DON W. CROCKETT
3070 Q Street, N.W.
Washington, D.C. 20007 **(202) 338-1997**

April 5, 2005

Jerrily R. Kress, FAIA
Director , Office of Zoning
441 4th Street NW, Suite 210-S
Washington, D.C. 20001

D.C. OFFICE OF ZONING
RECEIVED
2005 APR -6 PM 4:39

RE: BZA Appeal No. 17329 (1531 31st Street, N.W.)

Dear Ms. Kress:

This is in response to your letter dated March 29, 2005, requesting further information concerning the above appeal.

With respect to your three numbered requests: (a) A copy of the building permit which we claim was improperly issued on December 28, 2004, is attached hereto. (b) There is no "final and binding letter or memorandum" from DCRA evidencing its failure and refusal to enforce the Zoning Regulations at 1531 31st Street NW. (c) I served a complete copy of the appeal with all attachments upon Reid A. Dunn and ANC2E by first class United States mail on April 1, 2005.

You also asked us to describe in detail each and every exception we have to the administrative decision of DCRA, and why it was in error.[1] The response is as follows.

(1) Shortly before November 16, 2004, the owner of the apartment building unlawfully demolished one half of an ornamental turret and cut a large opening in the roof for two staircases without a building permit and in defiance of decisions by the CFA and the HPRB denying a building permit for that very work. Although DCRA issued a "stop work order" for that un-permitted work, it failed and refused to require the owner to restore the status quo as expressly required by DC code § 6-1106 and to impose penalties as provided by § 3201.1 of the Zoning Regulations.

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[1]We do not request the BZA to review compliance with the Building Code as you suggest. While DCRA failed to enforce the building code with respect to this fire and carbon monoxide hazzard, our reference to it merely illustrates the additional dangers arising from the un-permitted construction.

BZA
Case No. 17329
Exhibit No. 11

Board of Zoning Adjustment
District of Columbia
CASE NO. 17329
EXHIBIT NO. 11

(2) When the owner subsequently ignored the "stop work order" and constructed the roof structure over the long Thanksgiving Day weekend, DCRA again failed and refused to require the owner to restore the status quo and to impose penalties for the violation of its "stop work order." By refusing to take any action, it tacitly permitted the unlawful expansion of the nonconforming apartment house use in violation of § 2000.2 of the Zoning Regulations. [The penthouse that covers the walk-out staircases to the roof for both apartments is at least 10' wide, 10' deep, and 6' above the old ceilings of the apartments. Thus, this un-permitted addition expanded the nonconforming apartment use by at least 100 square feet and 600 cubic feet. The penthouse also unlawfully extends the use of two nonconforming apartments to the roof as residential recreation space.]

(3) After DCRA issued a second "stop work order" on December 27, 2004, it again failed and refused to enforce that order. It also failed and refused to apply and enforce § 2000.2 of the Zoning Regulations which prohibited any expansion of a nonconforming apartment house use. Instead, it issued a building permit on December 28, 2004, for minor changes to the unlawful roof structure and to the unlawfully demolished turret, i.e., "roof hatch & mechanical access door."

(4) On January 4, 2005, ANC2E transmitted a formal recommendation to the HPO recommending that the turret be restored and the roof structure be disassembled and replaced with a roof-level hatch. The DCRA has since failed and refused to even respond to that recommendation much less take any action to abate the unlawful and un-permitted expansion of the nonconforming use.

(5) On February 21, 2005, Don Crockett sent a letter addressed the Chairman of the HPRB with copies to all other relevant DCRA officers and offices again asking DCRA to implement the ANC's recommendation and enforce the Zoning Regulations with respect to this apartment house. Because DCRA again failed and refused to take any action whatsoever to abate the unlawful expansion of the nonconforming use and the un-permitted and unlawful demolition of the turret, this appeal was filed on March 25, 2005.

The renovation of the apartment house is now essentially complete and the new roof structure with its walk-out entry way to the roof remains intact, as shown by the photographs in the Appendix to Appellants' Statement. There has been no indication whatsoever that DCRA will take any action to abate the unlawful expansion of the nonconforming use prior to the issuance of a Certificate of Occupancy for this property. Indeed, for all appellants know, such a certificate

may have already been issued.[2] The four apartments have been shown by real estate agents since early March 2005. These agents have informed prospective buyers that they may use the roof as recreational space for roof decks and roof gardens.

The BZA is vested with authority to take appropriate action in cases such as this where the expansion of a nonconforming use was undertaken without a permit, pursuant to § 3100.2 of the Zoning Regulations:

> The Board, pursuant to the Zoning Act, shall also hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations, Title 11 DCMR. (Emphasis added).

Because the owner of 1531 31st Street NW demolished half of an ornamental turret and expanded the nonconforming apartment house use onto the roof for "residential recreation space" without a building permit, as required by § 3202.1, DCRA was legally obligated to require the owner to "restore the building or structure and its site to its appearance prior to the violation." DC Code § 6-1106.

Because DCRA has failed and refused to take any action to abate the illegal turret demolition and the unlawful expansion of the nonconforming use to the roof, the BZA is vested with authority, pursuant to § 3100.4, to issue appropriate orders and impose appropriate penalties on the owner of the property.

Sincerely,

Don W. Crockett

Enclosure

cc Reid A. Dunn
ANC2E

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[2]Appellants have no way of knowing when a certificate of occupancy is issued for any property including this one.

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
C.P.C No.	O G No.	R-3			By.
A No.	S L No.	Ward No.	Receipt No.	Date	Receipt No.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION PERMIT SERVICE CENTER
Tel 202-442-4589 Fax 202-442-4862

BLRA-33 (Rev 2/04)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY
(PRINT IN INK OR TYPE, DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

CLEARANCE TO FILE
Date

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

Address of Proposed Work:	Suite No.	2. Lot	3. Square	4. Application Date
1531 31st ST NW		294	1269	12/27/04

Owner of Building or Property	6 Address (*include Zip Code*)	7 Phone
REID A. DUNN	1711 CONNECTICUT AV NW	

Agent for Owner: (*if applicable*)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

D.C. GOVERNMENT
Reg# 1 12/28/04 at
PERMIT NO. B468701
Receipt# 138421 Amount $******65.00
EB22001215 0294 1269
BUILD,STRUCTURE & EQUI
Lot Square

Date 12/28/04 **(Type)** A/R

Address of work 1531 31ST ST NW

Permission is hereby granted to REID A DUNN

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

Authorized work and conditions of performance thereof:

(Owner) NO.

TOTAL PERMIT FEE $
FILING FEE $
DATE
FEE PAYABLE $ 65.00
FOR INSPECTIONS CALL 727-7562 442-4641

ROOF HATCH & MECHANICAL ACCESS DOOR.
THIS PERMIT AUTHORIZE CONSTRUCTION BETWEEN THE HOURS OF 7:00 AM AND 7:00 PM MONDAY THRU SATURDAYS. AFTER HOURS PERMITS ARE REQUIRED FOR TIMES AFTER 7:00 PM AND SUNDAYS.

Builder
Value $
No. of Bldgs.
Width of Bldgs.
Length
Height
No. of Stories 3
To be occupied as 4 UNIT APT
Projections:
Zone R3
Height of terrace above grade
Address of owner 1711 CONNECTICUT AVE NW
Deposit No.
Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D CLARK 32301
DIRECTOR

Chief, Permit Issuance Branch

By
Permit Clerk

PERMIT

19 Estimated Cost of Work	20 Completion Date of work	21 Method of Removing Construction Debris	22 Does the proposed work involve disturbing the earth or razing a building?
1/1/05	1/30/05	[ ] Pick-up Truck [X] Dumpster [ ] Other (*specify*)	[ ] Yes, answer q. 23 [X] No, SKIP q. 23-27

23. Is the area of disturbed earth more than 50 sq. ft?	24 Soil Erosion Control Methods	25 Area of Offsite Drainage	26. No of Footings or Columns	27 Size of Footings or Columns
[ ] Yes, answer q. 24-25 [ ] No, SKIP q. 24-25		sq ft		

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I)

Complete Section B if the proposed work is **new building, addition or alteration.** (Page 2)
Complete Section C if the proposed work is **razing a building.** (Page 2)
Complete Section D if the proposed work is a **retaining wall.** (Page 2)
Complete Section E if the proposed work is a **fence.** (Page 3)
Complete Section F if the proposed work is a **shed/garage.** (Page 3)
Complete Section G if the proposed work is an **awning.** (Page 3)
Complete Section H if the proposed work is a **sign.** (Page 3)

OFFICIAL USE ONLY

	R	P	H	A	
M					
P					
E					W [ ] Yes [ ] No
F					PLANS
S					[ ] No [ ] Sm [ ] Lg