DC Watch

1327 Girard Street, N.W., Washington, D.C. 20009-4915
202-234-6982, fax 202-232-1215
http://www.dcwatch.com

Executive Director
Dorothy A. Brizill

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D.C. OFFICE OF ZONING
2002 MAR -5 PM 3:55

To: Board of Zoning Adjustment

From: Dorothy A. Brizill, Executive Director, DC Watch

Dorothy A Brizill

Date: March 5, 2002

Subject: BZA Application #16803 (Application of JFC Builders of D.C.)
1358 Girard Street, NW
Square 2860, Lot 56

This is a submission for the record following the February 19, 2002, hearing on this case. I was a witness opposed to the application at both the December 11, 2001, and the February 19, 2002, hearings. I am submitting this information for the Board's consideration both as a resident of 1327 Girard Street, NW, since 1982, and as an individual who for many years presented the position of the Columbia Heights Neighborhood Coalition in cases heard by the BZA.

As the Board is aware, this case involves the application of JFC Builders of D.C., pursuant to 11 DCMR §3103.2 for a variance from the lot area requirements under subsection 401.3 and a variance from the off-street parking requirements under section 2101 to allow the conversion of a flat into a three unit condominium in an R- District at premises 1358 Girard Street, N.W. (Square 2860, Lot 56).

The Board of Zoning Adjustment has authority to grant variances under provisions of DCMR Title 11, Section 3103.2, which reads as follows:

> As set forth in D.C. Code, Section 5-424(g)(3), "Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code, Sections 5-413 to 5-432 would result in peculiar and exceptional practical difficulties to or exceptional

BZA
Case No. 16803
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Board of Zoning Adjustment
District of Columbia
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and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map."

The History of 1358 Girard Street, N.W.

As a twenty-year resident of this block, I am familiar with the history and use of 1358 Girard Street, NW. The property never served as, and was never occupied as, a three-unit apartment building. The property was owned and occupied by James Smith, Sr., and his family as a single-family house. Mr. Smith's children grew up in the house, and at various times some of Mr. Smith's children also lived in the house with their families when they became adults. Only after Mr. Smith's sons died and his daughter moved to New York City did Mr. Smith rent rooms in the house to elderly people.

Approximately two years ago, following Mr. Smith's death, a significant fire in the building was set accidentally by the only remaining tenant of the building. The house, with its substantial fire damage, was purchased as a shell by JFC Builders.

As the Office of Planning memorandum indicates, 1358 Girard Street, N.W., has no rear yard; the rear of the property and the three adjoining townhouses share a narrow, five-foot-wide public walkway. The conversion of this rowhouse into a three-unit condominium, without the possibility of even one parking space on the property, will have a detrimental impact on the 1300 block of Girard Street, N.W. This block has limited street parking, and on most evenings no parking spaces are available after seven p.m., even though the great majority of townhouses on the block are now occupied as single-family houses or as single-family houses with one rental unit. The conversion of this rowhouse into three units, without the provision of parking for even one tenant, sets a precedent for the conversion of neighboring rowhouses into three units. That precedent, if followed, would deny residents of the block the possibility of finding convenient, accessible, public parking. This would be a "substantial detriment to the public good" and would adversely affect the community. For this reason, the variance should not be granted.

Actions by JFC Builders

In its presentation of this case, JFC Builders, both in written submissions to the Board of Zoning Adjustment and in its testimony at the February 19, 2002, hearing impaired the integrity of the zoning process. It is a detriment to the public good if the BZA ignores or rewards the actions of JFC Builders. JFC Builders did the following things:

1. It removed documents regarding this house from the Department of Consumer and Regulatory Affairs file room (for which it received a stop work order and a

$5,000 fine from DCRA [Attachment 1 to this memorandum], about which it testified falsely to the BZA);

2. It provided three forged letters of support for the application file (Exhibits G, H, and I in the Statement of the Applicant, Exhibit 23 in the BZA files and Attachment 2 to this memorandum);

3. On the morning of the originally scheduled hearing, it bribed witnesses, both with cash payments and with the promise of construction work on their own houses, to support the application (Attachment 3 is a copy of the agreement to do construction work and of a $5,000 check to a witness); [1] these bribes were paid to individuals for whom forged letters of support were originally supplied to the BZA, and who later testified at the February 19, 2002, that they supported the application.

4. And it testified falsely to the BZA. At the February 19, 2002, hearing, the applicant falsely claimed to have polled all the neighbors, falsely claimed that the construction done on 1360 Girard Street, NW, was simply to repair damage done by the construction on 1358 Girard Street, NW (though the rear porch and the front walkway were not damaged by construction at 1358 Girard Street, and 1360 Girard Street had never previously had a rear fence and gate); and falsely characterized both the testimony and the vote at the Advisory Neighborhood Commission meeting (Attachment 5).

Actions of the BZA at the February 19, 2002, Hearing

At the February 19, 2002, hearing, the Chairman of the BZA made several procedural errors and erroneous rulings that prevented evidence from being presented to the Board. These procedural errors and erroneous rulings impugn the integrity of the zoning process and cause substantial detriment to the public good.

The Chairman refused to allow evidence that forged documents had been supplied to the BZA; he allowed the applicant simply to remove those documents from the applicant's BZA file as a procedural matter without taking note that they were forged; and he then ruled that the letters would not be considered in the Board's consideration of the case. When I raised the matter in my testimony, the Chairman ruled that the issue was not relevant to the Board's consideration of the case.

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[1] Following the December 11, 2001, hearing, JFC Builders did do the promised renovation work on 1360 Girard Street, NW, including building a new retaining wall, a new walkway to the front of the house, a new rear porch, and a wrought iron fence and gate across public space in the rear of the building. All of this construction was done without applying for any building permits from the Department of Consumer and Regulatory Affairs. The rear fence and locked gate have been found to be in violation of District regulations by the Department of Transportation, which oversees public space; the Fire Marshal's Office, which has deemed it a fire hazard; and DCRA, which found that the construction was done without a permit. (Attachment 4 is a letter from the DCRA, which shows that the construction was done without a permit, and a photograph of the fence and gate.)

The Chairman refused to admit evidence that the applicant submitted forged documents to the BZA or that the applicant bribed witnesses who appeared before it on February 19, 2002, nor did he or the Corporation Counsel for the BZA question the witnesses about the forged documents or the bribes, even though I alerted the Corporation Counsel to these facts a week before the hearing.

The Chairman refused to allow me to question the applicant or witnesses, even though:

> In contested cases before administrative agencies, parties have the right to "conduct such cross-examination as may be required for a full and true disclosure of the facts." D.C. Code §1-1509(b) (1999); see Glenbrook Road Ass'n v. District of Columbia Bd. of Zoning Adjustment, 605 A.2d 22, 38-39 (D.C. 1992). The agency, like a trial court, "should permit cross examination to explore any matters which tend to contradict, modify, or explain testimony given on direct." Hart v. United States, 538 A.2d 1146, 1148-49 (D.C. 1988) (citing Morris v. United States, 398 A.2d 333, 339 (D.C. 1978)). ***Cathedral Park Condominium Committee, Petitioner, v. District of Columbia Zoning Commission, Respondent and the Klingle Corporation, Intervenor. Petition for Review of a Decision in the District of Columbia Zoning Commission.*** District of Columbia Court of Appeals, No. 98-AA-59, Decided January 20, 2000.

The Board of Zoning Adjustment has a legal duty to defend the integrity of its proceedings. By allowing the BZA's proceedings to be corrupted, by refusing to take note of the grossest violations of its rules and of the law, and by refusing to allow evidence of those violations to be presented, the Chairman of the BZA himself violated the integrity of the hearing.

In this case, the applicant profited from being allowed by the Chairman to withdraw forged documents from the BZA files, by the Chairman's refusal to take note of the bribery of witnesses, and by the Chairman's refusal to allow questioning of the applicant or of the witnesses. An applicant should not be allowed to profit from his bad acts.

Ethical standards must be upheld in hearing the cases that are presented to boards and commissions in the District. Lawyers are subject to discipline should they commit unethical acts, such as submitting false evidence or bribing witnesses. Therefore, boards and commissions must either enforce rules against the unauthorized practice of law, or waive those rules only if they have an alternative internal mechanism to discipline unethical conduct before them. The BZA must have such a mechanism, and must enforce it.

I am, therefore, requesting the Board of Zoning Adjustment to take note of the applicant's violations of District regulations and laws and of its efforts to impugn the integrity the zoning process, and to refer those matters to the Corporation Counsel for further action; and to also find that on the substantive facts of the case the proposed variance would cause substantial detriment to the public good; and to deny the variance.

Attachment 1

★★★ GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPT. OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION

NOTICE OF INFRACTION

044035

Issuing Administration
A ☐ HRA E ☒ BLRA I ☐ FIRE
B ☐ MPD F ☐ OPLA J ☐ CMH
C ☐ LRA G ☐ OCOM K ☐
D ☐ BRA H ☐ EHA L ☐

__/__/__ Date of Service

11 / 28 / 01 Date of Infraction

2:58 ☐ a.m. ☒ p.m.

1358 GIRARD ST NW. WARD NO: ____
Place of Infraction (Street Address)

____ ( ) ____
Business/Company Name Telephone No.

John F. CASEY ( ) ____
Respondent's Full Name (Last, First, Middle) Telephone No.

1360 D STREET N.E.
Respondent's Street Address

WASHINGTON, DC. 20003
Respondent's City State Zip Code

Formal I.D. ☐ Yes ☐ No Recidivist ☒ Yes ☐ No

Bus. Lic. Type ____ Bus. Lic. No. ____

Bus. Permit Type ____ Bus. Permit No. ____

Respondent's Social Security No. ____

TO REPORT SUSPECTED INSTANCES OF WASTE, FRAUD, AND/OR ABUSE, CALL 1-800-521-1639.

You are charged with violating the District of Columbia laws set out below. You must indicate below each infraction listed, whether you admit the infraction, admit the infraction with an explanation, or deny the infraction. You have the right to request a hearing.

Code		Regulation	Fine Amount
53201		5-426	$ 5,000.00

Nature of Infraction Removing Document From File Room

☐ Admit ☐ Admit with Explanation ☐ Deny

Code		Regulation	Fine Amount
			$

Nature of Infraction ____

☐ Admit ☐ Admit with Explanation ☐ Deny

Code		Regulation	Fine Amount
			$

Nature of Infraction ____

☐ Admit ☐ Admit with Explanation ☐ Deny

Code		Regulation	Fine Amount
			$

Nature of Infraction ____

☐ Admit ☐ Admit with Explanation ☐ Deny

Total fine(s) amount applicable to the above infraction(s) $ 5000.00

WARNING: If you do not pay the required fine(s) or request a hearing or an adjudication by mail (see reverse side) within 15 days of the date of service of this notice, you will be subject to the maximum penalties permitted by law, suspension of your license/permit, a lien being placed on your property and/or sealing of your business. The fine amount will double if payment has not been received within 15 days. If this is not your first infraction, you will be subject to an increased fine.

I personally observed or investigated the commission of the infraction(s) noted above.

Frank K. Hall 201
Inspector's/Investigator's Signature Badge No.

I hereby acknowledge receipt of this Notice of Infraction.

RESPONDENT'S SIGNATURE DATE

OAD COPY

[redacted]

2/13/02

$5,000.00

★★★ GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

STOP WORK

COMPLETED

ADDRESS : 1358 GIRARD STREET, NW

VIOLATION: (Section/s) NO CHANGES ON SITE.
REMOVE PLUMBING FROM DCRA OFFICE

PROPER [redacted] **SHALL BE OBTAINED AND OR POSTED PRIOR TO THE CONTINUATION OF ANY WORK**
ANY AND ALL PERSONS ACTING CONTRARY TO THIS NOTICE SHALL BE SUBJECT TO A FINE/PROSECUTION OR BOTH

COMPLETED

APPLICATION FOR PERMIT(S) MUST BE FILED OR REMOVAL OF VIOLATION MUST OCCUR WITHIN 48 **HOURS/DAYS FROM THE POSTING OF THIS NOTICE.**

☒ Construction 442-4641	☐ Electrical 442-4643	☐ Plumbing 442-4642	☐ Elevator 442-4634	☐ Boiler 442-4695
2:58	4/28/01	Juan R. [illegible]		
Time	Date	Official		

87—pB727 wd-251

COMPLETED

CASE

Attachment 2

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Re:	Application of JFC Builders of DC, 1358 Girard Street, NW Lot 56 in Square 2860	BZA Application No. 16803 Public Hearing: ANC 1B Zoned R-4

Statement of the Applicant

I.

Nature of Relief Sought

This is an application pursuant to Section 3103.2 of the Zoning Regulations for a variance from the lot area requirements of Section 401.3 to permit establishment of a three-unit apartment/condominium in the R-4 zone at premises known as 1358 Girard Street, NW (the Subject Property).

The application further requests a variance from the off-street parking requirements; however, the applicant believes that a variance from the off-street parking requirements of Section 2101.1 was cited in error. As per Section 2101.1 - The Schedule of Requirements for Parking Spaces, additional parking is not required when a building is converted from two-family to three-family usage.

Use	Zone	Requirement
Two-Family Flat	R-4	1 for each 2 dwelling units
Apartment House or Multiple Dwelling	R-4	1 for each 3 dwelling units

Section 2100.4 states, in pertinent part: "...when the use of a building or structure is changed to another use which requires more parking spaces [emphasis added] than required for the use existing immediately prior to the change or, if the building or structure is vacant, the use which existed immediately prior to the vacancy, parking spaces shall be provided for the additional requirement in the amount necessary to conform to Section 2101."

II.

Jurisdiction

The Board has authority to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations.

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Exhibit G

October 11, 2001

Re: 1358 Girard Street Zoning Matter

To whom it may concern:

I am the current owner of 1356 Girard Street N.W. and have been for the past 15 years. On behalf of JFC builders and there property located next door to my home, 1358 Girard St. we welcome the new home renovation of 3 condominiums. The property for the past 14 years has been a transitional home for many renters that have not been all that desirable for the neighborhood. The building has always had three apartments, one on each floor of which was rented out up until the time the building had a fire and later sat and became vacant. The building has been completely renovated and we feel the idea of having people owning there home next to us will take more pride and care for the entire neighborhood as opposed to a renter.

Yours truly,

MJ Rawlings

Exhibit H

Board of Zoning Administration
222 4th Street
Washington. DC 3333333

October 22, 2001

Re: 1358 Girard Street NW

To Whom It May Concern:

I currently live, and have for the past 12 years in 1360 Girard Street NW, directly next door to the above referenced project. For years the previous owner has been renting out two units and living in the third unit himself. During this period there has been many tenants coming and going who just did not care for the property and neighborhood the way many of us on the block would care as homeowners.

The current owner has taken the time to go over his plans of converting the building into three condominiums for homeownership. We very much welcome the condominiums as opposed to apartments for the basic reason people who have homeownership take much more pride and care to there own property and there surrounding neighborhood. The building for years has been an eye sore for the neighborhood. Two years ago the building had a fire that burnt out majority of the building and the owner basically abandonded the building. The new owner Mr. Casey has since then purchased the building and has completely renovated the building into three beautiful new condominiums. The building now since the renovation has been brought back to a condition the whole neighborhood can appreciate.

As an immediate neighbor to the project I very much welcome the conversion of the property into three condominiums and look forward to further homeownership on the block to care for the property and surrounding neighborhood.

Sincerely.

Leon D. Rawlings

Leon D. Rawlings
1360 Girard St NW

Exhibit I

Board of Zoning Administration
441 4th Street
Washington, DC 20001

November 29, 2001

Re: 1358 Girard Street NW

To Whom It May Concern:

I currently own, and have for the past 6 years 1326 Girard Street NW.

The current owner has taken the time to go over his plans of converting the building into three condominiums for homeownership. We very much welcome the condominiums as opposed to apartments for the basic reason people who have homeownership take much more pride and care to their own property and there surrounding neighborhood. The building for years has been an eye sore for the neighborhood. The new owner Mr. Casey has since then purchased the building and has completely renovated the building into three beautiful new condominiums. The building now since the renovation has been brought back to a condition the whole neighborhood can appreciate.

As an immediate neighbor to the project I very much welcome the conversion of the property into three condominiums and look forward to further homeownership on the block to care for the property and surrounding neighborhood.

Sincerely,

1326 Girard St. NW


1360




1360



Attachment 3

I JOHN CASEY AND JFC BUILDERS LLC AGREE TO BUILD THE FOLLOWING AND REPAIR THE FOLLOWING FOR THE PROPERTY LOCATED AT 1360 GIRARD ST. NW WASHINGTON, DC. THIS WORK IS A RESULT OF DAMAGE TO THE REFERENCED PROPERTY DURING THE RENOVATION OF 1358 GIRARD ST.

THE ITEMS OF REPAIR ARE AS FOLLOWS

- REPAIR OR REPLACE SIDEWALK
- LANDSCAPING
- REBUILD REAR DECK
- PLACE REAR STEEL GATE

JOHN CASEY 12/11/01

WITNESS

12/11/01

Leon D. Rawlings

Security enhanced document. See back for details.

1120

JFC BUILDERS, LLC II
2458 SANDBURG ST.
DUNN LORING, VA 22027

65-7198/2550
159

DATE 12/7/01

PAY TO THE ORDER OF Leon D Rawlings $ 5,000.00

Five Thousand and 00/100 DOLLARS

Security features are included. Details on back.

CHEVY CHASE BANK
CHEVY CHASE, MARYLAND 20815

FOR _____

MP

GOVERNMENT OF THE DIST
Department of Consumer and

Office of the Director

Joseph K. McCarley
Customer Services Advocate

Department of Consumer and Regulatory Affairs
Office of the Director
941 North Capitol Street, N.E., Room 9500
Washington, D.C. 20002
Telephone: 202.442.8927 Fax: 202.442.9445
E-mail: Joseph.McCarley@dc.gov

February 15, 2002

Attachment 4

Ms. Dorothy Brizill:

Consistent with your recent request, please find enclosed for your review photocopies of permits and actions for **1356, 1326 and 1358 Girard Street, NW.** Presently, there is no record of the issuance of permits for ***1360 Girard Street, NW.*** If additional information is required in this regard, a Freedom of Information request should be directed to Mr. Robert Henry, DCRA's Freedom of Information Officer at (202) 442-4677.

Listed below is a chronology of permits and actions for **1326, 1356 and 1358 Girard Street NW:**

- **1326 Girard Street, NW : – Building Permit Application filed 9/21/01**
  - **Building Permit #439825 issued 10/31/01**
  - **Notice of Infraction issued 11/28/01**
  - **Stop Work Order issued 11/29/01**
  - **Building Permit#B441070 issued 12/13/01**
- **1356 Girard Street, NW: – *Building Permit #B439681 issued 10/31/01***
- **1358 Girard Street, NW: – Building Permit #B435603 issued 03/14/01**
  - **Notice of Infraction #044035 issued 11/28/01**
  - **Stop Work Order issued 11/28/01**

Thank you.

Sincerely,

Joseph McCarley
Customer Service Advocate

Enclosures

Gary

Imhoff

1327 Girard Street, N.W.
Washington, DC 20009-4915
202-234-6982
fax 202-232-1215
gimhoff@erols.com
http://www.dcwatch.com

March 5, 2002

Attachment 5

Ms. Jerrily R. Kress, Director
Board of Zoning Adjustment
441 4th Street, NW, Suite 210-S
Washington, DC 2001

Dear Ms. Kress:

Re: Application Number 16803
1358 Girard Street, NW

I have been advised that at the February 19, 2002, Board of Zoning Adjustment hearing the applicant in this case, JFC Builders, made several statements about the Advisory Neighborhood Commission meeting that was held on February 7, 2002, to consider this application.

I would like to correct some of these statements. I understand that the applicant testified that aside from Ms. Brizill only one other individual appeared at the ANC hearing in opposition to the application, that that individual's opposition was based solely on parking, that that individual's concerns were fully met and answered, and that that individual left the meeting supportive of the application.

That testimony is false. I was the other individual who testified to the ANC in opposition to the application. I came to the meeting opposed to the application based on several issues, of which parking was only one. Not one of my concerns was met or fully answered, and I left the meeting even more opposed to the application than I was when I came.

At the ANC meeting, the applicant admitted that forged letters of support had been submitted to the BZA. He blamed that on an employee of his company, JFC Builders, and claimed that valid letters of support were being obtained and would be substituted. I understand that no such letters were ever submitted to the BZA.

I understand that the applicant testified that the Advisory Neighborhood Commissioner for the single-member district in which 1358 Girard Street, NW, is located voted in favor of the application. That is false. The single-district commissioner, Calvin Woodland, voted against the application.

I continue to oppose this application, and ask the BZA to reject it both for substantive reasons and because of the false testimony presented by the applicant.

Sincerely yours,

Gary Imhoff

G
I