RESPONSE OF JFC BUILDERS, INC.
IN THE MATTER OF BZA CASE #16803

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Introduction:

This is in response to the letter dated March 5, 2002, submitted by Ms. Dorothy Brizill at the request of the Board of Zoning Adjustment (the Board). It should be noted that Ms. Brizill has not sought nor achieved party status under the provisions of 11DCMR, Section 3106.2.

Ms. Brizill is a neighbor of 1358 Girard Street, NW (the property). She resides at 1327 Girard Street, NW, approximately two hundred and nine feet (209 ft.) from the subject property (see attached map)

In her opening paragraph, Ms. Brizill states that she has a history before the Board on behalf of the Columbia Heights Neighborhood Coalition. As there is no evidence or indication that she is acting on behalf of that or any other organization or group, it must be determined that she is testifying as an individual resident of the community. Ms. Brizill's opinions are hers and hers alone.

The Board instructed Ms. Brizill to try to restrict her written testimony to issues that pertain to her perceived impact on the community. As in the past, she has not done that. Her submission is a personal attack on JFC Builders, Inc., its employees and the Board itself.

Our response is necessarily short. Ms. Brizill was allowed two-weeks for her submission while we were limited to three days. We agreed to the schedule because we believe that our case can stand on the merit of our submission and the exhibits of record. Our intent is to focus primarily on the zoning issues, however, we feel compelled to respond to some of the inflammatory allegations made by Ms. Brizill.

The History of 1358 Girard Street, N.W.

Ms. Brizill attests to her personal knowledge that the premises "…never served as, and was never occupied as, a three-unit apartment building.". She further states that, "The property was owned and occupied by James Smith, Sr., and his family as a single-family house."

In our initial application, we submitted Certificate of Occupancy #B21441 clearly indicating that as of December 9, 1959, the intent of the owner was to use the building as a "Flat", not a single-family dwelling. On April 3, 1967, Mr. Smith, the most recent owner prior to JFC Builders, Inc., obtained Certificate of Occupancy #B60757 to continue use of the building as a "Flat", not a single-family dwelling. Official records indicate that the property has not been configured for use as a single-family dwelling for at least forty-two (42) years.

BZA
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Exhibit No. 33

Board of Zoning Adjustment
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EXHIBIT NO.33

Ms. Brizill further states that the building, "...was purchased as a shell by JFC Builders." The building had been badly damaged by fire at the time of purchase, but it was not a "shell". As attested in the letter from Mr. James Shelton, former Chief Construction Inspector, the state of the building, prior to demolition and subsequent construction, was such that it was clear that the structure had been configured as a three-unit building. We have submitted compelling evidence that the building was, in fact, used as a three-unit apartment building for the last twenty (20) years. Utility bills show that services were not only provided to the building, but also that occupants of the building were using these utilities. Ms. Brizill's recollection is incorrect.

In the third paragraph under this heading, Ms. Brizill misrepresents the report of the Office of Planning (OP). She quotes the OP report as saying that the property has no rear yard. This statement is false. In the report of record, section III, page 2, paragraph 1, sentence 3, OP states; "There is a five-foot rear yard;...[emphasis added]". The definition of "Yard, rear" in 11DCMR, Sec. 199 supports the OP evaluation.

The existing rear yard is nonconforming under current regulations. The nonconformity is a preexisting condition of the site. It is consistent with the design of adjoining structures on both sides of the subject property.

Ms. Brizill alleges that a "public walkway" exists across the rear of the subject site and three adjoining properties. It is unclear what point she is trying to make. There is no evidence or indication that any of these rear yards are legally bound by a covenant, easement or adverse action that would render them a "public walkway". In fact, Figure 2 on Attachment 3 of the OP report shows that the area at the rear is not accessible to the public.

Ms. Brizill claims that conversion of this building without provision of off-street parking will have a "detrimental impact" on the community. It was made clear at the February 19, 2002 hearing that off-street parking cannot be provided nor is it required by the Zoning Regulations. The Zoning Administrator's letter effectively rescinded the erroneous citation. The record is clear on these facts.

The building was built in 1910, prior to the 1958 Zoning Regulations that first required off-street parking. There have been three uses since its construction. It was built as a single-family dwelling, converted to a two-family flat in 1959, and for at least the last twenty years, has been used as a three-unit building. The building has never had a parking space. The property is 100 feet from a major thoroughfare with public and private transportation opportunities. There is a subway station within a few blocks of the property.

Our proposal maintains status quo. There is no "substantial detriment to the public good". On the contrary, the certificate of occupancy that is the basis for our request would assure the community that the structure has been brought up to current fire and life safety standards. Had the previous owner gone through appropriate procedure for his

conversion, the fire may not have caused such extensive damage to this and the neighboring property.

Finally, Ms. Brizill complains that approval of our application would set a precedent for further conversion on the block, resulting in negative impact of increased density. It was made clear at the hearing that the Board decides each case on its individual merit. Approval of this proposal does not set a precedent as alleged by Ms. Brizill.

Actions by JFC Builders

Ms. Brizill has stated on numerous occasions that she believes Mr. John Casey, president of JFC Builders is a "bad man" who shouldn't be "rewarded" with a variance. It is clear that her opposition to this proposal is a personal vendetta against Mr. Casey, not based on any negative impact implied by this conversion.

The Board does not arbitrarily award or reward an applicant with a variance. The applicant must meet the tests specified in 11DCMR, Section 3103.2. We have met those tests.

In an attempt to support her contention, Ms. Brizill has listed a number of alleged offenses committed by JFC Builders. The list is fraught with half-truths and innuendo. Not one of the allegations, even if it were true, relates to the concept of zoning or to the merits of the case. As such, we feel that her allegations constitute "moot questions" under 11DCMR, Section 3105 and should not be considered by the Board.

However, due to the slanderous and inflammatory nature of the allegations, we will respond to each one in turn.

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 $5000 fine from which it testified falsely to the BZA)

   RESPONSE:
   Mr. Casey was advised to submit a copy of his approved plans in support of the BZA application. The renovation was seventy percent complete. Job site plans were not in a condition that they could be copied legibly. He attempted to buy a copy of the plans from the Building and Land Regulation Administration (BLRA). Their copy machine was broken. The hearing was 14 days away. Mr. Casey took the plans to another location and had them copied. He returned them to the file room.

   Mr. Casey should have asked permission of the clerk or asked that she accompany him to another copy area within the agency. He did not. As a result he was issued a stop work order and a citation.

   Staff at BLRA determined that they had erred in issuing the permit for a three-unit apartment building. Mr. Casey was directed that, in order to continue renovation, he

must obtain a building permit for a two-family flat and suspend work on the basement unit pending action of the Board. He obtained the permit and the stop work order was lifted. He has complied with the conditions of the permit.

Mr. Casey exercised his right to a hearing on the $5000 citation. The hearing was conducted on February 13, 2002. The hearing examiner continued the case so that he could review inspection reports. These approvals had been posted at the job site by each of the affected inspection entities. Inspector Juan Scott removed them from the site after issuing the stop work order. The case will be decided when the examiner has completed his review.

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

   RESPONSE:
   Renovation of the site was seventy percent complete before we found out that the permit was issued in error. We immediately put together a skeleton application package and submitted to the Board. Even though we had strong indications that the building had been used as three units, we had not yet compiled all of the information necessary to support our case. Once we received the information from the utility companies, we proceeded to the community. We contacted the ANC 1B and found that we had missed the last meeting before our hearing date of December 11, 2001.

   Because of our time constraints, an employee of JFC Builders was tasked with the specific job of obtaining letters from three neighbors who had previously indicated that they would provide written support. He drafted letters based on their statements and took them to the individuals for signature. Two of the neighboring property owners, one of whom lives in the community, reviewed the statements and signed the letters. The third was more difficult to obtain. Mr. Leon D. Rawlings lives in an adjacent property, 1360 Girard Street, NW, but was unavailable for signature.

   Unable to meet with Mr. Leon Rawlings, and motivated by the fact that Mr. Rawlings had indicated support as well as the fact that our hearing deadline was rapidly approaching, the employee signed Mr. Rawlings' name to the letter.

   We found out about the misrepresentation the morning of the December 11, 2001 hearing and immediately asked for a continuance. The employee was fired.

   Since that time we have obtained notarized letters from Mr. Leon D. Rawlings and Mr. William F. Schortinghouse IV. Further, Both Mr. Leon D. Rawlings and Mr. Michael Rawlings have appeared at both hearings in support of the proposal.

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 $5000 check to a witness) 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 support the application.

RESPONSE:
See attached letter

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)

   RESPONSE: Property owners within a 200' radius were notified by mail, including Mr. Gary Imhoff, owner of the residence of Ms. Brazill. One of the neighbors has indicated to us that Mr. Imhoff is Ms. Brizill's husband, so she should have been notified.

   The building was posted without significant interruption the entire time. Because we would not be able to present our case before ANC 1B in time for the hearing, an employee of JFC Builders, Inc. was tasked to poll every house on the block to gain support for the project. We concentrated our efforts on the adjacent property owners because they would be most closely impacted. Of the people that were home, three indicated strong support and that they would provide a letter to the Board. We obtained letters from those three (See #2 above). No other person that we were able to contact at home indicated opposition.

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

Ms. Brizill accuses the presiding officer of procedural errors and erroneous rulings. Her allegations are not supported by 11DCMR, Section 3117 – Hearing Procedures. The Chairman as the presiding officer has the responsibility and the authority to facilitate the hearing process.

Ms. Brizill disputes the validity of letters from neighbors that we submitted into the record. In response, we obtained notarized letters from two of the authors, Mr. Leon Rawlings and Mr. William F. Shortinghouse IV. Those letters were not submitted. The third author, Mr. Michael Rawlings appeared at the hearing to show his support. We brought the authors to testify personally so there would not be any confusion regarding their position. Mr. Shortinghouse was unable to attend. The appearance of the neighbors allowed us to remove the disputed correspondence from consideration.

The presiding officer has the authority to "Rule upon offers of proof and receive relevant evidence;".(11DCMR, Section 3117.3 (b)) When the letters were removed from

consideration, her "evidence" was no longer relevant. The ruling of the presiding officer was appropriate.

Despite the best efforts of the presiding officer, Ms. Brizill has succeeded in making her allegations a part of the record. In rebuttal, we are submitting copies of the notarized letters as attachments to this submission.

Ms. Brizill accused the presiding officer of procedural errors in not allowing her to question witnesses. She cites a precedent ruling that states in part, "In contested cases before administrative agencies, parties have a right to "conduct such cross-examination as may be required for full and true disclosure of the facts." [emphasis added]"

Ms. Brizill is not a party in this case. On December 11, 2001, after granting our requested continuance, the presiding officer advised Ms. Brizill that the delay would allow her time to request party status. As of the hearing conducted February 19, 2002, Ms. Brizill had not sought nor achieved party status. 11DCMR, Section 3119.3 states, "Every party may appear at a hearing to offer evidence and cross-examine witnesses." Ms. Brizill is not a party in this case. She did not have the right to cross-examine.

On December 11, 2001, Ms. Brizill was advised that, if she believed that she had evidence of criminal wrongdoing, she should present her allegations to the Criminal Division of the Office of the Corporation Counsel. Ms. Brizill has not done so. She states in her memorandum, "...I alerted the Corporation Counsel to these facts a week before the hearing." In fact, she did not complain to the Criminal Division of the Office of the Corporation Counsel. She spoke with the attorney that is assigned to provide legal assistance to the Board who in turn advised that she seek assistance from the Criminal Division.

We must end this now in order to meet the prescribed submission deadline. We will be happy to answer any questions that the Board might have at the decision hearing on Tuesday, March 12, 2002.

In response to the Dorthy Brazil and her incorrect claims to the repairs to the property located at 1360 Girard Street.

The enclosed agreement for repairs to be made by JFC Builders to the property located at 1360 Girard Street proceeded as follows:

1. Repair or replace the sidewalk. The sidewalk work and retaining wall foundation was performed by the owner of 1360. The neighbor, Leon Rawlings excavated and poured the foundation for a retaining wall and poured the concrete for the sidewalk. We mutually agreed that I was responsible for the sidewalk as a result of my Backhoe being placed on his front yard and sidewalk in order to dig for water and sewer lines for the property at 1358 Girard St.. So I, John Casey, agreed to pay for the concrete while the owner performed the labor work. The original agreement signed dated 12/11/2001 and witnessed by Attorney Mike Levy stated that John Casey would do the work but since Mr. Rawlings also wanted to install a retaining wall we agreed that I would just pay for the concrete while he performed the work.

2.The rear porch: The neighbor repaired the lower porch to the rear of his house himself and put a temporary railing up. I, John Casey, agreed to come in and put in the upper rear deck and Roof. This deck was torn down of the rear of 1360 Girard Street due to a fire. As I testified in the hearing the decks to 1360 and 1358 were connected together and when the fire happened the fire department pulled the deck off 1358 Girard to get it away from the burning building. This action by the fire department also pulled the deck away from the building of 1360 Girard therefore damaging that deck as well.

3. The rear Gate to the property was installed by a contractor hired by JFC Builders. Ms. Brazils claim of a fence and gate is incorrect. There was only a gate installed and no wrought iron fence. There is a existing fence that has been up for YEARS.

4. THE FIVE THOUSAND DOLLAR CHECK WAS PROVIDED SO THAT IF JFC BUILDERS DID NOT PERFORM THE WORK CORRECTIONS TO THE 1360 GIRARD PROPERTY IN A TIMELY FASHION THEY WOULD USE THOSE FUNDS TO CORRECT THE DAMAGE.

JOHN F CASEY

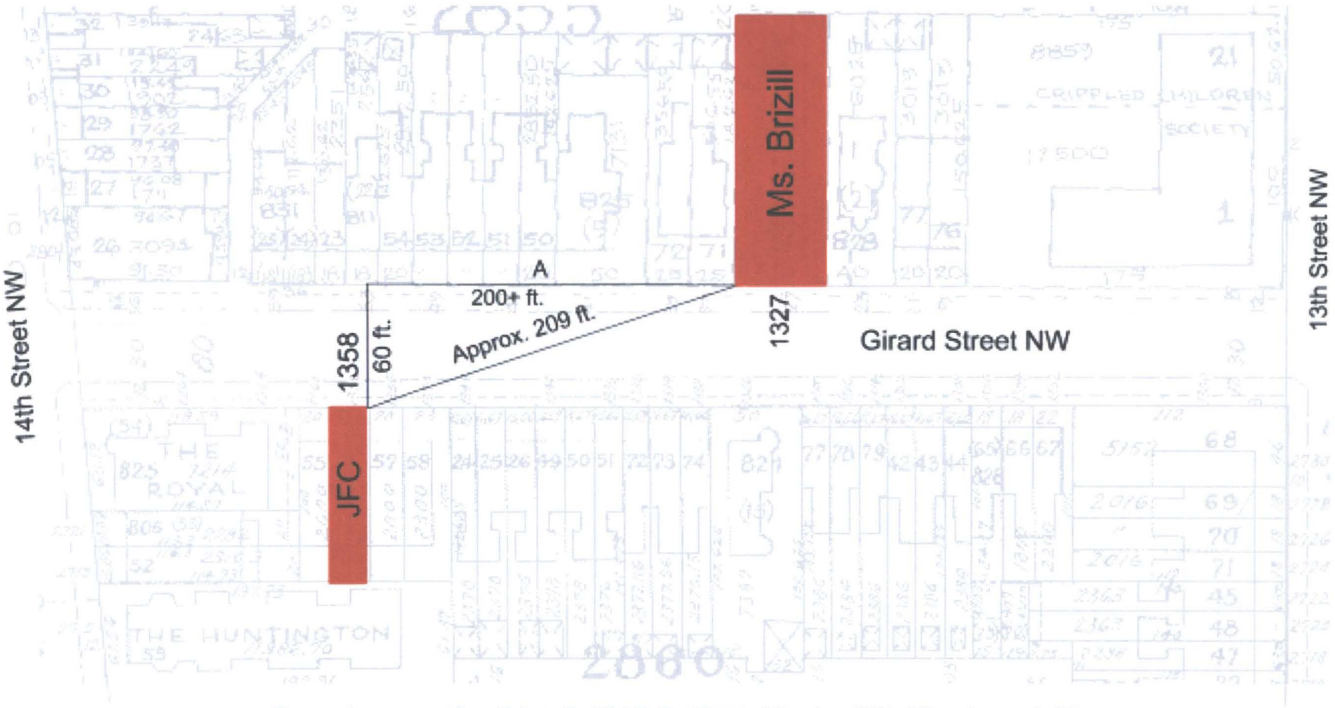
Re: 1358 Girard Street N.W. Washington, D.C.

I Charles Darling took the attached pictures of the above rerferenced project on 2/05/01 before any construction activity took place. The building was vacant and suffered fire damage mainly to the upper floor. The following pictures were of the basement and first floor. At the site visit the time the pictures were taken the building appeared to have a apartment in the basement with kitchen and bath as well as the first floor and second floor.

C P Darl

Charles Patrick Darling

Proximity of Ms. Brizill's Residence



The map is an excerpt from Volume 3 of Baist's Real Estate Atlas circa 1958. Although many buildings have been razed and some replaced with other structures, plat maps in the Office of the Surveyor show that the property owned by JFC Builders, Inc. and the residence of Ms. Brizill remain the same distance apart as represented in this map.

The line segment labeled "A" in the drawing is actually a bit over 200 ft. in length. Available information does not allow for accurate determination of actual length. We erred on the side of caution and determined the closest lot to lot distance from the Western property line of lot 54 in square 2555.

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

February 4, 2002

Board of Zoning Administration
222 4th Street N.W.
Washington, DC 20009

Re: 1358 Girard Street, N.W.

To Whom It May Concern:

I currently own, and have for the past 6 years in 1326 Girard Street NW, down the street to the above referenced project. During this period there has 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 basics 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. The new owner Mr. Casey has since then purchased the building and 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 homeownership on the block to care for the property and surrounding neighborhood.

Sincerely, William F. Schortinghouse IV

W. F. Schortinghouse IV
1326 Girard Street, NW
Washington, DC 20009

Given under our hand on this 4 day Feb, 2002.

State/Commonwealth of Maryland
City/County of PG Co.

Subscribed, sworn to and acknowledged before me by W.F. Schortinghouse IV

This 4th day of Feb, 2002

Notary Public Commission expires: 3/1/05

February 4, 2002

Board of Zoning Administration
222 4th Street N.W.
Washington, DC 20009

Re: 1358 Girard Street, N.W.

To Whom It May Concern:

I currently live, and have for the past 12 years in 1360 ~~1356~~ 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 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 basics 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 abandoned the building. The new owner Mr. Casey has since then purchased the building and 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 homeownership on the block to care for the property and surrounding neighborhood.

Sincerely,

Leon D. Rawlings
1360 Girard Street, NW
Washington, DC 20009

Given under our hand on this 4th day Feb., 2002

~~State/Commonwealth~~ of District of
~~City/County~~ of Columbia

Subscribed, sworn to and acknowledged before me by
Leo D. Rawlings
This 4th day of February, 2002

Notary Public Commission expires:

DEBRA KEATS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires: March 14, 2005