

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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APPEAL OF JEFFERY SCHONBERGER AND
GERALDINE REBACH
OF BUILDING PERMIT NO. B-456380

Appeal No. 17414

PRE-HEARING STATEMENT OF THE DISTRICT OF COLUMBIA

Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("Agency"), respectfully requests that the instant appeal be dismissed and that the Agency's decision be upheld. In support of it's request, the Agency submits as follows:

Statement of Facts

The instant matter concerns the construction of a second story to an private garage, located at 5362 27th Street, N.W. (Square 2292, Lot 27). Appellants allege that the building permit, which they concede authorized the construction of the second story of the garage, was issued in error.

The second story was constructed by the current property owners, Matthew Epstein and Amy Cohen Epstein (hereafter "the Espsteins") in 2005. The Appellants, Jeffery Schonberger and Geraldine Rebach, live at 5341 28th Street, N.W. (Square 2292, Lot 804) and 5345 28th Street, N.W. (Square 2292, Lot 801) respectively; both of their properties abut the alley west of the Epstein's property. Although appellants did not contest the validity of the permit when the garage was originally constructed, they later challenged the permit when the Epstein's added a second story.

BZA
Case No. 17414
Exhibit No. 27
Board of Zoning Adjustment
District of Columbia
CASE NO. 17414
EXHIBIT NO. 27

The Department of Consumer and Regulatory Affairs (DCRA) issued two building permits for construction at the premises, which is located in an R-1-B District. First, building permit no. B-456380, dated October 30, 2003, was issued for construction of a new single family structure with a detached garage, and site retaining walls. The construction application called for one detached accessory private garage to be 26 ft. in length, 22ft. in width, 20ft. in height, area of 572 sq. ft., and a volume of 1,440 cu.ft.

Building permit no. B-476241, dated August 10, 2005, was issued as a revision to building permit no. B-456380. The only purpose of the second permit was to reflect new ownership. This permit allowed the original owners, the Zuckerman Brothers, to (?) construct a two story garage such as it presently exists.

On August 9, 2005, Appellants appealed the original permit, B-456380, contending that it authorized the construction of a garage that exceeded the allowable size requirements, and authorized the construction of a garage that violated the rear yard requirement. The Appellants also argue that the Epsteins are utilizing the garage inconsistent with regulations allowing housing for domestic employees and, that the construction violates light and ventilation requirements.

In 2004, Appellants were aware of the issuance and terms of Building Permit No. B-456380. At that time, also raised objection to construction of the second story with the then owners, the Zuckerman Brothers. As an apparent result of the Appellants' objections, the Zuckerman Brothers only constructed a one-story garage, which was completed in 2004. **Agency Exhibit B (copy of Appellant Rebach's Affidavit); Agency Exhibit C (Copy of Appellant Schonberger letter).**

Argument

I. The Appeal was filed too late to invoke the Jurisdiction of the BZA

The BZA does not have jurisdiction to consider this appeal because Appellants failed to file the appeal within 60 days of their knowledge of the Agency action. The timely filing of an appeal is mandatory and jurisdictional. *Conner v. District of Columbia Bureau of Motor Vehicle Services*, 442 A.2d 957, 958 (D.C. 1982), and a reviewing body cannot enlarge the time to file an appeal. The District of Columbia Court of Appeals in *Totz v. District of Columbia Rental Housing Commission*, 474 A.2d 827 (D.C. 1984), affirmed dismissal of an appeal based on untimely filing. In *Totz*, the Court held that once the time prescribed for the filing of an appeal has passed, a reviewing body is without authority to hear the case. *See also, Beal v. District of Columbia Rental Housing Commission*, 474 A.2d 829 (D.C. 1984)(holding that time limits for filing appeals are mandatory and jurisdictional and cannot be enlarged).

Pursuant to 11 DCMR § 3112.2, an appeal must be filed within 60 days from the date an aggrieved party had notice or knowledge, or reasonably should have had notice or knowledge, of the administrative decision complained of¹. While a reviewing body has authority to enlarge the time for filing various motions and briefs, it has no authority, absent extraordinary or exceptional circumstances.

¹ The sixty (60) day standard was established as the reasonable standard for zoning matters in *Waste Management of Maryland, Inc. v. District of Columbia Board of Zoning Adjustment*, 775 A.2d 1117 (D.C. 2001). The aforementioned regulation codified this case which established a firm, clear and fixed date by which appeals are to be filed save for "exceptional circumstances substantially impairing the ability of an aggrieved party to appeal - circumstances outside the part's control." The court went on to state that two months was a reasonable time period.

On October 30, 2003, the Agency approved an application for a building permit. The permit was used to construct a new single family dwelling and detached garage at the location, 5362 27th Street, N.W. Washington, D.C. Appellants were aware of the permit and its terms, including that a two-story construction was authorized, in 2004. Appellant did not file the instant appeal within the 60-days authorized by law. Moreover, Appellants did not request an enlargement of time to file the appeal, or present to the BZA any exceptional circumstances that prevented them from filing the same. Accordingly, the BZA does not have jurisdiction to consider this appeal and must dismiss the instant appeal.

In addition, an appeal of the Agency's August 10, 2005 issuance of building permit # B 476241 (Agency Exhibit D) is untimely and not proper for consideration. First, the Appellants filed their appeal on August 9, 2005, before the August 10, 2005 permit issued. As such, the appeal was not ripe as no Agency action had yet occurred. Moreover, because the August 10, 2005 permit merely changed the ownership and did not authorize any construction that was not already authorized pursuant to the original permit, Appellants were not aggrieved by the August 10, 2005 action.

For all of these reasons, the Agency requests that the BZA issue an order dismissing the instant appeal.

II. The Permit and the Existing Structure Conform to the Allowable Square Footage Under 11 DCMR Sec. 2500.5

The permit that was issued properly allowed for the construction of a two-story structure. 11 DCMR Sec. 2500.5 provides in an R-1-A or R-1-B District, "...an accessory private garage may have a second story used for sleeping or living quarters of

domestic employees of the family occupying the main building." Furthermore, according to 11 DCMR Sec. 2500.6, "a two story accessory building allowed under 11 DCMR Sec. 2500.5 shall not exceed twenty (20) feet in height..." The permit at issue allowed for the construction of a structure of no more than 20 feet in height and, therefore was properly issued.

Appellants' erroneously contend that the permit could not allow for a structure that exceeds 900 square feet. , 11 DCMR Sec. 199.1, however, defines a private garage as, "a building or other structure, or part of a building or structure, not exceeding nine hundred square feet (900 sq. ft.) in area, used for the parking of one (1) or more motor vehicles and have no repair or service facilities." This provision does not limit the total square footage of the structure in its entirety to 900 square feet, but merely limits the area that is "used for the parking of one (1) or more motor vehicles" to 900 square feet. In the instant matter, the permit was issued for a structure that would total 1,144 gross square feet, but which lawfully limited the allowable parking area to less than 900 square feet. In fact, both the application upon which the permit was based, and the actual structure that was erected, contain only 572 sq. ft. in the area used for parking (the first floor).

Because the permit was issued for a parking area under 900 square feet, and a building no greater than 20 feet in height, it comported with the requirements of the applicable regulations.

III. The Rear Yard Exceeds the Requisite Set Back Requirement of 25 feet

A rear yard in an R-1-A and R-1-B zone is required to have a 25 foot minimum depth, according to 11 DCMR Sec. 404.1. The 25 foot rear yard requirement does not apply to a portion of an accessory private garage that is permitted within the rear yard.

More over 11 DCMR Sec. 2300.2 (a) provides that a private garage "...may be located either within a rear yard or beside the main building..." Here, the rear yard of the subject property as submitted by the Epsteins and shown on the DC Surveyor's plat exceeds the 25 foot minimum rear yard requirement. Agency Exhibit E (Surveyor's Plat)

Consequently, this concern of Appellant has no bases in law or fact.

✓ **IV. The question of whether the Epsteins are engaged in a non conforming use of the second story of the accessory building, is not relevant to the validity of the Agency's issuance of the permit**

Although Appellant contends that the Epsteins either intended to, or actually are, utilizing the second story of the accessory building contrary to that permitted under 11 DCMR Sec. 2500.5, that question is unrelated to whether the permit was properly issued. ✓

11 DCMR Sec. 3203.1 governs the requirement for what entities need a certificate of occupancy and provides that, "...no person shall use any structure, land, or part of any structure or land for any purpose other than a one-family dwelling until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR." A single family dwelling does not, in and of itself, require a certificate of occupancy and the concomitant inspections for construction and fire code compliance. Consequently, the "who lives there" component (mother or domestic employee or both) relies on the representation of the permit seeker at the time of the permit application. The Zoning Administrator does not conduct an inspection of the premises to determine "who lives there", nor does the subsequent non-conforming use deem the Agency's issuance of the permit to be ✓

unlawful. Rather, the question of a non-conforming use is an issue of enforcement that is ✓
beyond the purview of the BZA.

V. The accessory building does not obstruct light and ventilation of neighboring properties in violation of 11 DCMR Sec. 2500.9, nor does it restrict the privacy of neighboring properties.

11 DCMR Sec. 2500.9 provides that, "An accessory building shall not obstruct light and ventilation required by other regulations". Here, neither light nor ventilation has been obstructed by the current accessory private garage. Rather, the alley is 15 ft. wide and the principal structures of the properties affected should be located a minimum of twenty-five (25) feet from the rear property line. Additionally, the second story accessory private garage is set back at least 7 to 8 feet from the property line. Together, these distances do not yield an obstruction of light or ventilation. Finally, the applicable zoning regulations make no mention of privacy restriction. Thus, Appellants' argument on this point is without a basis in law.

Conclusion

For the reasons stated herein, and any others that may arise at a hearing on this matter, the Appeal of the Appellants Jeffery Schonberger and Geraldine Rebach of Building Permit No. B-456380 should be dismissed with prejudice.

Respectfully Submitted

BY:

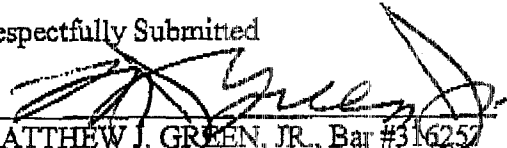

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Exhibit A

OFFICE NUMBER		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER
D.C. No.	O.C. No.			
A. No.	S. No. 123	Ward No.	Receipt No.	Permit No.

*** GOVERNMENT
OF THE DISTRICT
OF COLUMBIA
BLRA-33
(Rev. 10/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (72)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY

(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

ARRANGEMENTS TO FILE

ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

Address of Proposed Work: 5362 - 27 th ST, NW		Suite No.:	27	Square:	2292	4. Application Date: 8/19/03
Owner of Building or Property: 27 th STREET, LLC		8. Address: (include Zip) TWO WISCONSIN CIRCLE #560 CHEVY CHASE, MD 20815		7. Phone: (202) Work: 257-7022 Home:		
Agent for Owner (if applicable) CAREN MARTINO		9. Address: (include Zip) CAS ENGINEERING 108 W. RIDGEVILLE BVD MT. AIRY, MD 20771		10. Phone: (202) Work: Home: 744-2375		

Type of Proposed Work (check all applicable boxes):

- ☒ New Building
☐ Addition
☐ Alteration and Repair
☐ Raze Building
☒ Retaining Wall
☐ Fence
☐ Shed
☐ Awning
☒ Garage
☐ Sign
☐ Other (Specify)

Description of Proposed Work:

CONSTRUCT NEW SFD, DETACHED GARAGE & SITE RETAINING WALLS

Existing Use(s) of Building or Property: VACANT		14. Ex. No. of Stories of Bldg.: 0	15. Ex. No. of Dwelling Units: 0	Official Use Only Miscellaneous Fee	
Proposed Use(s) of Building or Property: SFD		17. Prop. No. of Stories of Bldg.: 2	18. Prop. No. of Dwelling Units: 1	Date:	
Starting Date of Work: 8/15/03	20. Completion Date of Work: 8/15/04	21. Method of Removing Construction Debris: ☒ Pick-up Truck ☐ Dumpster ☐ Other (specify):		22. Does the proposed work involve disturbing the earth or razing a building? ☒ Yes, answer q. 23 ☐ No, SKIP q. 23-27	
Is the area of disturbed earth more than 50 sq. ft.? ☒ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25	24. Soil Erosion Control Methods: PER APPROVED PLANS	25. Area of Offsite Drainage: N/A	26. No. of Footings of Columns: N/A	27. Size of Footings of Columns: N/A	

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I).

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

OFFICIAL USE ONLY				
R	E	H	A	
M				
F				
E				Yes ☐ No ☐
E				PLANS
S				Sign ☐ L

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

Architect's Name: SPEIGHT ARCHITECTS		29. Lic. No.:	30. Architect's Address: (include Zip)		31. Phone: (301) 588-1001
Engineer's Name: CAS ENGINEERING		33. Lic. No.:	34. Engineer's Address: (include Zip)		35. Phone: (301) 607-8003
Building Contractor's Name: ZUCKERMAN BROS. INC		36A. Lic. No.:	37. Contractor's Address:		38. Phone: (202) 237-7025
3. Type of Construction: ☒ Masonry ☐ Steel ☒ Fully Sprinklered ☐ Standpipe System ☒ Wood ☐ Other: ☐ Partially Sprinklered ☐ None ☒ Concrete ☐ Other:		40. Fire Suppression: ☒ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☐ None ☐ Other:		41. Booster Pump: ☐ New ☐ Existing ☒ None	42. Total Lot Area: 8614.5 sq. ft.
43. Breakdown of Lot Area (= 100%): a. Building: _____ % b. Paved Area: _____ % c. Greenery: _____ %		44. Present Gross Floor Area of Bldg.: 0 sq. ft.		45. Proposed Gross Floor Area of Bldg.: 56025 sq. ft.	
46. Floors involved in this permit: ☒ All ☐ Floors _____		47. Projection beyond building line? ☐ Yes, answer q. 48-52 ☒ No, SKIP q. 48-52		48. Number and type of projection: N/A	
49. Distance of projection: N/A		50. Width of projection: N/A		51. Width of building frontage: N/A	
52. Signature of Owner (projection only): N/A		53. Water or Sewer Excavation? ☒ Yes ☐ No		54. Driveway Construction? ☒ Yes ☐ No	
55. Sheeting/Shoring Necessary? ☐ Yes ☒ No		56. Elevators involved? ☐ Yes, answer q. 57 ☒ No, SKIP q. 57		57. No. and type of elev.: 0	
58. Plans Certified by Engineer? ☒ Yes, cert. is attached ☐ No		59. Estimated Cost of Work: (a) New/Add.: \$ 450,000 (b) Alt/Rep.: \$ _____ Total: \$ 450,000		OFFICIAL USE ONLY: Alter/Repair FEE: _____ New Const. FEE: 1930.50 Filing Fee: 450.00 TOTAL PERMIT FEE: 1480.50	
60. Volume of New Bldg. or Addition: 35000 cubic ft.		By: [Signature] Date: 9/22/07		By: [Signature] Date: 9/22/07	

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:		62. Contractor's Address: (include Zip)		63. Phone:	
64. Insurance Company:		65. Policy or Certif. No.:		66. Expir. Date:	
67. Raze Method:		68. Building Material:		69. Raze Entire Building? ☐ Yes ☐ No	
70. Building Condemned? ☐ Yes ☐ No		70A. Building Vacant? ☐ Yes ☒ No		71. Public Space Vault? ☐ Yes ☐ No	
72. Disconnect Water and/or Sewer? ☐ Yes ☐ No		73. Size of Water Connection: in.		74. Plumber's Name:	
75. Lic. No.:		76. Length: _____ ft.		77. Width: _____ ft.	
78. Height: _____ ft.		79. Volume: _____ cu. ft.		80. Party Wall? ☐ Yes ☐ No	
81. Asbestos in the Building? ☐ No ☐ Yes, Location _____		82. Raze Contractor Signature:		OFFICIAL USE ONLY: FEE: _____ By: _____ Date: _____	
83. Owner's Signature:					

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by O.C. Zoning Regulations.

84. Cost of Work: \$ 29,000		85. Material: MASONRY		86. Height: < 4'	
87. Color: NATURAL		88. Location: ☒ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land		89. Signature of Adjoining Owner: N/A	
90. Phone: Work N/A Home N/A		91. Address of Adjoining Owner: N/A		92. Lot: N/A	
93. Square: N/A		OFFICIAL USE ONLY: FEE: 700.00 By: [Signature] Date: 9/22/07			

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations.

94. Material and type:	95. Height: 86. Color:	97. Location:
	ft.	☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

98. Signature of Adjoining Owner:	99. Phone:
	Work Home
100. Address of Adjoining Owner:	101. Lot: 102. Square:

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number:	104. Length:	105. Width:	106. Area:	107. Height:	108. Volume:	109. Estimated Cost of Work:
1	26 ft.	22 ft.	572 sq. ft.	20 ft.	11440 cu. ft.	\$ 25,000
110. Material of Roof:	111. Material of Sides:	112. Wall thickness:	113. Color:			
MATCH HSE	MASONRY / FRAME	8" External (8" inches) ☐ Party () inches	MATCH HSE			

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color:	116. Type:	117. Projections:	118. Height of lowest part of awning:
		☐ Folding ☐ Fixed	Beyond bldg. line _____ in. Beyond pt. of attachm. _____ in.	(a) _____ ft above sidewalk (b) _____ ft above parking (c) _____ ft above grade
119. Material of Frame:	120. Material of Covering:	121. Lettering on Awning?	122. Fixed posts?	123. Over sidewalk cafe?
		☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number:	125. Electric Signs?	126. Type:	127. Power:	128. Electrical Contractor:
	☐ Yes, answer q. 129-132 ☐ No, SEE q. 126-132	☐ Incandes. ☐ Fluoresc. ☐ Neon	_____ VA	Lic. No.: and aff to notehamco
129. Address of Electrical Contractor (include Zip)	130. Signature of Licensed Electrician:	131. Phone:	132. License No.:	
133. Height relative to building and ground:	134. Material of Sign:	135. Type of Sign:	136. Color:	
(a) _____ ft. _____ in above sidewalk (b) _____ ft. _____ in above roof (c) _____ ft. _____ in bldg height (d) _____ ft. _____ in above projection or window (e) _____ ft. _____ in from roof to sign's bottom	137. Width:	138. Length:	139. Area of Sign:	
	ft.	ft.	sq. ft.	
140. Width of Business Frontage:	141. O or Q Number for Building:	142. Sign Contractor:		
		Lic. No.:		
143. Sign Contractor's Address:	144. Phone:	OFFICIAL USE ONLY Sign-FEE: \$ _____ By: _____ Date: _____ Total FEE: \$ _____ By: _____ Date: _____		

(I) APPLICANT'S SIGNATURE

A. OWNER: I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner: _____ Address: _____ Date: _____

B. AGENT: I hereby certify that I have the authority of the owner to make this application; that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent: Tim Martin Address: CAS Engineering Date: 7/11/03

108. W. Dobbins Blvd
APT Amy MB 2771

ON THIS PAGE OFFICIAL USE ONLY

A. PERMIT CONTROL

1. Fine Arts by: [Signature] Date: 8/20/03
2. Historic by: _____ Date: _____
3. PADC by: _____ Date: _____
4. Cap. Gateway by: _____ Date: _____
5. W.H./ Obs. Precinct by: _____ Date: _____
6. Flood Control by: _____ Date: _____
7. WMATA by: _____ Date: _____
8. Condem. by: _____ Date: _____
9. RLA by: _____ Date: _____
10. Rental Accom. by: _____ Date: _____
11. Chinatown Distr. by: _____ Date: _____
12. Utility Clearance by: _____ Date: _____
13. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☐ 1. Zoning by: _____ Date: _____
- ☐ 2. DPW - Permit and Records Division
Access to Parking Street ☐ Street ☐ Alley
Cleared by: _____ Date: _____
- ☐ 3. DPW - Consumer Engineer
Cleared by: _____ Date: _____
- ☐ 4. ERA - Erosion Control
Cleared by: _____ Date: _____

Restriction **APPROVED**
Commission of Fine Arts

SEPARATE ELECTRICAL PERMITS ARE REQUIRED
INSTALLATION PERMITS ARE REQUIRED

C. PLANS AND APPLICATION APPROVAL

- ☒ 1. Information Counter by: TD Date: 10/29/03
- ☐ 2. Information Center by: _____ Date: _____
- ☐ (a) ABC Board by: _____ Date: _____
- ☐ (b) Noise Control by: _____ Date: _____
- ☐ (c) Industrial Safety by: _____ Date: _____
- ☐ (d) Vector Control by: _____ Date: _____
- ☐ (e) D.C. Animal by: _____ Date: _____
- ☐ (f) Police Dept. by: _____ Date: 8/18/03
- ☐ 3. Zoning by: [Signature] Date: 8/18/03
Zoning Update by: _____ Date: _____
- ☐ 4. DPW - Permit and Records Division/Deposit # DO-6145
Sidewalk Deposit \$ 350.00 Driveway Deposit \$ _____
by: [Signature] Date: 10-25-03
- ☐ 5. Water/Sewer Design Branch
Consumer Eng. by: [Signature] Date: 10/16/03
- ☐ 6. Environmental Regulation Administration
☐ Environmental Policy Review
Control No.: _____
by: _____ Date: 10/18/03
- ☐ Erosion Control by: [Signature] Date: 10/18/03
- ☐ Storm Water Mgmt. by: [Signature] Date: 10/18/03
Plan No. _____
- ☐ 7. Mechanical Eng. Review by: [Signature] Date: 10/30/03
- ☐ 8. Plumbing Eng. Review by: [Signature] Date: 10/30/03
- ☐ 9. Electrical Eng. Review by: [Signature] Date: 10/30/03
- ☐ 10. Health Plan Review
☐ (a) Food Plan Review by: _____ Date: _____
☐ (b) Medical X-ray Plan Rev. by: _____ Date: _____
- ☒ 11. D.C. Fire Dept. (Fire Prevention Plan Review Section)
by: [Signature] Date: 10/23/03
- ☐ 12. Elevator Plan Rev. Sec. by: _____ Date: _____
- ☐ 13. Plumbing Insp. Rev. by: _____ Date: _____
- ☐ 14. Construction Insp. Branch (Field Check)
by: _____ Date: _____
- ☐ 15. Historic Pres. Div. by: [Signature] Date: 10/23/03
- ☐ 16. Structural Eng. by: [Signature] Date: 10/23/03
- ☐ 17. Permit and Certificate Issuance Counter
by: _____ Date: _____

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY

D.C. GOVERNMENT OFFICE OR OFFICIAL CALL THE
D.C. INSPECTOR GENERAL AT 1-800-521-1639

☐ 18. D.C. By: [Signature] Date: 10/23/03

ZONING

if O Number _____ Date _____

ating Use(s): New Construction

3FD

No. _____ BZA Case No. _____ PUD Order No. _____

- ☐ New bldg.
- ☐ P.O.D.
- ☐ File in room 329

DPW - PUBLIC SPACE

Street Name: _____

Street Width: _____

Road Width: _____

Sidewalk Width: _____

Parking: _____

Restrictions: _____

Exhibit B

AFFIDAVIT OF GERALDINE REBACH

Affiant, Geraldine Rebach, states as follows:

1. I, Geraldine Rebach, am competent to testify to the matters stated herein, and make these statements based on my personal knowledge. I am over the age of 18 years.
2. I reside at 5343 28th Street, N.W., Washington, D.C. and have lived at said residence since July, 1997.
3. On the evening of July 2, 2005 a man, woman and German Shepard were chatting with a neighbor at 5349 29th Street, NW when I returned from a walk with my dog. He introduced himself and his wife as new neighbors in the home across the alley from mine. He stated his intention to add a second story to his garage and wanted to advise me of the project.
4. The house that Mr. Epstein and his wife purchased was built within the past year or so by a homebuilder commonly known as Zuckerman Brothers. The house is, by my estimation, approximately 4,500 square feet and has a detached garage which is accessed by the alley which separates our respective properties.
5. Zuckerman Brothers had intended to build an apartment on top of the each of the respective garages of Mr. Epstein's new home and the neighboring house which were built at the same time. When I and a neighbor protested such a tall structure on the alley, Zuckerman Brothers informed us that they would not build apartments over the garages despite the fact that they had managed to receive a permit to do so. Zuckerman Brothers completed construction of the house and the garage and did not build an apartment over either garage.
6. After the initial introduction, I told Mr. Epstein that I was displeased with such a project, having been relieved when the builders decided not to pursue it. I said I would not go to great lengths to prevent it, but that I was against it. Mr. Epstein said he needed the apartment to accommodate his mother when she visits from the West Coast. She is very allergic to dogs, he said, and therefore would not be able to stay in his home when she visited the grandchild several times a year.

7. The following morning, Sunday, July 3, 2005, having reflected on Mr. Epstein's intention, I approached him in his garage to ask how he proposed to proceed, considering that the builders had declined to do so. I asked if he had plans and permits. He said he had approval from Fine Arts, from the Zoning office, and he already had a contractor. I was surprised, because I thought the builders had decided an apartment above the garage was not really within the District of Columbia building code. He assured me he had the necessary permits and was ready to begin construction. He said he wanted to be a good neighbor, that if I had any concerns, I should feel free to discuss them.
8. That afternoon, I delivered a note to Mr. Epstein's door stating that I believed there would be negative impact on my home if he proceeded, and that I felt we should speak further. I included my phone number and that of Mr. Jeffrey Schonberger, my next-door neighbor. That evening, Mr. Epstein appeared at my front door with his dog. He came in bearing a copy of the permit and plans as filed by and granted to the Zuckerman Brothers' company, 27th Street LLC. He said his mother had bad knees, that she very much wanted to be able to visit Mr. Epstein and his family, and that there were no suitable hotel accommodations nearby. He repeated that she is very allergic to pets. He said before buying this house, he visited the property at various times of the day to see how a taller building (the garage) would affect the light received by his house and mine. I still expressed my reluctance to get involved in a protracted legal battle, but was not pleased about this project.
9. The morning of July 5, 2005, as I was leaving from my garage for work, Mr. Epstein stopped me. He said he was going to speak with his attorney that day and wanted clarification of my position. He said I sent conflicting messages, saying I would not go to extremes to prevent his planned addition, but then saying I might register an appeal with the Board of Zoning Appeals. I said once again that I am opposed to the project, but needed more time to consult an attorney of my own or with the appropriate District of Columbia officials to be sure his project is completely consistent with zoning regulations.
10. The evening of July 5, 2005, upon my return from work, Mr. Epstein again approached my back fence to tell me he had spent an hour on the phone with his attorney, was certain that he could build his addition, and intended to proceed. If I chose to expend time and money fighting this, I might be liable for his legal fees if I lose the appeal.

FURTHER AFFIANT SAYETH NAUGHT.

Geraldine Rebach
Geraldine Rebach

August 15, 2005

Exhibit C

from the desk of
Jeffrey A. Schonberger

May 24, 2004

By Fax - 1 page total

Stuart A. Zuckerman
Zuckerman Brothers Incorporated
Two Wisconsin Circle
Chevy Chase, Maryland 20815

Re: 5362 & 5364 27th Street, N.W.

Dear Stuart:

Thank you for taking the time to speak with me last Friday regarding the above referenced property. As you may recall the neighbors and I have deep concerns over the accessory apartments which your company plans to construct over the accessory garages for the two single family dwellings now under construction. As you know the accessory structures will be 25 feet above the alley and will intrude upon the light, air and privacy of those properties to the rear of yours. It is our belief and understanding that your proposed plans do not comply with the rear yard set-back requirement for such accessory structures.

I would like to once again take this opportunity to respectfully ask that you reconsider progressing with the construction of the accessory apartments unless they are set back from your rear lot line 25 feet. Since the apartments have not yet been framed this might be an amenable time to pause and reconsider.

As I offered on Friday, I would be more than happy to discuss with you - either in person or telephonically - why you believe that the apartments do conform to the set back requirement and why we believe that they do not.

Please feel free to call me at anytime at my office (202.628.6950). We appreciate your attention to this matter.

Sincerely yours,

Jeffrey A. Schonberger

Exhibit D

#1708-B

H.1

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS PERMIT SERVICE CENTER

BUILDING PERMIT CONTROL BATCH SHEET

Date: 8/1/03 Intake Time: 8-11 ☐ AM ☐ PM	LOG NO. 03 - Time At Engr's. Counter: ☐ AM ☐ PM	Review Completion Due: ☐ AM ☐ PM
Address Including Lot & Square: 5362 27th St NW		Time Review Completed: ☐ AM ☐ PM
Owner of Building or Property:	Owner Address of Property:	Phone Work:
Agent for Owner (If applicable):	Agent for Owner Address:	Phone Work:

Circle Type of Proposed work :

New Building * Addition * Alteration * Repair * Building * Retaining Wall * Fence *
Shed * Awning * Garage * Sign * Other:

REQUIRED REVIEWS (Checked boxes only)	REVIEWER	REVIEW STATUS
☐ PUBLIC SPACE	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Ref to DPW ☐ Conf w/ Applicant
☒ ZONING <i>HFC 8/1/03</i>	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☒ Approved ☐ HFC ☐ Ref. to BZA ☐ Ref to Zoning Administrator ☐ Conf w/ Applicant
☐ SOIL EROSION	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Ref. to DOH ☐ Conf w/ Applicant
☐ STORMWATER MGMT	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Ref. to DOH ☐ Conf w/ Applicant
☐ AIR QUALITY ☐ EIS	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Ref to DOH ☐ Conf w/ Applicant
☐ WATER AND SEWER	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Ref to WASA ☐ Conf w/ Applicant
☐ MECHANICAL/PLUMBING	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Conf w/ Applicant
☐ HEALTH (Food & Medical)	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Conf w/ Applicant
☐ ELECTRICAL	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Conf w/ Applicant
☐ ELEVATOR	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Conf w/ Applicant
☐ FIRE PROTECTION	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Conf w/ Applicant
☐ STRUCTURAL	IN ☐ AM ☐ PM OUT ☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Conf w/ Applicant

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER:
O.G. No.:			
S.L. No.:		Ward No.:	Receipt No.:

★ ★ GOVERNMENT
OF THE DISTRICT
OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (72)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY

(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

DATE TO FILE

Date:

ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

Address of Proposed Work:		Suite No.:	Lot:	Square:	4. Application Date:
362 - 27 th ST, NW			27	2292	
Owner of Building or Property:		6. Address: (include Zip)		7. Phone:	
27 th STREET, LLC		TWO WISCONSIN CIRCLE #560 CHEVY CHASE, MD 20815		Work: (202) Home: 237-7022	
Agent for Owner: (if applicable)		9. Address: (include Zip)		10. Phone:	
AREN MARTINO		CAS ENGINEERING 108 W. RIDGEVILLE BLVD MT. AIRY, MD 20771		Work: (202) Home: 744-2315	
Type of Proposed Work (check all applicable boxes):					
☒ New Building		☒ Retaining Wall		☒ Garage	
☐ Addition		☐ Fence		☐ Sign	
☐ Alteration and Repair		☐ Shed		☐ Other (Specify) _____	
☐ Raze Building		☐ Awning			
Description of Proposed Work:					
CONSTRUCT NEW SFD, DETACHED GARAGE & SITE RETAINING WALL					

13. Existing Use(s) of Building or Property:		14. Ex. No. of Stories of Bldg.:	15. Ex. No. of Dwelling Units:	Official Use Only	
VACANT		0	0	Miscellaneous FEE	
16. Proposed Use(s) of Building or Property:		17. Prop. No. of Stories of Bldg.:	18. Prop. No. of Dwelling Units:	By: _____ Date: _____	
SFD		2	1		
19. Starting Date 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?	
8/15/03	8/15/04	☒ Pick-up Truck ☐ Dumpster ☐ Other (specify): _____		☒ Yes, answer q. 23 ☐ 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 Footing of Columns:
☒ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25	PER APPROVED PLANS		N/A	N/A	N/A

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)

2-0307 wdr/75

OFFICIAL USE ONLY					
	R	F	H	A	
M					
P					
E					W ☐ Yes ☐ No
F					PLANS: ☐ No ☐ Yes
S					Sign: ☐ No ☐ Yes

JURISDICTION: District of Columbia		TYPE: Commercial / Residential Use	
1. OWNER/APPLICANT/AGENT Karen Martino		2. LOCATION/ADDRESS 5304 27TH St, NW	
3. SQUARE 2292		4. LOT 0027	
5. ZONE R-1-B	6. USE OF BUILDING / STRUCTURE SFD		7. SCOPE OF WORK ☒ New Building ☐ Addition to existing building ☐ Alteration of
5A. OVERLAY DISTRICT N/A			
8. EXISTG. STRUCTURE ☒ Conforming ☐ Non-Conforming	10. WIDTH OF ADJACENT STREETS a. 90 ft on Street: 27TH Street b. _____ ft on Street: _____ c. _____ ft on Street: _____ d. _____ ft on Street: _____		11. WIDTH OF ADJACENT ALLEYS a. 15 ft b. _____ ft c. _____ ft ☐ N.A.
9. EXISTING USE ☒ Conforming ☐ Non-Conforming			
12. RESTRICTION LINES SETBACK ☒ N.A. a. _____ ft (on _____) b. _____ ft (on _____) c. _____ ft (on _____) d. _____ ft (on _____)		13. HEIGHT ACT OF 1910 Height of bldg. N/A Excess height ft _____	14. LOT TYPE ☐ Corner ☐ Through ☐ Triangular ☒ Interior ☐ Alley
15. NUMBER OF DWELLING UNITS 1 garage unit ☐ N.A.			
16. LOT AREA Required 3000 SF Provided 3645 SF	16A LOT WIDTH MIN ALLOW 50' Provided 50'	17. LOT OCCUPANCY Allowed 40% Proposed 29%	18. TOTAL GFA (Gross Floor Area) N/A SF
19. TOTAL CELLAR AREA SF N/A		20. FAR ALLOWED N/A PROVIDED _____	
21. RESIDENTIAL PARKING SPACES ☐ N.A. Required _____ Provided _____ Outdoors _____ Indoors _____		22. PARKING SPACES ☒ N.A. Required _____ Provided _____ Outdoors _____ Indoors _____	
23. LOADING BERTHS ☒ N.A. Required _____ Provided _____			
24. HEIGHT OF BUILDING Maximum Allowed 40 ft In this Zone R-1-B		25. NUMBER OF STORIES Allowed 3 Proposed 2	26. YARDS ☐ N.A. Rear Yd Depth: Required 25 ft Provided 25 ft Side Yd Width: Required 8 ft Provided 8 ft
24A. HEIGHT Curb to 1st floor _____ ft Curb to roof high point _____ ft Grade to 1st floor 1'-2" ft Grade to top story ceiling 21'-8" ft Grade to roof high point 29'-8" ft		25A. NUMBER OF LEVELS OF Basement ☐ N.A. Cellar ☒ N.A. 1	26A. COURTS ☒ N.A. Open Court Width: Required _____ ft Provided _____ ft Closed Court Width: Required _____ ft Provided _____ ft Closed Court Area: Required _____ SF Provided _____ SF
27. BZA Case Nr.	28. CAMPUS PLAN ☐ Yes ☐ No ☐ See Remarks	29. LANDMARK EXEMPTION ☐ Yes ☐ No ☐ See Remarks	30. TDR's ☐ No ☐ Yes: SF ☐ In ☐ Out ☐ See Remarks
☐ SEE REMARK ON REVERSE			

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
TECHNICAL REVIEW BRANCH

PLAN CORRECTION LIST

Job No.

#1708-B

Engineer

Michael Smith

Section

zoning

Date

11/6/06

CHANGES REQUIRED ON PLANS PRIOR TO APPROVAL:

No.

1)

IN VICE NOTE: THE 2-THIRD FLOOR

* RE-ROUTE TO BUILDING

JOB# 1708-L

LOT AREA

$$= 50 \times 172.29$$

$$= 8615 \text{ SF}$$

HOUSE AREA

$$= 50.7 \times 33 \text{ (main house)}$$

$$= 1673.1 \text{ SF} \checkmark$$

$$= 3.7 \times 20 \text{ (front protusion)}$$

$$= 74 \text{ SF} \checkmark$$

$$= 9.5 \times 3.5 \text{ (rear protusion)}$$

$$= 33.25 \text{ SF} \checkmark$$

$$= 13.4 \times 3.6 \text{ (rear protusion)}$$

$$= 48.24 \text{ SF} \checkmark$$

COVERED PORCH AREA

$$= 10 \times 14$$

$$= 140 \text{ SF} \checkmark$$

GARAGE AREA

$$= 26 \times 22$$

$$= 572 \text{ SF} \checkmark$$

TOTAL IMPROVEMENT AREA

$$= 1673.1 + 74 + 33.25 + 48.24 + 140 + 572$$

$$= 2540.59 \text{ SF}$$

% LOT Occupancy

$$= 2540.59 / 8615$$

$$= 29\%$$

Problems

- 1) 2 story garage w/ living quarters on 2nd story

EXHIBIT No. 179044
BZA

PERMIT

DEPARTMENT OF CONSUMER AND REGULATION AFFAIRS
BUILDING AND REPAIRS COORDINATION

BUILDING PERMIT

PERMIT NO. **B456380**

Date: **10/30/03**
Address of work: **5362 27th STREET NW**
City: **ALBUQUERQUE**
State: **NM**
Zip: **87114**

Permittee: **WILLIAM J. MURPHY**
Address: **5362 27th STREET NW**
City: **ALBUQUERQUE**
State: **NM**
Zip: **87114**

Builder: **WILLIAM J. MURPHY**
Address: **5362 27th STREET NW**
City: **ALBUQUERQUE**
State: **NM**
Zip: **87114**

Project: **DETACHED GARAGE**
Description: **DETACHED GARAGE WITH ATTACHED PORCH**
Area: **2712 SQUARE FEET**

Height: **10 FEET**
Width: **20 FEET**
Depth: **10 FEET**
Volume: **2000 CUBIC FEET**

Zone: **R-1-R**
Height of terrace above grade: **0 FEET**
Address of owner: **5362 27th STREET NW**
City: **ALBUQUERQUE**
State: **NM**
Zip: **87114**

Deposit No.: **1000**
Amount: **\$1000**

DEPARTMENT OF CONSUMER AND REGULATION AFFAIRS
BUILDING AND REPAIRS COORDINATION

DETAILS

REMARKS

Exhibit E

T-477 P.034/034 F-089

DISTRICT OF COLUMBIA GOV. DIVISION
OFFICE OF THE SURVEYOR

Washington, D.C., July 8, 2003

Plat for Building Permit of SQUARE 2202 LOTS 26&27

Scale: 1 inch = 30 feet Recorded in Book 187 Page 4

Receipt No. 06700

Furnished to: 27TH STREET LLC

I hereby certify that all existing improvements shown herein, are completely delineated and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly delineated and plotted; and agree with plans accompanying the application; that the foundation plans as shown herein is correct, and dimensions accordingly to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected on adjacent parcels the size of any adjoining lot or parcels is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that adequate parking area when required by the Zoning Regulations will be reserved. In accordance with the Zoning Regulations, and that interest has been correctly shown and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade(s) will result in a grade of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or lot or in excess of 10% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

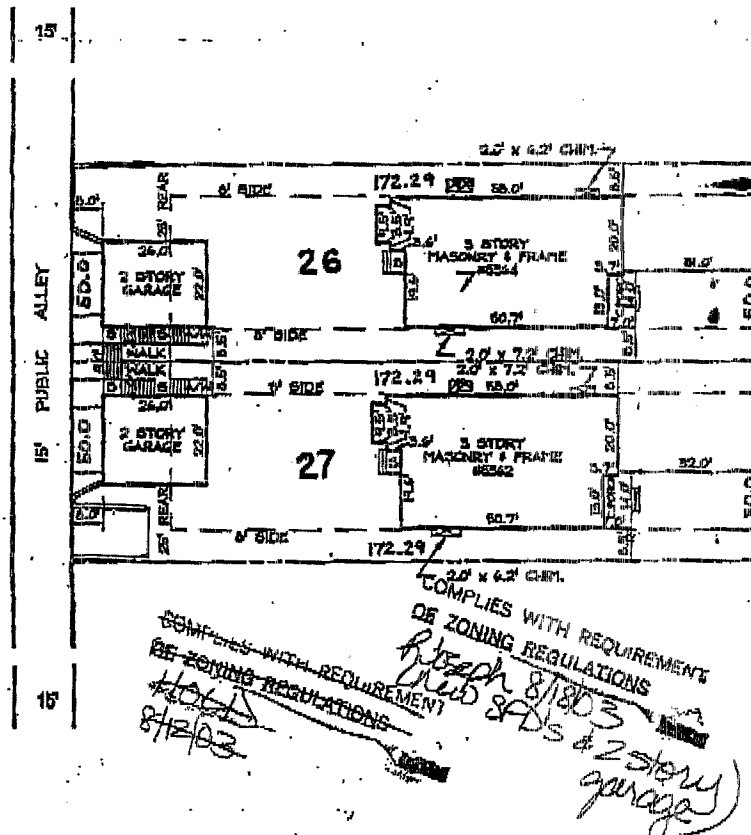
Surveyor, D.C.

Date: 11 AUG 03

By: L.M.A. *[Signature]*

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots and Panels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



[REDACTED]

To: CHAIRMAN GRIFFIS From: JOHN NYARKU
Location: Fax: (202) 727-6072
Fax: (202) 797-8385 Phone: (202) 727-0368
Phone: Date: February 17, 2006
Re: ^{SUBMISSION ON} BZA CASE# 17414 Number of Pages Including Cover: 34

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

If you do not receive all of this transmission, please contact sender immediately.