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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 status 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).

Case No. 17310
Exhibit No. 38

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Board of Zoning Adjustment
District of Columbia
CASE NO. 17310
EXHIBIT NO. 38

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