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November 6, 2001

BY TELECOPIER AND HAND-DELIVERY

Mr. Geoffrey H. Griffis
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W.
Room 210
Washington, D.C. 20001

Re: BZA Appeal 16679

Dear Chairperson Griffis:

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.

Mr. Charles Sisson, the property owner, has filed a Motion to Dismiss the Appeal as Moot based on the Board's proceedings (unanimous denial) in BZA Application No. 16521. This Motion is not credible and directly contradicted by Mr. Sisson's last minute and successful effort to narrow the scope and focus of Application No. 16521.

BZA Application No. 16521:

In October, 1999, Mr. Sisson filed Application No. 16521 as a remedial measure in order to seek zoning compliance for improvements which he built illegally under five separate building permits which were revoked by the Board in Appeal No. 16405. Application No. 16521, as originally self-certified was defective and had to be amended to accurately reflect the required relief. For the October 17, 2000 hearing date, the case was advertised:

> Application of Charles A. Sisson, pursuant to 11 DCMR 3103.2, for a variance from the front yard setback requirements under Subsections 1543.4 and 1543.2 from the allowable percentage of lot occupancy of a dwelling **for the construction of a front porch, rear addition and accessory garage** in the WHOD/R-1-A

16679
16

Board of Zoning Adjustment
District of Columbia
CASE NO. 16679
EXHIBIT NO. 16

> District at premises 3020 43rd Street, N.W. (Square 1621, Lot 70). Emphasis added.

At the October 17, 2000 hearing, Mr. Sisson surprised the Board, opponents and ANC 3D, by introducing yet a sixth building permit which purportedly authorized all of the illegally constructed improvements except the covered front porch. Building Permit No. B430091 (issued October 11, 2000) authorized:

> 2 SOTRY [SIC] 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).

Attached as Exhibit A. (Emphasis added).

Against this counsel's strenuous and repeated objections, the Board (with the advice and participation of the Office of Zoning Director, Jerrily Kress) accepted the new permit as a "matter-of-right" for purposes of Application No. 16521 and proceeded solely on the basis of a variance (front yard, lot occupancy) to permit the existing and illegally constructed covered front porch. The following excerpts from the October 17, and December 5, 2000 hearings clearly establish the narrow focus of the Board's inquiry to solely the covered front porch. The Board specifically recognized Appeal No. 16679, but deferred and rejected taking any action on that appeal in the context of the limited variance application.

> CHAIRPERSON REID: Mr. Brown, Mr. Brown, thank you very much and your objection – I'll sustain your objection and notwithstanding the fact that something that Mr. Sisson said was not in keeping with – was more germane to the appeal case, remember that **we understand fully our obligation and our responsibility and that is to hear and to deliberate on a variance case only today**. So if other things....

October 17, 2000 Hearing Transcript, page 258 (Emphasis added).

> CHAIRPERSON REID: Uh, uh, uh, wait a minute. We're supposed to be – this case is on the variance case, not on the appeal. Now you just raised that objection yourself and I sustained you. These questions you're asking are in regards to that appeal case. **This should only be germane to the variance case that we are actually hearing today, Mr. Brown**.

MS. KRESS: **And I might add the variance is for the roof on the front porch, that's what the variances are for and it's not about the parking**. I just wanted to clarify that. **It's not about anything else because basically at this point he has a permit as a matter of right for all of those things**. So we're only talking about the roof on the porch which he does not have a permit for.

MS. KRESS: He's doing that as a matter of right according to this permit he has right now. He's got all of that as a matter of right. **The only thing he does not have as a matter of right is the roof on the front porch**.

VICE CHAIRPERSON SOCKWELL: Which equates to a lot occupancy issue.

MS. KRESS: And a front yard issue.

Id. at pages 261-263 (Emphasis Added).

MR. BROWN: **Strictly the front porch**?

MS. KRESS: **Strictly the front porch. You're not looking at the other addition or the other things**. Those were all built as a matter of right according to the approved permits set. The only thing that is not a matter of right is that porch.

CHAIRPERSON REID: Okay.

Id. at page 265 (Emphasis added).

MR. BROWN: So in essence, and I think this will resolve it. The Board has essentially -- **what was advertised is a variance for lot occupancy and front yard for the construction of a front porch, rear addition and accessory garage. It is now being handled as a variance for lot occupancy and front yard for the construction of a covered front porch**.

MS. KRESS: **Exactly**.

MR. BROWN: That's all we're dealing with.

Id. at pages 266-267.

> MS. KRESS: Let me take a stab at that again. We got new evidence today and the evidence is a permit that has now been acquired by Mr. Sisson and as a part of that permit, from the people who issue permits and from the Zoning Administrator, **all of those things, the garage, the addition, they all say he can do as a matter of right**. So things that are done as a matter of right don't come to the BZA. The only things that come to the BZA are things you can't do as a matter of right. And so that's why he cannot put the porch on as a matter of right, so that comes to the BZA.
>
> **Now that doesn't mean that you couldn't appeal the DCRA, the Zoning Administrator's decision. That's a different case. Right now, they're looking at granting a variance that's being asked for**. Did I help at all? No.

Id. at page 270 (Emphasis added).

> MS. KRESS: .... **then you can come back and you can appeal the Zoning Administrator's opinion as it relates to the garage or to the addition** and then you can also ask for a reconsideration from this Board if they approve it for the porch. There are several more steps you can do.

Id. at page 272 (Emphasis added).

> VICE CHAIRPERSON SOCKWELL: **The Board will be considering the application only as it pertains to the roof of the front porch, and whether it should remain or be removed**. The zoning administrator has determined that ....

December 5, 2000 Hearing Transcript at page 37 (Emphasis added).

> CHAIRPERSON REID: Well, the fact of the matter is that we are here, and we have already set forth this date for the hearing on the matter of the roof on the porch.
>
> **The appeal [16679] in my opinion is something that is separate from apart that has to be done in the correct procedure**. So even if we were of the mind set to proceed, we could not even hear the appeal today.

Id. at page 49 (Emphasis added).

> CHAIRPERSON REID: .... **And then if in fact there is an appeal [16679], then we can hear that at the appropriate time**.

Id. at page 50 (Emphasis added).

> COMMISSIONER HOLMAN: Well, my only concern personally would be that since we know that this appeal is ripening, I don't want to have questions that relate to the appeal that we just decided not to hear. That's all I am saying.
>
> CHAIRPERSON REID: No, no, it has to be germane to the case before us today.

Id. at page 56.

> MS. CRARY: First, I would like to ask you that from what has been going on today, and what went on, on the 17th of October, it is now my understanding that in this particular meeting **that I am not allowed to be saying anything except about the porch, and the porch roof**.
>
> CHAIRPERSON REID: That's correct.

Id. at page 67 (Emphasis added).

Historical Background:

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. 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.

Unresolved Issues in Appeal 16679:

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 decision making:

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. [The building permit was issued based on the fiction that the existing illegal covered front porch would be removed or a variance granted. Neither has occurred and therefore the permit is fundamentally and fatally flawed. **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. Toye Bello, Zoning Administrator's Office
Maureen E. Dwyer, Esq.
170023

Form BLRA-16
(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

(Owner) NO.

TOTAL PERMIT FEE $

FILING FEE $

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.

Value $ No. of Bldgs.

Width of Bldg. Length Height No. of Stories 2

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

Chief, Permit Issuance Branch

Permit Clerk

L. JORDAN 32301

DIRECTOR

EXHIBIT A

'00 OCT 30 10:05

D.C.