Statement in Support of
Appeal of
Diana de Brito and Jonathan Gottlieb
Before
The Board of Zoning Adjustment of
The District of Columbia

Introduction

Diana de Brito and Jonathan Gottlieb ("Appellants") hereby appeal from administrative decisions of the Department of Consumer and Regulatory Affairs involving a plan to build a mansion, other structures and fences on property located at 2620 Foxhall Road, N.W., Lot 1031, Square 1397 (the ""Ludwig Estate").

The Appellants

Appellants are residents of 4610 Dexter Street, N.W., Lot 1032, Square 1397. Applicants' property consists of 28,562 square feet. The Appellants' property is adjacent to the north side of the Ludwig Estate. It is located in the Wesley Heights Overlay District. The Appellants' property is located across the street from and up the street from the Wesley Heights/Rock Creek Park.

The Ludwig Estate

The Subject Property is located at 2620 Foxhall Road, N.W., Lot 1031, square 1397. The Ludwig Estate consists of 124,980 square feet. The property is owned by Eugene and Carol Ludwig (the "Ludwigs"). The Ludwig Estate is located in the Wesley Heights Overlay District. The Ludwig Estate is located close to the Wesley Heights/Rock Creek Park. The Ludwig Estate is zoned R-1-A.

The Ludwigs have built up the level of the property by as much as twelve feet above the natural grade of the property by bringing to the property tons of materials from off site. The elaborate structure has elevated the property above adjoining homes and properties including those of the Appellants.

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Exhibit No. 3

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The Administrative Decisions

Appellants appeal from the decision of Patrick Canavan, the Acting Director of the Department of Consumer and Regulatory Affairs (the "Acting Director") to issue to Ludwig a building permit (No. B472018) on April 27, 2005 for "new fence" (the "Fence Permit"). Specifically, the Fence Permit authorizes the building of the following three types of "7' fence:"

1. "black vinyl coated c/l 7' fence;
2. 'natural wood privacy fence;" and
3. "wrought iron (black fence)."

These fences are part of a muli-million dollar plan to develop the Ludwig Estate. The plan apparently includes construction of the following:

1. a three story mansion with an estimated floor area of over twenty thousand square feet and a volume of over two hundred thousand cubic feet (according to the Ludwigs 2003 application);
2. tennis court;
3. swimming pool;
4. pool house;
5. various structures to elevate the height of the house and the property by as much as twelve feet; and
6. fences on top of the elevated platforms.

But instead of submitting one application for approval of a comprehensive plan at one time, the Ludwigs have submitted multiple applications for approval of various components of the plan over a period of years. With one exception, these multiple applications did not reflect changes in plans but reflected different components of the same plan.

For instance, in 2003 the Ludwigs submitted an application to build a pool but they delayed for two years until 2005 to submit an application to build fences "to meet pool enclosure requirements." Likewise, in 2003 the Ludwigs submitted multiple applications to build various retaining and other walls but they delayed for two years until 2005 to submit an application to build fences on top of the walls.

The effect of this piecemeal approach has been to obfuscate the plan from both regulators and the public. By the Ludwigs have made it difficult for the Department of Consumer and Regulatory Affairs to fulfill its responsibilities and make proper decisions.

Accordingly Appellants appeal from prior decisions involving the Ludwig Estate including the following:

1. the decision of D. Clark, the Director of the Department of Consumer and Regulatory Affairs (the "Director") to issue to the Ludwigs a building permit (No.B455009) on September 15, 2003 for construction of a three story wood frame house with stone veneer basement, new driveway stone retaining walls, bluestone terraces (the "House Permit");
2. the decision of D. Clark, the Director of the Department of Consumer and Regulatory Affairs to issue to the Ludwigs a building permit (No.B451175) on May 9, 2003 for sitework and grading and construction of a "new twelve foot retaining wall" and tennis court (the "Tennis Court Permit");
3. the decision of D. Clark, the Director of the Department of Consumer and Regulatory Affairs to issue to the Ludwigs a building permit the revised permit building permit (No.B452735) on July 1,2003 which revised permit No.B451175 (the "Revised Tennis Court Permit"); and
4. the decision of D. Clark, the Director of the Department of Consumer and Regulatory Affairs to issue to the Ludwigs a building permit (No.B452577) on June 26,2003.

All the permits together are hereby referred to as the "Ludwig Estate Permits."

The Manner in which Appellants are Aggrieved by the Administrative Decisions

The Fence Permit will adversely and irreparably effect their enjoyment of the property, the quality of the environment and the value of their property. It will create an eyesore that will loom over the Appellants' property and their house. Applicants have already suffered harm by the Ludwigs' erection of a structure located adjacent to their backyard with a poured concrete facade of several feet high with exposed metal rods.

The House Permit, the Tennis Court Permit, and the Revised Tennis Court Permit have caused substantial harm to the applicants in terms of environmental damage, impairment of and loss in property value. From the front of the Appellants' property to the back of the property, the Ludwig estate looms over the Appellants.

The effect of the Ludwig Estate Permits is to dramatically alter the character of the neighborhood.

The Errors in the Administrative Decisions

The Acting Director erred in granting the Fence Permit because the Fence Permit violates 12 DCMR 3110.3.3 and 12 DCMR 3110.1.3 since the permit allows the building of fences that exceed seven feet in height as measured from the natural grade of the property to the top of the fence. The Ludwigs have already constructed platforms consisting of dirt, concrete, steel, gravel and other materials to artificially elevate the height of the property. They cannot be permitted to artificially change the grade of the property and thereby evade the limitation of 12 DCMR 3110.3.3. The fences if built as permitted under the Fence Permit would substantially exceed the seven foot height limit and therefore violate the regulations.

The Acting Director erred in granting the Fence Permit because the Fence Permit violates 11 DCNR 1541.3 since the permit allows the building of fences that block "access to air and light" and are in stark conflict with "the harmonious design and attractive appearance of the neighborhood." Since the Ludwigs elevated the height of the property, the house and the property towers over the neighboring properties limiting the access of air and light and conflicting with the harmonious design and attractive appearance of the neighborhood. Adding fences on top of the elevated property would only further decrease the access of air and light, only heighten the conflict with the harmonious design of the neighborhood and harm the attractive appearance of the neighborhood.

The Director erred in granting the House Permit, the Tennis Court Permit, and the Revised Tennis Court Permit for a variety of reasons including the following:

1. they appear to permit construction that exceeds the limit for fences and fence walls of seven feet in height as measured from the natural grade of the property to the top of the fence in violation of 12 DCMR 3110.3.3 and 12 DCMR 3110.1.3;
2. they appear to permit construction that violates the requirement for side yard of a minimum of eight feet in violation of 11 DCMR 405.9;

3. they appear to permit construction that violates the requirement for rear yard of a minimum of twenty five feet in violation of 11 DCMR 404.1;
4. they appear to permit construction that exceeds the four foot limitation for structures in violation of 11 DCMR 2503.2;
5. they appear to permit construction that blocks access to air and light in violation of 11 DCMR 1541.3(c); and
6. they appear to permit construction that dramatically conflicts with the harmonious design and attractive appearance of the neighborhood in violation of 11 DCMR 1541.3(c).

Basis for Proving their Case

Appellants intend to prove their case by providing documentation of each of the violations, expert and eyewitness testimony as well as analysis of the applicable laws and regulations.

The Relief Requested

Appellants respectfully request that the Board of Zoning Adjustment enter relief consistent with 11 DCMR 3100.4 and other applicable law including but not limited to the following:

1. reverse each of the decisions relating to each of the Ludwig Estate Permits to the extent that they violate the letter and the sprit of applicable regulations;
2. vacate each of the Permits Ludwig Estate Permits to the extent that they violate the letter and the sprit of applicable regulations;
3. order the owners to remove all structures, fences and other changes to the property to the extent that they violate the letter and the sprit of applicable regulations and return the property to its original condition; and
4. order such further relief that is just and proper.

Conclusion

Applicants respectfully request that the Board of Zoning Adjustment enforce the letter and the spirit of the zoning regulations of the District of Columbia to protect the interests of homeowners in this and other neighborhoods in the District of Columbia against overzealous developers.

Respectfully submitted,

Diana de Brito and Jonathan Gottlieb
June 24, 2005

Certificate of Service

I, Jonathan Gottlieb, hereby certify that I served, by first class U.S. mail, a copy of this appeal upon each of the following persons:

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