ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

JOHN EPTING
202-663-8879
john.epting@shawpittman.com

January 9, 2003

RECEIVED
D.C. OFFICE OF ZONING
2003 JAN -9 PM 2:45

By Hand Delivery

District of Columbia Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: BZA Appeal No. 16982 of J. Brendan Herron, Jr. - Motion of Zuckerman Brothers, Inc. to Intervene and Dismiss Appeal

Dear Members of the Board:

Attached please find the motions of Zuckerman Brothers, Inc. to intervene and dismiss Appeal No. 16982 for failure to file within a reasonable time. As required, I also have attached 20 copies of the motion. Please call me if you have any questions.

Sincerely,

Allison C. Prince for John T. Epting

John Epting

Document #: 1298318 v.1

BZA
Case No. 16982
Exhibit No. 16

Board of Zoning Adjustment
District of Columbia
CASE NO. 16982
EXHIBIT NO. 16

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

RECEIVED
D.C. OFFICE OF ZONING
2003 JAN -9 PM 2:46

J. Brendan Herron, Jr.,	)	
	)	
Appellant,	)	
	)	
vs.	)	**Case No. 16982**
	)	
Department of Consumer and Regulatory Affairs,	)	
	)	
	)	
Appellee.	)	

ORIGINAL

MOTIONS FOR LEAVE TO INTERVENE AND DISMISS

Zuckerman Brothers, Inc. ("Zuckerman" or "Intervenor"), the owners of the property located at 2900 and 2902 Albemarle Street, N.W. (the "Properties"), hereby moves this Board for leave to intervene and to dismiss the appeal of J. Brendan Herron, Jr. and ANC 3F ("Appellants") as untimely, having been filed more than six months after the permits in question were issued allowing construction of two single-family homes. Moreover, this frivolous appeal follows months of meetings with, correspondence from, and threats by Appellants with regard to these two matter-of-right single family homes.[1]

---

[1] Mr. Herron, for example, has filed numerous, voluminous, and repetitive submissions in the BAR appeal, which are listed below:

1. July 8, 2002, 50 page appeal, including attachments.
2. August 1, 2002, 34 page opposition to Zuckerman's motion to dismiss.
3. October 3, 2002, 2 page letter to the Zoning Commission in support of the Tree and Slope Overlay.

Footnote continued on next page

Appellants challenge the action of the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") in issuing a raze permit, B446310 and two building permits, B446316 and B446312 (collectively, the "Permits"). The application for the raze permit and supplemental razing operation permit to tear down a single family residence at 2900 Albemarle Street was submitted to DCRA on March 1, 2002. The Department of Health Environmental Health Administration, the Department of Public Works, Historic Preservation, and the public utilities all reviewed and approved the applications. Accordingly, DCRA issued raze permit number B446310 on June 13, 2002. The building permit applications were submitted to DCRA on April 4, 2002. After the required approvals were obtained, DCRA issued building permits B446316 and B446312 also on June 13, 2002.

Footnote continued from previous page

4. October 28, 2002, 74 page submission including additional materials in opposition to Zuckerman's motion to dismiss, motion for BAR to issue subpoena for additional documents from DCRA despite the fact that DCRA had already provided the file, and a motion for an emergency stay of the raze permit.
5. November 12, 2002, 9 page response to Zuckerman's opposition to the motion for emergency stay.
6. November 14, 2002, 14 page response to DCRA's opposition to the motion for emergency stay.
7. November 14, 2002, 8 page response to Zuckerman's opposition to the motion for a subpoena.

This is an indication of only <u>one</u> of the appeals to which Zuckerman has been required to respond. Mr. Herron and the ANC have previously attempted to instigate an interim appeal to DCRA, have instigated this BZA appeal, and have submitted a resolution to DCRA in frivolous opposition to Zuckerman's application for a public space permit.

On December 19, 2002, Mr. Herron and ANC 3F filed this appeal. Intervenor, the property owner, hereby requests that the BZA dismiss this appeal as untimely.

Facts

I. THE APPLICATIONS

On March 29, 2002, Zuckerman Brothers, Inc. purchased Lot 9 in Square 2043 (the "Property") from Ilene R. Baylinson. (Deed, Exhibit A.) On April 4, 2002, Zuckerman submitted applications to construct two new single family dwellings with retaining walls on the Property. (Permit Applications, Exhibit B.) Zuckerman also filed a subdivision plat, dividing the Property into two lots numbered 18 and 19. (Subdivision Plat, Exhibit C.) Lot 18 is 75 feet wide and has an address of 2900 Albemarle Street, N.W. Lot 19 is 88.23 feet wide and has an address of 2902 Albemarle Street, N.W.

Square 2043 is located in the R-1-A Zone District. A one-family detached dwelling is permitted as a matter-of-right in the R-1-A Zone District. 11 DCMR § 201.1(a). Both dwellings are to be two-story frame and masonry buildings. The R-1-A district permits a height of 40 feet or three stories and a percentage of lot occupancy of 60%. It requires a minimum lot area of 7,500 feet and a minimum lot width of 75 feet. The minimum depth of each side yard is eight feet. The proposed construction and the subdivided lots meet these standards. (See Exhibit C; Approved Plans, Exhibit D; and Approved Plat, Exhibit E).

II. REGULATORY FRAMEWORK FOR APPEALS

Title 12 of the District of Columbia Municipal Regulations contains the District of Columbia Building Code. Under § 122.2 the property owner, or any other person, may appeal to the District of Columbia Board of Appeals and Review ("BAR") for a final decision of the code official. The Building Code also contains a provision for an interim appeal within the department. Under § 122.1, the property owner or any other person may appeal any official decision relating to the Construction/Building Codes. Within three working days, the reviewing official must affirm, modify, or reverse the previous action or decision. If the official affirms or modifies the previous decision, the appellant may request a review of the matter by the Director. The decision of the Director must be made within three working days, and is the final decision of the Department. If the Director does not act within three days, or denies the appeal, the appellant may appeal to the BAR within fifteen days.

Appeals under the Zoning Regulations follow a different process, which is set forth in Title 11 of the District of Columbia Municipal Regulations. Under § 3100.2, the District of Columbia Board of Zoning Adjustment ("BZA") hears appeals of the Zoning Regulations. This process is authorized by D.C. Code § 6-641.07(f) (2001), which provides that any "person aggrieved" may appeal to the BZA any administrative decision based in whole or in part upon the Zoning Regulations. Unlike the Construction/Building Code, the Zoning Regulations do not provide for an interim appeal within DCRA.

III. MR. HERRON AND ANC 3F

On April 5, 2002, one day after Zuckerman applied for the building permits, the Forest Hills Citizens Association submitted a petition to the District of Columbia Zoning Commission to establish a new zoning overlay – the Forest Hills Tree and Slope Overlay – which regulates terrain alteration and tree removal. The petition was not set down for hearing by the Zoning Commission until April 19, 2002 – over two weeks after Zuckerman applied for the building permits. (Hearing transcript, Exhibit F.)

During April and May of 2002, Herron and ANC 3F submitted numerous letters and electronic mail messages to DCRA expressing their concerns regarding the permit applications. On April 25, 2002, Herron sent a letter to Theresa Lewis, Deputy Director of DCRA, arguing that the permit applications do not appear to be in compliance with the D.C. Building Code because they were modified after the date they were filed. He also argued that the construction would have an adverse impact on traffic and the environment. (Letter to Theresa Lewis, Exhibit G.)

On April 29, 2002, ANC 3F adopted a resolution regarding the Permits. In the resolution, the ANC asserted that Commissioners Kogan, Maudlin, and others were denied the opportunity to review the applications. They contended that the denial "significantly delayed the review of the application, plans and drawings." Even so, the resolution admits that three of the ANC's constituents were able to review the application on April 25, 2002. The resolution further asserts that the Properties are located within the boundaries of the proposed Forest Hills Protective Tree and Slope Overlay district which

was filed on April 5, 2002 and set down for public hearing on April 19, 2002. Finally, the resolution identified seven concerns identified by the constituents who reviewed the plans., including complaints that the plans for the houses appeared to be "generic," did not appear to be consistent with the subdivision plat, and did not include a storm water management plan. (ANC Resolution, Exhibit H.) The resolution then concluded that

"ANC 3F strongly recommends that DCRA extend for an additional 30 days the review period for the applications for construction permits at 2900 and 2902 Albemarle Street" and that "[a]ny new or revised plans for the properties at 2900 and 2902 Albemarle Street be subject to a complete and full 30 day review beginning on the day any such new or revised plans are filed with DCRA." (*Id.*)

On May 3, 2002, Commissioner Kogan sent a letter to David Clark, Director of DCRA, requesting that the agency provide the ANC an additional 30 days to review the applications. He told DCRA that an ANC Commissioner had visited the Permit Application Center to review the plans, but had been told that the plans were not available to the public. However, he conceded that on April 19, 2002, DCRA had telephoned the ANC to inform them that they would be allowed to view the plans. Mr. Kogan further acknowledged that some ANC members had reviewed the plans on April 25, 2002, but complained that their review took place only four days prior to the ANC meeting on the issue. Mr. Kogan argued that the delay in allowing the Commissioners and neighbors to view the plans denied them "due process." He further requested that any modifications or revisions to the plans be accorded an additional thirty day review by the ANC for each modification or revision. (Letter from Phil Kogan, Exhibit I.)

Ms. Lewis responded to Kogan's letter by electronic mail on May 9, 2002, and sent a copy Mr. Herron. Although the application for building permits were submitted on April 4, 2002, Ms. Lewis informed Mr. Kogan that DCRA would "withhold the issuance of the building permits until June 3, 2002 to allow [the ANC] time to fully review the information submitted." Thus, the ANC was given approximately 30 additional days following the receipt of Mr. Kogan's request to Mr. Clark. Ms. Lewis apologized that the Commissioner had been denied the opportunity to review the applications and told Mr. Kogan that he and other members of the public were, indeed, entitled to review them. Ms. Lewis explained that any revised plans would not subject to an additional 30 day review because it is the policy of DCRA to "work[] with applicants to correct deficiencies found by revising the plans to comply with the building codes." She further explained that the Forest Hills Protective Tree and Slope Overlay did not apply to the applications because they were submitted on April 4, 2002, well before April 19, 2002 when the Overlay matter was set for public hearing. Finally, Ms. Lewis assured Mr. Kogan that she would be closely monitoring the review of the applications and that she would notify him of the decision made and provide responses to his concerns. (Electronic Letter from Ms. Lewis, Exhibit J).

Later that day, Mr. Herron responded by electronic mail to Ms. Lewis's letter. He disagreed that the buildings were "matter-of-right" because the Permits did not conform to the laws, rules, and regulations of the District of Columbia. He asserted that the Tree and Slope Overlay should apply to any and every modification to the building plans, and asserted that the applications did not conform to the Building Code. Finally, he argued

that the applications, plans, and correspondence are not exempt from the FOIA request he had made. Finally, he argued that the Permits did not comply with the Comprehensive Plan, the Mayor's budget, and public policy. (Electronic Letter from Mr. Herron, Exhibit K.)

On May 28, 2002, Mr. Herron and the ANC met with Ms. Lewis to discuss their concerns. Mr. Herron's notes demonstrate the issues that were discussed. During the meeting, Mr. Herron and members of the ANC identified for Ms. Lewis seven issues of concern, most of which were the same as those identified in the ANC resolution of April 29th. On June 11, 2002, Ms. Lewis sent a letter to Mr. Herron and ANC 3F addressing in particularity each of their concerns. In that letter, Ms. Lewis also specifically informed both Mr. Herron and the ANC that the Permits would be issued on June 12, 2002. (Letter from Theresa Lewis, Exhibit L.) The letter also indicates that Ms. Lewis again met with Mr. Herron and Commissioner Kogan on June 12, 2002 to further discuss DCRA's decision.

DCRA issued the Permits on June 13, 2002. Permit number B446310 grants permission to ZB, LLC, a wholly-owned subsidiary of Zuckerman, to "raze 1-story masonary [sic] brick frame single family dwelling" located at 2900 Albemarle Street, N.W. The two building permits, B44316 and B44312 grant permission to Zuckerman Bros. to "construct a new sfd & retaining walls" at 2900 and 2902 Albemarle Street, N.W. (Permits, Exhibit M.)

On June 20, 2002, Steven Sher of Holland & Knight, counsel for Zuckerman, mailed a letter to ANC 3F, Mr. Herron, and other nearby property owners, informing them that the Permits had been issued. The letter provided the permit numbers and described the work to be performed in accordance with each permit. It also informed them that "[t]he owners of the property intend to proceed with the actions authorized by these permits as provided for under the appropriate regulations." (Letter from Steven Sher, Exhibit N.)[2]

Mr. Herron appealed the issuance of the Permits to the Board of Appeals and Review ("BAR") on July 3, 2002 by facsimile transmission. As set forth above, appeals to BAR are allowed under § 122.2 of the Building Code with regard to errors in interpreting the Building Code. The appeal was stamped received by the BAR on July 8, 2002. ANC 3F did not join in the appeal.[3] In his submission to the BAR, Mr. Herron contended the Permits were improperly issued in several respects. His arguments addressed some issues related to the Building/Construction Code and some zoning issues. He contended that the building permit applications were incomplete, and that DCRA allowed the applicant to modify the applications after the proposed Forest Hills Tree and Slope Overlay was set down for hearing by the Zoning Commission. He also argued that the buildings do not comply with the Construction Code, that the applicant incorrectly

---

[2] In his July 3, 2002, statement accompanying his appeal, he acknowledged receipt of this letter. See Exhibit O at final page.

[3] On December 27, 2002, ANC 3F filed a resolution requesting that it be allowed to join Mr. Herron in the appeal.

completed the Environmental Impact Form, that the lot width of the property does not comply with the Building Code, and that the application was not referred to the Commission on Fine Arts. Finally, Mr. Herron argued that DCRA did not provide 30 days notice to the ANC and did not provide sufficient information pursuant to Mr. Herron's FOIA request. (Letter to S. Zuckerman with attached statement, Exhibit O.)

Mr. Herron also sent a copy of the appeal to DCRA, asking that they "reconsider and/or follow their own appeal process regarding the issuance of these permits" and requesting that they issue a stop work order. In the cover letter, Mr. Herron informed DCRA that he also was appealing the issuance of the Permits to the BAR. Mr. Herron, however, failed to make any mention of the Zoning Regulations in the cover letter and failed to cite any statute or regulation authorizing an interim appeal of issues related to the Zoning Regulations. (Cover Letter to Theresa Lewis, Exhibit P.)

On July 18, 2002, Zuckerman submitted a motion to dismiss the zoning issues from the BAR appeal. In the motion, Zuckerman informed Mr. Herron that some of his concerns actually arise under the Zoning Regulations, and must be appealed to the BZA. Zuckerman explained at length that zoning issues are heard by the BZA and that Building Code issues are heard by the BAR. Zuckerman concluded, "For whatever reason, Herron is mixing zoning and building code issues in his arguments, and the BAR has jurisdiction only over the building code issues." (Property Owners' Motion to Dismiss, or in the Alternative, to Oppose the Appeal, Exhibit Q at 4.) Mr. Herron received this motion on

by first class mail shortly thereafter. Had Mr. Herron filed an appeal with the BZA at this time, he would have been well within the two month limit for timely appeal.

On August 1, 2002, Mr. Herron responded to Zuckerman's motion to dismiss, expressly disavowing that his appeal relied on the Zoning Regulations. He argued:

> Zuckerman claims that Herron's appeal is in reality a zoning appeal and quotes in part, D.C. Mun. Regs. Titl 11 § 32-2.5, a zoning regulation and further alleges that since the case is based on this zoning regulation, the case should be heard by the Bureau of Zoning Administration ("BZA") and not the BAR. [sic]

He went on to assert:

> Council to Zuckerman has misread the appeal. Herron's appeal is based on the fact that the building permit application, filed on April 4, 2002, did not comply with Section 107.1, 107.12, 107.13, 107.15 and 107.16 of the DC Building Code. In addition, the application submitted was not complete. DCRA made an error in not rejecting this non-compliant application as required in Building Code Section 108.1.

(Appellant's Opposition to Property Owners' Motion to Dismiss or in the Alternative, to Oppose the Appeal, Exhibit R at 3 (emphasis supplied).) Mr. Herron further admitted that "Zuckerman's attorney has argued that an appeal of this vesting procedure should be presented in front of the Board of Zoning Adjustment and not the BAR...." (*Id.* at 7.)

On October 11, 2002, Mr. Herron wrote to David Clark, Director of DCRA, and Gregory Love, Appeals Officer, inquiring about the status of his interim appeal. In his request, Mr. Herron specifically stated that his appeal arose under § 122.1 of the Building Code and that, because DCRA had not responded to his July 3, 2002 request within the

required three business days, he was exercising his right under § 122.1.2 of the Building Code to appeal to the Director. Again, Mr. Herron neglected to cite any authority for an interim appeal of the Zoning Regulations. Indeed, he failed to mention the Zoning Regulations at all. Mr. Herron again requested that DCRA issue a stay or stop work order, or vacate the Permits. (Letter, Exhibit S.)

Mr. Clark responded to Mr. Herron's correspondence on October 23, 2002, reiterating DCRA's position that it had properly issued the permits and commenting on the numerous e-mails and letters sent by Mr. Herron to DCRA regarding the two Albemarle homes. Mr. Clark further explained that Mr. Herron had side-stepped the interim appeal process by filing an appeal with the BAR before receiving DCRA's response and, therefore, the interim appeal did not require a formal response. (Letter, Exhibit T.)

On October 28, 2002, Mr. Herron filed additional responses to Zuckerman's motion to dismiss the BAR appeal. In response to Zuckerman's argument that the zoning issues could only be appealed to the BZA, Mr. Herron continued to argue that his appeal was based only on § 122.2 of the D.C. Building Code, and consciously chose not to file a prophylactic appeal with the BZA within the relevant time limit. (Appellant's Opposition to Property Owners' Supplemental Motion to Dismiss Appeal without a Hearing, Exhibit U at 3.) In a supplemental motion also filed on October 28th, Mr. Herron again argued that his interim appeals to DCRA were based on § 122.1.2 of the Construction/Building Code. (Appellant's Supplemental Motion for Emergency Stay of Raze Permit B446310

(2900 Albemarle Street) and/or B446316, (2900 Albemarle Street) and B446312 (2902 Albemarle Street), Pending Appeal at 1.) On that same date, the BAR dismissed the issues in Mr. Herron's appeal arising under the Zoning Regulations for lack of jurisdiction. Specifically, the BAR dismissed Mr. Herron's claim that DCRA violated 11 DCMR § 3202.5 by issuing the Permits without applying the restrictions of the Forest Hills Protective Tree and Slope Overlay District. It also dismissed Mr. Herron's claim that the property did not comply with 11 DCMR § 401.3 with regard to minimum lot widths. (Order, Exhibit V.)

Mr. Herron and ANC 3F (collectively, "Appellants") filed this appeal on December 19, 2002. The appeal form indicates that Mr. Herron and the ANC are appealing from a decision made by David Clark, Director of DCRA on October 23, 2002, to the effect that "Permits B446310, B44316, and B446312 were properly issued." In this appeal, Appellants contend DCRA erred in four ways. First, they claim that the application did not meet the requirements of § 3202.5 because DCRA did not apply the provisions of the proposed Forest Hills Tree and Slope Overlay. The Appellants also contend that the Application was not accompanied by "all the required fees." Third, the Appellants claim that the subdivision approved on April 17, 2002, was erroneously approved because it violated the side yard provisions of §405.9. Finally, they argue that ANC 3F was denied the statutorily required 30 days notice to review the application.

Discussion

This appeal – a classic example of neighbors attempted to make a new home disappear by asserting every possible frivolous claim at their disposal, in every imaginable forum – should be dismissed as untimely. Mr. Herron and ANC 3F waited over six months before filing this appeal. The appeal should be dismissed as to Mr. Herron because he intentionally and expressly abandoned his claims arising under the Zoning Regulations, and inexplicably chose to pursue his remedy before only the BAR despite the fact that counsel for the property owner informed him verbally and in writing that some of his claims may be heard by only the BZA. The appeal also should be dismissed as to ANC 3F, because it unreasonably, and with no justification, has waited over six months to file this appeal. ANC 3F did not join in Mr. Herron's interim appeal to the DCRA or his appeal to BAR. ANC 3F has participated in many appeals in the past, and is well aware of the difference between zoning issues and construction code issues. ANC 3F also is well aware that zoning issues must be appealed to the BZA and that they must be appealed within 60 days. The unreasonable tardiness of both Appellants is magnified by the fact that counsel for the property owner personally informed them by letter on June 20, 2002, that the Permits had been issued and that the owner intended to proceed with construction.

I. LEGAL BACKGROUND

"The timely filing of an appeal with the BZA is mandatory and jurisdictional." *Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093

(D.C. 1994). "Because the rules of the BZA adopt no specific time limit on appeals, a standard of reasonableness is applied in determining whether an appeal is timely." *Waste Management of Maryland v. District of Columbia Board of Zoning Adjustment*, 775 A.2d 1117, 1122 (D.C. 2001). The District of Columbia Court of Appeals has held that two months between notice of a decision and appeal therefrom is the limit of timeliness. *Id.* "[I]n the absence of exceptional circumstances substantially impairing the *ability* of an aggrieved party to appeal – circumstances outside the party's control – we conceive of two months between notice of a decision and appeal therefrom as the limit of timeliness." *Id* (emphasis in original). The reasonable time period is calculated to allow the aggrieved party time to evaluate the feasibility of filing an appeal and to obtain counsel – not to allow the aggrieved party to wait until it is convenient to file the appeal. "This conception of the reasonableness standard does not countenance delay in taking an appeal when it is merely convenient for an appellant to defer making that decision." *Id.* That is because "deadlines for taking appeals serve important ends," such as providing the permittee a period after which it may proceed safely in accordance with the permit. *Id.*

To underscore and memorialize the two-month time limit on appeals established in *Waste Management*, the District of Columbia Zoning Commission recently amended § 3112 of the Zoning Regulations.[4] That regulation now requires that all appeals be filed within 60 days of the date the person filing the appeal had notice or knew of the decision

---

[4] See Zoning Commission Case No. 02-01 awaiting issuance of written order. The proposed rulemaking is attached as Exhibit U.

complained of, or reasonably should have had notice or known of the decision complained of, whichever is earlier.

For the purposes of calculating timeliness, "the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the decision complained of." *Mendelson*, 645 A.2d at 1093. In the context of a building permit, the party appealing is chargeable with notice on the date DCRA approves and issues the permit. *Id.* at 1094 (petitioner was on notice of right to appeal revised permit on date permit was issued).

II. UNDER *WASTE MANAGEMENT*, THIS APPEAL IS UNTIMELY

Appellants assert that DCRA erred in three ways. First, they erred in issuing the permits in violation of 11 DCMR §3202.5. They also argue that DCRA and the Office of the Surveyor erred in approving the subdivision on April 17, 2002. Finally, they contend DCRA denied ANC 3F the statutorily required 30 days notice to review the application and supporting documentation, and failed to accord the requisite "great weight" to the ANC.

The Permits were issued on June 13, 2002. No revised permits were issued, and no modifications to the Permits or the plans have been made since they were issued. The Permits indicated the full extent of the work to be performed — the razing of one single family dwelling and the construction of two single family dwellings with retaining walls. By letter dated June 11, 2002, Theresa Lewis, Deputy Director of DCRA, provided actual notice to both Mr. Herron and the ANC that the permits would be issued on June 12,

2002. On June 20, 2002, counsel for Intervenor provided actual notice to Mr. Herron, ANC 3F, and surrounding neighbors that the Permits had been issued. At the very latest, the time limit should be calculated from the date the Permits were issued. Because the permits were issued on June 13, 2002, the time to file an appeal expired two months later, on or about August 13, 2002.

The time limit on two of the issues started running even earlier. One of the issues of the appeal is the propriety of the subdivision plat filed with the District of Columbia Office of the Surveyor on April 17, 2002. Thus, the appeal of that issue should have been filed in mid-June – six months earlier. Appellants also contend that the ANC was denied its statutory right to a thirty day review period for each amendment and modification to the application or the plans. As stated above, Ms. Lewis of DCRA informed Herron and the ANC that they would not receive an additional thirty day review period in her electronic letter dated May 9, 2002. Accordingly, Appellants should have appealed that issue by the second week in July – five months earlier.

Appellants did not file an appeal with the BZA until December 19, 2002, over six months after the Permits had been issued, nearly seven months after Ms. Lewis informed them that they would not be entitled to an additional review period, and nearly nine months after DCRA and the Office of the Surveyor approved the subdivision plat. Under *Waste Management*, a delay of only four months is outside the bounds of reasonableness. *Waste Management*, 775 A.2d at 1122. Indeed, according to that case, "two months

between notice of a decision and appeal therefrom as the limit of timeliness." *Id.* Appellants are well outside those bounds.

Appellants are attempting to bootstrap their appeal into timeliness by asserting that they are appealing David Clark's letter of October 23, 2002, when, in actuality, they are appealing the issuance of the Permits themselves and actions that occurred before they were issued – particularly the zoning issues. This type of action should not be permitted. Such actions would allow opponents of matter-of-right development to indefinitely delay construction by sending repeated letters of opposition to DCRA and claiming that DCRA's responses are appealable "decisions." Interestingly, Appellants did not even provide the October 23, 2002 decision from which they ostensibly appeal. Their omission is not doubt intentional – and no doubt designed to conceal the fact that the October 23rd letter of Mr. Clark addresses only Building Code issues, and does not touch upon the zoning issues that Mr. Herron and the ANC now seek to press before the BZA. Moreover, the Form 125 submitted by Appellants merely asserts that the decision of Mr. Clark confirmed that the Permits were properly issued. This is confirmed by the letter itself, which states that DCRA believes that the Permits were correctly issued and "stands by its decision." It also states that the information in the letter is the same information "indicated to [Mr. Herron] previously in face-to-face meetings, prior e-mails and correspondence...." The October 23rd letter does not address new issues or contain a new decision – it is merely reiteration of the decision made by DCRA on June 13, 2002, when they issued the Permits.

Appellants cannot try to convert Mr. Clark's correspondence of October 23, 2002 into a formal "decision" on an interim appeal in order to bootstrap this untimely appeal. There is no statute or regulation authorizing an interim appeal of zoning issues. The only authority cited by Appellants for such an appeal is § 122.1 of the Building Code, which is relevant only to appeals of Building Code issues. Indeed, Mr. Herron's request of July 3, 2002, did not even comply with § 122.1, which requires that DCRA be given the time to respond prior to the filing of an appeal with the BAR. Had the Council, Zoning Commission, or BZA wished to provide for and interim appeal of issues relating to the Zoning Regulations, they would have expressly done so. Finally, the letter does not address any zoning issues; it refers only to Mr. Herron's correspondence regarding the BAR appeal.

Appellants cannot demonstrate any exceptional circumstance excusing them from pursing this appeal in a timely fashion. As to Mr. Herron, it is no excuse that he erroneously pursued his appeal before the Board of Appeals and Review instead of the BZA. The District of Columbia Court of Appeals has repeatedly held that the District of Columbia does not recognize the doctrine of equitable tolling. Thus, the statute of limitations is not tolled, extended, or held in abeyance when a plaintiff pursues his claim in the wrong forum. *See Curtis v. Aluminum Association*, 607 A.2d 509. 509 (D.C. 1992) ("there is no basis for finding that filing suit in another jurisdiction tolls the statute of limitations here..."); *Bond v. Serano,* 566 A.2d 47, 49 (D.C. 1989). "The fact that [an 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." *Waste*

Management, 775 A.2d at 1123. Here, Appellant Herron clearly pursued his appeal in the wrong forum despite the fact that counsel for Intervenor "continually" informed him that many of his claims arise under the zoning regulations and that the proper forum for the appeal of those claims was the Board of Zoning Adjustment. Indeed, Mr. Herron intentionally abandoned his claims under the Zoning Regulations in order to concentrate on his claims under the Building Code. This is demonstrated by his repeated and adamant assertions to the BAR that all of his claims are based on the Building Code. Despite the warnings of counsel for Intervenor, Appellant continued to maintain that his claims are based only on the Building Code and should be reviewed only by the Board of Appeals and Review.

There was nothing preventing Mr. Herron from appealing the Permits to the BZA in a timely manner. If he did have a question about the proper forum in which to pursue his claims, Mr. Herron easily could have protected his rights under the Zoning Regulations by filing a prophylactic appeal to the BZA when he submitted his appeal to the BAR. Indeed, Mr. Herron demonstrated that he is capable of such action by his letter of July 3, 2002, in which he indicated that he is protecting his appeal rights by filing both a request for reconsideration by DCRA and an appeal to the BAR. Appealing the zoning issues to the BZA at that time would not have compromised his interim appeal to DCRA under § 122.1 or his appeal to the BAR.

In any event, ANC 3F's six month delay in appealing the Permits is completely inexcusable. ANC 3F chose not to participate in Mr. Herron's appeal to the BAR until

December 27, 2002. With Mr. Herron, ANC 3F was specifically informed by DCRA and counsel for Intervenor that the Permits had been issued. Counsel for Intervenor even provided the permit numbers and descriptions of the work to be performed to ensure that actual notice was provided. ANC 3F was served with all filings in the BAR appeal. It did not pursue this matter in another forum during its six month delay. ANC 3F is well aware of the time limit on appeals, and is well aware that violations of the Zoning Regulations must be appealed to the BZA. At all times, the ANC was aware of the Permits and the course of the BAR appeal, but it chose not to file its own appeal or to participate in Mr. Herron's appeal. The ANC argues that it was delayed because it was denied access to the applications by DCRA. Even so, it did not appeal after it was allegedly denied access in April of 2002; it did not appeal when it was allegedly denied "great weight" in June of 2002. It took no action until December 27, 2002, when it filed this appeal to the BZA and its request to join in the BAR appeal. Accordingly, ANC 3F should be dismissed from this appeal.

Intervenor has been prejudiced by Appellant's untimeliness. Following Mr. Herron's express disavowal of his claims under the Zoning Regulations, Intervenor justly assumed that they had been abandoned, and that he intended to proceed only with his appeal of the Building Code issues. Likewise, because six months had elapsed, Intervenor assumed that ANC 3F was not going to appeal the Permits and have proceeded with the permitted construction. While Intervenor believes the appeal to be substantively baseless, it should not be forced to spend the resources to defend against zoning claims brought many months after the time to present such a challenge has elapsed.

Conclusion

The timely filing of an appeal is mandatory and jurisdictional. If this appeal were allowed, community members would have carte blanche to indefinitely delay matter-of-right development by submitting repetitive letters to the same officials asserting the same claims. Accordingly, the Intervenor hereby requests that the Board of Zoning Adjustment dismiss this appeal with prejudice.

Sincerely,

John T. Epting, Esq.
Deborah B. Baum, Esq.
Ashleigh Dale Horne, Esq.
Shaw Pittman LLP
2300 N St, N.W.
Washington, D.C. 20037

Dated: January 9, 2003

EXHIBITS

EXHIBIT A: Deed

EXHIBIT B: Permit Applications

EXHIBIT C: Subdivision Plat

EXHIBIT D: Approved Site Plan

EXHIBIT E: Approved Building Plat

EXHIBIT F: Transcript of Zoning Commission Public Meeting, Friday, April 19, 2002

EXHIBIT G: Letter dated April 25, 2002 from J. Brendan Herron to Theresa Lewis

EXHIBIT H: ANC 3F Resolutions of April 29, 2002

EXHIBIT I: Letter from Commissioner Phil Kogan to David Clark

EXHIBIT J: Electronic letter dated May 9, 2002 from Theresa Lewis to Phil Kogan

EXHIBIT K: Electronic letter dated May 9, 2001 from J. Brendan Herron to Eric Price, Theresa Lewis, et. al.

EXHIBIT L: Letter dated June 11, 2002 from Theresa Lewis to J. Brendan Herron and Phil Kogan

EXHIBIT M: Permits

EXHIBIT N: Letter dated June 20, 2002 from Steven E. Sher to Cathy Wiss

EXHIBIT O: Letter and statement dated July 3, 2002 from J. Brendan Herron to Stuart Zuckerman regarding appeal to Board of Appeals and Review

EXHIBIT P: Letter dated July 3, 2002, from J. Brendan Herron to Theresa Lewis

EXHIBIT Q: Property Owners' Motion to Dismiss, or in the Alternative, to Oppose the Appeal, dated July 18, 2002

EXHIBIT R: Appellants Opposition to Property Owners' Motion to Dismiss or in the Alternative, to Oppose the Appeal, dated August 1, 2002

EXHIBIT S: Letter dated October 11, 2002, from J. Brendan Herron to David Clark

EXHIBIT T: Letter dated October 23, 2002, from David Clark to J. Brendan Herron

EXHIBIT U: Cover letter, Appellant's Opposition to Property Owners' Supplemental Motion to Dismiss Appeal without a Hearing, and Appellant's Supplemental Motion for Emergency Stay of Raze Permit B446310 (2900 Albemarle Street) and/or B446316, (2900 Albemarle Street) and B446312 (2902 Albemarle Street), Pending Appeal dated October 29, 2002.

EXHIBIT V: Board of Appeals and Review Decision and Order, dated October 28, 2002.

I hereby certify that on January 9, 2003, a copy of the foregoing Motion was mailed first class, postage prepaid, to the following:

Robert V. Maudlin, ANC 3F
2906 Elliot Terrace, N.W.
Washington, D.C. 20008

J. Brendan Herron, Jr.
2901 Albemarle Street, NW
Washington, DC 20008

Charlotte Parker
Deputy, Civil Division
Office of the Corporation Counsel of the District of Columbia
441 4th Street N.W.
Suite 450 North
Washington, DC 20001

David A. Clark, Director
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, DC 20002

Theresa Lewis
Deputy Director/Chief of Staff
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, DC 20002

Karen Edwards
General Counsel
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E., Suite 9400
Washington, DC 20002



Ashleigh Dale Horne

A

Doc# 2002039455

DEED

THIS DEED is made this 29th day of March, 2002 by and between

ILENE R. BAYLINSON,

Party of the First Part

and

ZUCKERMAN BROTHERS, INC.,

Party of the Second Part

WITNESSETH, that for and in consideration of the sum of $10.00, the said Party of the First Part does hereby grant and convey unto the said Party of the Second Part, in fee simple, as sole owner, the following described land and premises, with the improvements, easements and appurtenances thereunto belonging, situate, lying and being in the District of Columbia, namely:

Lot 9 in Square 2043 in a subdivision made by Louis Grossberg and others, as per plat recorded in Liber No. 172 at Folio 145 among the Land Records of the Office of the Surveyor of the District of Columbia.

TO HAVE AND TO HOLD the same unto and to the use of the said Party of the Second Part, in fee simple.

AND the said Party of the First Part covenants to warrant specially the property hereby conveyed, and to execute such further assurances of said land as may be requisite.

WITNESS her hand and seal.

_____(SEAL)
ILENE R. BAYLINSON,

STATE OF MARYLAND
COUNTY OF MONTGOMERY

The foregoing was acknowledged before me on March 29, 2002 by ILENE R. BAYLINSON.

_____
Notary Public Richard L. Fritts

My Commission Expires: 10/1/04

RETURN TO:

PARAGON TITLE & ESCROW COMPANY
7415 ARLINGTON ROAD
BETHESDA, MARYLAND 20814

CASE 325-02



(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

28. Architect's Name:	29. Lic. No.:	30. Architect's Address: (include Zip)	31. Phone:
SPEIGHT ARCHITECTS		SILVER SPRING, MD	(301) 588-1001
32. Engineer's Name:	**33. Lic. No.:**	**34. Engineer's Address: (include Zip)**	**35. Phone:**
CAS ENGINEERING		MT. AIRY, MD 21771	(301) 607-8031
36. Building Contractor's Name:	**36A. Lic. No.:**	**37. Contractor's Address:**	**38. Phone:**
ZUCKERMAN BROTHERS		CHEVY CHASE, MD 20815	(202) 437-5300

39. Type of Construction	40. Fire Suppression:	41. Booster Pump:	42. Total Lot Area:	43. Breakdown of Lot Area (= 100%):
☒ Masonry ☐ Steel ☒ Wood ☐ Other: ☒ Concrete	☒ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☐ None ☐ Other:	☐ New ☐ Existing ☒ None	10942 sq. ft.	a. Building: 35 % b. Paved Area: 10 % c. Greenery: 55 %

44. Present Gross Floor Area of Bldg.:	45. Proposed Gross Floor Area of Bldg:	46. Floors involved in this permit:	47. Projection beyond building line?
∅ sq. ft.	552.0 sq. ft.	☒ All ☐ Floors _____	☐ Yes, answer q. 48-52 ☒ No, SKIP q. 48-52

48. Number and type of projection:	49. Distance of projection:	50. Width of projection:	51. Width of building frontage:	52. Signature of Owner (projection only):
Stoop & Stairs	3'-8"	8'-8"	88.23' ft.	Zuckerman Brothers, Inc. By:

53. Water or Sewer Excavation?	54. Driveway Construction?	55. Sheeting/Shoring Necessary?	56. Elevators involved?	57. No. and type of elev.:	58. Plans Certified by Engineer?
☒ Yes ☐ No	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes, answer q. 57 ☒ No, SKIP q. 57	∅	☒ Yes, cert. is attached ☐ No

59. Estimated Cost of Work:
a) New/Add.: $ 500,000
b) Alt/Rep.: $ _____
Total: $ 500,000

60. Volume of New Bldg. or Addition: 46,125 cubic ft.

OFFICIAL USE ONLY

Alter/Repair FEE	New Const. FEE	Filing Fee	TOTAL PERMIT FEE
$	$ 962.50	$ 500.00	$ 462.50
By: / Date:	By: M Date: 6/4/02	By: M Date: —	By: M Date: 6/4/02

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:	62. Contractor's Address: (include Zip)	63. Phone:

64. Insurance Company:	65. Policy or Certif. No.:	66. Expir. Date:	67. Raze Method:

68. Building Material:	69. Raze Entire Building?	70. Building Condemned?	70A. Building Vacant?	71. Public Space Vault?	72. Disconnect Water and/or Sewer?	73. Size of Water Connection:
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	in.

74. Plumber's Name:	75. Lic. No.	76. Length:	77. Width:	78. Height:	79. Volume:	80. Party Wall?
		ft.	ft.	ft.	cu. ft.	☐ Yes ☐ No

81. Asbestos in the Building?	82. Raze Contractor Signature:	OFFICIAL USE ONLY		
☐ No ☐ Yes. Location _____		FEE	By:	Date:
	83. Owner's Signature:	$		

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations

84. Cost of Work:	85. Material:	86. Height:	87. Color:	88. Location:
$ 10,000 ~~Estimated~~	masonry	6.5 ft.	natural	☒ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

89. Signature of Adjoining Owner:	90. Phone:	OFFICIAL USE ONLY		
N/A	Work N/A Home	FEE	By:	Date:
		$ 350.00	M	6/4/02
91. Address of Adjoining Owner:	**92. Lot:**	**93. Square:**		
N/A	N/A	N/A		

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations

94. Material and type:	95. Height: ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land *

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

98. Signature of Adjoining Owner:	99. Phone: Work Home	OFFICIAL USE ONLY FEE $	By:	Date:
100. Address of Adjoining Owner:	101. Lot:	102. Square:		

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number:	104. Length: ft.	105. Width: ft.	106. Area: sq. ft.	107. Height: ft.	108. Volume: cu. ft.	109. Estimated Cost of Work: $	OFFICIAL USE ONLY FEE $ By: Date:
110. Material of Roof:	111. Material of Sides:	112. Wall thickness:: ☐ External ( ) inches ☐ Party ( ) inches				113. Color:	

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color:	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line ____ in. Beyond pt. of attachm. ____ in.	118. Height of lowest part of awning: (a) ____ ft above sidewalk (b) ____ ft above parking (c) ____ ft above grade	OFFICIAL USE ONLY FEE $ By: Date:

119. Material of Frame:	120. Material of Covering:	121. Lettering on Awning? ☐ Yes ☐ No	122. Fixed posts? ☐ Yes ☐ No	123. Over sidewalk cafe? ☐ Yes ☐ No

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number:	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No. SKIP q. 126-132	126. Type: ☐ Incandes. ☐ Fluoresc. ☐ Neon	127. Power ____ VA	128. Electrical Contractor: Lic. No

129. Address of Electrical Contractor *(include Zip)*	130. Signature of Licensed Electrician:	131. Phone:	132. License No.:

133. Height relative to building and ground: (a) ____ ft ____ in above sidewalk (b) ____ ft ____ in above roof (c) ____ ft ____ in is bldg height (d) ____ ft ____ in above projection or window (e) ____ ft ____ in from roof to sign's bottom	134. Material of Sign:	135. Type of Sign:	136. Color:
	137. Width: ft.	138. Length: ft.	139. Area of Sign: sq. ft.
			140. Width of Business Frontage: ft.

141. C of O Number for Building:	142. Sign Contractor Lic. No	OFFICIAL USE ONLY					
		Sign FEE		Elect. FEE		Total FEE	
143. Sign Contractor's Address:	144. Phone:	$		$		$	
		By:	Date:	By:	Date:	BY:	Date:

(I) APPLICANT'S SIGNATURE:

A. **OWNER:** I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner: _____ Address: _____ Date: _____

B. **AGENT:** I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent: [signature] Address: CAS ENGINEERING 108 WEST PIDGEVILLE BLVD MEARY MO 9177[illegible] Date: 3/29/12

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

- ☐ 1. Fine Arts by: _____ Date: _____
- ☐ 2. Historic by: _____ Date: _____
- ☐ 3. PADC by: _____ Date: _____
- ☐ 4. Cap. Gateway by: _____ Date: _____
- ☐ 5. W.H./ Obs. Precinct by: _____ Date: _____
- ☐ 6. Flood Control by: _____ Date: _____
- ☐ 7. WMATA by: _____ Date: _____
- ☐ 8. Condem. by: _____ Date: _____
- ☐ 9. RLA by: _____ Date: _____
- ☐ 10. Rental Accom. by: _____ Date: _____
- ☐ 11. Chinatown Distr. by: _____ Date: _____
- ☐ 12. Utility Clearance by: _____ Date: _____
- ☐ 13. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☐ 1. Zoning by: _____ Date: _____
- ☐ 2. DPW — Permit and Records Division
  Access to Parking Street ☐ Street ☐ Alley
  Cleared by: SKL Date: 4/5/02
- ☐ 3. DPW - Consumer Engineer
  Cleared by: KKC Date: 4/5/02
- ☐ 4. ERA - Erosion Control
  Cleared by: [illegible] Date: 4/5/02

Restrictions of the Permit:

Cleared for [illegible] 4/5/02

[illegible] ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED

DO NOT ISSUE PERMIT WITHOUT LENNY DOUGLAS OR GREG LEE'S CLEARANCE. BM 5/6/02

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICE OR OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639

C. PLANS AND APPLICATION APPROVAL

- ☒ 1. Information Counter by: C.L. Date: 4-4-02
- ☐ 2. Information Center by: _____ Date: _____
  - ☐ (a) ABC Board by: _____ Date: _____
  - ☐ (b) Noise Control by: _____ Date: _____
  - ☐ (c) Industrial Safety by: _____ Date: _____
  - ☐ (d) Vector Control by: _____ Date: _____
  - ☒ (e) D.C. Animal by: _____ Date: _____
  - ☐ (f) Police Dept. by: _____ Date: _____
- ☒ 3. Zoning by: [illegible] Date: 4-[illegible]
  Zoning Update by: _____ Date: _____
- ☒ 4. DPW - Permit and Records Division/Deposit # 004750
  Sidewalk Deposit $ 2200.00 Driveway Deposit $ _____
  by: _____ Date: 4/5/02
- ☒ 5. Water/Sewer Design Branch
  Consumer Eng. by: KKC Date: 5/7/02
- ☒ 6. Environmental Regulation Administration
  - ☒ Environmental Policy Review
    Control No.: _____
    by: _____ Date: _____
  - ☐ Erosion Control by: [illegible] Date: 5/7/02
  - ☐ Storm Water Mgmt. by: 5/7/02 Date: 5/7/02
    Plan No. _____
- ☒ 7. Mechanical Eng. Review by: BM Date: 5/17/02
- ☒ 8. Plumbing Eng. Review by: BM Date: 5/17/02
- ☒ 9. Electrical Eng. Review by: [illegible] Date: 4/25/02
- ☐ 10. Health Plan Review
  - ☐ (a) Food Plan Review by: _____ Date: _____
  - ☐ (b) Medical X-ray Plan Rev. by: _____ Date: _____
- ☒ 11. D.C. Fire Dept. (Fire Prevention Plan Review Section) by: [illegible] Date: 5/10/02
- ☐ 12. Elevator Plan Rev. Sec. by: _____ Date: _____
- ☐ 13. Plumbing Insp. Rev. by: _____ Date: _____
- ☐ 14. Construction Insp. Branch (Field Check) by: _____ Date: _____
- ☒ 15. Historic Pres. Div. by: [illegible] Date: _____
- ☒ 16. Structural Eng. by: [illegible] Date: 6/12/02
- ☐ 17. Permit and Certificate Issuance Counter By: _____ Date: _____
- ☒ 18. Q.C. By: [illegible] Date: 6/13/02

ZONING

C of O Number _____ Date _____

Existing Use(s) _____

☒ New bldg.
☐ P.O.D.
☐ File in room 329

DPW — PUBLIC SPACE

Street Name: _____
Street Width: _____
Road Width: _____
Sidewalk Width: _____
Parking: _____
Restrictions: _____

Job No.:	BZA Case No.:	PUD Order No.:
615 B	N/A	N/A

2-0307-4 wd-375

N.S Cleared for issuance per T. Loach [illegible] 6/13/02

02-00103

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
P.A.D.C. No.:	O.G. No.: 21	R-1A			By:
H.P.A. No.:	S.L. No.: 2	Ward No.:	Receipt No.:	Date:	Receipt No.:

★ ★ ★ GOVERNMENT OF THE DISTRICT OF COLUMBIA

BLRA-33 (Rev. 10/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (727-7050)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY

(PRINT IN INK OR TYPE. DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

CLEARANCE TO FILE
By: _____ Date _____

ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1. Address of Proposed Work:	Suite No.:	2. Lot:	3. Square:	4. Application Date:
2902 Albemarle St. NW		18 [redacted]	2043	4/4/03

5. Owner of Building or Property:	6. Address: (include Zip)	7. Phone:
ZUCKERMAN BROS, INC	TWO WISCONSIN CIRCLE #500 CHEVY CHASE, MD 20815	(202) Work: Home: 4374513

8. Agent for Owner: (if applicable)	9. Address: (include Zip)	10. Phone:
KAREN G CAS ENGINEER INC	108 WEST EDGEVILLE BLVD MT. AIRY, MD 21771	(202) Work: Home: 744-2375

11. Type of Proposed Work (check all applicable boxes):

- ☒ New Building
- ☐ Addition
- ☐ Alteration and Repair
- ☐ Raze Building
- ☒ Retaining Wall
- ☐ Fence
- ☐ Shed
- ☐ Awning
- ☐ Garage
- ☐ Sign
- ☐ Other (Specify) PROJECTIONS

12. Description of Proposed Work:

CONSTRUCT NEW SFD AND RETAINING WALLS

13. Existing Use(s) of Building or Property:	14. Ex. No. of Stories of Bldg.:	15. Ex. No. of Dwelling Units:
RESIDENTIAL	0	0

16. Proposed Use(s) of Building or Property:	17. Prop. No. of Stories of Bldg.:	18. Prop. No. of Dwelling Units:
RESIDENTIAL	2 + cellar	1

Official Use Only
Miscellaneous FEE (PROJ.)
$ 50.00
By: [redacted] Date: 4/8/03

19. Starting Date of Work:	20. Completion Date of Work:	21. Method of Removing Construction Debris:	22. Does the proposed work involve **disturbing the earth** or razing a building?
6/1/03	6/1/03	☒ Pick-up Truck ☐ Dumpster ☐ Other (specify):	☒ Yes, answer q. 23 ☐ No, SKIP q. 23-27

23. Is the area of disturbed earth more than 50 sq. ft.?	24. Soil Erosion Control Methods:	25. Area of Offsite Drainage:	26. No. of Footings or Columns:	27. Size of Footings of Columns:
☒ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25	PER APPROVED PLANS	NA sq. ft.	0	NA sq. ft.

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I).

Complete Section B if the proposed work is **new building, addition or alteration.** (Page 2)
Complete Section C if the proposed work is **razing a building.** (Page 2)
Complete Section D if the proposed work is a **retaining wall.** (Page 2)
Complete Section E if the proposed work is a **fence.** (Page 3)
Complete Section F if the proposed work is a **shed/garage.** (Page 3)
Complete Section G if the proposed work is an **awning.** (Page 3)
Complete Section H if the proposed work is a **sign.** (Page 3)

10307 wd 375

OFFICIAL USE ONLY

	R	P	H	A	
M					
P					
E	6	16	B		W ☐ Yes ☐ No
F					PLANS
S					☐ No ☐ Sm. ☐ Lg.

(B) NEW BUILDING, ADDITION, ALTERATION (COMPLETE ITEMS 28 THRU 60)

28. Architect's Name:	29. Lic. No.:	30. Architect's Address: *(include Zip)*	31. Phone:
SPEIGHT ARCHITECTS		SILVER SPRING MD	
32. Engineer's Name:	**33. Lic. No.:**	**34. Engineer's Address: *(include Zip)***	**35. Phone:**
JAS ENGINEERING		MT AIRY MD 21771	
36. Building Contractor's Name:	**36A. Lic. No.:**	**37. Contractor's Address:**	**38. Phone:**
J. KERMAN BROTHERS		CHEVY CHASE, MD 20815	

39. Type of Construction	40. Fire Suppression:	41. Booster Pump	42. Total Lot Area	43. Breakdown of Lot Area (= 100%):
☒ Masonry ☐ Steel ☐ Wood ☐ Other: ☒ Concrete	☒ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☐ None ☐ Other:	☐ New ☐ Existing ☒ None	4556 sq. ft.	a. Building: 35 % b. Paved Area: 10 % c. Greenery: 55 %

44. Present Gross Floor Area of Bldg.:	45. Proposed Gross Floor Area of Bldg:	46. Floors involved in this permit:	47. **Projection beyond building line?**
0 sq. ft.	5421 sq. ft.	☒ All ☐ Floors _____	☐ Yes, answer q. 48-52 ☐ No, SKIP q. 48-52

48. Number and type of **projection:**	49. Distance of **projection:**	50. Width of **projection:**	51. Width of building frontage:	52. Signature of Owner **(projection only)**:
STOOP & STAIRS	3'-6"	8'-8"	75.0' ft.	Zachary Griffiths

53. Water or Sewer Excavation?	54. Driveway Construction?	55. Sheeting/Shoring Necessary?	56. Elevators involved?	57. No. and type of elev.:	58. Plans Certified by Engineer?
☒ Yes ☐ No	☒ Yes ☐ No	☐ Yes ☒ No	☐ Yes, answer q. 57 ☒ No, SKIP q. 57	0	☒ Yes, cert. is attached ☐ No

59. Estimated Cost of Work:	OFFICIAL USE ONLY			
(a) New/Add.: $ 500,000	Alter/Repair FEE	New Const. FEE	Filing Fee	TOTAL PERMIT FEE
(b) Alt/Rep.: $ _____	$	$ 962.50	$ 500.-	$ 462.50
Total: $ 500,000	By: Date:	By: M Date: 6/4/02	By: M Date:	By: M Date: 6/4/02
60. Volume of New Bldg. or Addition: 48,175 cubic ft.				

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:	62. Contractor's Address: *(include Zip)*	63. Phone:

64. Insurance Company:	65. Policy or Certif. No.:	66. Expir. Date:	67. Raze Method:

68. Building Material:	69. Raze Entire Building?	70. Building Condemned?	70A. Building Vacant?	71. Public Space Vault?	72. Disconnect Water and/or Sewer?	73. Size of Water Connection:
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	in.

74. Plumber's Name:	75. Lic. No.	76. Length: ft.	77. Width: ft.	78. Height: ft.	79. Volume: cu. ft.	80. Party Wall?
						☐ Yes ☐ No

81. Asbestos in the Building?	82. Raze Contractor Signature:	OFFICIAL USE ONLY		
☒ No ☐ Yes, Location _____	83. Owner's Signature:	FEE	By:	Date:
		$		

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations

84. Cost of Work:	85. Material:	86. Height:	87. Color:	88. Location:
$ ~~included~~ 10,000	masonry	5.5 ft.	Natural	☒ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

89. Signature of Adjoining Owner:	90. Phone:	OFFICIAL USE ONLY		
N/A	Work N/A Home	FEE	By:	Date:
91. Address of Adjoining Owner: N/A	92. Lot: N/A	93. Square: N/A	$ 350 ck	6/12/02

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations

94. Material and type:	95. Height: ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land *

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application

98. Signature of Adjoining Owner:	99. Phone: Work Home	OFFICIAL USE ONLY: FEE $	By:	Date:
100. Address of Adjoining Owner:	101. Lot:	102. Square:		

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number:	104. Length: ft.	105. Width: ft.	106. Area: sq. ft.	107. Height: ft.	108. Volume: cu. ft.	109. Estimated Cost of Work: $	OFFICIAL USE ONLY FEE $ By: Date:
110. Material of Roof:	111. Material of Sides:	112. Wall thickness: ☐ External ( ) inches ☐ Party ( ) inches				113. Color:	

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color:	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line ____ in. Beyond pt. of attachm. ____ in.	118. Height of lowest part of awning: (a) ____ ft above sidewalk (b) ____ ft above parking (c) ____ ft above grade	OFFICIAL USE ONLY: FEE $ By: Date:
119. Material of Frame:	120. Material of Covering:	121. Lettering on Awning? ☐ Yes ☐ No	122. Fixed posts? ☐ Yes ☐ No	123. Over side-walk cafe? ☐ Yes ☐ No	

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number:	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No, SKIP q. 126-132	126. Type: ☐ Incandes. ☐ Fluoresc. ☐ Neon	127. Power ____ VA	128. Electrical Contractor: Lic. No.

129. Address of Electrical Contractor *(include Zip)*	130. Signature of Licensed Electrician:	131. Phone:	132. License No.:

133. Height relative to building and ground: (a) ____ ft ____ in above sidewalk (b) ____ ft ____ in above roof (c) ____ ft ____ in is bldg height (d) ____ ft ____ in above projection or window (e) ____ ft ____ in from roof to sign's bottom	134. Material of Sign:	135. Type of Sign:	136. Color:
	137. Width: ft.	138. Length: ft.	139. Area of Sign: sq. ft.
			140. Width of Business Frontage: ft.

141. C of O Number for Building:	142. Sign Contractor Lic. No.	143. Sign Contractor's Address:	144. Phone:

OFFICIAL USE ONLY					
Sign FEE		Elect. FEE		Total FEE	
$		$		$	
By:	Date:	By:	Date:	BY:	Date:

(I) APPLICANT'S SIGNATURE:

A. **OWNER:** I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner:_____ Address:_____ Date:_____

B. **AGENT:** I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent: Karen Mathis Address:_____ Date: 3/29/02

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

- ☐ 1. Fine Arts by: _____ Date: _____
- ☐ 2. Historic by: _____ Date: _____
- ☐ 3. PADC by: _____ Date: _____
- ☐ 4. Cap. Gateway by: _____ Date: _____
- ☐ 5. W.H./ Obs. Precinct by: _____ Date: _____
- ☐ 6. Flood Control by: _____ Date: _____
- ☐ 7. WMATA by: _____ Date: _____
- ☐ 8. Condem. by: _____ Date: _____
- ☐ 9. RLA by: _____ Date: _____
- ☐ 10. Rental Accom. by: _____ Date: _____
- ☐ 11. Chinatown Distr. by: _____ Date: _____
- ☐ 12. Utility Clearance by: _____ Date: _____
- ☐ 13. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☐ 1. Zoning by: _____ Date: _____
- ☐ 2. DPW — Permit and Records Division
  Access to Parking Street ☐ Street ☐ Alley
  Cleared by: _____ Date: _____
- ☐ 3. DPW - Consumer Engineer
  Cleared by: Kke Date: 4/5/02
- ☐ 4. ERA - Erosion Control
  Cleared by: _____ Date: 4/5/02

Restrictions of the Permit:

Cleared for EIS 4/5/02

SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED

DO NOT ISSUE PERMIT WITHOUT LENNY DOUGLAS OR GREG LOVE'S CLEARANCE - TM 5/6/02

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICE OR OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639

C. PLANS AND APPLICATION APPROVAL

- ☑ 1. Information Counter by: C.L. Date: 4-4-02
- ☐ 2. Information Center by: _____ Date: _____
  - ☐ (a) ABC Board by: _____ Date: _____
  - ☐ (b) Noise Control by: _____ Date: _____
  - ☐ (c) Industrial Safety by: _____ Date: _____
  - ☐ (d) Vector Control by: _____ Date: _____
  - ☐ (e) D.C. Animal by: _____ Date: _____
  - ☐ (f) Police Dept. by: _____ Date: _____
- ☑ 3. Zoning by: Phillip Hucks Date: 4.11.02
  Zoning Update by: _____ Date: _____
- ☑ 4. DPW - Permit and Records Division/Deposit # DS-4756
  Sidewalk Deposit $ 300.00 Driveway Deposit $ _____
  by: _____ Date: 4/4/02
- ☑ 5. Water/Sewer Design Branch
  Consumer Eng. by: Kke Date: 5/7/02
- ☑ 6. Environmental Regulation Administration
  - ☑ Environmental Policy Review
    Control No.: _____
    by: _____ Date: _____
  - ☐ Erosion Control by: _____ Date: 5/7/02
  - ☐ Storm Water Mgmt. by: _____ Date: 5/7/02
    Plan No. _____
- ☐ 7. Mechanical Eng. Review by: _____ Date: 5/7/02
- ☐ 8. Plumbing Eng. Review by: _____ Date: 5/7/02
- ☑ 9. Electrical Eng. Review by: _____ Date: 4/25/02
- ☐ 10. Health Plan Review
  - ☐ (a) Food Plan Review by: _____ Date: _____
  - ☑ (b) Medical X-ray Plan Rev. by: _____ Date: _____
- ☑ 11. D.C. Fire Dept. (Fire Prevention Plan Review Section) by: _____ Date: 4/10/02
- ☐ 12. Elevator Plan Rev. Sec. by: _____ Date: _____
- ☐ 13. Plumbing Insp. Rev. by: _____ Date: _____
- ☐ 14. Construction Insp. Branch (Field Check) by: _____ Date: _____
- ☐ 15. Historic Pres. Div. by: _____ Date: _____
- ☑ 16. Structural Eng. by: _____ Date: 6/12/02
- ☐ 17. Permit and Certificate Issuance Counter By: _____ Date: _____
- ☑ 18. Q.C. By: _____ Date: 6/13/02

ZONING

C of O Number _____ Date _____

Existing Use(s) _____

☒ New bldg.
☐ P.O.D.
☐ File in room 329

Job No.:	BZA Case No.:	PUD Order No.:
Wash	N/A	N/A

DPW — PUBLIC SPACE

Street Name: _____

Street Width: _____

Road Width: _____

Sidewalk Width: _____

Parking: _____

Restrictions: _____

2-0307-4 wd-375

N/A Cleared for issuance per T Lewis 5/6/02



SUBDIVISION
SQUARE 2043

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful possession thereof; that there are no pending suits or actions that affect title to the property; that portion to any deeds of trust have been indicated thereon; and that there are no covenants or duties affecting title to the property other than such deeds of trust. The undersigned hereby subdivides Lot 8 in Square 2043 (S.O. 97-748) into two lots and requests that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES	OWNERS
	ZUCKERMAN BROTHERS, INC.
	STEVEN M. ZUCKERMAN, PRESIDENT
	STUART A. ZUCKERMAN, VICE-PRESIDENT

Subscribed and sworn before me this 5th day of April 2002

Notary Public — My Commission Expires 8/01/2005

NUMBER OF TRUSTS: 1

ASSENT BY TRUSTEES:

OFFICE OF TAX AND REVENUE

4/11/ 2002

I certify that the following statements relating to this subdivision are correct.

1. Ownership agrees with our records 4/11/02 KB
2. Real estate taxes are paid to 9/30/02 KB
3. There are no unpaid assessments 4/11/02 KB

for Mary L. Steed-Davis for
Chief Assessor, Assessment Division

I acknowledge for the assessor that this is not a tax certificate as intended by D.C. Code Section 47-1005.

Karen Martino

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

4/16, 2002

I certify that this subdivision complies with all applicable provisions of DCMR11, Zoning Regulation of the District of Columbia.

Zoning District: R1-A

Zoning Administrator

4/12, 2002

HISTORIC PRESERVATION

OFFICE OF THE SURVEYOR

April 17, 2002

I certify that this plat is correct and is hereby recorded.

Surveyor, D.C.

SURVEYOR'S OFFICE, D.C.

Made for: KAREN MARTINO

Drawn by: L.R.S. Checked by: FSA

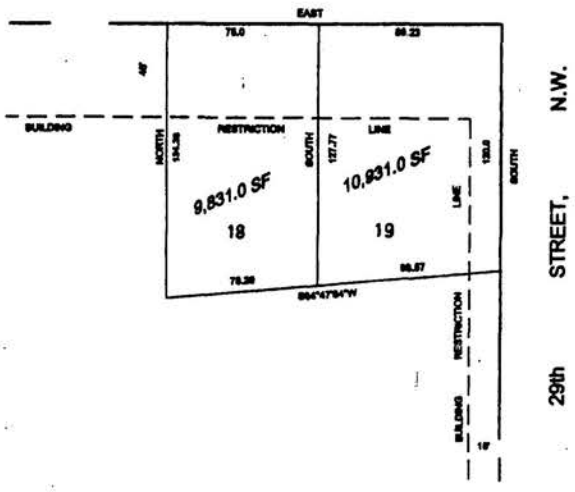
Record and computations by: P. BURNS

Recorded at 10:35 AM April 17, 2002 MT

Recorded in Book 195 Page 115 S.O. 97-748

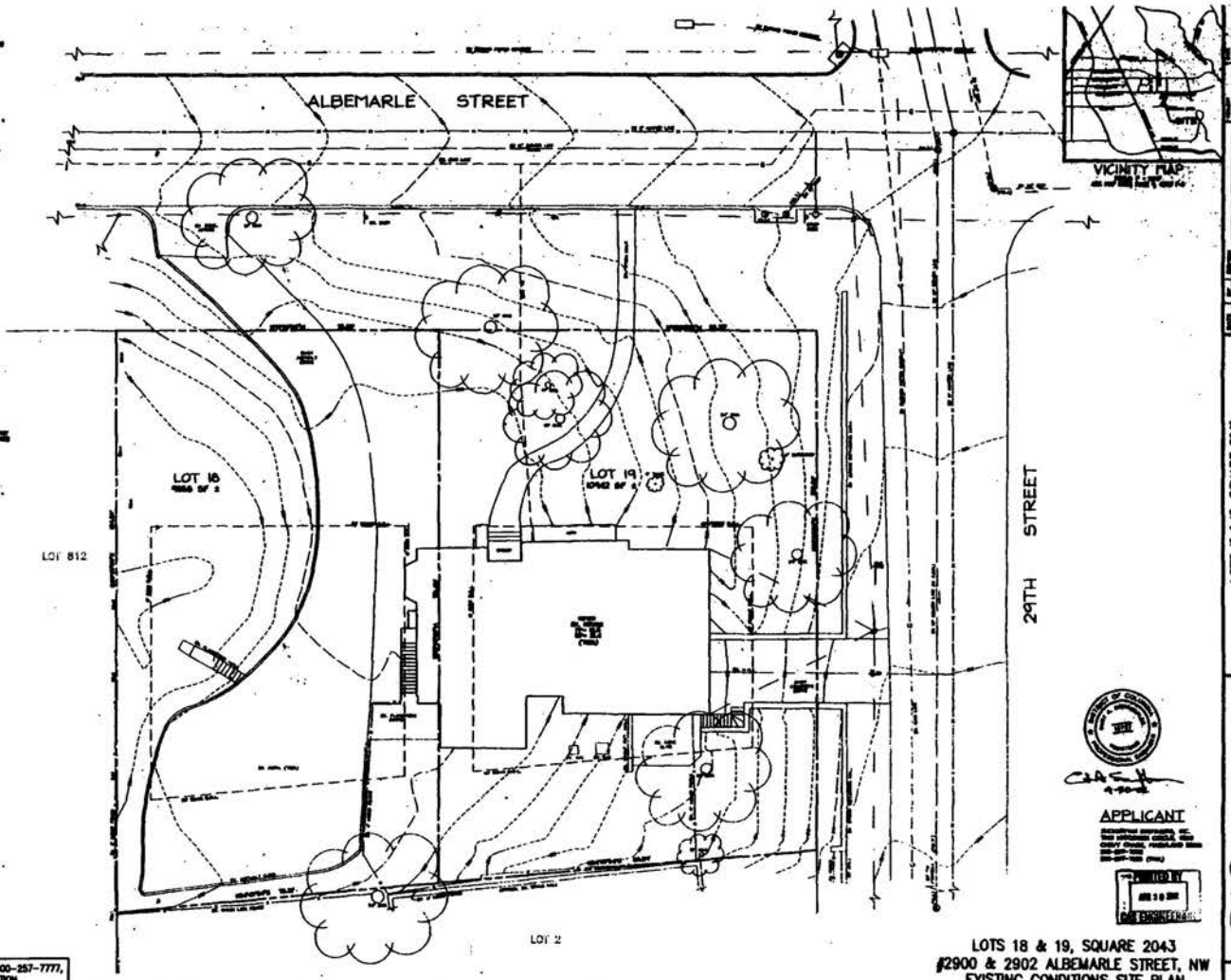
Scale: 1 inch = 20 feet File No. 02-760

ALBEMARLE STREET, N.W.





GENERAL CONSTRUCTION NOTES



APPLICANT

CONTRACTOR SHALL CONTACT MISS UTILITY, 1-800-257-7777, 48 HOURS PRIOR TO START OF CONSTRUCTION.

LOTS 18 & 19, SQUARE 2043
#2900 & 2902 ALBEMARLE STREET, NW
EXISTING CONDITIONS SITE PLAN

020875	02-02
CAS	N/A
1"=10'	CAS

LOTS 18 & 19, SQUARE 2043
#2900 & #2902 ALBEMARLE ST.
N.W. WASHINGTON
DISTRICT OF COLUMBIA

EXISTING CONDITIONS SITE PLAN

CAS ENGINEERING
CIVIL • SURVEYING • LAND PLANNING
A DIVISION OF CAS ENGINEERING, INC.

7 - 7

C:\020875PT.DWG



DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., April 18, 2002

Plat for Building Permit of SQUARE 2043 LOTS 18, 19

Scale: 1 inch = 30 feet Recorded in Book 195 Page 115

Receipt No. 008323

Furnished to: HOLLAND & KNIGHT

Surveyor, D.C.

By: L.E.S.

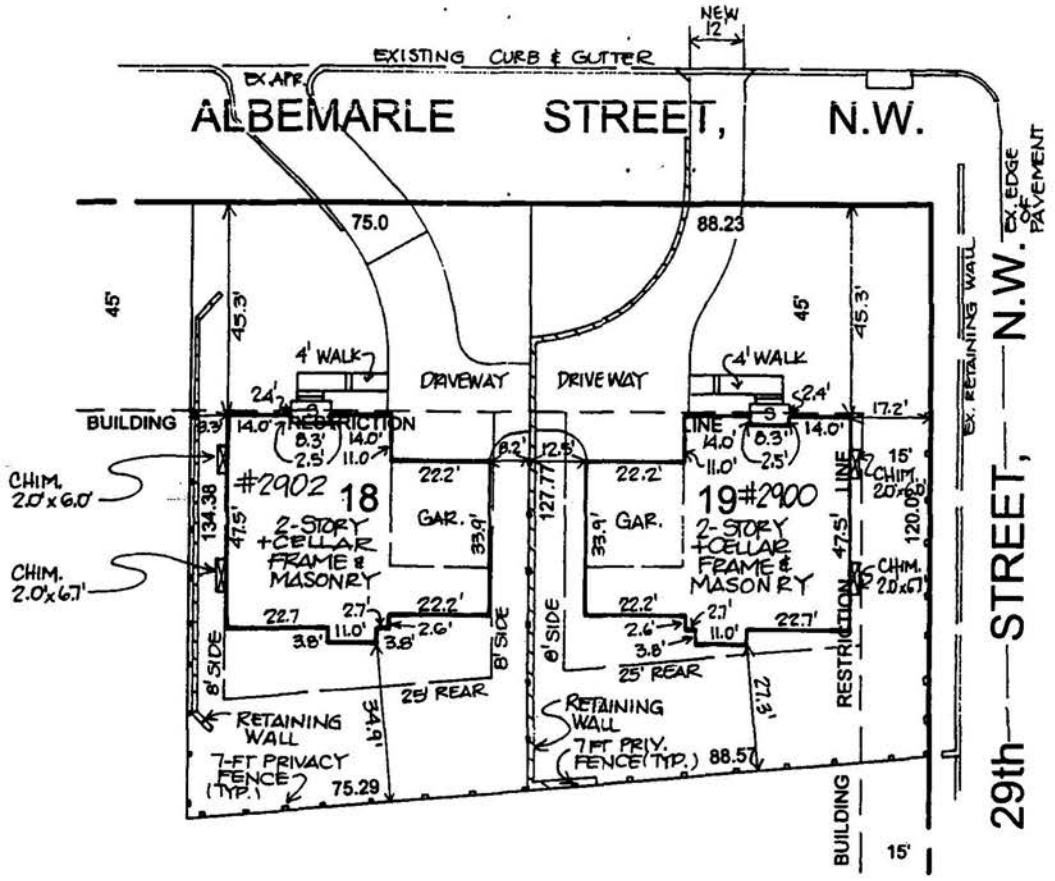
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 4|18|02 REVISED 5|14|02

Karen Martino

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



F

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

PUBLIC MEETING

+ + + + +

FRIDAY
APRIL 19, 2002

+ + + + +

WASHINGTON, D.C.

+ + + + +

RECEIVED
D.C. OFFICE OF ZONING
2002 MAY 13 AM 5:03

ORIGINAL

The meeting was convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice. Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
HERBERT FRANKLIN	Commissioner
JAMES HANNAHAM	Commissioner
JOHN PARSONS	Commissioner

ZONING COMMISSION STAFF PRESENT:

Alberto Bastida, Secretary, Office of Zoning
Sharon Sanchez, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, ESQ.
Marie Sansone, ESQ.

D.C. OFFICE OF PLANNING:

Steve Cochran
Ellen McCarthy
Jennifer Steingasser
Karen Thomas

SECRETARY BASTIDA: Right. Thank you.

CHAIRPERSON MITTEN: Yes. All those in favor, please say aye. Aye.

COMMISSIONER PARSONS: Aye.

VICE-CHAIRPERSON HOOD: Aye.

COMMISSIONER HANNAHAM: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida?

SECRETARY BASTIDA: The staff will record the vote five to zero, and I believe that Mr. Hood move it and Mr. Hannaham second it.

CHAIRPERSON MITTEN: And Mr. May did leave an absentee vote in the affirmative.

SECRETARY BASTIDA: Right. And Ms. Mitten, Mr. May, and Mr. Parsons voting in the affirmative. Just for point of clarification, this would be a rule making case, and it would be a contested case.

CHAIRPERSON MITTEN: Thank you for the clarification.

SECRETARY BASTIDA: Thank you.

CHAIRPERSON MITTEN: All right. Next, we have Zoning Commission case number 02-, dash, 19, which is a petition from Forest Hills Citizens' Association for a tree and slope overlay.

SECRETARY BASTIDA: Madam Chairman, sorry to interrupt, but I just want to point out that we've received a series of letters Friday and this morning, and those letters has been provided to the Commission.

CHAIRPERSON MITTEN: Yes. Thank you.

SECRETARY BASTIDA: On this case. Thank you.

CHAIRPERSON MITTEN: Yes. All right. We'll turn to the Office of Planning again.

MS. MCCARTHY: Thank you, Madam Chairman. I'll try to keep this very brief, given the hour.

Essentially, the Office of Planning is supporting set down of this case because, as this is the third application to specifically map an existing set of provisions in the zoning regulations to tree and slope overlay to a particular area, it seemed highly unlikely to us that there was any circumstance in which this was not worth having a public hearing and discussing the provisions. And, in fact, this was one of the sites that was originally mentioned to the Zoning Commission before the first tree and slope overlay was mapped, specifically with regard to Woodland Normanstone, and the Commission, at that time, provided direction to Forest Hills, to come back when that had been mapped, and to apply to their

particular neighborhood.

Our understandinai is, that although this was originally -- when originally conveyed to the Commission, it was discussed as an emergency zoning regulation. Given that this is on the agenda to be set down today, that the applicants would be willing to do this not as an emergency, but to just have this set down, and go through the regular process. That's what they communicated to us.

And I thought what I would like to do is, this is essentially like the basic tree and slope overlay, but there are some provisions that differ from those. As you know, every tree and slope overlay is slightly tailored to the neighborhood in which it's been applied. There have been slight differences between those. So I thought Ms. Thomas could very briefly run through what is unique to this tree and slope overlay that is not shared with the Woodland Normanstone version, and the Chamber Trodian Rissey Terrace version.

CHAIRPERSON MITTEN: All right.

SECRETARY BASTIDA: Madam Chairman, could I interject something before, though? Just for clarification, this is an overlay, so accordingly, will be a map amendment. So, if the Commission says

it today, in fact, it is vested, and it starts running from today.

CHAIRPERSON MITTEN: Right.

SECRETARY BASTIDA: For the application. So --

CHAIRPERSON MITTEN: Thank you.

SECRETARY BASTIDA: Thank you.

MS. THOMAS: Madam Chair, at this time, before I proceed a little bit further into what we're going to look at, what OP's going to look at, I'd like to inform the Commission that the ENC's, or Forest Hills Citizens Association meeting on April 16th, that property in squares 2263, 2040, and 2041, petition to be included in the map amendment. And I'd just like to note that for the record.

CHAIRPERSON MITTEN: Let me just ask you, just because I wasn't looking in the right place when you ran down those numbers. In terms of what's before us, on 1515.6, in the package that we received, are those squares included?

MS. THOMAS: No. The squares that I mentioned are not included, and they have asked to be included.

CHAIRPERSON MITTEN: And would you tell me what those squares are again, please?

MS. THOMAS: That's 2263, 2040, and 2041.

CHAIRPERSON MITTEN: All right.

MS. THOMAS: While OP recommends approval of the set down, based on preliminary review on typical standards of the relevant elements of the comprehensive plan, and current restrictions of the predominant zone in the neighborhood, R1E, we also want to recognize that the community has questions and concerns, and prior to public hearing, OP will work with all parties to address the issues including some of the -- and I'll just go through a list of the issues that were raised at the public meeting on April 16th.

Lot occupancy, lot size, side (inaudible) are requirements which propose from 8 to 16 feet, set back requirements. We can also look at building and slope properties, developer's rights, the rights of property owners to develop or subdivide any properties. Trees and its relation to property values, the efficacy of existing tree and slope overlays in other neighborhoods, and the elements of the proposed tree bill.

So, we are going to try to address the concerns and work with everybody concerned who has issues with this. And, at this time, we would

recommend set down for public hearing and for further review.

CHAIRPERSON MITTEN: And does your recommendation include the three squares that the neighborhood had requested be included?

MS. THOMAS: Yes.

CHAIRPERSON MITTEN: Thank you. Any questions from the Commission? One thing that I'd like to take a hard look at when we have a hearing -- presumably, we'll get there sooner or later -- in 1512.1, this overlay district would be mapped in combination with R1A, R1B, R2 or R5D, and in terms of being not inconsistent with the comprehensive plan, up to 75 percent lot occupancy is permitted in R5D, and the lot coverage restrictions in this proposed overlay are a maximum of 30 percent.

I'd like to talk about whether or not we can achieve consistency with generalized land use designations that would lead to a zoning category of R5D, with those kinds of restrictions in place.

So, if that could be developed, because I don't know that we've, in the past, if the tree and slope overlays have been mapped in combination with medium or high density residential.

MS. THOMAS: We will look at that and try

to come to some resolution on that. One other thing I'd like to mention, the petitioners have asked that we include in their text, in Section 1514 3 and 4, where it reads, "to include new residential," --

CHAIRPERSON MITTEN: I'm sorry.

MS. THOMAS: That's 1514.3.

CHAIRPERSON MITTEN: Oh, sorry.

MS. THOMAS: Yes. Where it says, "all residential buildings," it should read, "all new residential buildings."

CHAIRPERSON MITTEN: Okay.

MS. THOMAS: And 1514.4, where it says, "this idea of requirement for all residential buildings," it should read, "all new residential buildings."

CHAIRPERSON MITTEN: Okay. Thank you.

MS. THOMAS: Thank you.

CHAIRPERSON MITTEN: Any other questions for the Office of Planning? All right. Office of Planning recommends -- oh, go ahead.

VICE-CHAIRPERSON HOOD: Madam Chair, I guess we'll take the issue up of this set down, of what's requested here, and I'm readying through a lot of this that we just got about NC3F, which I believe, from what it states here, the host overlay is in that

area.

They're asking that, because of the abut ANC 3C and 3G -- okay. Never mind there. I thought they was asking -- never mind. Okay. I think they were just asking that ANC 3C and 3G, and I think we normally do that, because if ANCs abut the area which we are getting ready to make a decision on, we usually include those ANCs. But I don't know if this is something we need to take up now, see if it moves forward to hearing.

But I can tell you, I just wanted to ask the Office of Planning. You mention a meeting on April the --

MS. THOMAS: Sixteenth.

VICE-CHAIRPERSON HOOD: -- 16th? The correspondence said there were never no public meetings, so I'm just concerned about that. So I would hope we'll come prepared and ready to respond. It may be in front of me, but a lot of this stuff, we got just at 11:07 and whatnot, so I'm very concerned about that because there seems to be a very equally distributed opinion on whether or not to move forward or not, and I want to make sure that there was some public meetings and public notice. And also, that people had a chance to weigh in.

In one of the letters, I see -- one of the constituents even concerned mentioning this. The ANC did not hold proper meeting or something. So, anyway, at the time, hoping we can respond to that, if it's set down.

CHAIRPERSON MITTEN: Okay. And if it addresses your concern at all, and Mr. Bergstein can held me out on this -- I believe, at the stage of a set down, where we decide whether or not we're going to set something down, it's truly, at this point, we're just determining whether the proposal before us has merit for public hearing, and the process of really eliciting participation from the public and so one, takes place through the hearing process.

Would you say that's a fair representation, Mr. Bergstein?

MR. BERGSTEIN: Yes.

CHAIRPERSON MITTEN: Thank you. So, we're looking at this on its merits, at this point, although I share your concern and we want people to get involved as early in the process as possible.

VICE-CHAIRPERSON HOOD: And Madam Chairman, just add to that. I really appreciate your help. You know I always do. But I wanted to make sure that they came prepared, and this is another

opportunity where they hear what our concerns are upfront, so we don't wait until the time of the hearing to bring them, and it becomes a surprise. That's actually where I was going.

CHAIRPERSON MITTEN: Thank you.

COMMISSIONER PARSONS: Madam Chairman, I would urge us to set this down for hearing. I think a lot of the mail we've got in the last 24 hours is typical in matters of this kind, where an increased awareness in the neighborhood has occurred, and some who may have felt left out are expressing concern, but I think that's what a hearing is for. And there will certainly be plenty of time in the intervening -- we'll probably be out in June somewhere, before -- the leaves will be on the trees by the time we have a hearing on this. So I would move that we set this down for hearing.

VICE-CHAIRPERSON HOOD: I'll second it.

CHAIRPERSON MITTEN: Thank you. I just want to clarify that that would include the editorial changes to 1514.3 and 1514.4, and include the three squares that Ms. Thomas --

COMMISSIONER PARSONS: Yes. I'm sorry.

CHAIRPERSON MITTEN: -- suggested. That's fine. I just want to clarify that.

COMMISSIONER PARSONS: Thank you.

CHAIRPERSON MITTEN: Any further discussion?

All those in favor, please say aye. Aye.

COMMISSIONER HANNAHAM: Aye.

COMMISSIONER PARSONS: Aye.

VICE-CHAIRPERSON HOOD: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. May left his vote in the affirmative.

SECRETARY BASTIDA: Madam Chairman, the staff will record the vote five to zero to zero. Mr. Parsons move it and Mr. Hood second it. Ms. Mitten and Mr. Hannaham voting in the affirmative. Mr. May voting by absentee ballot. And this would be a rule making case.

CHAIRPERSON MITTEN: Thank you. all right. Now, we're under proposed action. We already took care of the first case. Now, we're moving on to Zoning Commission case number 01-, dash, 17MM/, slash, 93-, dash, 5F/, slash, 91-, dash, 18P. Mr. Bastida?

SECRETARY BASTIDA: Yes, Madam Chairman. Before we go into this case, I would like to request the waiver of accepting into the record the late filing of the report from the applicant, ANC, and the West End Civic Association. The applicant had to file

-- was late. I apologize -- of the applicant ANC because, in order to reach certain agreements, the applicant requested more time. I cannot provide that. The Commission has to do that, and that triggers the process of things filing late.

CHAIRPERSON MITTEN: All right. So we need to waive our rules to reopen the record to accept those. Is that correct?

SECRETARY BASTIDA: Correct.

CHAIRPERSON MITTEN: Any objection? All right. Without objection, Mr. Bastida.

SECRETARY BASTIDA: Thank you, Madam Chairman. Now, you have received all the information that was in the file and the staff request an action on this matter. Thank you.

CHAIRPERSON MITTEN: I'd like the record to reflect that Mr. Parsons has left the room. Anyone who's been involved in this case will recall that he had recused himself, and we'll call him back when we've disposed of this issue.

When we last visited this case, we had expressed some concern -- the Commission had expressed some concern that the amenities being offered by the application were insufficient, in light of the benefits being received, or the relief being

Exhibit B

J. Brendan Herron Jr.
2901 Albemarle Street NW
Washington, DC 20008
(202) 248 – 9837
Bherron@ifstrat.com

April 25, 2002

Ms. Theresa Lewis
Acting Administrator
Building and Land
DC Department of Consumer and Regulatory Affairs
941 North Capitol St., NE, Room 2200
Washington, DC 20002

Dear Ms. Lewis:

RE: Permits and Demolition Activity at 2900 and 2902 Albemarle Street

It is my understanding that Zuckerman Brothers (through an agent) has filed building permit applications that are presently pending for the above mentioned addresses. These applications do not appear to be in compliance with the DC building code (as described below) and thus I would request that the DCRA to reject the permits as non-compliant. In addition, it appears that demolition activity is underway without the proper permits and without apparent consideration for potential asbestos, lead and other environmental hazards that may exist on the property. Finally, I am concerned about the presence of a new driveway near the stop sign on Albemarle Street. With small children, including at least six infants under the age of three, living in homes surrounding the property, I am writing to request that the DCRA reject the current building permit application as non compliant with the Building Code and the Zoning Law and to strictly enforce the laws and regulations concerning these properties, including but not limited to the issues addressed below.

Building Permit

Through a review of the pending permit application and building plans filed on April 4, 2002 and supplemented on April 18, 2002 for the above mentioned address, it would appear that the application may not conform to the requirements for a building permit application under the DC building code under Section 107.12, Section 107.13.1 and Section 107.15, as a result of the filing of what appears to be incomplete and conflicting plans.

Section 107.12 requires that "The application for building permit shall be accompanied by not less than four (4) sets of plans drawn to scale, with the sufficient clarity and detail dimensions to show the nature and character of the work to be performed. Each set will contain complete architectural, civil, structural, mechanical, plumbing and electrical plans, as applicable." The plans do not appear to have contain architectural, civil, structural, mechanical, plumbing and electrical plans for the particular site and appear to have conflicts between the sets of plans and thus would appear not to be in compliance with this section 107.12.

Section 107.13.1 Site Plan Information requires that "the site plan, completely dimensioned and drawn to a scale indicated numerically as well as graphically, the site, its orientation to North, and location of all existing and new construction on the site, distances from property lines, established street grades,

proposed finished grades, proposed soil erosion control measures, location of utility service lines and connections thereto, with dimensions and all appurtenant features of such connections, as applicable" Section 107.15 Zoning Compliance Review Data requires similar plans that indicate:

> "1. The shape, dimensions and topography of the lot to be built upon, in sufficient detail to allow determination of heights above existing and proposed finished grade of all proposed structures, so as to allow determination of compliance with pertinent height limitations of Title 11 DCMR, Zoning Regulations.
> 2. The width of all public streets and public rights-of-way contiguous to the lot, with elevations at measuring points along them sufficient to determine compliance with the Height Act of 1910, as amended.
> 3. The shape and location in plan of all existing and proposed structures, fully dimensioned, including orientation and distances to lot lines so as to define without ambiguity the dimensions and location of said structures.
> 4. The elevations of all existing and proposed structures, fully dimensioned so as to define without ambiguity the dimensions of said structures.
> 5. The parking and loading plans and the basis for computation of the facilities shown on those plans.
> 6. Other information necessary to determine compliance with Title 11 DCMR, Zoning Regulations."

The plans appear to have a number of conflicts between the site plan and the structure plans including the location of the garages and driveways and the lack of grading information. Thus it is impossible to determine the compliance with the zoning regulations.

Demolition and other permit violations

It would also appear that Zuckerman Brothers has been performing work at the house presently existing at the above address without the required razing, building and other permits. My family is concerned about the current demolition activities that are being performed without addressing environmental and other site concerns including water runoff management, traffic management, asbestos and lead paint removal. The attached Exhibit list at least several cases where work was performed without permits and in some cases in apparent violation of other environmental and safety laws.

Traffic and Environmental Concerns

It is my understanding that the plans would add a new driveway entrance in close proximately to the stop sign at 29th and Albemarle Street. Vehicles frequently screech to a stop or even proceed without stopping at this traffic sign. It is my understanding that the plans call for a long driveway and what may be a blind exit by the driver. As the parent of a small child directly opposite the driveway, I am very concerned about the lack of any traffic study or review prior to the approval of this driveway (which will be the closest driveway on Albemarle to the stop sign).

I am also concerned that the builder has not provided any traffic management plan for the heavy vehicles that will be involved in the construction and in, at least one case, does not appear to have followed the existing laws regarding warning signs, flagman, no parking and permits to close streets.

In addition, the plans call for a significant change in grading on the site. This will likely require heavy equipment and likely cause significant airborne dirt and other potential pollutants that will leave the property (especially in the current drought) and require storm water management that will be critical for a

property located so close to Soapstone Valley Park both during and after construction. I am very concerned that these issues have not been addressed in the plan in regard to both the safety of the infants in the area and in the impact on the environment.

Requested Action

Based on the past course of action at this property, the potential environmental impact (including to nearby Soapstone Valley Park) and the presence of a number of small children in close proximity to the site, it is hereby requested that the DCRA:

1. Reject the current building permit application as noncompliant with the building code and require the builder to file new permits that comply with the building and zoning code.
2. That a Stop Work order be issued for the site preventing any further work until such time that valid permits are issued.
3. That work at the site be performed only in compliance with all applicable DC and federal laws and regulations including without limit, all building code, permit requirements, all federal and DC environmental, worker safety and traffic laws and regulations.
4. That the District of Columbia and all applicable departments strictly enforce the laws and regulations including those mentioned in item 3. Such enforcement shall include but not be limited to complying with any 30 day waiting periods, notification and publication requirements, community and ANC review, and environmental regulations (including asbestos and lead paint mitigation), and
5. That the government and the builder provide a list of contacts (with phone numbers and email addresses) and that an escalation policy be established so that we can assure compliance with the above.

We have attempted to meet with the builder through our ANC commissioner, Phil Kogan and have been told that the builder will not meet with us. Therefore, we are very concerned that unless the DCRA takes strong action to assist in putting appropriate safeguards into place that the health and safety of our children and the environment will be at risk and that our concerns regarding this property will continue to be ignored by the builder. I know from discussions with my discussion with many of the neighbors that they share similar concerns.

We thank you for your prompt attention to this matter. If you have any questions, I may be contacted at 202 248-9837.

Sincerely,

J. Brendan Herron Jr.

Cc: Richard Nettler, Esq. Robins, Kaplan, Miller & Ciresi L.L.P. (via email)
Phil Kogan ANC3f Commissioner
Karen Perry, ANC3f Commissioner
David Bardin, ANC3f Commissioner

Possible Illegal Work performed at 2900/2902 Albemarle Street

April 1st Tree removal work was performed at the site. The tree removal equipment blocked 29th street without permits, safety signs and flagman. The equipment was moved only after an investigation by the DC police department.

April 1st and 2nd – During the tree removal work, there were no No Parking signs posted under neither the trees. However, tree removal was conducted by covering the cars with a tarp without the car owner's permission or knowledge.

April 15th – Exterior demolition work was started on the house without permits. In addition, water was used in this process that was allowed to run freely into the storm water drainage system without any use of environmental protection.

April 18th to present – Interior demolition work appears to be in process without required permits.

District of Columbia Construction Codes Supplement 1999

107.13.1 Site Plan Information: The applicant shall show upon the site plan, completely dimensioned and drawn to a scale indicated numerically as well as graphically, the site, its orientation to North, and location of all existing and new construction on the site, distances from property lines, established street grades, proposed finished grades, proposed soil erosion control measures, location of utility service lines and connections thereto, with dimensions and all appurtenant features of such connections, as applicable. For raze or demolition, the site plan shall identify the structures or portions thereof to be demolished and the location and size of all existing structures and construction that are to remain on the site.

107.15 Zoning Compliance Review Data: The applicant shall provide to the Zoning Division of the Department not less than four (4) copies of plans drawn to a scale indicated numerically as well as depicted graphically, showing orientation of the property as to true North, and the following:

1. The shape, dimensions and topography of the lot to be built upon, in sufficient detail to allow determination of heights above existing and proposed finished grade of all proposed structures, so as to allow determination of compliance with pertinent height limitations of Title 11 DCMR, Zoning Regulations.

2. The width of all public streets and public rights-of-way contiguous to the lot, with elevations at measuring points along them sufficient to determine compliance with the Height Act of 1910, as amended.

3. The shape and location in plan of all existing and proposed structures, fully dimensioned, including orientation and distances to lot lines so as to define without ambiguity the dimensions and location of said structures.

4. The elevations of all existing and proposed structures, fully dimensioned so as to define without ambiguity the dimensions of said structures.

5. The parking and loading plans and the basis for computation of the facilities shown on those plans.

6. Other information necessary to determine compliance with Title 11 DCMR, Zoning Regulations.

H

Res 02-23

ANC3F RESOLUTION REGARDING APPLICATION TO DCRA FOR CONSTRUCTION PERMITS AT 2900 AND 2902 ALBEMARLE STREET NW

Advisory Neighborhood Commission 3F
North Cleveland Park and Forest Hills
P.O. Box 39290, Washington, D.C. 2016-9290

WHEREAS: Zuckerman Brothers Development Corporation has applied to DCRA for a construction permit in order to build two single family homes at 2900 and 2902 Albemarle Street NW; and

WHEREAS: DCRA erroneously denied Commissioners Kogan and Maudlin, as well as other Commissioners and concerned citizens in ANC 3F, the opportunity to review the applications, plans, and drawings for 2900 and 2902 Albemarle Street NW based on the erroneous assertion by DCRA staff that such information is protected by privacy rights of the applicant; and

WHEREAS: DCRA's denial significantly delayed the review of the application, plans and drawings; and

WHEREAS: As a result of of DCRA's erroneous denial and consequent delay, Alex Walworth, George Clark, and attorney Richard Nettler were denied the opportunity to review the application until the very late date of April 25, 2002, which was only four days prior to a publicly noticed ANC 3F meeting; and

WHEREAS: 2900 and 2902 Albemarle Street are within the boundaries of the proposed Forest Hills Protective Tree and Slope Overlay district which was the subject of a filing with the Zoning Commission by the Forest Hills Citizens Association (FHCA) on April 5, 2002; and

WHEREAS: The Zoning Commission on April 19, 2002, set down for public hearing the FHCA request for a Protective Tree and Slope Overlay district; and

WHEREAS: Commissioners Phil Kogan and Robert Maudlin of ANC 3F were denied the opportunity to meet with Stewart Zuckerman on April 23, 2002, to review with Mr. Zuckerman the drawings and plans for this project due to the advice and concern of Mr. Zuckerman's attorney that the filing by Forest Hills Citizens Association for a tree and slope zoning overlay for the Forest Hills neighborhood and the subsequent setting down of this item by the Zoning Commission could impact the interests of Zuckerman Development Corporation; and

WHEREAS: Ms. Walworth and Messrs. Clark and Nettler, following their initial review of the plans and drawings, are concerned that:

1. the plans filed for the houses appear to be generic building plans that could be utilized for any flat, 75-foot wide site;
2. the plans do not appear to be consistent with the subdivision plat provided by the applicant in regard to the siting of the houses on the lots;
3. the square footage shown on the plans accompanying the application is less than the amount indicated on the survey plat;
4. the subdivision plat shows, for example, two different lot sizes and different side yards than the building plans;
5. the subdivision plat also shows, for example, a shared driveway plan, which is at variance with he building plans;

6. the applicant may need to re-file the permit application; and
7. there is no storm water management plan.

THEREFORE BE IT RESOLVED THAT: Given the circumstances surrounding the application for a construction permit at 2900 and 2902 Albemarle Street NW including (1) the delays caused by DCRA's error in not allowing review of the application, plans, and drawings; and (2) the significant and substantial concerns identified by Ms. Walworth and Messrs. Clark and Nettler, ANC 3F strongly recommends that DCRA extend for an additional 30 days the review period for the applications for construction permits at 2900 and 2902 Albemarle Street; and

BE IT FURTHER RESOLVED THAT: Any new or revised plans submitted for the properties at 2900 and 2902 Albemarle Street be subject to a complete and full 30 day review beginning on the day any such new or revised plans are filed with DCRA.

Adopted by a vote of 6 - 0 - 0 at a duly-noticed public meeting of ANC 3F on April 29, 2002, with a quorum of its seven commissioners present.

/s/ Cathy Wiss
Cathy Wiss, Chair

/s/ David J. Bardin
David J. Bardin, Secretary

Res 02-24

ANC3F RESOLUTION REGARDING RAZE PERMIT FOR
2900 ALBEMARLE STREET NW

Advisory Neighborhood Commission 3F
North Cleveland Park and Forest Hills
P.O. Box 39290, Washington, D.C. 2016-9290

WHEREAS: ANC 3F received notice that on March 1, 2002, DCRA received an application for a raze permit for the property at 2900 Albemarle Street; and

WHEREAS: It is reported to ANC 3F that work on the property at 2900 Albemarle Street NW is being executed in a manner that does not provide the protection necessary from the potential hazards including lead, asbestos, and other airborne pollutants that may exist on the site or be generated during the demolition and construction process; and

WHEREAS: current operations at this site may have a negative environmental impact to nearby Soapstone Valley Park; and

WHERAS: a number of small children live in proximity to the site.

THEREFORE BE IT RESOLVED THAT: ANC 3F strongly recommends that a Stop Work Order be issued for the site at 2900 Albemarle Street NW prohibiting any further work from being performed until such time as all public health and environmental issues are resolved; and

BE IT FURTHER RESOLVED THAT: ANC 3F be given the opportunity to review and photocopy the raze permit file.

Adopted by a vote of 6 - 0 - 0 at a duly noticed public meeting of ANC 3F on April 29, 2002, with a quorum of its seven commissioners present.

/s/ Cathy Wiss
Cathy Wiss, Chair

/s/ David J. Bardin
David J. Bardin, Secretary

I

Exhibit A

David A. Clark, Director
Department of Consumer and Regulatory Affairs
941 North Capital Street NW
Washington, DC 20002

Dear Mr. Clark:

On April 4, 2002, Zuckerman Brothers Development Corporation filed an application requesting a construction permit for the properties at 2900 and 2902 Albemarle Street NW. The applicant proposes to build two single story homes.

The enclosed resolution was unanimously approved by six ANC 3F Commissioners at a duly noticed public meeting on April 29, 2002. This resolution strongly recommends that DCRA extend for an additional 30 days the review period for the applications for construction permits at 2900 and 2902 Albemarle Street.

It is very important that DCRA understand the reasons for this request. Shortly after the applications were filed for the 2900 and 2902 Albemarle Street, Commissioner Maudlin visited the Permit Application Center at DCRA. During this visit Commissioner Maudlin was erroneously denied the opportunity to review the plans and drawings accompanying the application. This denial was based on the erroneous assertion by DCRA staff that the plans and drawings are protected by the privacy rights of the applicant. Following this denial, Commissioner Maudlin and I telephoned members your staff on April 15 and 16 to find out (1) the basis in law for denying us the right to review the plans and drawings; and (2) to determine how we and our neighbors could obtain access to these plans and drawings. We spoke with Len Douglas in your Building and Land Regulation Administration, Karen Edwards in your General Counsel's office, and Greg Love who is your Zoning Administrator. Finally, on April 19 we received a voice mail messages from Miss Sanders in your plan file room and Mr. Love indicating that it was now "OK" to view the plans and drawings accompanying the 2900 and 2902 Albemarle Street application. In other words, your agency restored to our Commission and to residents of ANC 3F a right that should have never been denied. We find these actions on the part of DCRA to be grievous.

With regard to the instant complaint, your staff's erroneous denial of this Commission's right to review the plans and drawings filed with the 2900 and 2902 Albemarle Street applications interfered with and significantly delayed our ability to exercise our statutory authority to review and comment on this permit application within 30 days of filing. This erroneous denial also caused harm to our neighbors since they were unable to visit you plan file room with the assurance that the plans and drawings would be available to them. Consequently, their visit was delayed until April 25, just four days prior to a scheduled ANC meeting on this issue.

Following their visit, our neighbors identified a number of concerns with the plans and drawings including:

1. the plans filed for the houses appear to be generic building plans that could be utilized for

any flat, 75-foot wide site;

2. the plans do not appear to be consistent with the subdivision plat provided by the applicant in regard to the siting of the houses on the lots;
3. the square footage shown on the plans accompanying the application is less than the amount indicated on the survey plat;
4. the subdivision plat shows, for example, two different lot sizes and different side yards than the building plans;
5. the subdivision plat also shows, for example, a shared driveway plan, which is at variance with he building plans;
6. the applicant may need to re-file the permit application; and
7. there is no storm water management plan.

Given that your agency acted on the basis of erroneous information and that this action egregiously delayed our ability to exercise our statutory 30 day review; and given the substantial concerns of our neighbors during the brief time available to them to review the plans and drawings, we think you will agree that due process requires that you provide an additional 30 days for ANC 3F to exercise its statutory authority to review the plans and drawings for the 2900 and 2902 Albemarle Street application.

You should also be aware that the 2900 and 2902 Albemarle Street properties are within the boundaries of the proposed Forest Hills Protective Tree and Slope Overlay district which was the subject of a filing with the Zoning Commission by the Forest Hills Citizens Association (FHCA) on April 5, 2002. The Zoning Commission on April 19, 2002, set down for public hearing this Protective Tree and Slope Overlay filing by FHCA.

Finally, we request that any new or revised plans submitted for the properties at 2900 and 2902 Albemarle Street be subject to a complete and full 30 day review by ANC 3F beginning on the day any such new or revised plans are filed with DCRA.

I look forward to receiving a positive response from you.

Thank you for your attention to this matter.

Sincerely,

Phil Kogan
Commissioner, ANC 3F

cc: Teresa Lewis, DCRA
Greg Love, DCRA
Len Douglas, DCRA

Toye Bellow, DCRA
Eric Price, Deputy Mayor
John Koskinen, Deputy Mayor
Kathy Patterson, Councilmember
Phil Mendelson, Councilmember
Carol Schwartz, Councilmember
Sharon Ambrose, Councilmember