DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF HENRY SAILER, ET AL. BZA APPEAL NO. 17054

APPELLEE'S POST-HEARING SUBMISSION

Comes now Appellee, through counsel, and responds to this Board's request for a post hearing submission by providing the attached statement of the Administrator of the Building and Land Regulation Administration and Acting Zoning Administrator regarding the meaning of "pervious" and the Administrator's response to the Declaration submitted on behalf of Appellants by Mr. Edgar Nunley.

Rec'd by FAX on 2/10/04 RSN

Respectfully submitted,

Laura Gisolfi Gilbert, Esq.
Attorney for Appellee
Office of the General Counsel, Suite 9400
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, NE
Washington, D.C. 20002

Certificate of Service

I hereby certify that a copy of the foregoing Appellee's Post-Hearing Submission with attachment was sent to Mr. Benjamin Chew, Attorney for Appellants at Patton Boggs, 2550 M Street, N.W., Washington, D.C. 20037 and to Mr. John Epting, Attorney for Owner/Intervenor at Shaw Pittman, 2300 N Street, N.W., Washington, D.C. 20037, by FAX on February 10, 2004 and by mail on February 11, 2004.

Laura Gisolfi Gilbert

BZA
Case No. 17054
Exhibit No. 51

Board of Zoning Adjustment
District of Columbia
CASE NO. 17054
EXHIBIT NO. 51

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF HENRY SAILER, ET AL. **BZA APPEAL NO. 17054**

STATEMENT OF DENZIL NOBLE
ADMINISTRATOR OF BUILDING AND LAND REGULATION ADMINISTRATION
AND ACTING ZONING ADMINISTRATOR

I, Denzil Noble, being duly sworn according to law, depose and say:

1) That I am the Administrator of the Building and Land Regulation Administration at the Department of Consumer and Regulatory Affairs, and the Acting Zoning Administrator for the District of Columbia.

2) That I have reviewed the issues pertaining to the instant appeal and building permits numbers B448548, B451476 and B452193 issued for the property at 3101 Chain Bridge Road, N.W., Washington, D.C.

3) That it is my understanding that the Board would like DCRA to define or further explain to the Board what a "pervious" surface is, in relation to the Zoning Regulations.

4) The Zoning Regulations do not include a definition of "pervious" or "pervious surface." Rather, the Zoning Regulations include a definition of "impervious surface" as follows:

> **"Impervious surface** – an area that impedes the percolation of water into the subsoil and impedes plan growth. Impervious surfaces include the footprints of principal and accessory buildings, footprints of patios, driveways, other paved areas, tennis courts, and swimming pools, and any path or walkway that is covered by impervious material."

5) Therefore, a "pervious surface" must be defined as the opposite, that is: an area that allows percolation of water into the subsoil, or an area that does not impede plant growth.

6) Although the definition of "impervious surface" lists "driveways" as an example of an impervious surface, it is clear from the context, that the definition is referring to a paved driveway that is in fact impervious.

7) The provisions of the Zoning Regulations pertaining to required parking spaces, §2117, do require that *the required parking space* for a single family dwelling be accessible from improved streets or alleys via an impervious driveway.

8) However, there is nothing in the Zoning Regulations that precludes a property owner from having a pervious driveway or drive court to a second or third parking space that is not required by regulation. That is what was approved in the instant case.

9) A pervious driveway could, in my opinion, be covered by gravel, wood chips, vegetation, or some other pervious or permeable surface, which will allow percolation of the water into the subsoil, while at the same time addressing any potential soil erosion concerns.

10) In response to the Declaration of Mr. Edgar Nunley, first, it is irrelevant, whether or not Mr. Nunley was aware of, or approved, a pervious driveway during his tenure as Chief of the Zoning Division.

11) Mr. Nunley states that he knew Mr. Leon Paul, while employed at DCRA. In fact, Mr. Nunley had already retired at the time that Mr. Paul was hired in April 2001. Mr. Paul has a degree in mechanical engineering and was initially placed at

the front counter as "intake" engineer. However, Mr. Paul began to cross-train in zoning beginning in June 2001 under Mr. Toye Bello and Ms. Xoan Mac. He independently began doing zoning reviews for single family dwellings in September 2001 and has been performing progressively more complex zoning reviews since that time.

Denzil Noble
Acting Zoning Administrator

SUBSCRIBED AND SWORN TO before me this 10th day of Feb 2004.

Notary Public, D.C.

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF HENRY SAILER, ET AL. BZA APPEAL NO. 17054

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BOARD OF ZONING ADJUSTMENT

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Acting Zoning Administrator

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Notary Public, D.C.

District of Columbia
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Office of the General Counsel
941 North Capitol Street, N.E., Suite 9400
Washington, D. C. 20002
FAX Number: 202/442-9447

FACSIMILE COVER SHEET

DATE: 2/10/04

TO: Rick Nero

FAX #: 727-6072

FROM: Laurie Gisolfi Gilbert

PHONE: (202) 442-8199

RE: Saibe BZA Appeal #17054

YOU SHOULD RECEIVE 5 PAGES, INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES OR IF THE FACSIMILE IS ILLEGIBLE, PLEASE CALL (202) 442-8199.