BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

In re: 1812 35th Street, N.W., Washington, D.C.

APPEAL OF ADMINISTRATIVE DECISIONS

I. Introduction

Appellant Deidre Stancioff, by and through undersigned counsel, hereby appeals certain administrative decisions pertaining to 1812 35th Street, N.W, Washington, D.C. (hereinafter the "Subject Property"). Such decisions violate the laws and regulations of the District of Columbia, including but not limited to provisions in the District of Columbia Municipal Regulations ("DCMR") regarding lot occupancy requirements for one-family semi-detached dwellings in an R-3 district. This appeal relates to building permits B461964, B467431, and B468744. By and through the issuance of such permits, the Department of Consumer and Regulatory Affairs ("DCRA") has acted in violation of applicable zoning regulations.

In part, the permits, particularly B467431, authorize construction on the Subject Property which would exceed forty-percent (40%) of lot occupancy. Despite applicable laws and regulations prohibiting such construction, no zoning variance or special exception was sought or approved.

Appellant is an adjacent property owner who has standing to challenge the unlawful construction and the improperly issued permits. She owns 1814 35th Street, N.W., Washington, D.C. All efforts to resolve this matter informally with the owner of the Subject Property and with the District of Columbia Government have been unsuccessful to date.

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Case No. 17310
Exhibit No. 5

Board of Zoning Adjustment
District of Columbia
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II. Summary of the Relevant Facts

The Subject Property is located at Lot 802 in Square S1296.[1] It is situated in an R-3 district on the west side of 35th Street, Northwest. It measures 20 feet by 120 feet and totals only 2,400 square feet. As such, the Subject Property is a nonconforming lot under 11 DCMR § 401.3. It was improved prior to May 12, 1958, i.e., when certain zoning regulations took effect. See, e.g., 11 DCMR § 401.1. As originally developed, the property had a nonconforming side yard of approximately 2.5 feet. See 11 DCMR §§ 405.6 and 405.9); Exhibit 1 (Plan Correction List, Oct. 16, 2004, referring to nonconforming side of 2.5 feet). According to a building permit application that was filed with DCRA, the original structure was a small two-story structure which occupied approximately thirty-one percent (31%) of the lot. See Exhibit 2 (Application, dated April 23, 2004). [2]

Prior to any proposed improvements, the Subject Property contained a single-family dwelling which, by definition, is a "one-family semi-detached" dwelling . 11 DCMR § 199 (definition of "Dwelling, one-family semi-detached"). More particularly, the existing structure on the Subject Property was built on or near the property line abutting Appellant's lot. Appellant has a side lot of approximately four feet on the side facing the Subject Property. Accordingly, there is no "party wall"on Appellant's side. [3] The other side of the Subject Property includes the nonconforming side yard of

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1 As Appellant discusses below, many of the documents in DCRA's files, including applications and building permits, contain erroneous references to Lot 27. In fact, the Subject Property is known as Lot 802 and is situated between Lot 27 and Lot 803 (Appellant's lot).

2 Appellant cannot verify the accuracy of this figure or the methodology employed.

3 The owner of the Subject Property made the following representation to DCRA during the permitting process: "Wall is on property line; adjoining property is four feet away. Wall is not a party wall." See Exhibit 3 (Answers to questions on Job Number 2186C 4).

approximately 2.5 feet in width. See 11 DCMR §§ 405.6 and 405.9. Thus, the Subject Property is not a row dwelling because it possesses a side yard. 11 DCMR § 199 (definition of "Dwelling, row").

The Subject Property is presently undergoing significant improvements that would dramatically increase the overall size of the structure. Although all relevant plans have not been provided to Appellant,[4] the evolving scope of the work apparently includes the following construction:

(1) Adding a room and a bathroom on the existing basement (extending back in the lot);

(2) Adding a family room to the existing first floor;

(3) Adding a bedroom, bath and stairs to the existing second floor;

(4) Adding a third floor with two bedrooms and a bath.

See Exhibit 5 (Building Permit No. B467431, dated Nov. 5, 2004). The foregoing may be an incomplete list of intended improvements. For example, notes on the Approvals page of the August application state that a first floor deck will be constructed with dimensions of twelve feet by eight feet. Exhibit 8.

As Appellant explains below, the renovated structure would exceed forty percent (40%) of the lot and would adversely affect her property and the neighborhood generally. No zoning variance was sought or approved. Under these circumstances, the construction violates D.C. law. See discussion below.

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[4] Appellant has been trying for weeks to obtain copies of all relevant plans from DCRA in order to determine the intended scope of the proposed work. Attached as Exhibit 4 are available plans and drawings. However, DCRA has not provided Appellant with the plat or other drawings with all exact dimensions of the proposed structure. Appellant has asked for a copy of the plat from the Owner of the Subject Property. The plat is in the Owner's possession, but a copy has not been provided to date. If additional documents are located, Appellant will supplement this appeal with the pertinent materials.

III. Summary of Permits and DCRA Review

The chronology of applications, plans and permits is difficult to reconstruct, in part because documents are missing from DCRA and incorrect information was submitted to DCRA. Additionally, the plans and permits evolved over time, so that the full scope and impact of the proposed work was impossible to determine from a review of the earliest submissions.

More particularly, 1812 35th St. Associates LLC (the "Applicant") first filed an application with DCRA on or about April 23, 2004. This application for a building permit was limited to repair of an existing, fire-damaged two-story brick house. On the application, the owner represented the "Breakdown of Lot Area" as follows: building, 31%; paved area, 6%; and greenery, 63%. However, the existing gross floor area was listed as 1,600 square feet. At the time, the Applicant was not proposing any expansion of the structure. See Exhibit 2. Although the application erroneously identified the property as Lot 27, rather than Lot 802 in Square S1296, DCRA issued Building Permit No. B461964 to the owner on or about May 19, 2004. Exhibit 7 (permit B461964).

On or about August 12, 2004, the owner applied for a second permit to enlarge the footprint of the house by extending the basement back, adding rooms to the existing first and second floors, and constructing a third floor. Exhibit 8 (Application, dated August 12, 2004). The property was again incorrectly identified as Lot 27. In addition, items 28 through 58 on page two of the application were left completely blank. Thus, DCRA was not provided in the application with any information about, for example, the total lot area (item 42), the breakdown of lot area (item 43), the present gross floor area

(item 44), the proposed gross floor area (item 45), any projection beyond the building line (item 47), etc. Exhibit 8. Some of these application deficiencies were noted by DCRA staff and the owner was instructed to provide further information. For example, the Applicant was asked for the dimensions of all set backs on the plot and total lot occupancy coverage. Exhibit 3 (Answers to questions on Job Number 2186C4).

In a Plan Correction List, dated October 5, 2004, a DCRA zoning reviewer (Faye O.) classified the existing structure as a semi-detached dwelling with a maximum lot occupancy of forty percent (40%). Exhibit 9 (Plan Correction List, Oct. 5, 2004). She noted that the proposed addition "cannot be allowed." She instructed the owner "to modify proposed work to bring into Compliance or seek relief thru the BZA to build proposed work." Id.

The application was flagged again for zoning review on Saturday, October 16, 2004, with a note from the same staff member that: "1) Proposed lot occupancy is 44% BZE relief require[d]..." She rerouted the decision to zoning for action. Exhibit 1.

The same DCRA zoning reviewer then signed off on the application on Thursday, October 21st, i.e., five calendar days later. DCRA subsequently issued Building Permit B467431 on or about November 9, 2004. Exhibit 5. Interestingly, that permit does not identify the width or length of the buildings. It also erroneously references Lot 27, Square 1296.

On or about December 29, 2004, the owner sought a revision to its building permit, purportedly for the limited purpose of changing a cinderblock foundation to poured concrete. In fact, the contract agreement of the Applicant stated the following: "Change construction of cinder block basement walls (3) to reinforced concrete walls,

same dimensions and footprint." Exhibit 10 (Permit No. B468744); Exhibit 11 (Contract Agreement). Yet, in the application for that revision, the Applicant represented to DCRA that the breakdown of the lot area was now only forty percent (40%). Exhibit 11 (Application, dated Dec. 29, 2004).[5] On the same date as this application, a revised building permit was issued (Permit No. B468744). Exhibit 10. That permit still referenced Lot 27. It did not include the width or length of the buildings.

IV. Non-Compliance with the Lot Occupancy Requirements

In light of these circumstances and unavailable documents, it is very difficult to determine the exact percentage of lot occupancy of the proposed building. However, the footprint clearly will exceed forty percent (40%) for the following reasons:

1. For purposes of computing the building area on the Subject Property, the full width of the lot must be included pursuant to 11 DCMR § 199 (definition of "Building area"). When a side yard is less than five feet in width, the "building area" must include the side yard. Id. In this case, the full lot width is twenty (20) feet and the side yard is less than five feet.
2. The pre-existing Building Area, including the side lot of approximately 2 and one/half feet, totaled approximately 721.82 square feet. This figure was calculated from information contained in an old survey (Exhibit 12 hereto) and includes the following:

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[5] Oddly, the "Present Gross Floor Area of Bldg" had been revised downward from an earlier submission of 1,600 square feet to a somewhat illegible figure of perhaps 637 square feet. Meanwhile, the "Proposed Gross Floor Area of Bldg" was changed from 1,600 to 967. Compare Exhibit 2 and Exhibit 11 (Application, dated Dec. 29, 2004).

- A rectangular structure facing 35th Street and extending approximately 18.94 feet by 20 feet (including the non-conforming side yard) = 378.80 square feet;
- A rectangular structure adjacent to Ms. Stancioff's property measuring approximately 20.35 feet by 12 feet = 244.2 feet; and
- A small rectangular structure measuring 12.2 feet by 5.6, which equals 68.32. For lot occupancy purposes, the Building Area includes the nonconforming side lot of 2.5 feet by 12.2 feet, or 30.5 square feet. Thus, this section equals 98.82 square feet.

3. The improved structure apparently will include an additional footprint of approximately 11.84 feet by 27.51 feet.[6] This equals 325.72 square feet. See Exhibits 12, 13.

4. The total lot occupancy will equal approximately 1,047.54 square feet (i.e., 721.82 square feet plus 325.72 square feet). This constitutes at least 43.65 percent of the lot. This figure is generally consistent with DCRA's own estimates of 44 percent. See above. Notably, this total lot occupancy does not include any proposed deck. Appellant does not know the height of any deck to determine if it must be included in the lot occupancy calculation.

Thus, the proposed footprint of the entire, improved structure will exceed the permissible lot occupancy by approximately 90 square feet. Depending upon the particulars of the plans, this equals an additional footprint measuring approximately 9.25

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[6] This analysis includes averages and estimates based upon the best available information.

feet by 9.25 feet or, alternatively, 12 feet by 7.5 feet. As proposed, the footprint will support a **three-story** structure. Thus, Ms. Stancioff will be losing at least an additional 7 feet of light and air adjacent to her home and backyard based upon this zoning violation. [7]

Notably, the addition will sit directly on the lot line with Ms. Stancioff's property, thereby imposing the most deleterious effects upon her property. By contrast, the neighbor on the other side will benefit from a side yard of 2.5 feet for approximately 31 feet and then a wider side yard of approximately 8 feet towards the rear of those two properties.

Despite these circumstances, no zoning variance or special exception was ever sought.

V. The Zoning Regulations and Public Interest

By their express terms, the zoning regulations of the District of Columbia are intended to provide adequate light and air and to prevent overcrowding of land. 11 DCMR § 101.1. Accordingly, the D.C. Government enacted mandatory regulations that limit the maximum permissible development by an owner with a one-family, semi-detached dwelling in an R-3 zoning district. See discussion above.

Under the present circumstances, the proposed renovations to the Subject Property would result in a percentage lot occupancy of more than forty percent (40%). Accordingly, such improvements would violate the applicable zoning regulations. See 11 DCMR § 403.2. A careful reading of those regulations confirms that the applicable lot occupancy cap is forty percent (40%). Provisions relating to a sixty percent (60%) lot

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[7] Of course, she is losing almost all of the light on the side of the Subject Property due to the three-story construction. That construction adds approximately twenty-seven feet to the back of the house. See Exhibit 13. If the Owner of the Subject Property had complied with the lot occupancy requirements of forty percent (40%), the depth of the new construction would have been closer to twenty feet.

occupancy are limited to structures in an R-3 district which meet the definition of "row dwelling, church, or public school". Id. As mentioned above, the Subject Property is not a row dwelling.

Although the Zoning Administrator is authorized to permit very minor deviations from the maximum percentage of lot occupancy, such discretion is extremely limited. See 11 DCMR § 407.1. In the instant case, the Zoning Administrator lacked the regulatory flexibility to permit the proposed development at the Subject Property.

Nonetheless, DCRA approved the building permits. Such approval by DCRA was granted without any application for or issuance of any zoning variance or special exception. As a result, neither Ms. Stancioff nor her Advisory Neighborhood Commission ("ANC") was provided with the required notice of the development plans. In fact, Ms. Stancioff still does not know the exact scope of the proposed construction. Certainly, she had no basis for identifying the zoning violations until late December, 2004, i.e., when construction activities proceeded and the footprint became evident, or thereafter. Even in late December, Ms. Stancioff could not determine the full scope of the work, in part because DCRA could not locate the relevant plans. Despite repeated efforts over many weeks, plans were not provided to Ms. Stancioff until February of 2005. Such plans do not include all of the relevant documents, including the plat showing the dimensions of the proposed structure.

If a variance had been requested, Ms. Stancioff would have been able to establish the following:

a. Her lot is only 2,400 square feet and, as such, has limited light, air and privacy. Due to nonconforming side yards on her property and her

neighbors' properties, there is only a four-foot side yard between her home and the lot line with the Subject Property. As such, her property would be dramatically and adversely affected by excessive development on the adjacent lot. See Exhibit 6 (illustrative photographs showing the ongoing construction).

b. The proposed three-story structure on the Subject Property is being constructed directly on Ms. Stancioff's lot line, thereby dramatically increasing the deleterious effects of over-development upon Ms. Stancioff's property.

c. The development at the Subject Property will alter the currently charming appearance of three detached dwellings on the street.

d. Other neighbors will be adversely affected by excessive development of the Subject Property.

e. Applicants for building permits should not be allowed to circumvent the zoning requirements of the District of Columbia.

VI. The Zoning Administrator's Explanation of the Building Permit Approvals

Prior to filing this Appeal, Appellant sought an explanation from the Zoning Administrator of the rationale for issuance of the referenced building permits. In a meeting on February 8, 2005, Mr. Toye Bello, Zoning Administrator, confirmed that the proposed lot occupancy of the structure on the Subject Property will exceed forty-three percent (43%) and that no variance or special exception has been sought to date.[8] In that meeting, Mr. Bello explained that, according to late revisions to the plans, the one-family

[8] Following Appellant's retention of counsel, the Owner of the Subject Property has promised to file for a special exception.

semi-detached house was seeking to eliminate its nonconforming side yard by affixing a "trellis" between its property and an adjacent neighbor. According to the owner of the Subject Property, a trellis will be placed above the first floor and, as a consequence, will permit pedestrian traffic along the side of the house, i.e. under the trellis. DCRA administrators contend that this "trellis" essentially converts the semi-detached dwelling to a row dwelling. DCRA maintains that such a conversion is permissible as a matter of right and does not require any variance or special exception in an R-3 district.

Appellant challenges the factual and legal conclusions associated with this position. More particularly, Appellant contends that a semi-detached structure cannot, as a matter of right, eliminate a side yard and exceed the lot occupancy for one-family semi-detached dwelling. Side yards are required by 11 DCMR § 405.2; see also § 405.3. Section 405.2 states: "In an R-3, R-4, or R-5 District, a one-family semi-detached dwelling shall be subject to the side yard requirements of an R-2 District." Id. Although the Subject Property had a narrow, nonconforming side yard, it could not unilaterally remove that yard without a special exception or variance. When a property includes a nonconforming structure, enlargements and additions to that structure must, nonetheless, conform to the percentage of lot occupancy requirements and may not increase or extend any existing nonconforming aspect of the structure. 11 DCMR §§ 2001.3. See also 11 DCMR § 2002.5.

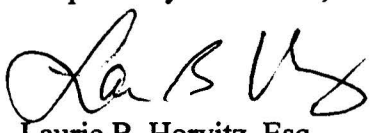
Assuming *arguendo* that a one-family, semi-detached dwelling could, under some circumstances, transform itself into a row dwelling without a variance or special exception, such circumstances are not present here. Certainly, a "trellis" cannot accomplish such a transformation. A trellis does not add any living space. It does not

create any lot line or party walls. Instead, the trellis is a transparent attempt to circumvent existing regulations.

VII. Conclusion

For the foregoing reasons, the building permits for construction at 1812 35th Street should not have been approved. The permitted construction would violate the zoning regulations, public policy, the rights and privileges of neighbors and the ANC. In light of these circumstances, the owner of 1812 35th Street, N.W. should be directed to modify the structure so that it complies with the maximum lot occupancy and side yard requirements of DCMR.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Appeal, including all exhibits thereto, were served on February 18, 2005, via first class mail, postage prepaid to the following:

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Bethesda, Maryland 20817

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INDEX OF EXHIBITS

APPEAL REGARDING 1812 35TH STREET, NW

Exhibit No.	Description
1	Plan Correction List, Oct. 16, 2004
2	Application for Building Permit, April 23, 2004
3	Answers to questions on Job Number 2186C 4
4	Available Plans and Drawings
5	Building Permit B467431, dated Nov. 5, 2004
6	Illustrative Photos of the Construction Project
7	Building Permit B461964, dated May 19, 2004
8	Application for Building Permit, Aug. 12, 2004
9	Plan Correction List, Oct. 5, 2004
10	Building Permit, dated Dec. 29, 2004
11	Contract Agreement and Application for Building Permit, Dec. 29, 2004
12	Survey, dated Dec. 26, 1944
13	Wall Check (inexact copy), dated Feb. 1, 2005

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