BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Application of Michael Taylor, pursuant to 11 DCMR	)
pursuant to 11 DCMR § 3104.1, for a special exception	)
to allow a rear addition to an existing single-family	) No. 17349
detached dwelling under section 223, not meeting the lot	)
occupancy (section 403), side yard (section 405), and	)
nonconforming structure provisions (subsection 2001.3)	)
requirements in the R-1-B District at premises 6919 6th	)
Street, N.W. (Square 3191, Lots 19 and 811)	)
	)

MOTION TO DISMISS

Friends and Neighbors of Square 3191 hereby file this motion to dismiss the above-captioned application filed by Michael Taylor for a special exception to allow an over-sized rear addition to an existing single-family dwelling located at 6919 6th Street, N.W., in the Takoma Park Historic District.

Background

Friends and Neighbors of Square 3191 was granted status as a party in opposition to the application on July 12, 2005, when the hearing on the application was originally scheduled to be heard. At that hearing, the applicant's representative, Mr. Edgar Nunley, requested a postponement of the hearing, citing the absence of the applicant's legal counsel, and the need for two additional pieces of information: a Capital Survey Plat showing the exact location of walls and their dimensions, and a topographical site plan showing the site elevations, which was necessary to show the height of the deck and the impact on the surrounding neighbors. Mr. Nunley represented that while the Capital Survey Plat was in hand, the Topographic Site Plan would not be available until "later on, either this week or the first of next week." Transcript of

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Hearing of July 12, 2005, at p. 16. The Office of the Planning ("OP") testified that the Topographic Site Analysis was necessary to the OP's analysis. Transcript of Hearing of July 12, 2005, at p. 35.

The postponement was then granted over the objections of Friends and Neighbors of Square 3191, and the hearing was then re-scheduled for Tuesday, September 13, 2005, with the record held open for OP's supplemental report. The applicant was specifically reminded "that the Topographical Analysis must be served on the Office of Planning, the ANC and the Intervenor, . . . *as soon as possible after it is ready, so they can do their analysis and be prepared.*" Transcript of Hearing of July 12, 2005, at p. at 47 (emphasis added).

The Applicant has not yet filed or served on the parties the requested Topographical Site Analysis. Nor has any counsel for the Applicant entered in appearance in this proceeding.

Discussion

The Zoning Regulations governing additions to one-family dwellings in an R-1 zone provide that "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 views from public ways." 11 DCMR § 223(d) (emphasis added). As this regulation makes clear, "graphical representations" such as the requested Topographical Analysis are a required part of the Applicant's case in order to demonstrate entitlement to a special exception under Section 223. Without this information, the Applicant has failed to satisfy its burden of proof under Section 223.

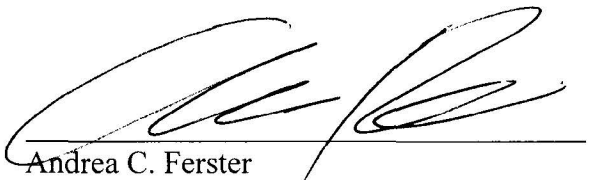
This Board's Rules of Procedure provide that, "[n]o later than fourteen (14) days before the date of the hearing for the application, the applicant *shall* file with the Board any additional

statements, information, briefs, reports (including reports or statements of expert and other witnesses) plans, or other material that the applicant may wish to offer into evidence at the hearing." 11 DCMR 3113.8 (emphasis added). It is now two months since the July 12, 2005 hearing, and less than one week prior to the rescheduled hearing, and the Applicant has failed to file or serve on the parties any of the required information.

The 14-day report deadline should not be waived to permit the Applicant to present this required information at the hearing on September 13, 2005. At this point, it will not be possible for the Office of Planning to provide its views on the application, and the parties and this Board will be precisely in the same position as they were on July 12, 2005, of being unable to determine whether the criteria in Section 223 has been met, or to adequately prepare for this hearing. Instead, the application should be dismissed due to the Applicant's failure to comply with the procedural requirements of the Zoning Regulations and Rules of Procedure.

The Applicant has had ample time to secure the required Topographical Analysis. The Applicant has been on notice since September 2004 that a Topographical Site Analysis was necessary, per the request of the D.C. Historic Preservation Review Board. Moreover, the plain language of the regulations squarely notifies the Applicant that graphical representations are an essential element of the Applicant's case. The Applicant was already granted a postponement, over the neighbors' objections, based on the Applicant's express assurances that this information would be filed in July 2005. The Applicant not only failed to file this information in July, it also failed to file this required information 14 days prior to the hearing. Accordingly, it is evident that the Applicant has failed to diligently prosecute its application, and the application should be dismissed in order to avoid further prejudice to the parties resulting from additional delays.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that, on September 9, 2005, a copy of the foregoing Motion to Dismiss was served by mail on, or as otherwise indicated:

Edgar T. Nunley
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