BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Re: Appeal of Darrel J. Grinstead, Esquire

BZA Appeal No. 16764
Public Hearings: September 25, October 16 and 23, 2001
ANC 3F

INTERVENOR'S RESPONSE TO APPELLANT'S POST-HEARING SUBMISSIONS

The Intervenor, by and through undersigned counsel, respectfully submits the following Response to the Appellant's Post-Hearing Submissions filed on November 13, 2001.

I. ARGUMENT

A. Appellant Has Challenged the October 13, 2000 Building Permit

For purposes of this Appeal, the central and only operative event was the October 13, 2000 issuance by DCRA of a Building Permit for construction of a "New Custom Home" at the subject property. It is undisputed that the Appellant waited more than eight and a half (8 ½) months to file this Appeal on June 28, 2001. During that extended period, the house was substantially completed.

Faced with a fatally flawed appeal (untimely and barred by laches), the Appellant, a lawyer himself, and his counsel, an experienced zoning litigant, have attempted to frame this Appeal in the context of a May 14, 2001 letter from Mr. Denzil Noble ("Noble Letter"). Standing alone, the Noble Letter is relevant only as it relates back to the underlying building permit issued by DCRA seven (7) months earlier. In his letter, Mr. Noble wrote: [a] re-review of approved plans [October 13, 2000 approved building permit plans] by Mr. Toye Bello, Chief

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Exhibit No. 45

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District of Columbia
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EXHIBIT NO.45

Zoning Technician, concluded that no other issues of non-compliance exist." Additionally, the Noble Letter is a response to the Appellant's October 7, 2000 and February 19, 2001 letters which both explicitly challenge the building permit and raise the same issues as set forth in the long overdue appeal (height, side and rear yards, lot width, lot area and lot occupancy).

The Appellant's reliance on the Noble Letter attempts to salvage an untimely and laches-barred Appeal, but is undermined by his elevation of irrelevant form over the fundamental and substantial issue – the building permit approved in October, 2000. The building permit, not the Noble Letter, is what authorized Intervenor to proceed with the house that has been constructed and which is the focus of the Appellant's unhappiness. Granting an appeal of the Noble Letter by itself is meaningless and would not achieve the Appellant's stated objective. The operative event was DCRA's issuance of a building permit on October 13, 2000 and a granting of this Appeal would have to directly and explicitly find that the building permit that was issued on October 13, 2000 was in error. As framed by the Appellant, granting this Appeal would find the Noble Letter in error, but leave the underlying building permit undisturbed and fully effective.

Central to the timeliness concept is a date certain by which to measure the Appellant's duty to file an appeal and fundamental fairness to Intervenor relying on the approval granted by DCRA. The building permit establishes an identifiable and objective date certain directly related to the substance of the appeal. In contrast, it is evident that there is no certainty for timing or fairness purposes created by the Noble Letter which came more than seven (7) months after the Appellant's first letter to DCRA, the issuance of the building permit and beginning of construction. Under the Appellant's scenario, the duty to appeal would not have arisen for so long as a written response from DCRA was delayed. Thus, Appellant would have been justified

in continuing to watch final construction, even sale and occupancy of the completed dwelling, while waiting for a response from DCRA. If DCRA had never responded to his letters, Appellant's position follows that no duty to appeal would ever have arisen.

B. The Appeal is Untimely

In considering the timeliness of an Appeal, the reasonableness of the delay in filing is critical to the Board's decision. In its most recent review of the timeliness issue, the Court of Appeals has clearly established two (2) months as the outer limits for filing an appeal. Waste Management of Maryland, Inc. v. District of Columbia Board of Zoning Adjustment, ____ A.2d ____ (D.C. 2001). This two (2) month time period "commences when the party appealing is chargeable with notice or knowledge of the decision complained of." Mendelson v. District of Columbia Board of Zoning Adjustment, 645 A.2d 1090, 1093 (D.C. 1944). In this case, the Appellant is clearly complaining about the building permit (and its compliance with the Zoning Regulations) which was issued on October 13, 2000, not the Noble Letter. Equally clear is that the Appellant knew of and reviewed the pending building permit application prior to authoring his first letter to DCRA on October 7, 2000. In addition to this detailed knowledge of the building permit, the Appellant stood by beginning in October 2000 and watched construction (which he had previously determined in his own mind was in violation) to progress to substantial completion without pursuing his duty to appeal. Nothing or no one prevented the Appellant from filing an appeal, he simply chose to make telephone calls and write letters to DCRA for which he received no response for seven (7) months. In Waste Management, the court made it clear that the fact that the complaining party "chose to concentrate on avenues that reasonably may have appeared more promising than an appeal does not excuse delay in filing an appeal." On February

19, 2001, construction at the site had been under way for four (4) months, but Appellant chose to write another letter to DCRA and await an uncertain response. Almost three (3) months (and substantial and expensive construction) passed before Appellant received a response from DCRA which said that the underlying permit which was issued on October 13, 2000 was in compliance with the Zoning Regulations.

C. The Appeal is Barred By Laches

The Intervenor's laches defense is well-founded based on the required elements of: (1) unreasonableness of the delay; and (2) resulting prejudice to the party asserting the defense. See e.g. American University Park Citizens Association v. Burka, 400 A.2d 737, 741 (D.C. 1979). While the unreasonableness of the delay of over eight (8) months is well-established, most critical to the laches defense is the prejudice which has been suffered by Intervenor as a result of the delay. Goto v. District of Columbia Board of Zoning Adjustment, 423 A.2d 917, 925 (D.C 1980)(also, noting that appeal could be timely for BZA jurisdictional purposes, but untimely and unduly prejudicial for laches purposes). Intervenor, despite some original complaints from Appellant, received a valid building permit on October 13, 2000. This permit authorized the construction which was started and proceeded. The Appellant's complaints without any action, the lengthy passage of time, and D.C. inspection and approvals establish an entirely reasonable basis for continuing the approved construction. It would be unreasonable to expect every project to halt when faced with an initial complaint from a neighbor who then takes no other action.

During the eight (8) months before the appeal was filed, Intervenor spent $500,000 in construction costs. On June 28, 2001, when this appeal was finally filed, the house was substantially completed. Not only had Intervenor reasonably invested a substantial sum of

money in the construction, but in doing so made improvements that cannot now, more than a year later, be modified without enormous expense and practical difficulty, if not impossibility.

D. Intervenor's Photographs Illustrate the "Front" of the House As Commonly Defined

Although, the parties have each produced definitions of "front" from a Webster's Unabridged Dictionary which differ slightly, those definitions share a common element. Each definition (and common sense) incorporates the concept of the "front" facing or directed forward. In this case, the photographs submitted by Intervenor show the entire front (46 feet) which faces the street/cul-de-sac. See Exhibit A for orientation of front, sides and rear. In sharp contrast, Appellant's Photographs (20, 21 and 22) only appear to show a smaller portion of the house which faces forward. However, on closer examination, the broader front is partially visible, although obscured by the trees and the angle of the photographs. Appellant's Photograph No. 23 also more clearly shows the full "front" despite the awkward angle and closeness to the structure.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
Jacques B. DePuy

By: _____
John Patrick Brown, Jr.
Counsel for Intervenor

November 20, 2001

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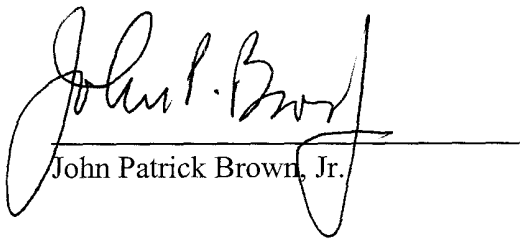
CERTIFICATE OF SERVICE

The foregoing Intervenor's Response to Appellant's Post-Hearing Submissions was served by hand-delivery, this 20th day of November, 2001, upon:

James T. Draude, Esquire
Driscoll & Draude
1230 31st Street, N.W.
Second Floor
Washington, D.C. 20007

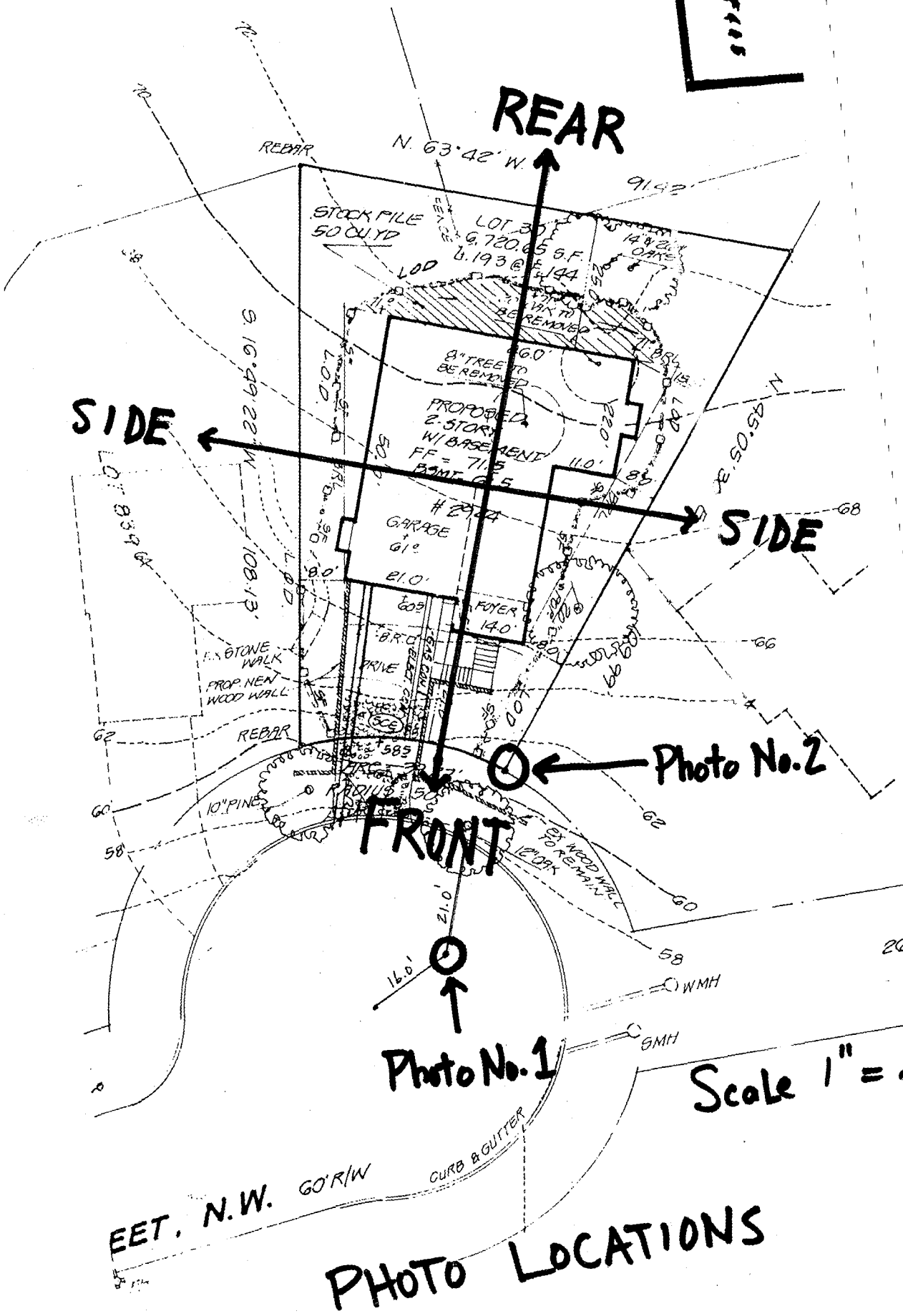
Mr. Robert V. Maudlin
Advisory Neighborhood Commission 3F
2906 Ellicott Terrace, N.W.
Washington, D.C. 20008

Marie-Claire Brown, Esquire
Office of Corporation Counsel
441 Fourth Street, N.W.
Room 450N
Washington, D.C. 20001



John Patrick Brown, Jr.

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REAR
SIDE
SIDE
FRONT
Photo No. 2
Photo No. 1
PHOTO LOCATIONS
N. 63°42' W.
REBAR
STOCK PILE
50 CU YD
LOT 30
9,720.65 S.F.
0.193 @ ±144
LOD
PROPOSED
2-STORY
W/ BASEMENT
FF = 71.5
BSMT = 61.5
# 2024
GARAGE
61.0
21.0'
FOYER
14.0'
PROP. NEW
WOOD WALL
REBAR
10" PINE
12" OAK
EX WOOD WALL
TO REMAIN
WMH
SMH
CURB & GUTTER
EET. N.W. 60' R/W
Scale 1" =