DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF HENRY SAILER, et al. BZA APPEAL NO. 17054

MOTION FOR RECONSIDERATION AND CLARIFICATION
OF DECISION AND ORDER ISSUED 8/23/04
WITH RESPECT TO REVISED PERMIT B452193

Appellee, through Counsel and pursuant to 11 DCMR §3126, respectfully requests that this Board revise and clarify the portion of the Decision and Order issued by the Board on August 23, 2004 granting Appellants' appeal with respect to the Revised Permit B452193, issued June 13, 2003. In support of this motion, Appellee states the following:

1) The Department of Consumer and Regulatory Affairs (DCRA) and the Zoning Administrator would like clarification of the Board's decision in order to provide guidance to the Zoning Administrator and the Department in implementing the Board's decision and related provisions of the Zoning Regulations.

2) The Board's decision, with respect to surface coverage and the definitions of "impervious" and "pervious" surfaces, may have broad ramifications for permissible lot coverage in the District;

3) The Board's decision blurs the distinction between an "impervious" surface (such as concrete or asphalt) and a "pervious" surface (such as gravel or dirt);

3) If the Board wishes to interpret the Zoning Regulations so as to limit the surface coverage for all driveways in the Chain Bridge Road/University Terrace (CBUT) Overlay District, it is recommended that the decision be clearly limited to this circumstance.

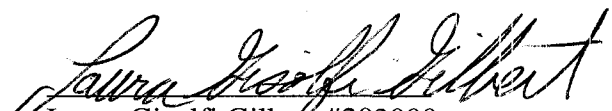
BZA
Case No. 17054
Exhibit No. 57

Board of Zoning Adjustment
District of Columbia
CASE NO. 17054
EXHIBIT NO. 57

4) The Board's reasoning, with respect to accessory garages, should also be revised and clarified.

WHEREFORE, counsel for Appellee, Department of Consumer and Regulatory Affairs respectfully requests that the Decision and Order be revised and clarified, as addressed more fully in the attached Memorandum of Points and Authorities.

Respectfully submitted,



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Certificate of Service

I hereby certify that a copy of the foregoing Motion and the attached Memorandum of Points and Authorities has been mailed, this 2nd day of September 2004, to the following parties and agencies who participated in the public hearing in the above-captioned matter

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Section 3126 of Title 11 of the District of Columbia Municipal Regulations (DCMR), the District of Columbia Zoning Regulations, provides that any party to a proceeding before the Board of Zoning Adjustment (BZA) may request reconsideration of a decision by the Board, provided that the motion is filed within ten days from the date of issuance of a final written order by the Board.

On August 23, 2004, this Board issued a Decision and Order in the above-captioned matter which, inter alia, granted Appellants' appeal of the issuance of Revised Permit B452193, issued June 13, 2004. The stated purpose for the Revised Permit was to revise the original building permit "to show pervious drive to the accessory garage structure." [Decision and Order at p.4, last line] In support of the application, the owner submitted a revised building plat, which depicted the surface of a portion of the driveway and lower drive court as being "pervious."

In deciding to rule in favor of the Appellants, the Board found that "even if this were a *lawful pervious driveway*, it should nevertheless have been treated as an impervious surface for the purpose of calculating impervious surfaces under the CBUT Overlay." [Decision and Order, p.7, paragraph 5. Emphasis added.] Because the Board

found that the driveway should have been treated as an impervious surface, the Board found further that the Owner exceeded the 50% limitation on impervious surface coverage in the CBUT Overlay District and that, as a result, the permit application should have been denied.

The Board presented three separate provisions of the regulations as the basis for its conclusions: 1) §1565, which expresses the intent of the CBUT to preserve the natural topography and encourage compatibility of new construction with the existing neighborhood; 2) §199.1, "impervious surface," which includes "driveways" within the definition; and 3) §2500.5, which allows an accessory garage to have a second story for "domestic employee" living quarters.

I. Purposes of CBUT Overlay District

In reaching its conclusions, the Board emphasized the purposes of the CBUT Overlay District, as set forth in §1565, to "preserve the natural topography . . ." and to "limit permitted ground coverage of new and expanded buildings and other construction, so as to encourage . . . compatibility between the siting of new buildings or construction and the existing neighborhood; . . .." DCRA is in accord with the Board's reliance on this provision as a basis for its conclusions.

II. Impervious Surface

In its discussion, the Board commented on the fact that there is no definition of "pervious" in the Zoning Regulations but that "the Board interprets it to mean the opposite of impervious."

The Board reviewed DCRA and the Owner's argument that the driveway provided access to an additional parking space on the property that was not "required" by

§2101.1 of the Zoning Regulations (which requires only one parking space for a single family home) and therefore did not have to be paved with an impervious material; however, the Board rejected this line of reasoning.

In its decision, the Board recited the definition of "impervious surface" (11 DCMR §199.1) as follows:

> An area that impedes the percolation of water into the subsoil and impedes plant growth. Impervious surfaces include the footprints of principal and accessory buildings, footprints of patios, **driveways,** others paved areas, tennis courts, and swimming pools, and any path or walkway that is covered by impervious material. [Emphasis added.]

The Board then found that:

> "even if this were a *lawful pervious driveway*, it should nevertheless have been treated as an impervious surface for the purpose of calculating impervious surfaces under the CBUT Overlay."

It is urged that the Board delete the foregoing statement and reconsider and clarify the language in its decision. DCRA is concerned that the statement renders the word "pervious" meaningless, and may result in confusion in implementing other provisions of the Zoning Regulations. It appears to contradict the Board's (and DCRA's) interpretation that "pervious" means the opposite of "impervious." Under the Board's language, a "pervious surface" is the same as an "impervious surface." It doesn't matter whether a driveway (or other pathway or surface) is dirt or gravel or whether it is asphalt or concrete. Conceivably a dirt path could be construed as construction that must be included in any required calculation of surface lot coverage.

It is requested that the Board clearly limit its decision to the finding that all driveways and drive courts in the CBUT Overlay District should be included in the

calculation of the 50% maximum limitation on impervious surfaces in the CBUT, based upon the definition in §199.1 and the intent of the CBUT to "limit permitted ground coverage of new . . . construction . . .."

Further, the Board should emphasize that its decision only applies to driveways in the CBUT Overlay and that its conclusion is based upon reading the two provisions (§199.1 and §1565) together.

III. Accessory Garage

The Board also based its decision on §2500.5, which allows an accessory garage, in R-1-A and R-1-B Districts only, to have a second story for "domestic employee" living quarters. The Board's decision states: "Pursuant to this regulation the only two-story buildings allowed in this District are accessory private garages." [Decision and Order, p.8, paragraph 3.] This statement is inaccurate and should be revised to read "the only two-story **accessory** buildings allowed in this District are accessory private garages." A two-story home is clearly allowed in R-1-A or R-1-B District. Further, DCRA does not agree with the Board's suggestion that if impervious paved driveways to such structures are not required, that any two-story building could be called a garage and that it would lead to abuse. DCRA suggests that there is no need to rely on §2500.5 to further support the Board's decision and suggests that the references to §2500.5 may lead to confusion in the processing of other applications and should be deleted as a basis for the Board's decision.

The above-requested clarifications will assist the DCRA and the Zoning Administrator in acting upon future permit applications involving similar issues and in implementing the Zoning Regulations in a consistent manner.

Respectfully submitted,

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FACSIMILE COVER SHEET

DATE: 9/2/04

TO: Board of Zoning Adjustment

FAX #: 727-6072

FROM: Laurie Gisolfi Gilbert

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RE: Sailer BZA #17054

YOU SHOULD RECEIVE 9 PAGES, INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES OR IF THE FACSIMILE IS ILLEGIBLE, PLEASE CALL (202) 442-8199.