

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001

Appeal of Patricia A. Schaub

BZA Appeal 19092

**DCRA'S MOTION TO CONTINUE PENDING DECISION BY THE BOARD ON THE
RELATED REQUEST FOR MINOR MODIFICATION (BZA 18514A)
AND PRE-HEARING STATEMENT**

DCRA hereby moves to continue this Appeal until after the Board has reviewed and ruled upon the related request for a minor modification for the same property at 1120 Park Street, N.E., BZA 18514A, which is scheduled to be heard on the same day. DCRA asserts that the Board's decision on the request for a minor modification will likely render this appeal moot since the main allegation of this Appeal is that the Zoning Administrator ("ZA") erred in approving the Permit because the plans approved by the Permit differed from those approved by the Board in BZA 18514.

The parties to this Appeal have been in protracted negotiation to resolve this issue, whether by litigation or by settlement, in the three months since this Appeal was first scheduled to be heard. Much of this litigation has revolved around engineering issues given that Appellant's garage encroaches on the Permit Holder's property and was built without the foundations and underpinning that would be required today. The Permit Holder has revised the plans approved by the Board in BZA 18514 to allow Appellant's garage to not be impacted by the Permit Holder's proposed garage. The Permit Holder attempted to request review by the Historic Preservation Review Board ("HPRB") prior to, or concurrently with, the Board's consideration of a minor modification (BZA 18514A), but Appellant has blocked that avenue at the ANC level until the Board has ruled on this Appeal.

Appellant asserts in its Supplementary Pre-Hearing Statement¹ that the Permit Holder is required to request approval from the Board to any change to the plans approved by the Board – no matter how miniscule or unrelated to the relief granted by the Board. Yet Appellant opposes

¹ BZA Appeal 19092 Exhibit Number 44 at 3.

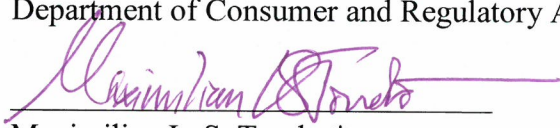
the Permit Holder's attempt to request relief from the Board, even though the proposed modifications differ only in inches from the plans approved by the Board in BZA 18514.

Appellant alleges that the Permit as issued is invalid as the Zoning Administrator approved plans for a roof deck atop the proposed garage as had been included in the plans approved by the Board in BZA 18514, but the Historic Preservation Office ("HPO") only approved plans for the proposed garage. Yet the approved plans for the Permit clearly limit the Permit to what was approved by the HPO, which may include the deck if reviewed and approved by HPRB – there is no other difference. Furthermore, the Permit Holder has provided a statement recognizing that the Permit only authorizes construction of what HPRB approves (Attachment A).

In the interest of judicial economy, DCRA therefore respectfully requests that the Board grant a continuance of this Appeal until after the Board has reviewed and ruled upon the related request for a minor modification – as Appellant asserted the Permit Holder should do. Alternatively, DCRA respectfully requests that if the Board decides to rule on the merits, that the Board affirm the Zoning Administrator's approval of the Permit and deny this Appeal.

Respectfully submitted,
CHARLES THOMAS
General Counsel
Department of Consumer and Regulatory Affairs

Date: 2/1/16


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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February 2016, a copy of the foregoing Motion to Dismiss was served via electronic mail to:

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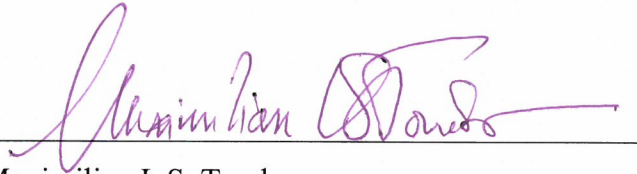
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Exhibit A

Statement of Permit Holder to limit construction under the Permit to what is approved by HPRB

PATRICIA JORDAN & ANDREW DALY
1120 Park Street N.E.
Washington, D.C. 20002

To whom it may concern:

With regard to our efforts to construct a garage on our property at 1120 Park Street, N.E., Washington, D.C., we hereby certify that we have no intention, nor have we ever had any intention, to build our garage in any manner or fashion other than that specifically approved of by the Historic Preservation Office.

We also hereby certify that we have no intention, nor have we ever had any intention to operate any business out of our planned garage.

12.01.2015

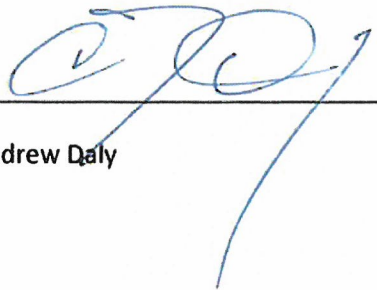
Date



Patricia Jordan

12.01.2015

Date



Andrew Daly