. 16521 focusing particular attention on the conclusion that Mr. Sisson had knowingly performed work without permits and beyond the scope of those permits which had been obtained based on incomplete and misleading information provided by the applicant, Mr. Sisson. The written order in Application No. 16521 has not been issued by the Board. In proceeding with Application No. 16521, the Board specifically deferred action on Appeal No. 16679 (accepting Building Permit B430091 as validly issued) and refused to allow testimony on the issues raised in that Appeal. Testimony was strictly limited to the specific issues raised in the Application No. 16521 and particularly the illegally constructed covered front porch.

The Board has heard no testimony or other evidence related to Appeal No. 16679 and the denial of BZA Application No. 16521 (especially without a written order) leaves most, if not all, the issues raised in Appeal No. 16679 unresolved. Specifically, at least the following issues raised by Appeal No. 16679 have not been the subject of Board scrutiny or decisionmaking:

1. The building permit application is unsigned and therefore void on its face.

2. The building permit approval is incomplete and inconsistent with the Board's written decision in BZA Appeal No. 16405.

3. The Building Permit approval violates the lot occupancy restrictions imposed by the Wesley Heights Overlay District ("WHOD"). 11 DCMR 1543.2 (a). The Zoning Administrator is not authorized any flexibility regarding the strict application of the lot occupancy restrictions imposed by the WHOD. 11 DCMR 407. **[Mr. Sisson has not removed the covered front in accordance with the Board's oral denial decision in Application No. 16521, and therefore, a substantially greater violation of the lot occupancy requirements continues to exist.]**

4. The Building Permit approval violates the applicable side yard restrictions. 11 DCMR 405.8. The Zoning Administrator's flexibility regarding the applicable side yard restrictions was a misuse and/or abuse of his limited discretion and substantially impairs the purpose of the otherwise applicable regulations. 11 DCMR 407.1.

5. The Building Permit approval violates BZA Appeal No. 16405 and the applicable private driveway width and grade restrictions. 11 DCMR 2117.

6. The Building Permit approval violates BZA Appeal No. 16405 and the applicable access and off-street parking restrictions. 11 DCMR 2101.1, 2117.4.

This Motion is in keeping with Mr. Sisson's long-standing practice of acting prematurely in order to obtain unwarranted or illegal benefit, attempt to escape full liability for his established misconduct, or circumvent the Board and its established role. The following facts are well-established: Mr. Sisson: 1) demolished the existing one-car garage without a demolition permit and contrary to the building permit; 2) constructed a two-car garage without a building permit; 3) constructed the covered front porch without a building permit and filed two after-the-fact permits; 4) filed Application 16521 without waiting for the written order in Appeal 16405; 5) incorrectly and prematurely self-certified zoning relief in Application No. 16521; 6) filed Application No. 16521 before concluding his Court of Appeals challenge of Appeal No. 16405; 7) filed and pursued Application No. 16521 based on incorrect property information, and 8) obtained a conflicting building permit while pursuing Application No. 16521.

It is undisputed that pursuing this Motion prior to the issuance of the Board's order in BZA Application No. 16521 is premature. By his own actions, Mr. Sisson limited the scope of Application No. 16521 to simply a matter of the illegally constructed covered front porch and the related front yard and lot occupancy violations. Having succeeded in this procedural maneuver, he must now wait to have the other outstanding issues adjudicated in this Appeal.

Remarkably, for more than three years, the Wesley Heights community has sought a common sense resolution (one that was timely, avoided legal fees, responded to the community's needs and allowed Mr. Sisson to retain most of the illegally constructed improvements) of this matter with Mr. Sisson, but has been repeatedly ignored. At this late date, Mr. Sisson should not be given any benefit of the doubt or rewarded for his established misconduct, failure to accept responsibility and intransigence.

For the foregoing reasons, the Appellant respectfully requests that the Motion to Dismiss be denied and that further action in this Appeal be deferred until after the order is issued in Application No. 16521 and the Court of Appeals has rendered its decision on Appeal No. 16405.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

JPB:sp
Enclosures
cc: Mr. William Harrop, President - SV-WHCA
Ms. Mildred R. Crary.
Mr. George Watson, III, President - Wesley Heights Historical Society
Mr. Michael D. Johnson, Zoning Administrator
Maureen E. Dwyer, Esq.
166021

Form 1
(Revised 7/17/95)

Docket No. 16079

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPEAL

NOTE: **See reverse side of this application for filing instructions, filing fees and information required by the Board.**

DO NOT MAIL DO NOT MAIL

TO THE BOARD OF ZONING ADJUSTMENT:

Pursuant to Sections 3105 and 3106 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the administrative decision of the Zoning Administrator
(Name of administrative officer and title)

made on October 11, 2000, to the effect that
(Date of decision)

to approve Building Permit No. B430091.

Premises affected are located at 3020 43rd Street, N.W.,
(street address)

Lot(s) 70, Square(s) 1621,

in the District of Columbia, in Zoning District WHOD/R-1-A.

Present Use of Property: Vacant.

Proposed Use of Property: Single-family Dwelling.

Owner of Property: Mr. Charles A. Sisson.

Address or Owner: c/o Allison C. Prince, Esq., 2300 N Street, N.W., Washington, D.C. 20037.

Name and address of appellant, if other than owner:
Spring Valley-Wesley Heights Citizen's Association
c/o John Patrick Brown, Jr., Esq.

State manner in which appellant is aggrieved by administrative decision: See attached.

State briefly the allegations of error in administrative decision:

See attached.

Relevant Sections of the Zoning Regulations: See attached.

Date: 11/28/00 Signature John P. Brown
(Applicant)*
John Patrick Brown, Jr.

***If appeal is filed by agent of appellant, Form 1 (notice of appeal) shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf of this appeal.**

TO BE NOTIFIED OF HEARING AND DECISION:

BZA APPEAL NO. 16679
By
Spring Valley-Wesley Heights Citizen's Association

Regarding 3020 43rd Street, N.W.
(Lot 70, Square 1621)

The administrative decision of the Zoning Administrator to approve Building Permit No. B430091, dated October 11, 2000 (attached as Exhibit A) is in error for the following reasons:

1. The Building Permit application is unsigned and therefore void on its face.

2. The Building Permit approval is incomplete and inconsistent with the Board's written decision in Appeal No. 16405.

3. The Building Permit approval violates the lot occupancy restrictions imposed by the Wesley Heights Overlay District ("WHOD"). 11 DCMR 1543.2 (a). The Zoning Administrator is not authorized any flexibility regarding the strict application of the lot occupancy restrictions imposed by the WHOD. 11 DCMR 407.

4. The Building Permit approval violates the applicable side yard restrictions. 11 DCMR 405.8. The Zoning Administrator's flexibility regarding the applicable side yard restrictions was a misuse and/or abuse of his limited discretion and substantially impairs the purpose of the otherwise applicable regulations. 11 DCMR 407.1.

5. The Building Permit approval violates BZA Appeal No. 16405 and the applicable private driveway width and grade restrictions. 11 DCMR 2117.

6. The Building Permit approval violates BZA Appeal No. 16405 and the applicable access and off-street parking restrictions. 11 DCMR 2101.1, 2117.4.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

Attorney for the Spring Valley-Wesley Heights Citizen's Association

November 28, 2000

Form BLRA-15
(Rev. 9/30/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT PERMIT NO. B430091

PERMIT

Date 10/11/00 (Type) MISC.

Address of work 3020 43RD STREET NW

Permission is hereby granted to

CHARLES SISSON

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

Authorized work and conditions of performance thereof:

Lot 70 Square 1621

TOTAL PERMIT FEE $

(Owner) FILING FEE $

NO. DATE

FEE PAYABLE $ 75.00

FOR INSPECTIONS CALL [redacted]442-4641

2 SOTRY REAR ADDITION (PREVIOUS PERMIT B413166, ATTACHED). NEW GARAGE (PREVIOUS PERMIT B415675, ATTACHED). REMOVAL OF ROOF OVER FRONT PORCH (SEE PREVIOUS PERMIT B419108 FOR THE CONSTRUCTION OF THE ROOF OVER FRONT PORCH, ATTACHED). SEPARATE ELEC. AND PLUMB. INSTALLATION PERMITS ARE REQUIRED.

Width of Bldgs. Length Height No. of Stories 2 No. of Bldgs.

Zone WHOD/R1A To be occupied as SFD

Height of terrace above grade Projections:

Address of owner 3020 43RD ST NW

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

L. JORDAN 32301
DIRECTOR

Chief, Permit Issuance Branch

By _____ Permit Clerk

EXHIBIT A

00-00166 FS (5) pages

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
P.A.D.C. No.:	O.G. No.:	WHOD/RET-A			By:
H.P.A. No.:	S.L. No.:	Ward No.:	Receipt No.:	Date:	Receipt No.:

★ ★ ★ GOVERNMENT OF THE DISTRICT OF COLUMBIA
BLRA-33 (Rev. 10/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (727-7050)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY

(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

CLEARANCE TO FILE
By: _____ Date _____

ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1. Address of Proposed Work:	Suite No.:	2. Lot:	3. Square:	4. Application Date:
3020 43RD STREET NW		70	1621	

5. Owner of Building or Property:	6. Address: (include Zip)	7. Phone:
CHARLES SISSON	3020 43RD ST NW WASHINGTON DC	Work: (202) 623-7113 Home:

8. Agent for Owner: (if applicable)	9. Address: (include Zip)	10. Phone:
		Work: Home:

11. Type of Proposed Work (check all applicable boxes):

- ☐ New Building
- ☒ Addition
- ☐ Alteration and Repair
- ☐ Raze Building
- ☐ Retaining Wall
- ☐ Fence
- ☐ Shed
- ☐ Awning
- ☒ Garage
- ☐ Sign
- ☐ Other (Specify) _____

12. Description of Proposed Work:

- 2 STORY REAR ADDITION (PREVIOUS PERMIT # B413166, ATTACHED)
- NEW GARAGE (PREVIOUS PERMIT # B415675, ATTACHED)
- REMOVAL OF ROOF OVER FRONT PORCH (SEE PREVIOUS PERMIT # B419103 FOR THE CONSTRUCTION OF THE ROOF OVER FRONT PORCH, ATTACHED)

13. Existing Use(s) of Building or Property:	14. Ex. No. of Stories of Bldg.:	15. Ex. No. of Dwelling Units:	Official Use Only: Miscellaneous FEE $ 75.00 By: Date: 10/7/02
SINGLE FAMILY RESIDENTIAL	2	1	
16. Proposed Use(s) of Building or Property:	17. Prop. No. of Stories of Bldg.:	18. Prop. No. of Dwelling Units:	
SINGLE FAMILY RESIDENTIAL	2	1	

19. Starting Date of Work:	20. Completion Date of Work:	21. Method of Removing Construction Debris:	22. Does the proposed work involve disturbing the earth or razing a building?
ASAP	ASAP	☐ Pick-up Truck ☒ Dumpster ☐ Other (specify):	☐ Yes, answer q. 23 ☒ No, SKIP q. 23-27

23. Is the area of disturbed earth more than 50 sq. ft.?	24. Soil Erosion Control Methods:	25. Area of Offsite Drainage:	26. No. of Footings or Columns:	27. Size of Footings of Columns:
☐ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25	SILT FENCE	N/A sq. ft.	N/A	N/A sq. ft.

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I).

Complete Section B if the proposed work is new building, addition or alteration. (Page 2)
Complete Section C if the proposed work is razing a building. (Page 2)
Complete Section D if the proposed work is a retaining wall. (Page 2)
Complete Section E if the proposed work is a fence. (Page 3)
Complete Section F if the proposed work is a shed/garage. (Page 3)
Complete Section G if the proposed work is an awning. (Page 3)
Complete Section H if the proposed work is a sign. (Page 3)

OFFICIAL USE ONLY

	R	P	H	A	
M					
P					
E					W: ☐ Yes ☐ No
F					PLANS
S					☐ No

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

28. Architect's Name:	29. Lic. No.:	30. Architect's Address: *(include Zip)*	31. Phone:
CEDAR DESIGN		9200 BASIL CT # 514 LARGO MD 20774	(301) 883-8600
32. Engineer's Name:	33. Lic. No.:	34. Engineer's Address: *(include Zip)*	35. Phone:
36. Building Contractor's Name:	36A. Lic. No.:	37. Contractor's Address:	38. Phone:

39. Type of Construction	40. Fire Suppression:	41. Booster Pump:	42. Total Lot Area:	43. Breakdown of Lot Area (= 100%
☐ Masonry ☐ Steel ☐ Wood ☐ Other: ☐ Concrete	☐ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☐ None ☐ Other:	☐ New ☐ Existing ☐ None	sq. ft.	a. Building: % b. Paved Area: % c. Greenery: %

44. Present Gross Floor Area of Bldg.:	45. Proposed Gross Floor Area of Bldg:	46. Floors involved in this permit:	47. Projection beyond building line?
sq. ft.	sq. ft.	☐ All ☐ Floors	☐ Yes, answer q. 48-52 ☐ No, SKIP q. 48-52

48. Number and type of projection:	49. Distance of projection:	50. Width of projection:	51. Width of building frontage: ft 52. Signature of Owner (projection only):

53. Water or Sewer Excavation?	54. Driveway Construction?	55. Sheeting/Shoring Necessary?	56. Elevators involved?	57. No. and type of elev.:	58. Plans Certified by Engineer?
☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes, answer q. 57 ☐ No, SKIP q. 57		☐ Yes, cert. is attached ☐ No

59. Estimated Cost of Work:
(a) New/Add.: $ _____
(b) Alt/Rep.: $ _____
Total: $

OFFICIAL USE ONLY

Alter/Repair FEE	New Const. FEE	Filing Fee	TOTAL PERMIT FEE
$	$	$	$
By: Date:	By: Date:	By: Date:	By: Date:

60. Volume of New Bldg. or Addition: cubic ft.

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:	62. Contractor's Address: *(include Zip)*	63. Phone:

64. Insurance Company:	65. Policy or Certif. No.:	66. Expir. Date:	67. Raze Method:

68. Building Material:	69. Raze Entire Building?	70. Building Condemned?	70A. Building Vacant?	71. Public Space Vault?	72. Disconnect Water and/or Sewer?	73. Size of Wat Connectior
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	in.

74. Plumber's Name:	75. Lic. No.	76. Length:	77. Width:	78. Height:	79. Volume:	80. Party Wall?
		ft.	ft.	ft.	cu. ft.	☐ Yes ☐ No

81. Asbestos in the Building?	82. Raze Contractor Signature:	OFFICIAL USE ONLY		
☐ No ☐ Yes, Location _____		FEE	By:	Date:
	83. Owner's Signature:	$		

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations

84. Cost of Work:	85. Material:	86. Height:	87. Color:	88. Location:
$		ft.		☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

89. Signature of Adjoining Owner:	90. Phone: Work Home	OFFICIAL USE ONLY		
		FEE	By:	Date:
91. Address of Adjoining Owner:	92. Lot:	93. Square:		

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations

94. Material and type:	95. Height: ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land *

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

98. Signature of Adjoining Owner:	99. Phone: Work Home	OFFICIAL USE ONLY: FEE $	By:	Date:
100. Address of Adjoining Owner:	101. Lot:	102. Square:		

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number:	104. Length: ft.	105. Width: ft.	106. Area: sq. ft.	107. Height: ft.	108. Volume: cu. ft.	109. Estimated Cost of Work: $	OFFICIAL USE ONLY: FEE $	By:	Date:
110. Material of Roof:	111. Material of Sides:	112. Wall thickness:: ☐ External ( ) inches ☐ Party ( ) inches				113. Color:			

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color:	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line ____ in. Beyond pt. of attachm. ____ in.	118. Height of lowest part of awning: (a) ____ ft above sidewalk (b) ____ ft above parking (c) ____ ft above grade	OFFICIAL USE ONLY: FEE $	By:	Date:

119. Material of Frame:	120. Material of Covering:	121. Lettering on Awning? ☐ Yes ☐ No	122. Fixed posts? ☐ Yes ☐ No	123. Over side-walk cafe? ☐ Yes ☐ No

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number:	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No, SKIP q. 126-132	126. Type: ☐ Incandes. ☐ Fluoresc. ☐ Neon	127. Power ____ VA	128. Electrical Contractor: Lic. No.:

129. Address of Electrical Contractor *(include Zip)*	130. Signature of Licensed Electrician:	131. Phone:	132. License No.:

133. Height relative to building and ground: a) ____ ft ____ in above sidewalk b) ____ ft ____ in above roof c) ____ ft ____ in is bldg height d) ____ ft ____ in above projection or window e) ____ ft ____ in from roof to sign's bottom	134. Material of Sign:	135. Type of Sign:	136. Color:

137. Width: ft.	138. Length: ft.	139. Area of Sign: sq. ft.	140. Width of Business Frontage: ft.

141. C of O Number for Building:	142. Sign Contractor Lic. No.:	OFFICIAL USE ONLY: Sign FEE $	Elect. FEE $	Total FEE $ 10.00
143. Sign Contractor's Address:	144. Phone:	By: Date:	By: Date:	BY: Date:

(I) APPLICANT'S SIGNATURE:

A. OWNER: I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner:_____ Address:_____ Date:_____

B. AGENT: I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent:_____ Address:_____ Date:_____

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

- ☐ 1. Fine Arts by: _____ Date: _____
- ☐ 2. Historic by: _____ Date: _____
- ☐ 3. PADC by: _____ Date: _____
- ☐ 4. Cap. Gateway by: _____ Date: _____
- ☐ 5. W.H./Obs. Precinct by: _____ Date: _____
- ☐ 6. Flood Control by: _____ Date: _____
- ☐ 7. WMATA by: _____ Date: _____
- ☐ 8. Condem. by: _____ Date: _____
- ☐ 9. RLA by: _____ Date: _____
- ☐ 10. Rental Accom. by: _____ Date: _____
- ☐ 11. Chinatown Distr. by: _____ Date: _____
- ☐ 12. Utility Clearance by: _____ Date: _____
- ☐ 13. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☐ 1. Zoning by: _____ Date: _____
- ☐ 2. DPW — Permit and Records Division
  Access to Parking Street ☐ Street ☐ Alley
  Cleared by: _____ Date: _____
- ☐ 3. DPW - Consumer Engineer
  Cleared by: _____ Date: _____
- ☐ 4. ERA - Erosion Control
  Cleared by: _____ Date: _____

Restrictions of the Permit:

SEPARATE ELECTRICAL, PLUMBING ~~AND MECHANICAL~~ INSTALLATION PERMITS ARE REQUIRED.

C. PLANS AND APPLICATION APPROVAL

- ☐ 1. Information Counter by: AM Date: 9-22-
- ☐ 2. Information Center by: _____ Date: _____
  - ☐ (a) ABC Board by: _____ Date: _____
  - ☐ (b) Noise Control by: _____ Date: _____
  - ☐ (c) Industrial Safety by: _____ Date: _____
  - ☐ (d) Vector Control by: _____ Date: _____
  - ☐ (e) D.C. Animal by: _____ Date: _____
  - ☐ (f) Police Dept. by: _____ Date: _____
- ☑ 3. Zoning by: SAN Date: 9/22/
  Zoning Update by: _____ Date: _____
- ☐ 4. DPW - Permit and Records Division/Deposit #
  Sidewalk Deposit $_____ Driveway Deposit $_____
  by: _____ Date: _____
- ☐ 5. Water/Sewer Design Branch
  Consumer Eng. by: _____ Date: _____
- ☐ 6. Environmental Regulation Administration
  - ☐ Environmental Policy Review
    Control No.: _____
    by: _____ Date: _____
  - ☐ Erosion Control by: _____ Date: 4/24
  - ☐ Storm Water Mgmt. by: _____ Date: _____
    Plan No. _____
- ☑ 7. Mechanical Eng. Review by: _____ Date: 9/23/96
- ☐ 8. Plumbing Eng. Review by: _____ Date: 9/23/96
- ☑ 9. Electrical Eng. Review by: _____ Date: 9/24/96
- ☐ 10. Health Plan Review
  - ☐ (a) Food Plan Review by: _____ Date: _____
  - ☐ (b) Medical X-ray Plan Rev. by: _____ Date: _____
- ☐ 11. D.C. Fire Dept. (Fire Prevention Plan Review Section) by: _____ Date: _____
- ☐ 12. Elevator Plan Rev. Sec. by: _____ Date: _____
- ☐ 13. Plumbing Insp. Rev. by: _____ Date: _____
- ☐ 14. Construction Insp. Branch (Field Check) by: _____ Date: _____
- ☐ 15. Historic Pres. Div. by: _____ Date: _____
- ☐ 16. Structural Eng. by: _____ Date: 10/7/
- ☐ 17. Permit and Certificate Issuance Counter By: _____ Date: _____
- ☐ 18. Q.C. By: _____ Date: _____

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICE OR OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639

ZONING

C of O Number _____ Date _____

Existing Use(s) _____

SFD

- ☐ New bldg.
- ☐ P.O.D.
- ☐ File in room 329

Job No.:	BZA Case No.:	PUD Order No.:

DPW — PUBLIC SPACE

Street Name: _____

Street Width: _____

Road Width: _____

Sidewalk Width: _____

Parking: _____

Restrictions: _____

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 16405 of Mildred Rodgers Crary, pursuant to 11 DCMR § 3105 (new 3100.2), from the administrative decision of the Zoning Administrator to issue the following building permits allowing various alterations and additions to the subject property: Permit No. B413166, dated January 29, 1998, for a two-story addition on the rear; Permit No. B413424, dated February 9, 1998, for an addition to a garage, length 20 feet, width 20 feet, height 14 feet; Permit No. B415675 dated May 27, 1998, for a new garage to be located on the same spot as previous garage, length 20 feet, width 10 feet 9 inches, height 8 feet; Permit No. B417814, dated August 17, 1998, for repair of existing roof, roof in place, no structural change; and Permit No. B419108, dated October 5, 1998, to build new porch roof as per plans. The Appellant also challenges the R-1-B zoning classification attributed to the property by the Zoning Administrator. These permits were issued for property located at premises 3020 43rd Street, N.W. (Square 1621, Lot 810).

HEARING DATES: December 16, 1998, February 17, 1999, April 21, 1999, May 5, 1999, May 19, 1999 and May 26, 1999

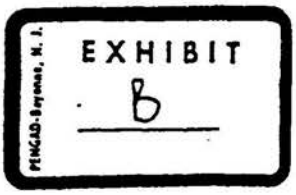
DECISION DATE: June 16, 1999

ORDER

PRELIMINARY AND PROCEDURAL MATTERS:

This Appeal was brought by Mildred R. Crary, the owner of property abutting the subject property. At the Board's December 16, 1998 public hearing, Charles Sisson, owner of the subject property, requested Intervenor status and postponement of the hearing because of a previously scheduled overseas trip. The Board granted both requests.

At the hearing held February 17, 1999, the Appellant sought to amend the Appeal to include two building permits that were discovered after the Appeal, which initially challenged three permits, was filed. The Board determined that the two newly discovered building permits were germane and directed readvertisement of the Appeal to include all five permits. Also at the February 17, 1999 hearing, the Intervenor requested dismissal of the Appeal because it was not timely filed and was also barred by the doctrines of laches and estoppel. The Board denied



Intervenor's estoppel claim on May 5, 1999,[1] but determined that the facts of the case must be heard before addressing the issues of timeliness and laches.

The Appeal was heard on May 26, 1999. Testimony was received from Mr. Edgar Nunley, chief of the Zoning Review Branch in the Department of Consumer and Regulatory Affairs, Advisory Neighborhood Commission ("ANC") 3D, and Mr. George Watson, president of the Wesley Heights Historical Society, in addition to the Appellant and the Intervenor.

FINDINGS OF FACT

1. The subject property is located at 3020 43rd Street, N.W. (Square 1621, Lot 810) in the Wesley Heights neighborhood of Ward 3. The streets that surround the property are Cathedral Avenue to the north, New Mexico Avenue and 43rd Street to the east, Hawthorne Street to the south, and 44th Street to the west.

2. The property contains 6,563 square feet of land area and is developed with a single-family, detached dwelling that was constructed in 1926. The building contains a gross floor area of 2,876 square feet.

3. The subject property is zoned WHOD/R-1-A. The Wesley Heights Overlay District (WHOD) was established to preserve and enhance the low-density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area. 11 DCMR § 1541.1. The purposes of the WHOD are: (1) to preserve in general the current density of the neighborhood; (2) to allow reasonable opportunities for owners to expand their dwellings; and (3) to preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood. 11 DCMR § 1541.3.

4. The WHOD zoning requirements apply in combination with the requirements of the R-1-A District. 11 DCMR § 1542.1. The zoning requirements applicable to the Intervenor's property are summarized in the following chart:

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[1] The elements of estoppel are: (1) expensive and permanent improvements, (2) made in good faith, (3) in justifiable and reasonable reliance upon, (4) affirmative acts of the District government, (5) without notice that the improvements might violate the zoning regulations, and (6) equities that strongly favor the party asserting the defense. *Wieck v. District of Columbia Board of Zoning Adjustment*, 383 A.2d 7, 11 (D.C. 1978). In denying Intervenor's estoppel claim, the Board relied upon the principle that an innocent third party properly cannot be estopped from challenging the government's mistaken issuance of a permit, even when there has been reliance by the permittee. The Board has previously held that estoppel cannot bar a neighboring property owner (as distinct from the District government) from asserting rights under the zoning regulations. The Court of Appeals has noted that the Board has adopted this position in *Beins v. District of Columbia Board of Zoning Adjustment*, 572 A.2d 122, 125 (D.C. 1990.) This position has been accepted in other jurisdictions as well. *See Lithe v. Hidalgo*, 536 S.W.2n 898, 901-02 (Mo.App. 1976) ("unconscionable to hold that aggrieved private parties could be prejudiced by the conduct of city officials with whom they are not in privity"); *Boyd v. Donelon*, 193 So.2d 291, 298 (La. App. 1966) (citations omitted) ("neighboring property owners . . . are not estopped by any permission or representations made by the municipal employees"): *Pascale v. Board of Zoning Appeals of City of New Haven*, 186 A.2d 377, 380 (1962) (assuming that a city may be estopped from enforcing a regulation because it issued a building permit, such estoppel will not defeat the rights of an aggrieved property owner).

Zoning Requirements	R-1-A	WHOD/R-1-A	Site
Minimum Lot Area	7,500 s.f.	7,500 s.f.	6,563 s.f. (existing)
Minimum Lot Width	75 ft.	75 ft.	53 ft. (existing)
Lot Occupancy	40%	2,000 s.f., where lot size is between 5,000 s.f. and 6,667 s.f.	2,145 s.f. (existing)
Floor Area Ratio	None Prescribed	Gross floor area shall not exceed the sum of 2,000 s.f. plus 40% of lot area, with exceptions for open porches and garages	2,876 s.f.
Minimum Front Yard	None Prescribed	Equal to or greater than the average setback of all structures on the same side of the street in the same block; 21 ft. in this case	25 ft. (prior to addition); 17 ft. (after porch construction)
Minimum Rear Yard	25 ft.	25 ft.	N.A.
Minimum Side Yard	8 ft. each	8 ft. each	6 ft. each (existing)
Off –street parking	One space, accessible directly from improved street or alley or via a graded and unobstructed private driveway	One space, accessible directly from improved street or alley or via a graded and unobstructed private driveway	

5. The subject property is nonconforming because its lot area, lot width, and setbacks are smaller than the minimums prescribed in the WHOD/R-1-A zone, and because its lot occupancy is higher than the prescribed maximum.

6. The Appeal challenges five permits issued between January and October 1998 for construction at the subject property, whose main elements were a covered front porch, a rear two-story addition, and a new garage. The five permits at issue are:

(1) Building Permit No. B413166, dated January 29, 1998, for a two-story addition on the rear;
(2) Building Permit No. B413424, dated February 9, 1998, for an addition to a garage, length 20 feet, width 20 feet, height 14 feet;
(3) Building Permit No. B415675, dated May 27, 1998, for a new garage to be located on the same spot as previous garage – length 20 feet, width 10 feet 9 inches, height 8 feet;
(4) Building Permit No. B417814, dated August 17, 1998, for repair of existing roof, roof in place, no structural change;
(5) Building Permit No. B419108, dated October 5, 1998, to build new porch roof as per plans.

7. The first permit, pertaining to the rear addition, incorrectly identified the zoning classification applicable to the subject property as R-1-B instead of WHOD/R-1-A.

8. Plans submitted by the Intervenor as part of his application for the first permit did not reflect all of the construction work that the Intervenor planned to perform at the site. The Intervenor's project was developed in a piecemeal manner and the various applications were often incomplete or otherwise misleading in that they did not always reflect the Intervenor's plans for the garage, rear addition, and front porch consistently and accurately.

9. The second permit, pertaining to an addition to the existing garage, also applied the wrong zoning classification, this time R-1-A instead of WHOD/R-1-A.

10. Although the second permit authorized an addition to an existing garage, the garage was demolished without authorization, purportedly because the Intervenor's contractor discovered that the footings to the existing garage were decayed.

11. A new garage was constructed on the subject property that was larger than the approved garage addition. The second permit approved a garage with dimensions of 20 feet in length and 14 feet in height, but the dimensions of the new garage were approximately 23 feet long, 21 feet wide, and 16 feet high.

12. The third permit, for a new garage in the same location as the previous garage, was issued after the new garage was already substantially completed. The large size of the new garage also exceeded the dimensions allowed by the third building permit.

13. The Zoning Regulations require that off-street parking spaces must be accessible at all times directly from improved streets or alleys or accessible from improved streets and alleys via graded and unobstructed private driveways. 11 DCMR § 2117.4.

14. A driveway providing access to required parking spaces must meet certain standards, including that a driveway serving more than one parking space must be at least 12 feet wide if designed for one-way circulation or at least 14 feet wide if designed for two-way circulation. 11 DCMR § 2117.8.

15. A private easement extends from Hawthorne Street, along the rear of four neighboring properties, and terminates at the Intervenor's property. Following construction of the new garage, the easement is eight feet wide.

16. The Intervenor's new garage is accessible only by means of the private easement.

17. The fourth permit, pertaining to roof repair, again applied the wrong zoning classification, in this instance R-1-B instead of WHOD/R-1-A.

18. The fourth permit was issued for repairs to an existing roof over the porch but, at the time the permit was issued, the porch was open and did not have a roof. The Intervenor was instructed to obtain a new building permit after DCRA discovered that there was no roof in place.

19. The fifth building permit authorized construction of a new porch roof.

CONCLUSIONS OF LAW AND OPINION:

An appeal to the Board may be taken by any person aggrieved by any decision of DCRA granting a building permit, or any other administrative decision based on the Zoning Regulations. D.C. Code § 5-424; 11 DCMR § 3202.2. The Board's powers with regard to appeals include to decide allegations of error in any decision made by DCRA in carrying out or enforcement of any zoning regulation. D.C. Code § 5-424.

The Zoning Regulations provide that an appeal must be "timely." 11 DCMR § 3315.2. Because the Board's rules do not adopt a specific time limit on appeals, a standard of reasonableness is applicable to determine whether an appeal is timely. *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 923 (D.C. 1980). In applying the reasonableness standard, courts have consistently held that the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the decision complained of. *Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628, 636 (D.C. 1985). *See also, e.g., Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994).

The Board concludes that the Appeal was timely with respect to all five permits. The Intervenor submitted five separate applications for building permits that all related to work performed on a single property. Because of the cumulative, piecemeal nature of the applications, the full extent of the Intervenor's construction project could not be discerned as each individual permit was issued and therefore they must be considered as a whole. The Appellant has alleged violations of the zoning regulations, such as failure to comply with lot occupancy and setback requirements, that pertain to the full extent of the work performed on the Intervenor's property, rather than merely concerning the individual components of the project. The Board is not persuaded that the first permit put the Appellant on notice of all the work to be done on the Intervenor's property or, therefore, that the work allegedly violated the Zoning Regulations.

Other factors also support our conclusion that the Appellant was not "chargeable with notice" as soon as the first permit was issued. The Intervenor's various permit applications contained errors of omission or were otherwise misleading in that they did not reflect all existing and planned improvements accurately and consistently. For example, the garage was not depicted accurately on the first application, concerning the rear addition, and the fourth application indicated that the front porch was not open but had an existing roof. Because of these errors, zoning violations arising from the failure to comply with lot occupancy and setback requirements of the Wesley Heights overlay, in particular, were not apparent until the work was substantially completed on the Intervenor's property. Moreover, some work was performed beyond the scope of the permit, as with the demolition of the existing garage and the construction of a new garage larger than the dimensions specified on the permit, and two of the permits (the third and fifth) were issued for work that was undertaken prior to receiving the permits. Therefore, the Board concludes that the Appellant was not chargeable with notice of the entire scope of work performed at the Intervenor's property until all of the permits were issued.[2]

The Intervenor argues that the Appeal is barred by laches. "Laches is a species of estoppel, being defined as the omission to assert a right for an unreasonable and unsatisfactorily explained length of time under circumstances prejudicial to the party asserting laches." *Wieck v. District of Columbia Board of Zoning Adjustment*, 383 A.2d 7, 11 (D.C. 1978), *quoting* 3 RATHKOPF, LAW OF ZONING AND PLANNING, at 67-1 (3d ed. 1972). "Laches is the principle that 'equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant." *American University Park Citizens Association v. Burka*, 400 A.2d 737, 740 (D.C. 1979), *quoting Russell v. Todd*, 309 U.S. 280, 287, 84 L. Ed. 754, 60 S. Ct. 527 (1940). The two elements of laches are the unreasonableness of the delay and the resulting prejudice to the party asserting the defense. *See, e.g., American University Park Citizens Association v. Burka*, 400 A.2d at 741. The "entire course of events," not merely the period from the zoning official's decision to the filing of an appeal, is relevant when determining the validity of a laches defense. *Goto v. District of Columbia Board of Zoning Adjustment,* 423 A.2d at 925, n.16.

The Board finds no merit in the Intervenor's argument. As discussed above with respect to timeliness, the Appellant did not unreasonably delay the filing of the Appeal. Rather, the Appeal was filed as soon as Appellant realized the entire scope of work being performed at the Intervenor's property. The Board concludes that the Appellant did not omit to assert her right to appeal for an unreasonable and unsatisfactorily explained length of time. Any delay in filing the appeal was not unreasonable but resulted from the fact that the Intervenor applied for separate building permits for each component of the construction on his property. Thus, there was no "unexcused delay." Accordingly, because the Intervenor failed to demonstrate the first element of laches – an unreasonable delay in bringing the appeal – the Board denies Intervenor's motion to dismiss the Appeal on grounds of laches.

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[2] The fifth permit, which was issued after the appeal was filed, authorized construction of a new porch roof. That permit was purportedly issued to correct the fourth permit, which had authorized repairs to an existing porch roof, but in fact no roof was in existence when the permit was issued.

Turning to the merits of the Appeal, the five permits issued to the Intervenor violate the zoning regulations in several respects. The applicable zone district was misidentified on three of the five permits. Twice, the underlying zone was incorrectly identified as R-1-B; however, because of the similarity between R-1-A and R-1-B requirements that mistake likely had no substantive effect. A more significant oversight was the failure to recognize that the Intervenor's property is located within the Wesley Heights Overlay District. Thus, the more stringent WHOD provisions were not applied, and permits were issued that purported to allow work that does not comply with relevant lot occupancy and setback requirements. This oversight was compounded by the fact that the full scope of the work planned for the Intervenor's property was not depicted consistently and accurately on all permit applications, thus precluding an assessment of each individual permit application within the context of all existing and planned improvements.

Moreover, the Intervenor's property is nonconforming because its lot area, lot width, and setbacks are smaller than the minimums prescribed in the WHOD/R-1-A zone, and because its lot occupancy is higher than the prescribed maximum. Structural alterations to nonconforming structures are permitted. 11 DCMR § 2001.2. However, enlargements or additions made to nonconforming structures must comply with certain conditions, including that the structure must conform to percentage of lot occupancy requirements, and the addition or enlargement itself must not increase or extend any existing, nonconforming aspect of the structure, or create any new nonconformity of structure and addition combined. 11 DCMR § 2001.3. The Board concludes that the work performed on the Intervenor's property increased its nonconforming aspect with respect to setbacks and lot occupancy.

As Mr. Nunley acknowledged at the public hearing, the permits for the garage should not have been issued if the garage did not provide access in conformance with the zoning regulations. The two-car garage is accessible only through an easement that, at a width of eight feet, is narrower than the minimum width of 14 feet specified in the zoning regulations for a driveway with two-way circulation serving a parking space. 11 DCMR § 2117.8.

The Board concludes that the Zoning Administrator erred in issuing the five building permits to the Intervenor. The Zoning Administrator's decisions were not based on complete and accurate information about the Intervenor's property, reflecting all existing and planned improvements. The Zoning Administrator also failed to apply the correct zoning classification, which resulted in the issuance of permits that did not conform to applicable zoning provisions, especially the Wesley Heights Overlay District, in several material respects. The violations stemming from erroneously issued permits were compounded in this case by the fact that some work, with respect to the garage and front porch, was not performed strictly in compliance with the permits.

The motion to DISMISS the Appeal based on timeliness and laches is DENIED.

VOTE: 4-0 (Angel Clarens, Betty King, Sheila Cross Reid and Jerry Gilreath to deny.)

The Zoning Administrator erred in issuing Building Permit Nos. B413166, B413424, B415675, B417814 and B419108. Therefore, it is hereby ORDERED that the Appeal be GRANTED.

VOTE: 4-0 (Angel Clarens, Betty King, Sheila Cross Reid and Jerry Gilreath to grant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
JERRILY R. KRESS
DIRECTOR

FINAL DATE OF ORDER: DEC 28 1999

UNDER 11 DCMR 3103.1 "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPEAL NO. 16405

As Director of the Office of Zoning, I hereby certify and attest that on DEC 28 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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ATTESTED BY: _____
JERRILY R. KRESS, FAIA
DIRECTOR