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A Professional Corporation

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January 6, 2004

Mr. Geoffrey Griffis
Chair, Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, DC 20001

D.C.
ZONING
2004 JAN -5 PM 2:56

Re: BZA Case No. 17102, Bob and Jennifer Beylickjian
3415 McKinley Street, N.W.

Dear Mr. Griffis and Members of the Board:

Enclosed are the pre-hearing materials for the hearing scheduled for January 20, 2004, in the subject case.

We anticipate calling some or all of the following individuals as witnesses

A. Robert Beylickjian
B. Jennifer Beylickjian

They will testify as to the reason for the special exception and the history of contacts with the neighbors. We will need approximately 30 minutes for our testimony.

ANC 3G voted unanimously to approve the project.

A petition signed by 11 nearby property owners is attached hereto.

We have also included a copy of a Court of Appeals decision in *Saah v. District of Columbia Board of Zoning Adjustment*, 433 A.2d 1114 (DC App. 1981) holding that the District was estopped from denying owner's application for a variance where owner had begun construction in reliance on the District's issuance of a permit,

BZA
Case No. 17102
Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO. 17102
EXHIBIT NO. 23

the economic impact on the owner was substantial and the change requested was minimal. Similarly, here the District's continual mistakes in surveying were only found after substantial construction had been undertaken. Moreover, we are seeking a modest change to the side yard requirement.

Please call if there are any questions.

Yours very truly,

Stephen N. Gell

PREHEARING STATEMENT

EXPLANATIONS AND REASONS

SUPPORTING AN APPLICATION

TO THE BOARD OF ZONING ADJUSTMENT

OF THE DISTRICT OF COLUMBIA

FOR A SPECIAL EXCEPTION

PURSUANT TO SECTIONS 223.1 and 3104

OF THE DISTRICT OF COLUMBIA ZONING REGULATIONS

3415 McKinley Street, N.W.

(SQUARE 1997, LOT 76 (822)

BZA Case No. 17102

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Survey plats dated 1925, 1989, 2003, and 2003

INTRODUCTION

This is a Statement of Explanation and Reasons supporting the application of Robert and Jennifer Beylickjian, (hereinafter "applicants") for a special exception, pursuant to Section 223.1 of the Zoning Regulations of the District of Columbia, to complete a two-story addition which is 2.9 feet from the side lot line.

DESCRIPTION OF THE APPLICANT

The Beylickjians purchased their home on McKinley Street in 1999. Recently, they contracted to build a two-story addition which extended the existing side yard setback. Plats and surveys filed at the Office of the Surveyor showed the existing side yard as approximately 5 feet. Based on these plats, they were granted a building permit on June 19, 2003. Section 405.8 of the Zoning Regulations permits the extension of a nonconforming side yard adjacent to a house built before 1958, with a minimum five-foot setback. After the addition was well under construction, a wall check by a private surveyor revealed that the existing wall was only 2.9 feet from the side lot line. A stop work order was issued by BLRA after the contractor had nearly enclosed the structure. Subsequently the District permitted them to secure it and make it weather tight. The Beylickjians are the unfortunate victims of mistakes made by surveyors in the past and incorrect plats filed by and with the DC Surveyor. They desperately need this special exception to finish the addition.

THE SUBJECT PROPERTY

A. Location and Description of the Property

The property which is the subject of this Application is a one-family detached dwelling located at 3415 McKinley Street, N.W., Square 1997, Lot 822 (76). It is in the R-1-B Zone, which permits single-family detached houses. The property is on the north side of McKinley between Broad Branch Road and Nevada Ave, N.W.

B. Area Surrounding the Property

The predominant uses in the area are low density residential.

C. Zoning History and Use History

The area is zoned R-1-B.

REASONS IN SUPPORT OF THE APPLICATION FOR SPECIAL EXCEPTION

A. Compliance with D.C. Zoning Regulations

The Special Exception is needed to permit the addition to this single-family house to be built within the 5-foot side yard setback area. The applicant satisfies the

requirements for grant of the Special Exception. The Board is authorized to grant special exceptions where, "in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property ..." 11 DCMR §3104.1

B. No Adverse Effects

Because of the large rear yard, even with the addition there will still be over 50 feet between the rear of the house and the rear lot line. There is a garage in the rear yard which takes up less than a third of the square footage of the rear yard. In addition, the house immediately to the west is nearly 14 feet from the Beylickjian house, and does not have an addition. There will be no loss of light at any time of day since an enormous tree in the rear yard of the subject house shades both back yards from eastern sunlight. East of the subject lot is a wooded area.

COMPLIANCE WITH THE COMPREHENSIVE PLAN

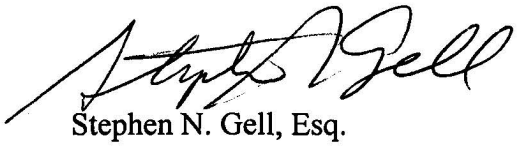
A. Appropriate Residential Use

The subject property is neither a landmark nor in a Historic District.

CONCLUSION

The Beylickjians are unintended victims of a series of mistakes originated by the District and perpetuated over the years by the District and private surveyors. The Applicants should be granted a Special Exception to allow this nonconformity. Such a use is unlikely to have any negative effects on the neighborhood and will correct an injustice. Moreover, such a use will be in harmony with the purpose and intent of the Zoning Regulations.

Respectfully submitted,



Stephen N. Gell, Esq.

Form 907—E. D.—10M—7-15-24 R. 687.

Surveyor's Office
DISTRICT OF COLUMBIA

PERMIT NO.

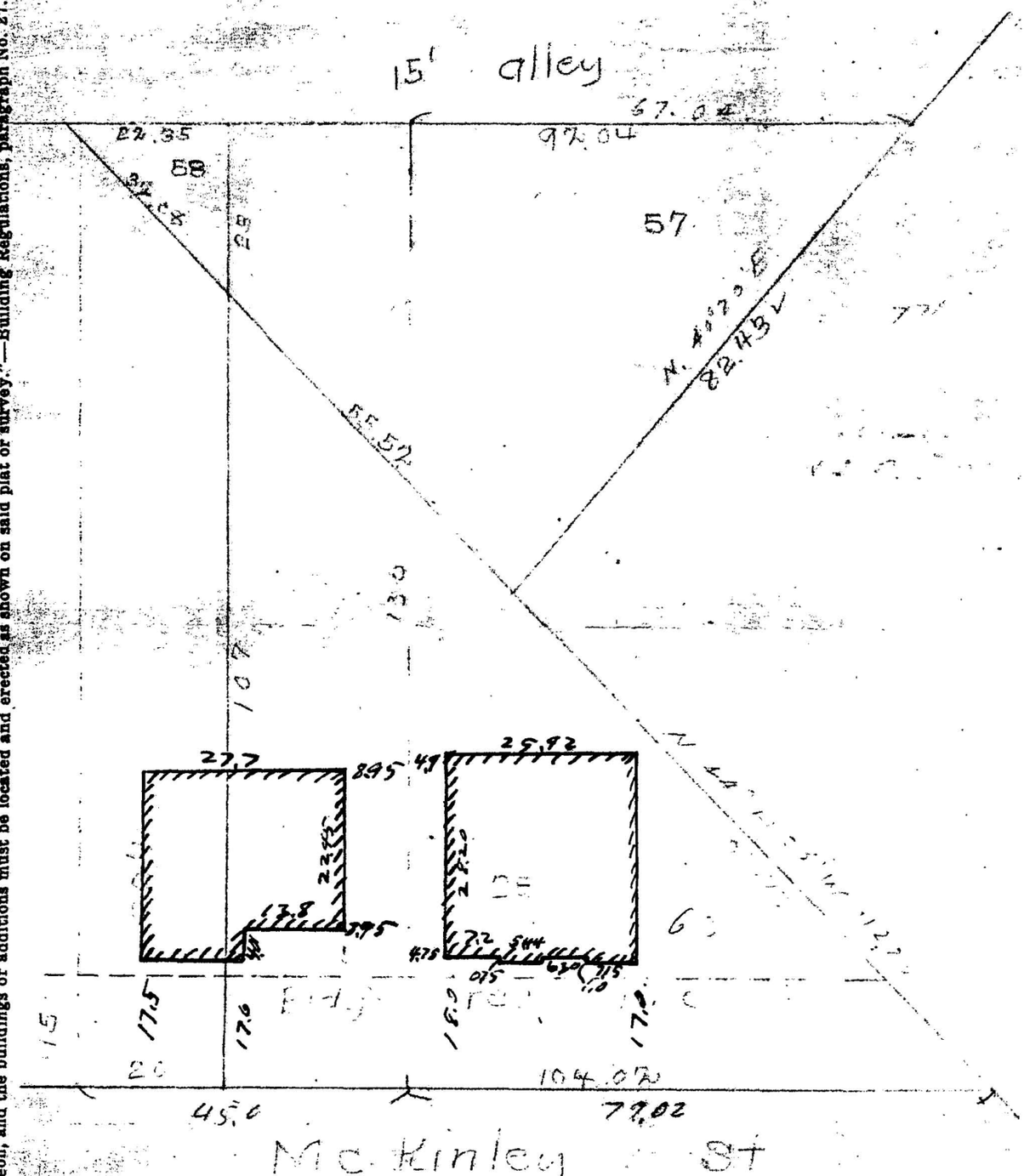
Washington, D. C., 3 24 1925

Plat, *for Building Permit of* Lots 57-58 + 29 + 802

59 1997

Recorded in Book 61 A+T *page* 10' 9

S. O. 9811



"The owner or applicant shall show upon such plat or survey, drawn to same scale as the plat or survey, all buildings or additions, located and to be located thereon, and the buildings or additions must be located and erected as shown on said plat or survey."—Building Regulations, paragraph No. 27.

Scale: 1 inch— 26 *feet*

Issued in accordance with Section 27, Building Regulations

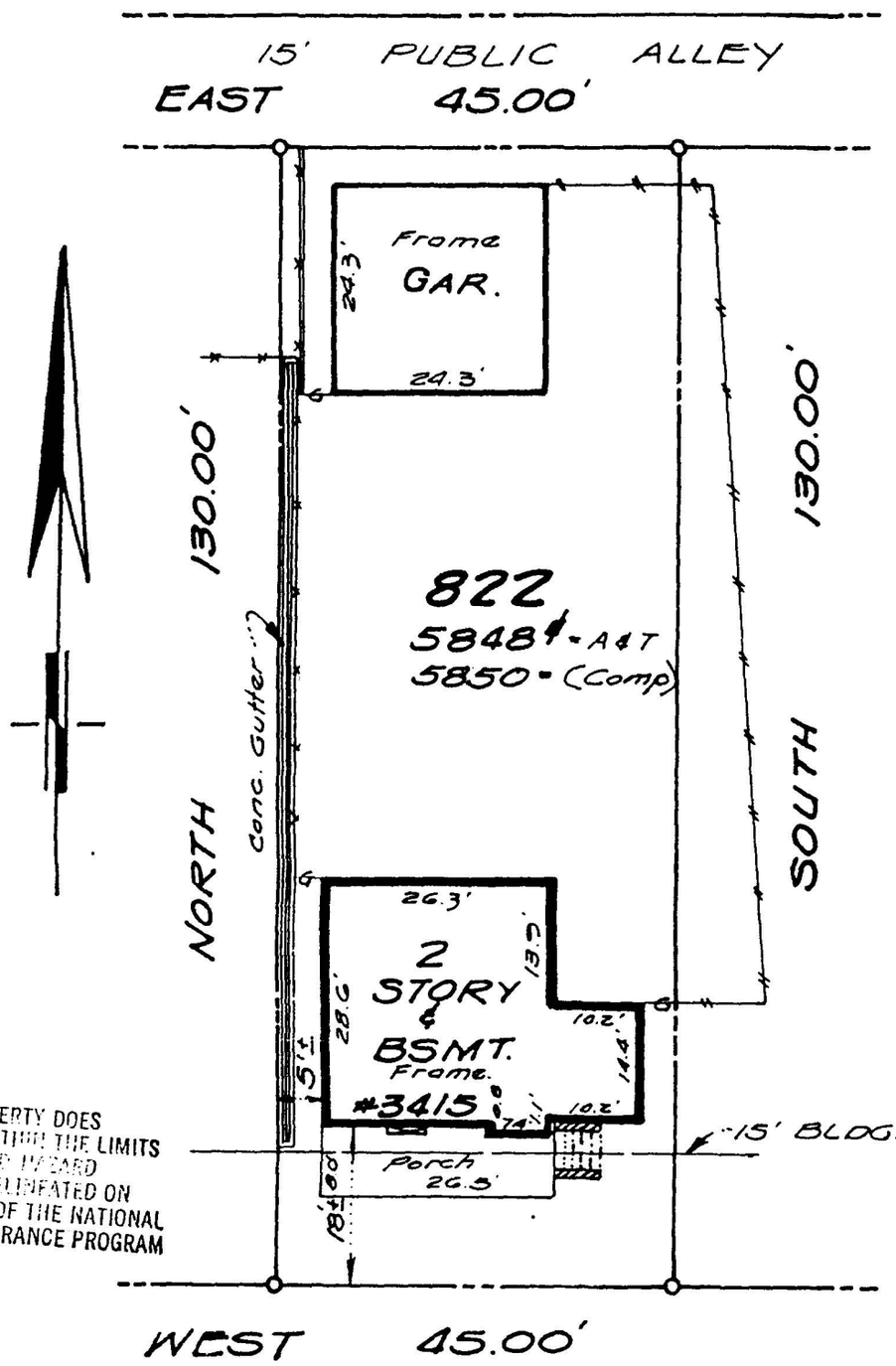
Furnished to Hostetler

Resurvey for .....

Surveyor, District of Columbia.

Per G.C.W.

LANDTECH ASSOCIATES, INC.
7307 BALTIMORE AVENUE SUITE 214
COLLEGE PARK, MARYLAND 20740



THIS PROPERTY DOES NOT LIE WITHIN THE LIMITS OF A FLOOD HAZARD AREA AS DELINEATED ON THE MAPS OF THE NATIONAL FLOOD INSURANCE PROGRAM

McKINLEY STREET, N.W.

NOTE:
Deed description not furnished.

STATE OF MARYLAND
GRADEN A ROGERS
No. 119
REGISTERED
PROPERTY LINE SURVEYOR

NO TITLE REPORT FURNISHED

CATION SURVEY OF
115 McKINLEY STREET, N.W.
WASHINGTON, D.C.

LOT: 822
LIBER: Shown A&T
DATE: 6-20-89
CASE NO: —

SQUARE: 1997
FOLIO: PAGE 3259F
SCALE: 1" = 20'
FILE NO: MSC-89258

TIFICATION: I hereby certify that the position of all the existing improvements on the above ribed property has been carefully established by a transit tape survey and that unless otherwise n there are no encroachments. This is not a property line survey and should not be used as such.

Graden A Rogers
GRADEN A ROGERS — PROP. L.S. MD LIC. NO 119

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., April 18, 2003

Plat for Building Permit of SQUARE 1997 LOT 76

Scale: 1 inch = 20 feet Recorded in Book 184 Page 47

Receipt No. 04078

Furnished to: SCS CONTRACTING

Surveyor, D.C.

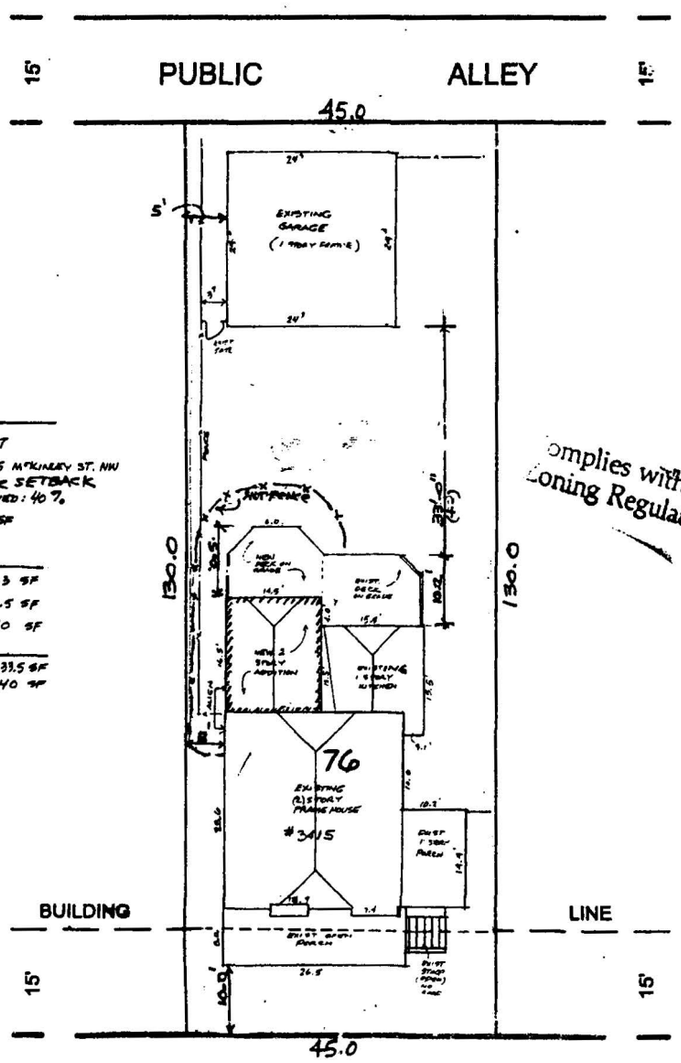
By: L.E.S.

I hereby certify that all existing improvements shown hereon, [illegible] and are correctly platted; that all proposed [illegible] covered porches, are correctly dimensioned [illegible] the application; that the foundation [illegible] accurately to the same scale as the property [illegible] proposed improvements to be [illegible] premises is not decreased to an [illegible] and ventilation; and it is further [illegible] required by the Zoning Regulations [illegible] Regulations, and that this area has been [illegible] further agreed that the elevation of the [illegible] Department approved curb and alley grade [illegible] of driveway at any point on private property in excess of [illegible] or in excess of 12% at any point for other buildings. (The [illegible] permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 4/22/03

James Cassaty AIA (architect)
(Signature of owner or his authorized agent)

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



ZONING INFORMATION

LOT : 76 SQUARE : 1997
ZONED : ADDRESS : 3415 McKINLEY ST. NW
BUILT PRIOR TO 1958 - 5' SIDE SETBACK
MAXIMUM LOT COVERAGE ALLOWED: 40%
EXISTING LOT: 5850 SF
ZONED : R1-B

COVERAGE:

1. HOUSE	:	1203 SF
2. GARAGE	: 24'x24' &	540.5 SF
3. ADDITION:		240 SF
TOTAL NEW COVERAGE:		2,033.5 SF
TOTAL ALLOWED:	(40%)	2,340 SF

Complies with requirement of Zoning Regulations
Initial RRR
6/3/03

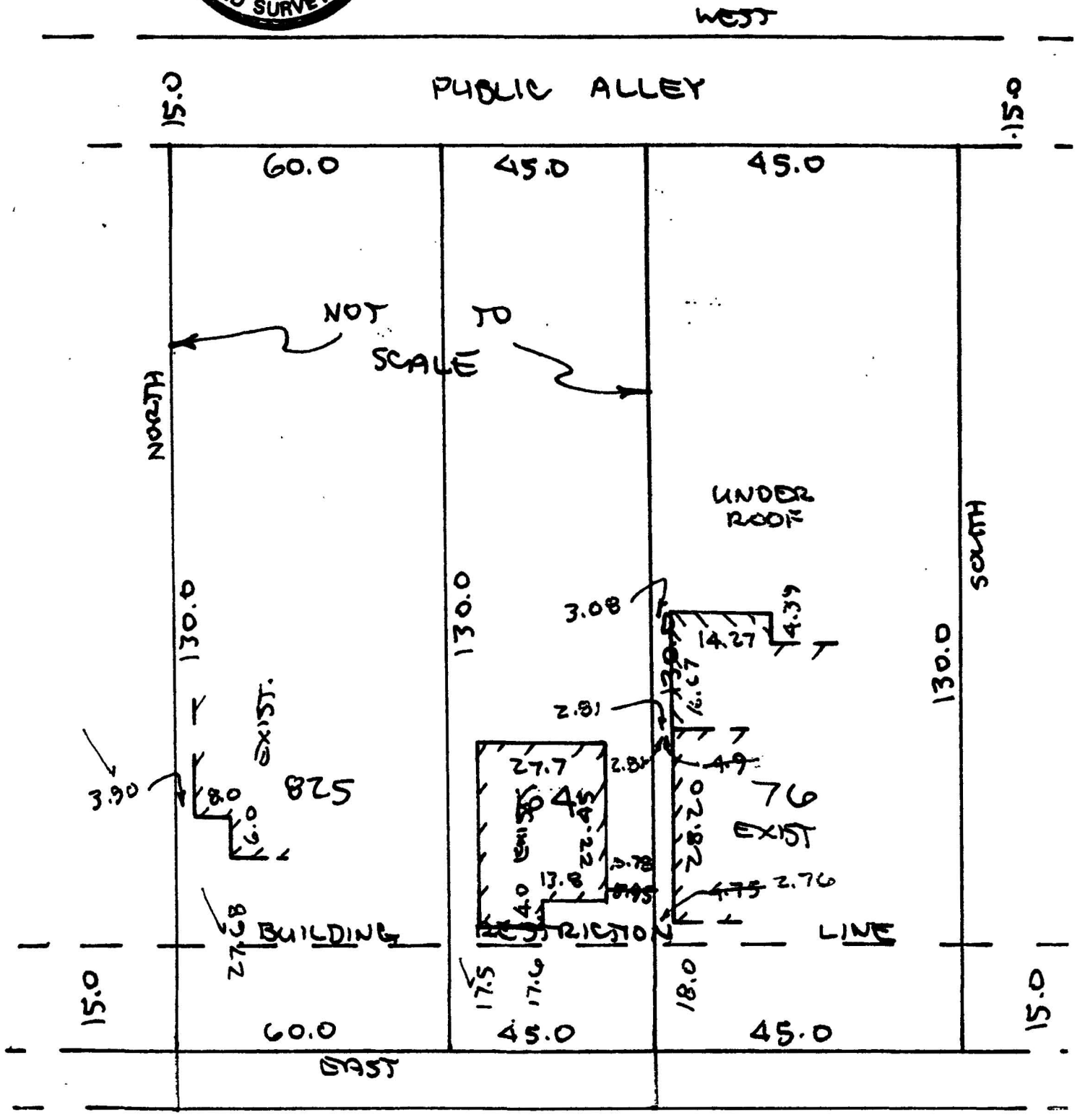
3418 McKINLEY STREET, N.W.

SO-04078(2003)

Zone. R-1-B Tnt#1139-D

DISTRICT OF COLUMBIA
EDWARD L. LOPEZ, JR.
No. 91-2
REGISTERED
LAND SURVEYOR

SCALE: 1" = 20'
DATE: 8/18/2008



265.35 sq ft or 0.35 acre

SHEET (2)

McKINLEY STREET, N.W.

E.D.M. & TADE

To the Board of Zoning Adjustment:

We, the undersigned, support the request of Bob and Jennifer Beylickjian for a side yard variance to permit them to complete the building of a two-story addition to their home at 3415 McKinley Street, N.W. BZA Case No. 17102

Name Write Print	Address	Date
Dan McCa Dan McCarron	3420 McKinley St. NW Wash, DC 20015	11/18/03
Stephen P. McCarron Sarah Joyce-McCarron	3416 McKinley St. NW. 3416 McKinley St. NW.	11/18/03 11/18/03
Therese Colucci Therese M. Col	3420 McKinley St. NW WDC 20015	11/18/03
Nicole Colucci	3420 McKinley St NW WDC 20015	11/18/03
Raylynn Oliver	5600 Broad Branch Rd NW WDC 20015	11/18/03
Catherine A. Nestor Catherine G. Nestor	3510 Northampton St. Wash. DC 20015	11/19/03
H. Clay & Moira BLACK H Clay Black	2412 McKinley St NW Washington, DC 20015	11/18/2003
Tuor O'Hara Judith M. O'Hara	3400 McKinley St, NW WASHINGTON, DC. 20015	11/19/03
Steve McCready STEVE McCREADY	3500 McKinley St. NW.	11/19/03
Beth VanHonsworth Beth VanHonsworth	" "	11/19/03
Benevo Weintraub Benevo Weintraub	3508 Northampton St., NW Washington, DC 20015	11/23/03

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

B452391

APPROVED

ADDRESS: 345 McKinley St. N.W

TYPE OF INSPECTION: Footing for addition
Sol Wall check

☑ CONSTRUCTION (202) 442-4641	☐ ELECTRICAL (202) 442-4643	☐ PLUMBING (202) 442-4642	☐ ELEVATOR (202) 442-4634

TITLE	DATE	OFFICIAL
	7-2-03	L. Deal

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. B452391

PERMIT

Date 6/19/03 (Type) ADDITION

Address of work 3415 McKINLEY ST. N.W.

Lot 76 Square 1997

Permission is hereby granted to
BOB AND JENNIFER BEYLICKJIAN (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 $ 2508.55

FOR INSPECTIONS CALL [redacted] 442-4641

Authorized work and conditions of performance thereof:

TWO (2) STORY REAR ADDITION WITH DECK ON GRADE.
SEPARATE ELEC.,PLUMB., & MECH. INSTALLATION PERMITS ARE REQUIRED.

Builder—

Value $

No. of Bldgs.

Width of Bldg. Length Height No. of Stories 2

Zone R-1-B To be occupied as S.F.D.

Height of terrace above grade Projections:

Address of owner SAME

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Chief, Permit Issuance Branch

By [redacted] Permit Clerk

D. CLARK
DIRECTOR

32301

District of Columbia Court of Appeals.

John SAAH, Petitioner,
v.
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent.

No. 80-88.

Argued April 16, 1981.
Decided July 29, 1981.

Applicant for zoning variance petitioned for review of a decision of the District of Columbia Board of Zoning Adjustment denying plaintiff variance that would permit him to retain a structure which exceeds maximum allowable percentage of occupancy. The Court of Appeals, Kelly, J., held that the Board of Zoning Adjustment, having approved but later cancelled applicant's building permit, was estopped from denying the variance sought by applicant.

Reversed and remanded.

West Headnotes

[1] **Zoning and Planning 762**
414k762 Most Cited Cases

Elements that must be shown in order to raise an estoppel against enforcement of a zoning regulation are that a party, acting in good faith, on affirmative acts of a municipal corporation, makes expensive and permanent improvements in reliance thereon, and the equities strongly favor the party seeking to invoke the doctrine.

[2] **Administrative Law and Procedure 791**
15Ak791 Most Cited Cases

Given the expertise of an administrative agency, the Court of Appeals is generally bound by agency's decision if it is supported by, and in accordance with, reliable, probative and substantial evidence in the whole record, and the agency's conclusions flow rationally from its findings.

[3] **Administrative Law and Procedure 796**
15Ak796 Most Cited Cases

Where administrative agency's final decision rests on a question of law, reviewing court has the greater expertise, and the agency decision is therefore accorded less deference.

[4] **Zoning and Planning 488**
414k488 Most Cited Cases

Board of Zoning Adjustment, having approved but later cancelled building permit to convert single-family dwelling into three apartments on grounds that structure exceeded maximum lot occupancy applicable in that zone, was estopped from denying owner's application for a variance where owner had undertaken construction in reliance upon issuance of permit, cost of complying with regulations was substantial, and public's interest in enforcement of lot occupancy restriction was minimal in that owner exceeded maximum lot occupancy by less than five percent.

*1114 Donald Cefaratti, Jr., Washington, D.C., for petitioner.

Leo N. Gorman, Asst. Corp. Counsel, Washington, D.C., with whom Judith W. Rogers, Corp. Counsel, and Charles L. Reischel, Deputy Corp. Counsel, Washington, D.C., were on the brief, for respondent.

Before KELLY, FERREN and PRYOR, Associate Judges.

*1115 KELLY, Associate Judge:

In this case we are called upon to review a decision of the Board of Zoning Adjustment denying petitioner a variance that would permit him to retain a structure which exceeds the maximum allowable percentage of lot occupancy. We hold that the zoning authorities, having approved, but later cancelled petitioner's

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building permit, are estopped from denying the variance sought. Therefore, we reverse, and remand for disposition of petitioner's application in accordance with this opinion.

I

Petitioner is the owner of improved property located at 1521 Church Street, N.W., within an R-5-B District. He purchased this property on March 15, 1978, at which time the lot contained a single family dwelling consisting of two stories and a basement, with a certificate of occupancy, issued July 22, 1952, permitting use of the second floor as a tenement house. On May 9, 1978, a building permit was issued allowing petitioner to renovate the structure to include three apartments. Construction was proceeding according to plan when, in September of 1978, the rear half of the building collapsed. Petitioner was then advised by a structural engineer to replace the original masonry walls above the first floor. New plans were prepared for the renovation, and new building permits were sought from the city government. On September 8, 1978, two permits were issued to petitioner: the first was for an "addition to a three story apartment house brick/frame as per applicant's plan and plat," and the second permit covered revision of the permit originally issued on May 9, 1978. Petitioner again began construction.

More than two months later, on November 17, 1978, the two permits were cancelled and petitioner was directed to cease work on the ground that approval for the permits had been erroneously granted. The problem, which, if it had been discovered in September, would have precluded approval of the plans in the form in which they were submitted at that time, was that the structure exceeded, by 123.91 square feet, the maximum lot occupancy of 60% applicable in the R-5-B zone.[FN1] The reason the permits had been approved in September was that in computing the area covered by the proposed structure, a passageway alongside the east side of the first floor of the building was not taken into account. The passageway is not enclosed at either end; however, the second and third floors project over the passageway and abut the western wall of the building next door. The maximum lot occupancy for petitioner's property is 1,254 square feet. Before renovation the structure covered 1,037 square feet; when the new construction is included, adding the projection over the passageway, the structure covers an additional 340.91 square feet. Thus, the total lot occupancy is then 1,337 square feet, or somewhat less than 65%. The Board found that at the time the permits were cancelled the renovation was 60% complete.

FN1. District of Columbia Zoning Regulation s 3303.1.

On November 30, 1978, the Corporation Counsel, in a memorandum to the Acting Chief of the Zoning Regulations Division, stated that the "circumstances establish sufficient elements of an estoppel to require the District Government to set aside the direction to cease work, pending timely application for an area variance." In Corporation Counsel's view, not all elements of an estoppel, in particular reasonable reliance, had yet been established, and a formal hearing was thought to be necessary to make that determination.

On December 8, 1978, petitioner was informed by letter that the order to cease work was lifted, provided (1) an application for an area variance was filed by December 15, and (2) a revision permit was secured authorizing construction of a rear-entry way not shown on the original plans. Petitioner made timely filing of the application for an area variance on December 15, 1978, and, after several hearings before the Board of Zoning Adjustment, the application was denied on January 4, 1980.

*1116 II

Although the doctrine of equitable estoppel has traditionally not been favored when sought to be applied against a government entity, see Note, Equitable Estoppel of the Government, 79 Colum.Law Rev. 551, 552-54 (1979), it is accepted that in certain circumstances an estoppel may be raised to prevent enforcement of municipal zoning ordinances. District

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of Columbia v. Cahill, 60 U.S.App.D.C. 342, 54 F.2d 453 (1931); see Wieck v. District of Columbia Board of Zoning Adjustment, D.C.App., 383 A.2d 7, 11 (1978); A. Rathkopf, The Law of Zoning and Planning, ch. 67, s 2 (4th ed. 1980).

[1] The elements that must be shown in order to raise an estoppel against enforcement of a zoning regulation are: (1) that a party, acting in good faith, (2) on affirmative acts of a municipal corporation, (3) makes expensive and permanent improvements in reliance thereon, and (4) the equities strongly favor the party seeking to invoke the doctrine. Wieck v. District of Columbia Board of Zoning Adjustment, supra, at 11. Furthermore, we held in Nathanson v. District of Columbia Board of Zoning Adjustment, D.C.App., 289 A.2d 881, 884 (1972), that reliance by the party must be justified.

[2][3][4] The Board concluded that in this case some, but not all, of the above elements were present. Given the expertise of an administrative agency, we are generally bound by its decision if it is supported by, and in accordance with, reliable, probative and substantial evidence in the whole record, and the agency's conclusions flow rationally from its findings. Stewart v. Board of Zoning Adjustment, D.C.App., 305 A.2d 516 (1973). However, where the agency's final decision rests on a question of law, the reviewing court has the greater expertise, and the agency decision is therefore accorded less deference. See Gordon v. District Unemployment Compensation Board, D.C.App., 402 A.2d 1251, 1254 (1979); B. Mezines, J. Stein & J. Gruff, Administrative Law s 51.01 (1977); F. Cooper, State Administrative Law, vol. 2, at 706-07, 721-22 (1965). Based upon the facts established in this case we hold the Board erred in concluding the elements of an estoppel were not present.

III

The affirmative act of the District of Columbia, upon which petitioner relied in constructing the building, was the issuance of the permits on September 8, 1978. There is no allegation that the plans that were approved on that day were submitted in bad faith. Respondent does contend that petitioner failed to establish that he made expensive and permanent improvements relying upon the issuance of the permits. We disagree. The Board specifically found that "(a) s of November 17, 1978, approximately 60% of the building had been completed." (Finding No. 13). That is a substantial portion of the total project and, even without documentary evidence indicating the precise amount of money expended up to that point, the Board's finding must be considered sufficient to satisfy the requirement of expensive repairs of a permanent nature, given that petitioner had undertaken a major reconstruction of the building, including replacement of masonry walls above the first floor. Furthermore, although neither side has referred to it, there was the unchallenged testimony of petitioner that he had expended "over $225,000 building that building" and that the cost of complying with the regulations would be "about $110,000."

Respondent argues petitioner's reliance upon the permits in beginning work was not justified. In Nathanson v. District of Columbia Board of Zoning Adjustment, supra, we held estoppel was not available to a party who sought to prevent enforcement of a condition that a 42 inch masonry wall be constructed even though the building permit issued for construction of the storage facility did not mention the wall. We rejected the assertion that reliance on the building permit was justified, since the party had had actual notice of the condition when a preliminary order granting a special exception was issued six weeks earlier. Recently, we held in *1117 Interdonato v. District of Columbia Board of Zoning Adjustment, D.C.App., 429 A.2d 1000 (1981), that petitioners could not have justifiably or reasonably relied upon a Board order which they were fully aware was under appeal and therefore not yet final.

In the instant case, it can at most only be argued that petitioner, or his architect, should have known that the project, as presented in September, exceeded the maximum lot occupancy. However, the same can be said for the official who approved the plans, and we will not go so far as to decide that any of them were negligent in failing to discover the problem at that time. In hindsight, there is no question that the portion of the upper floors which extends over the passageway must be included in calculating the percentage of the lot

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occupied by the structure.[FN2] Nevertheless, we do not consider petitioner's reliance upon approval of the permit applications to have been unjustified.

FN2. We accept the Board's finding No. 26 that the definitions of "percentage of lot occupancy" and "building area" contained in s 1202 of the Zoning Regulations make it obvious that "the area on the east side of the subject lot covered by the building at the second and third stories must be included in the percentage of lot occupancy."

The final element of **estoppel** that must be considered is whether the equities strongly favor petitioner. We are certain that they do. Petitioner has expended significant amounts of money and effort on this project, both at the construction site and before the Board. If the Board were not **estopped** from enforcing the maximum lot occupancy in this case, petitioner would be compelled to undertake substantial reconstruction and perhaps dismantle the entire building. Equity, which will not require a wasteful act, will not permit such a result where the public's interest in enforcement is only minimal,[FN3] as it is here, where petitioner exceeds the maximum lot occupancy by less than 5%.

FN3. Although **estoppel** is judicially disfavored in zoning cases because of the important public interest in the enforcement and integrity of Zoning Regulations, Interdonato v. District of Columbia Board of Zoning Adjustment, supra, we are satisfied the injury to the public in this case will be minimal. At the hearings before the Board, the objections raised to petitioner's structure related to its effect on the property next door. We decide only that the Board of Zoning Adjustment is **estopped** from enforcing the regulation, and do not reach the question of the effect of the **estoppel** on a claim made by a neighboring landowner. See Goto v. District of Columbia Board of Zoning Adjustment, D.C.App., 423 A.2d 917, 925 n.15 (1980).

Therefore, for the above reasons, we hold the Board of Zoning Adjustment is **estopped** from denying petitioner's application for a variance permitting the structure at 1521 Church Street to exceed by 123.91 feet the maximum percentage of lot occupancy.

Reversed and remanded.

433 A.2d 1114

END OF DOCUMENT

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Front - 3415 McKinley St. N.W.







AT REAR FACING EAST



