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OF COUNSEL:
HAROLD E. JORDAN

August 24, 2005

HAND-DELIVERED

Geoffrey Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 Fourth Street, N.W. - Room 210 South
Washington, D.C. 20001

Re: Board of Zoning Adjustment Application No. 17310 - 1812 35th Street, N.W. - Appeal of Zoning Administrator's Decision

Dear Mr. Griffis:

This firm represents 1812 35th Street Associates LLC ("Associates"), the owner of the real property located at 1812 35th Street, N.W., for which the Zoning Administrator approved the issuance of the building permit that is the subject of this proceeding. Enclosed for filing in this appeal, please find twenty (20) copies of: (1) Associates' authorization of agent letter, dated July 22, 2005; (2) an executed BZA Form 150, together with a certificate of service; (3) Associates' Points and Authorities In Support of Its Motion to Intervene and Motion to Dismiss; and (4) the affidavit of Andres Dan, dated August 23, 2005.

Very truly yours,

George R. Keys, Jr.

cc: Andres Dan
Gisela Garcia Tunon

BZA
Case No. 17310
Exhibit No. 29

Board of Zoning Adjustment
District of Columbia
CASE NO. 17310
EXHIBIT NO. 29

1812 35th Street Associates LLC
c/o Andres Dan
6504 Millwood Road
Bethesda, Maryland 20817

July 22, 2005

Geoffrey Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 4th Street, N.W. - Room 210 South
Washington, D.C. 20001

Re: Authorization of Agent

To Whom It May Concern:

1812 35th Street Associates LLC ("Associates") is the fee owner of Lot 802 in Square S-1296, located at 1812 35th Street, N.W., Washington, D.C. (the "Land"). Diedre O. Stancioff has filed Appeal No. 17310 challenging the decision of the Zoning Administrator to issue a building permit for the construction of an enlargement of an existing single family on the Land (the "Appeal"). Associates wishes to obtain status as an Intervener in the appeal to defend the Zoning Administrator's decision and to oppose the Appeal.

George R. Keys, Jr. of Jordan & Keys, LLP is hereby designated as the authorized agent for Associates for the purposes of intervening on Associates' behalf in the above-referenced appeal of the Zoning Administrator's decision in Appeal No. 17310 and representing it in all subsequent proceedings regarding the Appeal.

1812 35th Street Associates LLC

By: Andres Dan
Andres Dan
Managing Member

**BEFORE THE**
**DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT**

| | | |
|---|---|---|
| In re Appeal of: | ) | |
| | ) | |
| Deidre O. Stancioff | ) | |
| | ) | |
| v. | ) | Appeal No. 17310 |
| | ) | |
| Zoning Administrator, DCRA | ) | |
| | ) | |

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO INTERVENE AND MOTION TO DISMISS

1812 35th Street Associates LLC ("Associates"), by and through its counsel and authorized agent, has filed a motion with the Board of Zoning Adjustment ("BZA") seeking: (1) to intervene as a party in the appeal proceeding; and (2) to dismiss the appeal on the grounds that it was untimely filed. In support thereof, Associates offers the following points and authorities:

1. Motion to Intervene

Associates is the owner of the real property which is the subject of the instant appeal. In reliance on the decision of the Zoning Administrator to issue the building permit no. B467431 on November 5, 2004 (the "Building Permit"), Associates proceeded to construct an addition to the residential structure on the subject property, the exterior of which is now substantially complete. In such circumstances, Associates has a significant economic investment in the improvements constructed to date and desires to participate in the instant appeal in support of the Zoning Administrator's decision.

2. Motion to Dismiss

Section 3112.2 of the BZA's Rules of Practice and Procedure requires that an appeal be filed within sixty (60) days after the appellant "had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge. . . whichever is earlier." In this instance, the Zoning Administrator approved the issuance of the Building Permit, which was issued by the D.C. Department of Consumer and Regulatory Affairs ("DCRA") on November 5, 2004, a copy of which is attached hereto as Exhibit 1. The Building Permit authorized the residential addition pursuant to the plans submitted by Associates to DCRA. The Permit was posted on the exterior at the subject property and actual construction activity at the subject property began no later than November 15, 2004.[1] Moreover, Diedre O. Stancioff (the "Appellant"), who lives next to the subject property at 1814 35th Street, N.W., was entirely aware of the structure being planned at the subject property, even prior to the issuance of the Building Permit, as representatives of Associates, Mr. Andres Dan and/or Gisela Garcia Tunon, met with her on more than one occasion to display the plans for the subject property and to

[1]See ¶ 3, Andres Dan Affidavit, dated August 23, 2005, and attached hereto as Exhibit 2.

obtain her consent to stage some construction activity on her property.[2]

Appellant filed her appeal with the BZA on February 22, 2005, or 109 days after the Permit was issued and posted in the front window of the subject property, or 99 days after actual construction began on the subject property. Furthermore, Appellant's knowledge of the nature and scope of the proposed construction on the subject property actually preceded the date of issuance of the Building Permit. Obviously, Appellant was aware almost immediately that a significant construction project was underway on the adjacent property.[3] So concerned was Appellant by the activity and the potential impact on her residence that she filed a lawsuit in the D.C. Superior Court on December 20, 2004, seeking a temporary restraining order and preliminary injunction against Associates' construction activity. In this litigation effort, she was represented by counsel. Nonetheless, Appellant waited until February 22, 2005 before noticing this appeal, by which time Associates had completed all

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[2] Id., at ¶ 4.

[3] Appellant confirms actual knowledge in page 10 of her Opposition to Special Exception Application filed in BZA Application No. 17327, in the following words: "Meanwhile, Mrs. Stancioff promptly began raising concerns about the construction, including lot occupancy issues."

foundation work for the proposed addition and erected the exterior framing for the second and third story additions.[4]

In its decisions prior to 2002 on the issue of the timeliness of an appeal, the BZA relied on the reasoning of the D.C. Court of Appeals in Waste Management of Maryland, Inc., District of Columbia Bd. of Zoning Adjustment, 775 A.2d 1117, 1121-1122 (D.C. 2001) in fashioning a reasonableness standard of within two months for timely filing, recognizing that the timely filing of an appeal with the BZA is both mandatory and jurisdictional.[5] The Zoning Commission in adopting Order No. 02-01 (September 9, 2002) has codified the Court of Appeals standard in Mendelson and established sixty (60) days as the benchmark for timely filing. The only exception to this timely filing requirement is an extension granted by the BZA where there are exceptional circumstances beyond the control of an appellant that substantially impaired appellant's ability to file the appeal and when such an extension can be granted without prejudice to parties to the action. § 3112.2(d)(1). There is, and can be, no showing by Appellant in this appeal that Appellant was unable to have acted promptly to challenge the issuance of the Building Permit. Any such showing is foreclosed by: (1) Appellant's prior

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[4] ¶5, Andres Dan affidavit.

[5] Mendelson v. District of Columbia Board of Zoning Adjustment, 645 A.2d 1090, 1093 (D.C. 1994) (citations omitted)

knowledge of Associate's plans, (2) her awareness of the construction next door, (3) her insistence that Associates modify their foundation plans to shorten the construction period[6] and (4) her initiation of litigation to protect her property from alleged adverse impacts of the construction on the subject property.

The BZA has strictly construed the jurisdictional limits of § 3112.2 in the only two published cases that have addressed the question of timeliness, since the 2002 amendment of § 3112.2.[7] The BZA should apply the same standard to the instant appeal.

For all of the foregoing reasons, the BZA should dismiss the appeal with prejudice as being untimely filed in accordance with the practice rules of the BZA, and, in the alternative, the BZA should accept Associates intervention as a party to the appeal.

Respectfully submitted,

JORDAN & KEYS LLP

By: George R. Keys

George R. Keys, Jr.
Counsel for Intervener

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[6] ¶6, Andres Dan affidavit.

[7] Appeal No. 17085 of Louise and Larry Smith and Mary Ann Snow and James Marsh (July 6, 2004); Appeal No. 16998 of Advisory Neighborhood commission 5B (Sept. 3, 2003).

CERTIFICATE OF SERVICE

The undersigned, counsel for Intervenor, hereby certifies that on this 24th day of August, 2005, I served a copy of the Motion to Intervene and Motion to Dismiss, together with the Points and Authorities in support thereof, on each of the following persons or entities, via first class mail, postage pre-paid:

Laurie B. Hurvitz, Esq.
Finkelstein & Horvitz, P.C.
7315 Wisconsin Avenue
Suite 400 East
Bethesda, Maryland 20814

Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007

Alan H. Bergstein, Esq.
Office of the Attorney General
Land Use, Public Works and Utilities Section
801 North Capitol Street, N.E.
Washington, D.C. 20002

Zoning Administrator
D.C. Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Room 2000
Washington, D.C. 20002

Ellen McCarthy, Director
D.C. Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

George R. Keys, Jr.
Counsel for Intervenor, 1812 35th Street Associates LLC

1400 16th Street, N.W.
Suite 520
Washington, D.C. 20036
(202) 483-8300

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. 0407431

PERMIT

Date 11/5/04 (Type) ALTERATION AND REPAIR - ADDITION

Address of work 1812 35TH STREET N.W. Lot 0027 Square 1296

Permission is hereby granted to
1812 35TH STREET 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

TOTAL PERMIT FEE $

FILING FEE $

FEE PAYABLE $ 1175.90

Authorized work and conditions of performance thereof:

FOR INSPECTIONS CALL ~~727-6981~~ 442-4641

EXPANSION AS PER ENCLOSED PLANS.
ADD ONE ROOM AND BATHROOM ON EXISTING BASEMENT(EXTEND BACK), ADD FAMILY ROOM TO EXISTING FIRST FLOOR, ADD BEDROOM, BATH AND STAIRS TO EXISTING 2ND FLOOR, ADD THIRD FLOOR WITH TWO BEDROOMS AND BATHROOM.

Builder Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories : 3

Zone : R-3 To be occupied as SFD

Height of terrace above grade Projections:

Address of owner 6504 MILLWOOD RD. BETH. MD. 20817

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Chief, Permit Issuance Branch

By Permit Clerk

DAVID CLARK
DIRECTOR

E. KING

tabbies

EXHIBIT 1

# AFFIDAVIT

COUNTY OF Carroll,
STATE OF MARYLAND, ss:

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY that, before me, the subscriber, a Notary Public in and for the aforesaid jurisdiction, personally appeared ANDRES DAN, and made oath in due form of law and under penalty of perjury that, to the best of his knowledge:

1. I am the managing member of 1812 35th Street Associates LLC, which owns the real property at 1812 35th Street, NW, Washington, D.C., which is the subject of the appeal filed in BZA No. 17310.

2. In the capacity as managing member, I oversaw the preparation of the construction plans, obtained the building permits and supervised the construction work on the property.

3. The building permit for the erection of the addition was issued on November 5, 2004, and a copy of the building permit was posted on the front on the property on the same day. The permit was placed at street level, on the front window of the property.

4. Before receiving the issued building permit, that is, prior to November 5, 2004, either my partner, Ms Gisela Garcia Tunon or I, or both, met with Mrs. Deidre Stancioff on more than one occasion to explain the construction that would take place next door, because of the limited access and narrowness of the subject lot the cooperation of both adjacent neighbors was necessary to the construction effort, especially in the early stages of excavation and setting the foundation. During these discussions, we showed Mrs. Stancioff the plans for the building addition.

5. After November 5, 2004, and before excavation began, my partner met with Mrs. Stancioff to coordinate the excavation work, finalizing these conversations shortly after the contract with the excavation contractor was signed. To my recollection, these final conversations took place no later than 13 December, 2004. As a result of her objections, we revised the construction plans to change the foundation wall from cinder block to reinforced concrete in order to accelerate the work and minimize her inconvenience.

6. By the time of the filing of the appeal on February 22, 2005, framing for the second and third floors of the construction was complete and the construction was under partial roof framing.

7. To my recollection, actual construction work, i.e. demolition of rear wall, roof, and commencement of outside framing for extending the second floor over the then current first floor footprint, began at the subject property on 15 November, 2004. As a result of



this construction activity, it would be impossible, in my opinion, for either of the adjacent neighbors not to know that construction had commenced.

Andres Dan

Subscribed and sworn to before me this 23rd day of August, 2005.

Tracy Famolaro
Notary Public

[SEAL]

My Commission expires: 12/1/07

TRACY FAMOLARO
Notary Public
Carroll Co., MD
My Comm. Exps. Dec. 1, 2007

Form 150
(Revised 04/29/02)

Case No. 17310

# BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

## MOTION

Notice: Click Here for Motion Form Instructions

| Applicant, Appellant, Appellee, Party, Intervener* | VS | Applicant, Appellant, Appellee, Party, Intervener* |
|---|---|---|
| Deidre O. Stancioff, Appellant | | Zoning Administrator, DCRA, Appellee |

**Motion of:***
(state what you want the Board to do)

1. The Board of Zoning Adjustment should admit 1812 35th Street Associates LLC as Intervenor in the appeal. 2. The Board of Zoning Adjustment should dismiss the appeal as being untimely filed.

**Points and Authorities:***
(state the each and every reason why the Board should grant your motion, including relevant references to the Zoning Regulations or Map)

See the attached Points and Authorities.

## CERTIFICATE OF SERVICE

I hereby certify that on this* 24th day of* August, 2005 I served a copy of the forgoing Motion on each entity that has requested party status; or entities that have be granted party status – on the above referenced BZA case via*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☑ | First-class Mail | ☐ | Hand Delivery | ☐ | Other* | (ATTACH A LIST OF PARTIES SERVED) |

| | | | |
|---|---|---|---|
| Signature: | George R Keys | | |
| Print Name:* | George R. Keys, Jr. | Firm/Organization:* | Jordan & Keys LLC |

| Address:* | 1400 16th Street, NW Suite 520 | City:* | Washington | State:* | DC | Zip:* | 20036 |
|---|---|---|---|---|---|---|---|

* In the event an authorized agent files a motion on the behalf of the maker of the motion, a letter signed by the maker of the motion authorizing the agent to act on his/her behalf shall accompany the notice of application.

## To be notified of hearing and decision:
(Maker of Motion or Authorized Agent)*

| Name:* | George R. Keys, Jr. | | | | | | |
|---|---|---|---|---|---|---|---|
| Address:* | 1400 16th Street, NW Suite 520 | City:* | Washington | State:* | DC | Zip:* | 20036 |
| Phone No.:* | (202)483-8300 | Fax No.: | (202)328-6153 | E-Mail: | gkeys@jordankeys.com | | |

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.