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Nathan I. Finkelstein ★✱♦
Laurie B. Horvitz ★✱

Robert J. Goldman ★✱♦
Emily D. Gooding ★

★ MD, ✱ DC, ♦ G

September 2, 2005

Via Hand Delivery

Mr. Geoffrey Griffis, Chair
Board of Zoning Adjustment
441 Fourth Street, NW
Suite 210
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. Chairman and Members of the Board:

Enclosed please find twenty (20) copies of the following: (1) Supplemental Filing in Support of Deidre Stancioff's Appeal in the above-referenced matter; (2) Opposition to Motion to Dismiss.

Sincerely,

Laurie B. Horvitz, Esq.
Attorney for Deidre O. Stancioff

Enclosures

BZA
Case No. 17310
Exhibit No. 30

Board of Zoning Adjustment
District of Columbia
CASE NO. 17310
EXHIBIT NO. 30

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

In re: BZA Application No. 17310 – Appeal of Zoning Administrator's Decision
1812 35th Street, N.W., Washington, D.C.

OPPOSITION TO MOTION TO DISMISS

I. Introduction

Appellant Deidre Stancioff (hereinafter "Stancioff"), by and through undersigned counsel, hereby opposes the Motion to Dismiss that was filed by the owner of 1812 35th Street, N.W., Washington, D.C. (hereinafter "Owner"). The appeal was filed in a timely manner. As the Owner acknowledges, Section 3112.2 of the BZA's Rules of Practice and Procedure permits appeals 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." For the reasons set forth below, Stancioff filed her appeal within the required timeframe. Moreover, the Owner is barred by equitable principles from claiming any prejudice based upon the timing of the Appeal.

II. Argument

Stancioff did not have notice of the zoning violations when the building permits were issued or construction began. Significantly, the relevant application for building permit did not disclose a lot occupancy in excess of forty percent (40%). *See* Stancioff Appeal at Exhibit 8. In fact, the Application and permit did not even reference the correct lot and square in the District of Columbia. Stancioff Appeal at Exhibits 7 and 8.

Notably, the Owner also filed another application, dated December 29, 2004, in which the lot occupancy information was misstated. That application reported that the lot

area of the building would be 40% and the proposed gross floor area would be 967 square feet. *See* Exhibit 11 to Appeal.

Thereafter, the detailed plans for the Owner's improvements were unavailable from the Department of Consumer and Regulatory Affairs ("DCRA") for a protracted period of time. *See* Exhibit A hereto (e-mails to and from Toye Bello regarding the missing plans). When some plans were located by Toye Bello at DCRA in early February of 2005, Stancioff's counsel finally had an opportunity to examine them. However, those documents did not accurately disclose the lot occupancy issue with adequate candor or clarity. *See, e.g.,* Exhibit B hereto (Cover Sheet – representing that the project would have a "proposed lot occupancy" of "40%").

Meanwhile, the plat remained unavailable to Stancioff until *after* the Appeal was filed. *See* Appeal at fn. 4.

Stancioff diligently was trying to determine the lot occupancy of the proposed improvement from plans, DCRA officials and the Owner. On February 8, 2005, Stancioff finally met with Toye Bello at DCRA and learned that the improvements did, in fact, exceed forty percent (40%) and that the added "trellis" had been the alleged legal basis for DCRA's issuance of the permit. *See* Appeal at p. 10.

Significantly, the Owner then promised DCRA and Stancioff that a petition for special exception would be filed immediately. Such promises were made on or before February 11, 2005. *See* Exhibit C hereto. Despite these promises, the petition was not forthcoming. Under these circumstances, Stancioff was forced to file an appeal on February 22, 2005 and to pay the $800.00 filing fee relating thereto.

On February 23, 2005, the Owner again promised to file for special exception "within the next several days." According to counsel for the Owner, such delays were due to the "cumbersome" filing process, including various notices and other requirement. *See* Exhibit D hereto. In fact, the petition was not filed until March 21, 2005, i.e., more than five weeks after the Owner first promised to file.

Under these circumstances, the Owner has absolutely no basis for objecting to the timing of Stancioff's Appeal. As the record demonstrates, the Owner was fully aware of the lot occupancy and side yard issues in October of 2004. *See* Exhibit E hereto (excerpts from hearing on special exception petition). The Owner knowingly proceeded with construction with full appreciation of the attendant risks. It knew that the "trellis" was added to the plans in an effort to circumvent the zoning regulations.

Significantly, the construction was not substantially completed when Stancioff's zoning concerns were shared with the Owner. Exhibit 5 to the Appeal includes time-stamped photographs from February 5, 2005. At the time, the third floor had not been constructed (except for a few pieces of lumber). The first and second floors also were incomplete. Id. *See also* Exhibits hereto, establishing chronology of communications with Owner.

In the Motion to Dismiss, the Owner references a lawsuit that Stancioff filed in December of 2004 as alleged evidence that "Appellant was aware almost immediately that a significant construction project was underway on the adjacent property." Memorandum in Support of Motion at p. 3. The Owner does not disclose to the BZA the subject of that lawsuit, which related solely to damage that was sustained to Stancioff's property at the time of excavation. *See* Exhibit F hereto. Stancioff was challenging

excavation that encroached by approximately two feet onto her own property. Such circumstances did not constitute notice to Stancioff that the Owner also was violating the zoning laws of the District of Columbia.

III. Conclusion

Stancioff's appeal was filed in a timely manner. She respectfully requests an opportunity to present testimony at the hearing on September 20, 2005 regarding this issue. She has been out of the country since the Motion was filed. Accordingly, she seeks leave to address this issue further by means of sworn testimony at the scheduled hearing on her Appeal.

Respectfully Submitted,

Laurie B. Horvitz, Esq.
Nathan I. Finkelstein, Esq.
Robert Goldman, Esq.
FINKELSTEIN & HORVITZ, P.C.
7315 Wisconsin Ave., Suite 400 East
Bethesda, Maryland 20814
(301) 951-8400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition to Motion to Dismiss, including all exhibits thereto, were served on September 2, 2005, via first class mail, postage prepaid to the following:

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

George R. Keys, Jr.
Jordan & Keys, LLP
1400 16th Street, N.W.
Washington, D.C. 20036

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

Laurie B. Horvitz

A

'.aurie Horvitz

From: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
To: "'Laurie Horvitz'" <laurieh@fandhlaw.com>
Sent: Monday, February 07, 2005 3:40 PM
Subject: RE: Stancioff - 1812 35th Street NW

I should be able to accommodate you, under the circumstances Please call Evon Epps at 202-442-4576 to get you on my calendar for between 12:00 PM and 3:00 PM. Look forward to meeting with you. Thanks.

Toye Bello
Zoning Administrator
Dept. of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Suite 2000
202-442-4576

-----Original Message-----
From: Laurie Horvitz [mailto:laurieh@fandhlaw.com]
Sent: Monday, February 07, 2005 12:05 PM
To: Bello, Toye (DCRA)
Subject: Re: Stancioff - 1812 35th Street NW

Mr. Bello - Thank you for your efforts to evaluate and solve the issues presented. I certainly am pleased that you have located the plans. Could we review the plans within the next day or two? Ideally, we would obtain a copy fron DCRA of the applicable documents pertaining to the lot occupancy and other issues. Of course, we would pay all reproduction costs. Meanwhile, we are eager for a meeting. Could we meet tomorrow (Tuesday)? - Laurie Horvitz (301) 951-8400
----- Original Message -----

From: Bello, Toye (DCRA)
To: 'Laurie Horvitz'
Sent: Saturday, February 05, 2005 7:08 PM
Subject: RE: Stancioff - 1812 35th Street NW

Indeed, I have located the plans and now have a clearer understanding of what the zoning issue surrounding the subject site is. I have had my deputy contact the property owner for a meeting early next week to see about pursuing a resolution that is considerate of and protective of each party's interest in this matter. Without prejudice to a specific outcome as to whether this becomes an appeal or an application for relief before the Board of Zoning Adjustment (BZA) my preliminary assessment is that this is one of those vexing zoning situations which fall in such a grey area that there is merit in more than one interpretation.

Quite frankly I think the formulators of the zoning regulations anticipated discordant interpretative opinions to the Zoning Administrator's, in permitting appeals of all and any determination. My first attempt will be to fashion an administrative remedy to a zoning conflict, if possible, but sometimes it takes an appeal to foster a better understanding of the intent of the regulations.

I will schedule a meeting with you and your client after meeting with the owners next week, to inform and involve you in the attempt at resolution. Thank you for your patience.

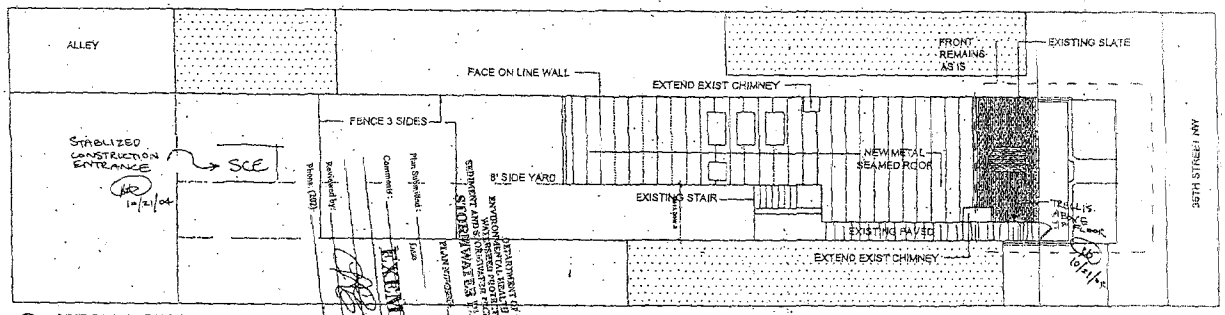
Toye Bello
Zoning Administrator
Dept of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Suite 2000
202-442-4576

-----Original Message-----
From: Laurie Horvitz [mailto:laurieh@fandhlaw.com]
Sent: Friday, February 04, 2005 12:52 PM
To: Toye.bello@dc.gov
Subject: Stancioff - 1812 35th Street NW

Mr. Bello - I greatly appreciated your telephone call last evening. Per your suggestion, I am following up with a email. Please let me know whether you have been able to locate the relevant plans. Most importantly, please clarify the proposed lot occupancy of the project at 1812 35th Street, N.W. I look forward to hearing from you this afternoon. - Laurie Horvitz, Esq. (counsel for Deidre Stancioff) - (301) 951-8400

B

ADDITION & RENOVATION TO
1812 35th STREET NW WASHINGTON, D.C.



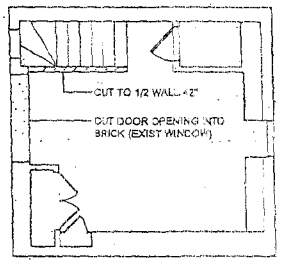
A SITE PLAN - PROPOSED
SCALE : 1/8" = 1'-0"

1812 35TH STREET NW
LOT 27 SQUARE S1296

RESIDENCIAL DISTRICT	R3
LOT SIZE	2400 SF
EXISTING HOUSE FOOTPRINT	637 SF
EXISTING LOT OCCUPANCY	26.5%
PROPOSED HOUSE FOOTPRINT	967 SF
PROPOSED LOT OCCUPANCY	40.0%
HEIGHT OF HOUSE	24'-4"
PROPOSED HGT OF HOUSE	35'-0"

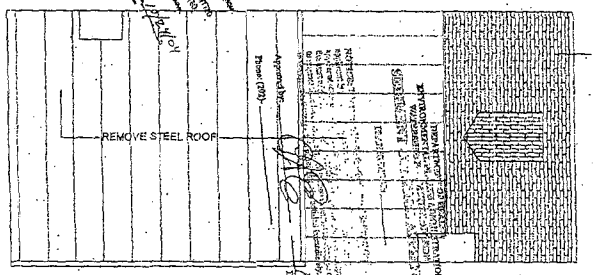
LIST OF DRAWINGS

A-1	ARCHITECTURAL PLANS
A-2	EXTERIOR ELEVATIONS
A-3	LONGITUDINAL SECTION
A-4	TRANSVERSE SECTIONS
A-5	SCHEDULES / DETAILS
S-1	STRUCTURAL PLANS
S-2	STRUCT. NOTES & DETAILS
S-3	STRUCTURAL DETAILS
M-1	MECHANICAL
P-1	PLUMBING
E-1/E-2	ELECTRICAL
EC-1	EROSION CONTROL

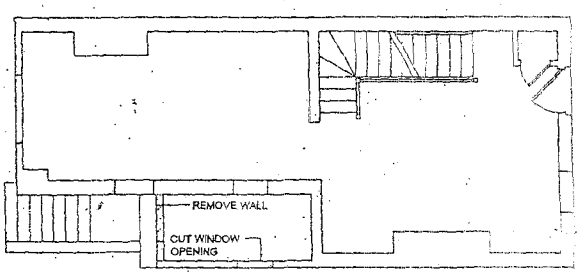


C 2ND FLOOR DEMOLITION PLAN
SCALE : 1/4" = 1'-0"

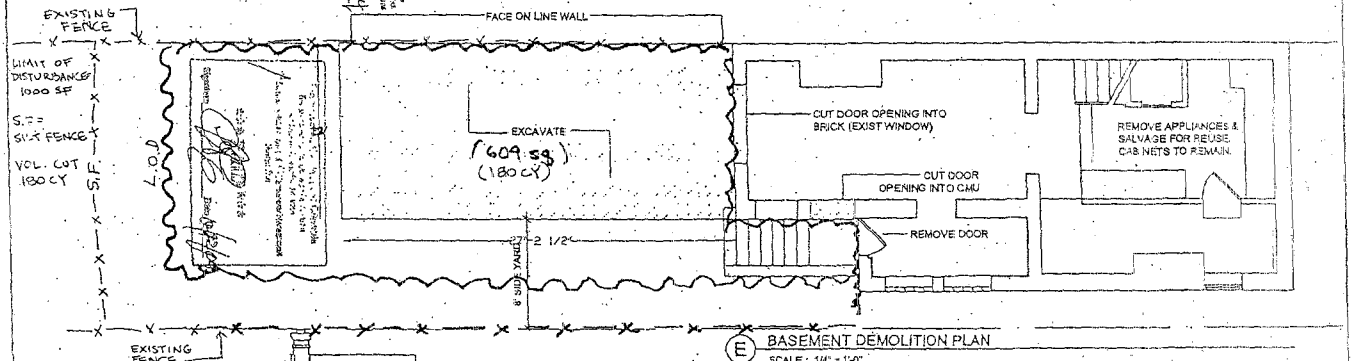
DEMOLITION PLANS



B ROOF DEMOLITION PLAN
SCALE : 1/4" = 1'-0"

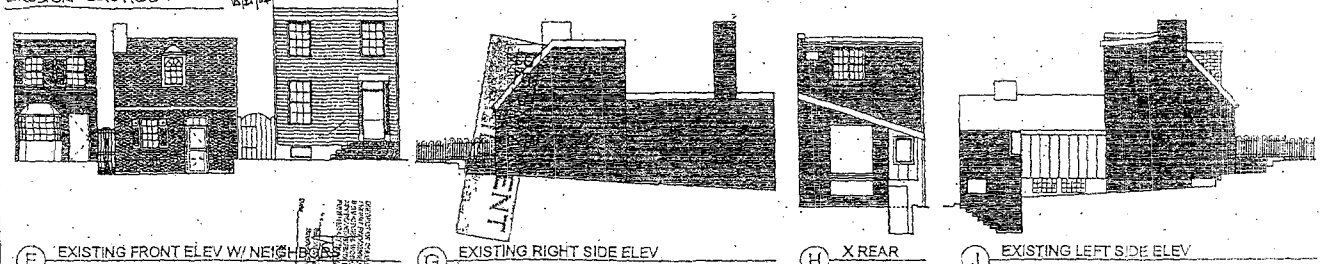


D 1ST FLOOR DEMOLITION PLAN
SCALE : 1/4" = 1'-0"



E BASEMENT DEMOLITION PLAN
SCALE : 1/4" = 1'-0"

EROSION CONTROL NOTES



F EXISTING FRONT ELEV W/ NEIGHBORS
SCALE : 1/8" = 1'-0"

G EXISTING RIGHT SIDE ELEV
SCALE : 1/8" = 1'-0"

H X REAR
1/8" = 1'-0"

J EXISTING LEFT SIDE ELEV
SCALE : 1/8" = 1'-0"

1812 35th STREET NW WASHINGTON, D.C.
PARTNERSHIP OF 1812

COVER SHEET
DEMOLITION / EXISTING

PERMIT SET 07-23-04

CS

C

Laurie Horvitz

From: "Peter L. Goldman" <pgoldman@oreillymark.com>
To: <laurieh@fandhlaw.com>
Sent: Wednesday, February 16, 2005 5:32 PM

Ms. Horvitz - per our discussion today, please be advised that I will be going to the Zoning Dept. at DCRA on February 22, 2005, to apply for a special exception for the property at 1812 35th Street, N.W.

Per our discussion, please contact my office (703) 684-6476 (703) 548-8935 (f) by no later than February 17, 2005, with your client's approval for the firewall to be built. It is essential for the safety of both properties. Thank you. Peter Goldman

LAW OFFICES
FINKELSTEIN & HORVITZ, P.C.
Suite 400 East
7315 Wisconsin Avenue
Bethesda, Maryland 20814
Telephone: (301) 951-8400
Facsimile: (301) 951-8401
Email: info@fandhlaw.com

Nathan I. Finkelstein ★◆◆
Laurie B. Horvitz ★◆

Robert J. Goldman ★◆◆

★ MD, ◆ DC, ● G

February 17, 2005

Via Facsimile (703) 548-8935 and First Class Mail

Mr. Peter L. Goldman, Esq.
526 King St., Suite 213
Alexandria, VA 22314

RE: 1812 35th Street Associates LLC

Dear Mr. Goldman:

I received your email, dated February 16, 2005, regarding the above-referenced property. As you know, we met on Friday, February 11th at the property. At that time, we discussed a number of issues, including the filing of an application for special exception by your client. My client, Ms. Stancioff, maintains that the proposed construction on 1812 35th Street impermissibly violates existing zoning regulations.

Although I had been told previously by Mr. Toye Bello, the current Zoning Administrator at DCRA, that such an application likely would be filed by your client on or before February 11th, you provided us with a different timetable. More particularly, you and your client represented that the application would be filed on February 14th or 15th. Accordingly, I placed calls to you on February 14th, 15th and 16th. Yesterday, February 16th, you stated that the application would be filed on February 22, 2005, in conjunction with an 11:00 a.m. meeting with the applicable government officials. These delays are extremely troubling and do not promote the trust and cooperation that you purportedly are advocating.

As I explained quite explicitly on February 11th, my client's requested cooperation will not be forthcoming unless and until I receive evidence of the filed application for special exception. Until I receive proof of filing, Ms. Stancioff will not provide access to her property for purposes of the firewall installation. Under the above-referenced circumstances, your client is solely responsible for any resulting delays in construction.

Please understand that Ms. Stancioff is not waiving any of her rights by trying to resolve certain outstanding issues with your client. If she consents to construction of the firewall at a later date, such consent will preserve expressly all of her other claims.

Sincerely,



Laurie B. Horvitz, Esq.

cc: Deidre Stancioff

Laurie Horvitz

From: "Bello, Toye (DCRA)" <Toye.Bello@dc.gov>
To: "'Laurie Horvitz'" <laurieh@fandhlaw.com>
Sent: Wednesday, February 16, 2005 1:44 PM
Subject: RE: Stancioff - 1812 35th Street

I will follow up on this and let you know promptly. Thanks.

Toye Bello
Zoning Administrator
Dept. of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Suite 2000
202-442-4576

-----Original Message-----
From: Laurie Horvitz [mailto:laurieh@fandhlaw.com]
Sent: Wednesday, February 16, 2005 12:31 PM
To: Bello, Toye (DCRA)
Subject: Stancioff - 1812 35th Street

Mr. Bello - I am writing to inquire about the promised application for special exception that we discussed regarding the above-referenced property. As you will recall, the owners of 1812 35th St. represented to you that they would be filing such an application by the end of last week. I met with the owner and her attorney on Friday and was told that the application would be filed on Monday or Tuesday. Despite these promises, I have not received any confirmation that the application was filed. Please let me know the status of this matter. You personally recommended the filing of the special exception. Your timely response would be greatly appreciated. - Laurie Horvitz (301) 951-8400 (counsel for Deidre Stancioff, 1814 35th St.).

D

O'REILLY
&
MARK, P.C.
ATTORNEYS AT LAW

Paul J. O'Reilly (MD)
Peter L. Goldman (DC MD VA)*
Diana C. Theologou (MD)
Rasheda M. Jiles (NC)

Of Counsel
Michael M. Ain (DC MD)

Retired
Eugene J. Mark, Jr.

* *reply to Virginia office*

11200 Rockville Pike, Suite 301
North Bethesda, Maryland 20852
TEL (301) 231-6330
FAX (301) 231-6122

526 King Street, Suite 213
Alexandria, Virginia 22314
TEL (703) 684-6476
FAX (703) 548-8935

www.oreillymark.com

February 23, 2005

VIA FACSIMILE (301) 951-8401
AND VIA REGULAR MAIL

Laurie B. Horvitz, Esq.
Finkelstein & Horvitz, P.C.
Suite 400 East
7315 Wisconsin Ave., N.W.
Bethesda, Maryland 20814

RE: 1812 35th Street Associates, LLC and Stancioff

Dear Ms. Horvitz:

As I informed you this morning, my clients are in the process of filing the application for a special exception with the District of Columbia Zoning Board. This process is cumbersome, with various notice and other requirements. The application will be filed within the next several days, after my clients complete the various requirements. This letter serves as notice to Ms. Stancioff that the special exception application is being filed.

Accordingly, I request that you honor your agreement with me last week that Ms. Stancioff allow my clients' workers on her property in order to build the fire wall. It is in both parties interest to build the wall.

Ms. Stancioff's failure to provide immediate approval for this work is an unmistakable sign of her bad faith and obstructionist tactics. The delays caused by your client are resulting in damages to the LLC. Please respond in writing by no later than 12:00 p.m., Friday, February 25, 2005. If I do not have your response and Mrs. Stancioff's approval for the fire wall work by then, the LLC will institute legal action against Mrs. Stancioff.

Sincerely,

Peter L. Goldman

E

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

JUNE 7, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Deputy Secretary
JOHN NYARKU	Zoning Specialist

OFFICE OF PLANNING:

STEPHEN COCHRAN	Office of Planning
ARTHUR JACKSON	Office of Planning

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

This transcript constitutes the minutes from the Public Hearing held on June 7, 2005.

MR. KEYS: Yes, potentially, one other witness.

CHAIRPERSON GRIFFIS: Okay. Yes, let's go ahead with questions at this point. Does the Board have any further questions?

BOARD MEMBER ETHERLY: I don't have any questions, Mr. Chair. I'll just note I think a very important point you made. The history was somewhat helpful, but just from my perspective, I definitely won't benefit from a whole lot of cross examination on the trellis question, in light of the history. I mean, once again, the history was helpful in terms of laying out some of the context, but just in terms of kind of still -- I'm still waiting for the pop. I'm still trying to get to kind of the payoff here. So just more or less as a guide for cross examination, I'm not feeling the excitement on this part of where we are. Thank you. For what that's worth.

CHAIRPERSON GRIFFIS: Well noted. Very well. If there's no other questions from the Board, let's move ahead to cross examination. Questions?

MS. HORVITZ: Thank you. Mr. Dan, just to -- very, very briefly. So when was the first date that you learned that there was a potential lot occupancy problem with the lot?

MR. DAN: According to my notes, it was --

CHAIRPERSON GRIFFIS: You need the microphone on.

MR. DAN: Let me make sure. Thank you. I keep forgetting. Everything is automatic nowadays. I believe that we found out some time in mid October and that's what delayed our getting our final permit. You have to go back in and discuss with Faye what this meant and what we had to do.

MS. HORVITZ: Okay. And when did you actually file for a petition for special exception?

MR. DAN: The petition for special extension -- exception was filed after -- in February after you indicated that you were going to challenge our building permit. We went back and talked to Mr. Bello and after talking to Mr. Bello, we, at that time, at some time towards mid or late February, we said we were going to file for the special exemption. But, as I said, it took us a while to collect all the material.

We went to DCRA and requested all the neighbor's addresses and that took a couple of weeks to get to us. They couldn't find our plot, as I understand, you know. He sent out, even delivered our plot, because the District had misplaced that. So it

took us a while to get all the information necessary.

MS. HORVITZ: In fact, it was filed in late March. Is that not correct?

MR. DAN: It was filed on March 21st, yes.

MS. HORVITZ: Okay. So you learned about the special exception problem in mid October and you filed for special exception before this Board in late March. Is that correct?

MR. DAN: The reason we did that, as we say, we had a valid permit.

MS. HORVITZ: Okay.

MR. DAN: We didn't need to file.

MS. HORVITZ: Okay. Now, when was the original house built that you are renovating?

MR. DAN: I'm not sure when that house was built. The records that were sent --

CHAIRPERSON GRIFFIS: Okay. We're going to keep short questions, short answers. If you don't know the answer to the question, you don't know.

MR. DAN: I don't know the answer.

CHAIRPERSON GRIFFIS: Okay. Next question.

MS. HORVITZ: Okay.

MR. DAN: I believe it was 1900, but I don't know.

F

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

RECEIVED
Civil Clerk's Office
DEC

Plaintiff

Deirdre Stanicuff
1814 35th St NW. 2002

Civil Action No. 0000574

1812 35th Associates LLC
Gisela C. Garcia Fumon
6804 Millwood Rd
Bethesda, Md 20817

Defendants

Andreas Dam
11208 Jackhouse Ct
Potomac Md 20854

COMPLAINT

1. **Jurisdiction of this court is founded on D.C. Code Annotated, 1973 edition, as amended, Sec. 11-921**

I want the court to order all activity cease on the property at 1812 35th Street NW. My house + garden have been damaged by an excavation that is over 10 feet deep 15 feet long (2 feet wide on my property) —

Wherefore, Plaintiff demands judgment against Defendant in the sum of $ 50,000.00 **with interest and costs.**

202 337 5871
Phone

DISTRICT OF COLUMBIA, SS

Deirdre O'D Stanicuff, being first duly sworn on oath deposes and says that th foregoing is a just and true statement of the amount owing by defendant to the plaintiff, exclusive of a set-offs and just grounds of defense.

Deirdre O'D Stanicuff
(Plaintiff Agen

Subscribed and sworn to before me this 20 day of December 2004

APPOLLO CAMERON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 15, 2005

Appollo Cameron
(Notary Public/Deputy Clerk)

FORM CV-1013 / Nov 00

Superior Court of the District of Columbia
CIVIL DIVISION

Deirdre O'D Stancioff Plaintiff

vs.

Street Associates L.L.C. Defendant
Gisela Garcia Turon
Andreas Dan.

No. _____

MOTION - (Pro-Se)

MOTION OF: Deirdre Stancioff for T.R.O.

(State briefly what you want the Court to do) I Cease all activity on property 1812 35th St N.W. - my house at 1814 has been damaged by an excavation that is over 10 feet deep 45 feet long & 2 feet in more on my property

Printed name:	Signature:
DEIRDRE O'D Stancioff	Deirdre O'D. Stancioff
Address:	Home phone no. 202 338 5871
1814 35th Street NW.	Business phone no.

CERTIFICATE OF SERVICE

On December 20, 2004 20 04. I mailed this motion to all the lawyers in the case the plaintiff(s) and the defendant(s) who do not have lawyers, as listed below

Street Associates LLC - 1812 35th Street NW Washington DC 20007

Name:	Name:
Gisela Garcia Turon	Andreas Dan
Address:	Address
6504 Hollywood Rd	11208 Tack House Ct
Bethesda MD 20814	Potomac md 20854

Deirdre O'D Stancioff
Signature

POINTS AND AUTHORITIES

(Write the reasons why the Court should grant your motion and include Court rules, laws and cases, if any, that support your reasons.)

Rules + case Law of D.C. Superior Court
Destruction of private property
Property damage + Trespass -

Deirdre O'D Stancioff
Signature

Form CA-191/Dec. 95

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

In re: BZA Application No. 17310
Appeal of Zoning Administrator's Decision
1812 35th Street, N.W., Washington, D.C.

SUPPLEMENTAL FILING IN SUPPORT OF APPEAL

Deidre Stancioff, by and through undersigned counsel, hereby submits additional exhibits in support of her Appeal of Zoning Administrator's Decision, BZA Case Number 17310.

1. Plat for Building Permit, 1812 35th Street.
2. Letters to and from Toye Bello, Zoning Administrator, dated March 7, 2005 and March 21, 2005.
3. Memorandum from Board of Zoning Adjustment, dated March 2, 2005.
4. Memorandum from Office of Planning, dated May 31, 2005, (excluding exhibits).
5. Excerpts from Hearing Testimony of Andres Dan in the related special exception proceeding.

Stancioff also respectfully requests that Board of Zoning Adjustment incorporate by reference the entire record in Application No. 17327, i.e., the application of 1812 35th Street Associates, LLC for a special exception.

Respectfully Submitted,

Laurie B. Horvitz, Esq.
Nathan I. Finkelstein, Esq.
Robert Goldman, Esq.
FINKELSTEIN & HORVITZ, P.C.
7315 Wisconsin Ave., Suite 400 East
Bethesda, Maryland 20814
(301) 951-8400
Counsel for Deidre Stancioff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Supplemental Filing, including all exhibits thereto, were served on September 2, 2005, via first class mail, postage prepaid to the following:

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

George R. Keys, Jr.
Jordan & Keys, LLP
1400 16th Street, N.W.
Washington, D.C. 20036

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

Laurie B. Horvitz

1

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., February 11, 2004

Plat for Building Permit of: SQUARE S - 1296 SITE PER SUB

Scale: 1 inch = 20 feet

Receipt No. 09384

Furnished to: 1812 35TH STREET PARTNERSHIP

Surveyor, D.C.

By: B.D.M.

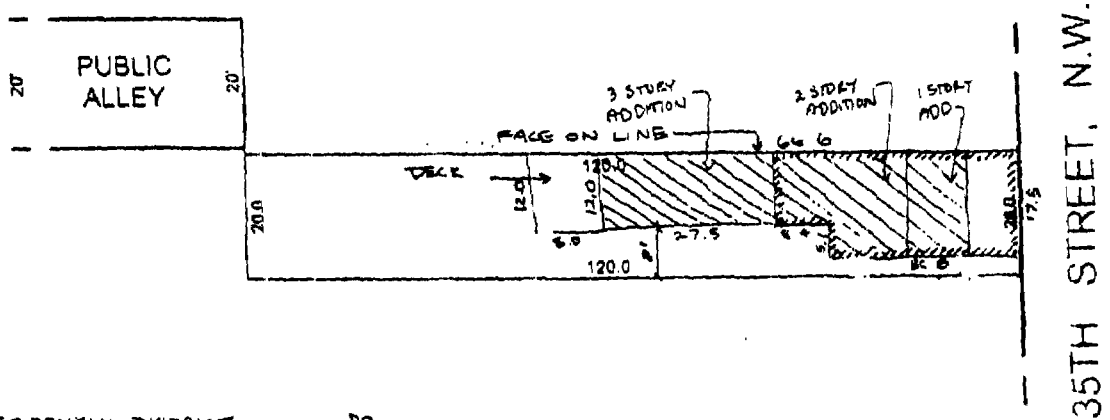
I hereby certify that all existing improvements shown hereon are completely dimensioned and are correctly platted; that all proposed buildings or construction or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 8/2/04

(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.

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GOVERNMENT OF D.C.
OFFICE OF PLANNING



RESIDENCIAL DISTRICT	R3
LOT SIZE	2400 SF
EXISTING HOUSE FOOTPRINT	637 SF
EXISTING HOUSE OCCUPANCY	26.5 %
PROPOSED HOUSE FOOTPRINT	967 SF
PROPOSED HOUSE OCCUPANCY	40 %
HEIGHT OF HOUSE	24'-4"
PROPOSED HEIGHT OF HOUSE	37'-0"

KEY

EXISTING FOOTPRINT

ADDITION

A SUBDIVISION HAS BEEN ORDERED TO CREATE A LOT OF RECORD.

2

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Advisory Neighborhood Commission 2E

Representing the communities of Burleith, Georgetown and Hillandale
3265 S Street, NW • Washington, DC 20007
(202) 338-7427 • FAX (202) 338-0279 • anc2e@erols.com

March 7, 2005

Mr. Toye Bello
Zoning Administrator
DCRA
941 North Capitol Street, NE
Suite 2000
Washington, 20002

RE: 1812 35th Street, NW

Dear Mr. Bello:

You have been very helpful in responding to my concerns not only as Chair of ANC 2E but as a neighbor who lives around the corner of 1812 35th Street and of course, of Ms. Stancioff who resides at 1814 35th Street. We have received a copy of her appeal to the Board of Zoning Adjustment and plan to partake in the May 5 hearing. In the meantime, this project is moving along at a rapid pace. I am enclosing a copy of a sheet from the application that I ask you to explain. I am confused as I know the lot occupancy allowed is 40% with a little wiggle room of 2% more but when I see proposed lot occupancy at 44% why was this allowed without a BZA review as is requested by the engineer Faye O? I find this very confusing. This project will probably be completed by the time of the BZA hearing in May so, if possible, I would like an explanation now. I also wanted to bring to your attention that we had to have the MPD stop the work yesterday at 1812 as they had no permit for Sunday work.

I look forward to hearing from you and have always appreciated your timely responses

Sincerely,

Ed Solomon
Commissioner, SMD 01

enclosure

COMMISSIONERS:

Ed Solomon, District 1 John Lever, District 2 Bill Skelsey, District 3 Brett Clements, District 4
Bill Starrels, District 5 Pam Moore, District 6 Charles Eason, District 7

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Office of the Zoning Administrator

March 21, 2005

Commissioner Ed Solomon
Commissioner, SM01
Advisory Neighborhood Commission 2E
3265 S Street, NW
Washington, DC 20007

Re: 1812 – 35th Street, NW

Dear Commissioner Solomon:

This letter responds to your letter of March 7, 2005, in the matter of the referenced address above. Your letter sought an explanation for the current statue of on-going construction at subject premises, in light of a scheduled appeal of the building permit before the Board of Zoning Adjustment (BZA). You also sought explanation for an attached Plan Correction List which indicated that BZA relief was necessary to construct up to forty four percent (44%) lot occupancy within the R-3 zone district, within which subject property lies.

For chronological reasons, let me first address the issue of the plan correction list. The Plan Correction List form is an internal plan review tool designed for the express purpose of communicating to an applicant, review comments associated with first line review of a filed application and associated plans. Hence, plan review comments therein do not necessarily establish the final basis for approval or denial of an application. An applicant may respond to the comments in a Plan Correction List by amending filed plans in order to bring a proposal into compliance or otherwise. If plans are or cannot be revised into compliance, only then is an application denied and referred to the BZA. This practice is underscored by the second comment in the Plan Correction List attached to your letter, which instructs the applicant to "reroute decision to Zoning for action."

In the instant case, the applicant revised the plans to eliminate the existing side yard, ostensibly by introduction of a trellis structure. The elimination of the side yard informed the basis for the determination that subject property metamorphosed into a single family row dwelling from its previous semi-detached designation. The effect of this change in designation was to permit a greater percentage of lot occupancy.

As you may be aware, whereas the R-3 zone district limits semi-detached single family dwellings to a maximum forty percent (40%) lot occupancy, row dwellings may occupy up to sixty percent (60%) maximum lot occupancy (See Section 403.2;11 DCMR).

It is in the context of this background that I, subsequent to Ms. Stancioff's complaint, overviewed and re-evaluated the approved building permit. I determined that though the approval of the building permit met the letter of the Zoning Regulations, it appeared to violate the spirit of the Regulations in misappropriating its intent. For the foregoing reason, I reversed the interpretative decision of this office as applied, and in separate meetings with the property owner and Ms. Stancioff, and her attorney, informed both parties of my strategy for redressing the standing situation.

My strategy entailed finding a balance of fairness to both parties' hardships. The property owner's good faith reliance on a duly issued building permit, and the potential adverse impact of the project on Ms. Stancioff's enjoyment of her property. Therefore, in exchange for not moving revocation of the building permit, I instructed the property owner to file a revised permit application for referral to the BZA. The application before the BZA will seek a special exception pursuant to Section 223.1. The applicant understands that approval of the request by the BZA is not guaranteed. To that end, the applicant has the option of scaling back the project to within the two percent (2%) flexibility discretion allowed the Zoning Administrator under Section 407.1, in the event the BZA denies the application.

Ms. Stancioff and her attorney chose to file an appeal before the BZA, notwithstanding that I met with them to outline what is the substance of this letter. I do not begrudge them their prerogative, but in the context of administrative appeals rights, my strategy, I believe, preserves Ms. Stancioff's right of participation in a public hearing which outcome has the opportunity to affect. A move to revoke the building permit would not have afforded her this same opportunity, would not have stopped the construction, and would not have been as expedient, given the Government's transition into a centralized administrative hearing process.

If the notice for the application hearing has not arrived yet, it should soon. I believe this strategy to be balanced, fair and equitable in that the property owner is not subjected to the unduly punitive impact of indefinite work stoppage and or revocation, given her good-faith reliance on the Government's issuance of the building permit and Ms. Stancioff's rights of opposition to the relief sought before the BZA is preserved. It is important to note that a Stop Work Order was not feasible here, as there exists no evidence of construction beyond the scope of approved plans.

I hope this provides the explanation requested by your letter and look forward to hearing from you should there be further questions about this matter.

Sincerely,

Toye Bello
Zoning Administrator

3

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Office of the Zoning Administrator

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March 2, 2005

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Faye Ogunneye, Chief
Zoning Review Branch

SUBJECT: **Proposed Rear Addition to a Single Family Semi-Detached Dwelling located at premises 1812 35th Street, N.W., Lot(s) 802, in Square S-1296, Zoned R-3**

Review of plans for the proposed at the above subject premises indicates that the Board of Zoning Adjustment approval is required as follows:

1. Special exception pursuant to Section 223.1, requirements for addition to an existing single family semi-detached structure in the R-3 residential zone district. (Section 3104.1)

fo/ee

BZA
Case No. 17327
Exhibit No. 4

NOTES AND COMPUTATIONS

ADDRESS: 1812 35th Street, N.W. LOT(S): SQUARE: S-1296

ZONED: R-3

	REQUIRED	ALLOWED	PROVIDED	VARIANCE
LOT AREA	2,000 Sq. Ft.		2,400 Sq. Ft.	
LOT WIDTH	20'		20'	
LOT OCCUPANCY (40%)		960 Sq. Ft.	Exist.: 720 Sq. Ft. Add.: 330 Sq. Ft. Total 1,050 Sq. Ft. (43.75%)	90 Sq. Ft. (3.75%)
FLOOR AREA RATIO ()		N/A	N/A	
PARKING SPACES	1		Existing	
LOADING BERTHS	N/A		N/A	
FRONT YARD	N/A		N/A	
REAR YARD	20' min.		53.3'	
SIDE YARD	8'		2.5'	5.5' (31.25%)
COURT, OPEN	N/A		N/A	
COURT, CLOSED	N/A		N/A	

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4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Ellen McCarthy
Interim Director

DATE: May 31, 2005

SUBJECT: BZA Application 17327

APPLICATION
1812 35th Street Associates LLC, the applicant, requests a special exception under Section 223.1 to retain a 3-story addition to an existing one-family detached dwelling located at 1812 35th Street, N.W. (Square 1296S Lot 27 [802]) pursuant to Section 3104.1 under Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning.

SUMMARY RECOMMENDATION
The Office of Planning (OP) cannot recommend approval of this request because the application does not meet the standards of Section 223.1.

SITE AND AREA DESCRIPTION
The subject property is approximately 0.05-acre (2,400 square feet) in size and immediately west of tree-lined 35th Street, N.W. It is developed with a 1½-story masonry dwelling (circa 1910) enlarged to 3-stories by an addition still under construction. The property slopes away from 35th Street with several large trees in the rear yard surrounded by a wooden stockade fence approximately 6 feet tall. There is no direct access to this property from an existing service alley to the northwest, and no on-site parking.

Development to the north, south, and west mostly consists of two-story frame and masonry detached-, semi-detached-, and row dwellings. There is also one 3-story semi-detached dwelling in the southern corner of the square at the intersection with S Street. To the east across 35th Street are a 2-story apartment building, and two building occupied by the Filmore Arts Academy (a D.C. public school), and a former public school building now occupied by the Corcoran Gallery Art & Design College. The subject and surrounding properties are all within a Residence (R-3) zone district (please refer to Exhibits 1-3).

APPLICANT'S PROPOSAL
The applicant explained that fire destroyed the interior of the original building. The applicant later purchased the property in 2003 with the intent of renovating and expanding the vacant

BZA
Case No. 17327
Exhibit No. 30

dwelling. Building Permit #B461964 was issued on May 19, 2004 for repair of the fire damage. Building Permit #B476431 subsequently issued on November 8, 2004 was for construction of 1½ -2 additional floors above the existing dwelling; and continuation of the resulting 3-story structure 27.5-feet further into the rear yard. The application letter dated March 15, 2005, explains that the Department of Consumer and Regulatory Affairs (DCRA) issued the permits based on a row dwelling classification when in fact it is a detached dwelling with an exterior wall in line with the northern property boundary. As stated in the letter, "The row dwelling classification was obtained by the (planned) addition of a trellis connecting the house to the adjacent (dwelling) to the South," another on-line detached one-family dwelling located at 1810 35th Street, N.W.

The property is in a R-3 zone district that allows row dwellings as a matter of right. Row dwelling as defined in Section 199 has no side yard setbacks and is permitted a percentage of lot occupancy up to 60%. This property has one side yard setback of 3 feet, as do both adjoining properties, therefore the Zoning Administrator ultimately concluded the dwelling is detached, and subject to side yard setback and lot occupancy limitations for a detached dwelling. The new addition maintains the existing nonconforming side yard setback of zero (0) feet along the northern property boundary, and the nonconforming 3-foot setback from the southern boundary for the upper-floor addition to the original dwelling. It also increased the lot occupancy percentage to 43.75%.

In a memorandum to the Board of Zoning Adjustment dated March 2, 2005, the DCRA Zoning Review Branch states the new construction requires special exception relief pursuant to Section 223.1. As a result, the applicant's letter explains this application was submitted to "... eliminate the need for a trellis, eliminate the need for changing the classification of the building (from a detached dwelling to a row dwelling), and allow for the extension to be completed per the plans approved by DCRA"

EXISTING ZONING AND RELIEF REQUESTED

The site is zoned R-3. Zoning Regulation Section 320.3 (a) allows one-family detached dwellings per Sections 300.3 (a) and 201.1 (a), and one-family row dwellings per Section 320.3 (b) as a matter of right in this zone district. Lot 802 dimensions are less than the required minimum width of 40 feet and 4,000 square feet of area for a detached one-family dwelling. Northern and southern side yard setbacks of 0 feet and as little as 3 feet, respectively, are less than the minimum 8 feet required under Section 405.9. Zoning Regulation include the following provisions for expanding such nonconforming buildings on nonconforming lots:

"405.8 In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; Provided, that the width of the existing side yard shall not be decreased; and Provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.)."

So, although the dwelling was constructed before 1958, neither non-conforming side yard setback can be extended as a matter-of-right. However, the following also applies:

"2001.3 Enlargements or additions may be made to the structure, provided, that the following requirements shall be met:

(a) The structure shall conform to percentage of lot occupancy requirements; and
(b) The addition or enlargement itself shall:
(1) Conform to use and structure requirements; and
(2) Neither increase or extend any existing, nonconforming aspect of the structure; nor
(3) Create any new nonconformity of structure and addition combined."

As constructed the addition continues existing nonconforming aspects of the dwelling and results in the allowable lot occupancy percentage being exceeded. This project is also subject to the following provisions of the Zoning Regulations.

Standard	R-3 Requirement	Existing	After Renovation	Required Relief
Min. Lot Area	4,000 s.f.	0.05 acres (2,400 s.f.)	Same	Yes
Min. Lot Width	40 feet	20 feet [1]	Same	Yes
Square Footage	--	924 s.f. [2]	1,050 s.f. [3]	--
Height	40 feet/ 3 stories	17 feet [4]	33 feet [4]	No
Lot Occupancy	40%	26.5 %	43.75 %	Yes
Side Yard	8 feet	0 & 3 feet	0 & 3 feet [5]	Yes
Rear Yard	20 feet	81.5 feet	53.4 feet	No
Parking	1 space	0	0	No

It is apparent that a residential addition on this property is not possible without zoning relief because meeting the 8-foot side yard setback requirement on the 20-foot wide lot would only allow construction of an addition 4-feet wide. As constructed, the resulting lot occupancy percentage exceeds that allowed as a matter of right by approximately 3.8% and both side property lines remain nonconforming. The applicant therefore submitted a request for special exception relief under Section 223 from the provisions of Section 2001.3, to allow continuation of the nonconforming side yard setbacks, and to exceed the allowable lot occupancy percentage.

ANALYSIS

Section 3104.1 grants the Board of Zoning Appeals (BZA) the authority "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 Zoning Maps and will not tend to

[1] From the annotated DC Surveyor's subdivision plat dated August 2, 2004
[2] Previous ground floor and finished area in half story according to D.C. land records
[3] From the submitted sheet of Notes and Computations
[4] From the Axonometric of Proposed Building (refer to Exhibits 4 & 7)
[5] The side yard setback of the rear portion of the addition from the southern boundary would be 8 feet, but not the additional upper floors over in the existing dwelling

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affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." The referenced special exception would allow the continuation of the nonconforming side yard setback along the northern and southern boundaries, and increase in the allowable lot occupancy percentage subject to Section 223 provisions.

Compliance with Section 223
Requirements under this section include the following:

223.2 The addition shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular;

(a) *The light and air available to neighboring properties shall not be unduly affected;* The proposed addition does not affect the air available to neighboring properties, however it significantly changes how shadows are cast on properties to the north. At OP's request, the applicant's architect prepared shadow diagrams approximating the original conditions, the dwelling with the addition, and the dwelling with theoretical maximum (4-foot wide) addition allowed under the Zoning Regulations (refer to Exhibits 4-9).

These diagrams indicate that shadows cast by the current construction or the original dwelling with a theoretical matter-of-right addition will (would) cover more of adjacent rear yards for a longer period from early fall through the winter. Under either option, the neighboring dwelling at 1814 35th Street largely remains in shadow most of the day during this period. Note that the "Shadows of Existing House" diagram (Exhibit 8) also seems to indicate that reducing the existing addition to 1-story would still cast a shadow over the abutting rear yard in the winter.

Diagrams also indicate that the new construction will not affect the neighboring properties to the south, and, because the adjacent 35th Street right-of-way is 80 feet wide, it does not appear the new shadow pattern will affect properties on the opposite side of the street.

OP is less concerned about shadows cast on the neighboring dwelling(s) to the north than about how those shadows may affect the utility of the rear yards. The applicant is encouraged to consider "stepping-down" the height of the addition to one story for that portion that extends beyond the original dwelling. This would mitigate the extent and duration of shadows cast in the fall months. Unless these or other effective mitigation measures are proposed, OP cannot conclude the light available to abutting properties is not substantially adversely affected.

(b) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;* With regards to the neighboring property to the north, privacy of use are not affected because the addition wall along the shared boundary does not include windows.

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Concerning the neighboring property to the south, the primary view from the addition third floor above the original dwelling (the portion of the building requiring zoning relief) appears to be over the neighboring residence. Views into the rear yard of the southern property are limited to the western end of the yard by a rear addition to southern dwelling and the angle of view. Based on this information, privacy of the neighboring property to the south is not unduly compromised by the subject addition or the proposed special exception. Note that zoning relief was not requested for the rear portion of the addition beyond the original dwelling because it meets the requirement for an 8-foot side yard setback from the southern boundary.

(c) *The addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the street frontage;* ... The new front façade represents a significant intrusion upon the 35th Street frontage in terms of it's architectural character and scale. Vertical articulation of the second and third floors negates the roofline of the original building while reflecting few characteristics of more typical building facades along the street. A more effective design approach could include bringing the entire façade out to the street, using a sloped roof and dormers at top of the building to make it appear more in scale, and negotiating with Building Code officials to reduce or eliminate the additional 3 feet of wall height required for the northern firewall.

Although the alley does not abut this property, the addition does not seem out of place when viewed from the alley when compared with rear facades of other dwellings.

(d) *In demonstrating compliance with (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs or elevation and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings, and view from public ways.* Sufficient graphical documentation was submitted for staff review and analysis.

223.3 *The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 districts or seventy percent (70%) in the R-3, R-4 and R-5 Districts.* This proposal is consistent with this limitation.

223.4 *The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials or other features for the protection of adjacent and nearby properties.* OP recommends that applicant consider reducing the height of the addition, particularly the portion that extends beyond the original dwelling. They should also consider redesigning the front façade to be less intrusive and reflect more characters of the surrounding architecture.

Based on this information, OP cannot conclude that the application meets the requirements of Section 223.

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Compliance with Section 3104.1:
Based on the findings of Section 223, granting the requested relief would not be in harmony with the general purpose and intent of the Zoning Regulations, and Zoning Map, and proposed changes will tend to adversely affect the use of the neighboring properties.

COMPREHENSIVE PLAN
The Comprehensive Plan Generalized Land Use Map designates this site and surrounding properties for Moderate Density residential development characterized by row houses and garden apartments as predominant uses.

COMMUNITY COMMENTS
A letter dated May 13, 2005 from Chair Ed Soloman, Chair, Advisory Neighborhood Commission (ANC) 2E expressed opposition to the requested special exception relief. The public record also includes letters in opposition from: Robert Robelus residing at 1818 35th Street (the second dwelling to the north); tenant Alexander Stancioff residing at 1814 35th Street (the abutting dwelling to the north); Eugene and Joanne Scanlan residing at 1806 35th Street (the second dwelling to the south); and Danielle Berthelot residing at 1804 35th Street (the second dwelling to the south).

RECOMMENDATION
The Office of Planning (OP) cannot support approval of this request because the application does not meet the standards of Section 223.1. OP encourages the applicant to reduce the height of the addition, and redesign the front façade to be more in scale and character with the existing pattern of dwelling facades along 35th Street.

EMc/afj

Attachments:
Exhibit 1 Aerial Including Zoning
Exhibit 2 Angled View from the East
Exhibit 3 Angled View from the West
Exhibit 4 Axonometric of the Existing Dwelling
Exhibit 5 Axonometric of the Neighbor Houses
Exhibit 6 Axonometric of Existing House with Neighbors
Exhibit 7 Axonometric of Proposed House
Exhibit 8 Shadows of Existing House
Exhibit 9 Shadows of Proposed House

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5

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

JUNE 7, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Deputy Secretary
JOHN NYARKU	Zoning Specialist

OFFICE OF PLANNING:

STEPHEN COCHRAN	Office of Planning
ARTHUR JACKSON	Office of Planning

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

This transcript constitutes the minutes from the Public Hearing held on June 7, 2005.

CHAIRPERSON GRIFFIS: -- the rear of your house?

MR. DAN: -- the rear of my current -- that's right.

CHAIRPERSON GRIFFIS: Okay.

MR. DAN: From my current house. The current project.

CHAIRPERSON GRIFFIS: Gotcha, yes.

MR. DAN: The next picture is also on the alley. It is another house facing south on the alley fronting on S Street, and that would be --

CHAIRPERSON GRIFFIS: More contemporary or modern house?

MR. DAN: That's correct.

CHAIRPERSON GRIFFIS: We don't know which one it is, contemporary or modern, at this point. That's the rear of the building.

MR. DAN: That's the rear of the building.

BOARD MEMBER ETHERLY: You don't have a frontal view of that particular property, do you?

MR. DAN: No, I didn't --

BOARD MEMBER ETHERLY: Okay. No problem.

MR. DAN: -- take that. I concentrated in taking what I could see from the house and what people could see from their yard. And finally, the last two

pictures are the two structures almost directly across the street from us on the other side of the street on 35th Street. The first one is an apartment building, this picture here. And the next one is the Fillmore School, Corcoran, I think it belongs to the Corcoran Art Gallery, the Fillmore School. It's also catty-cornered almost directly in front of us, but slightly to the south. And these two buildings are -- complete my panorama of that block or that general area.

Okay. Now, in designing our work, we determine to maintain the front facade. We wanted to keep the front facade of the house and not change, try to minimize the view that you would have from the street. So what we tried to do is, obviously and we did, we kept the two, you know, the two floors and we added the extra floor. And right now, that extra floor looks a little bit out of proportion, because we haven't finished our cosmetic fixes to that.

And the reason it's a little taller is because we were told to put a firewall and we had to extend the floor a little bit higher than we would have liked to. So it's a little bit -- you know, our upper floor is a little bit out of proportion, but we did the best to keep the same look of the existing house, which we happen to like very much.

We filed the building plans on the 13th of August of '04 and we were issued Building Permit B, bravo, 467431 on the 5th of November of '04. Now, prior to being issued this permit, we -- you know, it took a fairly long time from August to the end of November to be issued this permit. Prior to being issued this permit, we were called by Faye Ogunneye and we were told that the property was nonconforming as a semi-detached dwelling with respect to the lot occupancy.

We were surprised by that. We said we had calculated a 40 percent footprint and that was our intent to keep it at 40 percent footprint, but she said that since the side yard was nonconforming, that that side yard would count against the footprint. And according to her notes, which I think are part of the exhibit, there are two notes dated 10, October 5, '04 and October 16, '04. She said that the extra area was, approximately, 90 square feet. Although, being a scientist, if you multiply her numbers, she says the nonconforming yard is about 2.5 feet wide by 30.5 feet long, that's -- we're talking about 77 square feet. And that yields about a 3.17 addition to above the 40 percent occupancy that we were hoping to keep at 40 percent.

Now, we met with Faye and tried to see what can we do here. By that time --

CHAIRPERSON GRIFFIS: Let me see if I understand so far what you have said. You have indicated that Ms. Ogunneye in review of this and she would be the acting Zoning Administrator, at that time, thought that this would need to -- it was nonconforming in the 40 percent, because the side yard was calculated into the lot occupancy?

MR. DAN: Because the side yard had not been calculated, at that time.

CHAIRPERSON GRIFFIS: Right. So that calculated. So any addition to this would need relief under 223, because it would be an addition to a nonconforming structure?

MR. KEYS: That's -- I think you are taking it a step further than happened the following year. I think if you would let him -- allow him to finish the statement, he can --

CHAIRPERSON GRIFFIS: Okay.

MR. KEYS: -- tell you what followed from that.

CHAIRPERSON GRIFFIS: Right. What I don't want to spend too much time on, I mean, we're here for a 223 and that's requesting -- why we're here. You

know, we have got the time to use, let's go right to it.

MR. DAN: Right. As a result of that, we ask what can we do.

CHAIRPERSON GRIFFIS: Sure.

MR. DAN: You know, we have done, you know, all the plans. We have done all the calculations, the work, the structural work. And she indicated that if we were to build a trellis above the nonconforming yard, then that would make it a -- that would qualify the site, the house as a row dwelling.

CHAIRPERSON GRIFFIS: Sure.

MR. DAN: And the side yard would no longer be there. So (a), first of all, it would not count as a side yard, but basically that now the lot occupancy could be 60 percent instead of the 40 percent. So it was on this basis that we were granted a permit on November and that's when we commenced the work.

Now, before we commenced the work, we, you know, tried to talk to the neighbors. We talked to the neighbors actually. We didn't try. We talked to the neighbors. We showed them the plans. Told them what we were going to do. And we talked to Ms. Stancioff and she objected saying you will take away

the light from my house. And, basically, what I told her is that, you know, the house as existing is very, very small.

Anything that would be built nowadays would take away some of the light from her house, but we suggested to her that maybe we can work together and try to help to see how we can help her out, so we can all be maybe in a win-win proposition realizing that her win wouldn't be, you know, a very big win proposition. But we tried to work with her and we offered, at that time, to say if you want to add a skylight to -- she already has one skylight. If you want to add a skylight to the other side of the house, we would be helping -- we would be willing to help you with that and pay for it and/or let's discuss whatever it is you would like to do, so we can all work together on this.

But we commenced our work and we did not get much cooperation from Ms. Stancioff. By late February or mid February, we had already finished the construction up to the third floor. We were already walling, getting ready to put the siding and the walls, actually the walls of the property, and we needed to install the wall on the side of her property, primarily because it called for fire

resistant drywall.

And I wanted to install that as soon as possible, because the house already had a fire. I was a little hesitant to, you know, drag the firewall installation. So we had an agreement to -- we tried to work an agreement so we can get into her property to build that wall. She said that they were going to challenge our building permit and that they would not let us build from their property, unless we were willing to file for a special exemption. And then they would take the case before you.

So what we did, we went to talk to the DCRA to -- we talked to Mr. Bello and we talked to Faye and our lawyer and our architect were present. And we said okay, we have a valid permit, we think, what do we need to do? And he said that, Mr. Bello said that, although there was some, what do you call it, precedent for having a trellis as, you know, closing or making the property a row house, none of those had been challenged.

So what he said is he did not want to defend us, although he would help us, but he said he would suggest that we apply for a special exemption and that they would support us in that application. And at that point, I said okay, well we can, you know,

apply for a special exemption. Do we need to stop work? And he said no, you may proceed with your work. He said, however, if you don't apply for the special exemption, we will take away your permit.

So we pretty much were, you know, forced to apply. At that time, we obtained a memorandum from Faye. On March the 2nd we had to collect all the necessary material to file for a special exemption, all the addresses and all the stuff that are required. In the meantime, Ms. Stancioff and her lawyer did file for a hearing, even though they said they were not going to file if we would apply. I guess the reason they filed is because it took us too long to file ourselves. But it took us a long time because we had to collect a lot of material.

Where are we now? Right now, the construction is almost completed, except for the siding on the north side, which the neighbor would not let us complete. We have not installed a trellis. The reason we are applying here, we're trying to -- if this gets approved, we would not -- we would work with the neighbor, Richard, to not install the trellis, that's what he was objecting, he didn't want to have a trellis and some minor cosmetic applications.

So basically, the outside is all finished.

And basically, even though we have continued working, we have to significantly slow our construction, because of all the problems and impediments from the people on the north side.

CHAIRPERSON GRIFFIS: Understood. Okay. You've laid out clearly the history and the factual basis of why you are here.

MR. DAN: Right.

CHAIRPERSON GRIFFIS: Now, let's proceed on why you are here, 223, special exception, right? Let's go.

MR. KEYS: I would want to move to another witness.

CHAIRPERSON GRIFFIS: Sure. Yes, it's your case.

MR. KEYS: Do you have any questions of Mr. Dan?

CHAIRPERSON GRIFFIS: Do you have a question?

VICE CHAIR MILLER: Yes, I just want to make sure I understood your history right. I thought that you had said that DCRA told you that if you did the trellis, then you wouldn't need to get a special exception. Is that wrong? And then you seem to be saying that --

MR. DAN: No.

VICE CHAIR MILLER: You're seeking a special exception if you do the trellis. I mean, you seem to be saying both things or the opposite.

MR. DAN: Okay. When we first found out that the lot was noncompliant and we met with Faye, Faye suggested that the way -- and she has been very helpful. Faye suggested that the way to get around that is to build a trellis. That was before the meeting with Bello later on. The reason we met with Bello was because of the hearing that Ms. Stancioff and her lawyer were requesting. So since they requested a hearing, Bello told us well, you know, they are going to challenge my plans, even though this precedent for a trellis, I'm not sure I can defend it. And that's when he told us to get a special exemption to, in essence, not go with the trellis.

CHAIRPERSON GRIFFIS: But the point is, let's not put so much emphasis on trellis or not trellis. The point I understand that the Zoning Administrator indicated that if this was a connected row dwelling, you have 60 percent lot occupancy as a matter-of-right. The fact of this stepped off, and this is kind of a strange situation, because it steps off not for a compliant rear -- side yard, but it

steps off whatever it is, 2.5 feet.

All right. So that it goes in the lot occupancy. But the point is that it's not connected. It can't necessarily -- well, the Zoning Administrator didn't look at this as a row dwelling and, therefore, it's 40 percent lot occupancy. so the whole area was if it connected, your lot occupancy is enlarged. Okay.

MR. KEYS: Mr. Dan, I would like you, just if you could, describe the side yard of the property on the south side where the existing building was, where the new addition is and explain the distinctions between the side yards and what happens to the side yard.

MR. DAN: I believe what you are asking me is we kept the footprint of that noncompliant side yard, but the addition that followed complied with the 8 foot requirement. Is that what you are asking me?

MR. KEYS: That's correct.

MR. DAN: Thank you.

MR. KEYS: Mr. Chairman, if the Board has any more questions of Mr. Dan, do you want to make him available for cross examination now?

CHAIRPERSON GRIFFIS: Do you have one other witness?