

17414-21

COMMENT CONCERNING COMMISSIONER JERRY LEVINE'S
LETTER TO THE BOARD IN SUPPORT OF APPELLEES

The matter before the Board was discussed at the December 12, 2005 meeting of the Chevy Chase ANC. I presented the viewpoint of the Appellants and Thomas Carrol, Esq. of Holland & Knight presented the viewpoint of Appellees, Mr. & Mrs. (Cohen) Epstein as the Trustees of the Michael Sears Trust.

In the course of the discussion, it was abundantly clear that Commissioner Levine, who actively makes the point that he was once a practicing real estate attorney, would take up the banner of Appellees.

During the presentation of the Appellants viewpoint I posed the question to Commissioner Levine as to whether he, Commission Levine, believed that the garage with an apartment could be as large as 1,800 square feet since an a private garage could be as large as 900 square feet and that an apartment on top of the garage could also be 900 square feet for a total of 1,800 square feet. Mr. Levine answered in the affirmative. I then asked him whether he believed that there was any required rear yard setback and if there was no such setback requirement would that mean that in the absence of an alleyway, Appellees could build their 1,800 square foot structure directly on the property line adjacent to a neighbor's rear yard. Mr. Levine did not appear to speak into the microphone, which would have put him on the record, but instead he appeared to nod in the affirmative. To do otherwise would certainly have detracted from his promotion of Appellees' position.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17414
EXHIBIT NO. 21

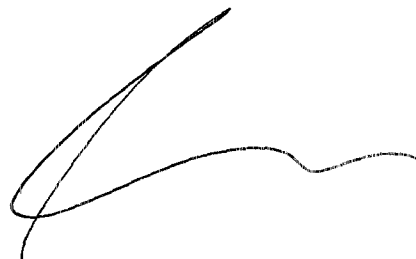
Board of Zoning Adjustment
District of Columbia
CASE NO. 17414
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At the end of the discussion, Mr. Levine announced that he would write a letter to the Board in support of Appellee's position.

As a follow-up to the meeting, a couple of weeks later, I e-mailed Commissioner Levine to ask for clarification on the question I had posed to him - especially since the question addresses the very underpinning of Appellees' stance. Although I asked him through three correspondences, Commissioner Levine refuses to go on the record or clarify his position. (Please see attached e-mail correspondence) His claim, remarkably, is that he has not researched the issue (nor apparently desires to).

We find this to be remarkable since Commissioner Levine, a former practicing attorney, certainly felt strongly enough about Appellees position that he took it upon himself to put his endorsement in writing to the Board, yet he flatly refuses to acknowledge the principals on which he rests that endorsement. We hope the Board will agree with Appellants that if Commissioner Levine, a person with a legal background, took it upon himself to endorse Appellees' position that at the very least he should have researched the underlying issues in order to have his endorsement be given any weight in the subject proceeding.

Subsequent to the December ANC meeting it was discovered that Mr. Levine was a former partner of Holland & Knight, the same firm which is representing Appellees. Mr. Levine did not recuse himself during the proceedings nor for that matter did he disclose the relationship at any time until I asked him about it in an e-mail in January, 2006.

A handwritten signature in black ink, consisting of a large, sweeping initial 'J' followed by a series of connected loops and a final horizontal stroke.

Jeffrey A. Schonberger

shelley

From: Jerry Levine [jerry@sambergfdn.org]
Sent: Tuesday, January 10, 2006 9:19 AM
To: shelley
Cc: 'Samantha Nolan'
Subject: RE: 27th Street Apartment Over Garage

I am finished discussing this matter with you. I left Holland & Knight five years ago. The Epstein's attorney was not at the firm at that time.

Jerry Levine, Co-Director
 The Samberg Family Foundation
 1730 M Street, NW, Suite 502
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 telephone 202.775.4551
 800 number 800.203.1541
 fax 202.828.9550
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-----Original Message-----

From: shelley [mailto:shelschon28@verizon.net]
Sent: Monday, January 09, 2006 8:52 PM
To: jerry@sambergfdn.org
Cc: 'Samantha Nolan'
Subject: RE: 27th Street Apartment Over Garage

Jerry,

The Epstein's position was very clear: (1) there is no requirement whatsoever for a garage with an attached apartment to have any rear yard whatsoever. And (2) the garage portion could be as large as 900 square feet and the apartment could be as large as 900 square feet for a total of 1,800 square feet. As per your letter to BZA, you whole heartedly agree with their position. Therefore you agree (as you nodded affirmatively in the hearing) that an 1,800 square foot structure which includes 900 square feet as garage space and 900 square feet as an apartment may be built on a lot line directly adjacent to another property. Why can't you simply acknowledge this as your position?

I find it both fascinating and disturbing that you refuse now to acknowledge this.

Is it also true that you were formally a partner in the law firm Holland & Knight? And, that the Epsteins are represented in this matter by Holland & Knight?

Very Curiously,

Jeffrey Schonberger

-----Original Message-----

From: Jerry Levine [mailto:jerry@sambergfdn.org]
Sent: Monday, January 09, 2006 10:57 AM

2/7/2006

To: shelley
Subject: RE: 27th Street Apartment Over Garage

Jeffrey, I haven't researched those questions and have no views on them. My only positions are the ones I set forth in my letter to the BZA. Best. Jerry.

Jerry Levine, Co-Director
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-----Original Message-----

From: shelley [mailto:shelschon28@verizon.net]
Sent: Sunday, January 08, 2006 6:29 PM
To: jerry@sambergfdn.org
Subject: RE: 27th Street Apartment Over Garage

Jerry, thank you for your quick response. Unfortunately, your attached letter does not address the questions I posed in my original e-mail.

As you may remember, these questions were presented to you at the hearing and at that time, according to my recollection, you simply nodded in a manner which looked like an affirmation but you did not actually speak into the microphone.

Will you please just clarify the record by answering my questions? I would greatly appreciate it if you would, again, please confirm your position for the record.

Thank you.

-----Original Message-----

From: Jerry Levine [mailto:jerry@sambergfdn.org]
Sent: Thursday, December 22, 2005 9:01 AM
To: shelley
Cc: 'Samantha Nolan'; Jerry Levine
Subject: RE: 27th Street Apartment Over Garage

Jeffrey, my position in this matter is set forth in the attached. All best for the holidays. Jerry.

Jerry Levine, Co-Director
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-----Original Message-----

From: shelly [mailto:shelschon28@verizon.net]
Sent: Wednesday, December 21, 2005 10:51 PM
To: jerry@sambergfdn.org
Cc: 'Samantha Nolan'
Subject: 27th Street Apartment Over Garage

Commissioner Levine:

At the most recent ANC meeting held December 12, 2005, in response to a dialogue concerning the apartment constructed over the garage on the 5300 block of 27th Street, I asked you specifically whether in your opinion and judgment an apartment built on top of a garage adjacent to an alley would be permissible and acceptable on a property located in a R-1-B zone even if that structure was 1,800 square feet in size. You responded in the affirmative (as long as 900 square feet was dedicated to parking cars).

I subsequently asked you whether you thought that in your opinion and judgment it was permissible and acceptable that said 1,800 square foot structure (which would at least be 25 feet above grade) would *not* be required to have *any* setback whatsoever (in the absence of an alley) and could be placed immediately adjacent to a neighboring property's lot line. You answered in the affirmative.

Please confirm that this is your position.

We look forward to your response. In the event you have any questions regarding this e-mail, please feel free to call me at any time. I can be reached directly at 202.628.6950.

Thank you for your time and attention to this matter.

Regards,

Jeffrey Schonberger