DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Henry P. Sailer,	)	
	)	
Appellant,	)	
	)	
vs.	)	**Appeal No. 17054**
	)	
Department of Consumer and Regulatory Affairs,	)	
	)	
	)	
Appellee.	)	

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REPLY IN SUPPORT OF
MOTION FOR LEAVE TO INTERVENE AND DISMISS

As required by § 3112.5 of the Zoning Regulations, the Appellants submitted BZA Form 125 and a statement of issues to institute their appeal. Both the Form and the statement are unequivocal – the Appellants are appealing the "issuance of Building Permit No. B 448548 …" (the "Main Building Permit"). Each of the issues the Appellants list in their statement relates to the plans filed in accordance with the Main Building Permit. Even so, Appellants now are attempting to circumvent the timeliness rules established by the Zoning Commission and the D.C. Court of Appeals by claiming that they were not on notice of the Main Building Permit or the proposed construction until DCRA issued a revised permit on June 13, 2003 to show a pervious driveway. The Appellants make their argument despite the following: (1) DCRA issued the Main Building Permit on January 29, 2002; (2) Mr. Logan demolished the existing structure and removed the trees at issue before Appellants' very eyes on February 8, 2003; and (3) Mr. Logan began constructing

BZA
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Exhibit No. 27

Board of Zoning Adjustment
District of Columbia
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the new home on March 24, 2003. Appellants clearly "had notice or knowledge" or "reasonably should have had notice or knowledge" of the Main Building Permit.

Appellants have misconstrued the Court's holding in *Sisson v. D.C. Bd. of Zoning Adjustment,* 805 A.2d 964 (D.C. 2002). That case is not about the number of permits that were issued. Indeed, almost all projects have a main building permit, and then a series of subsequent ancillary permits. Rather, *Sisson* is about the ability of an appellant to determine the full scope of the work to be performed. In *Sisson*, the property owner first applied for a permit for a two-story addition to the rear of his home. His application for that permit did not include some of the work he intended to perform, such as work on the garage, additional work on the rear addition, and work on the front porch. *Id.* at 964. The second permit was for an addition to the garage. However, instead of adding to the garage, Mr. Sisson demolished his existing garage and constructed a new garage that was larger than was approved under the permit. Mr. Sisson then obtained a third permit for the construction of a new garage, but that permit was not issued until after the garage was substantially completed. As constructed, the garage still exceeded the dimensions approved under the third permit. The fourth permit was to repair an existing porch roof. However, at the time the permit was issued, the porch did not even have a roof. The fifth and final permit was issued to construct a new porch roof, but it was not issued until after the roof was completed. *Id.* at 967. Thus, in *Sisson*, the property owner deliberately submitted a series of applications so that he would appear to be constructing less than what he actually constructed. At no time did Mr. Sisson submit a set of comprehensive plans demonstrating the full extent of the work to be performed.

This appeal presents the opposite situation. All of the work that Mr. Logan intended to perform was depicted in the plans submitted with his application for the Main Building Permit. The approved plans show the two-story garage with domestic quarters, the side steps, the swimming pool with catch-basin, and the driveway. The additional permits for which Mr. Logan applied, and which he ultimately received, were ancillary to the Permit. The entire scope of the work to be performed was reflected in the approved plans submitted with the application. The ancillary permits comprised the following:

1. Building Permit B448687 to raze the existing structure, issued on February 5, 2003.
2. Building Permit B449057 to install sheeting and shoring, issued on March 4, 2003.
3. Building Permit B451576 for construction of the in-ground pool, issued on May 20, 2003.
4. Building Permit B452193 revising permit B449057 to show a pervious drive to the accessory garage, issued on June 13, 2003.

Each of these permits was issued in conjunction with the Main Building Permit and reflected work that clearly would have been performed in accordance with the approved plans.

This case is more similar to *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41 (D.C. 2003). In that case the applicant, Georgetown University, applied for permits to renovate a building to create a child development center. DCRA issued permits in two stages. First, DCRA issued permits for construction of a fence, shed, and play equipment. Five months later, DCRA issued the permits for the renovation of the building. At that point, the Georgetown Residents Alliance appealed all of the permits.

The Court upheld the BZA's decision that the appeal of the first series of permits was not timely because it was clear that the ANC, and the larger community, were aware that the permits had been issued and were aware of the intended scope of the project. *Id.* at 50.

The Appellants in this appeal were aware of the work being performed on the Property, and their arguments merely obfuscate the fact that they filed an untimely appeal. Each of the Appellants lives within viewing distance of the Property. Indeed, neighborhood residents who reside up to one-half of a mile from the Property clearly knew about the demolition and tree removal on February 8, 2003.[1] If the Appellants did not see the actual demolition, surely they noticed that the house next door (or across the street) had become a giant hole. Even if they somehow failed to notice the absence of the house, surely they saw the large construction equipment that remained on the Property until March 10, 2003.[2] Indeed, the assertions in Appellants' opposition are incredible and implausible. For example, they state that "[f]rom the photographs provided, it *appears* that construction was taking place during the period between February 8 and March 10, 2003" (emphasis added). Surely the surrounding property owners would have noticed this type of construction.

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[1] Appellants argue that the actions of Judith Lanius should not be attributed to them. Although Ms. Lanius is not one of the Appellants, her knowledge and actions constitute evidence that the Appellants, who live even closer to the Property than Ms. Lanius, knew or should have known that the Permit had been issued by February 8, 2003.

[2] Despite Appellant's claims, Mr. Logan did not proceed with construction during this time in violation of the Stop Work Order. The equipment remained on the Property because the demolition contractor was not available to remove it.

Appellants clearly knew or should have known about the Main Building Permit. All of the issues raised in this appeal relate to that permit and the approved plans. Regardless of the date chosen – January 29th (Main Building Permit issued); February 8th (demolition and tree removal), or March 24th (construction commenced) – the appeal was untimely. Accordingly, this case should be dismissed.

Sincerely,

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Dated: October 17, 2003

CERTIFICATE OF SERVICE

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