BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of ROBERT LEHRMAN	)	
	)	BZA Appeal No. 16849
From the October 10, 2001 decision of the Zoning Administrator regarding 2221 30th Street, N.W.	)	

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OWNER'S REPLY TO APPELLANT'S OPPOSITION TO OWNER'S MOTION TO DISMISS

Owners Mr. and Mrs. Melvyn Estrin, as beneficiaries of the Estrin House Trust ("Owner"), hereby reply to the Appellant's Opposition to the Owner's Motion to Dismiss filed on April 4, 2002 and reiterate the arguments made in support of the Owner's Motion to Dismiss filed on March 20, 2002 as supplemented herein. The Appellant's reply in no way refutes the undisputable fact that the Board is without jurisdiction to hear this appeal because: (1) the Appellant is not an "aggrieved" person; (2) the appeal was not timely filed; (3) the appeal is barred by the doctrine of laches; and (4) the appeal is moot.

I. Owner's Reply to Assertion that Appellant is Aggrieved

The statement in Appellant's Opposition to the Owner's Motion to Dismiss that "Mr. Lehrman, as a neighboring resident who owns property in close proximity to the Estrin property, qualifies as a person 'aggrieved'" is completely contrary to the standards developed by the Courts for determining what constitutes "aggrievement" because the Appellant has not shown that he is

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affected by the ruling of the Zoning Administrator differently in character and kind from the general public. Neither of the cases cited by the Appellant obviates this essential requirement.

Moreover, the Appellant's argument that he is "aggrieved" because his land is similarly zoned within the Woodland-Normanstone neighborhood is without merit. The Appellant does not have any special status in connection with the Tree and Slope Protection Overlay ("TSP") provisions of the Zoning Regulations. To adopt Appellant's approach would mean that *anyone* within the TSP District would be entitled to standing as an "aggrieved" person, whether or not that person is affected by the action challenged.

II. Owner's Reply to the Appellant's Argument that Appeal Was Timely Filed

The Appellant claims that because he pursued other avenues in an attempt to get the result he wanted, namely by seeking a "reconsideration" of the Zoning Administrator's decision dated October 10, 2001, the delay was therefore reasonable. The Appellant also now seems to argue that he is not in fact appealing from the decision of October 10, 2001, but rather is appealing from the December 10, 2001 letter from J. Gregory Love, Administrator of the Building Land Regulation Administration, asserting that the October 10, 2001 determination did not address the issue regarding the second tree on the Owner's property that was not removed. If the Appellant is now arguing that he is not challenging the Zoning Administrator's decision of October 10, 2001, then the ruling of the Zoning Administrator stands.

Again, the Appellant's arguments are without merit. As indicated in the Owner's Motion to Dismiss, the Zoning Administrator, not the Building Land Regulation Administrator, has the power to enforce the Zoning Regulations and there is no law that allows for appeal of a decision of the Zoning Administrator to the Building Land Regulation Administration. Thus, an appeal only could properly be taken from a decision of the Zoning Administrator and such appeal is only properly taken to the *Board*. See page 185 of Reorganization Plan No. 1 of 1983, amending Commissioner's Order No. 69-96 dated March 7, 1969, as amended by Mayor's Order 78-42, dated February 17, 1978 and Reorganization Order No. 1 of 1982 dated July 6, 1982 (Exhibit 8 to Owner's Motion to Dismiss). The fact that the Appellant waited 99 days to file an appeal, all the while being represented by Counsel, while he pursued other strategies in an attempt to get the result he wanted does not make the delay reasonable. As the Court found in Waste Management of Maryland, Inc. v. D.C. Board of Zoning Adjustment, 775 A.2d 1117: "The fact that [the Appellant] chose to concentrate on avenues that reasonably may have appeared more promising than an appeal does not excuse its delay in noting an appeal." *See* Waste Management, 775 A.2d at 1123. Here, the Appellant, rather than appealing the Zoning Administrator's decision to the Board of Zoning Adjustment sought to get a "second bite at the apple" in the hopes of reversing the Zoning Administrator. Such an appeal to the BLRA is not provided for by law or regulation. This is not the case of an unwitting citizen who

does not know the rules–Appellant has, since on or before July 2001, been represented by learned counsel.

In addition, the Appellant's assertion that the October 10, 2001 determination did not speak to all alleged violations is wrong. In his correspondence to the Zoning Administrator, the Appellant clearly stated accusations regarding both trees, and all of the accusatory information was before the Zoning Administrator at the time of his decision on October 10, 2001. Thus, the Zoning Administrator in his determination, with all of the accusatory information presented to him and having visited the site, clearly stated that he found that "[b]ased upon my review, site inspection and understanding of the issues raised, I conclude that there is no violation of the Zoning Regulations and no further enforcement action is required regarding this matter."

III. Owner's Reply to Appellant's Claim that Appeal is Not Barred By Laches

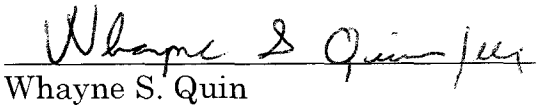
As indicated in the Owner's Motion to Dismiss, the appeal clearly should be dismissed based on the doctrine of laches. Again, by his own admission as indicated in letters to both Mr. Johnson and Mr. Estrin, Appellant was well aware of the activities with regard to the two trees in mid-July 2001, yet did not file an appeal with the Board until *six* months later. The Appellant's decision to wait more than six months to bring an appeal before the appropriate body, has resulted in unnecessary and unreasonable expense and delay for the Owner. Owner's house is now virtually under roof.

IV. Owner's Response to Appellant's Claim that the Appeal is Not Moot

To reiterate the Owner's arguments in the Owner's Motion to Dismiss, the appeal clearly is moot. The unsafe tree which used to hang over the Jordans' property and which was not in the zone of construction, was cut down last July; the second tree which was damaged is now being protected. The Board obviously cannot do anything regarding these particular trees. The Appellant is inviting the Board to conduct a hearing where all the issues are moot.

Inasmuch as the Appellant has failed to show that the Board has jurisdiction to hear this appeal, the Owner again respectfully requests that the appeal be dismissed.

Respectfully submitted,



Whayne S. Quin
Lisa L. Jackson
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-7274

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2002, a copy of the foregoing Opposition to Appellant's Request for a Stay was sent via hand delivery to:

Cornish F. Hitchcock
Andrea C. Ferster
1100 17th Street, N.W., 10th Floor
Washington, D.C. 20036

ANC 3C
2737 Devonshire Place, NW
Washington, D.C. 20008

Toye Bello
Acting Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Washington, DC 20002

Marie Claire Brown
Charlotte Parker
Pamela Smith
Office of Corporation Counsel
441 4th Street, N.W.
4th Floor South
Washington, D.C. 20001

Lisa L. Jackson

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