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Board of Zoning Adj

Exhibit C

Brendan Herron

From: Lewis, Theresa (DCRA) [Theresa.Lewis@dc.gov]
Sent: Thursday, May 09, 2002 5:12 PM
To: 'Phil.Kogan@hhs.gov'
Cc: Clark, David (DCRA); Pagano, Penny (COUNCIL); Patterson, Kathleen (COUNCIL); 'Brendan Herron'; Price, Eric (EOM); Koskinen, John (EOM); Love, JGregory (DCRA); Ravishankar, Bellur (DCRA); Douglas, Lennox (DCRA); Noble, Denzil (DCRA)
Subject: 2900 and 2902 Albemarle Street, N.W.

Importance: High

Phil Kogan
ANC Commissioner, 3F

RE: 2900 and 2902 Albemarle Street, N.W.

Dear Commissioner:

This is in response to your letters and e-mail of May 3, 2002 regarding problems you encountered with obtaining copies of building permit applications for the subject addresses. I would like to apologize to you and members of the Commission for the error that was made. Departmental policy dictates that applications submitted for various licenses and permits are to be made available to the public as well as to the Advisory Neighborhood Commissions. Consequently, even though the proposed construction of the two single-family dwellings is a "matter-of-right", the Department will withhold the issuance of the building permits until June 3, 2002 to allow you and your organization time to fully review the information submitted.

Your request that any new or revised plans be subject "to a complete and full 30 day review" cannot be approved. As you are aware, the plans on file are currently under review. Part of the review process may include working with applicants to correct deficiencies found by revising the plans to comply with the building codes. Under the rules governing Freedom of Information, your right to the application during this process is exempt. We will, however, take into consideration the concerns raised by the ANC Commission in finalizing the review and decision regarding the building permit application and will respond, in writing, to your concerns.

Finally, the agency is aware of the proposed Forest Hills Protective Tree and Slope Overlay. On April 19, 2002, the Zoning Commission set down this matter for public hearing. However, because the building permit application for the construction of the two dwellings was filed on April 4, 2002, prior to the set down date, the proposed overlay will have no impact on the processing of the application.

I assure you that I am closely monitoring the process for reviewing the permit applications on file and will notify you of the decision made and as stated will provide responses to your concerns. Should you have further questions regarding this matter, you may e-mail me or contact me directly on 442-8930.

Sincerely

Theresa D. Lewis

Deputy Director/Chief of Staff
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002
(202) 442-8930



Exhibit D

Brendan Herron

From: Brendan Herron [bherron@pathlore.com]
Sent: Thursday, May 09, 2002 8:34 PM
To: Lewis, Theresa (DCRA); Price, Eric (EOM); Koskinen, John (EOM)
Cc: 'Phil.Kogan@hhs.gov'; Noble, Denzil (DCRA); Douglas, Lennox (DCRA); Ravishankar, Bellur (DCRA); Love, JGregory (DCRA); Patterson, Kathleen (COUNCIL); Pagano, Penny (COUNCIL); Clark, David (DCRA)
Subject: DCRA interpretation of the Districts laws

Importance: High

Dear Mr. Eric Price
Mr. John Koskinen
Ms Theresa Lewis
Mr. Robert Rigsby, Esq. (under separate email)

I am in receipt of Ms. Lewis's email to Phil Kogan dated May 9. I disagreed with several significant points in your letter and believe that the stated position does not comply with the District laws, regulations or public policy in the following areas.

1. Under Section 3202.5 of the zoning laws, the Tree and Slope Provision should apply to any modifications of the building plans.
2. Building plans as submitted did not conform to Sections 107.12, Section 107.13.1 and Section 107.15 of the building code and thus should be not be considered a valid filing.
3. The application, plans and correspondence do not appear as an exemption in Section 2-534 of the Official Code of the District of Columbia and thus should be provided under a FOIA request.

Your position that building on these properties is a "matter of right" would be true only if the permits conform to the laws, rules and regulations of the District of Columbia. As further documented below, the plans as submitted do not meet that criteria and thus should be rejected.

The DC building code is very clear on what is required in a building plan permit application. For the DCRA to take the position that a submission that has irreconcilable conflicts between the location of the house, driveways and other structures between the site plan and the building plans is a valid application for a building permit is clearly not what the code states.

It is the mission statement of the DCRA to "protect the health, safety and welfare of District Residents". The Comprehensive Plan and the Mayor's Budget for FY2003 both reflect the desire to control development in Ward 3 and specifically Forest Hills. To the extent that DCRA sees any areas of gray within this matter, the public policy laid out in these planning documents should influence the DCRA to decide in favor of the neighbors who are concerned about this development.

I am deeply concerned that the DCRA and the Mayor is putting the builder's interest in front of the citizens who will have to live with the results. Again I ask that the laws be strictly enforced, that the FOIA request be complied with and the issues regarding environmental hazards on the demolition permit be addressed.

Finally, to address any economic impact of limiting development, besides the substantial taxes I pay, I am a financial advisor to two companies considering locating offices in DC. The failure to enforce the laws in this matter will be likely to significantly impact my recommendations as

to the suitability of the District of Columbia as a business location.

I have provided more details on the issues below and ask for a prompt response from the DCRA, the Mayor's office and the Corporation Counsel regarding the DCRA's interpretation of the laws and these particular issues.

Sincerely

Brendan Herron
(202) 248-9837
Bherron@ifstrat.com

Tree and Slope Provisions should apply to Modifications to the Building Permit

You have stated that the Tree and Slope overlay does not apply to the building permit since they were filed prior to set down by the zoning commission. However Section 3202.5 of the zoning code states

"If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application, and the completion of work pursuant to the permit, shall be governed as follows:
(a) The application shall be accompanied by any fee which is required, and by the plans and other information required by §3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation, and by any other plans and information which are required to permit complete review of the entire application under any applicable District of Columbia regulations;"

Based on the discrepancies documented in the prior letters from the ANC **including** discrepancies between the site plan and the house plans, it **would not** be possible to construct the house without substantial modification. These discrepancies include:

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.

Building Plans as submitted on April 4 did not comply with requirements for a building plan application.

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 prcperty 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."

As indicated above, 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.

FOIA request

Section 2-531 of the DC Code states "The public policy of the District of Columbia is that all persons are entitled
to full and complete information regarding the affairs of government and the official acts of those who represent
them as public officials and employees. To that end, provisions of this subchapter shall be construed with the view toward
expansion of public access and the minimization of costs and time delays to persons requesting information"

Section § 2-534. Exemptions from disclosure. list the items exempt from disclosure. There is nothing in this list that would allow the DCRA to not comply with the FOIA act.

"(a) The following matters may be exempt from disclosure under the provisions
of this subchapter:

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(3) Investigatory records compiled for law-enforcement purposes, but only to the extent that the production of such records would:

(A) Interfere with enforcement proceedings;

(B) Deprive a person of a right to a fair trial or an impartial adjudication;

(C) Constitute an unwarranted invasion of personal privacy;

(D) Disclose the identity of a confidential source and, in the case of a record compiled by a law-enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(E) Disclose investigative techniques and procedures not generally known outside the government;

(F) Endanger the life or physical safety of law-enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute:

(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(7) Information specifically authorized by federal law under criteria established by a presidential executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such executive order;

(8) Information exempted from disclosure by § 28-4505; and

(9) Information disclosed pursuant to § 5-417.

(b) Any reasonably segregable portion of a public record shall be provided to any person requesting the record after deletion of those portions which may be withheld from disclosure pursuant to subsection (a) of this section. In each case, the justification for the deletion shall be explained fully in writing, and the extent of the deletion shall be indicated on the portion of the record

which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (a) of this section under which the deletion is made. If technically feasible, the extent of the deletion and the specific exemptions shall be indicated at the place in the record where the deletion was made.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit nondisclosure of information of which disclosure is authorized or mandated by other law.

(d) The provisions of this subchapter shall not apply to the Vital Records Act of 1981. "

-----Original Message-----
From: Lewis, Theresa (DCRA) [mailto:Theresa.Lewis@dc.gov]
Sent: Thursday, May 09, 2002 5:12 PM
To: 'Phil.Kogan@hhs.gov'
Cc: Clark, David (DCRA); Pagano, Penny (COUNCIL); Patterson, Kathleen (COUNCIL); 'Brendan Herron'; Price, Eric (EOM); Koskinen, John (EOM); Love, JGregory (DCRA); Ravishankar, Bellur (DCRA); Douglas, Lennox (DCRA); Noble, Denzil (DCRA)
Subject: 2900 and 2902 Albemarle Street, N.W.
Importance: High

Phil Kogan
ANC Commissioner, 3F

RE: 2900 and 2902 Albemarle Street, N.W.

Dear Commissioner:

This is in response to your letters and e-mail of May 3, 2002 regarding problems you encountered with obtaining copies of building permit applications for the subject addresses. I would like to apologize to you and members of the Commission for the error that was made. Departmental policy dictates that applications submitted for various licenses and permits are to be made available to the public as well as to the Advisory Neighborhood Commissions. Consequently, even though the proposed construction of the two single-family dwellings is a "matter-of-right", the Department will withhold the issuance of the building permits until June 3, 2002 to allow you and your organization time to fully review the information submitted.

Your request that any new or revised plans be subject "to a complete and full 30 day review" cannot be approved. As you are aware, the plans on file are currently under review. Part of the review process may include working with applicants to correct deficiencies found by revising the plans to comply with the building codes. Under the rules governing Freedom of Information, your right to the application during this process is exempt. We will, however, take into consideration the concerns raised by the ANC Commission in finalizing the review and decision regarding the building permit application and will respond, in writing, to your concerns.

Finally, the agency is aware of the proposed Forest Hills Protective Tree and Slope Overlay. On April 19, 2002, the Zoning Commission set down this matter for public hearing. However, because the building permit application for the construction of the two dwellings was filed on April 4, 2002, prior to the set down date, the proposed overlay will have no impact on the processing of the application.

I assure you that I am closely monitoring the process for reviewing the permit applications on file and will notify you of the decision made and as stated will provide responses to your concerns. Should you have further questions regarding this matter, you may e-mail me or contact me directly on 442-8930.

Sincerely

Theresa D. Lewis
Deputy Director/Chief of Staff
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002
(202) 442-8930

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Exhibit F

June 11, 2002

Mr. Brendan Herron
Phil Kogan, ANC Commissioner 3F

RE: 2900 and 2902 Albemarle Street, N.W.

Dear Mr. Herron and Commissioner Kogan:

As indicated on Friday, June 7, 2002, the Department has completed its review of the permit application for 2900 and 2902 Albemarle Street, N.W. and has made a decision to issue the permits on Wednesday, June 12, 2002. As promised, you will find below, responses to your questions regarding the permit application.

1. **The plans filed for the houses appear to be generic building plans that could be utilized for any flat, 75-foot wide site;**

There was no problem found in the use of "generic" or prototype building plans. This method is often used in filing for permit applications as long as they comply with any setback requirements of the Zoning Regulations.

2. **The plans do not appear to be consistent with the subdivision plan provided the applicant in regard to the sitting of the houses on the lots:**

The dimensions of the building in the plans are consistent with the dimensions of the building survey on the D.C. Surveyor's plats. The Dimensions on the Albemarle side of the Subdivided computes. The dimension South and opposite of Albemarle Street are off by .83 of an inch for lot 19 and by 1.2" off of the respective lot width dimensions. This outcome is not unusual in a survey environment that is not exact. Any survey discrepancies are generally remedied in the course of the actual wall test that determines the actual location of the building relative to the lot lines. These two discrepancies are so insignificant as not to precipitate any non-conformity of setbacks required under the Zoning Regulations.

3. **The square footage shown on the plans accompanying the application is less than the amount indicated on the survey plat;**

The dimensions of the building plans are consistent with dimensions of building survey on Surveyor's Plats.

4. **The subdivision plat shows, for example, two different lot sizes and different side yards that the building plans;**

The building plans do not, and are not required to, reflect setbacks from property lot lines.

5. **The subdivision plat also shows, for example, a shared driveway plan, which is at variance with the building plans;**

The only part of the building plans reflective of the location of a "Shared Driveway" is the sediment control plan. These are consistent with the Surveyor's ("Subdivision") Plats.

6. **The garage location on 2900 conflicts between the building plans and the plat; and**

The building plans are not required to reflect the property boundary lines and street distribution. Therefore, this assertion is erroneous because the location of the garage is subject to a reference point based on street distribution and property lines. Nevertheless, the "Sediment Control Plan" is consistent with the "subdivision plats" with respect to the location of proposed garage.

7. **There is no storm water management plan.**

A Storm Water Management Plan was submitted and approved by the Department of health. The file includes a stamped and approved plan for storm water management.

I look forward to meeting with you and others on Wednesday, June 12, 2002 to further discuss this matter.

Sincerely,

Theresa D. Lewis, CPM
Deputy Director/Chief of Staff
941 North Capitol Street, N.E., Suite 9500
(202) 442-8937



PERMIT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B446310

Date 6/13/02 (Type) SUPPLEMENTAL RAZING OPERATIONS

Lot 0009 Square 2043

Address of work 2900 ALBEMARLE STREET, NW

TOTAL PERMIT FEE $

Permission is hereby granted to ZB, LLC (Owner)

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

NO. DATE

FILING FEE $

FEE PAYABLE $ 315.00

Authorized work and conditions of performance thereof:

FOR INSPECTIONS CALL 727-7562

RAZE 1-STORY MASONARY BRICK FRAME SINGLE FAMILY DWELLING. METHOD OF RAZING BY MACHINE. LENGTH: 70FT WIDTH: 25FT HEIGHT: 18FT BLDG INSPECTIONS BRANCH TO BE NOTIFIED 24-HOURS BEFORE RAZE OPERATION. TELE: 442-4641

Builder-- ZB, LLC Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories 1

Zone To be occupied as VACANT LOT

Height of terrace above grade Projections:

Address of owner 2 WISC CIRCLE #560/CHEVY CHASE, MD

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

DCLARK

DIRECTOR

Chief, Permit Issuance Branch

By WASHINGTON

Permit Clerk

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Form BLRA-15
(Rev. 9/30/91

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B446316

Date 6/13/02 (Type) A/R/MISC./R. WALL

Lot 0019 Square 2043

Address of work 2900 ALBEMARLE ST NW

Permission is hereby granted to

ZUCKERMAN BROS (Owner)

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

NO.

TOTAL PERMIT FEE $

FILING FEE $

DATE

FEE PAYABLE $ 862.50

FOR INSPECTIONS CALL [redacted] 442-4641

Authorized work and conditions of performance thereof:

COSNTRUCT A NEW SFD & RETAINING WALLS. CLEARED FOR EIS. SEPARATE ELEC.,PLUMB., AND MECH. INSTALLATION PERMITS ARE REQUIRED.

PERMIT

Builder—

Value $

No. of Bldgs.

Width of Bldgs.

Length

Height

No. of Stories 2 + CELLAR

Zone R1A

To be occupied as RESIDENTIAL

Height of terrace above grade

Projections:

Address of owner 2 WISC CIRCLE #560 CHEVY CHASE, MD

Deposit No.

Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

By: [signature] Permit Clerk

Cashier, Permit Issuance Branch

D CLARK 32301

DIRECTOR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT PERMIT NO. B446312

PERMIT

Date 6/13/02 (Type) MISC./NEW CONST/ RET. WALL Lot 0018 Square 2043

Address of work 2902 ALBEMARLE ST NW

Permission is hereby granted to (Owner) NO.

ZUCKERMAN BROS

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

Authorized work and conditions of performance thereof:

CONSTRUCT NEW SFD AND RETAINING WALLS.
CLEARED FOR EIS. SEPARATE ELEC.,PLUMB., & MECH. INSTALLATION PERMITS ARE REQURIE

TOTAL PERMIT FEE $
FILING FEE $
DATE
FEE PAYABLE $ 862.50
FOR INSPECTIONS CALL [redacted] 442-4641

Builder—
Width of Bldgs. Length Height Value $ No. of Bldgs.
Zone R1A To be occupied as No. of Stories 2 + CELLAR
Height of terrace above grade Projections: RESIDENTIAL
Address of owner 2 WISC CIRCLE #560 CHEVY CHASE, MD
Deposit No. Amount $
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D CLARK 32301
DIRECTOR

Chief, Permit Issuance Branch
By
Permit Clerk

n

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
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*Representative Office

Sao Paulo
Tel Aviv*
Tokyo

June 20, 2002

Cathy Wies
Chair
Advisory Neighborhood Commission 3F
Post Office Box 39290
Washington, D.C. 20016

STEVEN E. SHER
DIRECTOR OF ZONING
AND LAND USE SERVICES
202-663-7278
Internet Address:
esher@hklaw.com

Re: 2900 and 2902 Albemarle Street, N.W.
Square 2043, lots 18 and 19

Dear Ms. Wies:

This is to advise that, on June 13, 2002, the District of Columbia Department of Consumer and Regulatory Affairs issued (1) Permit No. B446310, to "raze 1-story masonary brick frame single family dwelling" at 2900 Albemarle Street, N.W.; (2) Permit No. B446316, to "construct a new SFD & retaining walls" at 2900 Albemarle Street, N.W.; and (3) Permit No. B446312, to "construct new SFD and retaining walls" at 2902 Albemarle Street, N.W. The owners of the property intend to proceed with the actions authorized by these permits as provided for under the appropriate regulations.

Very truly yours,

Steven E. Sher
Director of Zoning and Land Use Services

cc: Philip Kogan, ANC SMD 3F01
Richard Nettler, for the Forest Hills Citizens Association
Barbara Simons, President, Forest Hills Citizens Association
N.L. Zeidman, 2908 Albemarle Street, NW
J.B. Herron, Jr., 2901 Albemarle Street, NW
Christopher Hoge, 2911 Albemarle Street, NW
Leonard I. Abel, 2915 Albemarle Street, NW
Alex Walworth, 4420 29th Street, NW
Republic of Kenya, 4453 29th Street, NW
Howard J. Feldman, 4455 29th Street, NW
Government of Malta, 4501 29th Street, NW



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

July 3, 2002

Mr. Stuart Zuckerman
President
Zuckerman Brothers, Inc.
Suite 550
2 Wisconsin Circle
Chevy Chase, Md 20815

Dear Mr. Zuckerman:

RE: Appeal of Permits at 2900 and 2902 Albemarle Street

Attached is a formal appeal to the DCRA and the Board of Appeal and Review regarding the permits issued at 2900 and 2902 Albemarle Street. I believe that these permit have not been issued in compliance with the DC building code, the DC zoning regulations and DC Statute 6-641.09 ("collectively "Laws and Regulations"). **I intend to exercise all my administrative and legal rights under these and any other Laws and Regulations to appeal and overturn the issuance of these permits and to have any construction performed at the site taken down. Accordingly, you are hereby notified that any construction prior to a ruling on my appeals is strictly at your risk and I will be seeking to reverse any construction and have the property restored. I also intend to hold you jointly and severely responsible for any and all damages that my family or I have or may incur as a result of your activities.**

I may be reached at the above contact.

Sincerely

J. Brendan Herron Jr.

Before Board of Appeals and Review

In re: Formal Appeal of J. Brendan Herron Jr. of DCRA's issuance of building and demolition permits at 2900 and 2902 Albemarle Street, NW, Washington, DC 20008 ("Permits") and Motion to Vacate such permits and Motion for Stop Work Order pending Hearing.

Appellant's Statement

This is an appeal of a decision of the Department of Consumer and Regulatory Affairs ("DCRA") and other agencies of the District of Columbia involved in issuing of building and raze permits ("Permits") for the demolition of an existing single family residence at 2900 Albemarle Street, NW and the construction of two Single Family Residences at 2900 and 2902 Albemarle Street NW, (Square 2043, Lot 18 and 19) ("Subject Property"). DCRA issued said Permits, B446310 (Raze permit), B446316, (2900 Albemarle Building Permit) and B446312 (2902 Albemarle Building Permit). The owner/developer of the Subject Property is Zuckerman Brothers, Inc. located at Ste 550, 2 Wisconsin Circle, Chevy Chase, Md 20815 ("Owner"). Appellant, J. Brendan Herron Jr. is an adjacent neighbor, residing at 2901 Albemarle Street, NW.

Reasons for the Appeal

Appellant believes that DCRA, other government agencies and the Owner made a number of errors or misinterpretations of the laws and regulations of the District of Columbia in applying for and issuing the Permits, including:

1. DCRA allowed Owner to file an incomplete building permit application with conflicting documents. DCRA allowed the Owner to later modify the said application despite the fact that the Zoning Commission setting down for hearing (and thus putting into effect) more restrictive zoning for the Subject Properties. This violated DC Code Section 6-1405.1 that requires that all buildings comply with the Construction Codes of the District of Columbia and Sections 107.12, 107.13 and 107.14 and 108.1.
2. DCRA allowed Owner to file application prior to owning the Subject Properties.

3. Owner incorrectly completed the Environmental Impact Form (EIF) that must accompany the application for a building permit. The result of this incorrect EIF was that the DCRA did not fully evaluate the project under the DC Environmental Policy Act of 1989.
4. DCRA did not allow the ANC 30 days to comment on the final plans and did not meet the requirements under DC Code 1-1309.10 to give great weight and a written response to the ANC.
5. Property at 2902 Albemarle does not appear to comply with the Building Code, as the width of the lot in one location is less than 75 feet.
6. DCRA conducted most of the application review in private and continues to withhold information from adjacent property owners in violation of the Freedom of Information Act and the DC Code Section 2-513 on Public Policy and open government.
7. DCRA did not refer the application to the Commission on Fine Arts as required under Section 6-611.01.

The Appellant reserves the right to supplement this list and this appeal when he receives further disclosures from the DCRA.

Relief Requested

The Appellant hereby request that:

1. The Permits be revoked or that a Stop Work Order be issued.
2. DCRA turn over all documents under the FOIA request.
3. The Owner is required to restore the Subject Property to their condition prior to the issuance of the Permits.
4. The Owner is required to submit a new application for any desired improvements to the property subject to all existing zoning regulations at the time of the submission.

The Appellant request that the Board of Appeals or DCRA grant the first two requests on an emergency basis as the construction on the property may cause significant health and safety risks to the six children living under age 2 living adjacent to the property.

Background of the Case

On or about April 4, 2002 [1], Owner filed the DCRA application form, an Environmental Impact Form ("EIF") and some documents, relating to the application for Permits for the Subject Property. The Owner made an additional filing of documents on or about April 18, 2002. ("Initial Documents"). These Initial Documents were further supplemented or modified several times by the Owner including on April 30, 2002 with the filing of a combined erosion and sediment control and building site plan and on May 14th with the filing of an amended survey.

According to the District of Columbia Real Property Tax records ("Real Property Tax Records"), on April 5, 2002. Owner purchased Subject Property (referred to in Real Property Tax Records as Square 2043, Lot 0009).

On April 19th, the Zoning Commission set down for a hearing the proposed Forest Hills Tree and Slope Zoning Overlay. This set down had the impact of putting into effect a change in the zoning relating to the property.

From the date of filing until approximately April 19th, 2002, DCRA refused to allow the ANC 3F commissioners access to the Initial Documents. The ANC passed a resolution on April 29th, requesting among other things, a 30-day review period once the final plans were submitted. (See Exhibit A attached)

On April 22nd, Appellant submitted a FOIA request to DCRA regarding Subject Property.

[1] Appellant has not had access to all documents filed by Owner or maintained by DCRA as DCRA has ignored a Final Decision by The Secretary of the District of Columbia requiring DCRA to turn over information requested under a Freedom of Information Act request of DCRA by the Appellant or explain why such information is exempt under the act. See Exhibit G for more information.

On April 25th, Appellant wrote a letter to Ms. Theresa Lewis, Deputy Director, DCRA (Exhibit B attached), requesting, among other things, that the Initial Documents filed by the Owner be rejected as being non compliant with the DC Code Section 6-1405.1 which requires that all buildings comply with the Construction Codes of the District of Columbia and Sections 107.12, 107.13 and 107.14 of the Construction code which define the documents necessary for a valid building permit as a result of an incomplete filing by the Owner.[2]

On May 9th, Theresa Lewis responded to the ANC via email indicating that the building permit application was under review and that DCRA may be "working with the applicant to correct any deficiencies found by revising the plans to comply with the building codes." She also denied the ANC an additional period to review the final plans prior to issuance and indicated that while DCRA was aware of the proposed Tree and Slope Overlay, "because the building permit application for the construction of two dwellings was filed on April 4, 2002, prior to the set down date, the proposed overlay will have no impact on the processing of the application." (See Exhibit C attached).

On May 9th, the Appellant responded to Theresa Lewis's email disagreeing with her positions on the modifications of the building permits and the applicability of the Tree and Slope Provision. (See Exhibit D attached.).

On May 28, 2002, Theresa Lewis and staff met with the Appellant, other concerned citizens and the ANC commissioner. At that meeting, the Appellant again cited the building code and asked the DCRA to reject the pending application (See Exhibit E attached).

On June 11, 2002, Theresa Lewis addressed some of the concerns raised in the ANC resolution of April 29th, 2002 but did not give a reason for rejecting the request of the ANC for a 30 day review of the final plans (See Exhibit F)

---

[2] Relative References of the code and the areas of non-compliance are spelled out in detail in the Exhibit B.

On June 12, 2002, the Appellant and some concerned neighbors met with Theresa Lewis and staff to again review the issues and request again that the permit application be rejected.

On June 12, 2002 Secretary of the District of Columbia issued a Final Decision directing DCRA to provide a written response to the Appellant on his FOIA request. To date, DCRA has not complied with this Final Decision. (See Exhibit G and Footnote 1)

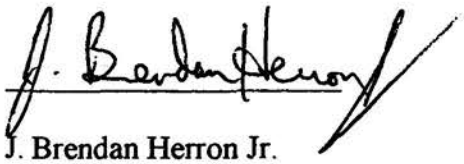
On June 20th, Appellant received notice from Holland and Knight (relationship to Owner not known) indicating Permits had been issued.

Conclusion

For the foregoing reasons, Appellant respectfully request that the Bureau of Appeal and Review reverse the decision of the DCRA and grant the relief requested above.

Dated: July 3, 2002

Respectively Submitted,



J. Brendan Herron Jr.
2901 Albemarle Street
Washington, DC 20008
(202) 248-9837

Certificate of Service

I hereby certify that a copy of the foregoing Appeal was faxes to the Board of Appeals and Review on July 3, 2002 and a copy with attachments was sent Federal Express on July 3, 2002 for delivery on July 5, 2002. A copy was mailed, postage prepaid on July 3, 2002 to the Owner at Ste 550, 2 Wisconsin Circle, Chevy Chase, Md 20815 and to



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

July 3, 2002

Ms. Theresa Lewis
Deputy Director
DC Department of Consumer and Regulatory Affairs
941 North Capitol St., NE, Room 2200
Washington, DC 20002

Dear Ms. Lewis:

RE: Appeal of Issuance of Permits at 2900 and 2902 Albemarle Street

Attached is an appeal filed with the Board of Appeals and Review of the permits issued for 2900 and 2902 Albemarle Street. As you are aware, I do not believe that the permits should have been issued for the properties and thus intent to exercise my appeal rights. By this letter, I also request that DCRA reconsider and/or follow their own appeal process regarding the issuance of these permits and/or grant a stop work order until such time as the appeal can be decided. I remain concerned about the negative health and safety impact on the small children living in the homes surrounding the property resulting from the demolition and from any construction activity.

I would also request that you provide a response to the Final Ruling on June 12, 2002 by the Secretary of the District of Columbia regarding my freedom of information act request.

I appreciate your willingness to discuss our matters of disagreement and look forward to your prompt attention to this matter. If you have any questions, I may be contacted at 202 248-9837.

Sincerely,

J. Brendan Herron Jr.



DISTRICT OF COLUMBIA BOARD OF APPEALS AND REVIEW

APPEAL OF J. BRENDAN HERRON, JR. **RE: PERMITS AT 2900 AND 2902 ALBEMARLE STREET, NW**

DOCKET NO. 025863-CI

RECEIVED
JUL 18 2002
BOARD OF APPEALS AND REVIEW

PROPERTY OWNERS' MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO OPPOSE THE APPEAL

On behalf of the Zuckerman Brothers, Inc. (hereinafter "Zuckerman"), the owners of the property at 2900 and 2902 Albemarle Street, NW, Washington DC 20008 (hereinafter "Subject Properties"), this motion respectfully requests that the Board of Appeals and Review (the "Board" or "BAR") deny the appeal of J. Brendan Herron, Jr. (hereinafter "Herron"). Pursuant to D.C. MUN. REGS. tit. 1 § 503.4 (2002), a notice of cross appeal was submitted by the undersigned on June 16, 2002, in support of the permits dated June 13, 2002. The permits were issued by the Department of Consumer and Regulatory Affairs ("DCRA") and allow the demolition of an existing structure at 2900 Albemarle Street, NW, and the construction of two single family houses on the Subject Properties. The relevant permits are B446310 (Raze Permit), B446316 (2900 Albemarle Building Permit) and B446312 (2902 Albemarle Building Permit) (hereinafter the "Subject Permits") (see Exhibit A).

Each of Herron's allegations are addressed in turn below. Since Herron's Appeal has stated no error with respect to the DCRA's issuance of the Subject Permits, we respectfully request that this Appeal be dismissed with prejudice. In the alternative, for the reasons below, Herron's Appeal of the Subject Permits should be denied. Herron's Appeal provides no basis for finding error by DCRA in issuing the Subject Permits.

1. Herron first claims that DCRA erred by allowing Zuckerman to file an incomplete building permit application and then modify such application while the Zoning Commission was considering a more restrictive overlay for the area (ZC Case 02-19: Text Amendment – Forest Hills Tree and Slope Overlay District ("Overlay")).

Mr. Herron misreads the Zoning Regulations. The permit applications were filed on April 4, 2002 (see Exhibit B) (the "Subject Permit Applications"). The Overlay petition was filed on April 5, 2002, and set for hearing by the Zoning Commission on April 19, 2002 (see Exhibit C, relevant portions of the Transcript of the April 19, 2002 Zoning Commission Public Meeting (Tr. 119-120)). Thus, the applications were pending with DCRA before the Overlay was filed and 15 days before the Overlay was set for hearing. The vesting provisions under D.C. MUN. REGS. tit. 11 § 3202.5 (2002) only applies "[i]f an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction." The regulations are clear that they apply only to applications filed after a case is pending, i.e., set for hearing. § 3202.5(b) makes this point even more clear:

> If the application is filed after the date on which the Zoning Commission has made a decision to hold a hearing on the amendment, the application may be processed, and any work authorized by the permit may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding, or in accordance with the most restrictive zone district classification being considered for the site.

(Emphasis supplied). D.C. MUN. REGS. tit. 11 § 3202.5 (b) (2002).

Since the Subject Permit Applications were filed before the Overlay was set for hearing, the vesting provisions detailed in § 3202.5(b), above, are not applicable. Mr. Herron was informed by Theresa Lewis, Deputy Director/Chief of Staff, DCRA, that the Overlay and related vesting provisions were not applicable to the Subject Permit Applications. (See Herron's

Exhibit C). Mr. Herron has chosen to revisit this issue on appeal. DCRA made no error and is correctly reading the Zoning Regulations.

We also question whether the Board has any jurisdiction over zoning issues under D.C. CODE ANN. §§ 5-413 and 5-432 (2002). D.C. CODE ANN. § 5-424(f) (2002) provides authority to the Board of Zoning Adjustment (BZA) (and not the BAR) over appeals based upon any zoning regulation adopted under D.C. CODE ANN. §§ 5-413 - 5-432. Further, the BAR's jurisdiction is detailed in D.C. CODE ANN. §2-1803.1 (2002):

> Except as provided in §2-1831.06, the District of Columbia Board of Appeals and Review shall entertain and determine appeals timely filed by persons aggrieved by orders issued by hearing examiners pursuant to this chapter or by the Mayor, except that appeals involving infractions of Chapter 6 (*Involving Zoning matters*) or the District of Columbia Zoning Regulations shall be entertained and determined by the District of Columbia Board of Zoning Adjustment; appeals involving infractions of Chapter 1 of Title 25 (*Alcoholic beverages*), or of any regulation issued under the authority of that chapter shall be entertained and determined by the District of Columbia Alcoholic Beverage Control Board; appeals involving infractions of laws governing occupations and professions or of regulations issued under the authority of those laws shall be entertained and determined by the appropriate occupational or professional board or commission; and appeals involving infractions of Chapter 35 of Title 42 (*Rental housing*), or of any regulation issued under the authority of that chapter shall be entertained and determined by the District of Columbia Rental Housing Commission.

(Emphasis supplied.)

Further, Title 12 of the DCMR, the District of Columbia Construction Codes 1999 Supplement (the "Building Code"), provides in § 122.2:

> Appeal to Board of Appeals and Review: The owner of a building or structure or any other person may appeal to the D.C. Board of Appeals and Review for a final decision of the code official. The appeal shall specify that the true intent of the Construction Codes or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the Construction Codes do not fully

apply, or an equally good or better form of construction can be used.

(Emphasis supplied).

Thus, the BAR's jurisdiction is limited to the scope of the D.C. Construction Codes, and does not extend to zoning issues under the Zoning Regulations (Title 11 of the DCMR (Zoning)).

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. Despite the jurisdictional issue, the DCRA correctly determined that the Overlay was not applicable to the Subject Permits, so informed Herron, and made no error in issuing the Subject Permits.

2. Herron claims as error that the DCRA allowed Zuckerman to file an application prior to owning the Subject Properties.

The Building Code, Section 107.1.2, specifically allows an agent of the owner or lessee to file a building permit application. An agent did file as indicated in Exhibit B.[1] Thus, there was no error in DCRA's acceptance of the Subject Permit Applications and issuance of the Subject Permits.

3. Herron claims that DCRA erred because Zuckerman incorrectly completed the Environmental Impact Form (EIF) that accompanies a building permit application, and that DCRA did not fully evaluate the project under the D.C. Environmental Policy Act of 1989 (D.C. Public Law 8-36).

The DCRA acted without error. Line 1 of the EIF form clearly provides an exemption for projects that are a "residential structure within the R-1 through R-5-A zoning districts." The EIFs for the Subject Permits are attached as Exhibit D. The Subject Property is zoned R-1-A, and the two single family homes are residential. Further, the regulations implementing the Environmental Policy Act (D.C. MUN. REGS. tit. 20 § 7202.2 (k) (2002)) provide a specific

[1] In addition, Zuckerman owned the Subject Property as of March 29, 2002 (see Deed attached as Exhibit J).

exemption for "Class 11. Residential structure projects, or portions of projects, within the R-1 through R-5-D zoning district, as defined under Chapters 2 and 3 of Title 11, DCMR (Zoning)." The regulations are attached as Exhibit E.

4. Herron claims that the DCRA erred by not allowing the Advisory Neighborhood Commission (ANC) 30 days to comment on the final plans and did not consider the ANC's response in an adequate manner.

First, we question why Herron is raising issues on behalf of the ANC. In any event, the ANC was provided with more than thirty days to comment. The permit applications were filed on April 4th and permits were not issued until June 13th. Mr. Herron had notice that the applications were filed at least by April 25th (see Herron's Exhibit B). In addition, by correspondence dated May 9, 2002, Theresa Lewis (Deputy Director/Chief of Staff, DCRA) advised ANC 3G Commissioner Phil Kogan that "in response to your letters and e-mail of May 3, 2002 ... even though the proposed construction of the two single-family dwellings is a 'matter of right,' the Department will withhold the issuance of the building permits until June 3, 2002 to allow you and your organization to fully review the information submitted." (See Herron's Exhibit C). Mr. Herron was sent a copy on this correspondence. As shown in the materials filed by Herron (Herron's Exhibits C, D, E (Meeting Agenda with Theresa Lewis on May 28th), and F), the DCRA had substantial correspondence and a meeting with Herron and the ANC. Finally, DCRA responded in detail in writing to Herron and the ANC by letter dated June 11th (see Heron's Exhibit F). This letter adequately addressed all issues raised by Herron and the ANC.

5. Herron claims that DCRA erred because the property at 2902 Albemarle does not comply with the Building Code since the width of the lot in one location is less than 75 feet.

First, we note again our objection to raising issues not relevant to the Building Code in this forum. The lot width provisions are provided in D.C. MUN. REGS. tit. 11 § 401.3 (2002).

The evaluation and interpretation of those regulations is a zoning issue, not a Building Code issue, and therefore not properly before this Board.

Further, the approved Site Plan, Sheet 7, the subdivision plat and the approved building plat all indicate that both lots are 75 feet or more in width and therefore in compliance with D.C. MUN. REGS. tit. 11 § 401.3 (see Exhibits F, G and H). Therefore, DCRA did not err in issuing the Subject Permits.

6. Herron claims the DCRA erred by conducting most of the application review in private and withholding information from neighbors in violation of the Freedom of Information Act and the D.C. Code Section 2-513.[2]

We find that this allegation flies squarely in the face of all the correspondence, the May 28th meeting with Theresa Lewis, and the 30 day delay of issuing of the permits clearly referenced in Herron's Exhibits C, D, E and F. The record filed by Herron clearly indicates that DCRA provided Herron and the ANC information about the project and addressed the issues that were raised. Even with subsequent review of plans, Herron has shown no basis for invalidating DCRA's issuance of the Subject Permits. Even if valid, Herron's claims indicate, at best, a harmless, procedural error, which was cured by DCRA and had no impact upon DCRA's issuance of the Subject Permits.

7. Herron claims the DCRA erred by not referring the application to the Commission on Fine Arts as required by D.C. CODE ANN. §6-611.01.

The attached CFA map and square index shows (Exhibit I), that this property is not within CFA jurisdiction. The CFA jurisdiction area is shown within the bold area adjacent to Rock Creek Park on the map. In addition, Square 2043, the site of the Subject Properties, is not indicated on the square index. DCRA thus did not err in issuing this permit.

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[2] Correct code citation is D.C. Code Section 2-531.

CONCLUSION

For the reasons given, the Board should dismiss Herron's Appeal because it has no substance or merit. In the alternative, because Herron's Appeal states no basis for error, we request that the Appeal be denied.

Respectfully submitted,



John T. Epting, Esq.
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037

Date: July 18, 2002

TABLE OF EXHIBITS

Exhibit A Permits B446310 (Raze Permit), B446316 (2900 Albemarle Building Permit) and B446312 (2902 Albemarle Building Permit)

Exhibit B Permit Applications

Exhibit C Relevant Portions of Transcript of the April 19, 2002 Zoning Commission Public Meeting

Exhibit D Environmental Impact Forms for the Subject Permits

Exhibit E Regulations Implementing Environmental Policy Act

Exhibit F Approved Site Plan (Sheet 7 of Plans)

Exhibit G Subdivision Plat

Exhibit H Approved Building Plat

Exhibit I CFA Map and Square Index

Exhibit J Deed dated March 29, 2002

Certificate of Service

I hereby certify that on July 18, 2002, a copy of the foregoing Motion was mailed first class, postage prepaid, to the following:

Phil Kogan, ANC 3F
3634 Veazey Street, N.W.
Washington, D.C. 20008-3135

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

Robert R. Rigsby, Esq.
Corporation Counsel of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Fourth Floor
Washington, DC 20002

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
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Karen Edwards
General Counsel
Department of Consumer and Regulatory Affairs
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Washington, DC 20002

John T. Epting

Document #: 1258093 v.1

1280141v.1



DISTRICT OF COLUMBIA BOARD OF APPEALS AND REVIEW

APPEAL OF J. BRENDAN HERRON, JR.

RE: PERMITS AT 2900 AND 2902 ALBEMARLE STREET, NW

DOCKET NO 025863-CI

APPELLANT'S OPPOSITION TO PROPERTY OWNERS' MOTION TO DISMISS OR IN THE ALTERNATIVE, TO OPPOSE THE APPEAL

Pursuant to D.C. Mun. Regs. Tit. 1 § 514.3, J. Brendan Herron Jr. ("Appellant") hereby respectfully request that the Board of Appeals and Review ("BAR") deny the motion filed by counsel to Zuckerman Brothers, Inc. ("Zuckerman") on July 18, 2002 to dismiss with prejudice or, alternatively deny the Appellant's claim.

Each of Zuckerman's objections is addressed below. Zuckerman's objections are a mischaracterization of, or an incorrect statement regarding the Appellant's case and thus the Appellant respectively request that the Zuckerman's motion be denied.

Zuckerman first claims that the Appellant has stated no error with respect to the DCRA's issuance of the Permits B446310 (Raze permit), B446316, (2900 Albemarle Building Permit) and B446312 (2902 Albemarle Building Permit), (collectively "Subject Permits").

Appellant's appeal, Docket No 025863-CI ("Appeal") lists seven (7) errors that DCRA made in issuing the Subject Permits. These errors are:

1. DCRA allowed Zuckerman to file an incomplete building permit application that did not comply with Sections 107.12, 107.13 and 107.15 of the DC Building Code. (Note: Appeal mistakenly referenced section 107.14 instead of 107.15 of the DC Building Code, reference is corrected here). In addition, upon review of new documents provided by Property Owner, permit application did not also comply with 107.1.1 and 107.16. DCRA made an error in not reject the application as required under Section 108.1 of the DC Building Code.
2. DCRA made an error in allowed Zuckerman to file application prior to owning the Subject Properties.
3. Owner incorrectly completed the Environmental Impact Form (EIF) that must accompany the application for a building permit. DCRA made an error in accepting an incomplete and incorrect EIF and thus did not fully evaluate the project under the DC Environmental Policy Act of 1989.
4. DCRA did not allow the ANC 30 days to comment on the final plans and did not meet the requirements under DC Code 1-1309.10 to give great weight and a written response to the ANC.
5. Property at 2902 Albemarle does not appear to comply with the Building Code, as the width of the lot in one location is less than 75 feet.
6. DCRA conducted most of the application review in private and continues to withhold information from adjacent property owners in violation of the Freedom of Information Act and the DC Code Section 2-513 on Public Policy and open government.

7. DCRA erred in not referring the application to the Commission on Fine Arts as required under Section 6-611.01.

Each error by DCRA is further supported below.

1. **Zuckerman claims that Herron's appeal is in reality a zoning appeal and quotes in part, D.C. Mun. Regs. Tit. 11 § 3202.5, 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.**

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 Sections 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.

DCRA, itself was aware of this non-compliance as noted on a Plan Correction List dated 5/13/02 (See Exhibit A) that indicates

i. The dimensions on the D.C. Survey Plat Plan and submitted plans do not agree. Please co-ordinate. (Exhibit A)

This is a violation of DC Building Code Section 107.16.1 that requires that

> The applicant shall <u>show upon the building plat, completely dimensioned and drawn in ink to the same scale as the plat, the outline of all buildings, additions, or other structures existing and to be constructed</u>. The accuracy of the representation of the location of the structures on the plat shall be self-certified by the owner or authorized agent for the owner of the lot of record or parcel of land, who shall sign a certificate in a form prescribed by the code official, printed on the building plat.

(Emphasis supplied) DC Building Code 107.16.1

According to Exhibit A, this violation was not corrected until 5/17/02

ii. Complete items Nos. 48 thru 52 of the building permit application form. (Exhibit A)

This is a violation of DC Building Code Section 107.1.1 that requires that

> Form of Application: The application for the permit shall be submitted in the form prescribed and provided by the code official, and shall be accompanied by the fee required in Section 112.0. Submittal requirements shall be in accordance with Sections 107.12 through 107.16.
>
> (Emphasis supplied) DC Building Code 107.1.1

According to Exhibit A, this violation was not corrected until 5/14/02. In addition, according to Exhibit B, the permit fees were not paid until 5/13/02 and 6/4/02.

iii. Please submit site plan with utilities shown as per sec 107.13.1 of the DC Construction Code (Exhibit A)

iv. Submit energy conservation calculations complying with energy code as per sec 107.12-4 of 1999 D. C. Const. Code (Exhibit A)

Items iii. and iv from Exhibit A are self-explanatory and obviously the application did not comply with these code sections.

Additionally, as seen from the date of April 30, 2002 of Exhibit F of the Property Owner's Appeal, it would appear that Existing Site Plan (see Exhibit C attached) required under DC Building Code Section 107.15 was not submitted until after April 30, 2002.

This is a violation of Section 107.15 of the DC Building Code that requires

> **Building Code 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.

(Emphasis supplied) DC Building Code 107.15

DCRA made an error in allowing the permit process to continue in direct violation of

DC Building Code Section 108.1 that states

Building Code 108.1 Action on Application: The code official shall examine or cause to be examined all applications for permit and amendments to applications within a reasonable time after filing. The applicant shall have the option of providing for a third-party reviewing agency, at the applicant's expense, to perform a code compliance review of the project and provide the code official with a certified report to the findings of the review, in a format acceptable to the code official. The code official shall accept such reports from approved plans review agencies, provided that the code official determines that such agencies satisfy the qualification and reliability requirements established by the code official and all agency reports are certified by architects or professional engineers with qualifications equivalent to those required in Section 108.0 for design professionals. If the application or the plans do not conform to the requirements of all pertinent laws, the code official shall reject such application in writing, stating reasons for the rejection, citing specific Code sections, and stating the applicant's right of appeal under Section 122.0
(Emphasis supplied) DC Building Code 108.1

As it would appear that the application and the plans did not comply with Sections 107.1, 107.12, 107.13, 107.15 and 107.16 of the DC Building Code, DCRA should have rejected the application and required Zuckerman to submit a new application that complied with the DC Building Code.

It should be noted that, in many cases, the date of the filing and any subsequent adjustments to the filing does not have any significance. However, in this particular case, as pointed out by the Property Owner's attorney, The Forest Hills Tree and Slope Overlay District was set for a hearing by the Zoning Commission on April 19, 2002. This Zoning Commission action triggered DC Mun. Regs. tit. 11 § 3205.5 that states

> 3202.5 If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application, and the completion of work pursuant to the permit, shall be governed as follows:
>
> (a) The application shall be accompanied by any fee which is required, and by the plans and other information required by §3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation, and by any other plans and information which are required to permit complete review of the entire application under any applicable District of Columbia regulations;
>
> (b) If the application is filed after the date on which the Zoning Commission has made a decision to hold a hearing on the amendment, the application may be processed, and any work authorized may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning commission in the proceeding or in accordance with the most restrictive zone district classification being considered for the site.
>
> (Emphasis supplied) DC Mun. Regs. tit. 11 § 3205.5

Thus while Zuckerman's council has argued that the regulations allow for a vesting of applications pending prior to the date of the Zoning Hearing (in this case, April 19, 2002), the regulations require that the application should have been accompanied by a paid fee and shall be "sufficiently complete to permit processing without substantial change or deviation, and by any other plans and information which are required to permit complete review of the entire application under any applicable District of Columbia regulations" (Emphasis supplied) DC Mun. Regs. tit. 11 § 3205.5. As noted above, in our case, the fee was not paid until 5/13/02 and 6/4/02. In addition, as noted above, the application did not comply with Sections 107.1, 107.12, 107.13, 107.15 and 107.16 of the DC Building Code as of April 19, 2002 and thus should not be allowed to proceed under DC Mun. Regs. tit. 11 § 3205.5 (a).

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, which it agrees is the proper forum for an appeal of the Construction Code. However, as noted in DC Building Code Section 107.15, DCRA has responsibility for assuring compliance with the Zoning Code. It should also be noted that according to Exhibit B, DCRA signed off on the zoning compliance on April 26, 2002. This would also appear to be an error because, as shown above, the application as of April 26, 2002 did not comply with DC Mun. Regs. tit. 11 § 3205.5 and because the information required under Building Code Section 107.15 (i.e. Zoning Compliance Review Data) that would seem to be necessary to make a zoning determination was not filed until at least April 30, 2002.

It should also be noted that there are no provisions in the Building Code that allow for any amendments or supplemental filings to an application. The only section of the Building Code that applies to Amendments is Building Code Section 107.5 that states

> 107.5 Amendments to Permit: The holder of a valid active building permit shall be authorized to amend it or to amend the plans, application or other records pertaining to it, by filing at any time before completion of the work for which the original permit was issued, an application for revision of a building permit, accompanied by two (2) sets of the revised plans or documents. Once such amendments are approved and the revision permit is issued, it shall be deemed part of the original permit and shall be kept therewith in the official records of the Department. A revision permit shall become invalid upon expiration of the original building permit it amends. The extension provisions of Section 112.8.1 shall apply to the original building permit and shall only affect the respective revision permits to the extent that the original building permit is extended.
>
> (Emphasis supplied) DC Building Code 108.1

This provision only applies to valid issued building permits and not applications. Zuckerman did not have a valid active building permit and thus would not be allowed Amendments authorized under this clause. Additionally, as DC Mun. Regs. tit. 11 § 3205.5 (a) (noted above) requires that there not be "substantial change or deviation," to an application, any Amendments would not be allowed for the permit to be allowed to vest.

In summary to Zuckerman's appeal issue 1., DCRA has made numerous errors in accepting Zuckerman's incomplete application and plans and in allowing Zuckerman to modify such plans and pay the fees owed on such plans after the date of the Zoning Hearing in direct violation of DC Building Code 108.1 and DC Mun. Regs. tit. 11 § 3205.5.

2. **Zuckerman claims there was no error in DCRA accepting the application when filed as Zuckerman used an agent to file the application and owned the property as of March 29, 2002.**

Herron's original appeal issue was that DCRA made an error by allowing Owner to file application prior to owning the Subject Properties. Zuckerman's filing indicates that Zuckerman owned the property as of March 29, 2002 although the deed was not filed under April 5, 2002 and that Zuckerman used an agent to file the appeal as permitted in Section 107.1.2. While this may be the case for Permits B446316 (2900 Albemarle Building Permit) and B446312 (2902 Albemarle Building Permit), the application for the Raze Permit B446310 was filed on 3/1/02 (Exhibit D), which is prior to Zuckerman owning the property. Thus, DCRA made an error in accepting the application for the Raze Permit.

3. **Zuckerman claims that DCRA did not make an error in accepting the Environmental Impact Form (EIF) filed by Zuckerman with the building permit applications.**

Herron's original appeal indicated that the Zuckerman incorrectly completed the Environmental Impact Form (EIF) that must accompany the application for a building permit. The result of this incorrect EIF was that the DCRA did not fully evaluate the project under the DC Environmental Policy Act of 1989. Zuckerman supplied a copy of the EIF form in the Exhibit D of the appeal. (See Exhibit E attached). This EIF is inaccurate in at least two areas. First, the EIF was filed on 3/1/02 and thus the

certification that Zuckerman Brothers, LLC (abbreviated ZB, LLC on the EIF) was the owner was inaccurate as Zuckerman did not acquire the property until 3/29/02.

Secondly, Zuckerman's appeal states that Line 1 provides an exemption for residential property. This is not true as Line or Question 1 of the EIF (that was filed for 2900 Albemarle Street) asks, "Does the owner of this site own adjacent or abutting property?" The answer checked was NO. However, Zuckerman clearly owns 2902 Albemarle Street, the adjacent property as it is the subject of one of the permits. Thus, this answer is incorrect. In addition, an EIF for 2902 also answers NO to Question 1. As a Yes answer on the EIF requires the submission of a site plan to the EIS Coordinator of DCRA and as a site plan was not produced until April 30, 2002 (See date of Exhibit C) and as DCRA determined that additional Environmental Impact Screening Form was not required without having a Site Plan, DCRA made an error in making this determination as a result of the incorrect statement on the EIF by Zuckerman.

4. **Zuckerman objects to the appeal that DCRA erred by not allowing the Advisroy Neighborhood Commission (ANC) 30 days to comment on the final plans and did not consider the ANC's response in an adequate manner.**

Zuckerman's objection is based upon the fact that the permits were filed on April 4th and not issued until June 13 and thus the ANC had adequate time to comment on the plans. However, this is not true. As noted in Theresa Lewis's email dated May 9, 2002 to Phil Kogan,

"Your request that any new or revised plans be subject "to a complete and full 30 day review" cannot be approved. As you are aware, the plans on file are currently under review. Part of the review process may include working with applicants to correct deficiencies found by revising the plans to comply with the building codes. Under the rules governing Freedom of Information, your right to the application during this process is exempt."

Emphasis added (See Herron's Appeal Exhibit C).

This meant that DCRA was refusing to give the ANC complete access to the application and the plan. This refusal is in violation of DC Mun. Regs. tit. 1 § 1-309.1 (i) (1) that states

Each Commissioner shall have access to District government officials and to all District government official documents pursuant to § 2-531 et seq. that are material to the exercise of it development of recommendations to the District Government.

(Emphasis supplied) DC Mun. Regs. tit. 1 § 1-309.1(i)(1)

DC Mun. Regs. tit. 1 § 2-531 of the DC Code states

The public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this subchapter shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information

(Emphasis supplied) DC Mun. Regs. tit. 1 § 2-531

DCRA erred in not allowing the ANC Commissioner access to the application and submitted plans until June 11, 2002 by which time, DCRA had already made up its mind to issue the permits as noted in Theresa Lewis's letter dated June 11, 2002 (See Herron Appeal Exhibit F).

Additionally, DC Mun. Regs. tit. 1 § 1-309.10 states

3) (A) The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the

recommendations and explicit reference to each of the Commission's issues and concerns.
(B) In all cases the government entity is required to articulate its decision in writing. The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under he circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.
(C) The government entity shall promptly send to the Commission and the respective ward Council member a copy of its written decision.

(Emphasis supplied) DC Mun. Regs. tit. 1 § 1-309.10

DCRA erred in not providing the ANC and Council member Patterson a response that complies with 1-309.1 in particular, sections (B) and (C). Zuckerman's appeal also raised the question as to why Herron is raising issues on behalf of the ANC. The ANC was established to give citizens a voice in the government. As a DC citizen, DCRA's actions deprived Herron of the benefit of that voice.

5. **Zuckerman also appealed Herron's claim that the property at 2902 Albemarle Street does not comply with the building code since the width of the lot is less than 75 feet.**

DC Building Code Section 107.16.1 that requires that

> The applicant shall show upon the building plat, completely dimensioned and drawn in ink to the same scale as the plat, the outline of all buildings, additions, or other structures existing and to be constructed. The accuracy of the representation of the location of the structures on the plat shall be self-certified by the owner or authorized agent for the owner of the lot of record or parcel of land, who shall sign a certificate in a form prescribed by the code official, printed on the building plat.
>
> (Emphasis supplied)

Zuckerman has supplied this plat as Zuckerman Exhibit H. If you look at the back wall of 2902 Albemarle and add up the dimensions as follows, the dimensions appear to be less than the 75 feet as required in DC Mun. Regs. tit. 11 § 401.3

Side Yard	8'
First wall section	22.7'
Second wall section	11.0'
Third wall section	2.7'
Forth wall section	22.2'
Side Yard	8'
	74.6'

Thus, the plat or the lot did not comply with DC Building Code 107.16.1 and should not be allowed.

6. **Zuckerman appealed Herron's claim that DCRA erred by conducting most of the application review in private and by withholding information from neighbors in violation of the Freedom of Information act and D.C. Code Section 2-531.**

Zuckerman's appeal dismisses the importance of the DC Code Section 2-531 as, at worst, a procedural error, which was cured by DCRA and had no impact upon the issuance of the permits. This is not true. DCRA has just recently released (July 23, 2002) some but not all of the documents requested. This first release provided some of the basis for this claim and had the information been made available to Herron prior to DCRA issuing the permits, Herron would have had valuable information in challenging the permit issuance. In addition, DC Mun. Regs. tit. 1 § 2-531 of the DC Code states

> The public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this subchapter shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information

(Emphasis supplied) DC Mun. Regs. tit. 1 § 2-531

This public policy is intended, in part, to provide citizens the ability to protect themselves against government error and mistakes. Thus the failure to release the information is not procedural but deprived Herron of his rights under DC Law.

7. **Zuckerman objected to Herron's claim that the DCRA erred by not referring the application to the Commission on Fine Arts as required by D.C. Code ANN. § 6-611.01.**

In the objection, Zuckerman supplied a CFA Map prepared in 1962 and a square index (See Zuckerman Exhibit I). The square index on the cover clearly states " This list is for information purposes ONLY and should not be considered the limit of the Commission of Fine Arts jurisdiction." Based on this disclaimer alone, the index should be ignored.

The Map presented was last revised in 1962, approximately 40 years ago. In reviewing the map, it is clear that (Exhibit F) that Albemarle Street abuts Soapstone Valley Park and 29th street (the cross street for 2900 Albemarle Street) dead ends into Soapstone Valley Park at Audubon Terrace. In addition, Albemarle Street appears to dead-end into Rock Creek Park. DC code states

> D.C. Code § 6-611.01. Erection or alteration of buildings fronting on certain federal property; applications submitted to Commission of Fine Arts for review [Formerly § 5-410].
> In view of the provisions of the Constitution respecting the establishment of the seat of the national government, the duties it imposed upon Congress in connection therewith, and the solicitude shown and the efforts exerted by President Washington in the planning and development of the capital city, it is declared that such development should proceed along the lines of good order, good taste, and with due regard to the public interests involved, and a reasonable degree of control should be exercised over the architecture of private or

> semipublic buildings adjacent to public buildings and grounds of major importance. To this end, when application is made for permit for the erection or alteration of any building, any portion of which is to front or abut upon the grounds of the Capitol, the grounds of the White House, the portion of Pennsylvania Avenue extending from the Capitol to the White House, Lafayette Park, Rock Creek Park, the Zoological Park, the Rock Creek and Potomac Parkway, Potomac Park, the Mall Park System and public buildings adjacent thereto, or abutting upon any street bordering any of said grounds or parks, the plans therefore, so far as they relate to height and appearance, color, and texture of the materials of exterior construction, shall be submitted by the Mayor of the District of Columbia to the Commission of Fine Arts; and the said Commission shall report promptly to said Mayor its recommendations, including such changes, if any, as in its judgment are necessary to prevent reasonably avoidable impairment of the public values belonging to such public building or park; and said Mayor shall take such action as shall, in his judgment, effect reasonable compliance with such recommendation; provided, that if the said Commission of Fine Arts fails to report its approval or disapproval of such plans within 30 days, its approval thereof shall be assumed and a permit may be issued.
>
> (Emphasis supplied) D.C. Code § 6-611.01

When the map was drawn in 1962, Soapstone Valley Park was not considered part of Rock Creek Park. However, in 1970, Congress passed the National Park Service Act, which incorporated Soapstone Valley Park under the management of Rock Creek Park. The provision states

> In addition, the provisions of sections 1b to 1d of this title, and the various authorities relating to the administration and protection of areas under the administration of the Secretary of the Interior through the National Park Service, including but not limited to the Act of August 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2, 3, and 4), the Act of March 4, 1911 (36 Stat. 1253), as amended (16 U.S.C. 5) relating to rights-of-way, the Act of June 5, 1920 (41 Stat. 917), as amended (16 U.S.C. 6), relating to donation of land and money, sections 1,4, 5, and 6 of the Act of April 9, 1924 (43 Stat. 90), as amended (16 U.S.C. 8 and 8a-8c), relating to roads and trails, the Act of March 4, 1931 (46Stat. 1570; 16 U.S.C. 8d), relating to approach roads to national monuments, the Act of June 3, 1948 (62 Stat. 334), as amended (16 U.S.C. 8e-8f), relating to conveyance of roads to States, the Act of August 31, 1954 (68 Stat. 1037), as amended (16 U.S.C. 452a), relating to acquisitions of in holdings, section 1 of the Act of July 3, 1926 (44 Stat. 900), as amended (16 U.S.C. 12), relating to aid to visitors in emergencies, the Act of March 3, 1905 (33 Stat. 873; 16 U.S.C. 10), relating to arrests, sections 3, 4, 5, and 6 of the Act of May 26, 1930 (46 Stat. 381), as amended (16 U.S.C.

> 17b, 17c, 17d, and 17e), relating to services or other accommodations for the public, emergency supplies and services to concessioners, acceptability of travelers checks, care and removal of indigents, the Act of October 9, 1965 (79 Stat. 696; 16 U.S.C. 20-20g), [1] relating to concessions, the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l-4 et seq.), and the Act of July 15, 1968 (82 Stat. 355), shall to the extent such provisions are not in conflict with any such specific provision, be applicable to all areas within the national park system and any reference in such Act to national parks, monuments, recreation areas, historic monuments, or parkways shall hereinafter not be construed as limiting such Acts to those areas.

(Emphasis supplied) 16 U.S.C. 1, Sec. 1c.Sec. 1c.

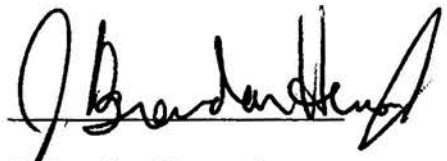
As a result of this and other legislation, Soapstone Valley Park is now part of the Rock Creek Park Area as shown on the map from the National Park Service (Exhibit G). Since Soapstone Valley Park and Rock Creek Park are treated as one area and since both Albemarle Street and 29th Street border Soapstone Valley park, these properties which abut Albemarle Street and 29th Street should have been referred to the Commission of Fine Arts and DCRA made an error in not referring these properties prior to issuing the permits.

Conclusion

For the foregoing reasons, Appellant respectfully request that the Bureau of Appeal and Review reject Property Owner's Motion to Dismiss, or in the Alternative, to Oppose the Appeal.

Dated: August 1, 2002

Respectively Submitted,



J. Brendan Herron Jr.
2901 Albemarle Street
Washington, DC 20008
(202) 248-9837

Certificate of Service

I hereby certify that a copy of the foregoing Appeal was sent Federal Express on August 1, 2002 to the Board of Appeals and Review. A copy was mailed, postage prepaid on August 1, 2002 to the Owner at Ste 550, 2 Wisconsin Circle, Chevy Chase, Md 20815, to Owner's Counsel, John T. Epting, Esq., Shaw Pittman LLP, 2300 N Street, NW, Washington DC 20037 and to David Clark, Director, DCRA at DC Department of Consumer and Regulatory Affairs, 941 North Capitol St., NE, Room 2200, Washington, DC 20002.

J. Brendan Herron Jr.

Table of Exhibits

Exhibit A DCRA Plan Correction List dated 5/13/02

Exhibit B Permit applications showing dates fees paid

Exhibit C Existing Site Plan dated April 30, 2002

Exhibit D Application for the Raze Permit was filed on 3/1/02

Exhibit E EIF form

Exhibit F CFA Map

Exhibit G National Park Service Map of Rock Creek Park

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

October 11, 2002

Mr. David A. Clark
Director
DC Department of Consumer and Regulatory Affairs
941 North Capitol St., NE, Room 2200
Washington, DC 20002

Mr. J. Gregory Love
Appeals Officer
DC Department of Consumer and Regulatory Affairs
941 North Capitol St., NE, Room 2200
Washington, DC 20002

Dear Mr. Clark and Mr. Love:

RE: **Emergency Request for a Stay or Stop Work Order on, or to Vacate Permits Issued at 2900 and 2902 Albemarle Street**

I have previously filed with your Department a formal appeal on July 3, 2002 that included a request for a stop work order for, or to vacate, the building permits issued for 2900 and 2902 Albemarle Street. Mr. Clark recognized receipt of this appeal in a letter dated July 9, 2002 (Attached). To date, I have not heard any response to my request for an appeal from DCRA or a denial of my request for stay or stop work order on, or to vacate the permits. Under Section 122.1.2 Action of Appeals of the DC Construction Code, I should have had a formal response in three business days and if no formal response, the right to a second appeal with the Director. As I have not heard any formal response, by this letter, I am exercising my appeal right directly to the Director.

While I believe my case for the initial appeal and the supplementary filing "Appellant's Opposition to Property Owners' Motion to Dismiss or in the Alternative, to Oppose the Appeal" served on Mr. Clark on August 1, 2002 provide sufficient support to issue a Stay, Stop Work Order or Vacate the Permit, I have provided some additional information below which supports the immediate issuance of a Stop Work Order or Stay on the Permits or to have the Permits vacated..

Raze Permit

It would appear that the Raze Permit has been issued to a legal entity ZB, LLC, which is not and has never been the owner of 2900, or 2902 Albemarle Street. ZB, LLC does not appear to even be a legal or insured entity. In fact, it would appear that the Raze Permit application filed on 3/1/02 is contains 20 incorrect answers including the name of the property owner and signatures (See attached application with yellow highlights of incorrect answers). According to DC land records, Ilene R. Baylinson owned 2900 Albemarle Street as of 3/01/02. ZB, LLC does not own and has never owned the subject property. The property is now owned by Zuckerman Brothers, Inc. (a separate legal entity from ZB, LLC). The

insurance information on the permit application was not completed and no evidence of insurance has been submitted. As I am sure you are aware, if this entity, which may not exist or be insured, would cause damage to the city streets or the neighbors, neither the city nor the neighbors would have any legal recourse against this entity.

In addition, the Raze permit had an inaccurate EIF form. In questions 1 and 2, the applicant indicated that they did not own nor plan to acquire the adjoining property when in fact they intended to create the adjacent lot at 2902 Albemarle. They also failed to submit a site plan to the EIS coordinator as required under the positive answer to Question 3.

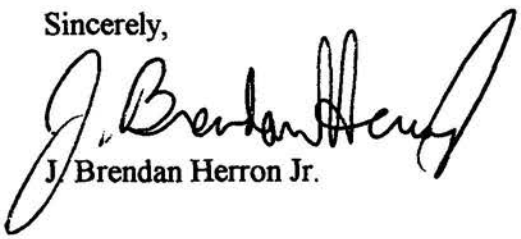
I request an immediate stay or stop work order on or to vacate the Raze permit. I request that DCRA require a new Raze Permit application that contains no incorrect information.

All Permits

As previously noted in my other filings, I believe that the building permits that were issued incorrectly. I have summarized some significant points in the attached Support. I request an immediate stay or stop work order on, or to vacate the Building Permits and that DCRA require new permit applications prior to allowing any work to proceed on the site.

In summary, a Motion to vacate the permits or to issues a Stop Work Order or Stay of the permits is justified because the permits and the accompanying certifications contained material inaccuracies and did not comply with the laws and Regulations of the District of Columbia. An emergency request should be granted because of the potential for an uninsured and possibly non-existent entity to demolish a building that is located in a neighborhood with a number of small children. As the individuals submitting the permit request could not even accurately complete the applications, there is absolutely no assurance that they will comply with the DC Building Code in either demolishing the existing structure or in building new structures. This lack of compliance places the neighbors at great risk and thus emergency action is required. Under Section 122.1.2 Action of Appeals of the DC Construction Code, I request a formal response from the Director in three business days, which would be next Wednesday October 16, 2002. I appreciate your attention to this matter. If you have any questions, I may be contacted at 202 248-9837.

Sincerely,



J. Brendan Herron Jr.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the Director

October 23, 2002

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

Dear Mr. Herron,

DCRA has reviewed all of your correspondence, including your letters dated July 3, 2002 and October 11, 2002, challenging DCRA's issuance of a raze permit and building permits for 2900 and 2902 Albemarle Street, NW, (permit numbers B446310, B44316 and B446312), including your request for a stay, stop work order, or order vacating these permits.

As indicated to you previously in face-to-face meetings, prior e-mails and correspondence, DCRA believes that these permits were correctly issued and stands by its decision issuing the above-referenced permits. Therefore, your request for a stay of the permits, stop work order or order to revoke permits B446310, B44316 and B446312 is hereby formally denied by DCRA.

In response to your complaint that DCRA has failed to respond to your letters, we regret any misunderstanding. However, since your letter to DCRA dated July 3, 2002 informed DCRA that you had already appealed to the DC Board of Appeals and Review, without waiting for DCRA to first respond as provided in 12 DCMR 122.1, a formal response on the merits was not, in our view, required.

Because DCRA is of the opinion that these permits were properly issued, a stop work order or stay will not be issued and the permits will not be "vacated" or revoked. Since your have already appealed to the DC Board of Appeals and Review, it appears that we will need to wait for the outcome of your appeal. In the alternative, you may pursue any other legal actions you may deem appropriate.

Sincerely,

David A. Clark



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

October 28, 2002

Ms Francine Howard James
Executive Officer
Board of Appeals and Review
441 4th Street
Suit 540S
Washington, DC 20008

Dear Ms. James:

RE: **Emergency Stay Request** and Appeal of Permits at 2900 and 2902 Albemarle Street Docket No. 02563-CI

Please find enclosed several motions regarding the above case including a second request for the consideration of emergency stay or stop work order on the subject permits. Per the Chairperson's request, I have requested the stay from DCRA Director and not received a response within the required timeframe. Therefore, I am requesting an emergency stay.

Also enclosed is:

- Appellants Opposition to Property Owner's supplemental motion
- Motion for issuance of a Subpoena

These motions have been served by messenger on all parties and thus I request the prompt review of the Stay request by the Chairman. Thank you for your assistance. If you have any questions, I may be reached at the above contact.

Sincerely

J. Brendan Herron Jr.

DISTRICT OF COLUMBIA BOARD OF APPEALS AND REVIEW

APPEAL OF J. BRENDAN HERRON, JR.

RE: PERMITS AT 2900 AND 2902 ALBEMARLE STREET, NW

DOCKET NO 025863-CI

APPELLANT'S OPPOSITION TO PROPERTY OWNERS' SUPPLEMENTAL MOTION TO DISMISS APPEAL WITHOUT A HEARING

Pursuant to D.C. Mun. Regs. Tit. 1 § 514.3, J. Brendan Herron Jr. ("Appellant") hereby respectfully request that the Board of Appeals and Review ("BAR") deny the motion filed by counsel to Zuckerman Brothers, Inc. ("Zuckerman") on October 18, 2002 to dismiss appeal without a hearing.

Each of Zuckerman's objections is addressed below. Zuckerman's objections are a mischaracterization of, or an incorrect statement regarding the Appellant's case and thus the Appellant respectively request that the Zuckerman's motion be denied.

Zuckerman first claims that the DCRA gave full and due consideration to the concerns of Herron prior to the issuance of the permits and thus the BAR should dismiss the appeal without an evidentiary hearing based solely on the record of appeal.

As noted in Appellant's appeal, Docket No 025863-CI ("Appeal") DCRA conducted most of the application review in private and did not provide Herron with access to the

complete record as requested in Herron's FOIA request and as ordered by the Office of the Secretary of the District of Columbia on June 12, 2002 (Exhibit G of initial Appeal). It was not until after the permits B446310 ("Raze permit"), B446316, ("2900 Albemarle Building Permit") and B446312 ("2902 Albemarle Building Permit"), (defined collectively as "Permits") were issued on June 13, 2002 that DCRA released on July 23, 2002 some but not all of the documents requested. This first release contains evidence of additional errors made by DCRA (as noted in the other filings made on October 29, 2002 including all the information about the Raze Permit). Had the information been made available to Herron prior to DCRA issuing the Permits, Herron would have had valuable information in challenging the permit issuance. In addition, DC Mun. Regs. tit. 1 § 2-531 of the DC Code states

> The public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this subchapter shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information
>
> (Emphasis supplied) DC Mun. Regs. tit. 1 § 2-531

This public policy is intended, in part, to provide citizens the ability to protect themselves against government error and mistakes. Thus the failure to release the information deprived Herron of his rights under DC Law. In addition, as noted in Exhibit A attached, and in the request for Subpoena filed on October 29, 2002, DCRA still has not provided Herron with all of the information requested under his FOIA request. Because Herron did not and does not have complete access to the records that the DCRA "relied upon" and has yet to have a full hearing of his issues (since he didn't have access to the

documents when presenting his objections to DCRA prior to the permit issuance), Zuckerman's motion should be denied.

Zuckerman also claims that Herron has stated no error with respect to DCRA's issuance of the Permits and that Herron's appeal raises Zoning issues beyond the authority of the BAR Zuckerman goes on to quote Section 510.14 which limits the ability of the BAR to reverse the Director only if "not in accordance with law" or "without observance of procedure required by law"

This objection is incorrect. Section 122.2 of the DC Construction Code makes it clear in its title "Appeal to Board of Appeals"

> The owner of a building or structure or any other person may appeal to the D.C. Board of Appeals and Review for a final decision of the code official. The appeal shall specify that the true intent of the Construction Codes or the rules legally adopted there under have been incorrectly interpreted, the provisions of the Construction Code do not fully apply, or an equally good or better form of construction can be used.
>
> (Emphasis supplied) DC Building Code 122.2

:

Herron has listed a number of errors or situations where the DC Construction Code has been incorrectly interpreted, not in accordance with law or without observance of procedure required by law. With the exception of errors or situations that Herron became aware of after the receipt of the FOIA information, these same issues were raised and never addressed by DCRA in their record. These include:

- The fact that the building permit was incomplete as filed on April 19, 2002 and did not comply with Sections 107.12, 107.13 and 107.15 of the DC Building Code. (Note: Appeal mistakenly referenced section 107.14 instead of 107.15 of

the DC Building Code, reference is corrected here). In addition, upon review of new documents provided by Property Owner, permit application did not also comply with 107.1.1 and 107.16.

- That an incomplete application should be rejected under Section 108.1 of the DC Building Code.
- That DCRA allowed Zuckerman to modify the plans and to pay the building permit fees after April 19, 2002 (the date of the set down of the Forest Hills Tree and Slope overlay) in violation of Zoning Code Section 3202.5 and thus building code section 107.15
- Owner incorrectly completed the Environmental Impact Form (EIF) that must accompany the application for a building permit. DCRA made an error in accepting an incomplete and incorrect EIF and thus did not fully evaluate the project under the DC Environmental Policy Act of 1989.
- DCRA did not allow the ANC 30 days to comment on the final plans and did not meet the requirements under DC Code 1-1309.10 to give great weight and a written response to the ANC.
- Property at 2902 Albemarle does not appear to comply with the Building Code, as the width of the lot in one location is less than 75 feet.
- DCRA erred in not referring the application to the Commission on Fine Arts as required under Section 6-611.01.
- DCRA accepted a Raze permit application that contained twenty incorrect statements and then issued the Raze permit to an entity that does not exist, does not own the property and is not insured.

With the exception of the last item, which Herron only recently became aware of, all of these items have been explained in detail in the Appellant's Opposition to Property Owner's Motion to Dismiss or in the Alternative, to Oppose the Appeal, filed on August 1, 2002.

Most of these issues were also raised to and never addressed by DCRA. For these reasons, Zuckerman's motion should be denied.

There are three other reasons Herron should be granted a hearing.

1. It should be noted that DC Mun. Regs§ 6-641.09. Building permits; certificates of occupancy states

   It shall be unlawful to erect, construct, reconstruct, convert, or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit from the Inspector of Buildings, and said Inspector shall not issue any permit for the erection, construction, reconstruction, conversion, or alteration of any building or structure, or any part thereof, unless the plans of and for the proposed erection, construction, reconstruction, conversion, or alteration fully conform to the provisions of this subchapter and of the regulations adopted under said sections. In the event that said regulations provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections. The owner or person in charge of or maintaining any such building or land or any other person who erects, constructs, reconstructs, alters, converts, maintains, or uses any building or structure or part thereof or land in violation of said sections or of any regulation adopted under said sections, shall upon conviction for such violation on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants in the name of said District and which Court is hereby authorized to hear and determine such cases be punished by a fine of not more than $100 per day for each and every day such violation shall continue. The Corporation Counsel of the District of Columbia or any neighboring property owner or occupant who would be specially damaged by any such violation may, in addition to all other remedies provided by law, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the

occupancy of such building, structure, or land. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of these sections, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(Emphasis supplied) DC Mun. Regs. tit. 1 § 2-1802.03

and Chapter 18 of title 2 in § 2-1802.03 states

(a) The administrative law judge or attorney examiner shall conduct a hearing on a notice of infraction in accordance with Chapter 5 of this title, except as otherwise provided by this chapter. The Mayor shall bear the burden of establishing an infraction by a preponderance of the evidence.

(Emphasis supplied) DC Mun. Regs. tit. 1 § 2-1802.03

2. It should be noted that if Herron had the type of hearing that Zuckerman claims that he had, the decision of DCRA would have been similar in nature to a declaratory Order. Under the Administrative Procedure Act,

On petition of any interested person, the Mayor or an agency, within their discretion, may issue a declaratory order with respect to the applicability of any rule, regulation, Council act or resolution, or statute enforceable by them or by it, to terminate a controversy (other than a contested case) or to remove uncertainty. A declaratory order, as provided in this section, shall be binding between the Mayor or the agency, as the case may be, and the petitioner on the state of facts alleged and established, unless such order is altered or set aside by a court. A declaratory order is subject to review in the manner provided in this subchapter for the review of orders and decisions in contested cases, except that the refusal of the Mayor or of an agency to issue a declaratory order shall not be subject to review. The Mayor and each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition.

(Emphasis supplied) DC Mun. Regs§ 2-2508

and under § 2-2509 Contested Cases

a) In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the Mayor or the agency determines that the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is

necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. The notice shall also state that if a party or witness is deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language, the party or witness may apply to the agency for the appointment of a qualified interpreter. Unless otherwise required by law, other than this subchapter, any contested case may be disposed of by stipulation, agreed settlement, consent order, or default.

(Emphasis supplied) DC Mun. Regs§ 2-2509 (a)

3. Finally, it should be noted that the BAR was established by Organization Order No. 112, dated August 15, 1955 with the intent that The Board of Appeals and Review shall, in accordance with such Organization Order, and its rules of practice and procedure, provide the aggrieved person with an opportunity for a hearing and shall sustain, modify, or vacate such adverse action by the Mayor as is appropriate in the case. (Emphasis supplied)

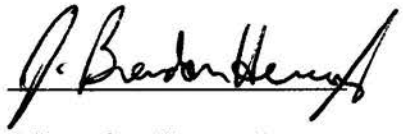
For all three of these reasons, Zuckerman's motion should be denied.

Conclusion

For the foregoing reasons, Appellant respectfully request that the Bureau of Appeal and Review reject Property Owner's Motion to Dismiss Appeal Without a Hearing

Dated: October 29, 2002

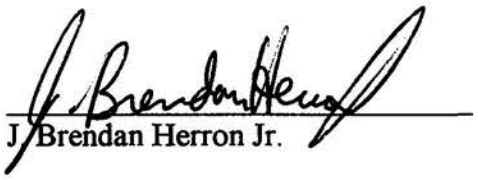
Respectively Submitted,



J. Brendan Herron Jr.
2901 Albemarle Street
Washington, DC 20008
(202) 248-9837

Certificate of Service

I hereby certify that a copy of the foregoing Appeal was sent via messenger on October 29, 2002 to the Board of Appeals and Review. A copy was sent via messenger on October 29, 2002 to the Owner at Ste 550, 2 Wisconsin Circle, Chevy Chase, Md 20815, to Owner's Counsel, John T. Epting, Esq., Shaw Pittman LLP, 2300 N Street, NW, Washington DC 20037 and to David Clark, Director, DCRA at DC Department of Consumer and Regulatory Affairs, 941 North Capitol St., NE, Room 2200, Washington, DC 20002.



J. Brendan Herron Jr.

Table of Exhibits

Exhibit A DCRA FOIA Response July 23, 2002