BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF	*	
	*	
2944 CHESAPEAKE STREET, NW	*	BZA Appeal No. 16764
WASHINGTON, DC	*	
	*	
DARREL GRINSTEAD, APPELLANT	*	

RESPONSES OF THE ZONING ADMINISTRATOR TO THE POST-HEARING SUBMISSIONS OF APPELLANT AND INTERVENOR

The Zoning Administrator respectfully responds to the post-hearing submissions of the Appellant Darrel Grinstead and the Intervenor, William Wahabi, filed with the Board of Zoning Adjustment on November 13, 2001 as follows:

Appellant's Submissions:

The Appellant submitted two separate documents entitled *Appellant's Memorandum Regarding Laches* and *Affidavit of Stephen W. Gresham*, respectively.

Memorandum Regarding Laches

Appellant's memorandum is directly in response to the Intervenor's argument that the appeal is legally barred, not only because the appeal was untimely filed within the two (2) month window established in *Waste Management of Maryland, Inc. v. District of Columbia Board of Zoning Adjustment*, ___A.2d ___(D.C. 2001), but further that it is barred by the doctrine of laches.

Appellant Grinstead improperly argues that the time for filing an appeal of the Zoning Administrator's decision to issue the construction permit was tolled until a letter seven months after he formally challenged the issuance of the permits was sent to him by the Department of Consumer and Regulatory Affairs ("DCRA"). Appellant's argument suggests that the time for filing an appeal with the BZA is triggered by the language of

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the May 14, 2001 letter. The Zoning Administrator queries whether the time for filing an appeal would have not yet occurred had the letter been silent to that end, stating only that the DCRA maintained its original position that the drawings complied with the zoning regulations and the permit was properly issued. Clearly this is not the case. DCRA, unlike other administrative bodies that issue "right to sue" letters, does not have any authority to determine when an appeal can be filed.

While the Zoning Administrator is confident that the permit was properly issued in compliance with all District of Columbia laws, it should be noted that Appellant did, based on his own testimony, personally observe construction in progress for more than seven months and then filed his appeal only after the construction was essentially complete.

Affidavit of Stephen W. Gresham

The Zoning Administrator has no basis upon which to challenge the location of the photographer of Appellant's photographs numbered 20, 21, 22, and 23. It is clear however, that the relevant portion of the building as viewed by the photographer is conspicuously hidden by vegetation which, on first glance, gives the appearance that the front of the building is only that portion which is not masked. Photographs numbered 20, 21, and 22 all give this extremely misleading view. Photograph number 23, with most of the vegetation eliminated, gives a more accurate view of the front of the building, consistent with the drawings submitted, the interpretation of the District's zoning laws, and the Zoning Administrator's decision to issue the permit.

The Intervenor's Submissions:

Zoning Compliance:

The Zoning Administrator restates that consistent with the submissions of the Intervenor, the front of the building spans the entire width of the building (Tr. 85:15-18, Tr. 110:19-111:2), and is that entire portion of the building viewed from the street facing the building, irrespective of any recessed portions of the building (Tr. 106-111). (The relevant portions of the transcript are attached hereto.)

Side Yards:

The Zoning Administrator submits that the regulations are clear on this issue. Pursuant to 11 DCMR § 2502.8, a chimney is a permitted projection into the side yard and this is, therefore, not an issue properly before this body.

Rear Yard:

The Zoning Administrator submits that based upon the drawings provided to DCRA, the rear yard requirements were met exercising the flexibility authority granted to the Zoning Administrator under 11 DCMR § 407.1. The instant appeal is based solely upon the decision of the Zoning Administrator to issue construction permits for the building at 2944 Chesapeake Street, N.W. Based upon the extensive review of the project plans as submitted to DCRA, the permit was properly issued.

Lots 856 and 859:

The Zoning Administrator submits that the records on file with the Office of the Surveyor speak for themselves. Based upon those records the zoning regulations have been fully complied with.

The Intervenor's Photographs:

As stated in the *Post-Hearing Submissions of the Zoning Administrator* filed herein on November 13, 2001, the Zoning Administrator has reviewed and adopts the photographs submitted by the Intervenor as true and accurate depictions of the building as seen from the street immediately facing the building.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Responses of the Zoning Administrator to the Post-Hearing Submissions of Appellant and Intervenor were faxed and mailed postage prepaid this 20th day of November, 2001 to James T. Draude, Esq., Driscoll & Draude, 1230 31st Street NW, 2nd Floor, Washington, DC 20007, Fax No.202-298-6699 and John Patrick Brown, Jr., Esq., Greenstein DeLorme & Luchs, P.C., 1620 L Street, NW, Suite 900, Washington, DC 20036-5605, Fax No. 202-451-1410.

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and the building survey does not reflect the existence of a porch. But I think that a parallel line which indicates the setback line, which is drawn on the porch, may indicate a slight projection into the side yard setback. But there's no indication that that would not be covered under the same flexibility authority from the side yard, if it fact it does project beyond that line.

BOARD MEMBER LEVY: Okay. Thanks.

CHAIRMAN GRIFFIS: Ms. Renshaw?

VICE-CHAIRPERSON RENSHAW: Yes. Mr. Chairman, a few questions for Mr. Bello or Mr. Johnson, as the case may be.

First of all, if you -- Mr. Bello, if you were just a newcomer to the area and you were walking by the property and you had an option to look all around the property, would the front of the property as from Chesapeake Street look the same as the back of the property looking at the structure, I mean? I'm not talking about the lawn.

MR. BELLO: Looking at the structure?

VICE-CHAIRPERSON RENSHAW: At the structure. Does the front look like the back?

MR. BELLO: Well, probably not from a pedestrian standpoint. There, obviously, is a

significant change in elevation from the middle of Chesapeake Street to the rear of this property, which engenders a different scale of sight, if you will.

VICE-CHAIRPERSON RENSHAW: Uh-huh. How do you define wing? I looked at 199 and I can't find a definition for wing. So we have to go to *Webster's Dictionary*. But how would you define wing?

MR. BELLO: I'll probably have to rely on the English dictionary, too. But I think the word is used descriptively here to describe a recessed portion of the front of this building.

VICE-CHAIRPERSON RENSHAW: Okay. All right. Because Mr. Gresham used the word wing in his testimony as defining the recessed portion of the house, which is in the back -- more in the back because it sets, as I understand it, 32 feet back.

MR. BELLO: Uh-huh.

VICE-CHAIRPERSON RENSHAW: So more in the back than in the front. And I am just trying to understand why you are still maintaining that the wing, as we see it recessed back 32 feet, is still measured as part of the front?

ZONING ADMINISTRATOR JOHNSON: If I might?

VICE-CHAIRPERSON RENSHAW: Mr. Johnson.

ZONING ADMINISTRATOR JOHNSON: Thank you.

Mrs. Renshaw.

That's because as some people referenced as a wing, purely and clearly faces the front. If you're standing -- if you stand anywhere in the Chesapeake area in the enclave there, you will clearly see that it is in the front of the property, the front of the building.

So what, again, if someone is calling a wing, well, you know they can call it whatever they want. The fact of the matter is that we make the determination and it is in front of the street. So that's why we hold steadfast to that position, because that's what it is.

VICE-CHAIRPERSON RENSHAW: Even though the wing as we think of it is more associated with the back of the house than with the front of the house? Because visually from the back you can see the full expanse of the house.

ZONING ADMINISTRATOR JOHNSON: I would concur with Mr. Bello's assessment, and that is (1) it depends on where you are. For example, if you're at the front of the property, it clearly goes up slope. If you're looking from the backside of the property and then it depends on what property that you're on because there are several properties that abut the

back or the rear yard of the property. So, again, it would depend on where you looked at it from, but clearly you would see, as Mr. Bello conveyed earlier, it does look different than the front. But clearly I think the key point that has to be emphasized is, is whatever you want to call it, a wing, it is still facing the front and thus, is to be considered a front of the property.

VICE-CHAIRPERSON RENSHAW: Just because it is facing front, but you said the front is where your perspective is; in other words, where you're standing. So I could be standing in Chesapeake Street looking at that and from, as the pictures have shown us, we could not see the wing or that part of it and just assume that where the line has been on one of these drawings that's no longer up is the front of the building, the reduced front? You understand what I mean?

ZONING ADMINISTRATOR JOHNSON: Well, to answer -- I understand what you're saying. And to answer that question, yes, but then I would simply encourage anyone to stand in front, at least stand in the middle of the property; then you could get a clearer picture of what the front really entails.

Now, using the scenario that you use, yes, if I stood in front but stood on the far northwest end

of it, and thus had a slanted view, I would not be able to see the entire front. Just as if I stood on the opposite corner and looked the other way, I would not be able to see.

So, again, we would encourage to get a truer picture of the front, one would have to stand in the middle.

VICE-CHAIRPERSON RENSHAW: Is it in the building code that it is more defined as to what a front is versus a wing of a building? I'm not just trying to tie this down a little bit better. Because it seems to be a little bit, what should we say, your definition. The way you have operated this is how it is defined. Am I correct?

ZONING ADMINISTRATOR JOHNSON: I'm going to defer that question to Mr. Bello, if I may.

VICE-CHAIRPERSON RENSHAW: Mr. Bello, please.

MR. BELLO: Thank you. I think that the point of the exercise is that for the entire span of the width of the lot that if you stand at any point of the front of the lot, that you'll be able to view that portion of this building including the wing section of it from the street. And I think that's consistent with the definition that corp counsel has entered into

testimony derived from the English dictionary, unabridged English dictionary.

VICE-CHAIRPERSON RENSHAW: Okay. All right.

I just have a second question on this natural topography. I believe Mr. Gresham was asked about that, and did he know that the regulations allow a garage to be excavated to accommodate the D.C. laws regarding off street parking, am I correct? So I would like to know in the excavation for the garage of this building did you -- what was the natural topography, first off? Can you explain what that was? Was it flat or was it an embankment? Did you excavate down? I would like to know.

MR. DRAUDE: Before we do this, can we identify this drawing, at least, by title and date or something?

CHAIRMAN GRIFFIS: I do not believe this was submitted into the record.

MS. PRUITT: It's not in the record. Do you have an extra copy to be submitted?

Mr. Chair, I would suggest we could label this Exhibit 26.

CHAIRMAN GRIFFIS: 26 will be the large 2436 plan that's on the board which is --