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EDWIN E. HUDDLESON, III (DC, CA)

November 13, 2001

HAND DELIVERED

Jerrily R. Kress
Director
Office of Zoning
Room 210
441 Fourth Street NW
Washington, D.C. 20004

D.C. OFFICE OF ZONING
RECEIVED
2001 NOV 13 PM 2:33

Re: BZA Appeal No. 16764

Dear Ms. Kress:

Enclosed for filing in the above case are ten copies of: 1) Appellant's Memorandum Regarding Laches, and 2) Affidavit of Stephen W. Gresham.

Please return date-stamped copies to us with our messenger.

Thank you for your assistance.

Sincerely,

James T. Draude

James T. Draude

BZA
Case No. 16764
Exhibit No. 41

Board of Zoning Adjustment
District of Columbia
CASE NO.16764
EXHIBIT NO.41

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

In re: Appeal of Darrel J. Grinstead) Appeal No. 16764
) ANC 3F

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APPELLANT'S MEMORANDUM REGARDING LACHES

Appellant Darrel J. Grinstead ("Grinstead") respectfully requests the Board to reject the defense of laches raised by Intervenors.

STATEMENT OF FACTS

On June 27, 2000, Mr. Wahabi ("Owner") filed an application for a permit to construct a "new custom house" as a single family dwelling on the Subject Property (Ex. 21-A).[1] The application described the number of stories as three plus cellar (Ex. 21-A).

In late September, 2000, Grinstead learned from his representative on Advisory Neighborhood Commission 3F ("ANC 3F") that a permit application was pending for the property adjacent to Grinstead's (10/16 Tr. 18).[2]

After reviewing plans for the house on file with DCRA, Grinstead contacted the Owner to express his concerns regarding the size of the proposed house (10/16 Tr. 18-20). The Owner met with Grinstead at Grinstead's residence near the end of September, 2000 (Id.). Grinstead reviewed the plans with the Owner and told the Owner that the house was too large for the lot and too high, that the lot might not be a buildable lot at all,

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[1] "Ex. ___" refers to the exhibits marked and filed in the record in this case. "Ex. 21-A" refers to the document marked Exhibit A and attached to Ex. 21.

[2] "10/16 Tr. ___" refers to the transcript of the hearing in this case on October 16, 2001.

that Grinstead thought that the proposed house would violate the Zoning Regulations, and that Grinstead intended to oppose construction of the house (10/16 Tr. 19-20). The Owner refused to make any concessions regarding the size and height of the house (Id.).

On October 5, 2000, the Owner filed an application for a permit for grading, excavation, footing and foundation walls on the Subject Property (Ex. 21-B).[3] The application described the number of stories as three plus cellar (Ex. 21-B). DCRA issued the permit on October 6, 2000 (Ex. 21-D).[4] Grinstead did not learn of issuance of this permit until after the fact (10/16 Tr. 19, 73-74).

On October 7, 2000 (Saturday), Grinstead wrote a letter to DCRA on behalf of himself and adjoining neighbors requesting DCRA to deny the pending permit application (Ex. 21-C). Grinstead hand delivered that letter to DCRA on October 10, 2000 (Tuesday)[5] (with a copy mailed to the Owner) (10/16 Tr. 18-19). Grinstead's letter noted that the proposed house was four stories, that the height exceeded permissible limits, and that the lot did not meet the required minimum lot size. It also stated that the neighbors did not possess sufficient information to determine if the

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[3] DCRA erroneously marked this application as being in an R-1-B zoning district (Ex. 21-B).

[4] This permit erroneously stated that the Subject Property is zoned R-1-B (Ex. 21-D).

[5] November 9, 2000 was the Columbus Day holiday.

proposed house met rear yard, side yard, and other requirements of the Zoning Regulations.

On October 13, 2000 (Friday), DCRA issued a permit to the Owner to construct a new custom house on the Subject Property (Ex. 21-E). This permit described the house as three stories (Ex. 21-E). Grinstead also did not learn of the issuance of this permit until after the fact (10/16 Tr. 19, 73-74).

On the weekend in October when heavy equipment was being placed on the Subject Property, Grinstead thought that a permit had not been issued and confronted the equipment operator, who withdrew the equipment from the Subject Property (10/16 Tr. 19).

On the following weekend heavy equipment again arrived on the Subject Property (10/16 Tr. 19-21). The Owner was present and had a permit for excavation (Id.). Grinstead and some neighbors again confronted the Owner with their objections that the proposed house violates the Zoning Regulations (Id.). Grinstead told the Owner that "we intended to do everything we could to stop the property from being built as it was planned" (10/16 Tr. 21).

DCRA did not respond to Grinstead's letter of October 7, 2000 opposing issuance of the permits (10/16 Tr. 21). After repeated and unavailing telephone calls to DCRA seeking a response (10/16 Tr. 21-22), Grinstead mailed a letter dated February 19, 2001 to DCRA (with a copy mailed to the Owner) repeating his objections to the proposed house (Ex. 21-F). He cited a prior case in which the Board of Zoning Adjustment

("BZA") had found that DCRA had approved construction of an illegal four story house in a zone with a three story limit (Ex. 21-F, p. 2). Both the Mayor's office and DCRA promptly acknowledged receipt of Grinstead's letter (10/16 Tr. 21-22, 74-76; Ex. 28). Shortly thereafter, the Zoning Administrator called Grinstead and said that he had not been aware of Grinstead's prior letter and that he would have someone look into it promptly (10/16 Tr. 22).

In March, the Zoning Administrator issued a stop work order while surveying was performed on the Subject Property (10/16 Tr. 22-23). The survey was completed on March 30, 2001 (10/16 Tr. 23; Ex. 25). This indicated to Grinstead that the matter was under active review at DCRA (10/16 Tr. 23).

Having received no response to his letter by the end of March, 2001, Grinstead again began calling DCRA but received no response to his calls (10/16 Tr. 23-24).

On May 14, 2001, DCRA sent a letter to Grinstead responding to his letters of October 7, 2000 and February 19, 2001 (Ex. 21-G). DCRA stated that after review it found that the project was in compliance with all Zoning Regulations (Id.). DCRA noted that Grinstead had a right to appeal its decision to the BZA (Id.).

This appeal was filed on June 28, 2001.

Mr. Wahabi testified that he did not become aware of the height issue until September 10, 2001 (10/23 Tr. 225). That cannot be true since he had received Grinstead's letters of October 7, 2000 and February 19, 2001, both of which raise the

height issue.[6]

ARGUMENT

To establish a defense of laches, the Owner must show both an unreasonable delay by Grinstead in filing this appeal and prejudice to the Owner caused by such delay.[7] In this case, there was no unreasonable delay and any prejudice to the Owner was self-inflicted by his reckless decision to start construction while Grinstead's objections were unresolved.

The decision that is the subject of this appeal is DCRA's letter of May 14, 2001 (Ex. 1). There was no unreasonable delay in the filing of this appeal after issuance of that decision.

The Owner's defense of laches is based on the Owner's contentions that Grinstead should have appealed from the issuance of the building permit in October, 2000 and that the Owner had no knowledge of Grinstead's objections when he began construction (Owner Mem. 4-8; 10/23 Tr. 161-162).[8]

DCRA issued the building permit to the Owner three days after DCRA received Grinstead's letter of October 7, 2000. Any

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[6] When Ms. Renshaw observed that Mr. Wahabi "knew back in October that Mr. Grinstead had a problem with the height, as expressed in this letter of October 7", Mr. Wahabi did not disagree (10/23 Tr. 253-254).

[7] The Board denied the Owner's motion to dismiss this appeal as untimely (10/23 Tr. 160-171). Both the issue of timeliness and the issue of laches involve a determination whether there was unreasonable delay by Grinstead in filing this appeal.

[8] "Owner Mem. ___" refers to the "Request to Intervene and Opposition Statement of Property Owner, William Wahabi and Mouzella Ademilluyi", filed in this case on October 1, 2001 (Ex. 24).

reasonably prudent owner would have checked with DCRA to confirm that issuance of the permit meant that DCRA had rejected Grinstead's objections. Grinstead had no reason to think that issuance of the permit (of which he learned after the fact) constituted DCRA's decision on the objections raised in his letter of October 7, 2000.

As Commissioner Mitten observed (10/23 Tr. 169-170), the Board's experience is that issuance of a building permit is not necessarily DCRA's last word on a project. DCRA did not so regard it since DCRA issued a separate decision on May 14, 2001 responding to both of Grinstead's letters (Ex. 21-G). That decision expressly notes that Grinstead has the right to appeal (Id.).

The Board's discussion at a decision meeting on Appeal No. 16533 (Tr. 6-9, dated 4/18/00) establishes that an Owner who proceeds with construction in the face of unresolved issues raised by neighbors proceeds at his own risk.

CONCLUSION

For the foregoing reasons Appellant Darrel J. Grinstead respectfully requests the Board to reject the defense of laches raised by Intervenors in this case.

Dated: November 13, 2001

Respectfully submitted,

JAMES T. DRAUDE (D.C. Bar 182667)
Driscoll & Draude
Second Floor
1230 Thirty-First Street NW
Washington, DC 20007
(202) 333-0330

Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Appellant's Memorandum Regarding Laches were hand delivered on November 13, 2001 to:

John Patrick Brown, Jr.
Greenstein Delorme & Luchs
Suite 900
1620 L Street NW
Washington, DC 20036

Marie Claire Brown
Office of Corporation Counsel
Room 450N
441 Fourth Street NW
Washington, DC 20001

JAMES T. DRAUDE

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BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

In re: Appeal of Darrel J. Grinstead) Appeal No. 16764
) ANC 3F

AFFIDAVIT OF STEPHEN W. GRESHAM

STEPHEN W. GRESHAM, being first duly sworn, testifies as follows:

1. I am a licensed architect and testified at a hearing in this case on October 23, 2001.

2. On October 18, 2001, I took the attached photographs, numbered 20 through 23, of the house under construction at 2944 Chesapeake Street NW ("Subject House").

3. When I took photographs no. 20 through 22, I was standing at the location of a surveyor's pin embedded in the center of the raised island at the center of the circular cul de sac that the Subject House faces.

4. When I took photograph no. 23, I was standing just outside the construction fence behind the curb at the end of the walkway that leads to the front entrance of the Subject House.

Stephen W. Gresham

STEPHEN W. GRESHAM

STATE OF:
COUNTY OF:

I, Laurie D. Waters, a Notary Public for the State and County aforesaid, hereby certify that STEPHEN W. GRESHAM, a person known to me or whose identity was sufficiently proved to me, appeared before on this date and made oath as set forth in the attached Affidavit.

Dated this 1 day of November, 2001.

SEAL

Laurie D. Waters
Notary Public

My commission expires: 9/30/02

Dscn0069.jpg



Dscn0070.jpg



Dscn0071.jpg



Dscn0076.jpg



CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Affidavit of Stephen W. Gresham and four photographs were hand delivered on November 13, 2001 to:

John Patrick Brown, Jr.
Greenstein Delorme & Luchs
Suite 900
1620 L Street NW
Washington, DC 20036

Marie Claire Brown
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James T. Draude

JAMES T. DRAUDE