BEFORE THE ZONING COMMISSION OR BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA

FORM 150 – MOTION FORM

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 19627

Motion of: ☐ Applicant ☐ Petitioner ☐ Appellant ☐ Party ☒ Intervenor ☐ Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Dismiss Appeal

Points and Authorities:

On a separate sheet of 8 ½" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

☐ Yes, consent was obtained by all parties
☒ Consent was obtained by some, but not all parties
☐ No attempt was made
☐ Despite diligent efforts consent could not be obtained

Further Explanation: _____

CERTIFICATE OF SERVICE

I hereby certify that on this 08 day of December, 2017 I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning in the above-referenced ZC or BZA case via: ☐ Mailed letter ☐ Hand delivery ☒ E-Mail ☐ Other _____

Signature:	Kristina Crooks
Print Name:	Kristina A. Crooks, Counsel for Intervenor
Address:	c/o Holland & Knight LLP, 800 17th St NW, Washington, DC
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BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of ANC 7F/David Belt Building Permit No. B1501924 at 4000 Benning Road, N.E. (Square 5081, Lot 0052) in the RA-3 (R-5-C) Zone District	**Appeal No. 19627** **Hearing Date:** December 13, 2017

OWNER'S COMBINED MOTION TO DISMISS THE APPEAL
AND TO WAIVE THE FILING DEADLINE IN 11-Y DCMR § 302.17

4000 Benning Road LLC (the "Owner"), the owner of the property at 4000 Benning Road, N.E. (the "Property"), hereby requests that the Board dismiss the above-captioned appeal as **(1)** untimely under 11-Y DCMR §§ 302.2, 302.3[1]; and, regarding challenges to construction in public space, **(2)** beyond the scope of the Board's jurisdiction. Additionally, the Owner requests that the Board waive the timing requirement under 11-Y DCMR § 302.17. Good cause exists for this waiver because the Owner was only recently able to retain counsel to handle this appeal.

Before addressing the jurisdictional problems with this appeal, it is worth pointing out two anomalies. As a starting point, it is not entirely clear who the real appellant is. This appeal was nominally brought by Advisory Neighborhood Commission 7F. But David P. Belt, who owns the adjacent single-family home at 3940 Benning Road, N.E., appears to be the real appellant (Mr. Belt together with the ANC are the "Appellants"). Mr. Belt identifies himself as the appellant in the Form 150 (Ex. 1) and Statement in Support of the Appeal (Ex. 7). Mr. Belt also never submitted a letter from the ANC confirming his authority to initiate this appeal on behalf of the ANC. 11-Y DCMR § 302.10.

Additionally, in the Form 150, Appellants do not identify the administrative decision being appealed. But from other paperwork, Appellants appear to be challenging Permit No. B1501924,

[1] This appeal is procedurally governed by the current Zoning Regulations, although the appeal of Permit No. B1501924 is based on compliance with the 1958 Regulations.

which authorized the construction of the 4-story, 71-unit affordable housing project on the Property (the "Permit"). Specifically, Appellants appear to be arguing that the Permit is incongruent with Zoning Regulation provisions for (a) retaining walls; (b) required rear yard; (c) projections of the building over the front-property line into public space; and (d) construction of an accessway for the loading dock over the side-lot line onto public space.

Notwithstanding those anomalies, this appeal is fatally flawed for two critical reasons:

First, the appeal is inexcusably late. Appellants concede this point—acknowledging that their appeal, filed on September 7, 2017, is untimely. (*See* Ex. 7, 12.) This is because Appellants reasonably should have known about the Permit when it issued ***two years ago*** on October 2, 2015. Besides that, Intervenor's evidence shows that Mr. Belt had actual notice of the Permit in April 2016, and that the ANC knew about it in May 2016. Appellants' own paperwork, submitted in support this appeal, shows that Mr. Belt was communicating about the project with DCRA in March 2017, and that the ANC was "kept apprised" of construction developments on the Property. Thus, both Mr. Belt and the ANC knew about the Permit well more than 60 days before this appeal was filed. (Ex. 12.)

Additionally, of critical import here, the apartment building was under roof as of May 15, 2017, which triggered the 10-day period to file this appeal. Appellants inexplicably waited 115 days after the building was under roof to file this appeal.

Second, regarding points (c) and (d) above, the Board lacks jurisdiction to review the public-space permits, which were duly authorized and issued by the Department of Transportation ("DDOT"). The proper forum to challenge those permits is the Office of Administrative Hearings, not the Board.

At bottom, this appeal cannot surmount the most basic procedural hurdles. The Owner

properly relied on the Permits in building this affordable-housing project. The project has been substantially finished for many months, and the Owner would be severely prejudiced if this appeal is allowed to go forward. For exactly that reason, if the Board somehow concludes that this appeal is timely, which it should not do for all the reasons set forth above and below, the Board should nevertheless go on to hold that the Permit cannot be reviewed or revoked based on principles of laches and estoppel.

I. FACTUAL BACKGROUND

A. Mr. Belt's Effort to Downzone the Property.

The Appellants' submission details Mr. Belt's longtime opposition to any development on the Property. In or around 2012, Holy Christian Missionary Baptist Church, the then-owner of the Property, entered into contract negotiations to sell the Property to the now Owner. As a result of that, on April 19, 2013, Mr. Belt filed a petition asking the Zoning Commission to rezone the Property from the C-3-A Zone District to the R-1-B Zone District. (Ex. 4 (Z.C. Order 13-07).) ANC 7F submitted a letter in support of Mr. Belt's petition. (ZC Case 13-07, Ex. 9.)

On September 26, 2013, the Commission held a public hearing on Mr. Belt's petition. (*Id.* at 2.) There, the Owner (then contract purchaser) testified in opposition to the proposed Zoning Map amendment. Specifically, the Owner testified that it already expended $500,000 in developing plans to construct the 71-unit affordable housing project, had secured financing through DCHD, and was in the process of starting permitting and finalizing the contract to purchase. (ZC Case 13-07, 2/20/14 Tr. 121-23.) The Owner testified that the downzoning would destroy all of those plans. (*Id.*)

In light of that testimony, the Commission rejected Mr. Belt's petition, eventually deciding to rezone the Property from the C-3-A Zone District to the R-5-C Zone District. (*Id.* at 4.) This

rezoning would still permit the Property to be redeveloped as-of-right with a 4-story, 71-unit residential building. The Commission's final order issued on June 9, 2014. Importantly, at this point, Appellants were on notice that a building permit for the Property would be filed.

B. The Permit to Redevelop the Property.

The Owner finalized its purchase of the Property on March 31, 2014, and immediately moved forward with its plan to redevelop the site. On November 24, 2014, Owner filed for a building permit. The Office of Zoning approved the proposed building on July 22, 2015, and the Building Permit issued on October 2, 2015. The Building Permit describes the work as:

> 4-story wood frame structure over a walkout basement – 71 residential apartments, amenity spaces, including exercise room, multipurpose room, leasing offices and main lobby. A below-grade garage will service the residents, building signage will be located on grade in front of building.

There is no dispute that Building Permit was properly posted on the Property. Construction started in or around March 2016, and the building was "under roof" as of May 15, 2017. (Ex. A ¶ 11); *see also* 11-Y DCMR § 302.3(b).)

C. Appellants Actual Knowledge of the Permitting Decision.

Appellants offer this Board no explanation for why they did not know, and reasonably should not have known, about the Permit when it issued in October 2015, or about the construction when it started in March 2016. That is because no explanation exists. Mr. Belt lives right nearby; tried to downzone the Property; and knew, as part of those downzoning proceedings, that the Owner intended to move quickly to secure a building permit.

Additionally, the Declaration of Christopher A. Stennett, P.E., which is attached as Exhibit A, makes clear that Mr. Belt had actual knowledge of the Permit in April 2016, when he requested a meeting with the development team to discuss the project and, in particular, the retaining wall. (Ex. A ¶ 5.) In fact, on July 28, 2016, Mr. Belt executed a letter agreement with the development

team pertaining to issues involving the construction of the retaining wall on the Property and, as part of that, the temporary closure of the adjacent public alley. (*Id.* ¶¶ 5-9.)

The Declaration also makes clear that, on May 19, 2016, the development team appeared at the monthly ANC meeting to discuss the status of the project. (*Id.* ¶ 7.) Thus, the ANC had actual notice of the Permit as far back as May 2016.

Besides all of that, the Appellants' own documents, which they submitted in support of this appeal, establish that Mr. Belt knew about the Permit in March 2017. (Ex. 3 at p. 5.) In fact, Mr. Belt was in regular contact with DCRA and the Office of Zoning between March and June 2017, regarding his concerns about construction on the Property. Specifically, during that time period, Mr. Belt made five separate inquiries about the apartment building and retaining wall:

- In March 2017, Mr. Belt contacted DCRA specifying that he did not think the apartment building was compliant with the requirements in the R-5-C Zone District. DCRA personnel discussed the Building Permit with Mr. Belt, and the fact that it had been approved by the Office of Zoning on July 22, 2015;

- On April 6, 2017, Mr. Belt sent a letter to the Office of Zoning stating that the Owners' building plans were not compliant with ZC Order 13-07 and requesting that another review be undertaken. That month, the Office of Zoning re-reviewed the Building Permit and related drawings and found them to be compliant;

- In April 12, 2107, Mr. Belt contacted DCRA to inquire why a "wall check" had not been done on the retaining wall at the Property. A wall check was done on April 27, 2017, and the wall was found to be compliant with the plans and Zoning Regulations;

- In April 2017, Mr. Belt separately contacted DCRA to express concern that the Owner was using public space without authorization. On April 25, 2017, the Owner submitted to the Office of Zoning proof that it had permission to use the public space—i.e., Permit No. PA107910-R1;

- On June 16, 2017, Mr. Belt sent an email to the Office of Zoning acknowledging the wall-check approval and furnishing a new list of compliance concerns. The Office of Zoning sent a third-party inspector to visit the site, who determined that the construction was being built according to approved plans.

The ANC, for its part, acknowledges that it was "kept apprised" of developments at the Property. (Ex. 12.) By this, the ANC concedes that it knew about the Permit more than 60 days before the appeal was filed. (*See* Ex. 12.)

The purported issues that Mr. Belt flagged for DCRA and the Office Zoning are the exact same ones that Appellants raise in this appeal. Appellants were on notice as far back as Spring 2017, if not well before that point, that they needed to file an appeal. But instead of doing so, Appellants inexplicably sat on the sidelines for 6 months before finally filing this appeal.

II. ARGUMENT

A. This Appeal Was Inexcusably Late And Must Be Dismissed.

1. The Zoning Regulations establish firm deadlines for filing an appeal.

It is well-established that an administrative appeal is subject to dismissal for late filing. *See Gatewood v. D.C. Water & Sewer Auth.*, 82 A.3d 41, 46-48 (D.C. 2013). Indeed, an appeal regarding the administration or enforcement of the Zoning Regulations must be filed "within sixty (60) days from the date the person appealing the administrative decision *had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier*." 11-Y DCMR § 302.2 (emphasis added) (the "60-Day Rule").

Additionally, the Zoning Regulations provide that where, as here, "the decision complained of involves the erection, construction, reconstruction, conversion or alteration of a structure . . . [n]o appeal shall be filed later than ten (10) days after the date on which the structure or part thereof in question is under roof." *Id* § 302.3(a) (the "10-Day Rule"). Section Y-302.4 guarantees that, notwithstanding this 10-day limit, "an appellant shall have a minimum of sixty (60) days from the date of the administrative decision complained of in which to file an appeal." 11-Y DCMR § 302.4.

These Regulations were intended to codify the principles discussed by the Court of Appeals in *Waste Management of Maryland, Inc. v. D.C. Board of Zoning Adjustment*, 775 A.2d 1117 (D.C.

2001), and to establish clear deadlines by which appeals are to be filed. As the Court stated in discussing a "reasonable" deadline for appeal (prior to enactment of the 60-Day Rule):

> A reasonable time in which to appeal is measured by the time that fairness dictates to enable an aggrieved party to evaluate the appropriateness of seeking review, to obtain the assistance of counsel, and to take the other steps necessary to proceed. . . . This conception of the reasonableness standard does not countenance delay in taking an appeal when it is merely convenient for an appellant to defer making that decision. Rather, because deadlines for taking appeals serve important ends, they should not be extended without good cause.

Waste Mgmt. of Md., Inc., 775 A.2d at 1122. In that case, the Court conceived of "two months between notice of a decision and appeal therefrom as the limit of timeliness" in the absence of "exceptional circumstances." *Id*. The Zoning Commission subsequently established 60 days as the limit for BZA appeals brought in the ordinary course. 11-Y DCMR § 302.2.

2. Appellants failed to file within the 60-day period established by Section Y-302.2.

Notably, Appellants failed to comply with Section Y-302.12(e), which requires a statement demonstrating how the appeal meets the jurisdictional requirement of timeliness. The failure to do so suggests strongly that Appellants have nothing helpful to say for themselves on this front. In fact, there is significant record evidence establishing that Appellants knew or should have known of the Permit within 60 days of the date that it issued—that is, by December 1, ***2015***, which is nearly ***two years*** before this appeal was filed.

First, as the adjoining landowner, Mr. Belt's intense interest in, and scrutiny of, the Property is well documented. Indeed, in 2013, Mr. Belt, who lives next to the Property, filed a petition to downzone the Property, as evidenced in Z.C. Case 13-07. (Ex. 4.) Through that process, Mr. Belt was put on notice of Owner's imminent plans to redevelop the Property. Mr. Belt thus knew or should have known that the Permit issued way back in October 2015. *See, e.g.*, *Appeal of Nebraska*

Avenue Neighborhood Association, BZA No. 17127 (June 2, 2005) (holding that an appellant's close scrutiny of a project, including prior appeals, puts it on notice that additional permits may be issued and that it knew or should know of such permits about the time they are issued).

Additionally, it strains credulity to believe that Mr. Belt, who lives right near the Property and went to all the trouble to try to downzone the Property, was not reasonably aware of the extensive and nearly complete construction on the adjacent Property until July 9, 2017 (*i.e.*, 60 days before this appeal was filed on September 7, 2017).

Second, ANCs, like ANC 7F here, receive lists of DCRA-issued permits on a biweekly basis. D.C. Code § 1-309.10(c)(3). Thus, the ANC was provided notice of the Permit and therefore knew or should have known about it as far back as October 2015.

Even assuming that Appellants did not know and reasonably should not have known of the Permit back in October 2015, which is hard to believe given the foregoing, there is nevertheless substantial evidence in the record to show that Appellants *actually* knew about the Permit, in **April 2016**. That means their appeal should have been filed, at the latest, in June 2016. Instead, this appeal was filed on **September 7, 2017**.

As detailed above, between April and July 2016, Mr. Belt had repeated meetings and discussions with the development team regarding the Property. (Ex. A ¶¶ 5-9.) In May 2016, the development team appeared before the ANC to discuss the project. (*Id.* ¶ 7.)

Even if the Board wants to ignore the Owner's evidence, the Appellants' own evidence decisively shows that they knew about the Permit in Spring 2017. In fact, Mr. Belt contacted DCRA in March 2017, to complain that the apartment building was incongruent with the requirements for the R-5-C Zone District. Mr. Belt had an ongoing dialogue with DCRA about the construction on the Property between March and June 2017. The ANC, for its part, acknowledges

that it was "kept apprised" of construction developments at the Property. The ANC does not bother to identify the exact triggering date for its knowledge. Instead, the ANC just concedes the issue—readily acknowledging that its appeal is untimely under the 60-Day Rule. (Ex. 12.)

There is no question that the Appellants knew or reasonably should have known about the Permit no later than Spring 2017, which makes this appeal untimely under Section Y-302.2.

3. There are no exceptional circumstances here and thus no basis to extend the 60-day period.

Given that Appellants basically concede their appeal is late, they are forced to argue that there are "extenuating circumstances" that impaired their ability to timely file this appeal. (Ex. 7 at p. 1.)

The Board is authorized to extend the 60-day appeal period only if Appellants satisfy a two-part test—that is, establishing that (1) exceptional circumstances exist that were outside Appellants' control, which could not have been reasonably anticipated, and which substantially impaired the Appellants' ability to timely file; and (2) the extension would not prejudice the Owner. 11-Y DCMR § 302.6(a). Assuming this inquiry is even justified here, which it is not for the reasons stated above, this appeal can only be heard if Appellants satisfy both prongs.

There are no exceptional circumstances here. Indeed, Appellants are only able to vaguely argue that "there was no way for anyone to know [Owner was] not building according to submitted plans or within the zoning regulations until such portions were built." (Ex. 7.) The record evidence, however, proves otherwise.

First, starting in March 2017, Mr. Belt repeatedly pressed DCRA to inspect the Property and confirm that both the apartment building and retaining wall were compliant with approved

plans and the Zoning Regulations. (Ex. 3 at p. 5.)[2] The purported issues that Mr. Belt flagged for DCRA—which were thoroughly investigated by DCRA—are the exact same ones that Appellants raise in this appeal. Appellants were thus on notice as far back as last March that they needed to file an appeal. But instead of doing so, Appellants inexplicably sat on the sidelines for almost six months before finally filing this appeal.

Second, even crediting Appellants' argument that they could not know the extent of the alleged issues until the building was built, the building was—as explained immediately below—under roof as of May 15, 2017. Appellants have not offered, indeed cannot offer, any legitimate explanation for why they then waited another 115 days to file this appeal.

Additionally, there is no question that allowing this appeal to proceed will cause substantial prejudice to the Owner. The Owner received the Permit on October 2, 2015, and proceeded to build in reliance on that Permit. The Owner substantially completed the Project in May 2017. Now, nearly ***two years*** after the Permit issued, and more than ***3 months*** after the building was under roof, Appellants have come forward to challenge the Permit. If the Owner is forced to make alternations and other significant changes to a finished building, the Owner will incur substantial, if not crippling, costs. Appellants should not be rewarded for "lying in wait" and bringing this appeal at the 13th hour.

4. Appellants failed to appeal within the 10-day period after the project was "under roof."

Even if the Board were to conclude that there were extenuating circumstances, which it should not do for the reasons stated above, the appeal is nevertheless untimely under the 10-Day Rule.

[2] In August 2017, Mr. Belt again raised these issues with the Office of Councilmember Vincent C. Gray, which investigated Mr. Belt's complaints and found that the Owner was in compliance with applicable regulations. (Ex. 3.)

Regardless of when an appellant acquires actual or constructive knowledge of the building permit, it is well established that no appeal may be filed more than 10 days after the structure is under roof. 11-Y DCMR § 302.3(a). The 10-Day Rule is absolute and does not provide for a "should have known" exception, like that found in the 60-Day Rule. *Compare* 11-Y DCMR § 302.2 *with* 11-Y DCMR § 302.3(a). By strictly limiting the time for appeal, this provision is intended to minimize threats to completed construction projects and to ensure that property owners are not held captive by endless litigation.

As evidenced by the attached Declaration of Christopher A. Stennett, P.E., the building here was under roof as of May 15, 2017. (Ex. A ¶ 11.) Thus, the appeal period definitively closed on May 25, 2017. Appellants did not file within this time period. Because the appeal was filed ***115 days*** after the building was under roof, the Board should hold that this appeal is untimely.

B. The Board Lacks Jurisdiction to Review the Public-Space Permits.

The Appellants also complain that certain portions of the building improperly encroach onto the public space. This is untrue. The Owner properly obtained permits from DDOT to authorize construction in public space. 24 DCMR § 100 *et seq.*

But, more relevant than that, this is not the correct forum to adjudicate those issues. Construction in public space is allowed and regulated under Title 24 of the DCMR, administered by DDOT, and by Chapter 32 of the Building Code (Title 12A of DCMR), administered by DCRA. The Zoning Administrator does not review any aspect of a DCRA or DDOT permit for construction in public space. An appeal of DCRA's interpretation of the Building Code, and DDOT's interpretation of the public space regulations, fall under the jurisdiction of the Office of Administrative Hearings, not the Board. Accordingly, in addition to the timeliness issue, the Board should dismiss Appellants' public-space challenge.

C. If the Board Concludes the Appeal is Timely, Which It Should Not Do For the Reasons Stated Above, the Permit Should Not Be Reviewed Based On Principles of Laches and Equitable Estoppel.

Even if the Board concludes that the appeal is somehow timely under the Zoning Regulations, the Board should nevertheless hold that the appeal is barred by laches because Appellants waited to appeal until the building was essentially finished. It is well-established that the "principle element in applying the doctrine of laches is the resulting prejudice to the defendant, rather than the delay itself." *Goto v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 917, 925 (D.C. 1980) (citation omitted). Here, the Owner is clearly prejudiced by the timing of this appeal. Appellants reasonably should have known about the Permit when it issued in October 2015, and certainly knew about it in March 2017, and yet they waited another six months—at which time the building went under roof and neared final completion—to raise this appeal. If Appellants had proceeded with their appeal in a timely manner, the prejudice to Owner could have been substantially lessened.

Additionally, the Board should be estopped from reviewing the Permit or enforcing the Zoning Regulations against the Owner because the Owner relied to its detriment on the Permit at issue. The doctrine of equitable estoppel protects the reliance interests of property owners by placing limitations on the exercise of a local government's police power. Under this doctrine, a local government may be equitably estopped from revoking a zoning decision when a property owner: (1) acting in good faith; (2) on affirmative acts of the local government; (3) makes expensive and permanent improvements in reliance on those affirmative acts; and (4) the equities strongly favor the party invoking the doctrine. *Wieck v. D.C. Bd. of Zoning Adjustment*, 383 A.2d 7, 11 (D.C. 1978).

While "the doctrine of equitable estoppel has traditionally not been favored when sought

to be applied against a government entity, . . . it is accepted that in certain circumstances an estoppel may be raised to prevent enforcement of municipal zoning ordinances." *Saah v. D.C. Bd. of Zoning Adjustment*, 433 A.2d 1114, 1116 (D.C. 1981); *see also Rafferty v. D.C. Zoning Comm'n*, 583 A.2d 169, 174 (D.C. 1990) (noting that where "a party acting in good faith under affirmative acts of a city has made such expensive and permanent improvements that it would be highly inequitable and unjust to destroy the rights acquired, the doctrine of equitable estoppel will be applied") (quoting *District of Columbia v. Cahill*, 54 F.2d 453, 454 (D.C. 1931)); *cf. Smith v. United States*, 277 F. Supp. 2d 100, 115 (D.D.C. 2003) (holding that "fundamental principles of equitable estoppel apply to governmental agencies just as they do to private parties").

The record clearly demonstrates that the Owner has satisfied all of the elements necessary to raise an estoppel defense. First, the Owner acted in good faith in constructing the building on the Property, having obtained all the appropriate plans and specifications in order to receive a building permit from the District. Second, there is no question that the Owner acted in reasonable reliance on an affirmative act of the District government—specifically, the issuance of the Permit by DCRA. *E.g.*, *Saah*, 433 A.2d at 1116 (issuance of building permit an affirmative act for estoppel purposes). Third, the apartment building, which has been under roof for more than 6 months, is the paradigm of an expensive and permanent improvement. Fourth, the prejudice tips decisively in favor of the Owner for all the reasons stated above.

Accordingly, even if the Board concludes that the appeal was timely under the Zoning Regulations, which it should not do for all the reasons stated above, the Appellants' claim should be deemed barred by laches and the Board estopped from reviewing the Permit or enforcing the Zoning Regulations against the Owner.

III. CONCLUSION

Based upon the clear-cut language of the Zoning Regulation and the undisputed record evidence, this appeal is inexcusably late. The Board is without jurisdiction to hear this appeal and it must therefore be dismissed.

Dated: December 8, 2017

Respectfully Submitted,

HOLLAND & KNIGHT LLP

By: __/s/ Kristina A. Crooks_____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Board of Zoning Adjustment and was sent by electronic mail, on this the 8th day of December, 2017, on the following:

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__/s/ Kristina A. Crooks_____
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EXHIBIT A

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of ANC 7F/David Belt Building Permit No. B1501924 at 4000 Benning Road, N.E. (Square 5081, Lot 0052) in the RA-3 (R-5-C) Zone District

Appeal No. 19627

DECLARATION OF CHRISTOPHER A. STENNETT, P.E.
IN SUPPORT OF OWNER'S MOTION TO DISMISS

I, Christopher A. Stennett, P.E., declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am over 18 years old and have personal knowledge regarding the facts contained in this declaration.

2. I received my B.S. in Mechanical Engineering from Howard University, and I have been a registered professional engineer for more than 25 years.

3. In or around November 2015, I joined the Warrenton Group, a real-estate developer, based in the District of Columbia. I immediately began working on the 4000 Benning Road project—that is, the "St. Stephen's project." My duties and responsibilities for that project have included working with the development partners, overseeing the general contractor, monitoring construction, and interfacing with the community and addressing neighborhood concerns.

4. In or around March 2016, principle construction on the St. Stephen's project began.

5. Very quickly thereafter, I began to have communications with David P. Belt, one of the nearby property owners. In fact, on April 27, 2016, Mr. Belt invited members of the development team (Steven Wahl and Rob Peck of Hamel Buildings, as well as O'dette McDonald and me of the Warrenton Group) to meet with him to discuss his issues concerning

the construction of the project, including the retaining wall at the rear of the property. In particular, I remember telling Mr. Belt that in order to build the rear retaining wall, we had obtained a permit to temporarily close the public alley behind our property in June 2016. This led to a series of discussions.

6. Later that same day, on April 27, 2016, Mr. Belt invited Mr. Wahl and me to meet with the National Park Service to discuss the project and the permit to close the alley. Mr. Belt's three major issues were: (1) the alley closure would not allow him or his neighbor, Marcia Jones-Pisi, to turn around their vehicles at the end of the alley; (2) the alley closure would prevent bikers and pedestrians from using the trail into the adjacent National Park; and (3) a higher fence was required on top of retaining wall for safety reasons.

7. On May 19, 2016, the development team and general contractor attended the monthly ANC meeting to inform the ANC and the community about the status of construction on the St. Stephen's project. Mr. Belt, who appears to have been the single-member district representative at that time (ANC7F01), attended that meeting and voiced concerns about the project.

8. In the weeks thereafter, there were multiple meetings with Mr. Belt and Mrs. Jones-Pisi regarding the alley closure issue.

9. On July 19, 2016, those meetings culminated with Mr. Belt and Mrs. Jones-Pisi executing a written agreement with the Warrenton Group and Pennrose Properties, LLC regarding the alley-closure issues. A copy of that letter agreement is attached hereto as Exhibit 1. The letter agreement is addressed to Mr. Belt in his capacity as "ANC Commissioner 7F01."

10. We continued to have conversations with Mr. Belt, in his individual capacity and as a designated representative for Mrs. Jones-Pisi about the retaining wall/alley-closure issue through the Fall of 2016.

11. On or about May 15, 2017, the building was under roof—meaning that the main roof for the building was in place.

Pursuant to the requirements of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 8, 2017

Christopher A. Stennett, P.E.

EXHIBIT 1

4000 Benning Road, LLC
c/o Pennrose Properties, LLC
575 South Charles Street, Suite 140
Baltimore, MD 21201

July 19, 2016

Mrs. Marcia Jones-Pisi
3944 Benning Rd, NE
Washington, D.C. 20019

Mr. David Belt
ANC Commissioner 7F01
3940 Benning Rd., NE
Washington, DC 20019

RE: St. Stephens – Alley Construction Agreement

Dear Mrs. Jones-Pisi and Mr. Belt,

4000 Benning Road, LLC, the development team for the St. Stephens apartment development would like to express our deepest appreciation to allow the construction of the alley to move forward without a significant delay and more importantly at an inconvenience to your daily routine.

Pursuant to your discussion with Mr. Christopher Stennett, of The Warrenton Group, you are authorizing the 4000 Benning Road, LLC, and its agents, permission to build a parking pad on Mrs. Jones-Pisi's property for her use only and at no cost to her. The parking pad will be built according to the design that will be prepared by the design team and approved by Mrs. Jones-Pisi and Mr. Belt. All the required permits shall be obtained by the St. Stephen's team prior to the construction of the parking pad. In order to expedite the closing of the alley, Mrs. Jones-Pisi has agreed to use the Uber or Lyft services until the construction of the parking pad is complete. The St. Stephen's ownership team will reimburse Mrs. Jones-Pisi each month for her transportation cost. Please send the reimburse requests to my attention at the address listed on this stationary.

Additionally, a temporary fence will be installed to maintain pedestrian access to the existing walking path to the National Park. We will move expeditiously to complete the retaining wall and the alley will be restored as soon as the work is done. Mr. Stennett will provide regular updates as to the progress of the construction and is available if at any time you have any concerns and/or questions.

In closing, the St. Stephen's partners intend to be good neighbors and we hope to maintain a healthy line of communication. Again, we sincerely appreciate your cooperation regarding this matter.

Respectfully,

Ivy Dench-Carter
Pennrose Properties, LLC

Warren Williams
The Warrenton Group

Accepted by:

Mrs. Marcia Jones-Pisi
Homeowner
Date:

Mr. David Belt
ANC Commission 7F01
Date:

Cc: Christopher Stennett

COPY

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT:

I, Marcia Jones Pisi, the undersigned of 3944 Benning Road N.E., Washington D.C. 20019 do hereby make, constitute and appoint my neighbor, David Belt, of 3940 Benning Road N.E., Washington, D.C. 20019 my true and lawful attorney- in- fact for me and in my name, place, and stead, and on my behalf, and for my use and benefit to perform the following specific actions:

To execute and sign my name and on my behalf any documents related to the engineering and construction of a carport in the rear of my residence at 3944 Benning Road N.E., Washington, D.C. 20019.

To coordinate with Mr. Christopher A. Stennett of the Warrenton Group on any and all issues related to the construction of the carport; and to make decisions on the carport in coordination with Mr. Stennett.

To exercise or perform any act, power, duty, or right whatsoever that I now have, or may hereafter acquire the legal right, power or capacity to perform, in connection with, arising from, or relating to the construction of the carport.

This Limited Power of Attorney shall expire on upon satisfactory completion of the carport construction.

/Marcia Jones Pisi/
Marcia Jones Pisi

I, Emily Daenzer hereby certify that on this 21st day of July, 2016 before me, the subscriber, a Notary Public personally appeared Marcia Jones Pisi and made oath in due form of law that the matters and things set forth above are true to the best of her knowledge, information and belief.

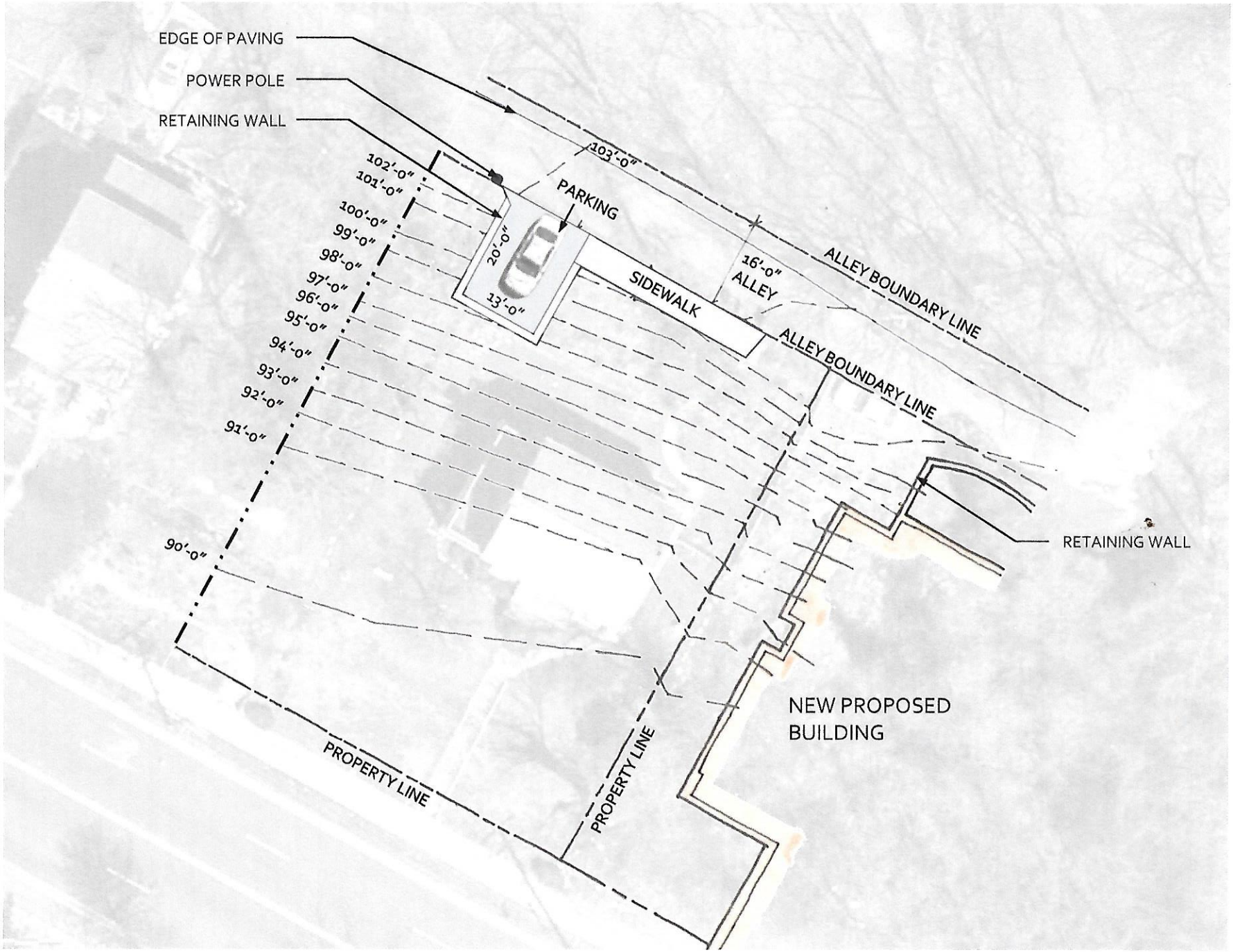
GIVEN under my hand and seal this 21st day of July, 2016.

Emily C. Daenzer
Notary Public

EMILY C. DAENZER NOTARY PUBLIC DISTRICT OF COLUMBIA EXP. 3-31-21

EMILY C. DAENZER
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires March 31, 2021

My Commission Expires: _____



Mrs. Jones' Parking
07/20/2016

0' 20'

Parking Site Plan