BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17310
EXHIBIT NO. 41

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October 26, 2005

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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. At the close of the public hearing yesterday, you requested the parties inform the Board of any citations to decisions of the Board or otherwise which they wished the Board to take consideration of in the deliberation of this appeal. I have consulted with Laurie B. Horvitz, Esq., Appellant's counsel, and with Stephanie Ferguson, Esq, DCRA's counsel, in preparing the list of citations below:

1. BZA Application Nos. 16863 and 16863-A - S&P Properties LLC (Nov. 11, 2002)

2. BZA Appeal No. 16811 - David and Janet Pritchard (Oct. 15, 2002)

3. BZA Application No. 17007 - Kathleen Peoples and Philip Sedlak (Sept. 4, 2004)

4. BZA Appeal No. 17085 - Louise and Larry Smith, et al. (Feb. 28, 2005)

5. BZA Application No. 17331 - JPI Apartments Development LP

Board of Zoning Adjustment
District of Columbia
CASE NO. 17310
EXHIBIT NO. 41

(Jul. 6, 2005)

6. BZA Application No. 17327 - 1812 35th Street Associates LLC (Sept. 13, 2005)

7. 83 Am. Jur. 2d. *Zoning & Planning*, § 140.[1]

For your convenience, we enclose a copy of the cited Am. Jur. 2d. reference.

Respectfully submitted,

George R. Keys, Jr.

cc: Laurie B. Horvitz, Esq.
Stephanie Ferguson, Esq.
Charles Eason, ANC 2E

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[1]Laurie Horvitz, Esq. did not consent to the inclusion of this citation.

Westlaw.

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American Jurisprudence, Second Edition
Database updated August 2005

Laura Hunter Dietz, J.D., Margaret Hoag, J.D., Alan J. Jacobs, J.D., Theresa Leming, J.D., Bill Lindsley, J.D., Lucas Martin, J.D., Eric C. Surette, J.D.

Zoning and Planning
VIII. Building and Lot Regulations
A. Height, Bulk, and Area Restrictions
2. Setback Regulations

Topic Summary; Correlation Table; References

§ 140. What constitutes building or structure

West's Key Number Digest

West's Key Number Digest, Zoning and Planning ⚖64

Setback regulations commonly require that buildings and other structures be established behind the setback line. In determining whether a structure is a "building" within the meaning of a zoning ordinance setback restriction, a court may consider the reasonably apparent use of the structure, not the subjective intent of the owner. [FN1]

A tennis court is said not to be a building or structure within the meaning of such a regulation.[FN2] A mobile home placed on the land for inspection and sale is not a structure which must observe the setback restrictions,[FN3] nor is a parking lot,[FN4] or a tiki hut which is not fully enclosed. [FN5]

A 12-foot by 12-foot antenna, attached to the ground by concrete and angle irons, is a "structure" as that term is employed in an ordinance which prohibits structures in required front yard space.[FN6] A canopy over the pumps of a gasoline station is a building which must comply with setback requirements.[FN7] Likewise, a garage is a building within the meaning of a zoning ordinance prohibiting the construction of a new building within a setback. [FN8]

[FN1] Storms v. Town of Eaton, 131 N.H. 50, 549 A.2d 1208 (1988).

[FN2] City of Bloomfield Hills v. Ziegelman, 413 Mich. 911, 320 N.W.2d 53 (1982); Klein v. Lower Macungie Tp., 39 Pa. Commw. 81, 395 A.2d 609 (1978).

[FN3] City of Federal Heights v. Knight Mobile Homes, 640 P.2d 244 (Colo. Ct. App. 1981).

[FN4] In re Miller, 170 Vt. 64, 742 A.2d 1219 (1999).

[FN5] Nash v. Fort Lauderdale Bd. of Adjustment, 462 So. 2d 88 (Fla. Dist. Ct. App. 4th Dist. 1985).

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83 Am. Jur. 2d Zoning and Planning § 140

[FN6] Gouge v. City of Snellville, 249 Ga. 91, 287 S.E.2d 539 (1982).

[FN7] In re Cumberland Farms, Inc., 151 Vt. 59, 557 A.2d 486 (1989).

[FN8] Healey v. Town of New Durham Zoning Bd. of Adjustment, 140 N.H. 232, 665 A.2d 360 (1995).

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