GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the General Counsel

December 17, 2007

Board of Zoning Adjustment
441 4th Street, NW
2nd Floor
Washington, D.C. 20001

Re: Appeal No. 17657, 1231 Morse Street, Inc.

Dear Ms. Bailey:

Pursuant to the Board's request, enclosed is the District of Columbia's Brief on Equitable Estoppel and Laches.

Yours truly,

Melinda Bolling

Melinda Bolling, Esq.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17657
EXHIBIT NO. 41

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In re:
1231 Morse Street, Inc.,

Appellant,

Appeal No. 17657

DISTRICT OF COLUMBIA'S
BRIEF ON EQUITABLE ESTOPPEL AND LACHES

Appellee, the District of Columbia Department of Consumer and Regulatory Affairs, ("District" or "DCRA"), by and through undersigned counsel, respectfully submits its brief asserting that the doctrines of equitable estoppel and laches are not applicable to the appeal because 1231 Morse Street, Inc. ("Morse Street" or "Appellant") cannot meet the elements of either estoppel or laches. Since the doctrines do not apply, this Board should deny Appellant's appeal as the District is not prohibited by the equitable doctrines of estoppel or laches from halting Appellant's unlawful construction.

STATEMENT OF FACTS

On April 12, 2005, Morse Street filed a Building Permit Application and plans to construct an addition to a single family dwelling and convert the single family dwelling to an eleven unit apartment building in an R-4 district. On September 6, 2005, Morse Street was issued Building Permit Number B 477039 to build an addition to a single family dwelling for conversion into an eleven unit apartment building. An addition to a pre-1958 single family dwelling, converting the existing structure to an eleven unit apartment building, was permissible in an R-4 district because pre-1958 buildings were allowed to convert as a matter of right. After 1958, apartment buildings are not allowed as a matter of right in an R-4 district. The Building Permit Application specifically stated

Morse Street "intended to construct the apartment building as an addition to an *existing* structure."[1] The plans submitted by Morse Street with the application *depicted* an existing single family dwelling that was to be converted into an eleven-unit apartment building.

On December 14, 2005, Morse Street was granted an emergency demolition permit Number B 478240 to remove one partial exterior wall and to reduce a wall to a safe height.[2] On the night of February 20, 2006, the remaining ½ of the sitting room wall (the only remaining portion of the pre-1958 single family dwelling) collapsed. The parties dispute the cause of the collapse. On February 21, 2006, based on a complaint, the District conducted an inspection at 1233 Morse Street, NE and determined that the remains of the single family dwelling had fallen into the construction hole. On February 24, 2006, the District informed Morse Street that razing the existing structure due to the current status of the building required a new building permit application to construct a new building. Three days later, on February 27, 2006, the District conducted a second inspection at 1233 Morse Street, NE and determined that the pre-1958 single family dwelling had been completely razed without a proper permit.[3]

Building Code Violations

On February 28, 2006, the District issued a Stop Work Order ("SWO") citing that the owner performed work "above the scope of approved drawings and permits." On

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[1] See, Exhibit One.

[2] Demolition Permit Number B 478240 reflects an incorrect issuance date of December 14, 2006. See also Exhibit Two, page 2, indicated paragraph.

[3] 12A DCMR §§ 105.1.7 and 105.1.7.1 provides that "[a] raze permit is required to secure the right to remove a building or structure down to the ground."

March 10, 2006, Morse Street appealed the SWO to the Reviewing Official and on April 3, 2006 to the Director, respectively; both appeals were denied.

On January 19, 2007, Morse Street filed a revised Building Permit Application to reconstruct collapsed walls of an existing structure and indicated no additional changes to the approved plans for the previously issued Building Permit Number B477039. The plans did not depict an empty lot due the razing of the building. On March 5, 2007, the Zoning Administrator denied the zoning portions of the plans and revised Building Permit Application.

Based on the February 28, 2006, appeal of the Stop Work Order to the Office of Administrative Hearings, after a full evidentiary hearing, the Office of Administrative Hearings ("OAH") issued a Final Order Entering a Judgment in Favor of Morse Street finding on a Summary Adjudication on March 27, 2007. OAH found that the omission of the applicable Building Code sections from the February 28, 2006 SWO was not harmless error and determined that the SWO was defective. In essence, the Court ruled on a technicality rather than the substance of the actual violation. As a result of the Court's ruling, the District posted a second SWO on April 9, 2007 at the property. The SWO alleged that the Appellant constructed beyond the scope of the Building Permit and exceeded the emergency demolition permit. Due to another technical error, immediately upon learning of the technical error, the District removed the April 9, 2007 SWO and posted a third SWO on April 12, 2007. Morse Street appealed the April 9, 2007 SWO to the Reviewing Official and Director of DCRA on April 23, 2007 and on April 27, 2007, respectively; both appeals were denied. In response to Morse Street's allegations of a technical error, the District removed the April 12, 2007 SWO and posted a fourth SWO

on May 8, 2007. On May 18, 2007, Morse Street filed an appeal with the Reviewing Official for the May 8, 2007 SWO which was denied on May 23, 2007. On May 24, 2007, Morse Street appealed to the Director of DCRA, which was denied on May 29, 2007. On July 20, 2007, the District served Morse Street with a Notice to Revoke Permits. On July 30, 2007, Morse Street appealed the Notice to Revoke to OAH and filed a Motion to Consolidate Pending Appeals before this Board. As a result, this Board took jurisdiction of the Zoning and Building Code violations.

Zoning Violations

On March 6, 2007, Former Zoning Administrator, Bill Crews, issued a Zoning Determination Letter that denied the zoning section of Morse Street's Building Permit Application due to violations of 11 DCMR § 330.5(c). The District also informed Morse Street that without an existing structure (due to the razing of the property), District zoning laws did not allow conversion of an apartment building in the R-4 (Residential) District pursuant to 11 DCMR § 330.5(c).[4] On April 20, 2007, Morse Street appealed the Zoning Administrator's March 6, 2007 Zoning Denial Letter to this Board and subsequently on August 9, 2007, Morse Street amended its appeal to include revocation of the original Building Permit and Emergency Demolition Permit which was stayed before the Office of Administrative Hearings pending the consolidated appeals before this Board.

ARGUMENT

EQUITABLE ESTOPPEL DOES NOT PREVENTTHE DISTRICT FROM ENFORCING THE BUILDING CODE AND ZONING REGULATIONS

[4] 11 DCMR § 330.5(c) provides that "[t]he following uses shall be permitted as a matter of right in an R-4 District . . . the conversion of a building or other structure existing before May 12, 1958, to an apartment house as limited by §§ 350.4(c) and 401.3."

Appellant's appeal should be denied because Appellant cannot meet the elements of equitable estoppel. Estoppel is defined as "a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true."[5] There are six elements of an equitable estoppel claim: "(1)expensive and permanent improvements, (2) made in good faith, (3) in justifiable and reasonable reliance upon, (4) affirmative acts of the District government, (5) without notice that the improvements might violate the zoning regulations; and (6) equities that strongly favor the petitioner." *Bannum, Inc. v. D.C. Board of Zoning Adjustment*, 894 A.2d 423, 431 (D.C. 2006); *See also Interdonato v. District of Columbia Board of Zoning Adjustment*, 429 A.2d 1000, 1003 (D.C. 1981). As the law requires Appellant to meet all six elements to prevail on an estoppel claim, this appeal should be denied as the Appellant cannot meet this burden.

Element One – Expensive and Permanent Improvements

First, the Appellant fails to meet the first prong of estoppel because prior to the posting of the February 28, 2006 SWO "expensive and permanent improvements" were not completed. By February 28, 2006, only the framework of the addition was constructed.[6] Even Appellant acknowledges that only thirty (30%) percent of the construction was completed when the February 28, 2006 SWO was posted.[7] As of February 28, 2006, the Appellant was on notice that there were Building Code violations and should have known that any subsequent construction was done at its peril regardless

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[5] Black's Law Dictionary, Seventh Edition (1999).
[6] See Exhibit Three.
[7] See Appellant's Proposed Findings of Fact, paragraph 21. See also Mr. Demurren's testimony at 10/30/07 Transcript p. 349, lines 8 – 11; Mr. LeGrant's testimony at 10/30/07 Transcript p. 322, lines 1-14.

if it was minimal or excessive. Regardless, of what the Appellant is arguing what occurred after the posting of the February 28, 2006 SWO, the preceding work Appellant had completed was minimal and anything done subsequent was at its own risk.[8]

Appellant's argument that the District cannot revoke a Building Permit when it has spent a lot of money or when the construction at issue is almost complete does not overcome the greater interest of the public in the "integrity and enforcement of the zoning regulations." *See, Interdonato* at 1003. Furthermore, Appellant's argument is counterintuitive because it is the Appellant's responsibility to comply with District of Columbia law regardless of the amount of expenditure. Appellant was on notice that there was a problem yet Appellant chose not to seek compliance, but chose complicity instead. Although all construction costs are arguably expensive, the improvements completed after posting the February 28, 2006 SWO should be discounted because Appellant had notice of construction violations and obviously continued to construct until at least March 2007 when the entire structure was nearly completed – one month before filing an appeal to this Board. Therefore, post construction costs and expenses do not support Appellant's estoppel argument. *Rice v. Van Vranken*, 232 NYS 506 (NY 1929) (to support an estoppel argument, the work must be performed in reliance on the permit and cannot be completed after notice of revocation).

Secondly, expensive improvements are not included as a basis for estoppel when the construction is in violation of Zoning Regulations as is the case here. *San Antonio v.*

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[8] Mr. Demurren's testimony regarding the amount of improvements completed is in stark contrast to the testimony of the District's three witnesses (Laniese Lee, Camille Parker, Scott Jones) who are neighbors surrounding the site. See Mr. Demurren's testimony at 10/30/07 Transcript p. 335, lines 1-20; p. 336, lines 1-12; p. 337, lines 1-20. Compare to Ms. Lee's testimony at 10/30/07Transcript p. 74 line 2 – p. 84; Ms. Parker's testimony at 10/30/07 Transcript p. 94-102; Mr. Jones' testimony at 10/30/07 Transcript p. 109, lines 12-22; p. 110, line 20-22, p. 111, line 1-16.

Humble Oil & Refining Co., 27 S.W. 2d 868 (TX 1930). Since only preliminary construction occurred prior to the February 28, 2006 SWO, the Appellant cannot ***now*** argue that the "expensive and permanent improvements" element for estoppel was met. Therefore, Appellant's reliance on the amount of money spent and the percentage of construction concluded is not sufficient and cannot withstand the *Bannum* standard. *Bannum, Inc.*, 894 A.2d at 431. Accordingly, the Appellant fails to establish the first prong of estoppel and the appeal should be denied.

Element Two – Good Faith

The Appellant also fails to meet the second prong of estoppel because continued construction at the site was not made in "good faith." Under this prong, the Appellant must show that construction continued in good faith reliance on the Building Permit issued by the District. *See, Bannum, Inc.* at 432. It is clear that the Appellant was on notice February 28, 2006 based on the first SWO issued (removed on a technicality not on a substantive assertion) that continued construction was illegal.[9] At no time, has the District changed its position regarding Building Code and Zoning Regulations violations. Once the Appellant was on notice that the District determined that there were Building Code and Zoning Regulations violations at the site, it was unreasonable for the Appellant to continue to construct and later allege that it acted in good faith based on the issuance of the Building Permit while ignoring the February 28, 2006 SWO. *Hilton Hotels Corp. v. District of Columbia Bd. of Zoning Adjustment,* 435 A.2d 1062, 1063 (D.C. 1981); *Interdonato v. District of Columbia Board of Zoning Adjustment*, 429 A.2d 1000, 1003

[9] The Appellant would want this Court to focus on the District's issuance of four SWOs, however, it is clear from the record that the removal and re-posting of the SWOs was based primarily on technicalities, not a finding that the Code granted them permission to convert a single family unit into an eleven unit apartment building in a R-4 District.

(D.C. 1981). Additionally, although Appellant alleged that a District inspector determined that the pre-1958 building was structurally unsafe, Lenny Douglas testified that the emergency demolition permit was issued based on a request from Appellant's agent and a photo.[10] Appellant's "good faith" construction efforts clearly ended on February 28, 2006 upon posting of the first SWO. Therefore, Appellant's actions fail to establish element two of the *Bannum* standard.

More importantly, the Appellant cannot argue that they acted in good faith because if they had Morse Street would not have submitted plans misrepresenting the site that identified a structure on the lot that was in fact razed. Now, the Appellant wants to challenge the behavior of the District. What really should be judged is the Appellant's submission to the District. The District should not be imputed with knowledge of the razing of a building – the District reasonably relies on the trustworthiness of the citizen's of the District in its building plans submissions. Therefore, the Appellant again fails to establish the second prong of estoppel and the appeal should be denied.

Element Three – Justifiable and Reasonable Reliance

Next, Appellant cannot meet the third element of justifiable and reasonable reliance because it was on notice as of February 28, 2006 of the Building Code violations. Under this prong, the Appellant must show that construction continued with "justifiable and reasonable reliance" on the original Building Permit Number B477039 issued by the District. *Id.* at 431. In *Bannum*, the Court of Appeals held that *Bannum's* reliance on the DCRA concurrence letters was not "justifiable and reasonable." The Court of Appeals held, "[i]t is the Board, not the Zoning Administrator, which has final

[10] Lenny Douglas' testimony at 10/30/07 Transcript at p. 120, lines 1-13.

administrative responsibility to interpret the Zoning Regulations." *Bannum, Inc.*, 894 A.2d at 431 (D.C. 2006). *See also* Murray v. District of Columbia Board of Zoning Adjustment, 572 A.2d 1055, 1058 (D.C. 1990); D.C. Code § 6-641.07 (g)(4) (2001) (empowering the BZA to "reverse or affirm, wholly or partly, or . . . modify" any order or decision appealed from, or to "make such order as may be necessary to carry out its decision"). Similarly, in *Rafferty v. District of Columbia Zoning Commission*, 662 A.2d 191 (D.C. 1995), the Court sustained the Commission's rejection of the estoppel claim because of its conclusion that petitioners had *constructive notice* of the PUD restrictions, and hence could not justifiably rely on *the issuance of the building permit*, is supported by and flows rationally from substantial evidence in the record.

Here, the Appellant cannot meet this prong because it was unreasonable to rely on the original Building Permit when the District gave notice that continued construction was in violation of the Building Code and Zoning Regulations. Moreover, even if this Board does not accept the first SWO, the District posted three additional SWOs (February 28, 2006, April 9, 2007, April 12, 2007 and May 8, 2007) and with each SWO it was clear Appellant was in violation of the Building Code. This Board can pick any date February 28, 2006, April 9, 2007, April 12, 2007 and May 8, 2007 and rule that Appellant had notice and was in violation of the Building Code because regardless of technical errors the substantive violations did not change.

Only after the issuance of the Zoning Determination Letter did the Appellant stop construction at the site. Here, Appellant ignored the facts and reality of the District's citation for violation of the Building Code and Zoning Regulations. The February 28, 2006 SWO was subsequent to the issuance of the September 6, 2005 Building Permit.

Hence, it was this subsequent action, the February 28, 2006 SWO, upon which the Appellant should have relied. It is unreasonable for the Appellant to argue that construction continued in reliance on the Building Permit Number B477039 when the subsequent SWOs informed Appellant of problems and that work must cease. Instead, Appellant continued to construct and it is this flagrant disregard for the District's laws and regulations that has now produced this litigation.

Moreover, the Appellant does not have clean hands to assert equitable estoppel because (1) it falsely indicated that the pre-1958 building continued to exist, when in fact it was razed; (2) it was issued an emergency demolition permit on December 14, 2005, to remove one wall and reduce the building to a safe height two months prior to the February 20, 2006 collapse; (3) the SWOs put Appellant on notice of its noncompliance with the Building Code Regulations on February 28, 2006, April 9, 2007, April 12, 2007 and May 8, 2007;[11] and (4) the Appellant was on constructive notice when the neighbors informed the Appellant that the garage violated Zoning Regulations. *Rafferty v. District of Columbia Bd. of Zoning Adjustment,* 572 A.2d 1055, 1058 (D.C. 1990).

In conclusion, the Appellant has ignored all notice by the District and knowingly continued to construct the eleven unit apartment building. Therefore, Appellant does not meet the "justifiable and reasonable reliance" element under the estoppel test.

Element Four – Affirmative Acts Of The District

[11] Respondents' argument, as articulated in *Saah v. D.C. Board of Zoning Adjustment,* 433 A.2d 1114, 1116 (D.C. 1981), "that Petitioner [*Saah*], or his architect, should have known that the project ... exceed the maximum lot occupancy. However, the same can be said for the official who approved the plans" might be applicable in this case, but for, Respondents' falsifying the "use" of the second story garage on the architectural plans submitting with their building permit application.

Again, the Appellant fails to satisfy the fourth prong of estoppel because to overcome this prong the Appellant must prove there was no intervening act to put them on notice that there was a violation. It has been clear from the beginning, the first affirmative act (subsequent to the Building Permit) was February 28, 2006, the second was April 9, 2007, the third was April 12, 2007, and lastly May 8, 2007. The Appellant cannot argue that posting of these SWOs was not an affirmative act.[12] *See, Interdonato* at 1004.

Therefore, it is not reasonable for the Appellant to continue to rely on the Building Permit when there was a superseding intervening act by the District, the February 28, 2006 SWO. The Appellant ignored this affirmative act of the District and continued to construct in violation of District laws and regulations.[13] Thus, the Appellant cannot satisfy the fourth prong, therefore, the fourth element of estoppel cannot be met and the appeal fails.

Element Five – Notice Of Building And Zoning Regulation Violations

Also, the Appellant fails to meet the fifth prong of estoppel because the Appellant refused to comply with the February 28, 2006, April 9, 2007, April 12, 2007 and May 8, 2007 SWOs, Appellant was clearly on notice that continued construction at the site violated the Building Code and Zoning Regulations and any additional construction was at its peril. *Id.* (Appellant cannot continue with construction work once aware of the

[12] Even if this Board does not agree with the District's issuance of four SWOs, this Board must find that these actions were affirmative acts by the District, thereby finding that the Appellant has not met this burden.

[13] Additionally, continued construction was completed without the required inspections in violation of District laws and regulations.

District's legal challenge.) Therefore, the Appellant was on notice, thus, it cannot meet the fifth element of estoppel.

Element Six – Equity Favors District Not Appellant

The Appellant again fails to meet the sixth and final prong of estoppel because equity strongly favors the District because the District has a duty to protect the public and enforce the Building Code and Zoning Regulations. It is always in the public interest to ensure that members of the public know that an enforcement agency, such as DCRA, will enforce the law regardless the issue or parties involved. Equities favor the District because the Appellant submitted plans depicting a structure that did not exist in violation of District laws. Therefore, Respondent does not meet the sixth element of equitable estoppel.

THIS BOARD CANNOT FIND THAT THE DISTRICT DELAYED IN ENFORCING THE BUILDING CODE AND ZONING REGULATIONS

Even if this Court finds the Appellant's estoppel argument colorful, Appellant's appeal should be denied because the Appellant cannot meet the elements of laches. Laches "is rarely applied" [in zoning matters] "except in the clearest and most compelling circumstances." *Wieck v. District of Columbia Bd. of Zoning Adjustment*, 383 A.2d 7, 10 (D.C. 1978).

The principle of laches is that equity will not aid a plaintiff whose unexcused delay, if the suit is allowed, would be prejudicial to the defendant. *American Univ. Park Citizen Ass'n v. Burka*, 400 A.2d 737, 740 (D.C. 1979) (internal citations omitted). The principle was developed to promote diligence and prevent the enforcement of stale claims. *Id.* Laches will not provide a valid defense unless two elements are met: 1) the defendant has been prejudiced by delay and 2) that delay is unreasonable. *Id.* It requires

an "exceptional showing of both prejudice and unreasonableness of the delay." *Beins v. District of Columbia Board of Zoning Adjustment*, 572 A.2d 122 (D.C. 1990).

First, the Appellant cannot assert a claim of laches because there has been no delay by the District. Specifically, during each phase of the construction – regardless of the District's position that some construction was done illegally - the District responded to all requests of the Appellant regarding the construction.

On September 6, 2005, Appellant received the Building Permit. On December 14, 2005, Appellant received the Emergency Demolition Permit. Over the course of two months concluding on or about February 17, 2006, the Appellant removed the walls of the pre-1958 building and left ½ of the side wall unsupported or unbraced which later fell into the hole located in the place of the previous single family dwelling. On or about February 20, 2006, the remaining unsupported and unbraced ½ side wall, of the pre-1958 building collapsed. Immediately after the collapse, on February 28, 2006 the District issued a SWO for Appellant to halt construction. Even after the appeals of the Appellant, the District continued to address technical errors in the SWO and continued to take the position that the Appellant was in violation of the Building Code and Zoning Regulations.

Again, on January 19, 2007, Appellant ignored former Zoning Administrator Bill Crews' directive to deliver its Revised Building Permit Application to him directly and instead had Toye Bello[14] deliver the Revised Building Permit Application to a former subordinate instead of the Zoning Administrator. Unbeknownst to the former Zoning Administrator, Mr. Bello's former subordinate approved the Revised Building Permit

[14] Toye Bello was the Zoning Administrator for fifteen years ending on May 2005.

Application. Immediately upon learning this on March 5, 2007, Bill Crews overruled the zoning technician's approval and denied the zoning sections of the Revised Building Permit Application. On March 6, 2007, Bill Crews issued to Appellant a Zoning Determination Letter citing violation of 11 DCMR § 330.5(c). This timetable recounts prompt action by the District to enforce Appellant's Zoning Regulation violations. None of the District's actions were tardy or delayed. Therefore, Appellant's laches argument fails and its appeal should be denied.

Second, the Appellant cannot assert a claim of laches because any delay is due to Appellant's faulty submission and failure to be forthright with his construction plans and intention for the site. Mr. Demurren's provided uncontroverted testimony that it was Appellant's intent to construct an eleven unit apartment building in an R-4 district and to destroy the pre-1958 building originally on the site.[15] Regardless of the testimony of the Appellant, a close review of the plans submitted by Appellant indicates that the eleven unit apartment "addition" would have completely surrounded and subsumed the original dwelling.[16] After the "addition" was erected, the original building would not be seen ever. Even if the building had not been razed or collapsed, nothing of the original building would have been seen or recognizable upon completion of the construction. There is no doubt "nothing [at the site in its current condition] really resembles the [pre-1958] existing structure" as Mr. Demurren answered to this Board.[17]

Now that the project has been halted by the District's enforcement of Zoning Regulations, Appellant cries foul and incorrectly asserts the defense of laches. The fact is

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[15] 10/30/07 Transcript p. 300, lines 19-20; p. 365, line 22; p. 369, line 5.
[16] See Exhibit Four.
[17] 10/30/07 Transcript p. 402, lines 15-22; p. 403, lines 1-12.

that on February 28, 2006 when the District learned that the entire pre-1958 building had collapsed, District officials posted a SWO to halt continued work at the site. Witnesses for both the Appellant and the District testified that the entire pre-1958 building was removed day by day and Appellant's removal was completed on President's Day, February 20, 2006. Hence the District acted promptly and there was no delay in enforcement. Therefore, the defense of laches fails and the appeal should be denied.

Conclusion

WHEREFORE, for all of the foregoing reasons, the District requests that the Appellant's appeal be denied as the construction violates 11 DCMR § 330.5(c) and the District is not prohibited by the equitable doctrines of estoppel or laches from halting Appellant's unlawful construction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

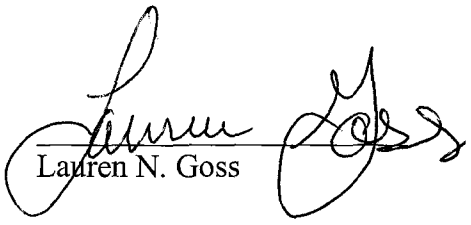
I hereby certify that a copy of the foregoing District of Columbia's Brief on Equitable Estoppel and Laches was mailed and electronically served this 17th day of December 2007, to the following:

J. Patrick Brown, Esq.
Greenstein DeLorme and Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036

and served via first-class mail to:

Mr. William Shelton, Chairperson
ANC 5B
1437 Montana Avenue, N.E.
Suite 5
Washington, DC 20028

Commissioner Elise Bernard
ANC 5B08
1220 Florida Avenue, NE
Washington, DC 20002



Lauren N. Goss

Exhibit One

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
N.C.P.C. No:	O.G. No:	R-4			By:
H.P.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

B500207

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
By_____ Date_____

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

tabbies One EXHIBIT

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1 Address of Proposed Work:	Suite No.	2. Lot	3. Square	4. Application Date
1233 MONROE ST. NE		130	4069	4/12/05

5 Owner of Building or Property	6 Address (*include Zip Code*)	7 Phone
TAIWO DAMURU		240-832-4315
8 Agent for Owner: (*if applicable*)	**9. Address (*include Zip Code*)**	**10. Phone**

11. Type of Proposed Work (check all applicable boxes)

"False statements or misrepresentation of facts on a permit application and/or plans is subject to criminal penalties pursuant to DC law 22-2405."

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

12. Description of Proposed Work

BUILDING PERMIT FOR ADDITION TO SINGLE FAMILY DWELLING AND CONVERT TO APARTMENT 11-UNIT BUILDING AS PER PLANS. ✓

13 Existing Use(s) of Building or Property	14 Ex. No of Stories of Bldg	15 Ex No of Dwelling Units	Official Use Only Miscellaneous FEE	
SFD	2+Cellar	1	$	
16 Proposed Use(s) of Building or Property	**17 Prop No of Stories of Bldg**	**18 Prop. No of Dwelling Units**	**By:**	**Date:**
APARTMENT - 11 Units	3+Cellar	11		

19 Starting Date	20 Completion Date of work	21 Method of Removing Construction Debris	22 Does the proposed work involve **disturbing the earth** or razing a building?
5/25/05	8/30/05	[ ] 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 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	
M				
P				
E				W ☐ Yes ☐ No
F				PLANS
				☐ No ☐ Sm ☐ Lg

DCRA's EXHIBIT

Exhibit Two

LAW OFFICES

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WILLIAM H. HARRIS, JR.
RICHARD G. WISE
ABRAHAM J. GREENSTEIN
GILBERT E. DELORME
VINCENT MARK J. POLICY
RICHARD W. LUCHS
JUDITH R. GOLDMAN
JACQUES B. DEPUY
JEFFREY H. GELMAN
ALAN S. WEITZ
WILLIAM C. CASANO
JOHN PATRICK BROWN, JR.
LEWIS F. MORSE
ROGER D. LUCHS
JAMES D. SADOWSKI

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OF COUNSEL
MICHAEL T. CREHAN

*ADMITTED IN VA ONLY

EXHIBIT
tabbies
Two

March 10, 2006

BY CERTIFIED FIRST CLASS MAIL; RETURN RECEIPT

Reviewing Official
Mr. Lennox Douglas
Acting Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Room 2000
Washington, DC 20002

Re: Appeal of Stop Work Order for 1233 Morse Street, N.E. ("Property")

Dear Mr. Douglas:

On behalf of our client, Mr. Taiwo Demuren, who represents the 1231 Morse Street, Inc., the owner of the Property, we request a meeting with you as soon as possible to resolve this improper work stoppage. We assert that the Stop Work Order ("Order") issued effective February 28, 2006, at your request by Mr. G. Davidson, is at best incorrect and at the worst invalid as is the purported rationale given in your letter dated February 24, 2005. This letter constitutes our appeal of the Order pursuant to Section 112.1 of Title 12 of the District of Columbia Municipal Regulations ("DCMR"). The bases for our appeal consist of the following.

The Order is invalid because you appear to be challenging the Building Permit and the underlying zoning approvals granted by your office for the Building Permit based on a subsequent emergency razing of the structure which was determined to be necessary by DCRA officials. A Stop Work Order cannot be issued to challenge a valid Building Permit, unless the construction activity is beyond the scope of construction approved by the Building Permit. Pursuant to Section 114.1 of Title 12 DCMR, the code official must allege that "work is being performed contrary to the Construction Codes...". Our client and his contractors were performing work in compliance with a valid Building Permit issued September 6, 2005. We intend to present testimony from Mr. Demuren that it was not until approximately three months

EXHIBIT "B"

DCRA'S EXHIBIT

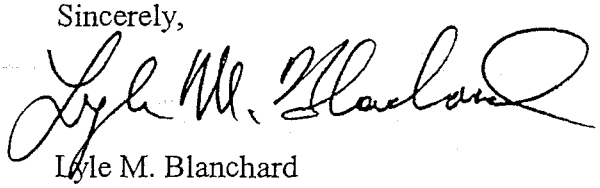
later after the date of the permit during which time construction progressed from the rear of the lot to the front where the existing structure sat that it became apparent that the existing structure was structurally unsound. Mr. Demuren followed proper procedure and based upon a determination by DCRA that the structure was unsound to the extent that the issuance of an emergency demolition permit was issued on December 14, 2005 – again, a period of more than three months after the Building Permit was issued. It was not until some five months later that your office decides to stop work based on mere speculation that our client is working "above" the scope of the permit.

For your information, the appropriate way to challenge the Building Permit is to move to revoke the Building Permit pursuant to Section 105.6 of Title 12 DCMR which provides our client with due process protections for contested cases pursuant to the District of Columbia Administrative Procedures Act (D.C. Official Code §2-209).

Therefore, based on the foregoing, we request that you immediately rescind the Stop Work Order.

If you have any questions, please contact me.

Sincerely,



Lyle M. Blanchard

cc: Mr. Taiwo Demuren
John Patrick Brown, Jr., Esquire

284507

Exhibit Three

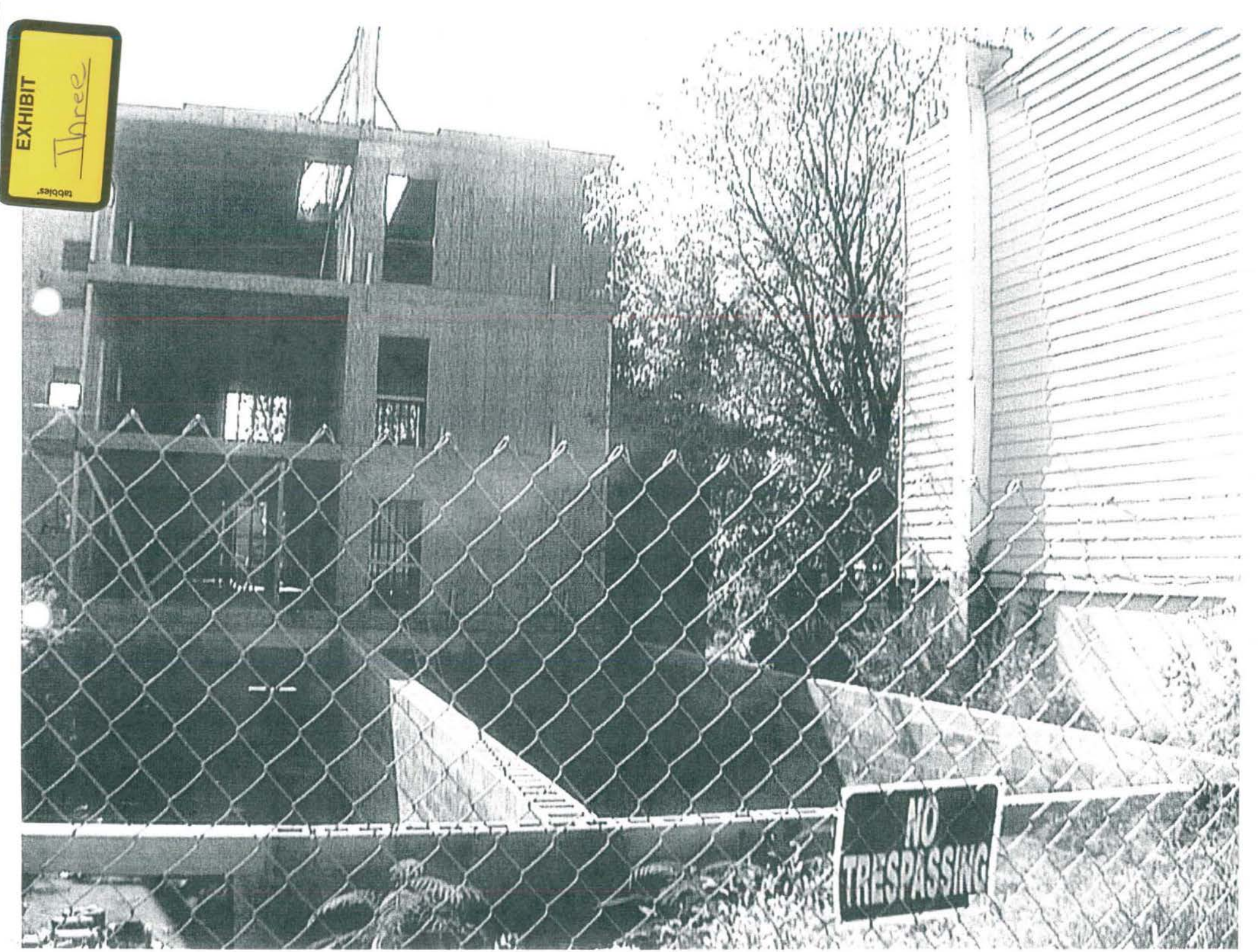


EXHIBIT
Three
tabbies
NO
TRESPASSING

Exhibit Four

EXHIBIT
tabbies
Four

OFFICE OF THE SURVEYOR

July 11, 2005 Robert H. Smith Jr.

Washington, D.C., ~~DECEMBER 13, 2004~~

Plat for Building Permit of: SQUARE 4069 ~~SITE PER SUB~~ LOT 130

BK 199 Pg 45

Scale: 1 inch = 20 feet

Receipt No. ~~15987~~ 21108

Furnished to: TAIWO DEMUREN

Surveyor, D.C.

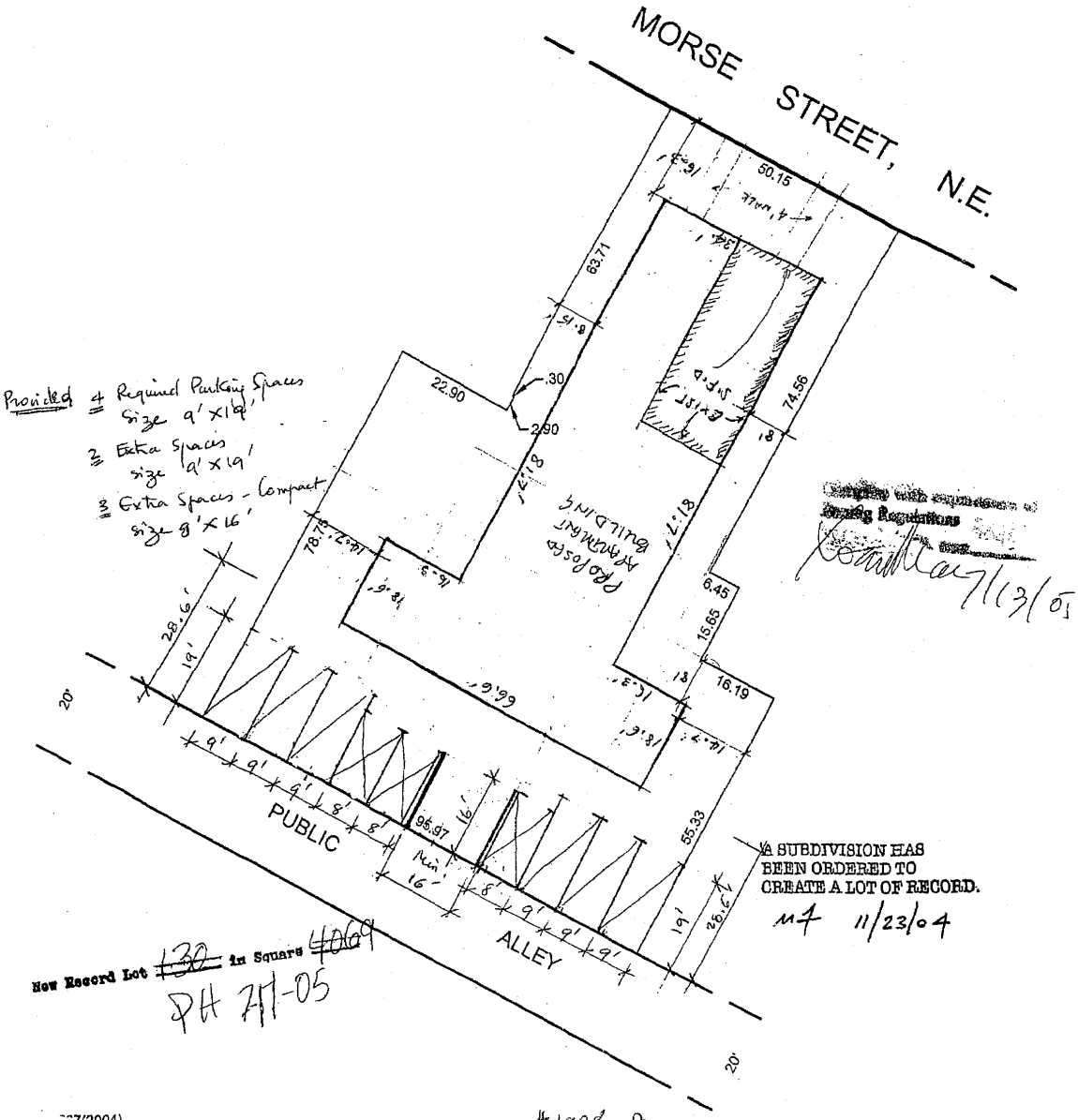
By: B.D.M.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises 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 accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn 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 will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% 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.)

Date: 3/20/05

(Signature of owner or his authorized agent)

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



7/13/05

~~7/2004~~)

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