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|                                                                                                                                                                                 | <p>ADVISORY NEIGHBORHOOD COMMISSION 3C<br/>GOVERNMENT OF THE DISTRICT OF COLUMBIA<br/>CATHEDRAL HEIGHTS • CLEVELAND PARK<br/>MASSACHUSETTS AVENUE HEIGHTS<br/>MCLEAN GARDENS • WOODLEY PARK</p>            |
| <p>Single Member District Commissioners<br/>01-Lee Brian Reba * 02-Gwendolyn Bole * 03-Jeffrey<br/>Kaliel                      04-Richard Steacy * 05-Margaret<br/>Siegel * 06-Carl Roller<br/>07- Victor Silveira * 08-Catherine May * 09-Nancy<br/>MacWood</p> | <p>3601 Connecticut Avenue, NW Suite L-<br/>06<br/>Washington, DC 20008<br/>Website <a href="http://www.anc3c.org">http://www.anc3c.org</a><br/>Email <a href="mailto:all@anc3c.org">all@anc3c.org</a></p> |

## ANC 3C Resolution 2013-020

Regarding Appeal of Lawrence and Kathleen Ausubel, BZA Appeal No. 18577

WHEREAS, on October 24, 2012, the Department of Consumer and Regulatory Affairs (“DCRA”) inspected the 800 Amp., CT cabinet installed at 2750 32<sup>nd</sup> St. NW, four feet from the property line shared with 2744 32<sup>nd</sup> St. NW; and

WHEREAS, DCRA issued Notice of Violation and Notice to Abate bearing Control Number CEL 1300001, finding the installation of the CT cabinet to violate 11 DCMR 409.5 and 2309.2 because of the height of the cabinet and its proximity to the property line shared with 2744 32<sup>nd</sup> St. NW; and

WHEREAS, DCRA ordered the 2750 32<sup>nd</sup> St. Trust, the owner of 2750 32<sup>nd</sup> St. NW, to abate the violation by lowering the height of the CT cabinet to 4 feet or relocating it more than 8 feet from the property line; and

WHEREAS, the 2750 32<sup>nd</sup> St. Trust appealed the Notice of Violation and Notice to Abate bearing Control Number CEL1300001, in Board of Zoning Appeals action number 18525; and

WHEREAS, before a hearing could be held on the validity of the Notice of Violation and Notice to Abate bearing Control Number CEL1300001, the Zoning Administrator withdrew the Notice of Violation and Notice to Abate, stating that “the cabinet is not sited within the required side yard setback, but is located in the front yard”, and therefore does not violate the side yard setback and height restrictions set forth in 11 DCMR 409.5 and 2309.2; and

WHEREAS, the ZA withdrew the Notice of Violation and Notice to Abate after consultation with the attorney for 2750 32<sup>nd</sup> St Trust but without offering either the owners of 2744 32<sup>nd</sup> St or the ANC the opportunity to comment that a hearing would have afforded, and

WHEREAS, Lawrence and Kathleen Ausubel, the owners of the property at 2744 32<sup>nd</sup> St. NW, immediately adjacent to the installed CT cabinet, filed appeal number 18577 before the Board of Zoning Appeals on April 10, 2013, challenging the withdrawal of the Notice of Violation and Notice to Abate bearing Control Number CEL 1300001; and

WHEREAS, in order to justify withdrawing the Notice of Violation and Notice to Abate bearing Control Number CEL1300001, the Zoning Administrator created the Zoning Regulations the concept

of a “front yard”, which does not exist in the regulations as promulgated by the City Council of the District of Columbia, and

WHEREAS, the Zoning Administrator further decided that, unlike the rear yard and side yard provided for in the Zoning Regulations, the “front yard” contains no restrictions on the height or placement of structures within it; and

WHEREAS, 11 DCMR 199 defines a “side yard” as “a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure,” under which definition the CT cabinet is in the side yard of the main building at 2750 32<sup>nd</sup> St. NW, and

WHEREAS, 11 DCMR 199 of the Zoning Regulations defines a “structure” to include retaining walls, under which definition the CT cabinet is in the side yard of the retaining wall at 2750 32<sup>nd</sup> St. NW, and

WHEREAS, in order to justify withdrawing the Notice of Violation and Notice to Abate bearing Control Number CEL1300001, the Zoning Administrator ignored the plain language of the Zoning Regulations and found that only the main building on a property—and not an auxiliary structure such as a retaining wall—defines a side yard; and

WHEREAS, the ANC is concerned that the Zoning Administrator’s creation of a “front yard” free of setback restrictions and the Zoning Administrator’s avoidance of the zoning regulations defining side yards by auxiliary structures will adversely affect homeowners in ANC 3C by allowing the erection of structures which violate the side yard setback requirements, as these actions have adversely affected the owners of 2744 32<sup>nd</sup> St. NW; and

WHEREAS, the ANC believes that the Zoning Administrator exceeded his authority in creating a front yard free of setback requirements, when the zoning regulations are silent on front yards, that the Zoning Administrator exceeded his authority by ignoring the provisions of the zoning regulations which provide that auxiliary structures define side yards with setback requirements and that the Zoning Administrator therefore erred in concluding that the CT cabinet does not violate the side yard setback requirements.

THEREFORE BE IT RESOLVED that ANC 3C requests that the Board of Zoning Adjustment GRANT Appellant Lawrence and Kathleen Ausubel’s Appeal No. 18577; and

BE IT FURTHER RESOLVED that the Commissioner for ANC 3C08, the Chair, or the Chair’s designee, is authorized to represent the Commission on this matter.

Attested by

A handwritten signature in purple ink that reads "V. Silveira/ANC3C".

Victor Silveira  
Chair, on June 17, 2013

*This resolution was approved by a voice vote on June 17, 2013 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 9 commissioners) was present.*