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December 1, 2006

VIA HAND-DELIVERY

Mr. Geoffrey H. Griffis
Chairman
Board of Zoning Adjustment
441 4th Street, N.W.
Room 200
Washington, D.C. 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17591
EXHIBIT NO. 1

Re: BZA Appeal of MLW, LLC
3256 N Street, N.W.
Square 1218, Lot 104 ("Property")

Dear Chairman Griffis:

This firm is counsel for MLW, LLC ("Appellant") in bringing this Appeal of the Zoning Administrator's October 19, 2006 Notice of Revocation of the current Certificate of Occupancy for the Property as a five (5) unit apartment building.

This longstanding use of the Property as a five (5) unit apartment building was approved by the Board in BZA Order No. 6885 (1962) without time limitation or other conditions. The Zoning Administrator incorrectly and without substantiation alleges that this use approved by the Board is a "nonconforming use" and that use has been discontinued for more than three years pursuant to 11 DCMR 2005.1.

The Appellant respectfully, but urgently, requests the Board to schedule this Appeal for an expedited hearing and/or grant this Appeal by Summary Judgment. Under the extraordinary background and circumstances in this matter and the Zoning Administrator's attempt to usurp and undermine the authority of the Board and the validity of its Orders, the expedited handling can not be avoided. Beyond the impact on the Board, delay in resolving this matter will have a catastrophic impact on the Appellant and the authorized construction that is more than eighty

Board of Zoning Adjustment
District of Columbia
CASE NO. 17591
EXHIBIT NO. 1

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GREENSTEIN DELORME & LUCHS, P.C.
Mr. Geoffrey H. Griffis
December 1, 2006
Page 2

(80%) percent completed at a current cost of \$1.3 Million Dollars and require the Board authorized five (5) unit apartment building to sit idle for as long as a year while this Appeal is pending.

In support of this Appeal, the Appellant submits the following:

1. BZA Appeal Form 125;
2. Appeal fee of \$800.00;
3. Letter of Authorization from MLW, LLC;
4. Statement of Appeal; and
5. Appellant's Motion for Summary Judgment and/or An Expedited Hearing.

Thank you for your assistance and cooperation in this matter and the Appellant looks forward to the Board's expedited handling of this important case.

Sincerely,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____

John Patrick Brown, Jr.

JPB/prm
Enclosures

cc: Jill Stern, Esquire
Dennis M. Taylor, Esquire
Andrew J. Saindon, Esquire
Mr. Ed Solomon, ANC 2E
Mr. Bill Starrels, ANC 2E
MLW, LLC

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Form 125 – Exhibit 1

(Revised 3/15/02)

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Case No.

17591

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111
111BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA111
111
111

2006 Dec 1, 2:14 P.M. g/w APPEAL

Notice: See other side of appeal form for instructions

Pursuant to Section(s) § 3100 and § 3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken

from the administrative decision of:

Name of administrative officer and title

Bill Crews, Zoning Administrator

made on

Date of decision

October 19, 2006

, to the effect that

Notice of Revocation of Certificate of Occupancy

Number CO61776 (dated September 9, 2003) for the five (5) unit apartment building located at 3256 N Street, N.W. (Square 1218, Lot 104) alleging on "information and belief, the Zoning Administrator has determined that the non-conforming use was discontinued for a period of three (3) or more years" and as a result, under 11 DCMR § 2005.1, "the current use as a five unit apartment building is not allowed by the Zoning Regulations."

Address(es) of Affected Premises	Square(s)	Lot(s)	Zoning Districts
3256 N Street, NW	1218	104	R-3

Present use of Property: Apartment Building; 5 units

Proposed use of Property: Apartment Building; 5 units

Owner of Property:

MLW, LLC

Telephone No.:

301-770-0770

Address of Owner:

5920 Empire Way, Rockville, Maryland 20852

Name, address and telephone number of lessee:

--

Name, address and telephone number of appellant, if other than owner:

--

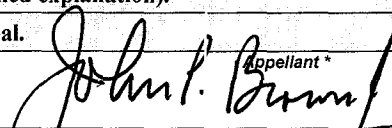
State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8½" x 11" to respond and attach it to the Form 125 Appeal.

Date:

December 1, 2006

Signature:



Appellant *

* If Appeal is filed by agent of the Appellant, Form 125 Appeal shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.

To be notified of hearing and decision:

(Appellant or Authorized Agent)*

Name:

John Patrick Brown, Jr., Esquire, Stephanie A. Baldwin, Esquire, Joshua M. Greenberg, Esquire

Address:

Greenstein, DeLorme & Luchs, P.C., 1620 L Street, NW, Suite 900, Washington, DC 20005

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202-452-1400

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E-Mail:

jpb@gdlaw.com
sab@gdlaw.com
jmg@gdlaw.com

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED

APPEAL APPLICATION FORM

57297

D.C. Treasurer

11/27/2006

\$800.00

Inv. Date
11-27-2006Inv. No.
5629-3

Invoice Description

Amount Paid
800.00

57297

\$800.00

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

GREENSTEIN DELORME & LUCHS, P.C.

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WASHINGTON, DC 20036-5605
(202) 452-1400**BB&T**
Branch Banking and Trust CompanyWASHINGTON,
DC

15-154/540

NUMBER

57297

57297

Eight Hundred and No/100 Dollars

DATE

AMOUNT

11/27/2006

\$800.00

PAY
TO THE
ORDER
OF

D.C. Treasurer

SECURE
SAFE
SECURE
SAFE

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

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APPLICATION FEE

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LETTER OF AUTHORIZATION

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D.C. OFFICE OF ZONING

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MLW, LLC
5920 Empire Way, Rockville
Maryland 20852

November 30, 2006

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Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: BZA Appeal of MLW, LLC
3256 N Street, N.W. (Square 1218, Lot 104)

To Whom It May Concern:

MLW, LLC is the owner of the above-referenced property. Please accept this letter as authorization for John Patrick Brown, Jr., Esquire, Stephanie A. Baldwin, Esquire, Joshua M. Greenberg, Esquire and the firm of Greenstein DeLorme & Luchs, P.C., to file and prosecute the above-referenced BZA Appeal on behalf of MLW, LLC.

Sincerely,



Mary Wagshal
Managing Member, MLW, LLC

STATEMENT OF APPEAL

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**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of MLW, LLC

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BZA Appeal No.
ANC 2E

STATEMENT OF APPEAL

The Appellant, MLW, LLC ("MLW"), by and through undersigned counsel, respectfully submits this Board of Zoning Adjustment ("Board") Appeal of the Department of Consumer and Regulatory Affairs and/or the Zoning Administrator's October 19, 2006 Notice of Revocation ("Notice") of Certificate of Occupancy Number CO61776 (dated September 9, 2003) (the "Current C of O") for the five (5) unit apartment building located at 3256 N Street, N.W. (Square 1218, Lot 104) (the "Property") alleging on "information and belief, the Zoning Administrator has determined that the nonconforming use was discontinued for a period of three (3) or more years" and as a result, under 11 DCMR § 2005.1, "the current use as a five (5) unit apartment building is not allowed by the Zoning Regulations." See, Exhibit 1.

I. BASIS FOR APPEAL

The Zoning Administrator has attempted to usurp the authority of the Board and overrule its earlier decision. In BZA Order No. 6885, the Board expressly authorized use of the Property as a five (5) unit apartment building without time limitation or other conditions. See, Exhibit 2. It is well-established that a use of the Property approved by the Board runs with the land and is not a nonconforming use. Accordingly, the approved use as a five (5) unit apartment building is not subject to the discontinuance provisions of 11 DCMR § 2005.1.

Additionally, under the compelling and well documented circumstances of this case, the Zoning Administrator and/or DCRA are estopped from revoking the Current C of O and such action is also legally barred by the doctrine of Laches.

II. EXECUTIVE SUMMARY

This Appeal is not an isolated occurrence, but only the latest in a series of unsubstantiated, unauthorized and unsuccessful attacks by Mr. Bill Crews, the Zoning Administrator ("Mr. Crews"), against the Property and MLW. On two prior occasions, Mr. Crews has exceeded his authority and, without justification, issued two (2) different Stop Work Orders for the authorized construction occurring at the Property. When challenged, both Stop Work Orders were withdrawn by DCRA.

In good faith reliance on its right to proceed with the renovation of the Property under several DCRA issued building permits, MLW has obtained Two Million One Hundred Ninety-Eight Thousand Three Hundred Forty 38/100 Dollars (\$2,198,340.38) in construction financing, expended One Million Three Hundred Thousand Dollars (\$1,300,000.00) to date, and completion of the authorized work in progress will cost an additional Six Hundred Fifty Thousand Dollars (\$650,000.00). Affidavit of Ms. Mary Wagshal, Exhibit 3. The DCRA authorized work at the Property is now eighty percent (80%) complete with substantial completion scheduled to occur in January 2007. Id.

Having twice been rebuked for invalid Stop Work Orders and exposed DCRA and himself to substantial monetary damages, Mr. Crews has now attempted to revoke a valid certificate of occupancy, flagrantly disregarding a prior order of the Board authorizing the use of the Property as a five (5) unit apartment building. See, Exhibit 1.

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The following is an outline of the major events proceeding the issuance of the Notice, each of which is discussed at greater length below, but collectively clearly justify MLW's request for granting this Appeal on an expedited and summary judgment basis:

- August 21, 1962:** BZA Order 6885 issued authorizing the use of the Property as a five (5) unit apartment building;
- September 6, 2002:** MLW acquired Property;
- September 9, 2003:** DCRA issued Certificate of Occupancy No. CO61776 authorizing continued use of the Property as a five (5) unit apartment building;
- June 4, 2004:** Application for building permit for interior renovation of the Property filed with DCRA;
- August 9, 2004:** Application for building permit for exterior renovation of the Property filed with DCRA;
- March 16, 2005:** DCRA issued first Building Permit (exterior work);
- June 21, 2005:** DCRA issued second Building Permit (interior work);
- November 3, 2005:** Construction commenced on Property;
- December 7, 2005:** Mr. Crews illegally issued a Stop Work Order, alleging violation of 11 DCMR §2002 [Nonconforming Uses Within Structures];
- January 20, 2006:** MLW initiated lawsuit against District of Columbia, Dr. Patrick Canavan and Mr. Bill Crews;
- January 23, 2006:** Stop Work Order lifted by DCRA and lawsuit dismissed;
- March 28, 2006:** Mr. Crews illegally issued a second Stop Work Order, alleging violation of 11 DCMR §2005.1;
- April 10, 2006:** MLW initiated second lawsuit against District of Columbia, Dr. Patrick Canavan and Mr. Bill Crews;
- April 11, 2006:** District of Columbia, through Office of Attorney General, indicated second Stop Work Order will be lifted by close of business;
- April 12, 2006:** Second Stop Work Order lifted at approximately 12:00 p.m.;
- October 19, 2006:** Mr. Crews issued Notice of Revocation of Certificate of Occupancy Number CO61776, alleging violation of 11 DCMR §2005.1;

November 2, 2006: MLW, through counsel, requested immediate rescission of the Notice of Revocation, which was denied by District of Columbia.

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III. FACTUAL BACKGROUND

MLW is the owner of the Property, a three (3) story, five (5) unit apartment building, located at the corner of N Street and Potomac Street, N.W., in the heart of the Georgetown Historic District. See, Exhibit 3 and 6.

A. BZA APPEAL NO. 6885

In the early 1960's, the prior owners of the Property, Mr. and Mrs. Aubrey W. Williams (the "Williams"), noted an appeal¹ to the Board of Zoning Adjustment, seeking to change a nonconforming use from a rooming house to an apartment house. After a public hearing on this appeal, the Board granted the Williams request to use the Property as an apartment house, and the Property was thereafter permitted to be used and occupied as a five (5) unit apartment house. See, Exhibit 2. The BZA Order limited the apartment house to five (5) units, but did not impose any time limitation or other conditions. Id.

B. TRANSFER OF OWNERSHIP

After BZA Order No. 6885, the Property was acquired by Mr. and Mrs. Richmond Harris, under the name of Georgetown Chateaux, Inc.

Mr. Jerome Wagshal ("Mr. Wagshal") acquired the Property in the early 1970's. On November 3, 1978, the District of Columbia issued Mr. Wagshal Certificate of Occupancy No. B111434 for the Property (the "1978 C of O"). See, Exhibit 4. The 1978 C of O authorized the

¹ In 1962, a BZA appeal was the functional and legal equivalent of a modern "use variance" and/or "special exception" granted by the Board. See, 11 DCMR §§ 3103 and 3104.

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Property to be occupied as a five (5) unit apartment house, the same as the prior Certificate of Occupancy for the Property. Id.

On April 30, 2001, Mr. Wagshal passed away. On August 22, 2002, the Estate of Jerome Wagshal executed a deed to the Property in favor of Ms. Mary Wagshal, his widow ("Ms. Wagshal"). See, Exhibit 5. On September 6, 2002, Ms. Wagshal transferred ownership of the Property to a limited liability corporation, MLW. See, Exhibit 6. On September 9, 2003, the District of Columbia issued the Current C of O to MLW. See, Exhibit 7. The Current C of O was issued based on a change of ownership with continued use authorized as a five (5) unit apartment building. Id.

C. RENOVATION OF THE PROPERTY

On June 4, 2004, MLW submitted a Building Permit application for "Interior Work Only – Rehabilitation and Alteration of Existing 5-unit Apartment Building." See, Exhibit 8 (emphasis in original).

On August 9, 2004, MLW submitted a Building Permit application for exterior "Rehabilitation of Existing 5 Unit Apartment Building." See, Exhibit 9.

On March 16, 2005, the DCRA issued Building Permit No. B470714 (the "March 2005 Permit") authorizing the exterior "Rehab. of Exist'g 5-Unit Apt. Bldg." located on the Property. See, Exhibit 10.

On June 21, 2005, DCRA issued a second permit, Building Permit No. B474036 (the "June 2005 Permit") authorizing "Interior Work Only Rehab. and Alteration of Existing 5-unit Apt. Bldg." See, Exhibit 11.

During the one (1) year period it took MLW to obtain the March 2005 Permit and June 2005 Permit, both permit applications were exhaustively reviewed and approved by DCRA, the

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U.S. Commission of Fine Arts and D.C. Historic Preservation Review Board. The Zoning Administrator expressly approved both permit applications. See, Exhibits 8 and 9, and Affidavit of Mr. Olutoye Bello, attached as Exhibit 12.

After obtaining all necessary permits and approvals, construction at the Property began on or about November 3, 2005 and has continued uninterrupted, except for the two invalid Stop Work Orders issued by Mr. Crews and then rescinded. See, Bowen Affidavit, Exhibit 13.

The following is a summary of the permits issued in conjunction with the Property.

<u>Permit No.</u>	<u>Date of Issuance</u>	<u>Purpose</u>
1. B470714	March 16, 2005	Rehabilitation of existing five (5) unit apartment building. Work includes window restoration, excavation of rear courtyard and construction of new brick garden walls. Porch roof will be added to the entrance of the rear basement apartment. <u>Exhibit 10</u> .
2. B474036	June 21, 2005	Interior work only. Rehabilitation and alteration of existing five (5) unit apartment building. <u>Exhibit 11</u> .
3. PA15617	October 24, 2005	Occupy roadway with dumpster 20' x 10".
4. EL107336	November 7, 2005	Outlets, lights, electric range, garbage disposal, dish washer, hot water heater, service meter, motor/generator.
5. EL107516	November 9, 2005	Stingers, temporary quad outlet.
6. PLBG107613	November 9, 2005	Bath tubs, water closets, sinks, basins, garbage disposal, water heaters, gas range, gas oven, gas furnace.
7. AC107812	November 9, 2005	Refurbish air conditioning.

D. THE FIRST STOP WORK ORDER ISSUED BY MR. BILL CREWS

On December 7, 2005, DCRA issued a Stop Work Order (the "First Stop Work Order"), citing "DCMR11 [sic] 2002 Nonconforming use structure without BZA Approval." See, Exhibit 14. The First Stop Work Order was not signed by the issuing official, containing only a hand-printed note that it was issued "per Bill Crews." Id.

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On December 21, 2005, MLW, through counsel, sent a letter to Mr. Lennox Douglas, Acting Administrator of BLRA ("Mr. Douglas"), pursuant to 12 D.C.M.R. §112.1, appealing the First Stop Work Order. See, Exhibit 15. Mr. Douglas did not respond to the appeal within the required three (3) days or at anytime thereafter.

Having received no response from Mr. Douglas, MLW, through counsel, on December 30, 2005 sent a letter to Dr. Patrick J. Canavan, Director of DCRA ("Dr. Canavan"), pursuant to 12 D.C.M.R. §112.1.2, appealing the First Stop Work Order. See, Exhibit 16. Dr. Canavan did not respond to the appeal within the three (3) days permitted. Based on Dr. Canavan's failure to respond, on January 9, 2006, MLW, through counsel, submitted a Supplementary Statement in Support of Appeal of the First Stop Work Order (the "Supplementary Statement") to Dr. Canavan. See, Exhibit 17. Dr. Canavan did not respond to the Supplementary Statement within the three (3) days required, or at any time thereafter.

Based on the repeated failure of DCRA to respond to the three (3) letters, MLW on January 20, 2006, filed a Complaint and Motions for Temporary Restraining Order ("TRO") and for Preliminary Injunction ("PI"), captioned *MLW, LLC v. District of Columbia et al.*, 06-ca-0000360 in the Superior Court for the District of Columbia (the "First Litigation"). See, Exhibit 18, (Complaint;) and Exhibit 19, (TRO and PI.) A hearing on the TRO was scheduled for before the Judge-in-Chambers on January 23, 2006 at 3:00 p.m.

The basis for the First Litigation was, *inter alia*, that a Stop Work Order authorized by the Construction Codes does not apply to alleged zoning violations; that Mr. Crews, in his capacity as the Zoning Administrator, lacked the authority to issue the First Stop Work Order; and the First Stop Work Order itself was technically deficient and therefore a nullity. See, Exhibits 18 and 19.

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On the morning of January 23, 2006, only hours prior to the Superior Court hearing on the TRO, Ellen A. Efros, Esq., Assistant Attorney General, Equity Section I, Civil Litigation Division, Office of the Attorney General for the District of Columbia ("Ms. Efros"), contacted counsel for MLW, by telephone, and advised that the First Stop Work Order had been rescinded by Mr. Crews, and that MLW was allowed to immediately recommence work under the previously issued buildings permits. This conversation was confirmed in an email sent by Ms. Efros. See, Exhibit 20. Mr. Crews, also in a telephone conversation with MLW's counsel, confirmed that the First Stop Work Order had been rescinded. Based on the rescission of the First Stop Work Order, on January 31, 2006, MLW filed a Notice of Dismissal without prejudice as to the First Litigation. See, Exhibit 21.

E. THE SECOND STOP WORK ORDER ISSUED BY MR. BILL CREWS

On March 28, 2006, DCRA issued a second Stop Work Order (the "Second Stop Work Order"), citing "11 DCMR §2005.1 = See attached letter sent March 22, 2006 to Ms. Mary Wagshal – Must provide proof of rental of all 5-units for past 10 years" as the violation. See, Exhibit 22. The Second Stop Work Order was signed by "Juan Scott" with a hand-printed note stating "Bill Crews." Id. The Second Stop Work Order had the box next to the pre-printed label of "Construction" checked off. Id. Also, the Second Order contained a hand-written label or box marked "Office of Zoning Administrator" checked off. Id.

The Second Order was accompanied by a letter from Mr. Crews dated March 22, 2006 (the "SWO Letter"). See, Exhibit 23. Despite the fact that the SWO Letter was dated March 22, 2006 and had a handwritten note by Mr. Crews that the "original" was mailed on March 23, 2006, the postmark on the envelope showed that it was mailed on March 27, 2006. Id. The SWO Letter acknowledged that use of the Property as a five (5) unit apartment was authorized

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by order of the Board of Zoning Adjustment in Appeal No. 6885. Id. The SWO Letter further stated that "a question arises as to the continuation of the nonconforming use" and referenced 11 D.C.M.R. 2005.1." Id. The SWO Letter also contained a handwritten note that read "Stop Work Order place [sic] by Mr. Bill Crews, authorization of the Director, DCRA will be lifted upon verification of requested documentation." Id.

As required, on or about March 29, 2006, MLW, through counsel, sent a letter to Mr. Douglas, pursuant to 12 D.C.M.R. §112.1, appealing the Second Stop Work Order. See, Exhibit 24. Again, Mr. Douglas did not respond to the appeal within the three (3) days required, and, to date, no response has ever been received from Mr. Douglas.

On April 10, 2006, having received no response from DCRA, MLW filed a second Complaint and Motions for Temporary Restraining Order ("TRO") and for Preliminary Injunction ("PI"), captioned *MLW, LLC v. District of Columbia et al.*, 06-ca-2790 in the Superior Court for the District of Columbia (the "Second Litigation"). See, Exhibit 25. Counsel for MLW once again contacted the District of Columbia regarding the Second Stop Work Order. At the behest of Ms. Efros, several messages were left with Mr. Crews seeking to discuss the lifting of the Second Stop Work Order, but Mr. Crews did not return any of the telephone calls. See, Exhibit 26.

On April 11, 2006, after several additional conversations by telephone with Ms. Efros and Andrew Saindon, Esq., Assistant Attorney General for the District of Columbia ("Mr. Saindon"), the District indicated the Second Stop Work Order would be rescinded before the close of business that day. See, Exhibit 27. However, the Second Stop Work Order was not lifted until approximately noon on the following day, Wednesday, April 12, 2006. See, Exhibit 28. Based on the lifting of the Stop Work Order, MLW withdrew its request for temporary and

preliminary injunctive relief, but the Second Litigation was not dismissed due to the significant and continuing financial harm incurred by MLW as direct result of the unjustified actions of the District and Mr. Crews.

The Second Litigation remains pending as of the date of this Appeal, with the parties currently conducting discovery. The deposition of Mr. Crews has yet to be taken, but the District has consented to MLW's request for leave to amend the Complaint in the Second Litigation to include the most recent actions undertaken by Mr. Crews in revoking the Current C of O.

F. NOTICE OF REVOCATION OF CURRENT CERTIFICATE OF OCCUPANCY

On October 19, 2006, Mr. Crews issued the Notice which revoked the Current C of O as of October 29, 2006. See, Exhibit 1. In the Notice, Mr. Crews alleged that on "information and belief, the Zoning Administrator has determined that the nonconforming use was discontinued for a period of three (3) or more years" and as a result, under 11 DCMR § 2005.1, "the current use as a five (5) unit apartment building is not allowed by the Zoning Regulations." See, Exhibit 1.

IV. LEGAL ANALYSIS

A. THE FIVE UNIT APARTMENT BUILDING APPROVED BY THE BOARD IS A CONFORMING USE

The Notice is fatally flawed based on the unsupported assertion that the use of the Property as a five (5) unit Apartment Building is a "nonconforming use" and therefore subject to the three-year discontinuance provisions of 11 DCMR § 2005.1. By this action, Mr. Crews has attempted to usurp the authority of the Board, demonstrated a fundamental and continuing

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misunderstanding and disrespect for the Zoning Regulations and the proper role of the Zoning Administrator, and caused great harm to a law-abiding property owner.

It is undisputed that the Board expressly authorized, without time limitation or any other condition, use of the Property as five (5) unit Apartment Building. See, Exhibit 2. It is also well established that any use approved and authorized by the Board runs with the land and is NOT a "nonconforming use" as that term is defined in the Zoning Regulations. ANDERSON, AMERICAN LAW OF ZONING, §20.2 (4th Ed); see also, Affidavit of Mr. Olutoye Bello, Exhibit 12. In 1962, the Board's granting the "appeal" was in all respects the functional and legal equivalent of a what is now known as either a "use variance" or a "special exception" and that approval must be clearly distinguished from a "nonconforming use." Courts throughout the country have firmly embraced the concept that a use approved by a variance or special exception "becomes a conforming use and otherwise partakes to a large degree the character of a vested right running with the land." ANDERSON, AMERICAN LAW OF ZONING §§ 6.1, 20.2 citing Industrial Lessors, Inc. v. Garfield, 119 NJ Super 181, 290 A.2d 737 (1972), cert. den., 61 NJ 160, 293 A.2d 390. Accordingly, a use authorized through such zoning relief is not a "nonconforming use." See, Exhibit 12.

Additionally, a careful analysis of the "nonconforming use" definition demonstrates that the Board approved five (5) unit apartment building use is conforming. Under the Zoning Regulations, a "nonconforming use" is defined as:

[A]ny use of land or of a structure, or of a structure and land in combination, lawfully in existence at the time this title or any amendment to this title became effective, that does not conform to the use provisions for the district in which the use is located. A use lawfully in existence at the time of adoption or amendment of this title that would thereafter require special exception approval from the Board of Zoning Adjustment shall not be deemed a nonconforming use. That nonconforming use shall be considered a

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conforming use, subject to the further provisions of §§ 3104.2 and 3104.3.

11 DCMR §199.1.

Specifically, the five (5) unit apartment building use was not a use "lawfully in existence" when the Zoning Regulations were adopted in May 1958, or amended. Significantly, the apartment building use was first authorized by the Board four (4) years after the Zoning Regulations were adopted, not by operation of law as the result of being "grandfathered" by the subsequent adoption of new or amended Zoning Regulations. See, Exhibit 2.

In addition, this definition also clearly establishes and contemplates the role of the Board and its special exception approval authority in distinguishing between nonconforming and conforming uses. An otherwise nonconforming use would be considered a conforming use if that use could be approved by the Board as a special exception. Thus, under the current Zoning Regulations in the R-3 Zone where the Property is located, the prior nonconforming use as a rooming house could be changed to another nonconforming use as an apartment building with a special exception under § 2003.1.

Section § 2003.1 provides:

If approved by the Board of Zoning Adjustment, as authorized in §§ 3103 and 3104 for variances and special exceptions, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section.

In applying § 2003.1 to this case, the Board would be authorized to grant a special exception to allow a rooming house (first permitted in the R-4 zone) to be changed to an apartment house (also, first permitted in the R-4 zone). And as a result, the approved apartment building would be a conforming use under the clear definition of "nonconforming use."

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B. A CONFORMING USE IS NOT SUBJECT TO DISCONTINUANCE UNDER § 2005.1

The discontinuance restrictions under § 2005.1 are by definition only applicable to a "nonconforming use." Section 2005.1 provides:

Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

11 DCMR § 2005.1 (Emphasis added).

As a conforming use, the five (5) unit Apartment Building at the Property is not subject to the discontinuance restrictions of § 2005.1.

C. THE DISTRICT IS ESTOPPED FROM REVOKING THE CURRENT CERTIFICATE OF OCCUPANCY

The District of Columbia is estopped from revoking the Current C of O. MLW has repeatedly acted in reliance, to its detriment, on the Current C of O, as well as the construction and other permits issued by the District of Columbia.

There is a substantial body of case law applying estoppel to municipal corporations, including, specifically the District of Columbia. *See i.e., District of Columbia v. Cahill*, 54 F.2d 453, 454 (D.C. 1931) (where a party acting in good faith under affirmative acts of a city has made such expensive and permanent improvement that it would be highly inequitable and unjust to destroy the rights acquired, the doctrine of equitable estoppel will be applied); *Bannum, Inc. v. District of Columbia Board of Zoning Adjustment*, 894 A.2d 423 (D.C. 2006); *Saah v. District of Columbia Board of Zoning Adjustment*, 433 A.2d 1114 (D.C. 1981); *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917 (D.C. 1980); *Wieck v. District of*

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Columbia Board of Zoning Adjustment, 383 A.2d 7 (D.C. 1978) *Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356 (D.C. 1975).

Most recently, the D.C. Court of Appeals has repeated the six part test required to successfully establish an estoppel claim against the D.C. government, including: 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) the equities strongly favor the petitioner. *Bannum, Inc.*, 894 A.2d at 431, *District of Columbia Department of Consumer and Regulatory Affairs v. Vu*, CR-C-06-100009 (OAH, October 16, 2006).

It is indisputable that MLW undertook the present action, including but not limited to, obtaining financing for construction, contracting with several contractors, allowing substantial work to be performed on the Property and making other expensive and permanent improvements to the Property, in reliance on not only the Current C of O, but two Building Permits and other permits and approvals issued by the District long before the issuance of the Notice.

As of the date of the Notice, MLW had incurred debt of over \$1,300,000.00, including at least \$950,000.00 in construction costs over almost one year and \$30,000.00 in interest on the construction loans. See, Exhibit 3. This substantial financial investment, and the actions of MLW, were made in direct reliance on the affirmative acts of the District – issuance of the Current C of O, two (2) Building Permits and other approvals for work on the Property. Id. MLW's reliance on the repeated affirmative acts of the District were at all times in good faith, justified and reasonable under the circumstances for the purpose of renovating and investing in an aging property for continued use as a rental accommodation. In a matter recently decided by the Office of Administrative Hearings, *District of Columbia Department of Consumer and*

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Regulatory Affairs v. Vu, supra, the District was estopped from revoking a building permit as the homeowner had incurred debt of in excess of One Million Dollars (\$1,000,000.00) and the expenditure of the funds was in good faith and in justifiable and reasonable reliance on affirmative acts of DCRA. *District of Columbia Department of Consumer and Regulatory Affairs v. Vu*, CR-C-06-100009, (OAH, October 16, 2006).²

At no time prior to initiating the extensive and expensive construction at the Property did MLW have any notice that the Current C of O and/or the 2 building permits and other approvals were in violation of the Zoning Regulations. Only after construction had begun did Mr. Crews raise a challenge to the approvals granted. In both instances, the illegal and unauthorized Stop Work Orders were promptly lifted, and MLW had no notice or reason to believe that the work in progress could not be continued to completion and the Property occupied in accordance with the Current C of O and the approved construction. After the Second Stop Work Order was lifted on April 12, 2006, MLW restarted construction and continued uninterrupted and at great expense for more than six (6) months before, without warning, Mr. Crews unilaterally issued the Notice. After twice being rebuked for acting improperly, it was unconceivable to MLW, or its counsel, that Mr. Crews had any reasonable basis for objecting, or was foolish or reckless enough to initiate yet a third unwarranted assault on MLW, the Property and numerous approvals from the District.

The equities in this case overwhelmingly favor MLW. The Current C of O is more than three (3) years old and has never before been challenged. On the basis of the Current C of O,

² The Court of Appeals in *Saah v. District of Columbia Board of Zoning Adjustment, supra*, found that equitable estoppel applied against the District when significantly less money had been expended to complete less construction than in *Vu*. In *Saah*, the homeowner spent over one-quarter of a million dollars (\$225,000.00) for sixty percent (60%) completion.

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MLW obtained building permits and numerous other approvals, incurred construction financing and construction began and reasonably continued for more than a year at a cost exceeding \$1,300,000.00. Construction is now approximately eighty percent (80%) completed with an anticipated completion date of January 31, 2007 (although, to date, MLW has only been invoiced for approximately sixty-five percent (65%) of construction costs), and revoking the Current C of O would have the domino affect of invalidating the building permits and leaving the Property with a partially completed and uninhabitable structure. As in the *Vu* case, this result would be "ruinous" to MLW precipitating a default in the construction loans and erecting a barrier to obtaining permanent financing and subjecting the Property to foreclosure. "In zoning, the equities can be so compelling as to favor the individual property owner." *Wieck* at 13.

D. REVOCATION OF THE 2003 C OF O IS BARRED BY THE DOCTRINE OF LACHES

The Notice is barred by the doctrine of laches, as the District and Mr. Crews "slept on its rights" with respect to any claim as to the Current C of O. See, 11 D.C.M.R. 3112.2(a); see also, Appeal No. 16849 of Robert Lehrman; Appeal No. 14110 of the Residential Action Coalition; *Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment*, 816 A.2d 41 (D.C. 2003); *Waste Management of Maryland, Inc. v. District of Columbia Board of Zoning Adjustment*, 775 A.2d 1117 (D.C. 2001).

"To prevail on the affirmative defense of laches, the party asserting the defense bears the burden of proving that (1) the claimant knew of the existence of the grounds for the claim; (2) the delay was unreasonable and must have worked to the disadvantage, injury or prejudice of the party asserting the defense; (3) the delay of time has resulted in some change in the condition of the property or in the relations of the parties; however, the mere passage of time is insufficient

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to support a finding of laches." *Town of Cameron v. Woodell*, 150 N.C. App. 174, 563 S.E. 2d

198 (N.C. App. 2002).

If the District had a viable claim against the Current C of O, it waited far too long in seeking recourse. See, *Federal Marketing Company v. Virginia Impression Products Company*, 823 A.2d 513 (D.C. 2003); see also, *Richards v. Mackall*, 124 U.S. 183 (1888); *Halstead v. Grinnan*, 152 U.S. 412 (1894). The Court of Appeals in *American University Park Citizens Association v. Burka*, 400 A.2d 737 (D.C. 1979), stated that "[l]aches is the principle that equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant." Id. at 740 (internal quotations omitted).

The Current C of O was issued on September 9, 2003. See, Exhibit 7. On June 4, 2004 and August 9, 2005, MLW submitted applications for construction permits with respect to the proposed renovations to the Property. See, Exhibit 8 and 9. On or about March 16, 2005 and June 21, 2005, the requested construction permits for the construction work authorizing the renovation of the existing five (5) unit apartment building located on the Property were issued. See, Exhibits 10 and 11. On or about November 3, 2005 construction on the Building commenced and has continued for more than a year at a cost of more than \$1,300,000.00. See, Exhibit 13. The District is barred by laches, as well as estoppel, discussed *infra*, from revoking the Current C of O over three (3) years after its issuance, more than one (1) year after issuance of building permits and one (1) year after the start of construction. Given the level of sustained scrutiny, bordering on obsession, that Mr. Crews and DCRA has directed at the Property over more than two (2) years, it is inexcusable that the Notice was filed at this late date.

MLW, in reliance on the issuance of the Current C of O, combined with the subsequent issuance of the construction permits authorizing the substantial renovations to the Property,

expending significant amounts of money on the Property. See, Exhibit 3. It is without dispute that a change in the condition of the Property has occurred since the time the Current C of O was issued, and that said change in condition is directly related to the issuance of the Current C of O and the construction permits. Clearly, the District's delay in acting on its alleged claim, without making a concession as to the merits of the same, has operated to the extreme prejudice of MLW. The Notice may result in MLW defaulting on its construction loans and other financial obligations as to the Property.

E. WITNESSES

In Support of this Appeal, MLW will introduce at least the following witnesses if a hearing is required:

1. Ms. Mary Wagshal, MLW, LLC
2. Mr. Olutoye Bello, Zoning Expert

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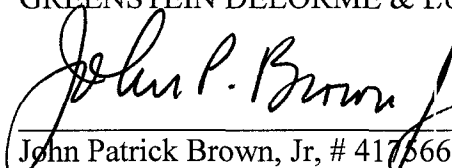
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V. CONCLUSION

For the foregoing reasons, the Zoning Administrator's action is founded on a legally insufficient basis and barred by the doctrine of estoppel and/or laches, and therefore, the Appeal must be GRANTED and DCRA directed to withdraw the Notice without further delay or interference.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



John Patrick Brown, Jr, # 417566

Joshua M. Greenberg, # 489323

Stephanie A. Baldwin, # 463370

1620 L Street, N.W.

Suite 900

Washington, D.C. 20036

(202) 452-1400

Counsel for Appellant – MLW, LLC

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal and Statement in Support of Appeal was served via hand delivery, this 15th day of December 2006, upon the following:

Jill Stern, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Room 9400
Washington, D.C. 20002

Dennis M. Taylor, Esq.
Assistant General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Room 9400
Washington D.C. 20002

Andrew J. Saindon, Esq.
Assistant Attorney General
Office of the Attorney General for the District of Columbia
441 4th Street, N.W.
6th Floor South
Washington, D.C. 20001

Mr. Ed Solomon
Chairman
Advisory Neighborhood Commission 2E
3525 S Street, NW
Washington, DC 20007

Mr. Bill Starrels
Single Member District Representative 2E05
Advisory Neighborhood Commission 2E
1045 31st Street, NW
Washington, DC 20007

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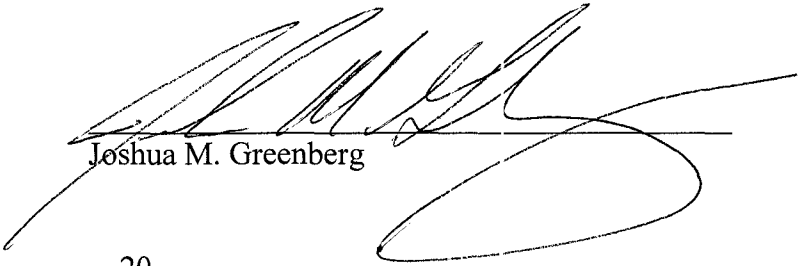

Joshua M. Greenberg

EXHIBIT 1

NOTICE OF REVOCATION

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



VIA PERSONAL SERVICE
FIRST CLASS MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Certified Mail Receipt #: 7025182000261863157

Joseph, McDermott & Reiner, P.C.
Registered Agent for MLW, LLC
1050 17th St NW, #700
Washington, DC 20036

And

FIRST CLASS MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Certified Mail Receipt #: _____

Ms. Mary Wagshal
MLW, LLC
5920 Empire Way
Rockville, MD 20852

Re: 3256 N Street, NW

**NOTICE OF REVOCATION OF
CERTIFICATE OF OCCUPANCY NUMBER CO61776**

This is official notice that the District of Columbia Department of Consumer and Regulatory Affairs ("Department") revokes Certificate of Occupancy # CO61776, effective ten (10) days from the date of service of this notice. This action is taken pursuant to 11 DCMR Section 2005.1, which states:

"Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a

941 North Capitol Street, N.E., Suite 2000, Washington, D.C. 20002
Phone: (202) 442-4576 Fax: (202) 442-4871

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NOTICE OF REVOCATION OF
CERTIFICATE OF OCCUPANCY NUMBER CO61776
Page 2 of 3

nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located."

According to Departmental records, in 1962 the Board of Zoning Adjustment voted to change the official use of the premises as a nonconforming rooming house to that of a nonconforming five (5) unit apartment house.

Since then, Certificate of Occupancy B111434 was issued to Jerome Wagshal, on November 3, 1978, permitting the continuing nonconforming use of the occupied five (5) unit apartment house on the premises at 3256 N Street, NW, Washington, D.C.

Subsequently on September 9, 2003, Certificate of Occupancy Number CO61776 was issued to MLW, LLC based upon a 'change of ownership' application.

Upon information and belief, the Zoning Administrator has determined that the nonconforming use was discontinued for a period of three (3) or more years, and that the current use as a five unit apartment building is not allowed by the Zoning Regulations of the District of Columbia.

You are hereby directed to discontinue the unauthorized use of the property, effective ten (10) days from the date of service of this notice. Should it be discovered that you are continuing to conduct an unauthorized use upon the premises, in violation of the Zoning Regulations of the District of Columbia, the Department will initiate legal proceedings against you without further notice.

At your discretion, you may submit comments, objections, or proof of your legal and officially authorized use of the premises to the Zoning Administrator, Mr. Bill Crews, 941 North Capitol Street, NE, Suite 2000, Washington, D.C. 20002. However, notwithstanding the delivery of comments or objections, the revocation of Certificate of Occupancy # CO61776, is effective ten (10) days from the date of service of this notice unless the Zoning Administrator provides written notice to you, which indicates that the revocation is rescinded.

RIGHT TO APPEAL

You have the right to appeal this Notice of Revocation pursuant to the District of Columbia Zoning Regulations, Section 3200 (11 DCMR 3200). You must file your appeal at the D.C. Office of Zoning, Board of Adjustment, located at 441 Fourth Street, NW, Suite 210S, Washington, D.C. 20001.

If you file an appeal, please send a copy of your appeal, including any supporting documents and pleadings to the Zoning Administrator, Mr. Bill Crews, 941 North Capitol Street, NE, Suite 2000, Washington, D.C. 20002.

If you have any questions, you may contact my office at (202) 442-9554.

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From:JRW PC ROCKVILLE MD

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NOTICE OF REVOCATION OF
CERTIFICATE OF OCCUPANCY NUMBER CO61776
Page 3 of 3

Date: 10.19.06


Bill Crews
Zoning Administrator

CERTIFICATE OF PERSONAL SERVICE

D.C. ZONING INSPECTOR _____ PERSONALLY
SERVED THIS NOTICE OF REVOCATION ON THE _____ DAY OF
SEPTEMBER 2006 AT _____ M. SERVICE WAS EFFECTED UPON
_____, WHO WAS THEN LOCATED ON THE
PREMISES AT _____

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EXHIBIT 2

BZA ORDER No. 6885

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Appeal #6885

PUBLIC HEARING--August 21, 1962

Mr. Davis:

I move that the following Order be entered:

ORDERED:

That the appeal of Anita S. and Aubrey W. Williams to change a nonconforming use from a rooming house to apt. house at 3256 N St. N.W., lot 821, square 1218, be granted.

From the records and the evidence adduced at the hearing, the Board finds the following facts:

(1) Appellant's lot has a frontage of 20 feet on N Street and a depth of 81 feet on Potomac Street. The lot contains an area of 1620 square feet of land and the improvements consist of a three-story row dwelling.

(2) Evidence adduced at the hearing indicates that the building has been used as an apartment house although licensed as a rooming house. The basement contains two apartments; the first floor one apartment, and the top floor two apartments for a total of five. Evidence indicates that the building has been used for multi-family occupancy as far back as 1925, but are actually apartments with separate housekeeping units each having a bath and a kitchen.

~~(3) No structural alterations will be required in the building either interior or exterior, an apartment house license being required to legalize the existing use.~~

(4) There was considerable evidence in support of this appeal in the form of letters from property owners in the near vicinity. There was some opposition from the Georgetown Citizens' Assn. and the Progressive Citizens' Assn. of Georgetown.

OPINION:

We are of the opinion that the sanctioning of a license for an apartment house in this instance will not affect adversely the present character of future development of the neighborhood in accordance with these regulations and the Comprehensive Plan for the District of Columbia, as evidence indicates the building has been so used for many years.

We are further of the opinion, from an inspection of the plans, that the units (5) are adequate in area and will not be objectionable in this R-3 District, as no structural alterations will be required either on the inside or outside of the structure and will give the appearance of a single-family row house. In this respect we are also of the opinion that the new use as an apartment house will be less objectionable than would be a rooming house, as the apartment house will accommodate less persons than would be the case if converted to a rooming house.

This Order shall be subject to the following condition:

(a) This apartment house shall be limited to five units.

Mr. Kooner: I second the motion. Motion carried with Mr. Clouser and Mr. Scrivener absent.

EXHIBIT 3

AFFIDAVIT OF MS. MARY WAGSHAL

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**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of MLW, LLC

BZA Appeal No. _____
ANC 2E

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AFFIDAVIT

I, Mary Wagshal, duly sworn, depose and state as follows:

1. I am over twenty one (21) years of age and make this Affidavit based on personal knowledge of the facts set forth herein.
2. I am the Managing Member of MLW, LLC ("MLW"), a District of Columbia limited liability corporation which owns the real property and improvements located at 3256 N Street, N.W. (Square 1218, Lot 104) (the "Property"), and am authorized to make this Affidavit on behalf of MLW in support of the above-captioned BZA Appeal.
3. MLW acquired the Property on September 6, 2002. Subsequently, MLW applied for a transfer of the Certificate of Occupancy, and on September 9, 2003, DCRA issued Certificate of Occupancy No. CO61776 (the "Current C of O") authorizing the continued use of the Property as a five (5) unit apartment building.
4. On or about June 4, 2004, MLW submitted an application for a building permit for interior renovations of the Property. On or about June 21, 2005, DCRA issued the building permit authorizing commencement of the interior renovations.
5. On or about August 9, 2004, MLW submitted an application for a building permit for exterior renovations of the Property. On or about March 16, 2005, DCRA issued the building permit authorizing commencement of the exterior renovations.
6. Between October and November of 2005, several additional permits and approvals were issued by DCRA in conjunction with the renovations at the Property.

7. On or about September 29, 2003, MLW submitted a preliminary application for construction loans (consisting of, among others, a business plan, Current C of O, appraisal report, architectural proposal) with First Liberty Bank. The loan application was updated in October, 2004 with current information and financials. Based on the issuance of the Current C of O and the building permits, First Liberty Bank approved a construction loan in favor of MLW in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00).

8. On or about November 3, 2005, construction at the Property commenced.

9. MLW acted specifically in reliance on BZA Order 6885, the Current C of O, and the building permits and other approvals from DCRA when it designed the renovations to the Property and completed construction drawings, obtained construction financing, entered into construction contracts, started construction and continued with construction at the Property and in doing so incurred expenses of almost One Million Three Hundred Thousand Dollars (\$1,300,000.00) as of October 31, 2006.

10. On or about October 19, 2006, Mr. Bill Crews ("Mr. Crews") issued a notice revoking the Current C of O based on discontinuance of a nonconforming use, which was not received by MLW until the following week.

11. Based on the revocation of the Current C of O, MLW will be unable to convert the construction financing into permanent financing for the Property.

12. Based on the revocation of the Current C of O, MLW may be placed in default on its loans with First Liberty Bank.

13. As of October 31, 2006, MLW has obtained Seven Hundred Ninety-Eight Thousand Three Hundred Forty Dollars and Thirty-Eight Cents (\$798,340.38) in construction financing, expended approximately One Million Three Hundred Thousand Dollars

(\$1,300,000.00) in connection with renovation of the Property, and anticipates an additional Six Hundred Fifty Thousand Dollars (\$650,000.00) will be required to complete construction at the Property as authorized by the building permits issued by DCRA.

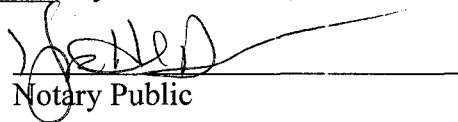
14. As of October 31, 2006, construction at the Property was approximately eighty percent (80%) complete, but MLW had only been billed for approximately sixty-five percent (65%) of the construction costs and the anticipated date of substantial completion is January, 2007.

15. Based on the revocation of the Current C of O, the Property can not be occupied as a five (5) unit apartment when the approved construction is completed.

16. The revocation of the Current C of O prevents MLW from advertising, renting or otherwise occupying the Property as a rental accommodation which is the longstanding use approved by the BZA and DCRA.


Mary Wagshal

Subscribed and sworn to me this 29th day of November, 2006.


Notary Public

My Commission Expires:

YVETTE D. MOORE
A Notary Public Of District Of Columbia
My Commission Expires January 1, 2008

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EXHIBIT 4

1978 C OF O

Duplicate - 579305

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF ECONOMIC DEVELOPMENT

OFFICE OF LICENSES AND PERMITS

PERMIT BRANCH

THIS CERTIFICATE ENCOMPASSES

SQUARE FEET

FEE 508

APPLICATION FOR CERTIFICATE OF OCCUPANCY - RESIDENTIAL

(WRITE WITH TYPEWRITER OR INK)

USE this form if Certificate is to be issued for Hotel, Flat or Apartment, Rooming, Boarding or Tenement House, Day Nursery, Private Club, Convalescent Home, or Other Residential Use.

To the DIRECTOR OF INSPECTION

Date

The applicant(s) requests the issuance of a Certificate of Occupancy for the use of the premises described below, and agrees to comply with all applicable laws and regulations of the District of Columbia, and any terms and conditions appearing on BOTH sides of this application and on any Certificate of Occupancy issued on the basis of this application.

Full Name of Owner(s) of Business JEROME S. WALSH
(See instruction on reverse side) (LAST) (FIRST) (MIDDLE) (LAST)

Description of Premises for which Certificate is Requested

Address 3256 N. ST. N.W. and building to be occupied JEROME S. WALSH 1st 822 1/2 Square 1112Name and address of owner of building 3256 N. ST. N.W. 43 21601To the best of your knowledge is the building now being condemned? NOMaterial of building MASONRY No. of Stories High 2 Basement? YESProposed use APARTMENT HOUSE (ALL FLOORS)Which Floor(s) will be occupied for above use ALLPrevious use APARTMENT HOUSE Will applicant reside on the premises? YES

READ INSTRUCTIONS AND INFORMATION ON REVERSE SIDE OF THIS APPLICATION
PENALTIES ARE PROVIDED FOR MISREPRESENTATION

To Be Filled in by Clerk

IF OWNER OF BUSINESS SIGNS

Law Enforced

Area District

Transcript of No.

E. D. No.

B. Z. A. No.

Bldg. Permit No.

Previous use

More or less than

Name of Clerk

APPROVED

REQUESTED FOR APPROVALS

P.S.

Bldg.

Phg.

Elec.

Under

Date

Date

Date

APPROVED FOR THE USE OF PERMIT

[Signature] 11-3-78

ATTACHMENT 2

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EXHIBIT 5

DEED TO MS. MARY WASHAL

DEED

THIS DEED, made this 22nd day of August, 2002,
by and between MARY L. WAGSHAL, as Personal Representative of
the ESTATE OF JEROME S. WAGSHAL, deceased, party of the first
part; and MARY L. WAGSHAL, devisee, party of the second part.

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D.C. OFFICE OF ZONING

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WITNESSETH:

That for no consideration, the party of the first
part does hereby grant and convey unto the party of the
second part, in fee simple, all of that piece or parcel of
land, together with improvements, rights, privileges and
appurtenances to the same belonging, situate, lying and being
in the District of Columbia, described as follows, to wit:

See Schedule A attached hereto and made a part
hereof

AND the said party of the first part hereby
covenants that it will warrant specially the property hereby
conveyed; and that it will execute such further assurances of
said land as may be requisite.

WITNESS my hand and seal, the day and year
hereinbefore written.

IN PRESENCE OF-

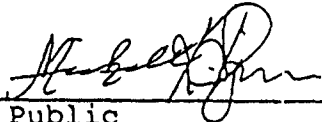
ESTATE OF JEROME S. WAGSHAL

By: Mary L. Wagshal [SEAL]
MARY L. WAGSHAL, Personal
Representative

State of Maryland)
County of Montgomery) ss:

I, Michelle K. Taylor, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that MARY L. WAGSHAL, as the Personal Representative of the ESTATE OF JEROME S. WAGSHAL, party to and who is personally well known to me as the person who executed the foregoing and annexed Deed bearing date on the 22nd day of August, 2002, personally appeared before me in the said jurisdiction and acknowledged the same to be her act and deed.

August Given under my hand and seal, this 22nd day of August, 2002.



Notary Public

My Commission Expires: March 13, 2006

MICHELLE K. TAYLOR
Notary Public, State of Maryland
My Commission Expires Mar. 13, 2006

After Recordation Return To:

Robert M. Reiner, Esq.
Joseph, McDermott & Reiner, P.C.
1050 17TH Street NW, Suite 700
Washington, D.C. 20036

2006 NOV 31 PM 2:26

D.C. OFFICE OF ZONING

RECEIVED

SCHEDULE A

Part of Lot numbered Eighty (80) in Beatty and Hawkins Addition to Georgetown being Square numbered Forty-eight (48), Georgetown, now known as Square numbered Twelve Hundred Eighteen (1218), in the City of Washington, described as follows:

BEGINNING: for the same of the East line of Potomac Street, Eighty-one (81) feet South of the South line of "N" Street, and running thence South Five (5) feet; thence East Twenty (20) feet; thence North Five (5) feet and thence West Twenty (20) feet to the place of beginning; also part of Lot numbered Eighty (80) in Square numbered Twelve Hundred Eighteen (1218), as follows:

BEGINNING: for the same at the intersection of the East line of Potomac Street and the South line of "N" Street, and running thence South along Potomac Street, Eighty-one (81) feet to a private alley, Five (5) feet wide; thence East on the said alley, Twenty (20) feet; thence North parallel with Potomac Street, Eighty-one (81) feet and thence West along "N" Street, Twenty (20) feet to the place of beginning.

NOTE: At the date hereof the above described land is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lots numbered Eight Hundred Twenty-two (822) and Eight Hundred Twenty-three (823) in Square numbered Twelve Hundred Eighteen (1218).
Lot Eight Hundred Twenty-two (822) subject to perpetual use as an alley.

DC. OFFICE OF ZONING

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2008 NOV 21 PM 2:26

EXHIBIT 6

DEED TO MLW, LLC

RECORDED

D.C. OFFICE OF ZONING

2014 NOV 31 PM 2:26

DEED

THIS DEED, made this 6th day of SEPTEMBER 2002,
 by and between MARY L. WAGSHAL, party of the first part; and
 MLW, LLC, a District of Columbia limited liability company,
 party of the second part.

RECEIVED
 D.C. OFFICE OF ZONING
 2006 NOV 31 PM 2:26

WITNESSETH:

That for no consideration, the party of the first part does hereby grant and convey unto the party of the second part, in fee simple, all of that piece or parcel of land, together with improvements, rights, privileges and appurtenances to the same belonging, situate, lying and being in the District of Columbia, described as follows, to wit:

See Schedule A attached hereto and made a part hereof

Being the same property conveyed to the party of the first part by Deed dated August 22, 2002 and recorded on August 26, 2002 among the land records of the District of Columbia.

AND the said party of the first part hereby covenants that she will warrant specially the property hereby conveyed; and that she will execute such further assurances of said land as may be requisite.

WITNESS my hand and seal, the day and year hereinbefore written.

IN PRESENCE OF-

Robert M. Reem

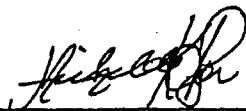
By: Mary L. Wagshal [SEAL]
 MARY L. WAGSHAL

AB3

State of Maryland)
County of Montgomery) ss:

I, Michelle K. Taylor, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that MARY L. WAGSHAL, party to and who is personally well known to me as the person who executed the foregoing and annexed Deed bearing date on the 6th day of September, 2002, personally appeared before me in the said jurisdiction and acknowledged the same to be her act and deed.

Given under my hand and seal, this 6th day of September, 2002.



Notary Public

My Commission Expires: _____

MICHELLE K. TAYLOR
Notary Public, State of Maryland
My Commission Expires Mar. 13, 2006

After Recordation Return To:

Robert M. Reiner, Esq.
Joseph, McDermott & Reiner, P.C.
1050 17TH Street NW, Suite 700
Washington, D.C. 20036

SCHEDULE A

Part of Lot numbered Eighty (80) in Beatty and Hawkins Addition to Georgetown being Square numbered Forty-eight (48), Georgetown, now known as Square numbered Twelve Hundred Eighteen (1218), in the City of Washington, described as follows:

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BEGINNING: for the same at the intersection of the East line of Potomac Street and the South line of "N" Street, and running thence South along Potomac Street, Eighty-one (81) feet to a private alley Five (5) feet wide; thence East on the said alley, Twenty (20) feet; thence North parallel with Potomac Street, Eighty-one (81) feet and thence West along "N" Street, Twenty (20) feet to the place of beginning.

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Lot Eight Hundred Twenty-two (822) subject to perpetual use as an alley.

RECEIVED

D.C. OFFICE OF ZONING

2006 NOV 31 PM 2:27

D.C. OFFICE OF ZONING

2006 NOV 31 PM 2:27

EXHIBIT 7

2003 C OF O

C of O

PERMIT NO.

CO 61776

CERTIFICATE OF OCCUPANCY

THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS

DATE : 9/9/2003

ADDRESS:

3256 N ST NW

FLOOR(S):

BASEMENT
1ST, 2ND & 3RD

PRCLID: 1218

(square)

-0000

0823

(lot)

WARD: 2

ZONE: R3

PERMISSION IS HEREBY GRANTED TO:

CORPORATION: MLW, LLC
ID No.: L12427

TRADING AS:

APPROVED USES:

APARTMENT BUILDING

PREVIOUS USES:

APARTMENT BUILDING

TYPE:

CHANGE OF OWNERSHIP

ADDITIONAL FOOTAGE: OCCUP. LOAD:

29

5

EXPIRATION DATE:

NONE

DESCRIPTION OF USE:

APARTMENT BUILDING (5 UNITS), LOTS 822 & 823

FEE:

\$81.00

THIS CERTIFICATE SHALL BE POSTER CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this certificate VOID and a NEW certificate must be obtained.

David A. Clark
DIRECTOR

PERMIT CLERK:

Shittu

★ ★ ★

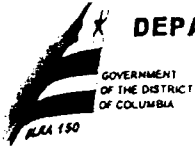
RECEIVED

D.C. OFFICE OF ZONING

2006 NOV 31 PM 2:27

EXHIBIT 8

BUILDING PERMIT APPLICATION

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**BUILDING AND LAND REGULATION ADMINISTRATION
941 NORTH CAPITOL STREET, N.E., 2ND Floor
WASHINGTON, D.C. 20003

QUEUE No:

AP No.

**APPLICATION FOR CONSTRUCTION PERMITS
ON PRIVATE PROPERTY****B**

1. DATE: 06/04/04	2. ADDRESS of PROJECT: 3256 N STREET, NW	3. LOT: 104	4. SQUARE: 1218	5. SUITE:	6. WARD: 2	7. ZONE: RB
8. OWNER OF BUILDING: MLW LLC		9. ADDRESS: 5920 EMPIRE WAY ROCKVILLE, MD 20892		10. PHONE No: 301-770-0770		
11. AGENT FOR OWNER: MARY WAGSHAL		12. ADDRESS:		13. PHONE No:		

BUILDING CODE DATA

14. TYPE OF WORK ☐ New Building ☐ Addition ☒ Alteration ☐ Revision ☒ Repair ☐ Tenant layout ☐ Interior Work Only ☐ Other	15. EXISTING USE GROUP OF BUILDING RESIDENTIAL	16. Exist Dwell. Units: 5
	17. PROPOSED USE GROUP OF BUILDING RESIDENTIAL	18. Prop. Dwell. Units: 5

9. Description of Proposed Work:

INTERIOR WORK ONLY - REHABILITATION AND ALTERATION OF EXISTING 5 UNIT APARTMENT BUILDING.

20. Exist No. of Stories Above Grade. MLW 3 AND BASEMENT	21. Proposed No. of Stories Above Grade. MLW 3 AND BASEMENT	22. Exist No. of Stories Below Grade. MLW 1	23. Proposed No. of Stories Below Grade. MLW 1 AND 1/2
--	---	---	--

ZONING REGULATION DATA

24. Exist. Use(s) APARTMENT BUILDING	25. Exist. No. of Stories 3 NW	26. Exist. Cellar levels. 1 NW
27. Prop. Use(s) APARTMENT BUILDING.	28. Prop. No. of Stories 3 NW	29. Prop. Cellar levels. 1 NW

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

Print

MLW LLC
MARY L. WAGSHAL

Date

6/4/04

Agent: I hereby certify that I have the authority of the owner to make this application. I declare 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

Print

Date

30. Cost of Alteration: \$	31. Cost of Addition \$	32. Square footage of Construction Sq. ft.	33. Volume of Addition or New Building Cu. ft.
-------------------------------	----------------------------	---	---

34. Building Sprinklered? ☒ Yes • Partial • Full • No • Standpipe Type • 13R • 13D	35. Elevators? • Yes ☒ No No. of: _____ Type: _____	36. Plans certified by Engineer? • Yes, certification attached. ☒ No
--	---	---

37. Architects Name: BARNES VANZEE ARCHITECTS	38. Lic No.	39. Address: 1238 Wisconsin Av. SE 202 WASHINGTON, DC 20007	40. Phone No. 202 337 7255
--	-------------	---	-------------------------------

41. Architects E-mail address:	42. Fax No. 202 337 0609
--------------------------------	-----------------------------

43. Engineers Name: ROBERT SILMAN ASSOCIATES	44. Lic No.	45. Address: 1053 31 ST STREET NW WASHINGTON, DC 20007	46. Phone No. 202 333-6230
---	-------------	---	-------------------------------

47. Engineers E-mail address:	48. Fax No. 202 318 3015
-------------------------------	-----------------------------

49. Contractors Name:	50. Lic No.	51. Address:	52. Phone No.
-----------------------	-------------	--------------	---------------

53. Contractors E-mail address:	54. Fax No.
---------------------------------	-------------

FEE(\$)					
---------	--	--	--	--	--

ALTERATION/REPAIR	NEW CONSTRUCTION	PENALTY	FLING FEE	TOTAL FEE(\$)	SIGNATURE	DATE
\$	\$	\$	\$	\$		

Comments:

RECEIVED
 D.C. OFFICE OF ZONING
 2006 NOV 31 PM 2:27

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):**A. PERMIT CONTROL**

- ☒ 1. Fine Arts by: [Signature] Date: 6/4/04
- ☒ 2. Historic by: [Signature] Date: 6/4/04
- ☐ 3. Cap Gateway by _____ Date: _____
- ☐ 4. NCPC _____ Date: _____
- ☐ 5. W.H./Obs. Precinct by _____ Date: _____
- ☐ 6. Flood Control by _____ Date: _____
- ☐ 7. WMATA by _____ Date: _____
- ☐ 8. Condem by _____ Date: _____
- ☐ 9. Rental Accom. by _____ Date: _____
- ☐ 10. Chinatown Distr by _____ Date: _____
- ☐ 11. Utility Clearance by _____ Date: _____
- ☐ 12. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☐ 1. Zoning by _____ Date: _____
- ☐ 2. DDOT - Permit and Records Division
Access to Parking Street ☐ Street ☐ Alley
Cleared by: _____ Date: _____
- ☒ 3. ~~DDOT~~ Consumer Engineer
Cleared by: [Signature] Date: 7/16/04
4. ERA - Erosion Control
Cleared by: _____ Date: _____

Restrictions of the Permit.

Interior work only

**TO REPORT WASTE, FRAUD,
OR ABUSE BY ANY D.C. GOVERNMENT
OFFICIAL, CALL THE D.C. INSPECTOR
GENERAL AT 1-800-521-1639**

C. PLANS AND APPLICATION APPROVAL

- ☒ 1. Information Counter by _____ Date: _____
- ☐ 2. Information Center by _____ Date: _____
- ☐ (a) ABRA 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: _____
- ☒ 3. Zoning by [Signature] Date: 7/5/04
Zoning Update by: _____ Date: _____
Zoning Overlay approval by: _____ Date: _____
- ☐ 4. DDOT - Permit and Records Division/Deposit #
Sidewalk Deposit \$ _____ Driveway Deposit \$ _____
by _____ Date: _____
- ☒ 5. Water/Sewer Design Branch
Consumer Eng. by: _____ Date: _____
- ☐ 6. Environmental Regulation Administration
☐ Environmental Policy Review
Control No _____ Date: _____
☒ Erosion Control by: _____ Date: _____
☐ Storm Water Mgmt. by: _____ Date: _____
Plan No _____
- ☐ Air Quality by _____ Date: _____
- ☐ Underground Storage by: _____ Date: _____
- ☒ 7. Mechanical Eng. Review by _____ Date: _____
- ☒ 8. Plumbing Eng. Review by _____ Date: _____
- ☒ 9. Electrical Eng. Review by: _____ Date: _____
- ☒ 10. Health Plan Review
☐ (a) Food Plan Review by: _____ Date: _____
☐ (b) Medical X-Ray Plan Rev
by: _____ Date: _____
- ☒ 11. Fire Protection Plan Review
by: _____ Date: _____
- ☐ 12. D.C. Fire Dept. (Fire Prevention Plan Review Section)
by: _____ Date: _____
- ☐ 13. Elevator Plan Rev. Sec by: _____ Date: _____
- ☐ 14. Plumbing Insp Rev. by: _____ Date: _____
- ☐ 15. Construction Insp. Branch (Field Check)
by: _____ Date: _____
- ☐ 16. Historic Pres. Div. by _____ Date: _____
- ☐ 17. EISF _____ Date: _____
- ☒ 18. Structural Eng. by: _____ Date: _____
- ☐ 19. Permit and Certificate Issuance Counter
by: _____ Date: _____
- ☐ 20. QC By: _____ Date: _____

ZONING

C of O Number COG1776 Date 9/9/03

Existing Use(s) Apartment Bldg

Proposed Use 5 units - Interior
Work only

- ☐ New Bldg
- ☐ P O D
- ☐ File in
room 2124

DDOT - PUBLIC SPACE

Street Name: _____

Street Width: _____

Road Width: _____

Sidewalk Width: _____

Parking: _____

Restrictions: _____

Job No 1620-B BZA Case No _____ PUD Order No _____

EXHIBIT 9

EXTERIOR PERMIT APPLICATION

RECEIVED

D.C. OFFICE OF ZONING

2006 NOV 31 PM 2:27



GOVERNMENT
OF THE DISTRICT
OF COLUMBIA

BLRA 150

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

BUILDING AND LAND REGULATION ADMINISTRATION
941 NORTH CAPITOL STREET, N.E., 2ND Floor
WASHINGTON, D.C. 20003

APPLICATION FOR CONSTRUCTION PERMITS
ON PRIVATE PROPERTY

QUEUE No: 0
AUG 13 2004
AP No.

B

1. DATE: 8/9/04	2. ADDRESS of PROJECT: 3256 N STREET, NW	3. LOT: 104	4. SQUARE: 1218	5. SUITE:	6. WARD: 2	7. ZONE: R3
8. OWNER OF BUILDING: MLW LLC		9. ADDRESS: 5920 EMPIRE WAY ROCKVILLE, MD 20852		10. PHONE No. 301-770-0770		
11. AGENT FOR OWNER: MARY WAGSHAL		12. ADDRESS:		13. PHONE No. 301 770-0770		
BUILDING CODE DATA						
14. TYPE OF WORK: ☐ New Building ☐ Addition ☒ Alteration ☒ Repair ☐ Revision ☐ Tenant layout ☐ Interior Work Only ☐ Other		15. EXISTING USE GROUP OF BUILDING: RESIDENTIAL APT		16. Exst Dwell. Units. 5		
		17. PROPOSED USE GROUP OF BUILDING: RESIDENTIAL APT		18. Prop. Dwell. Units 5		
19. Description of Proposed Work: REHABILITATION OF EXISTING 5 UNIT APARTMENT BUILDING. WORK TO INCLUDE WINDOW RESTORATION, EXCAVATION OF REAR COURTYARD CONSTRUCTION OF NEW BRICK GARDEN WALLS. A PORCH ROOF WILL BE ADDED TO THE ENTRANCE OF THE REAR BASEMENT APARTMENT.						
20. Exst No. of Stories Above Grade. 3 + B		21. Proposed No. of Stories Above Grade. 3 + B		22. Exst No. of Stories Below Grade. 1		23. Proposed No. of Stories Below Grade. 1
ZONING REGULATION DATA						
24. Exst. Use(s) APARTMENT BUILDING APT		25. Exst. No. of Stories 3		26. Exst. Cellar levels. 1		
27. Prop. Use(s) APARTMENT BUILDING. APT		28. Prop. No. of Stories 3		29. Prop. Cellar levels. 1		
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: <u>Mary L. Wagshal</u> Print <u>MARY L. WAGSHAL</u> Date <u>8-9-04</u> <u>MLW LLC</u> <u>MLW LLC</u>						
Agent: I hereby certify that I have the authority of the owner to make this application. I declare 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: _____ Print _____ Date _____						

102-0



Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration - Permit Service Center

October 15, 2004

Building Permit Application Filing Fee Receipt

Engineering Coordinator: Leon Paul (Eng. Coor)

D.C. TREASURER

RECEIVED
D.C. OFFICE OF ZONING
2004 NOV 31 PM 2:22

Project Identification

Tracking Number:

XXXX D 5

Project Location:

3256 N ST NW

Special requirements

- ☐ Historic ☐ Other:
☐ Fine Arts
☐ BZA

Payment

Make payment to D.C. Treasurer

Filing Fee: \$57.31

Filing fee paid: ☒ _____

Amount paid: \$57.31

Applicant/Agent

MARY WAGSHAL 301-770-0770

Credit BLRA Account # 3012

DCRA strives to complete building permit application reviews in 30 days or less. You can find the status of your application using the property address or tracking number at the DCRA Website:

www.dcrd.dc.gov/services/permits/ldjob.asp

Your tracking number is: XXXX D 5

Approved applications not retrieved and paid for within 120 days of customer notification will be cancelled, after which the customer must re-apply for a building permit.

102-D

RECEIVED
D.C. OFFICE OF ZONING
2006 NOV 31 PM 2:27

POTOMAC STREET

823

(104) ←

EXISTING 3-STORY + BSMT
MASONRY BUILDING

SQUARE 1218 RE-SUBDIVIDED.
RECORDED @ 12:10 PM, JANUARY 29, 2004.
RECORDED IN BOOK 197 ON PAGE 100

APPROVED
Commission of Fine Arts

0004-238

AUG 13 2006

COMMISSION OF FINE ARTS

NEW
GARDEN
WALL

NEW
GATE

NEW REAR
STAIRS

20.0

NEW
FENCE

← SQUARE 1218 RE-SUBDIVIDED.
RECORDED AT 12:10 PM, JANUARY 29, 2004.
RECORDED IN BOOK 197, PAGE 100.

RECEIVED

D.C. OFFICE OF ZONING

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

2016 NOV 31 PM 2: 27 Washington, D.C., June 14, 2004

Plat for Building Permit of SQUARE 1218 LOT 823

Scale: 1 inch = 10 feet Recorded on Microfilm

Receipt No. 12391

Furnished to: TRACY

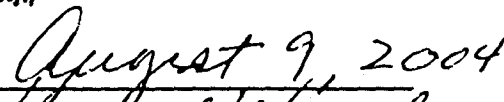
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that 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.)


Surveyor, D.C.

By: L.M.A.



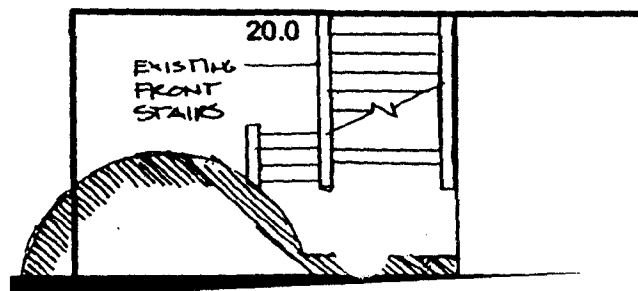
Date: X


August 9, 2004

(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.

N STREET



30. Cost of Alteration: \$	31. Cost of Addition \$	32. Square footage of Construction Sq. ft.	33. Volume of Addition or New Building Cu. ft.
34. Building Sprinklered? ☒ Yes ☐ Partial ☐ Full ☐ No ☐ Standpipe Type ☐ 13R ☐ 13D	35. Elevators? ☐ Yes ☒ No No. of: _____ Type: _____	36. Plans certified by Engineer? ☐ Yes, certification attached. ☒ No	
37. Architects Name: BARNES VANZE ARCHITECTS	38. Lic No.	39. Address: 1238 WISCONSIN AV. NW WASHINGTON DC 20007	40. Phone No. 337 7255
41. Architects E-mail address:		42. Fax No. 337 0609	
43. Engineers Name: ROBERT SILMAN + ASSOC.	44. Lic No.	45. Address: 1053 31 ST ST, NW WASHINGTON DC 20007	46. Phone No. 333 6230
47. Engineers E-mail address:		48. Fax No. 318 3015	
49. Contractors Name:	50. Lic No.	51. Address:	52. Phone No.
53. Contractors E-mail address:		54. Fax No.	
FEE(s)			

ALTERATION/REPAIR	NEW CONSTRUCTION	PENALTY	FILING FEE	TOTAL FEE(S)	SIGNATURE	DATE
\$	\$	\$	\$	\$		
Comments:						

TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICE OR OFFICIAL,
CALL THE INSPECTOR GENERAL AT 1-800-521-1839. ALL CALLS ARE CONFIDENTIAL

0G04-238

3256 N Street, NW

84 N Capital St 3rd Fl

Page 4

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

- ☐ 1. Fine Arts by Paul K. Lawrence Date 24 Sept. '04
- ☒ 2. Historic by Paul K. Lawrence Date 12/1/03
- ☐ 3. Cap Gateway by _____ Date: _____
- ☐ 4. NCPC. _____ Date: _____
- ☐ 5. W H./Obs. Precinct by: _____ Date: _____
- ☐ 6. Flood Control by: _____ Date: _____
- ☐ 7. WMATA by: _____ Date: _____
- ☐ 8. Condem by: _____ Date: _____
- ☐ 9. Rental Accom. by: _____ Date: _____
- ☐ 10. Chinatown Distr by: _____ Date: _____
- ☐ 11. Utility Clearance by _____ Date: _____
- ☐ 12. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

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

Restrictions of the Permit.

TO REPORT WASTE, FRAUD,
OR ABUSE BY ANY D.C. GOVERNMENT
OFFICIAL, CALL THE D.C. INSPECTOR
GENERAL AT 1-800-521-1639

C. PLANS AND APPLICATION APPROVAL

- ☐ 1 Information Counter by: NYV Date: 10/15/04
- ☐ 2. Information Center by: _____ Date: _____
- ☐ (a) ABRA 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: Foye O Date: 11/18/04
- ☒ 3. Zoning by: Foye O Date: 11/18/04
Zoning Update by: _____ Date: _____
Zoning Overlay approval by: _____ Date: _____
- ☐ 4 DDOT - Permit and Records Division/Deposit #
Sidewalk Deposit \$ _____ Driveway Deposit \$ _____
by _____ Date: _____
- ☐ 5. Water/Sewer Design Branch
Consumer Eng. by: _____ Date: _____
- ☐ 6. Environmental Regulation Administration
☐ Environmental Policy Review
Control No _____ Date: _____
☐ Erosion Control by: _____ Date: _____
☐ Storm Water Mgmt by: _____ Date: _____
Plan No _____
- ☐ Air Quality by _____ Date: _____
- ☐ Underground Storage by: _____ Date: _____
- ☐ 7. Mechanical Eng. Review by: _____ Date: _____
- ☐ 8 Plumbing Eng. Review by _____ Date: _____
- ☐ 9. Electrical Eng. Review by: _____ Date: _____
- ☐ 10 Health Plan Review
☐ (a) Food Plan Review by: _____ Date: _____
☐ (b) Medical X-Ray Plan Rev
by: _____ Date: _____
- ☐ 11 Fire Protection Plan Review
by: _____ Date: _____
- ☐ 12. D.C. Fire Dept (Fire Prevention Plan Review Section)
by: _____ Date: _____
- ☐ 13 Elevator Plan Rev. Sec by: _____ Date: _____
- ☐ 14 Plumbing Insp Rev. by: _____ Date: _____
- ☐ 15 Construction Insp. Branch (Field Check)
by: _____ Date: _____
- ☐ 16 Historic Pres. Div. by _____ Date: _____
- ☐ 17 EISF. N/A 1 Date: 10/18/04
- ☒ 18 Structural Eng by: _____ Date: _____
- ☐ 19. Permit and Certificate Issuance Counter
by: _____ Date: _____
- ☐ 20. QC By: _____ Date: _____

DDOT - PUBLIC SPACE

C of O Number

61776

Date

9/9/03

Existing Use(s)

5 Unit Apartment 12 + 1st

Proposed Use

- ☐ New Bldg
☐ P O D
☐ File in room 2124

Street Name: _____

Street Width: _____

EXHIBIT 10

MARCH 2005 PERMIT

10000000

DO. OTTO OF ZONING

2004 NOV 31 PM 2:28

☆☆ GOVERNMENT
OF THE DISTRICT
OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B470714

Date 3/16/05 (Type) ALTERATION AND REPAIR
Address of work 3256 "N" ST. NW.

Permission is hereby granted to

MLW, LLC

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

Authorized work and conditions of performance thereof:

REHAB. OF EXIST'G 5-UNIT APT. BLDG.

WORK INCLUDES WINDOW RESTORATION, EXCAVATION OF REAR COURTYARD AND CONST. OF NEW BRICK GARDEN WALLS. PORCH ROOF WILL BE ADDED TO THE ENTRANCE OF THE REAR BASEMENT APT.

SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED.

Width of Bldgs.

Length

Height

Zone

To be occupied as

Height of terrace above grade

Projections:

Address of owner

Deposit No.

Amount \$

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

THIS PERMIT AUTHORIZES CONSTRUCTION BETWEEN THE HRS. 7:00 AM - 7:00 PM MONDAY - SATURDAYS. AFTER HOURS PERMITS ARE REQUIRED FOR TIME AFTER 7:00 PM SUN.

PATRICK CANAVAN - ACTING DIRECTOR

DIRECTOR

FALSE STATEMENTS OR MISREPRESENTATION OF FACTS ON A PERMIT APPLICATION AND/OR PLANS IS SUBJECT TO CRIMINAL PENALTIES PURSUANT TO DC LAW 22-2405

Lot 104 Square 1218

TOTAL PERMIT FEE

FILING FEE

DATE

FEE PAYABLE

\$ 1176.00

FOR INSPECTIONS CALL 442-4641

Value \$

No. of Bldgs.

No. of Stories

Chief, Permit Issuance Branch

[Signature]

RECORDED

D.C. OFFICE OF ZONING

JUN 21 11 2:28

EXHIBIT 11

JUNE 2005 PERMIT

☆☆ GOVERNMENT
OF THE DISTRICT
OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. **8474036**

Date **6/21/05** (Type) **ALTERATION AND REPAIR**
Address of work **3256 "N" STREET N.W.** Lot **104** Square **28** 1218

Permission is hereby granted to
MLW LLC

(Owner)
NO.

TOTAL PERMIT FEE \$
FILING FEE \$
DATE
FEE PAYABLE \$ **6328.50**

who is authorized to perform the work described herein at the
address shown above in strict accordance with the conditions
stated on BOTH sides of this permit.

Authorized work and conditions of performance thereof:

FOR INSPECTIONS CALL 727-7562

INTERIOR WORK ONLY. REHAB. AND ALTERATION OF EXISTING 5 UNIT APT. BLDG.

INTERIOR WORK ONLY.

THIS PERMIT DOES NOT AUTHORIZE CROSSING PUBLIC SIDEWALK WITH TRUCKS.
SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED.

Builder's
Width of Bldg.

Zone **R-3** WARD: **2**

Height of terrace above grade

Address of owner

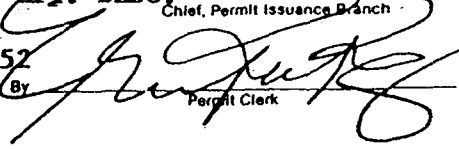
Deposit No.

5920 EMPIRE WY. ROCKVILLE MD 20852

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

To be occupied as
Projections:

APT. BLDG. Chief, Permit Issuance Branch

By  Permit Clerk

PATRICK CANAVAN
DIRECTOR

E. KING

P
E
R
M
I
T

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D.C. OFFICE OF ZONING
2005 NOV 31 PM 2:28

EXHIBIT 12

AFFIDAVIT OF MR. OLUTOYE BELLO

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D.C. OFFICE OF ZONING

2014 NOV 31 PM 2:28

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of MLW, LLC

BZA Appeal No. _____
ANC 2E

AFFIDAVIT

I, Olutoye Bello, duly sworn, depose and state as follows:

1. I am over twenty one (21) years of age and make this Affidavit based on personal knowledge of the facts set forth herein.
2. I am the Managing Member of Bello, Bello & Associates, LLC, a Washington, D.C. based zoning consulting and code compliance, plans review and certified third-party inspection company, and am authorized to make this Affidavit in support of the above-captioned BZA appeal on behalf of the appellant, MLW, LLC ("MLW").
3. I have previously served as the Zoning Administrator for the District of Columbia (October 2004 through May 2005), and was employed by the District of Columbia government for approximately fifteen (15) years in a variety of zoning related positions, including at DCRA and the Office of Zoning. As a result, I have extensive knowledge and understanding of the duties, responsibilities and limitations of the authority of the Office of the Zoning Administrator and the process by which building permits and Certificates of Occupancy are applied for, reviewed, approved/denied, and enforced.
4. The Zoning Administrator for the District of Columbia, among other agencies within the District of Columbia government, reviews applications for construction permits and Certificates of Occupancy, and either approves or disapproves the same based on compliance with the Zoning Regulations. The Zoning Administrator is also responsible for

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reviewing existing building permits and certificates of occupancy for continued compliance with the Zoning Regulations.

5. Both of the building permit applications submitted by MLW were reviewed and expressly approved by the Zoning Administrator's office before the issuance of those permits.

6. Certificate of Occupancy No. CO61776 (September 9, 2003) authorizing use of the Property as a five (5) unit apartment building was reviewed and approved by the Zoning Administrator's Office and remains valid.

7. Based on my extensive experience in the interpretation and enforcement of the Zoning Regulations, it is well established and beyond dispute that any use which is approved and authorized by the Board of Zoning Adjustment runs with the land, is not considered a "nonconforming use" as that term is defined in the Zoning Regulations for the District of Columbia, 11 DCMR § 199.1, and therefore is not subject to the discontinuance provisions of 11 DCMR §2005.1.

8. I have personally reviewed BZA Order No. 6885, and conclude that the Order authorized the use of the real property and improvements located at 3256 N Street, N.W. (Square 1218, Lot 104) (the "Property") as a five (5) unit apartment building without time limitation or other conditions.

9. In my experience, the Zoning Administrator does not have the authority to revoke Certificate of Occupancy No. CO61776 alleging that the use approved by the Board of Zoning Adjustment is "nonconforming" and that use has been discontinued pursuant to 11 DCMR 2005.1.

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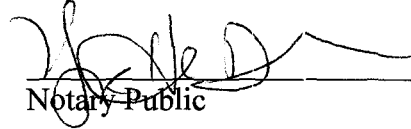
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2006 NOV 31 PM 2:28



Olutoye Bello

Subscribed and sworn to me this 30th day of November, 2006.


Notary Public

My Commission Expires:

302324v1

YVETTE D. MOORE
A Notary Public Of District Of Columbia
My Commission Expires January 1, 2008

EXHIBIT 13

AFFIDAVIT OF MR. KOLAR BOWEN

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2014 MAY 31 PM 2:28

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MLW, LLC,

Plaintiff,

v.

DISTRICT OF COLUMBIA, et al.

Defendants.

Civil Action No. _____

Judge _____

2006 NOV 3 PM 2:28

D.C. OFFICE OF ZONING

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AFFIDAVIT

I, KOLAR W. BOWEN, duly sworn, depose and state as follows:

1. I am over twenty one (21) years of age and make this Affidavit based on personal knowledge in support of the Complaint for Declaratory and Injunctive Relief, the Motion for Preliminary Injunction and the Motion for Temporary Injunction filed by the Plaintiff MLW, LLC ("MLW").

2. I am the Vice-President of RAB Management, Inc. ("RAB"), a real estate services firm located in Washington, D.C., specializing in leasing, construction, construction management and property management.

3. All records referenced herein are in the care and custody of RAB and are maintained in the normal course of business.

4. RAB was retained by MLW as the general contractor in conjunction with a proposed construction project on the five (5) unit apartment building (the "Building") located at 3256 N Street, N.W. in Washington, D.C. (the "Property").

5. All necessary permits and approvals had been obtained by MLW and/or RAB, on behalf of MLW, prior to commencing construction on the Building.

6. On or about November 3, 2005, construction commenced. The initial phase of work on the Building consisted of interior demolition of the plaster and lathing, thereby exposing the support girders for the walls, along with the roof girders and ceiling joists. While the overall structural stability of the Building was known to be diminished prior to commencing the interior demolition, the interior demolition exacerbated the condition as the lathing and plaster were found to offer support for the damaged and failing ceiling joists and roof girders.

7. Due to concerns surrounding the structural integrity of the Building, the structural engineering firm of Robert Silman Associates, P.L.L.C. was retained to inspect the Building. The results of said inspection are stated in the Affidavit of Mr. Christopher Cobb and the accompanying Exhibits to the Affidavit of Mr. Cobb.

8. On December 7, 2005, in the midst of the interior demolition, underpinning and other work which must, by necessity, precede the renovations of the Building, DCRA – Building and Land Regulation Administration issued a Stop Work Order (the "SWO"). See, *Exhibit A, SWO*.

9. On December 8, 2005, MLW, through its attorneys, Jacques B. DePuy, Esq., John Patrick Brown, Jr., Esq. and Lyle M. Blanchard, Esq., and its agents, Ms. Mary Wagshal, Mr. John Hauser and myself, had a conference call with Ms. Theresa Lewis to discuss the SWO. Ms. Lewis agreed to send a DCRA inspector to the Building.

10. Ms. Wagshal, Mr. Hauser and I went directly to the Property to meet the inspector, but the inspector failed to arrive by 6:00 p.m., and we left the Property at that time. After receiving a call from Mr. Blanchard informing me that Mr. Abdullah Barrow, DCRA structural engineer, was en route to the Property, I returned to the Property.

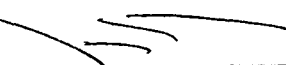
11. Mr. Barrow conducted an inspection in the dark from the rear yard of the building as the sun had set at the time of the inspection.

12. Mr. Barrow, after conducting his inspection, informed me of his belief that there was no danger to the rear wall and that he would allow work to continue with respect to replacement of the roof and roof beams only. Mr. Barrow stated that he was not convinced of any need for the masonry work on the rear wall, and therefore disregarded a request to complete the same prior to undertaking the roof work. Mr. Barrow also indicated that MLW would need to contact Board of Zoning Adjustment to determine the reasons for the issuance of the SWO, and that until the same was done, Mr. Barrow would not authorize any additional work on the Building.

13. Mr. Barrow's inspection was conducted in the dark as the sun had set at the time of the inspection. The inspection was cursory and was conducted from the exterior of the Building.


Kolar W. Bowen

Subscribed and sworn to me this 19th day of January, 2006.


Notary Public

My Commission Expires: 11/30/2006

EXHIBIT 14

FIRST STOP WORK ORDER

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D.C. OFFICE OF ZONING

2006 NOV 31 PM 2:29

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2006 NOV 31 PM 2:29

★★★ GOVERNMENT OF THE
DISTRICT OF
COLUMBIA
CLASS-CR
FORM 10/05

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

STOP WORK

ADDRESS :

3256 N ST. N.W.

VIOLATION:

(Section/s) DCMR 2002 Non Conformance
Structure without BZA Approval
for use since 12/1/01 BZA

PROPER

Permit / Approval SHALL BE OBTAINED AND OR POSTED PRIOR TO THE CONTINUATION OF A
ANY AND ALL PERSONS ACTING CONTRARY TO THIS NOTICE SHALL BE SUBJECT TO A FINE/PROSECUTION

APPLICATION FOR PERMIT(S) MUST BE FILED OR REMOVAL OF VIOLATION MUST OCCUR WITHIN _____
HOURS/DAYS FROM THE POSTING OF THIS NOTICE.



Construction
442-4641



Electrical
442-4643



Plumbing
442-4642



Elevator
442-4634



Bolts
442-4

Time

Date

Official

EXHIBIT 15

LETTER TO MR. LENNOX DOUGLAS – DECEMBER 2005

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D.C. OFFICE OF EDWING

2006 NOV 31 PM 2:29

LAW OFFICES

GREENSTEIN DeLORME & LUCHS, P.C.

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

1620 L STREET, N.W., SUITE 900

WASHINGTON, D.C. 20036-5605

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MONIC Y. HALSEY
DONALD F. HOLMES, JR.
GUY R. JEFFRESS
M. RYAN JENNESS
MIRIAM HELLEN JONES
ISABEL P. SABIO

OF COUNSEL
MICHAEL T. CREHAN

*ADMITTED IN VA ONLY

WRITER'S DIRECT DIAL
(202) 452-1400
J&D@GDLLAW.COM

December 21, 2005

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

Re: 3256 N Street, N.W.; Appeal of Issuance of, and Request for Immediate
Rescission of, Stop Work Order

Dear Mr. Douglas:

Enclosed is a completed Appeal Request Form and a Statement of Justification in
Support of an Appeal of the Issuance of a Stop Work Order.

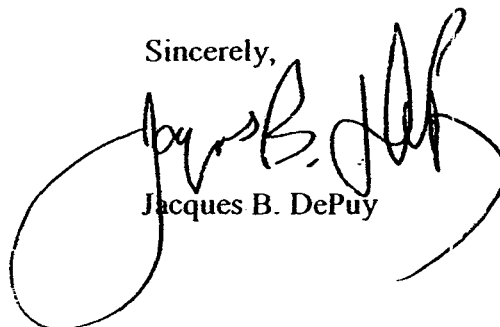
Because construction work (i.e., interior demolition work) at the subject building has
commenced pursuant to a validly issued building permit and because the building was in poor
structural condition prior to the start of construction, the building is in significantly weakened
condition and must be stabilized immediately. See a copy of a letter from a structural engineer
attached to the enclosed Statement.

We request that you act to rescind the Stop Work Order immediately but in no event later
than within three (3) working days as required by 12 DCMR § 112.1.2.

Thank you.

GREENSTEIN DELORME & LUCHS, P.C.
Lennox Douglas
December 21, 2005
Page 2

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Jacques B. DePuy', is written over the typed name.

Jacques B. DePuy

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D.C. OFFICE OF ZONING
2005 NOV 31 PM 2:29

JBD:mac278738v1
Enclosures

cc: Mr. Neil Stanley
Ms. Theresa Lewis
Mr. Patrick Canavan
Mr. Floyd May
Mr. Bill Crews
Ms. Mary Wagshal
Mr. Kolar Bowen
Richard W. Luchs Esquire

(All copies w/ enclosures)

EXHIBIT 16

LETTER TO DR. PATRICK J. CANAVAN

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D.C. OFFICE OF ZONING

2006 NOV 31 PM 2:20

LAW OFFICES

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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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WASHINGTON, D.C. 20036-5605

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GUY R. JEFFRESS
M. RYAN JENNESS
MIRIAM ELLEN JONES
ISABEL P. SABIO*

OF COUNSEL
MICHAEL T. CREHAN
*ADMITTED IN VA ONLY

LMB@GDLLAW.COM

December 30, 2005

BY MESSENGER

Dr. Patrick J. Canavan
Director
Department of Consumer and Regulatory
Affairs
941 North Capitol Street, N.E., Suite 9500
Washington, DC 20002

Re: Appeal of Issuance of, and Request for Immediate Rescission of, Stop Work
Order; 3256 N Street, N.W. (the "Property")

Dear Dr. Canavan:

On behalf of our client, the owner of the above-referenced Property, this letter constitutes our appeal to the Director of the Department of Consumer and Regulatory Affairs (DCRA) pursuant to Title 12 of District of Columbia Municipal Regulations (DCMR) section 112.1.2 (District of Columbia Building Code Supplement of 2003). This is appeal for the Director's review is based on the non-action of the code official within three (3) working days to the enclosed appeal which we filed on December 21, 2005. I confirmed verbally with Mr. Lennox Douglas that he was not able to take action on the enclosed appeal with the prescribed period. Therefore, on behalf of the Property owner, we are filing this appeal and request that you act on this appeal within the three (3) working day period specified in section 112.1.2 (a copy of this section is also enclosed).

Immediate action is required for reasons of public safety. Because construction work (i.e., interior demolition work) at the subject building had commenced pursuant to a validly issued building permit and because the building was in poor structural condition prior to the start of construction, the building is in significantly weakened condition and must be stabilized immediately. See a copy of a letter from a structural engineer attached to the enclosed Statement.

GREENSTEIN DELORME & LUCHS, P.C.

Mr. Patrick J. Canavan

December 30, 2005

Page 2

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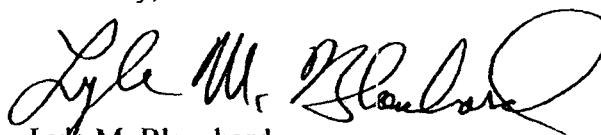
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We request that you act immediately to rescind the Stop Work Order and in no event later than within three (3) working days as required by 12 DCMR §112.1.2.

Thank you.

Sincerely,



Lyle M. Blanchard

279270v1

Enclosures

cc: Ms. Theresa Lewis
Mr. Neil Stanley
Mr. Lennox Douglas
Mr. Bill Crews
Ms. Mary Wagshal
Mr. Kolar Bowen
Richard W. Luchs, Esquire
Jacques B. DePuy, Esquire

(All copies w/ enclosures)

EXHIBIT 17

SUPPLEMENTARY STATEMENT TO DR. CANAVAN

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D.C. OFFICE OF ZONING

2008 NOV 31 PM 2:30

LAW OFFICES
GREENSTEIN DeLORME & LUCHS, P.C.

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ABRAHAM J. GREENSTEIN
GILBERT E. DeLORME
VINCENT MARK J. POLICY
RICHARD W. LUCHS
JUDITH R. GOLDMAN
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WASHINGTON, D.C. 20036-5605

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M. RYAN JENNESS
MIRIAM ELLEN JONES
ISABEL P. SABIO*

OF COUNSEL
MICHAEL T. CREHAN
*ADMITTED IN VA ONLY

WRITER'S-DIRECT DIAL
(202) 452-1400
LMB@GDLAW.COM

January 9, 2006

BY MESSENGER

Dr. Patrick Canavan

Director

Department of Consumer and Regulatory Affairs

941 North Capitol Street, N.E., Suite 9500

Washington, D.C. 20002

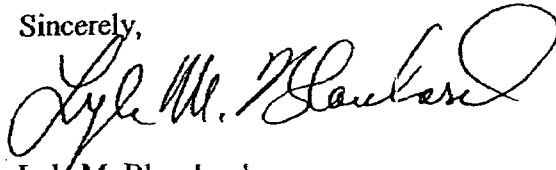
Re: Appeal of Issuance of, and Request for Immediate Rescission of, Stop Work Order; 3256 N Street, N.W. ("Property")

Dear Dr. Canavan:

Enclosed herewith is a supplementary statement in support of our appeal of the Stop Work Order issued in conjunction with the Property. This statement is in furtherance of my letter to you dated December 30, 2005.

Please respond immediately.

Sincerely,



Lyle M. Blanchard

LMB:mac279670v1

Callaway
1/9/06

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DO NOT REPLY
JAN 10 2:30 PM
FBI/DOJ

GREENSTEIN DELORME & LUCHS, P.C.
January 9, 2006
Page 2

cc: Ms. Theresa Lewis
Mr. Neil Stanley
Mr. Lennox Douglas
Mr. Bill Crews
Ms. Mary Wagshal
Mr. Kolar Bowen
Richard W. Luchs, Esquire
Jacques B. DePuy, Esquire
(All copies w/encls. by electronic mail or First Class Mail)

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SUPPLEMENTARY STATEMENT IN SUPPORT OF APPEAL OF STOP WORK ORDER

3256 N Street, N.W.

This Supplementary Statement is submitted on behalf of the owner of 3256 N Street, N.W. by its attorneys Greenstein DeLorme & Luchs, P.C. and is in furtherance of an appeal of the issuance of a Stop Work Order dated December 7, 2005 (SWO).

The initial appeal of the SWO by the property owner was made by letter to Mr. Lennox Douglas, Acting Administrator, BLRA dated December 21, 2005. Since no action was taken by Mr. Douglas in response to such appeal, a subsequent and further appeal of the SWO was made by letter addressed to Mr. Patrick Canavan, Director, D.C. Department of Consumer and Regulatory Affairs dated December 30, 2005.

The matters contained in this Supplementary Statement are in furtherance of and supplement the matters contained in the referenced appeals to Messrs. Douglas and Canavan.

The unsigned Stop Work Order dated December 7, 2005 issued "per Bill Crews", Zoning Administrator, is invalid on its face for the following reasons:

1. The SWO Incorrectly States -- as the Sole Alleged Violation -- that the Use of 3256 N Street, N.W. constitutes a "Non Conforming" Use Pursuant to "DCMR11 2002".

Section 2002 of the Zoning Regulations pertains to "nonconforming uses within structures." A "nonconforming use" is defined as follows:

(A)ny use of land or of a structure, or of a structure and land in combination, lawfully in existence at the time this title or any amendment to this title became effective, that does not conform to the use provisions for the district in which the use is located....
11 DCMR § 199.1 The Zoning Regulations became effective on May 12, 1958. See 11 DCMR § 100.2.

The use of the building at 3256 N Street, N.W. as an "apartment house" with five (5) apartment units was authorized by order of the Board of Zoning Adjustment (BZA) in Appeal No. 6885 dated August 21, 1962. See attached Exhibit "A". Certificate of Occupancy Number CO61776 authorizing such apartment house use was issued on September 9, 2003. See attached Exhibit "B".

Based on the foregoing, the apartment house use of the Property was specifically authorized by the Board of Zoning Adjustment and was never, and is not now, a "nonconforming use". The apartment house use was not in existence on May 12, 1958 and was not a use "lawfully in existence" when the Zoning Regulations were adopted. (To the contrary, such a use was first authorized four (4) years after the Zoning

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Regulations were adopted.) The apartment house use was specifically authorized by order of the BZA, not by operation of law as the result of the adoption of new zoning regulations. Thus, since the apartment house use is not a "nonconforming use", a SWO that is issued based on such an erroneous allegation is invalid on its face.

2. Because the Exterior and Interior Work to Renovate the Apartment House Was Authorized by DCRA by Validly Issued Building Permits and No Allegation was or has been Made by DCRA that the Work Performed at the Time of the Issuance of the SWO is or was Contrary to the Validly Issued Building Permits, DCRA is Estopped and Barred from Issuing the SWO

The exterior and interior work to renovate the apartment house was duly authorized by DCRA pursuant to the following building permits:

<u>Building Permit Number</u>	<u>Date of Issuance</u>	<u>Purpose</u>
1. B470714	3/16/05	Rehab. Of Existing 5 Unit Apt. Bldg. Work Includes Window Restoration, Excavation of Rear Courtyard and Const. of New Brick Garden Walls. Porch Roof Will Be Added to the Entrance of the Rear Basement Apt.
2. B474036	6/21/05	Interior work only. Rehab. And Alteration of Existing 4 Unit Apt. Bldg. Interior Work Only
3. PA15617	10/24/05	Occupy Roadway With Dumpster 20'Inth. 10"
4. EL107516	11/9/05	Stringers, Temp Quad Outlet
5. EL107336	11/7/05	Outlets, Lights, Electric Range, Garbage Disposal, Dish Washer, Hot Water Heater, Service Meter, Motor/Generator
6. PLBG107613	11/9/05	Bath Tubs, Water Closets, Sinks, Basins, Garbage Disposal; Water Heaters, Gas Range, Gas Oven, Gas Furnace
7. AC107812	11/9/2005	Refurbish Air Conditioning

As a result of the validly issued building permits issued by DCRA, the property owner commenced work on the building on approximately November 3, 2005.

DCRA is estopped and barred from issuing a SWO for work performed pursuant to validly issued building permits at 3256 N Street, N.W. since there has been no allegation that the work performed is in violation of such validly issued building permits and the property owner proceeded to undertake work in reliance on the permits. In District of Columbia v. Cahill, 54 F. 2d 453 (D.C.1931), the Court of Appeals held that

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the District, a municipal corporation, could be estopped from revoking a certificate of occupancy where the permit holder had "in good faith under affirmative acts of a municipal corporation [made] expensive and permanent improvements in reliance [on the District's granting of the permit], 'because the permit holder... would be unjustly and inequitably deprived of the rights which the corporation granted to him." See also Permanent Financial Corporation v. Montgomery County, 518 A.2d 123 (1986)(where the developer expended substantial funds in reliance on County approval of its building permits, the County was estopped from preventing construction on the building); Town Center Management v. District of Columbia Rental Housing Commission, 496 A.2d 264 (D.C. 1985) (applying estoppel to administrative agencies)

Based on the foregoing, we request that the Stop Work Order be immediately rescinded.

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EXHIBIT 18

JANUARY 2006 COMPLAINT

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MLW, LLC,
5920 Empire Way
Rockville, MD 20852

Plaintiff,

v.

PATRICK J. CANAVAN,
ACTING ADMINISTRATOR,
DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
941 North Capitol Street, N.E.
Suite 9500
Washington, D.C. 20002

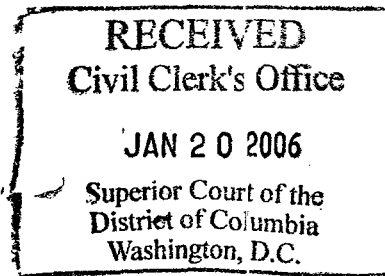
and

THE DISTRICT OF COLUMBIA
Serve: Mayor Anthony A. Williams
c/o Mr. Len Becker
1350 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004

Serve: Robert J. Spagnoletti, Esq.
c/o Ms. Darlene Fields
Registered Agent, District of Columbia
441 4th Street, N.W.
Suite 600 South
Washington, D.C. 20001

Serve: Office of Risk Management
Attn: Claims
441 4th Street, N.W.
Suite 800 South
Washington, D.C. 20001

Defendants.



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Civil Action No. _____
Judge _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

PLAINTIFF MLW, LLC, by counsel, hereby sues Defendants PATRICK J. CANAVAN, and THE DISTRICT OF COLUMBIA and states:

JURISDICTION AND STATEMENT OF CASE

1. This Court has jurisdiction pursuant to D.C. Code §§ 11-921 (2001 ed.).
2. This is an action for temporary, preliminary and permanent injunctions against Defendants. Plaintiff seeks injunctive relief against Defendants to enjoin them from acting in violation of applicable law and/or regulations governing the issuance and appeal of a Stop Work Order in connection with previously and validly issued construction permits for substantial rehabilitation of a physical structure in the District of Columbia and to deny Plaintiff ("MLW") its fundamental constitutional right of due process under the law.

PARTIES

3. MLW is a domestic limited liability company which owns the real property and improvements located in Square 1218, Lot 104 (the "Property").
4. Defendant Patrick J. Canavan is the Acting Director of the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA").
5. Defendant District of Columbia is a municipal corporation.

FACTS

6. On or about June 4, 2004, MLW submitted an Application for Construction Permits on Private Property. *See, Exhibit A, Page 1 of Application for Construction Permits.*
7. On or about March 16, 2005, the DCRA – Building and Land Regulation Administration ("BLA") issued the requested construction permits (the "March Permits") authorizing the rehabilitation of the existing five (5) unit apartment building located on the Property (the "Building"). *See, Exhibit B, March Permits; see, Exhibit C, Affidavit of Mr. Kolar Bowen (the "Bowen Affidavit").*

8. On or about June 21, 2005, DCRA – BLA issued an additional permit (the "June Permits") authorizing the rehabilitation and alteration of the interior of the Building. *See, Exhibit D, June Permits; see, Exhibit C, Bowen Affidavit.*

9. On or about November 3, 2005, after obtaining all necessary permits and approvals, construction on the Building commenced in anticipation of major renovations. The work performed on the Building temporarily impacted the structural integrity of the Building. *See, Exhibit C, Bowen Affidavit.*

10. Due to concerns regarding the structural integrity of the Building after the completion of the internal demolition, MLW retained the structural engineering firm of Robert Silman Associates, P.L.L.C. and requested an inspection of the Building be conducted. *See, Exhibit C, Bowen Affidavit; see, Exhibit E, Affidavit of Mr. Christopher Cobb and Exhibits (the "Cobb Affidavit and Exhibits").*

11. On or about Thursday, December 1, 2005, at the request of the architects for the construction project, Barnes Vanze Architects (the "Architects"), acting on behalf of MLW, an inspection and investigation of the existing conditions of the Building was conducted. A summary of the findings of the inspection of the Building, along with recommendations for repair was sent to Wagshal, through the Architects, on December 5, 2005. *See, Exhibit E, Cobb Affidavit and Exhibits.*

12. The inspection revealed two (2) items which require immediate attention to avert a potential collapse of the Building, as well as any resultant injury to, or loss of, human life. The first pertains to the condition of the existing roof girders and the high likelihood of a total roof collapse. The second involves movement, or shifting, of the western wall of the Building, on the

Potomac Avenue side, away from the Building which increases the likelihood of a total roof collapse. *See, Exhibit E, Cobb Affidavit and Exhibits.*

13. Mr. Cobb concluded the likelihood of a total structural failure of the roof is significant. *See, Exhibit E, Cobb Affidavit and Exhibits.* Approximately 3/5 of the roof could collapse and destabilize the westernmost wall of the Building. *See, Exhibit E, Cobb Affidavit and Exhibits.*

14. Mr. Cobb also concluded that the movement of the western (Potomac Avenue) wall of the Building has further destabilized the Building and to prevent a collapse of the western wall the recommended repairs include masonry repair at the rear wall. This repair is also essential to the stability of the south end of the roof. *See, Exhibit E, Cobb Affidavit and Exhibits.*

15. Allowing the Building to remain in its present condition creates a danger to the public at large, as well as the surrounding properties, based on the significant likelihood of a total collapse of the Building. *See, Exhibit E, Cobb Affidavit and Exhibits..*

16. On or about December 7, 2005, DCRA – BLA issued a Stop Work Order (the "Order"), citing "DCMR11 2002 Non-conforming use structure without BZA Approval" as the violation. *See, Exhibit F, Order.*

17. The Order is not signed by the issuing official, containing only a hand-printed note that it was issued "per Bill Crews." *See, Exhibit F, Order.*

18. The Order does not contain a telephone number of the issuing official. *See, Exhibit F, Order.*

19. On or about December 8, 2005, MLW, through counsel, Jacques B. DePuy, Esq., John Patrick Brown, Jr., Esq. and Lyle M. Blanchard, Esq., and its agents, Ms. Mary Wagshal, Mr. John Hauser and Mr. Kolar Bowen, contacted Ms. Theresa Lewis, with questions concerning

the Order. During the telephone conference, Ms. Lewis agreed to dispatch a DCRA structural engineer to the Building that evening. *See, Exhibit C, Bowen Affidavit.*

20. Ms. Wagshal, Mr. Hauser and Mr. Bowen went directly to the building to meet the engineer, but the engineer did not appear by 6:00 p.m. and the aforementioned parties left the Building. Mr. Blanchard, upon learning of the same, contact Ms. Lewis and was informed the engineer was en route. Mr. Blanchard contacted Mr. Bowen and requested that he return to the Building, which he did. *See, Exhibit C, Bowen Affidavit.*

21. Mr. Abdullah Barrow, DCRA Structural Engineer, arrived at the Building at between approximately 6:20 p.m. and 6:30 p.m. and performed a cursory inspection of the Building. Mr. Barrow's inspection was conducted in the dark, as the sun had set by this time, from the rear yard of the Building. *See, Exhibit C, Bowen Affidavit.* At no point did Mr. Barrow enter the Building. *See, Exhibit C, Bowen Affidavit.*

22. Mr. Barrow's opinion was that there was no danger to the rear wall, and he would allow work to continue on the replacement of the roof and the roof beams only. *See, Exhibit C, Bowen Affidavit.*

23. Mr. Barrow was unconvinced, and disregarded, a request to complete the masonry work before proceeding with the roof work. *See, Exhibit C, Bowen Affidavit.*

24. Mr. Barrow indicated that MLW would need to contact DCRA – BZA to determine why the Order was issued before Mr. Barrow would authorize any additional work to be performed. *See, Exhibit C, Bowen Affidavit.*

25. On or about December 21, 2005, MLW, through counsel, sent a letter to Mr. Lennox Douglas, Acting Administrator for DCRA – BLA, pursuant to 12 D.C.M.R. §112.1, appealing the Order. *See, Exhibit G, Letter to Mr. Lennox Douglas dated December 21, 2005.*

26. Mr. Douglas did not respond to the appeal within the three (3) days permitted, or December 26, 2005 (as December 24, 2005 was a Saturday), and, to date no response has been received from Mr. Douglas.

27. On or about December 30, 2005, MLW, through counsel, sent a letter to Dr. Patrick J. Canavan, Director of DCRA, pursuant to 12 D.C.M.R. §112.1.2, appealing the Order. *See, Exhibit H, Letter to Dr. Patrick J. Canavan dated December 30, 2005.*

28. Dr. Canavan did not respond to the appeal within the three (3) days permitted, or January 5, 2006 (due to New Year's holiday weekend), and, to date, no response has been received from Dr. Canavan.

29. On or about January 9, 2006, MLW, through counsel, submitted a Supplementary Statement in Support of Appeal of Stop Work Order (the "Supplementary Statement") to Dr. Canavan. *See, Exhibit I, Supplementary Statement.*

30. Dr. Canavan did not respond to the Supplementary Statement within the three (3) days permitted, or January 12, 2006, and, to date, no response from Dr. Canavan has been received.

COUNT I

(DECLARATORY JUDGMENT AND INJUNCTION)

31. MLW hereby incorporates by reference the allegations or paragraphs 1 – 31, *supra*, as if fully stated herein.

32. An actual controversy of a justiciable nature exists between MLW and Defendants involving the validity of the Stop Work Order issued by DCRA - BLA.

33. By their conduct, Defendants have violated MLW's Constitutional rights to due process.

34. By their conduct, Defendants have violated MLW's right to due process under the District of Columbia Administrative Procedures Act, D.C. Code § 2-209 *et seq.*

35. MLW has no adequate remedy at law.

36. Unless Defendants are restrained by this Court from interfering with MLW's previously approved and issued construction permits, Plaintiff will suffer immediate, substantial and irreparable injury. Plaintiff has a substantial likelihood of success on the merits of the underlying action. The benefits to Plaintiff in obtaining injunctive relief outweigh the potential harm which Defendants would incur if this Court grants the requested injunctive relief. Moreover, the public interest is best served by granting the injunction.

WHEREFORE, Plaintiff requests that this Honorable Court grant the following relief:

(a) a judicial declaration that the Order does not comply with the District of Columbia Administrative Procedures Act, D.C. Code § 2-501, *et seq.* as the Order fails to contained the required contact information and fails to state a valid violation justifying the issuance of the Order;

(b) a judicial declaration that the Order unconstitutionally deprives MLW of its fundamental right to due process and is therefore void;

(c) a temporary restraining order, preliminary injunction and permanent injunction enjoining Defendants from seeking to enforce, in any manner, the Order issued on December 7, 2005 by DCRA - BLA;

(d) a judicial declaration that MLW is not barred by the Order from continuing the necessary work required to avoid a complete and total structural failure of the roof and walls of the Building, and the attendant death and/or injury to human life resulting from the

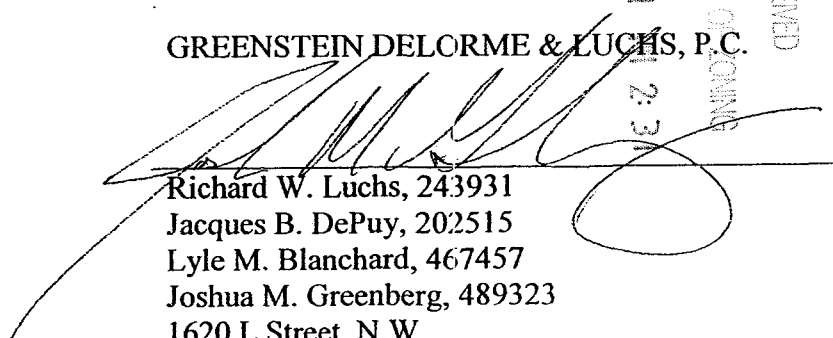
aforementioned structural failure, or from otherwise proceeding in accordance with the previously issued construction permits with respect to the Building;

- (e) an award of the costs of this action, including reasonable attorneys' fees;
- (f) such other and further relief as the Court decides just and proper.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: January 20, 2006


Richard W. Luchs, 243931
Jacques B. DePuy, 202515
Lyle M. Blanchard, 467457
Joshua M. Greenberg, 489323
1620 L Street, N.W.
Suite 900
Washington, DC 20036-5605
Telephone: (202) 452-1400

Counsel for Plaintiff MLW, LLC

279952v1

EXHIBIT 19

JANUARY 2006 MOTIONS FOR TEMPORARY RESTRAINING ORDER
AND
FOR PRELIMINARY INJUNCTION

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

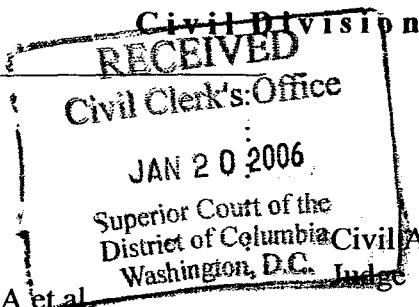
MLW, LLC

Plaintiff,

v.

DISTRICT OF COLUMBIA et al.

Defendants.



Civil Action No.

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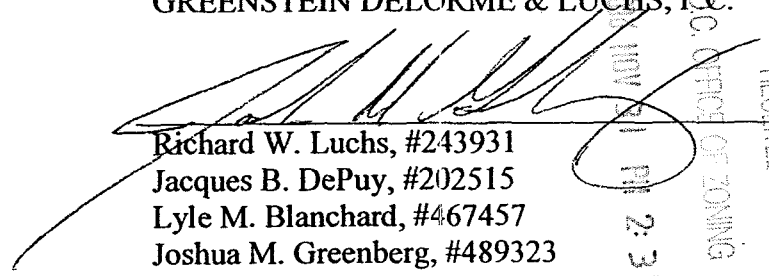
**PLAINTIFF MLW, LLC'S MOTION FOR ENTRY OF A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

PLAINTIFF MLW, LLC (hereinafter "MLW"), through counsel, hereby request this Court enter a Temporary Restraining Order and Preliminary Injunction precluding enforcement of the Stop Work Order of the District of Columbia Department of Consumer and Regulatory Affairs Building and Land Regulation Administration. In support hereof, MLW submits the attached Memorandum of Points and Authorities in Support of Plaintiff MLW, LLC'S Motion for Entry of a Temporary Restraining Order and Preliminary Injunction (hereinafter "Memorandum"). For the reasons set forth in the Memorandum and attached Exhibits, Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction must be granted.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: January 20, 2006


Richard W. Luchs, #243931
Jacques B. DePuy, #202515
Lyle M. Blanchard, #467457
Joshua M. Greenberg, #489323
1620 L Street, N.W.
Suite 900
Washington, DC 20036-5605
Telephone: (202) 452-1400

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Counsel for Plaintiff MLW, LLC

280206V1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Plaintiff MLW, LLC's Motion for Entry of a Temporary Restraining Order, attached Memorandum of Points & Authorities in Support and accompanying exhibits was served via process server (along with Complaint and Summons) and via first class mail this 20th day of January, 2006, on:

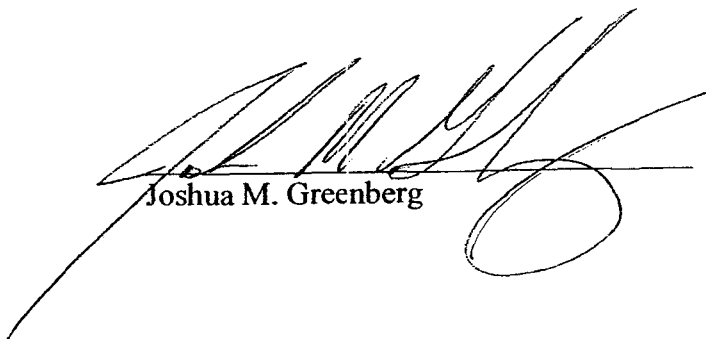
Mayor Anthony A. Williams
c/o Mr. Len Becker
1350 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004

Julie Lee, Esq.
General Counsel
District of Columbia Department of Consumer and Regulatory Affairs
941 North Capitol Street, S.E.
Suite 9400
Washington, D.C. 20002

Dr. Patrick J. Canavan
Acting Director
District of Columbia Department of Consumer and Regulatory Affairs
941 North Capitol Street, S.E.
Suite 9500
Washington, D.C. 20002

Andrew J. Saindon, Esq.
Assistant Corporation Counsel
441 Fourth Street, N.W.
Sixth Floor South
Washington, D.C. 20001

Robert J. Spagnoletti, Esq.
c/o Ms. Darlene Fields
Registered Agent – District of Columbia
441 4th Street, N.W.
Suite 600 South
Washington, D.C. 20001


Joshua M. Greenberg

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MLW, LLC

Plaintiff,

v.

DISTRICT OF COLUMBIA et al.

Defendants.

Civil Action No.
Judge

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ORDER REGARDING TEMPORARY RESTRAINING ORDER

Upon consideration of the Plaintiff MLW, LLC's Motion for Entry of a Temporary Restraining Order and Preliminary Injunction (hereinafter "Plaintiff's Motion"), along with the Memorandum of Points and Authorities in Support of Plaintiff's Motion and attached Exhibits, it is, by this Court, as of this _____ day of January, 2006, it is:

ORDERED that Plaintiff's Motion is GRANTED; and

IT IS FURTHER ORDERED that a Temporary Restraining Order in favor of Plaintiff MLW, LLC is hereby entered; and

IT IS FURTHER ORDERED that Defendants' Stop Work Order is hereby declared null and void; and

IT IS FURTHER ORDERED that Plaintiff may recommence construction on the building located at 3256 N Street, N.W. in Washington, D.C., pursuant to the building permits issued by the District of Columbia Department of Consumer and Regulatory Affairs – Building and Land Regulation Administration.

IT IS FURTHER ORDERED that Defendants are enjoined from seeking to enforce, in any manner, the Stop Work Order issued on December 7, 2005 by the District of Columbia Department of Consumer and Regulatory Affairs – Building and Land Regulation Administration.

Associate Judge
District of Columbia Superior Court

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COPIES TO:

Richard W. Luchs, Esq.
Jacques B. DePuy, Es.
Lyle M. Blanchard, Esq.
Joshua M. Greenberg, Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W.
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Washington, DC 20036-5605

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Civil Action No.
Judge

ORDER REGARDING PRELIMINARY INJUNCTION

Upon consideration of the Plaintiff MLW, LLC's Motion for Entry of a Temporary Restraining Order and Preliminary Injunction (hereinafter "Plaintiff's Motion"), along with the Memorandum of Points and Authorities in Support of Plaintiff's Motion and attached Exhibits, it is, by this Court, as of this _____ day of January, 2006, it is:

ORDERED that Plaintiff's Motion is GRANTED; and

IT IS FURTHER ORDERED that a Preliminary Injunction in favor of Plaintiff MLW, LLC is hereby entered; and

IT IS FURTHER ORDERED that Defendants' Stop Work Order is hereby declared null and void; and

IT IS FURTHER ORDERED that Plaintiff may recommence construction on the building located at 3256 N Street, N.W. in Washington, D.C., pursuant to the building permits issued by the District of Columbia Department of Consumer and Regulatory Affairs – Building and Land Regulation Administration.

IT IS FURTHER ORDERED that Defendants are enjoined from seeking to enforce, in any manner, the Stop Work Order issued on December 7, 2005 by the District of Columbia Department of Consumer and Regulatory Affairs – Building and Land Regulation Administration.

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Associate Judge
District of Columbia Superior Court

COPIES TO:

Richard W. Luchs, Esq.
Jacques B. DePuy, Es.
Lyle M. Blanchard, Esq.
Joshua M. Greenberg, Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W.
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Suite 600 South
Washington, D.C. 20001

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MLW, LLC

Plaintiff,

v.

DISTRICT OF COLUMBIA et al.

Defendants.

Civil Action No.
Judge

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**PLAINTIFF MLW, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS MOTION FOR ENTRY OF TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

I. INTRODUCTION

The Defendants in this case have purportedly enjoined Plaintiff through a "Stop Work Order" from continuing construction and rehabilitation work which had previously received all permits and approvals, even though the Regulation which governs the issuance of Stop Work Orders – 12 D.C.M.R. 114.1 – expressly requires that a Stop Work Order contain specific information, which the Defendants have failed to include. At no time since the Stop Work Order (the "Order") was issued, or at any point prior to issuance of the same, have the Defendants even proposed to hold a hearing, let alone hold one. Plaintiff asks this Court to declare the Order invalid which, as shown below, it clearly is. This will permit the Plaintiff to proceed with the construction and rehabilitation work previously approved by the District of Columbia, and to prevent a complete and total structural failure of the subject property.

II. FACTUAL BACKGROUND

MLW is a domestic limited liability company which owns the real property and improvements located in Square 1218, Lot 104 (the "Property"). Defendant Patrick J. Canavan

is the Director of the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), and the Defendant District of Columbia is a municipal corporation.

On or about June 4, 2004, MLW submitted an Application for Construction Permits on Private Property. See, Exhibit A, Page 1 of Application for Construction Permits. On or about March 16, 2005, the DCRA – Building and Land Regulation Administration ("BLA") issued the requested construction permits (the "March Permits") authorizing the rehabilitation of the existing five (5) unit apartment building located on the Property (the "Building"). See, Exhibit B, March Permits; see, Exhibit C, Affidavit of Mr. Kolar Bowen (the "Bowen Affidavit"). On or about June 21, 2005, DCRA – BLA issued an additional permit (the "June Permit") authorizing the rehabilitation and alteration of the interior of the Building. See, Exhibit D, June Permits; see, Exhibit C, Bowen Affidavit.

On or about November 3, 2005, after obtaining all necessary permits and approvals, construction on the Building commenced in anticipation of major renovations. The work performed on the Building temporarily impacted the structural integrity of the Building. See, Exhibit C, Bowen Affidavit. The initial phase of the work on the Building consisted of interior demolition of the plaster and lathing, thereby exposing the support girders for the walls, along with the roof girders and ceiling joists. While the overall structural stability of the Building was known to be diminished **prior** to the commencement of the interior demolition, the interior demolition exacerbated the condition and revealed that the overall condition of the Building was in a significantly weakened and imminently dangerous condition, as the lathing and plaster were found to offer support for the damaged and failing ceiling joists and roof girders. See, Exhibit C, Bowen Affidavit; see, Exhibit E, Affidavit of Mr. Christopher Cobb and attached Exhibits (the "Cobb Affidavit and Exhibits").

Due to concerns regarding the structural integrity of the Building after the completion of the internal demolition, MLW retained the structural engineering firm of Robert Silman Associates, P.L.L.C. and requested an inspection of the Building be conducted. See, Exhibit C, Bowen Affidavit; see, Exhibit E, Cobb Affidavit and Exhibits. The inspection was held on Thursday, December 1, 2005. A summary of the findings of the inspection of the Building, along with recommendations for repair was sent to Wagshal, through the Architects, on December 5, 2005 (the "Inspection Letter"). See, Exhibit E, Cobb Affidavit and Exhibits.

The inspection revealed two (2) items which require immediate attention to avert a potential imminent collapse of the Building, as well as any resultant injury to, or loss of, human life. The first pertains to the condition of the existing roof girders and the high likelihood of a total roof collapse. The second involves movement, or shifting, of the western wall of the Building, on the Potomac Avenue side, away from the Building which increases the likelihood of a total roof collapse. See, Exhibit E, Cobb Affidavit and Exhibits.

Mr. Cobb concluded the likelihood of a total structural failure of the roof is significant. See, Exhibit E, Cobb Affidavit and Exhibits. Approximately 3/5 of the roof could collapse and destabilize the westernmost wall of the Building. See, Exhibit E, Cobb Affidavit and Exhibits.

Mr. Cobb also concluded that the movement of the western (Potomac Avenue) wall of the Building has further destabilized the Building and to prevent a collapse of the western wall the recommended repairs include masonry repair at the rear wall. This repair is also essential to the stability of the south end of the roof. See, Exhibit E, Cobb Affidavit and Exhibits.

Allowing the Building to remain in its present condition creates a danger to the public at large, as well as the surrounding properties, based on the significant likelihood of a total collapse of the Building. See, Exhibit E, Cobb Affidavit and Exhibits.

On or about December 7, 2005, in the midst of the interior demolition, underpinning and other work, which by necessity must proceed the planned renovations of the Building, DCRA – BLA issued a Stop Work Order (the "Order"), citing "DCMR11 2002 Non-conforming use structure without BZA Approval" as the violation. See, Exhibit F, Order. The Order is not signed by the issuing official, containing only a hand-printed note that it was issued "per Bill Crews." See, Exhibit F, Order. Furthermore, the Order does not contain the telephone number of the issuing official. See, Exhibit F, Order.

On or about December 8, 2005, MLW, through counsel, Jacques B. DePuy, Esq., John Patrick Brown, Jr., Esq. and Lyle M. Blanchard, Esq., and its agents, Ms. Mary Wagshal, Mr. John Hauser and Mr. Kolar Bowen, contacted Ms. Theresa Lewis with questions concerning the Order. See, Exhibit C, Bowen Affidavit. During the telephone conference, Ms. Lewis agreed to dispatch a DCRA structural engineer to the Building that evening. See, Exhibit C. Ms. Wagshal, Mr. Hauser and Mr. Bowen went directly to the building to meet the engineer, but the engineer did not appear by 6:00 p.m. and the aforementioned parties left the Building. Mr. Blanchard, upon learning of the same, contact Ms. Lewis and was informed the engineer was en route. Mr. Blanchard contacted Mr. Bowen and requested that he return to the Building, which he did.

Mr. Abdullah Barrow, DCRA Structural Engineer, arrived at the Building at between approximately 6:20 p.m. and 6:30 p.m. and performed a cursory inspection of the Building. See, Exhibit C, Bowen Affidavit. Mr. Barrow's inspection was conducted in the dark, as the sun had set by this time, from the rear yard of the Building. See, Exhibit C, Bowen Affidavit. At no point did Mr. Barrow enter the Building. See, Exhibit C, Bowen Affidavit. Mr. Barrow's opinion was that there was no danger to the rear wall, but that he would allow work to continue

on the replacement of the roof and the roof beams only. See, Exhibit C, Bowen Affidavit. Mr. Barrow was unconvinced, and disregarded, a request to complete the masonry work before proceeding with the roof work. See, Exhibit C, Bowen Affidavit. Mr. Barrow indicated that MLW would need to contact DCRA – Board of Zoning Adjustment, even though BLA issued the Order, to determine why the Order was issued before Mr. Barrow would authorize any additional work to be performed.

On or about December 21, 2005, MLW, through counsel, sent a letter to Mr. Lennox Douglas, Acting Administrator for DCRA – BLA, pursuant to 12 D.C.M.R. §112.1, appealing the Order. See, Exhibit G, Letter to Mr. Lennox Douglas dated December 21, 2005. Mr. Douglas did not respond to the appeal within the three (3) days permitted, or December 26, 2005 (as December 24, 2005 was a Saturday), and, to date no response has been received from Mr. Douglas.

On or about December 30, 2005, MLW, through counsel, sent a letter to Dr. Patrick J. Canavan, Director of DCRA, pursuant to 12 D.C.M.R. §112.1.2, appealing the Order. See, Exhibit H, Letter to Dr. Patrick J. Canavan dated December 30, 2005. Dr. Canavan did not respond to the appeal within the three (3) days permitted, or January 5, 2006 (due to New Year's holiday weekend), and, to date, no response has been received from Dr. Canavan.

On or about January 9, 2006, MLW, through counsel, submitted a Supplementary Statement in Support of Appeal of Stop Work Order (the "Supplementary Statement") to Dr. Canavan. See, Exhibit I, Supplementary Statement. Dr. Canavan did not respond to the Supplementary Statement within the three (3) days permitted, or January 12, 2006, and, to date, no response from Dr. Canavan has been received.

III. LEGAL ARGUMENT

The standards for granting a temporary restraining order and a preliminary injunction, as set forth in In re Antioch, 418 A.2d 105, 109 (D.C. 1983), are as follows:

- (a) likelihood of success on the merits of the underlying cause of action;
- (b) likelihood of irreparable injury in the absence of preliminary injunctive relief;
- (c) the balancing of the harms favors granting the request for injunctive relief; and
- (d) the public interest will be served by granting the injunctive relief sought.

Id.

While all four of the elements are addressed below, "[i]f the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak."

CityFed Fin. Corp. v. Office of Thrift Supervision, 58 F.3d 738, 747 (D.C. Cir. 1995). An injunction may be justified "where there is a particularly strong likelihood of success on the merits even if there is a relatively slight showing of irreparable injury." Id.

A. STATUTORY PROVISION RELIED UPON BY DCRA – BLA

In this case, BLA purported to issue the Order on the basis of 12 D.C.M.R. §114A, specifically §114.1, which provides:

Notice to Owner or Other Responsible Person. Upon notice from the code official that work on any building or structure is being performed contrary to the provisions of the Construction Codes or in an unsafe and dangerous manner, the property shall be posted and such work shall be immediately stopped until the situation is corrected. The stop work order shall be in writing, in a form prescribed by the code official, containing a description of the right to appeal the order, and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work. The stop work order shall state the address of the property and the specific section or sections of the Codes violated. If no responsible person is present to receive the order, the property may be posted, and the stop work order along with an appeals form shall be sent to the owner by first class mail within three (3) working days. No stop work order may be issued nor

considered valid unless it contains all the above information, the name and the telephone number of the official empowered to review the order, and the signature of the issuing official.

12 D.C.M.R. §114A.1 (2003) (as amended May 27, 2005).

B. LIKELIHOOD OF SUCCESS ON THE MERITS

MLW has a high likelihood of success on the merits of this dispute for three reasons.

First, BLA has failed to comply with the requirements for issuing the Order. Second, the alleged violation, that the Building is a nonconforming use, is incorrect and therefore not a valid basis for issuance of the Order. Third, BLA is estopped from issuing the Order, as the work on the Building was undertaken in compliance with, and in reliance on, validly issued building permits and BLA has failed to show that such work is contrary to the building permits. Finally, the BLA actions violate the Constitutional rights of MLW with respect to due process.

1. DCRA – BLA FAILED TO MEET THE PROCEDURAL REQUIREMENTS FOR ISSUING A STOP WORK ORDER

i) THE VIOLATION LISTED IS INAPPLICABLE TO STOP WORK ORDERS

The requirements of 12 D.C.M.R. §114.1, quoted above, pertaining to the issuance of a stop work order are clear and unambiguous. To begin, the stop work order must alleged that "work is being performed contrary to the Construction Codes..." 12 D.C.M.R. 114.1. The Order in the present case does not meet this threshold requirement. The violation listed in the Order reads "DCMR11 2002. Non-conforming use of structure without BZA approval." See, Exhibit E, Order. The District of Columbia Zoning Regulations are not defined in the Building Code as being a part of, or included within the "Construction Codes." See, 12 D.C.M.R. §101.1.1 (Defines the scope of the Construction Codes as comprising Title 12 and the codes listed in Sections 101.2 through 101.4.8). The Zoning Regulations are contained within Title 11 and are therefore, by definition of "Construction Codes" excluded from use as a basis of issuance of a

stop work order. Therefore, the alleged violation of "DCMR11 2002" is not a violation that may result in the issuance of a stop work order, and for that reason alone, the Order is invalid and must be immediately rescinded.

Additionally, the Order does not cite any allegedly illegal, improper or unauthorized construction work. On its face, it refers to a use to which the building may be put at some point in the future. There is no authorization in the Construction Codes for the issuance of a stop work order based on such an alleged future condition. 12 D.C.M.R. §114.1.

ii) THE ORDER FAILS TO CONTAIN THE REQUIRED IDENTIFYING INFORMATION

Furthermore, §114.1 states that "[n]o stop work order may be issued **nor considered valid** unless it contains all of the above information, the name and the telephone number of the official empowered to review the order, and the signature of the issuing official." 12 D.C.M.R. §114.1. None of these requirements are met in the present case.

First, a stop work order is to be issued by a Code Official, who is the Director of DCRA, or a properly authorized and empowered delegate. The Order states, in a handwritten notation, that it was issued "per Bill Crews." Mr. Crews is the Zoning Administrator, and there is no evidence that he has been delegated to act on behalf of the Director of DCRA for the purposes of issuing stop work orders.¹

Second, a stop work order is to contain the signature of the issuing official along with a telephone number to reach the official empowered to review the stop work order. 12 D.C.M.R. §114.1. Notwithstanding the argument that Mr. Crews is not an authorized issuing official, the Order does not bear the requisite signature and telephone number. See, Exhibit E, Order. The Order contains a handwritten note which reads "Zoning 442-4376", but this cannot be construed

¹ Even if Mr. Crews was designated for such a purpose, we submit that such delegation was unlawful because the Zoning Administrator is not a proper official to interpret or enforce the Construction Codes.

to meet the requirement of §114.1 and the specific name and phone number of the "official empowered to review the order." 12 D.C.M.R. §114.1. Therefore, improper notice was given to MLW, and this fact, either alone or in conjunction with the proceeding argument, requires that the Order be rescinded immediately.

Section 114.1 of the Construction Codes states that "[n]o stop work order may be issued nor considered valid unless it contains all the above . . . information. As the Order in this case fails to contain a violation of the Construction Codes, signature of issuing official and telephone number of official empowered to review the same, the Order issued by Mr. Crews is invalid and was improperly issued.

2. THE ORDER INCORRECTLY STATES – AS THE SOLE ALLEGED VIOLATION – THAT THE USE OF 3256 N STREET, N.W. CONSTITUTES A NON-CONFORMING USE PURSUANT TO "DCMR11 2002"

Section 2002 of the Zoning Regulations pertains to "nonconforming uses within structures." A nonconforming use is defined as follows:

[A]ny use of land or of a structure, or of a structure and land in combination, lawfully in existence at the time this title or any amendment to this title became effective, that does not conform to the use provisions for the district in which the use is located. . . .

11 D.C.M.R. §199.1.

The use of the Building as an apartment house with five (5) units was authorized by the Board of Zoning Adjustment (BZA) in Appeal No. 6885 dated August 21, 1962. See, Exhibit J, Appeal No. 6885. A Certificate of Occupancy, number CO61776, authorizing use of the Building as an apartment house was issued on September 9, 2003. See, Exhibit K, Certificate of Occupancy.

Based on the aforementioned, the Building was specifically authorized by BZA for use as an apartment house, and was never, nor is it now, a nonconforming use. The apartment house was not in existence on May 12, 1958 and was not a use "lawfully in existence when the Zoning

Regulations were adopted, also on May 12, 1958. To the contrary, such a use was first authorized four (4) years after the Zoning Regulations were adopted. The apartment house use was specifically authorized by order of the BZA, not by operation of law as the result of the adoption of new zoning regulations. Therefore, since the apartment house use is not a nonconforming use, any stop work order issued based on such an erroneous allegation is invalid on its face.

3. DCRA -- BLA IS ESTOPPED FROM ISSUING THE ORDER AS IT AUTHORIZED THE CONSTRUCTION BY VALIDLY ISSUED BUILDING PERMITS AND THERE IS NO ALLEGATION THAT THE WORK IS CONTRARY TO THE PERMITS

The exterior and interior work to renovate the apartment house was duly authorized by BLA pursuant to the following building permits:

<u>Building Permit No.</u>	<u>Date of Issuance</u>	<u>Purpose</u>
1. B470714	March 16, 2004	Rehabilitation of existing five (5) unit apartment building. Work includes window restoration, excavation of rear courtyard and construction of new brick garden walls. Porch roof will be added to the entrance of the rear basement apartment.
2. B474036	June 21, 2005	Interior work only. Rehabilitation and alteration of existing four (4) unit apartment building.
3. PA15617	October 24, 2005	Occupy roadway with dumpster 20' x 10".
4. EL107336	November 7, 2005	Outlets, lights, electric range, garbage disposal, dish washer, hot water heater, service meter, motor/generator.
5. EL107516	November 9, 2005	Stingers, temporary quad outlet.
6. PLBG107613	November 9, 2005	Bath tubs, water closets, sinks, basins, garbage disposal, water heaters, gas range, gas oven, gas furnace.
7. AC107812	November 9, 2005	Refurbish air conditioning.

As a result of the validly issued building permits by BLA, MLW commenced work on the building on approximately November 3, 2005.

BLA is estopped and barred from issuing the Order for the work performed in compliance with the validly issued building permits as there has been, nor is there, an allegation that the work performed is in violation of such validly issued building permits, and MLW proceeded to undertake work in reliance on the aforementioned permits.

In District of Columbia v. Cahill, 54 F.2d 453 (D.C. 1931), the Court of Appeals held that the District, a municipal corporation, could be estopped from revoking a certificate of occupancy where the permit holder had "in good faith under affirmative acts of a municipal corporation [made] expensive and permanent improvements in reliance [on the District's granting of the permit], 'because the permit holder ... would be unjustly and inequitably deprived of the rights which the corporation granted to him.'" See also, Permanent Financial Corporation v. Montgomery County, 518 A.2d 123 (1986) (where the developer expended substantial funds in reliance on County approval of its building permits, the County was estopped from preventing construction on the building); Town Center Management v. District of Columbia Rental Housing Commission, 496 A.2d 264 (D.C. 1985) (applying estoppel to administrative agencies).

**4. MLW HAS A PROTECTED PROPERTY RIGHT IN THE
CONTINUING VALIDITY OF THE BUILDING PERMITS**

MLW has a property right in the continuing vitality of the building permits issued by BLA protected by the Fifth Amendment of the Constitution of the United States under the property interest test set forth in Board of Regents v. Roth, 408 U.S. 564 (1972). In Roth, the Supreme Court stated that "property interests ... are not created by the Constitution[,] [but] are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." Id. at 577. While a series of cases held that an applicant

for a permit had no property right therein, see e.g., Gardner v. City of Baltimore, 969 F.2d 63 (4th Cir. 1992); George Washington University v. District of Columbia, 318 F.3d 203 (D.C. Cir. 2003), the Court in 3883 Connecticut, LLC v. District of Columbia, 336 F.3d 1068 (D.C. Cir. 2003), drew a distinction as to the case when one **holds a permit**, as is MLW's case, and stated:

Gardner and George Washington University focus on an official's discretion to approve an application in determining whether the applicant has "more than a unilateral expectation" in the permit it seeks while we must determine whether the permit holder has "more than a unilateral expectation" in the permit's *continued effect*. Therefore, our inquiry focuses on the official's discretion to revoke or suspend the permit.

3883 Connecticut, LLC, 336 F.3d at 1073 (citing Lopez v. FAA, 318 F.3d 242, 249 (D.C. Cir. 2003)) (emphasis in original).²

The permits issued in the instant matter are not preliminary permits issued pending final review of the application, but instead are the final permits authorizing the construction requested by MLW. Sections 105.6 (Revocation of Permits) and 114.1 of the Construction Codes defines the authority of the BLA to revoke or suspend a construction permit. A close reading of these sections illustrates that the authority to terminate or suspend work already in progress is significantly limited.

Pursuant to §105.6, there are only six (6) conditions which justify revocation of a permit: (a) false statement, misrepresentation of fact, or significant inaccuracy in the application; (b) construction fails to comply with the Construction Codes, the permit, revised permit or the approved plans and other information filed in conjunction with the application for the permit; (c) permit holder has been cited for one (1) or more violations of the Construction Codes which threaten the health and safety of the public; (d) two or more stop work orders have been issued

² The Lopez Court held that because the FAA had the ability to revoke the designation of "Designated Engineering Representative" at "any time for any reason," there was no constitutionally protected property right in the aforementioned designation. Lopez v. FAA, 318 F.3d 242, 249 (D.C. Cir. 1979).

and the permit holder fails to comply with the conditions for resumption of work; (e) contractors license has expired, is suspended or has been revoked; and (e) when permit has been issued in error. 12 D.C.M.R. §105.6. Section 114.1 authorizes the issuance of a stop work order if the construction is being "performed contrary to the provisions of the Construction Code or in an unsafe and dangerous manner." 12 D.C.M.R. §114.1.

As such, discretion to revoke or suspend the permits is limited and therefore "constrained sufficiently to give [MLW] an expectation in the continued effect of the permits – and therefore a property interest in them." 3883 Connecticut, LLC, 336 F.3d at 1073.

C. MLW WILL SUFFER IRREPARABLE INJURY IF THE REQUESTED RELIEF IS NOT GRANTED

1. STRUCTURAL FAILURE AND SUBSEQUENT COLLAPSE OF BUILDING CONSTITUTES IRREPARABLE INJURY

Should this Court deny the requested relief, MLW will incur irreparable injury because the Building will suffer a structural failure and collapse, thereby rendering the Building beyond economic repair. The Georgetown neighborhood has been designated a National Historic Landmark District, and as such, all proposed projects within the neighborhood are to be reviewed by both the Commission of Fine Arts (the "CFA") and the District of Columbia Historic Preservation Office (the "HPO") to ensure the proposed project does not negatively impact the character of the historic neighborhood. MLW submitted an application to the requisite parties, and on September 22, 2004 received a favorable recommendation from the CFA. See, Exhibit L, Letter from CFA dated September 22, 2004. While both the CFA and HPO have signed off on the project at issue, therefore indicating the same is in furtherance of maintaining the character of the historic Georgetown neighborhood, the Order accomplishes the opposite result, i.e., it allows the Building, in its significantly weakened structural condition, to further deteriorate and ultimately collapse.

The District of Columbia Court of Appeals, in Young Men's Christian Association of the City of Washington v. Covington, 484 A.2d 589 (D.C. 1984), affirmed the issuance of a temporary restraining order which prohibited the YMCA from allowing further physical deterioration of a building designated a historic landmark. See, Id. The Covington Court found that irreparable harm would occur if the "building were to deteriorate beyond economic repair" and that the plaintiffs would be unable to obtain the relief they sought, renovation and reopening of the building, should the structure collapse. Covington, 484 A.2d at 593. The same is applicable in the instant matter. MLW has demonstrated, through the Cobb Affidavit and Bowen Affidavit, that the Building is significantly weakened structurally, and that specific steps must be taken to prevent a collapse of the same. The Order precludes MLW from taking any steps with respect to the Building, and the present condition coupled with the fact that the Building is exposed to the elements (i.e., there are no windows and the interior walls and ceilings have been removed) all increase the possibility of a catastrophic collapse. If the Building collapses, MLW requested relief becomes moot, and it would be confronted with the costly choice of having to rebuild the Building from scratch.

**2. DENIAL OF MLW DUE PROCESS RIGHTS CONSTITUTES
IRREPARABLE INJURY**

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 5 U.S. 137, 163 (1803). The Fourteenth Amendment to the United States Constitution provides that a State shall not "deprive any person of life, liberty, or property, without due process of law." Amdt. 14, § 1. The procedural component of the Due Process Clause does not protect everything that might be described as a "benefit": "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire" and "more than a unilateral expectation of it. He

must, instead, have a legitimate claim of entitlement to it." Roth, 408 U.S. 564, 577. Such entitlements are "of course, . . . not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." Paul v. Davis, 424 U.S. 693, 709 (1976) (quoting Roth, *supra*, at 577); see also, Phillips v. Washington Legal Foundation, 524 U.S. 156, 164 (1998). The Order in this case is a vested property right and therefore, MLW is entitled to Due Process protections before the same is revoked or suspended.

As discussed in Section C, *supra*, §114.1 authorizes the issuance of a stop work order if the construction is being "performed contrary to the provisions of the Construction Code or in an unsafe and dangerous manner." 12 D.C.M.R. §114.1. The plain language of the regulation requires that a violation must be found prior to the issuance of a stop work order. There is no basis for the Order, as the cited violation, "DCMR11 2002," is found in the Zoning Regulations and not the Construction Code. As discussed in Section B1i, *supra*, the District of Columbia Zoning Regulations are not defined in the Building Code as being a part of, or included within the "Construction Codes." See, 12 D.C.M.R. §101.1.1 (Defines the scope of the Construction Codes as comprising Title 12 and the codes listed in Sections 101.2 through 101.4.8). The Order clearly does not comport with the requirements of §114.1, and therefore unconstitutionally deprives MLW of its Constitutionally protected property right in the building and construction permits which were issued by BLA. 3883 Connecticut, LLC v. District of Columbia, 336 F.3d 1068. By issuing the Order for a violation that is not included within the scope of the applicable Regulations, MLW has been deprived of its Due Process Rights, and deprivation of the same constitutes an irreparable injury.

At a minimum, due process considerations require both notice and opportunity to be heard before a protected property right is deprived. The Order clearly fails to meet both of the aforementioned. First, there is no basis for the issuance of the Order for a violation of the Zoning Regulations, as the regulations governing stop work orders are limited to violations of the Construction Codes. Second, the Order is procedurally defective as it fails to contain the name and phone number of the official empowered to review the Order. MLW has been deprived of its vested property right, the building and construction permits, without DCRA – BLA complying with the Constitutional requirements of Due Process. Such a violation of this basic tenant of liberty constitutes irreparable injury justifying the requested relief.

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Virginia Petroleum Jobbers Asso. v. Federal Power Com., 259 F.2d 921, 925 (D.C. Cir. 1958).

The injury to MLW, collapse of the Building should the Order not be lifted, is not one that can be compensated or corrected.

D. HARM TO MLW OUTWEIGHS ANY HARM TO DEFENDANTS

In addition to denying MLW's Constitutional rights, other factors tip in favor of MLW and the issuance of the Temporary Restraining Order and Preliminary Injunction. The foregoing statutory and case law clearly show MLW's right to proceed. MLW has already begun construction in accordance with the permits and approvals, and the Order has forced MLW to cease all activities at a time when the Building itself is susceptible to collapse. See, Exhibit E, Cobb Affidavit and Exhibits; see, Exhibit C, Bowen Affidavit. Additionally, MLW, prior to the issuance of the Order, undertook the step of having an inspection of the Building conducted to

determine just what the problem was and how to address the same in a timely and safe manner. Should this Motion be denied and the Building collapses, MLW will be exposed to legal action for any personal injuries suffered, or any damage to any of the surrounding properties.

As indicated in the Inspection Letter, there is a danger that the Building will collapse or suffer significant damage because of the deteriorated condition of the Building and particularly because of the fact that the Order was issued at a time after interior demolition had commenced, thus weakening and exposing the structure to the elements. Therefore, the Order has subjected the structure to greater potential for damage or collapse than would otherwise have been the case. In the event of such collapse or damage, MLW will hold DCRA responsible, as a result of its issuance of an unlawful stop work order, and it will seek to recover all damages available at law.

The granting by this Court of the Temporary Restraining Order and of a Preliminary Injunction will serve to minimize the disproportionate amount of harm that MLW will endure as a result of the BLA's mandate to refrain from cease all activities at the Property with respect to the Building. MLW has demonstrated that a total collapse of the Building is a significant likelihood, and should the same occur, MLW will incur significant expense as the Building itself will need to be reconstructed instead of the planned renovations.

E. THE PUBLIC INTEREST WILL BE SERVED BY GRANTING THE REQUESTED RELIEF

The public has an interest in ensuring that administrative agencies of the District of Columbia government act within the limits on their authority as established by the Council and applicable municipal regulations. The BLA issued the Order, but failed to include the required information regarding who issued the same, how to contact that individual, and most importantly, the basis for, and a description of, the violation justifying the Order.

This Court has clear authority to issue an injunction against an administrative agency.

The ultimate test of reviewability is not to be found in an overrefined technique, but in the need of the review to protect from the irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow, the results of which the regulations purport to control. Thus administrative orders are ordinarily reviewable when they impose an obligation, **deny a right**, or fix some legal relationship as a consummation of the administrative process. (emphasis added).

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Trans-Pacific Freight Conference of Japan v. Federal Maritime Board, 302 F.2d 875, 877 (D.C. Cir. 1962) (internal citations omitted).

The BLA action denies a right; it precludes MLW from continuing previously approved and permitted construction without notice of why said permits and approvals have been suspended. MLW has followed the prescribed procedure for noting an appeal of the BLA decision to issue the Order, but at every step of that process, BLA has failed to respond..

Relief from this Court will not interfere with the ability of BLA to issue Stop Work Orders; MLW does not seek to interfere with that process. Judicial review at this juncture will protect the public at large from overreaching agency decisions and a significant likelihood of either personal injury due to collapse of the Building or damage to the surrounding properties.

Additionally, the public interest favors the interest of the granting of an injunction against allowing the likelihood of a collapse. The Building is located within the historic Georgetown neighborhood and is therefore part of the overall character of the neighborhood. If the Building were to be allowed to collapse and therefore deteriorate beyond economic repair, the neighborhood would be impacted by such a blemish. While ultimately the Building may or may not be renovated as proposed, the public interest favors maintaining the same in the status quo until such time a final decision on that matter is determined.

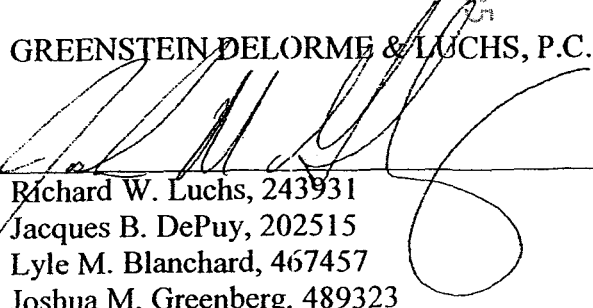
IV. CONCLUSION

For these reasons, a Temporary Restraining Order and a Preliminary Injunction precluding enforcement of the Stop Work Order of the District of Columbia Department of Consumer and Regulatory Affairs Building and Land Regulation Administration should be granted.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: January 20, 2006


Richard W. Luchs, 243931
Jacques B. DePuy, 202515
Lyle M. Blanchard, 467457
Joshua M. Greenberg, 489323
1620 L Street, N.W.
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Telephone: (202) 452-1400

Counsel for Plaintiff MLW, LLC

280208v1

EXHIBIT 20

EMAIL SENT BY ELLEN A. EFROS, ESQ.

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Joshua M. Greenberg

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From: Efros, Ellen (OAG) [Ellen.Efros@dc.gov]
Sent: Monday, January 23, 2006 10:26 AM
To: Joshua M. Greenberg
Cc: Crews, Bill (DCRA); Lee, Julie(DCRA); Love, Richard (OAG)
Subject: MLW LLC v. Canavan et al.; Case No. 2006 CA 000360 B

Josh,

Confirming our conversation earlier this am, this is to confirm that the SWO issued on or about December 7, 2005, for the property referenced in the above action has been lifted by Bill Crews, the Zoning Administrator, and Plaintiff is permitted to resume work pursuant to previously issued permits.

I understand that you will contact the Judge-in-Chambers and remove this action from the docket for today's scheduled TRO hearing at 3:00 p.m. Please confirm by return email that this has been done.

Also, please let me know whether Plaintiff intends to pursue this action or will file a dismissal.

Ellen A. Efros

Assistant Attorney General

Equity Section I, Civil Litigation Division

Office of the Attorney General for the District of Columbia

(202) 442-9886

ellen.efros@dc.gov

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1/23/2006

EXHIBIT 21

NOTICE OF DISMISSAL OF STOP WORK ORDER

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MLW, L.L.C.,

Plaintiff,

v.

PATRICK CANVAN, et al.,
Defendants.

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Civil Clerk's Office

JAN 31 2006

Superior Court of the
District of Columbia
Washington, D.C.

Civil Action No. 06-ca-0000360
Judge Anna Blackburne-Rigsby
Next Event: Initial Conference
April 21, 2006 at 9:00 a.m.

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NOTICE OF DISMISSAL

PLAINTIFF MLW, LLC, by counsel, and pursuant to SCR Civil 41(a)(1), hereby dismisses the above-captioned action, without prejudice, as to all Defendants. As of the date of this Notice of Dismissal, the Defendants have filed neither an Answer nor a Motion for Summary Judgment, and therefore, dismissal without prejudice pursuant to SCR Civil 41(a)(1) is proper.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: January 31, 2006

Richard W. Luchs, 243931
Jacques B. DePuy, 202515
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Telephone: (202) 452-1400

Counsel for Plaintiff MLW, LLC

280643v1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via first class mail, postage prepaid, this 23rd day of January, 2006 on:

Mayor Anthony A. Williams
c/o Mr. Len Becker
1350 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004

Ellen Efros, Esq.
Office of the Attorney General
441 4th Street, N.W.
Sixth Floor South
Washington, D.C. 20001

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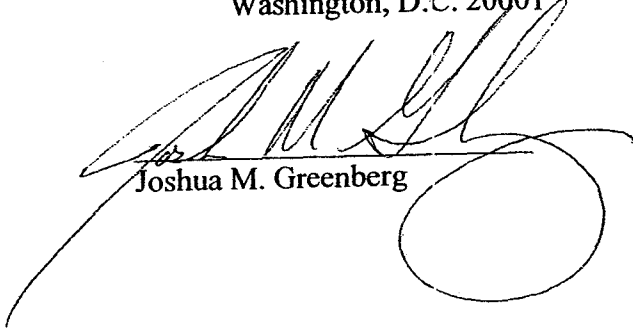
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Washington, D.C. 20002

Andrew J. Saindon, Esq.
Assistant Corporation Counsel
441 Fourth Street, N.W.
Sixth Floor South
Washington, D.C. 20001

Robert J. Spagnoletti, Esq.
c/o Ms. Darlene Fields
Registered Agent – D.C.
441 4th Street, N.W.
Suite 600 South
Washington, D.C. 20001


Joshua M. Greenberg

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D.C. OFFICE OF ZONING

2016 MAY 31 PM 2:36

EXHIBIT 22

SECOND STOP WORK ORDER

*** DEPARTMENT OF THE
DISTRICT OF
COLUMBIA
01/25/03
Rev. 10/97

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

STOP WORK

ADDRESS : 3256 N. STREET NW
WASHINGTON DC SEC 1218 LOT 823

VIOLATION: (Section/s) 11 DCMR 220051 = SEE ATTACHED LETTER SENT
MARCH 27, 2006 TO MS. MARY WIGSHALL = MUST PROVIDE PROOF OF PERMIT
of all 5 UNITS IN PAST 10 YEARS

PROPER PERMIT **SHALL BE OBTAINED AND OR POSTED PRIOR TO THE CONTINUATION OF ANY WORK.**
ANY AND ALL PERSONS ACTING CONTRARY TO THIS NOTICE SHALL BE SUBJECT TO A FINE/PROSECUTION OR BOTH.

APPLICATION FOR PERMIT(S) MUST BE FILED OR REMOVAL OF VIOLATION MUST OCCUR WITHIN 10
HOURS/DAYS FROM THE POSTING OF THIS NOTICE. ☒ Office of Zoning Administration 442.4576

☒ **Construction**
442-4641

☐ **Electrical**
442-4643

☐ **Plumbing**
442-4642

☐ **Elevator**
442-4634

☐ **Boiler**
442-4630

1:00 p.m.
Time

3/28/06
Date

Bill C. Jones
Official

EXHIBIT 23

LETTER TO ~~TO~~ MR. BILL CREWS

From

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2016 NOV 31 PM 2:36

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



March 22, 2006

Ms. Mary Wagshal
MLW LLC
5920 Empire Way
Rockville, MD 20852

Re: 3256 N Street NW

Dear Ms Wagshal:

original mailed 3/23
OFFICE OF ZONING
RECEIVED
2006 MAR 31 PM 2:36
STOP WORK ORDER
PUT BY AUTHORIZATION
OF THE DIRECTOR, DCPA
will be lifted upon verification of
REQUESTED DOCUMENTATION.
Bulger
03.28.06.

The use of the building at 3256 N Street NW as a five unit apartment building was authorized by order of the Board of Adjustment (BZA) in appeal No. 6885 dated August 21, 1962. This authorization is for a non-conforming use.

Non-conforming uses must be continued, or the right to the non-conforming use expires.

After inspecting this property, a question arises as to the continuation of the non-conforming use. 11 DCMR 2005.1 states:

"Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located."

Please provide to this office evidence of continual rental of all 5 apartments for the past 10 years. This evidence may be in the form of signed leases, rental payment records included in income tax returns, or rental availability advertisements.

I would appreciate receipt of this information by April 7, 2006.

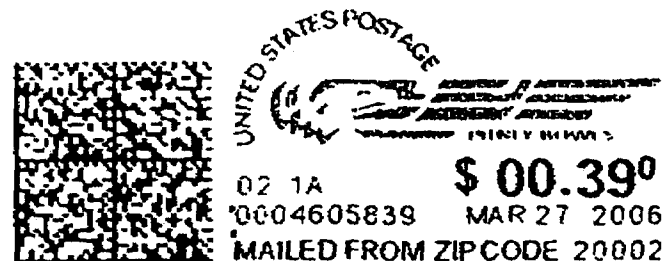
Best regards,

Bill Crews

Zoning Administrator for the District of Columbia

U.S. DISTRICT OF COLUMBIA
GENERAL & REGULATORY AFFAIRS
BOX 37200
WASHINGTON, DC 20013-7200

U.S. BUSINESS
NO POSTAGE
NECESSARY
IF MAILED
IN THE UNITED STATES



MS Mary WAGSHAL
MLW LLC
5920 EMPIRE WAY
Rockville MD 20852

20832+2861-20 C030



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EXHIBIT 24

LETTER TO MR. LENNOX DOUGLAS – MARCH 2006

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LAW OFFICES

GREENSTEIN DeLORME & LUCHS, P. C.

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
DONALD F. HOLMES, JR.

1620 L STREET, N.W., SUITE 900

WASHINGTON, D.C. 20036-5605

TELEPHONE (202) 452-1400

FACSIMILE (202) 452-1410

www.gdllaw.com

ABRIELLE B. ANDERSON*
STEPHANIE A. BALDWIN
LYLE M. BLANCHARD
GREGORY T. DuMONT
ALFRED M. GOLDBERG
JOSHUA M. GREENBERG
JARED S. GREENSTEIN*
MONIC Y. HALSEY
GUY R. JEFFRESS
M. RYAN JENNESS
MIRIAM HELLEN JONES
ISABEL P. SABIO**

OF COUNSEL
MICHAEL T. CREHAN

*ADMITTED IN MD ONLY
**ADMITTED IN VA ONLY

WRITER'S DIRECT DIAL
(202) 452-1400
JBD@GDLAW.COM

March 29, 2006

BY HAND

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

Re: 3256 N Street, N.W.; Appeal of Issuance of, and Request for Immediate
Rescission of, Stop Work Order

Dear Mr. Douglas:

Enclosed is a completed Appeal Request Form and a Statement of Justification in
Support of an Appeal of the Issuance of a Stop Work Order.

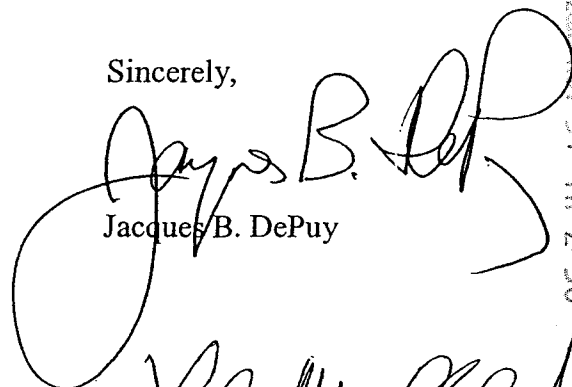
Because construction work at the subject building has commenced pursuant to a validly
issued building permit and because the building was in poor structural condition prior to the start
of construction, the building is in weakened condition and must be stabilized immediately and
protected from the elements. Roof repairs have not been completed to make the building safe as
of March 28, 2006, the date the Stop Work Order was issued.

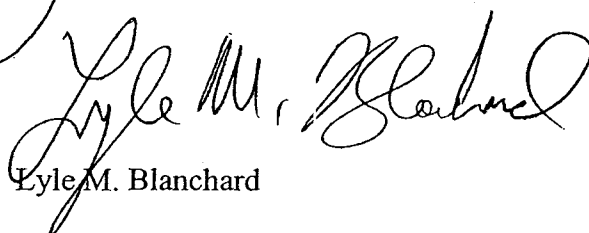
We request that you act to rescind the Stop Work Order immediately but in no event later
than within three (3) working days as required by 12 DCMR § 112.1.2.

Thank you.

GREENSTEIN DELORME & LUCHS, P.C.
Mr. Lennox Douglas
March 29, 2006
Page 2

Sincerely,


Jacques B. DePuy


Lyle M. Blanchard

2006 APR 31 PM 2:36

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2857591
Enclosures

cc: Mr. Bill Crews (w/encls.)
Ms. Mary Wagshal (w/encls.)
Mr. Kolar Bowen (w/encls.)
Richard W. Luchs, Esquire (w/o encls.)

APPEAL REQUEST FORM
Stop Work Order
Building and Land Regulation Administration
Department of Consumer and Regulator Affairs
941 North Capitol Street, N.E., Suite 2000
Washington, D. C. 20002
Telephone (202) 442-9557

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Pursuant to Title 12, District of Columbia Municipal Regulations, §112.1
we _____, request an Appeal of the Department's Stop Work Order
dated 3/28/06.

Address: 1620 L Street, NW, Suite 900
Washington, DC 20036

Telephone: (202) 365-8612 (h) (c)
(202) 452-1400 (o)

Grounds for Appeal:

_____ The true intent of the Construction Codes/Zoning Regulations or the rules
has _____
been incorrectly interpreted.

_____ The provisions of the Construction Codes/Zoning Regulations do not fully
apply.

_____ An equally good or better form of construction/zoning can be used.

Explanation: See attached Statement for Appeal of, and Request for
Immediate Recission of, Stop Work Order Issued to Owner of
3256N Street, NW.

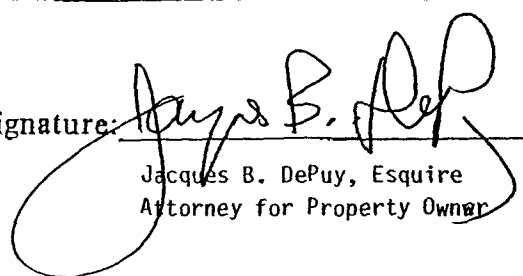
Signature:  Date: March 29, 2006
Jacques B. DePuy, Esquire
Attorney for Property Owner

EXHIBIT 25

APRIL 2006 COMPLAINT AND MOTIONS

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NOV 31 11 2: 36

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MLW, LLC,
5920 Empire Way
Rockville, MD 20852

Plaintiff,

v.

PATRICK J. CANAVAN,
DIRECTOR,
DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
941 North Capitol Street, N.E.
Suite 9500
Washington, D.C. 20002

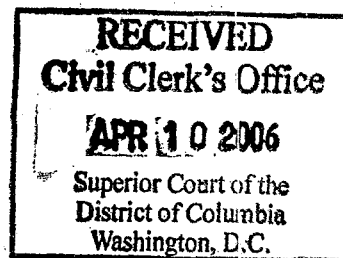
and

BILL CREWS
ZONING ADMINISTRATOR,
DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
941 North Capitol Street, N.E.
Suite 9500
Washington, D.C. 20002

and

THE DISTRICT OF COLUMBIA
Serve: Mayor Anthony A. Williams
c/o Mr. Len Becker
1350 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004

Serve: Robert J. Spagnoletti, Esq.
c/o Ms. Darlene Fields
Registered Agent, District of Columbia
441 4th Street, N.W.
Suite 600 South
Washington, D.C. 20001



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D.C. OFFICE OF ZONING

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0002790-06

Civil Action No. _____
Judge _____

Serve: Office of Risk Management
Attn: Claims
441 4th Street, N.W.
Suite 800 South
Washington, D.C. 20001

Defendants.

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**COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF AND
DAMAGES**

PLAINTIFF MLW, LLC, by counsel, hereby sues Defendants PATRICK J. CANAVAN,
BILL CREWS and THE DISTRICT OF COLUMBIA and states:

JURISDICTION AND STATEMENT OF CASE

1. This Court has jurisdiction pursuant to D.C. Code §§ 11-921 (2001 ed.).
2. This is an action for temporary, preliminary and permanent injunctions, as well as damages, against the Defendants. Plaintiff seeks injunctive relief against Defendants to enjoin them from acting in violation of applicable law and/or regulations governing the issuance and appeal of a Stop Work Order in connection with previously and validly issued construction permits for substantial rehabilitation of a physical structure in the District of Columbia and to deny Plaintiff ("MLW") its fundamental constitutional right of due process under the law. Additionally, Plaintiff seeks a declaration that the Defendants are precluded from issuing any further Stop Work Orders based on alleged violations of Title 11 of the District of Columbia Municipal Regulations. Lastly, Plaintiff seeks an award of damages and attorney's fees, specified below, due to the delay incurred as a result of the intentional and deliberate conduct of the Defendants in unlawfully delaying a previously approved and permitted construction project by the repeated issuance of invalid Stop Work Orders.

PARTIES

3. MLW is a domestic limited liability company which owns the real property and improvements located in Square 1218, Lot 104 (the "Property").

4. Defendant Patrick J. Canavan is the Acting Director of the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA").

5. Defendant Bill Crews is the Zoning Administrator for DCRA.

6. Defendant District of Columbia is a municipal corporation.

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FACTS

7. On or about June 4, 2004, MLW submitted an Application for Construction Permits on Private Property. *See, Exhibit A, Page 1 of Application for Construction Permits.*

8. On or about March 16, 2005, the DCRA – Building and Land Regulation Administration ("BLA") issued the requested construction permits (the "March Permits") authorizing the rehabilitation of the existing five (5) unit apartment building located on the Property (the "Building"). *See, Exhibit B, March Permits; see, Exhibit C, Affidavit of Mr. Kolar Bowen (the "Bowen Affidavit").*

9. On or about June 21, 2005, DCRA – BLA issued an additional permit (the "June Permits") authorizing the rehabilitation and alteration of the interior of the Building. *See, Exhibit D, June Permits; see, Exhibit C, Bowen Affidavit.*

10. As part of the permit application review process, several departments within DCRA, including the Office of the Zoning Administration, reviewed the application.

11. The Office of the Zoning Administration approved the application during the review period.

12. On or about November 3, 2005, after obtaining all necessary permits and approvals, construction on the Building commenced in anticipation of major renovations. The

work performed on the Building temporarily impacted the structural integrity of the Building. *See, Exhibit C, Bowen Affidavit.*

13. On or about December 7, 2005, DCRA – BLA issued a Stop Work Order (the "First Order"), citing "DCMR11 2002 Non-conforming use structure without BZA Approval" as the violation. *See, Exhibit E, First Order.*

14. The First Order was not signed by the issuing official, containing only a hand-printed note that it was issued "per Bill Crews." *See, Exhibit E, First Order.*

15. The First Order does not contain a telephone number of the issuing official. *See, Exhibit E, First Order.*

16. On or about December 8, 2005, MLW, through counsel, Jacques B. DePuy, Esq., John Patrick Brown, Jr., Esq. and Lyle M. Blanchard, Esq., and its agents, Ms. Mary Wagshal, Mr. John Hauser and Mr. Kolar Bowen, contacted Ms. Theresa Lewis, with questions concerning the First Order.

17. On or about December 21, 2005, MLW, through counsel, sent a letter to Mr. Lennox Douglas, Acting Administrator for DCRA – BLA, pursuant to 12 D.C.M.R. §112.1, appealing the First Order. *See, Exhibit F, Letter to Mr. Lennox Douglas dated December 21, 2005.*

18. Mr. Douglas did not respond to the appeal within the three (3) days permitted, or December 26, 2005 (as December 24, 2005 was a Saturday).

19. On or about December 30, 2005, MLW, through counsel, sent a letter to Dr. Patrick J. Canavan, Director of DCRA, pursuant to 12 D.C.M.R. §112.1.2, appealing the First Order. *See, Exhibit G, Letter to Dr. Patrick J. Canavan dated December 30, 2005.*

20. Dr. Canavan did not respond to the appeal within the three (3) days permitted, or January 5, 2006 (due to New Year's holiday weekend).

21. On or about January 9, 2006, MLW, through counsel, submitted a Supplementary Statement in Support of Appeal of the First Order (the "Supplementary Statement") to Dr. Canavan. *See, Exhibit H, Supplementary Statement.*

22. Dr. Canavan did not respond to the Supplementary Statement within the three (3) days permitted, or January 12, 2006.

23. On January 20, 2006, MLW filed a Complaint and Motions for Temporary Restraining Order ("TRO") and for Preliminary Injunction ("PI"), captioned *MLW, LLC v. District of Columbia et al.*, 06-ca-0000360 in the Superior Court for the District of Columbia (the "First Litigation"). *See, Exhibit I, Complaint; Exhibit J, TRO and PI.* A hearing on the TRO was set for hearing before the Judge-in-Chambers on January 23, 2006 at 3:00 p.m.

24. The arguments for filing the First Litigation were, *inter alia*, that a Stop Work Order authorized by the Construction Codes does not apply to alleged zoning violations; that Mr. Crews, as the Zoning Administrator, lacked the authority to issue the First Order; and the First Order itself was technically deficient and therefore a nullity. *See, Exhibit I, Complaint; Exhibit J, TRO and PI.*

25. On the morning of January 23, 2006, Ellen A. Efros, Esq., Assistant Attorney General, Equity Section I, Civil Litigation Division, Office of the Attorney General for the District of Columbia, contacted counsel for Plaintiff, Joshua M. Greenberg, Esq., via telephone and advised that the First Order had been rescinded by Mr. Crews, and that MLW was allowed to immediately recommence work under the previously issued permits. This conversation was

confirmed in an email sent to Mr. Greenberg by Ms. Efros. *See, Exhibit K, Email from Ms. Efros dated January 23, 2006.*

26. Mr. Crews, also in a conversation with Mr. Greenberg, confirmed that the First Order had been rescinded, and that it was, in fact, in Mr. Crews' possession at that time.

27. On January 31, 2006, Plaintiff filed a Notice of Dismissal without prejudice. *See, Exhibit L, Notice of Dismissal.*

28. On or about March 28, 2006, DCRA – BLA issued a second Stop Work Order (the "Second Order"), citing "11 DCMR §2005.1 See attached letter sent March 22, 2006 to Ms. Mary Wagshal – Must provide proof of rental of all 5 units for past 10 years" as the violation. *See, Exhibit M, Second Order.*

29. The Second Order is signed by "Juan Scott" with a hand-printed note stating "Bill Crews." *See, Exhibit M, Second Order.*

30. The Second Order has the box next to the pre-printed label of "Construction" checked off. *See, Exhibit M, Second Order.* Furthermore, the Second Order contains a handwritten label marked "Office of Zoning Administrator" checked off. *See, Exhibit M, Second Order.*

31. The Second Order was accompanied by a letter from Mr. Crews dated March 22, 2006 (the "SWO Letter"). *See, Exhibit N, SWO Letter.*

32. The SWO Letter, despite the fact that it is dated March 22, 2006 and has a handwritten note that the "original" was mailed on March 23, 2006, the postmark on the envelope that the SWO was mailed in is for March 27, 2006. *See, Exhibit N, SWO Letter; see also, Exhibit O, Envelope for SWO Letter.*

33. The SWO Letter states that the Board of Zoning Adjustment Order issued in August of 1962, in connection with Appeal 6885, authorized the use of the Building as an apartment. *See, Exhibit N, SWO Letter.*

34. The SWO Letter further states that "a question arises as to the continuation of the non-conforming use" and references 11 D.C.M.R. 2005.1." *See, Exhibit N, SWO Letter.*

35. The SWO Letter contains a handwritten note that reads "Stop Work Order place [sic] by authorization of the Director, DCRA will be lifted upon verification of requested documentation" (the "SWO Letter Note"). *See, Exhibit N, SWO Letter.*

36. The SWO Letter Note is signed "Bill Crews" and is dated "03.28.06." *See, Exhibit N, SWO Letter.*

37. The SWO Letter contains the same D.C.M.R. citation as the Second Order. *See, Exhibit N, SWO Letter.*

38. The basis for the issuance of the Second Order is 11 D.C.M.R. 2005.1, as stated in both the Second Order and the SWO Letter. *See, Exhibit N, SWO Letter; see also, Exhibit M, Second Order.*

39. Concurrently with the posting of the Second Order, two DCRA employees, neither of which is believed to be either Mr. Crews or Mr. Scott, informed the on-site foreman for Wagner Roofing Company, Mr. Dan Williams, that the site was shut down, that all work must immediately stop and that all personnel must come off the roof immediately. *See, Exhibit P, Affidavit of Mr. Dan Williams.*

40. Mr. Williams informed the DCRA employees that his crew was in the middle of installing a built in roof-top gutter and requested permission to continue working to make the same watertight. *See, Exhibit P, Affidavit of Mr. Dan Williams.* Permission was originally

denied, but after a conversation between Mr. Williams and the DCRA employees, the crew was granted thirty (30) minutes to complete the requested action. *See, Exhibit P, Affidavit of Mr. Dan Williams.* Mr. Williams was told that if the crew exceeded the thirty (30) minutes, a fine would immediately be assessed. *See, Exhibit P, Affidavit of Mr. Dan Williams.*

41. Mr. Williams inquired as to the impact the Second Order would have on the public space permit that was pending and the DCRA employees stated that the Second Order would preclude the issuance of any permits for the Property. *See, Exhibit P, Affidavit of Mr. Dan Williams.*

42. The Second Order has prevented the public space permit, required by Wagner Roofing Company in order to complete the roof work, from issuing, and has caused an additional unjustified delay of an indeterminate amount of time.

43. The watertight seal placed on the roof is not permanent in nature, and the same will need to be replaced to prevent damage to the Building in the future. *See, Exhibit P, Affidavit of Mr. Dan Williams.*

44. On or about March 29, 2006, MLW, through counsel, sent a letter to Mr. Lennox Douglas, Acting Administrator for DCRA – BLA, pursuant to 12 D.C.M.R. §112.1, appealing the Second Order. *See, Exhibit Q, Letter to Mr. Lennox Douglas dated March 29, 2006.*

45. Mr. Douglas did not respond to the appeal within the three (3) days permitted, or April 3, 2006 (as April 1, 2006 was a Sunday), and, to date, no response has been received from Mr. Douglas.

46. The Second Order remains in place as of the date of the filing of this lawsuit, and has and will continue to cause MLW substantial monetary harm.

COUNT I

(DECLARATORY JUDGMENT AND INJUNCTION)

47. MLW hereby incorporates by reference the allegations or paragraphs 1 – 46, *supra*, as if fully stated herein.

48. An actual controversy of a justiciable nature exists between MLW and Defendants involving the validity of the Second Order issued by DCRA - BLA.

49. By their conduct, Defendants have violated MLW's Constitutional rights to due process.

50. By their conduct, Defendants have violated MLW's right to due process under the District of Columbia Administrative Procedures Act, D.C. Code § 2-209 *et seq.*

51. MLW has no adequate remedy at law.

52. Unless Defendants are restrained by this Court from interfering with MLW's previously approved and issued construction permits, Plaintiff will suffer immediate, substantial and irreparable injury. Plaintiff has a substantial likelihood of success on the merits of the underlying action. The benefits to Plaintiff in obtaining injunctive relief outweigh the potential harm which Defendants would incur if this Court grants the requested injunctive relief. Moreover, the public interest is best served by granting the injunction.

COUNT II

(COMPENSATORY DAMAGES)

53. MLW hereby incorporates by reference the allegations or paragraphs 1 – 52, *supra*, as if fully stated herein.

54. By their failure to comply with the procedure for issuing a Stop Work Order, the Defendants have caused MLW to suffer pecuniary injury as a result of the delay associated with the Defendants' unconstitutional, intentional and unjustified issuance of the Second Order and as

a result of MLW not being able to proceed with its construction and renovations as previously approved and permitted by the Defendants.

55. The Defendants' have actual and constructive knowledge that their conduct is improper by virtue of the admission that the First Order, which also alleged a Title-11 violation, was issued improper as demonstrated by its immediate revocation upon initiation of the First Litigation.

56. Despite this, the Defendants have voluntarily and intentionally engaged in the same conduct to harass MLW and to prevent the completion of MLW's previously and lawfully approved construction project.

57. MLW's damages arise, *inter alia*, from the fact that it has already entered into construction loan commitments and begun contracting with various businesses to perform renovations necessary for the leasing of units within the Building; may be exposed to legal action for breaching such contracts; has already commenced construction on some portions of the Building and the delay has left the structure vulnerable to damage due to exposure to the elements; and it has incurred legal fees and costs in seeking to overturn two (2) invalid Stop Work Orders.

WHEREFORE, Plaintiff requests that this Honorable Court grant the following relief:

(a) a judicial declaration that the Second Order does not comply with the District of Columbia Administrative Procedures Act, D.C. Code § 2-501, *et seq.* as the Second Order fails to contained the required contact information and fails to state a valid violation justifying the issuance of the Order;

(b) a judicial declaration that the Second Order unconstitutionally deprives MLW of its fundamental right to due process and is therefore void;

(c) a temporary restraining order, preliminary injunction and permanent injunction enjoining Defendants from seeking to enforce, in any manner, the Second Order issued on March 28, 2006 by DCRA - BLA;

(d) a judicial declaration that MLW is not barred by the Second Order from otherwise proceeding in accordance with the previously issued construction permits with respect to the Building;

(e) compensatory damages in the amount of not less than One Hundred Eighteen Thousand One Hundred Forty-One Dollars (\$118,141.00) against all Defendants, jointly and severally, for damages resulting from the delay associated with the issuance of the Second Order;

(f) continuing compensatory damages in the amount of not less than One Hundred Eighteen Thousand One Hundred Forty-One Dollars (\$118,141.00) per month against all Defendants, jointly and severally, for each month that this litigation continues until a final decision is entered, and any and all appeals are decided;

(g) punitive damages in the amount of at least Five Million Dollars (\$5,000,000.00) based on the Defendants' repeated unjustified, unconstitutional and illegal conduct in connection with the issuance of the Second Order;

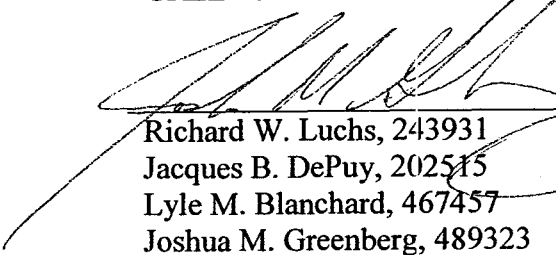
(h) an award of the costs of this action, including reasonable attorneys' fees, in an amount to be proven at trial;

(i) such other and further relief as the Court decides just and proper.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: April 10, 2006


Richard W. Luchs, 243931
Jacques B. DePuy, 202515
Lyle M. Blanchard, 467457
Joshua M. Greenberg, 489323
1620 L Street, N.W.
Suite 900
Washington, DC 20036-5605
Telephone: (202) 452-1400

Counsel for Plaintiff MLW, LLC

279952v1

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

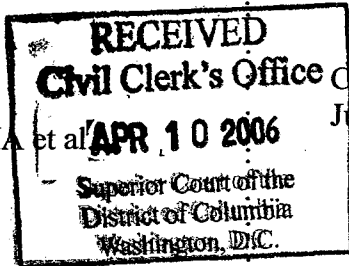
MLW, LLC

Plaintiff,

v.

DISTRICT OF COLUMBIA et al

Defendants.



Civil Action No.
Judge

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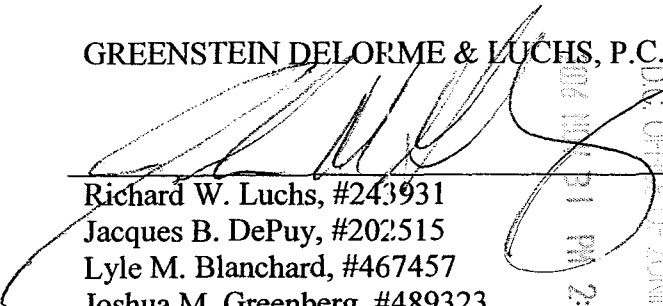
PLAINTIFF MLW, LLC'S MOTION FOR ENTRY OF A PRELIMINARY
INJUNCTION

PLAINTIFF MLW, LLC (hereinafter "MLW"), through counsel, hereby request this Court enter a Preliminary Injunction precluding enforcement of the Stop Work Order of the District of Columbia Department of Consumer and Regulatory Affairs Building and Land Regulation Administration. In support hereof, MLW submits the attached Memorandum of Points and Authorities in Support of Plaintiff MLW, LLC'S Motion for Entry of a Preliminary Injunction (hereinafter "Memorandum"). For the reasons set forth in the Memorandum and attached Exhibits, Plaintiff's Motion for Preliminary Injunction must be granted.

Respectfully submitted,

GREENSTEIN DELOREME & LUCHS, P.C.

Dated: April ¹⁰~~7~~, 2006


Richard W. Luchs, #243931
Jacques B. DePuy, #202515
Lyle M. Blanchard, #467457
Joshua M. Greenberg, #489323
1620 L Street, N.W.
Suite 900
Washington, DC 20036-5605
Telephone: (202) 452-1400

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2006 MAR 31 PM 2:38

Counsel for Plaintiff MLW, LLC

286584V1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Plaintiff MLW, LLC's Motion for Entry of a Preliminary Injunction, attached Memorandum of Points & Authorities in Support and accompanying exhibits was served via process server (along with Complaint and Summons) and via first class mail this 10th day of April, 2006, on:

Mayor Anthony A. Williams
c/o Mr. Len Becker
1350 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004

Julie Lee, Esq.
General Counsel
District of Columbia Department of Consumer and Regulatory Affairs
941 North Capitol Street, S.E.
Suite 9400
Washington, D.C. 20002

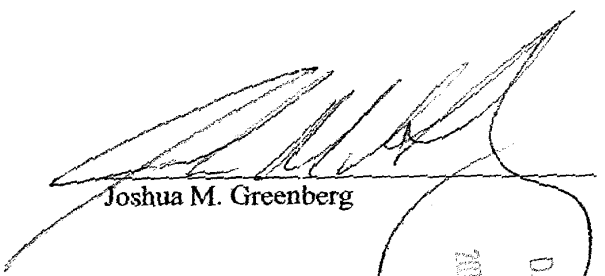
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Mr. Bill Crews
Zoning Administrator
District of Columbia Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Room 9500
Washington, D.C. 20002

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Joshua M. Greenberg

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MLW, LLC

Plaintiff,

v.

DISTRICT OF COLUMBIA et al.

Defendants.

Civil Action No.
Judge

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ORDER REGARDING PRELIMINARY INJUNCTION

Upon consideration of the Plaintiff MLW, LLC's Motion for Entry of a Preliminary Injunction (hereinafter "Plaintiff's Motion"), along with the Memorandum of Points and Authorities in Support of Plaintiff's Motion and attached Exhibits, it is, by this Court, as of this _____ day of April, 2006, it is:

ORDERED that Plaintiff's Motion is GRANTED; and

IT IS FURTHER ORDERED that a Preliminary Injunction in favor of Plaintiff MLW, LLC is hereby entered; and

IT IS FURTHER ORDERED that Defendants' Stop Work Order is hereby declared null and void; and

IT IS FURTHER ORDERED that Plaintiff may recommence construction on the building located at 3256 N Street, N.W. in Washington, D.C., pursuant to the building permits issued by the District of Columbia Department of Consumer and Regulatory Affairs – Building and Land Regulation Administration.

IT IS FURTHER ORDERED that Defendants are enjoined from seeking to enforce, in any manner, the Stop Work Order issued on March 28, 2006 by the District of Columbia Department of Consumer and Regulatory Affairs – Building and Land Regulation Administration.

Associate Judge
District of Columbia Superior Court

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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**PLAINTIFF MLW, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS MOTION FOR ENTRY OF A PRELIMINARY INJUNCTION**

I. INTRODUCTION

This is not the first time that the Plaintiff MLW, L.L.C. ("MLW") has been forced to come before this Court to request relief from an invalid action taken by the District of Columbia, namely the issuance of an improper, unjustified and illegal Stop Work Order. In fact, the present matter is nearly identical to the prior litigation, *MLW, L.L.C. v. District of Columbia et al.*, 06-ca-0000360 (the "First Litigation"). Nonetheless, the Defendants have insisted on engaging in this blatantly illegal and harassing conduct with no regard, nor understanding, of the rules and regulations which prohibit the very conduct in which Defendants have again engaged.

The Defendants in this case have purportedly enjoined MLW through a "Stop Work Order" from continuing construction and rehabilitation work, which had previously received all permits and approvals, even though the Regulation which governs the issuance of Stop Work Orders – 12 D.C.M.R. 114.1 – expressly requires that a Stop Work Order contain specific information, which the Defendants have failed to include. At no time since the Stop Work Order (the "Order") was issued, or at any point prior to issuance of the same, have the Defendants even

proposed to hold a hearing, let alone hold one. MLW asks this Court to declare the Order invalid which, as shown below, it clearly is. This will permit the MLW to proceed with the construction and rehabilitation work previously approved by the District of Columbia, to avoid any further delay and imposition of needless and unjustified expense at the hands of the Defendants.

II. FACTUAL BACKGROUND

MLW is a domestic limited liability company which owns the real property and improvements located in Square 1218, Lot 104 (the "Property"). Defendant Patrick J. Canavan is the Director of the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), Defendant Bill Crews is the Zoning Administrator for DCRA, and on information and belief, has held this position for less than one (1) year, and Defendant District of Columbia is a municipal corporation.

To fully comprehend the egregious violation of MLW's fundamental constitutional rights, a review of the First Litigation is necessary, as the conduct is strikingly similar to that in the present matter.

A. THE FIRST LITIGATION - *MLW, L.L.C. v. DISTRICT OF COLUMBIA ET AL.*, 06-CA-0000360

On or about June 4, 2004, MLW submitted an Application for Construction Permits on Private Property. *See, Exhibit A, Page 1 of Application for Construction Permits.* On or about March 16, 2005, the DCRA – Building and Land Regulation Administration ("BLA") issued the requested construction permits (the "March Permits") authorizing the rehabilitation of the existing five (5) unit apartment building located on the Property (the "Building"). *See, Exhibit B, March Permits; see, Exhibit C, Affidavit of Mr. Kolar Bowen (the "Bowen Affidavit").* On or about June 21, 2005, DCRA – BLA issued an additional permit (the "June Permit") authorizing

the rehabilitation and alteration of the interior of the Building. *See, Exhibit D, June Permits; see, Exhibit C, Bowen Affidavit.*

On or about November 3, 2005, after obtaining all necessary permits and approvals, construction on the Building commenced in anticipation of major renovations. The work performed on the Building temporarily impacted the structural integrity of the Building. *See, Exhibit C, Bowen Affidavit.* The initial phase of the work on the Building consisted of interior demolition of the plaster and lathing, thereby exposing the support girders for the walls, along with the roof girders and ceiling joists. While the overall structural stability of the Building was known to be diminished **prior** to the commencement of the interior demolition, the interior demolition exacerbated the condition and revealed that the overall condition of the Building was in a significantly weakened and imminently dangerous condition, as the lathing and plaster were found to offer support for the damaged and failing ceiling joists and roof girders. *See, Exhibit C, Bowen Affidavit; see, Exhibit E, Affidavit of Mr. Christopher Cobb and attached Exhibits (the "Cobb Affidavit and Exhibits").*

Due to concerns regarding the structural integrity of the Building after the completion of the internal demolition, MLW retained the structural engineering firm of Robert Silman Associates, P.L.L.C. and requested an inspection of the Building be conducted. *See, Exhibit C, Bowen Affidavit; see, Exhibit E, Cobb Affidavit and Exhibits.* The inspection was held on Thursday, December 1, 2005. A summary of the findings of the inspection of the Building, along with recommendations for repair was sent to Wagshal, through the Architects, on December 5, 2005 (the "Inspection Letter"). *See, Exhibit E, Cobb Affidavit and Exhibits.*

The inspection revealed two (2) items which required immediate attention to avert a potential imminent collapse of the Building, as well as any resultant injury to, or loss of, human

life. The first pertained to the condition of the existing roof girders and the high likelihood of a total roof collapse. The second involved movement, or shifting, of the western wall of the Building, on the Potomac Street side, away from the Building which increased the likelihood of a total roof collapse. *See, Exhibit E, Cobb Affidavit and Exhibits.*

Mr. Cobb concluded the likelihood of a total structural failure of the roof was significant. *See, Exhibit E, Cobb Affidavit and Exhibits.* Approximately 3/5 of the roof could collapse and destabilize the westernmost wall of the Building. *See, Exhibit E, Cobb Affidavit and Exhibits.*

Mr. Cobb also concluded that the movement of the western (Potomac Street) wall of the Building had further destabilized the Building and to prevent a collapse of the western wall the recommended repairs included masonry repair at the rear wall. This repair was also essential to the stability of the south end of the roof. *See, Exhibit E, Cobb Affidavit and Exhibits.*

Allowing the Building to remain in its then-current condition would have created a danger to the public at large, as well as the surrounding properties, based on the significant likelihood of a total collapse of the Building. *See, Exhibit E, Cobb Affidavit and Exhibits.*

On or about December 7, 2005, in the midst of the interior demolition, underpinning and other work, which by necessity must precede the planned renovations of the Building, DCRA – BLA issued a Stop Work Order (the "First Order"), citing "DCMR11 2002 Non-conforming use structure without BZA Approval" as the violation. *See, Exhibit F, First Order.* The First Order was not signed by the issuing official, containing only a hand-printed note that it was issued "per Bill Crews." *See, Exhibit F, First Order.* Furthermore, the First Order did not contain the telephone number of the issuing official. *See, Exhibit F, First Order.*

On or about December 8, 2005, MLW, through counsel, Jacques B. DePuy, Esq., John Patrick Brown, Jr., Esq. and Lyle M. Blanchard, Esq., and its agents, Ms. Mary Wagshal, Mr.

John Hauser and Mr. Kolar Bowen, contacted Ms. Theresa Lewis with questions concerning the First Order. *See, Exhibit C, Bowen Affidavit.* During the telephone conference, Ms. Lewis agreed to dispatch a DCRA structural engineer to the Building that evening. *See, Exhibit C.* Ms. Wagshal, Mr. Hauser and Mr. Bowen went directly to the building to meet the engineer, but the engineer did not appear by 6:00 p.m. and the aforementioned parties left the Building. Mr. Blanchard, upon learning of the same, contact Ms. Lewis and was informed the engineer was en route. Mr. Blanchard contacted Mr. Bowen and requested that he return to the Building, which he did.

Mr. Abdullah Barrow, DCRA Structural Engineer, arrived at the Building at between approximately 6:20 p.m. and 6:30 p.m. and performed a cursory inspection of the Building. *See, Exhibit C, Bowen Affidavit.* Mr. Barrow's inspection was conducted in the dark, as the sun had set by this time, from the rear yard of the Building. *See, Exhibit C, Bowen Affidavit.* At no point did Mr. Barrow enter the Building. *See, Exhibit C, Bowen Affidavit.* Mr. Barrow's opinion was that there was no danger to the rear wall, but that he would allow work to continue on the replacement of the roof and the roof beams only. *See, Exhibit C, Bowen Affidavit.* Mr. Barrow was unconvinced, and therefore disregarded a request to complete the masonry work before proceeding with the roof work. *See, Exhibit C, Bowen Affidavit.* Mr. Barrow indicated that MLW would need to contact DCRA – Board of Zoning Adjustment, even though BLA issued the First Order, to determine why the First Order was issued before Mr. Barrow would authorize any additional work to be performed.

On or about December 21, 2005, MLW, through counsel, sent a letter to Mr. Lennox Douglas, Acting Administrator for DCRA – BLA, pursuant to 12 D.C.M.R. §112.1, appealing the First Order. *See, Exhibit G, Letter to Mr. Lennox Douglas dated December 21, 2005.* Mr.

Douglas did not respond to the appeal within the three (3) days permitted, or December 26, 2005 (as December 24, 2005 was a Saturday).

On or about December 30, 2005, MLW, through counsel, sent a letter to Dr. Patrick J. Canavan, Director of DCRA, pursuant to 12 D.C.M.R. §112.1.2, appealing the First Order. *See, Exhibit H, Letter to Dr. Patrick J. Canavan dated December 30, 2005.* Dr. Canavan did not respond to the appeal within the three (3) days permitted, or January 5, 2006 (due to New Year's holiday weekend).

On or about January 9, 2006, MLW, through counsel, submitted a Supplementary Statement in Support of Appeal of the First Order (the "Supplementary Statement") to Dr. Canavan. *See, Exhibit I, Supplementary Statement.* Dr. Canavan did not respond to the Supplementary Statement within the three (3) days permitted, or January 12, 2006.

On January 20, 2006, MLW filed the First Litigation, and sought entry of a Temporary Restraining Order ("TRO") and Preliminary Injunction ("PI"). *See, Exhibit J, Complaint; Exhibit K, TRO and PI.* The hearing on the TRO was to be heard by Judge-in-Chambers on January 23, 2006 at 3:00 p.m.

The arguments for filing the First Litigation were, *inter alia*, that a Stop Work Order authorized by the Construction Codes does not apply to alleged zoning violations; that Mr. Crews lacked the authority to issue the First Order; and the First Order itself was technically deficient and therefore a nullity. *See, Exhibit J, Complaint; Exhibit K, TRO and PI.*

On the morning of January 23, 2006, Ellen A. Efros, Esq., Assistant Attorney General, Equity Section I, Civil Litigation Division, Office of the Attorney General for the District of Columbia, contacted counsel for MLW, Joshua M. Greenberg, Esq., via telephone and advised that the First Order had been rescinded by Mr. Crews, and that MLW was allowed to

immediately recommence work under the previously issued permits. This conversation was confirmed in an email sent to Mr. Greenberg by Ms. Efros. *See, Exhibit L, Email from Ms. Efros dated January 23, 2006.* Additionally, in a telephone conversation with Mr. Greenberg, Mr. Crews confirmed the revocation of the First Order.

On January 31, 2006, Plaintiff filed a Notice of Dismissal, without prejudice, as the Defendants had tacitly admitted the violation of MLW's constitutional rights and had issued the First Order illegally and in direct contradiction with the Regulations governing the same. *See, Exhibit M, Notice of Dismissal.*

Shortly thereafter, MLW was able to recommence work on the Property.

B. THE DISTRICT ISSUES A SECOND ILLEGAL STOP WORK ORDER

On or about March 28, 2006, DCRA – BLA issued a second Stop Work Order (the "Second Order"), citing "11 DCMR §2005.1 See attached letter sent March 22, 2006 to Ms. Mary Wagshal – Must provide proof of rental of all 5 units for past 10 years" as the violation. *See, Exhibit N, Second Order.* The Second Order and the First Order each cite, as the alleged violation, a provision of Title 11 of the D.C.M.R.

The Second Order is signed by "Juan Scott" with a hand-printed note stating "Bill Crews." *See, Exhibit N, Second Order.* The Second Order has the box next to the pre-printed label of "Construction" checked off. *See, Exhibit N, Second Order.* Furthermore, the Second Order contains a hand-written label marked "Office of Zoning Administrator" checked off, as the Office of Zoning Administrator is not one of the pre-printed division on the Stop Work Order form. *See, Exhibit N, Second Order.*

The Second Order was accompanied by a letter from Mr. Crews dated March 22, 2006 (the "SWO Letter"). *See, Exhibit O, SWO Letter.* The SWO Letter, despite the fact that it is dated March 22, 2006 and has a handwritten note that the "original" was mailed on March 23,

2006, the postmark on the envelope that the SWO was mailed in is for March 27, 2006. *See, Exhibit O, SWO Letter; see also, Exhibit P, Envelope for SWO Letter.*

The SWO Letter states that the Board of Zoning Adjustment Order issued in August of 1962, in connection with Appeal 6885, authorized the use of the Building as an apartment. *See, Exhibit O, SWO Letter.* The SWO Letter further states that "a question arises as to the continuation of the non-conforming use" and references 11 D.C.M.R. 2005.1." *See, Exhibit O, SWO Letter.* The SWO Letter also contains a handwritten note that reads "Stop Work Order place [sic] by authorization of the Director, DCRA will be lifted upon verification of requested documentation" and is signed by "Bill Crews" with a date of "03.28.06" (the SWO Letter Note). *See, Exhibit O, SWO Letter.* Both the SWO Letter and the Second Order contain the same D.C.M.R. citation as the basis of the alleged violation – 11 D.C.M.R. 2005.1. *See, Exhibit N, Second Order; see also, Exhibit O, SWO Letter.*

Concurrently with the posting of the Second Order, two DCRA employees, neither of which is believed to be either Mr. Crews or Mr. Scott, informed the on-site foreman for Wagner Roofing Company, Mr. Dan Williams, that the site was shut down, that all work must immediately stop and that all personnel must come off the roof immediately. *See, Exhibit Q, Affidavit of Mr. Dan Williams.*

Mr. Williams, after coming down from the roof as ordered, informed the DCRA employees that his crew was in the middle of installing a built in roof-top gutter and requested permission to continue working to make the same watertight and prevent damage to the Building. *See, Exhibit Q, Affidavit of Mr. Dan Williams.* Permission was originally denied, but after a conversation between Mr. Williams and the DCRA employees, the crew was granted thirty (30) minutes to complete the requested action. *See, Exhibit Q, Affidavit of Mr. Dan*

Williams. Mr. Williams was told that if the crew exceeded the thirty (30) minutes, a fine would immediately be assessed. *See, Exhibit Q, Affidavit of Mr. Dan Williams*.

Mr. Williams subsequently inquired as to the impact the Second Order would have on the public space permit application which is currently pending. The DCRA employees stated that the Second Order would preclude the issuance of any permits for the Property. *See, Exhibit Q, Affidavit of Mr. Dan Williams*.

Despite the fact that Wagner Roofing Company was given thirty (30) minutes to "shore-up" the roof, the watertight seal placed on the roof is not permanent in nature, and the same will need to be replaced to prevent damage to the Building in the future. *See, Exhibit Q, Affidavit of Mr. Dan Williams*.

On March 29, 2006, MLW, through counsel, sent a letter to Mr. Lennox Douglas, Acting Administrator for DCRA – BLA, pursuant to 12 D.C.M.R. §112.1, appealing the Second Order. *See, Exhibit R, Letter to Mr. Lennox Douglas dated March 29, 2006*. As was the case with the First Order, Mr. Douglas did not respond to the appeal within the three (3) days permitted, or April 3, 2006 (as April 1, 2006 was a Sunday), and, to date, no response has been received from Mr. Douglas.

On April 6, 2006, counsel for MLW sent a letter to Mayor Anthony A. Williams to place the District of Columbia on notice that a claim for unliquidated damages was forthcoming unless the Second Order was rescinded by the close of business on Friday, April 7, 2006. *See, Exhibit S, Letter to Mayor Williams dated April 6, 2006*. No response has been received as of the date of this lawsuit, nor has the Second Order been rescinded.

III. LEGAL ARGUMENT

The standards for granting a temporary restraining order and/or a preliminary injunction, as set forth in In re Antioch, 418 A.2d 105, 109 (D.C. 1983), are as follows:

- (a) likelihood of success on the merits of the underlying cause of action;
- (b) likelihood of irreparable injury in the absence of preliminary injunctive relief;
- (c) the balancing of the harms favors granting the request for injunctive relief; and
- (d) the public interest will be served by granting the injunctive relief sought.

Id.

While all four of the elements are addressed below, "[i]f the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak."

CityFed Fin. Corp. v. Office of Thrift Supervision, 58 F.3d 738, 747 (D.C. Cir. 1995). An injunction may be justified "where there is a particularly strong likelihood of success on the merits even if there is a relatively slight showing of irreparable injury." Id.

A. STATUTORY PROVISION RELIED UPON BY DCRA – BLA

In this case, BLA purported to issue the Second Order on the basis of 12 D.C.M.R. §114A, specifically §114.1, which provides:

Notice to Owner or Other Responsible Person. Upon notice from the code official that work on any building or structure is being performed contrary to the provisions of the Construction Codes or in an unsafe and dangerous manner, the property shall be posted and such work shall be immediately stopped until the situation is corrected. The stop work order shall be in writing, in a form prescribed by the code official, containing a description of the right to appeal the order, and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work. The stop work order shall state the address of the property and the specific section or sections of the Codes violated. If no responsible person is present to receive the order, the property may be posted, and the stop work order along with an appeals form shall be sent to the owner by first class mail within three (3) working days. No stop work order may be issued nor

considered valid unless it contains all the above information, the name and the telephone number of the official empowered to review the order, and the signature of the issuing official.

12 D.C.M.R. §114A.1 (2003) (as amended May 27, 2005).

B. LIKELIHOOD OF SUCCESS ON THE MERITS

MLW has a high likelihood of success on the merits of this dispute for three reasons:

First, BLA has failed to comply with the requirements for issuing the Second Order. Second, the alleged violation, that the Building is a nonconforming use, is incorrect and therefore not a valid basis for issuance of the Second Order. Third, BLA is estopped from issuing the Second Order, as the work on the Building was undertaken in compliance with, and in reliance on, validly issued building permits and BLA has failed to show that such work is contrary to the building permits. Finally, the BLA actions violate the Constitutional rights of MLW with respect to due process.

1. DCRA – BLA FAILED TO MEET THE PROCEDURAL REQUIREMENTS FOR ISSUING A STOP WORK ORDER

i) THE VIOLATION LISTED IS INAPPLICABLE TO STOP WORK ORDERS

The requirements of 12 D.C.M.R. §114.1, quoted above, pertaining to the issuance of a Stop Work Order are clear and unambiguous. To begin, the Stop Work Order must alleged that "work is being performed contrary to the **Construction Codes....**" 12 D.C.M.R. §114.1 (emphasis added). As with the First Order, **the Second Order fails to meet even this threshold requirement.**¹ The violation listed in the Second Order reads "11 DCMR §2005.1 See attached letter sent March 22, 2006 to Ms. Mary Wagshal – Must provide proof of rental of all 5 units for past 10 years." *See, Exhibit N, Second Order.* The letter attached to the Second Order is from

¹ The First Order also failed to site a violation of the Construction Codes, and instead cited a provision contained within Title 11 of the D.C.M.R., the zoning regulations.

Mr. Bill Crews, the Zoning Administrator for the District of Columbia, and is dated March 22, 2006 (the "March Letter"). Although dated March 22, 2006, the March Letter is postmarked March 27, 2006, and contains a handwritten note reading "Stop Work Order Place[d] By Authorization of the Director, DCRA. Will Be Lifted Upon Verification of Requested Documentation" and is signed "Bill Crews" on March 28, 2006. *See, Exhibit O, SWO Letter; see also, Exhibit P, Envelope for SWO Letter.* Clearly, Mr. Crews' letter states that "after inspecting this property, a question arises as to the continuation of the non-conforming use." *See, Exhibit O, SWO Letter.* This is indisputable proof that the Second Order was issued **based on an alleged Title 11 violation**. Title 11 of the D.C.M.R. contains the **zoning regulations**, which are not defined in the Building Code as being a part of, or included within the "Construction Codes." *See, 12 D.C.M.R. §101.1.1* (Defines the scope of the Construction Codes as comprising Title 12 and the codes listed in Sections 101.2 through 101.4.8). The Zoning Regulations are contained within Title 11 and are therefore, by the definition of "Construction Codes," are excluded from use as a basis of issuance of a Stop Work Order. Therefore, by its own admission, the alleged violation of "11 DCMR §2005.1" is not a violation that may result in the issuance of a Stop Work Order, and for that reason alone, the Second Order is invalid and must be immediately rescinded.

As stated above, a Stop Work Order must state a violation of the Construction Codes. The Second Order clearly fails to cite any allegedly illegal, improper or unauthorized construction work. *See, Exhibit N, Second Order.* On its face, the Second Order refers to a **use** to which the building may be put at some point in the future. There is no authorization in the Construction Codes for the issuance of a stop work order based on such an alleged future condition. 12 D.C.M.R. §114.1.

By virtue of the First Litigation, the Defendants were made aware that this conduct was improper and illegal, a fact that was admitted by the revocation of the First Order. To turn around three (3) months later and rely on yet another section in Title 11 is evidence of the lack of understanding of the Construction Code and a gross abuse of authority on the part of Defendant Crews.

ii) **THE ORDER FAILS TO CONTAIN THE REQUIRED IDENTIFYING INFORMATION**

Furthermore, §114.1 states that "[n]o stop work order may be issued **nor considered valid** unless it contains all of the above information, the name and the telephone number of the official empowered to review the order, and the signature of the issuing official." 12 D.C.M.R. §114.1. These requirements are not met in the present case.

First, a stop work order is to be issued by a Code Official, who is the Director of DCRA, or a properly authorized and empowered delegate. The Second Order is signed by "Juan Scott" who is the Chief of Construction for DCRA, and further states, in a handwritten notation under Mr. Scott's signature, "Bill Crews." While Mr. Scott may be empowered to enforce the Construction Codes, the alleged violation as stated in the Second Order is **not found in the Construction Codes**. Mr. Crews is the Zoning Administrator, and there is no evidence that he has been delegated to act on behalf of the Director of DCRA for the purposes of issuing stop work orders.² The handwritten note on the SWO Letter which accompanied the Second Order is insufficient proof of delegation of authority, but regardless, the violation itself is not a basis for issuing a Stop Work Order.

Section 114.1 of the Construction Codes states that "[n]o stop work order may be issued nor considered valid unless it contains all the above . . . information. As the Second Order fails

² Even if Mr. Crews was designated for such a purpose, we submit that such delegation was unlawful because the Zoning Administrator is not a proper official to interpret or enforce the Construction Codes.

to contain a violation of the Construction Codes, the Second Order as issued by Mr. Scott and Mr. Crews is improperly issued and therefore invalid and illegal.

2. **THE MARCH ORDER AND LETTER INCORRECTLY STATE – AS THE SOLE ALLEGED VIOLATION – THAT THERE IS A QUESTION AS TO THE "CONTINUATION OF THE NON-CONFORMING USE" OF 3256 N STREET, N.W. CONSTITUTES**

Section 2002 of the Zoning Regulations pertains to "nonconforming uses within structures." A nonconforming use is defined as follows:

[A]ny use of land or of a structure, or of a structure and land in combination, lawfully in existence at the time this title or any amendment to this title became effective, that does not conform to the use provisions for the district in which the use is located. . . .

11 D.C.M.R. §199.1.

Conversely, a use variance is defined as that "which permits a use of land other than those [] prescribed by the zoning regulations." Anderson, *American Law of Zoning* §20.6 (4th ed.). A variance is granted through a quasi-judicial determination or by ordinance. *See, Id. at 20.2.* A variance is allowed when the use is not considered offensive to the zoning regulations with regard to particular circumstances. *See, 11 D.C.M.R. §3103; see also, Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979); *Anderson American Law of Zoning* §20.2. A use approved as a variance **"becomes a conforming use** and otherwise partakes to a large degree the character of a **vested right running with the land."** *Anderson American Law of Zoning* §20.2 (*emphasis added*). Accordingly, a use authorized through administrative relief is **not a "non-conforming use."**

The use of the Building as an apartment house with five (5) units was authorized by the Board of Zoning Adjustment (BZA) in Appeal No. 6885 dated August 21, 1962. *See, Exhibit T, Appeal No. 6885.* The BZA Order was the subject of an appeal to change a non-conforming use from a rooming house to an apartment house. According to the BZA Order, the use as an

apartment house was deemed to "not affect adversely the present character or future development of the neighborhood in accordance with these regulations and the Comprehensive Plan for the District of Columbia...." Although not specifically stated in the BZA Order, the granting of the use of the Property as an apartment house, is more likely than not, a use variance due to the approval of "up-zoning." The Property is located within an R-3 zone district. The use of property as a rooming house is not allowed as a matter-of-right until the R-4 zone district, and the use of property as an apartment house is not allowed as a matter-of-right until the R-5 zone district. *See, 11 D.C.M.R. §§330, 350.* Therefore, the use of the Property, approved by an administrative body of the District of Columbia, is a conforming use.

Based on the aforementioned, the Building was specifically authorized by BZA for use as an apartment house, and was never, nor is it now, a non-conforming use. The apartment house was not in existence on May 12, 1958 and was not a use "lawfully in existence" when the Zoning Regulations were adopted, also on May 12, 1958. To the contrary, such a use was first authorized four (4) years after the Zoning Regulations were adopted. **The apartment house use was specifically authorized by order of the BZA**, not by operation of law as the result of the adoption of new zoning regulations. Therefore, since the apartment house use is not a nonconforming use, any stop work order issued based on such an erroneous allegation is invalid on its face. A BZA Order has no expiration date, and therefore, the Order of August 21, 1962 remains valid and in force.

3. DCRA – BLA IS ESTOPPED FROM ISSUING THE ORDER AS IT AUTHORIZED THE CONSTRUCTION BY VALIDLY ISSUED BUILDING PERMITS AND THERE IS NO ALLEGATION THAT THE WORK IS CONTRARY TO THE PERMITS

The exterior and interior work to renovate the apartment house was duly authorized by BLA pursuant to the following building permits:

<u>Building Permit No.</u>	<u>Date of Issuance</u>	<u>Purpose</u>
1. B470714	March 16, 2004	Rehabilitation of existing five (5) unit apartment building. Work includes window restoration, excavation of rear courtyard and construction of new brick garden walls. Porch roof will be added to the entrance of the rear basement apartment.
2. B474036	June 21, 2005	Interior work only. Rehabilitation and alteration of existing four (4) unit apartment building.
3. PA15617	October 24, 2005	Occupy roadway with dumpster 20' x 10".
4. EL107336	November 7, 2005	Outlets, lights, electric range, garbage disposal, dish washer, hot water heater, service meter, motor/generator.
5. EL107516	November 9, 2005	Stingers, temporary quad outlet.
6. PLBG107613	November 9, 2005	Bath tubs, water closets, sinks, basins, garbage disposal, water heaters, gas range, gas oven, gas furnace.
7. AC107812	November 9, 2005	Refurbish air conditioning.

As a result of the validly issued building permits by BLA, MLW commenced work on the building on approximately November 3, 2005.

When an application for a construction permit is submit to DCRA, the application is routed through the various divisions, *inter alia*, zoning, construction, electrical, plumbing, water, etc.... Each of these departments is given an opportunity to conduct a review of the application and to investigate whether the property, planned construction/renovation, use, etc... is permitted. After each department has conducted its review and is satisfied that nothing in the application would be contrary to law, the application is signed off by the department, and eventually the permit is issued. This is exactly the case here. MLW submitted all applications for the March and June permits, the various departments signed off on the application and the Permits were issued. In fact, Mr. Toye Bello, the former Zoning Administrator for the District of Columbia,

signed off on the permit applications in this case after looking into the same. Mr. Bello determined that the use of the Property as MLW plans was lawful, and therefore, the District is estopped from challenging the same at this juncture.

BLA is estopped and barred from issuing the Second Order for the work performed in compliance with the validly issued building permits as there has been, nor is there, an allegation that the work performed is in violation of such validly issued building permits, and MLW proceeded to undertake work in reliance on the aforementioned permits.

In *District of Columbia v. Cahill*, 54 F.2d 453 (D.C. 1931), the Court of Appeals held that the District, a municipal corporation, could be estopped from revoking a certificate of occupancy where the permit holder had "in good faith under affirmative acts of a municipal corporation [made] expensive and permanent improvements in reliance [on the District's granting of the permit], "because the permit holder ... would be unjustly and inequitably deprived of the rights which the corporation granted to him." See also, *Permanent Financial Corporation v. Montgomery County*, 518 A.2d 123 (1986) (where the developer expended substantial funds in reliance on County approval of its building permits, the County was estopped from preventing construction on the building); *Town Center Management v. District of Columbia Rental Housing Commission*, 496 A.2d 264 (D.C. 1985) (applying estoppel to administrative agencies).

4. MLW HAS A PROTECTED PROPERTY RIGHT IN THE CONTINUING VALIDITY OF THE BUILDING PERMITS

MLW has a property right in the continuing vitality of the building permits issued by BLA protected by the Fifth Amendment of the Constitution of the United States under the property interest test set forth in *Board of Regents v. Roth*, 408 U.S. 564 (1972). In *Roth*, the Supreme Court stated that "property interests ... are not created by the Constitution[,] [but] are created and their dimensions are defined by existing rules or understandings that stem from an

independent source such as state law." *Id.* at 577. While a series of cases held that an **applicant** for a permit had no property right therein, *see e.g., Gardner v. City of Baltimore*, 969 F.2d 63 (4th Cir. 1992); *George Washington University v. District of Columbia*, 318 F.3d 203 (D.C. Cir. 2003), the Court in *3883 Connecticut, LLC v. District of Columbia*, 336 F.3d 1068 (D.C. Cir. 2003), drew a distinction as to the case when one **holds a permit**, as is MLW's case, and stated:

Gardner and *George Washington University* focus on an official's discretion to approve an application in determining whether the applicant has "more than a unilateral expectation" in the permit it seeks while we must determine whether the permit holder has "more than a unilateral expectation" in the permit's *continued effect*. Therefore, our inquiry focuses on the official's discretion to revoke or suspend the permit.

3883 Connecticut, LLC, 336 F.3d at 1073 (citing *Lopez v. FAA*, 318 F.3d 242, 249 (D.C. Cir. 2003)) (emphasis in original).³

The permits issued in the instant matter are not preliminary permits issued pending final review of the application, but instead are the final permits authorizing the construction requested by MLW. Sections 105.6 (Revocation of Permits) and 114.1 of the Construction Codes defines the authority of the BLA to revoke or suspend a construction permit. A close reading of these sections illustrates that the authority to terminate or suspend work already in progress is significantly limited.

Pursuant to §105.6, there are only six (6) conditions which justify revocation of a permit: (a) false statement, misrepresentation of fact, or significant inaccuracy in the application; (b) construction fails to comply with the Construction Codes, the permit, revised permit or the approved plans and other information filed in conjunction with the application for the permit; (c) permit holder has been cited for one (1) or more violations of the Construction Codes which

³ The *Lopez* Court held that because the FAA had the ability to revoke the designation of "Designated Engineering Representative" at "any time for any reason," there was no constitutionally protected property right in the aforementioned designation. *Lopez v. FAA*, 318 F.3d 242, 249 (D.C. Cir. 1979).

threaten the health and safety of the public; (d) two or more stop work orders have been issued and the permit holder fails to comply with the conditions for resumption of work; (e) contractors license has expired, is suspended or has been revoked; and (e) when permit has been issued in error. 12 D.C.M.R. §105.6. Section 114.1 authorizes the issuance of a stop work order if the construction is being "performed contrary to the provisions of the Construction Code or in an unsafe and dangerous manner." 12 D.C.M.R. §114.1.

As such, discretion to revoke or suspend the permits is limited and therefore "constrained sufficiently to give [MLW] an expectation in the continued effect of the permits – and therefore a property interest in them." *3883 Connecticut, LLC*, 336 F.3d at 1073.

C. MLW WILL SUFFER IRREPARABLE INJURY IF THE REQUESTED RELIEF IS NOT GRANTED

The denial of MLW's due process rights constitutes irreparable injury. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 5 U.S. 137, 163 (1803). The Fourteenth Amendment to the United States Constitution provides that a State shall not "deprive any person of life, liberty, or property, without due process of law." Amdt. 14, § 1. The procedural component of the Due Process Clause does not protect everything that might be described as a "benefit": "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire" and "more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Roth*, 408 U.S. 564, 577. Such entitlements are "'of course, . . . not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.'" *Paul v. Davis*, 424 U.S. 693, 709 (1976) (quoting *Roth, supra*, at 577); see also, *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 164 (1998). The permits issued by

DCRA-BLA constitute a vested property right and therefore, MLW is entitled to Due Process protections before the same is revoked or suspended.

As discussed in Section B, *supra*, §114.1 authorizes the issuance of a stop work order if the construction is being "performed contrary to the provisions of the Construction Code or in an unsafe and dangerous manner." 12 D.C.M.R. §114.1. The plain language of the regulation requires that a violation must be found prior to the issuance of a stop work order. There is no basis for the Second Order, as the cited violation, "11 DCMR §2005.1," is found in the Zoning Regulations and not the Construction Code. As discussed in Section B1i, *supra*, the District of Columbia Zoning Regulations are not defined in the Building Code as being a part of, or included within the "Construction Codes." *See*, 12 D.C.M.R. §101.1.1 (Defines the scope of the Construction Codes as comprising Title 12 and the codes listed in Sections 101.2 through 101.4.8). The Second Order clearly does not comport with the requirements of §114.1, and therefore unconstitutionally deprives MLW of its Constitutionally protected property right in the building and construction permits which were issued by BLA. *3883 Connecticut, LLC v. District of Columbia*, 336 F.3d 1068. By issuing the Second Order for a violation that is not included within the scope of the applicable Regulations, MLW has been deprived of its Due Process Rights, and deprivation of the same constitutes an irreparable injury.

At a minimum, due process considerations require both notice and opportunity to be heard before a protected property right is deprived. The Second Order clearly fails to meet both of the aforementioned. First, there is no basis for the issuance of the Second Order for a violation of the Zoning Regulations, as the regulations governing stop work orders are limited to violations of the Construction Codes. Second, the Second Order is procedurally defective as it fails to contain the name and phone number of the official empowered to review the Second

Order. MLW has been deprived of its vested property right, the building and construction permits, without DCRA – BLA complying with the Constitutional requirements of Due Process.

Such a violation of this basic tenant of liberty constitutes irreparable injury justifying the requested relief.

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

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Virginia Petroleum Jobbers Asso. v. Federal Power Com., 259 F.2d 921, 925 (D.C. Cir. 1958).

The injury to MLW, increased delay in completing construction and substantial and unwarranted financial hardship should the Second Order not be lifted, is not one that can be compensated or corrected.

D. HARM TO MLW OUTWEIGHS ANY HARM TO DEFENDANTS

In addition to denying MLW's Constitutional rights, other factors tip in favor of MLW and the issuance of the Temporary Restraining Order. The foregoing statutory and case law clearly show MLW's right to proceed. MLW has already begun construction in accordance with the permits and approvals, and the Second Order has forced MLW to cease all activities at a time when the Building itself is susceptible to damage and increased costs due to the Defendants conduct. *See, Exhibit U, Cost of Delay; see, Exhibit Q, Williams Affidavit.*

The granting by this Court of the Temporary Restraining Order will serve to minimize the disproportionate amount of harm that MLW will endure as a result of the BLA's mandate to refrain from cease all activities at the Property with respect to the Building. MLW has demonstrated that a serious financial hardship is being worked on it, solely by the continuing illegal, unconstitutional and harassing conduct of the Defendants.

E. THE PUBLIC INTEREST WILL BE SERVED BY GRANTING THE REQUESTED RELIEF

The public has an interest in ensuring that administrative agencies of the District of Columbia government act within the limits on their authority as established by the Council and applicable municipal regulations. The BLA issued the Second Order, but failed to include the required information regarding who issued the same, how to contact that individual, and most importantly, the basis for, and a description of, the violation justifying the Second Order.

This Court has clear authority to issue an injunction against an administrative agency.

The ultimate test of reviewability is not to be found in an overrefined technique, but in the need of the review to protect from the irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow, the results of which the regulations purport to control. Thus administrative orders are ordinarily reviewable when they impose an obligation, **deny a right**, or fix some legal relationship as a consummation of the administrative process. (emphasis added).

Trans-Pacific Freight Conference of Japan v. Federal Maritime Board, 302 F.2d 875, 877 (D.C. Cir. 1962) (internal citations omitted).

The BLA action denies a right; it precludes MLW from continuing previously approved and permitted construction without notice of why said permits and approvals have been suspended. MLW has followed the prescribed procedure for noting an appeal of the BLA decision to issue the Second Order, but at every step of that process, BLA has failed to respond.⁴

Relief from this Court will not interfere with the ability of BLA to issue Stop Work Orders; MLW does not seek to interfere with that process. Judicial review at this juncture will

⁴ The same was the case in the First Litigation. MLW noted its appeal to Mr. Lennox Douglas, yet no response within the time prescribed by the Regulations was forthcoming. Thereafter, MLW noted its further appeal to Dr. Patrick Canavan, and again, no response was forthcoming. Upon issuance of the Second Order, MLW noted its appeal with Mr. Douglas, but again, no response was received. Rather than participate in an exercise in futility, MLW proceeded to exercise its right to utilize the judiciary to secure relief.

protect the public at large from overreaching agency decisions and the already occurring unjustified increase in costs to MLW based on the unwarranted delay.

Additionally, the public interest favors the interest of the granting of an injunction against allowing the invalid Second Order to stand in effect. If the Second Order were allowed to stand, DCRA could issue Stop Work Orders at any time and for any reason and subject property owners in the midst of construction to skyrocketing costs, legal liability and potential financial ruin with no fear of recourse.

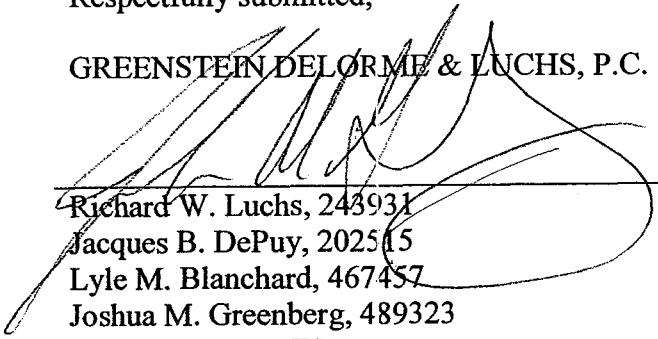
IV. CONCLUSION

For these reasons, a Preliminary Injunction precluding enforcement of the Stop Work Order of the District of Columbia Department of Consumer and Regulatory Affairs Building and Land Regulation Administration should be granted.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: April 10, 2006


Richard W. Luchs, 243931
Jacques B. DePuy, 202515
Lyle M. Blanchard, 467457
Joshua M. Greenberg, 489323
1620 L Street, N.W.
Suite 900
Washington, DC 20036-5605
Telephone: (202) 452-1400

Counsel for Plaintiff MLW, LLC

286753v1

EXHIBIT 26

Mr. CREWS NON-RESPONSE

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2006 NOV 31 PM 2:40

Joshua M. Greenberg

From: Efros, Ellen (OAG) [Ellen.Efros@dc.gov]
Sent: Tuesday, April 11, 2006 8:55 AM
To: Joshua M. Greenberg
Subject: 3256 N Street/MLW, Inc.

Josh, did you speak with Bill Crews yesterday? I also left messages for him this a.m. I received no papers from you yesterday so I assume you are not proceeding tomorrow with a tro hearing.

Please let me know where we are on this.

Thanks.

Ellen A. Efros
Assistant Attorney General
Equity Section I, Civil Litigation Division
Office of the Attorney General for the District of Columbia
(202) 442-9886
ellen.efros@dc.gov

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11/30/2006

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Joshua M. Greenberg

From: Joshua M. Greenberg
Sent: Tuesday, April 11, 2006 9:16 AM
To: 'Efros, Ellen (OAG)'
Subject: RE: 3256 N Street/MLW, Inc.

Ellen:

I left a message for Mr. Crews yesterday, but have not heard back at this point. Attached, please find a copy of the Complaint (in 2 parts) and Motion for TRO (1 part) and exhibits (2nd part). The TRO hearing is set for Wednesday at 2:30 pm.

Thank you.

Joshua M. Greenberg, Esquire
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036
Phone: 202.452.1400 x385
Fax: 202.452.1410
E-mail: jmg@gdllaw.com
www.gdllaw.com

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-----Original Message-----

From: Efros, Ellen (OAG) [<mailto:Ellen.Efros@dc.gov>]
Sent: Tuesday, April 11, 2006 8:55 AM
To: Joshua M. Greenberg
Subject: 3256 N Street/MLW, Inc.

Josh, did you speak with Bill Crews yesterday? I also left messages for him this a.m. I received no papers from you yesterday so I assume you are not proceeding tomorrow with a tro hearing.

Please let me know where we are on this.

Thanks.

*Ellen A. Efros
Assistant Attorney General
Equity Section I, Civil Litigation Division*

11/30/2006

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Office of the Attorney General for the District of Columbia
(202) 442-9886
ellen.efros@dc.gov

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NOV 30 2006

EXHIBIT 27

EMAIL SENT BY ANDREW SAINDON, ESQ.

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2008 NOV 31 PM 2:10

Joshua M. Greenberg

From: Joshua M. Greenberg
Sent: Tuesday, April 11, 2006 4:24 PM
To: 'Saindon, Andy (OAG)'
Cc: Richard W. Luchs; Jacques B. DePuy
Subject: MLW, LLC v. District of Columbia et al (06-ca-002790) - 3256 N Street, N.W

Mr. Saindon:

Please allow this email to confirm our conversation of earlier this afternoon, Tuesday, April 11, 2006, in which you indicated that the Stop Work Order issued in connection with 3256 N Street, N.W. has been rescinded and that MLW, LLC may recommence activity at the Property in compliance with all permits issued by DCRA-BLA. Attached, please find a Praeipce canceling the hearing before the judge in chambers set for tomorrow at 2:30. The same will be filed first thing tomorrow morning. Additionally, a Praeipce withdrawing the Motion for the TRO and the PI will be filed at the same time.

Please confirm, in a reply email, that the Stop Work Order has been rescinded, and that MLW, LLC may recommence work immediately.

Thank you.

Joshua M. Greenberg, Esquire
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036
Phone: 202.452.1400 x385
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11/30/2006

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MLW, L.L.C.,

Plaintiff,

v.

THE DISTRICT OF COLUMBIA, et al.,

Defendants.

Civil Action No. 06-ca-002790
Judge Mary A. Gooden Terrell
Next Event: Hearing on Motion for Entry
of Temporary Restraining Order
April 12, 2006 at 2:30 p.m. before the
Judge-in-Chambers

2006 NOV 31 AM 2:40

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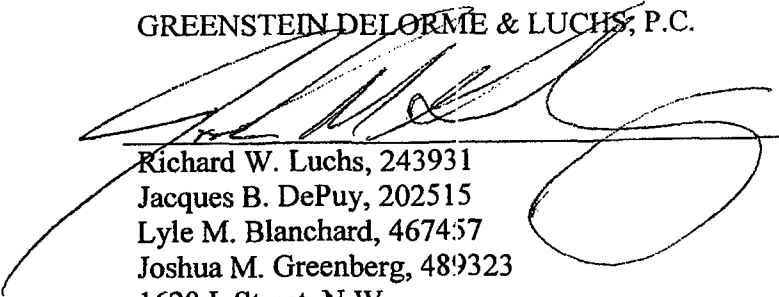
PRAECIPE

Will the Clerk of the Court please withdraw Plaintiff's Motion for Entry of a Temporary Restraining Order in the above-captioned matter and cancel the hearing scheduled for 2:30 p.m. on April 12, 2006, before the Judge-in-Chambers as the District of Columbia has withdrawn the Stop Work Order which was the basis for the Motion for Entry of a Temporary Restraining Order.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: April 12, 2006


Richard W. Luchs, 243931
Jacques B. DePuy, 202515
Lyle M. Blanchard, 467457
Joshua M. Greenberg, 489323
1620 L Street, N.W.
Suite 900
Washington, DC 20036-5605
Telephone: (202) 452-1400

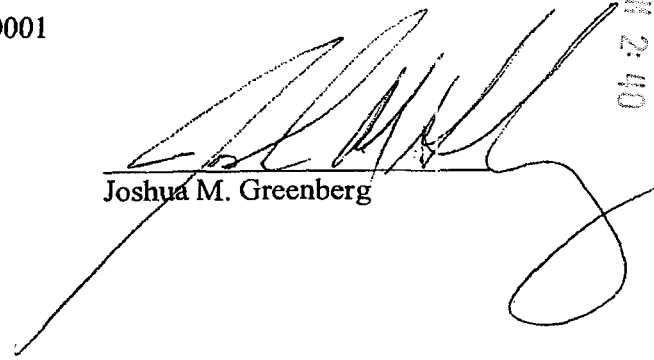
Counsel for Plaintiff MLW, LLC

286893v1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via first class mail, postage prepaid, this ~~12~~^{11th} day of ~~January~~^{APRIL}, 2006 on:

Andrew Saindon, Esq.
Office of the Attorney General
441 4th Street, N.W.
Sixth Floor South
Washington, D.C. 20001


Joshua M. Greenberg

2006 NOV 31 PM 2:40

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EXHIBIT 28

NOTICE OF DISMISSAL OF SECOND STOP WORK ORDER

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2024 MAY 31 PM 2:41

Joshua M. Greenberg

From: Saindon, Andy (OAG) [andy.saindon@dc.gov]
Sent: Wednesday, April 12, 2006 12:37 PM
To: Joshua M. Greenberg
Cc: Richard W. Luchs; Jacques B. DePuy
Subject: RE: MLW, LLC v. District of Columbia et al (06-ca-002790) - 3256 N Street, N.W.

Gentlemen,

While I was told that DCRA would try to remove the SWO yesterday before COB, I just received word from DCRA that an inspector has removed the SWO on the property (at approximately 12 noon today, Wednesday). I apologize for the delay.

From: Joshua M. Greenberg [mailto:JMG@gdllaw.com]
Sent: Tuesday, April 11, 2006 4:24 PM
To: Saindon, Andy (OAG)
Cc: Richard W. Luchs; Jacques B. DePuy
Subject: MLW, LLC v. District of Columbia et al (06-ca-002790) - 3256 N Street, N.W.

Mr. Saindon:

Please allow this email to confirm our conversation of earlier this afternoon, Tuesday, April 11, 2006, in which you indicated that the Stop Work Order issued in connection with 3256 N Street, N.W. has been rescinded and that MLW, LLC may recommence activity at the Property in compliance with all permits issued by DCRA-BLA. Attached, please find a Praeipie canceling the hearing before the judge in chambers set for tomorrow at 2:30. The same will be filed first thing tomorrow morning. Additionally, a Praeipie withdrawing the Motion for the TRO and the PI will be filed at the same time.

Please confirm, in a reply email, that the Stop Work Order has been rescinded, and that MLW, LLC may recommence work immediately.

Thank you.

Joshua M. Greenberg, Esquire
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MOTION FOR SUMMARY JUDGEMENT

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of MLW, LLC

BZA Appeal No. _____
ANC 2E

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**APPELLANT'S MOTION FOR SUMMARY JUDGMENT
AND/OR AN EXPEDITED HEARING**

The Appellant, MLW, LLC ("MLW"), by and through undersigned counsel, respectfully submits this Motion for Summary Judgment and/or An Expedited Hearing on its Appeal of the Department of Consumer and Regulatory Affairs and/or the Zoning Administrator's October 19, 2006 Notice of Revocation of Certificate of Occupancy Number CO61776 (dated September 9, 2003) (the "Notice") for the five (5) unit apartment building located at 3256 N Street, N.W. (Square 1218, Lot 104) (the "Property") alleging on "information and belief, the Zoning Administrator has determined that the nonconforming use was discontinued for a period of three (3) or more years" and as a result, under 11 DCMR § 2005.1, "the current use as a five unit apartment building is not allowed by the Zoning Regulations." See, Exhibit 1. In support of its Motion, MLW states that there no genuine issue as to any material fact and Appellant is entitled to judgment as a matter of law.

Additionally, MLW respectfully requests that the Board schedule this Appeal on an expedited basis given the extraordinary history and circumstances, the direct assault by the Zoning Administrator and DCRA on the Board's prior approval of the five unit apartment building and authority to make such approvals without being second-guessed and/or overruled, and the extreme prejudice to MLW that will result without prompt action. Specifically, MLW requests that this Appeal be scheduled for a public hearing at the first date consistent with the Board's 40-day notice requirements under 11 DCMR §3113.13.

MLW expressly incorporates by reference its Statement of Appeal, including Exhibits 1 through 28.

I. BASIS FOR APPEAL

The Zoning Administrator has attempted to usurp the authority of the Board and overrule its earlier decision. In BZA Order No. 6885, the Board expressly authorized use of the Property as a five unit apartment building without time limitation or other conditions. See, Exhibit 2. It is well-established that a use approved by the Board runs with the land and is not a nonconforming use. Accordingly, the approved use as a five unit apartment building is not subject to the discontinuance provisions of 11 DCMR § 2005.1.

Additionally, under the compelling and well documented circumstances of this case, the Zoning Administrator and/or DCRA are estopped from revoking the Current Certificate of Occupancy and such action is also legally barred by the doctrine of Laches.

II. EXPEDITED RESOLUTION IS JUSTIFIED AND AUTHORIZED.

The Board has the explicit and inherent authority to schedule this Appeal on an expedited basis when unique circumstances warrant. 11 DCMR §§ 3116 and 3117.2; see also, BZA Appeal No. 17468-A (November 15, 2006) (granting a cross appeal and expedited scheduling of the hearing). Without expedited action, this Appeal will not be scheduled for a hearing until April 2007, and the decision making and order issuance process will take at least an additional three to six months. Realistically, a year or more may pass from the Notice before MLW can expect a decision on its Appeal. During this period, MLW will suffer extreme prejudice and be forced to halt its completely authorized construction in progress or allow the completed five unit apartment building sit vacant for months waiting for the Appeal process to be completed.

Of equal or even greater significance, the Board cannot tolerate its authority to be usurped and its long-standing decisions to be overruled by the Zoning Administrator and DCRA. Faced with this unprecedented challenge, the Board has no choice but to act decisively and without unnecessary delay. The negative impact threatened by the Zoning Administrator's action goes way beyond this case. At stake is the validity of every Board approval and the ability of the parties which received the approvals and all subsequent owners' of the property to reasonably rely on the Board's approvals without unauthorized interference or challenge from the Zoning Administrator and/or DCRA.

III. STANDARD FOR GRANTING SUMMARY JUDGMENT

Summary judgment is appropriate if there is "no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Super. Ct. Civ. R. 56 (2005); see also, Musa v. Continental Ins. Co., 644 A.2d 999, 1001-02 (D.C. 1994). Only disputes over facts, viewed in the light most favorable to the non-moving party, which might legitimately affect the outcome of a trial, are "material" under Rule 56. See, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986) (There is no issue to be decided at trial unless there is sufficient evidence favoring the non-moving party for the jury to return a verdict for that party.); see also, Barnstead Broadcasting Corp. v. Offshore Broadcasting Corp., 886 F.Supp. 874, 878 (D.C. Cir. 1995) (Disputed material facts are those that might affect outcome of the suit under governing law.); Clayton v. Owens-Corning Fiberglass Corp., 662 A.2d 1374, 1381 (D.C. 1995).

The United States Supreme Court has articulated a policy favoring the granting of summary judgment motions. See, e.g., Celotex, supra, 477 U.S. 317; Anderson v. Liberty

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Lobby, Inc., supra, 477 U.S. 242 (1986); Matsushita Electric Industrial Co., Ltd., supra, 475

U.S. 574. In Celotex, the Supreme Court stated:

Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of [Court Rules] as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.

Celotex, 477 U.S. at 327.

The District of Columbia Court of Appeals has also noted that summary judgment is a valuable tool, and that public policy favors disposing of issues summarily where possible.

Hercules & Co., Ltd. v. Beltway Carpet Services, Inc., 592 A.2d 1069, 1075 (D.C. 1991);

Vessels v. District of Columbia, 531 A.2d 1016, 1019 (D.C. 1987). In administrative proceedings, summary judgment is also a well accepted practice. District of Columbia

Department of Consumer and Regulatory Affairs v. Vu, CR-C-06-100009 (OAH, October 16, 2006)(granting summary judgment against DCRA).

As is demonstrated below, the resolution of this action is entirely a matter of resolving questions of law and, therefore, MLW is entitled to summary judgment as a matter of law.

IV. MATERIAL FACTS NOT IN DISPUTE

The following material facts are undisputed:

1. In Order No. 6885 (August 21, 1062), the Board authorized use of the Property as a five unit Apartment Building without time limitation or other conditions. See, Exhibit 2.
2. MLW is the owner of the Property. See, Exhibits 3 and 6.
3. On September 9, 2003, DCRA issued Certificate of Occupancy No. C061776 ("Current of Certificate of Occupancy") authorizing continued use of the Property as a five unit Apartment Building. See, Exhibits 7 and 12.

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4. On March 16, 2005, DCRA issued Building Permit No. B470714 ("March 2005 Permit") authorizing exterior renovation of the existing five unit Apartment Building. See, Exhibits 10 and 12.
5. On June 21, 2005, DCRA issued Building Permit No. B474036 ("June 2005 Permit") authorizing interior renovation of the existing five unit Apartment Building. See, Exhibits 11 and 12.
6. MLW obtained construction financing of One Million Four Hundred Thousand Dollars (\$1,400,000.00) secured by the Property in reliance on BZA Order No. 6885, the Current Certificate of Occupancy, the March 2005 Permit and the June 2005 Permit (collectively, the "DC Approvals"). See, Exhibit 3.
7. On November 3, 2005, MLW began construction at the Property in reliance on the DC Approvals. See, Exhibits 3 and 13.
8. On December 7, 2005, Mr. Crews issued a Stop Work Order ("First Stop Work Order") at the Property alleging a violation of 11 DCMR § 2002 [nonconforming uses within structures]. See, Exhibit 14.
9. On January 23, 2006, DCRA lifted the First Stop Work Order and MLW resumed, construction at the Property. See, Exhibit 20.
10. On March 28, 2006, Mr. Crews issued a second Stop Work Order ("Second Stop Work Order") alleging a violation of 11 DCMR § 2005.1. See, Exhibits 22 and 23.
11. On April 12, 2006, DCRA lifted the Second Stop Work Order and MLW resumed construction at the Property. See, Exhibit 28.
12. On or about October 19, 2006, Mr. Bill Crews, the Zoning Administrator sent a Notice of Revocation of the Current Certificate of Occupancy to MLW. See, Exhibit 1.

13. Through October 31, 2006, MLW has spent One Million Three Hundred Thousand Dollars (\$1,300,000.00) on the construction at the Property. See, Exhibit 3.
14. As of October 31, 2006, construction at the Property is approximately eight percent (80%) completed with substantial completion scheduled for January 31, 2007. See, Exhibit 3.

V. LEGAL ANALYSIS

A. THE FIVE UNIT APARTMENT BUILDING APPROVED BY THE BOARD IS A CONFORMING USE

The Notice is fatally flawed based on the unsupported assertion that the use of the Property as a five unit Apartment Building is a "nonconforming use" and therefore subject to the three-year discontinuance provisions of 11 DCMR § 2005.1. By this action, Mr. Crews has attempted to usurp the authority of the Board, demonstrated a fundamental and continuing misunderstanding and disrespect for the Zoning Regulations and the proper role of the Zoning Administrator, and caused great harm to a law-abiding property owner.

It is undisputed that the Board expressly authorized, without time limitation or any other condition, use of the Property as five unit Apartment Building. It is also well established that any use approved and authorized by the Board runs with the land and is NOT a "nonconforming use" as that term is defined in the Zoning Regulations. ANDERSON, AMERICAN LAW OF ZONING, §20.2 (4th Ed); see also, Exhibit 12. In 1962, the Board's granting the "appeal" was in all respects the functional and legal equivalent of a what is now known as either a "use variance" or a "special exception" and that approval must be clearly distinguished from a "nonconforming use." Courts throughout the country have firmly embraced the concept that a use approved by a variance or special exception "becomes a conforming use and otherwise partakes to a large

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degree the character of a vested right running with the land." ANDERSON, AMERICAN LAW OF ZONING §§ 6.1, 20.2 citing Industrial Lessors, Inc. v. Garfield, 119 NJ Super 181, 290 A.2d 737 (1972), cert. den, 61 NJ 160, 293 A.2d 390. Accordingly, a use authorized through such zoning relief is not a "nonconforming use." See, Exhibit 12.

Additionally, a careful analysis of the "nonconforming use" definition demonstrates that the Board approved 5-unit apartment building use is conforming. Under the Zoning Regulations, a "nonconforming use" is defined as:

[A]ny use of land or of a structure, or of a structure and land in combination, lawfully in existence at the time this title or any amendment to this title became effective, that does not conform to the use provisions for the district in which the use is located. A use lawfully in existence at the time of adoption or amendment of this title that would thereafter require special exception approval from the Board of Zoning Adjustment shall not be deemed a nonconforming use. That nonconforming use shall be considered a conforming use, subject to the further provisions of §§ 3104.2 and 3104.3.

11 DCMR §199.1.

Specifically, the 5-unit apartment building use was not a use "lawfully in existence" when the Zoning Regulations were adopted in May 1958, or amended. Significantly, the apartment building use was first authorized by the Board four (4) years after the Zoning Regulations were adopted, not by operation of law as the result of being "grandfathered" by the subsequent adoption of new or amended Zoning Regulations.

In addition, this definition also clearly establishes and contemplates the role of the Board and its special exception approval authority in distinguishing between nonconforming and conforming uses. An otherwise nonconforming use would be considered a conforming use if that use could be approved by the Board as a special exception. Thus, under the current Zoning Regulations in the R-3 Zone where the Property is located, the prior nonconforming use as a

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rooming house could be changed to another nonconforming use as an apartment building with a special exception under § 2003.1.

Section § 2003.1 provides:

If approved by the Board of Zoning Adjustment, as authorized in §§ 3103 and 3104 for variances and special exceptions, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section.

In applying § 2003.1 to this case, the Board would be authorized to grant a special exception to allow a rooming house (first permitted in the R-4 zone) to be changed to an apartment house (also, first permitted in the R-4 zone). And as a result, the approved apartment building would be a conforming use under the clear definition of "nonconforming use."

B. A CONFORMING USE IS NOT SUBJECT TO DISCONTINUANCE UNDER § 2005.1

The discontinuance restrictions under § 2005.1 are by definition only applicable to a "nonconforming use." Section 2005.1 provides:

Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

11 DCMR § 2005.1 (Emphasis added).

As a conforming use, the 5-unit Apartment Building at the Property is not subject to the discontinuance restrictions of § 2005.1.

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C. THE DISTRICT IS ESTOPPED FROM REVOKING THE CURRENT CERTIFICATE OF OCCUPANCY

The District of Columbia is estopped from revoking the Current C of O. MLW has already acted in reliance, to its detriment, on the Current C of O, as well as the construction and other permits issued by the District of Columbia.

There is a substantial body of case law applying estoppel to municipal corporations, include, specifically the District of Columbia. See i.e., District of Columbia v. Cahill, 54 F.2d 453, 454 (D.C. 1931) (where a party acting in good faith under affirmative acts of a city has made such expensive and permanent improvement that it would be highly inequitable and unjust to destroy the rights acquired, the doctrine of equitable estoppel will be applied); Bannum, Inc. v. District of Columbia Board of Zoning Adjustment, 894 A.2d 423 (D.C. 2006); Saah v. District of Columbia Board of Zoning Adjustment, 433 A.2d 1114 (D.C. 1981); Goto v. District of Columbia Board of Zoning Adjustment, 423 A.2d 917 (D.C. 1980); Wieck v. District of Columbia Board of Zoning Adjustment, 383 A.2d 7 (D.C. 1978); Smith v. District of Columbia Board of Zoning Adjustment, 342 A.2d 356 (D.C. 1975).

Most recently, the D.C. Court of Appeals has repeated the six part test required to successfully establish an estoppel claim against the D.C. government, including: 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) the equities strongly favor the petitioner. Bannum, Inc. at 431; District of Columbia Department of Consumer and Regulatory Affairs v. Vu, CR-C-06-100009, (OAH, October 16, 2006).

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It is indisputable that MLW undertook the present action, including but not limited to, obtaining financing for construction, contracting with several contractors, allowing substantial work to be performed on the Property and making other expensive and permanent improvements to the Property, in reliance on not only the Current C of O, but two Building Permits and other permits and approvals issued by the District long before the issuance of the Notice.

As of the date of the Notice, MLW had incurred debt of \$1,300,000.00, including at least Nine Hundred Fifty Thousand Dollars (\$950,000.00) in construction costs over almost one year and Thirty Thousand Dollars (\$30,000.00) in interest on the construction loans. This substantial financial investment, and the actions of MLW, were made in direct reliance on the affirmative acts of the District – issuance of the Current C of O, two (2) building permits and other approvals for work on the Property. MLW's reliance on the repeated affirmative acts of the District were at all times in good faith, justified and reasonable under the circumstances for the purpose of renovating and investing in an aging property for continued use as a rental accommodation. In a matter recently decided by the Office of Administrative Hearings, captioned District of Columbia Department of Consumer and Regulatory Affairs v. Vu, *supra*, the District was estopped from revoking a building permit as the homeowner had debt of in excess of One Million Dollars (\$1,000,000.00) and the expenditure of the funds was in good faith and in justifiable and reasonable reliance on affirmative acts of DCRA. District of Columbia Department of Consumer and Regulatory Affairs v. Vu, CR-C-06-100009, (OAH, October 16, 2006).¹

¹ The Court of Appeals in Saah v. District of Columbia Board of Zoning Adjustment, *supra*, found that equitable estoppel applied against the District when significantly less money had been expended to complete less construction than in Vu. In Saah, the homeowner spent over one-quarter of a million dollars (\$225,000.00) for sixty percent (60%) completion.

At no time prior to initiating the extensive and expensive construction at the Property did MLW have any notice that the Current C of O and/or the two (2) building permits and other approvals were in violation of the Zoning Regulations. Only after construction had begun did Mr. Crews raise a challenge to the approvals granted. In both instances, the illegal and unauthorized Stop Work Orders were promptly lifted and MLW had no notice or reason to believe that the work in progress could not be continued to completion and the Property occupied in accordance with the Current C of O and the approved construction. After the Second Stop Work Order was lifted on April 12, 2006, MLW restarted construction and continued uninterrupted and at great expense for more than six (6) months before, without warning, Mr. Crews unilaterally issued the Notice. After twice being rebuked for acting improperly, it was unconceivable to MLW, or its counsel, that Mr. Crews had any reasonable basis for objecting or was foolish or reckless enough to initiate yet a third unwarranted assault on MLW, the Property and numerous approvals from the District.

The equities in this case overwhelmingly favor MLW. The Current C of O is more than three (3) years old and has never before been challenged. On the basis of the Current C of O, MLW obtained building permits and numerous other approvals, incurred construction financing and construction began and reasonably continued for more than a year at cost exceeding \$1,300,000.00. Construction is now approximately eighty percent (80%) completed with an anticipated completion date of January 31, 2007 (although, to date, MLW has only been invoiced for approximately sixty-five percent (65%) of construction costs), and revoking the Current C of O would have the domino affect of invalidating the building permits and leaving the Property with a partially completed and uninhabitable structure. As in the Vu case, this result would be "ruinous" to MLW precipitating a default in the construction loan and erecting a

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barrier to obtaining permanent financing and subjecting the Property to foreclosure. "In zoning, the equities can be so compelling as to favor the individual property owner." Wieck at 13.

D. REVOCATION OF THE 2003 C OF O IS BARRED BY THE DOCTRINE OF LACHES

The Notice is barred by the doctrine of laches, as the District "slept on its rights" with respect to any claim as to the Current C of O. See, 11 D.C.M.R. 3112.2(a); see also, Appeal No. 16849 of Robert Lehrman; Appeal No. 14110 of the Residential Action Coalition; Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment, 816 A.2d 41 (D.C. 2003); Waste Management of Maryland, Inc. v. District of Columbia Board of Zoning Adjustment, 775 A.2d 1117 (D.C. 2001).

"To prevail on the affirmative defense of laches, the party asserting the defense bears the burden of proving that (1) the claimant knew of the existence of the grounds for the claim; (2) the delay was unreasonable and must have worked to the disadvantage, injury or prejudice of the party asserting the defense; (3) the delay of time has resulted in some change in the condition of the property or in the relations of the parties; however, the mere passage of time is insufficient to support a finding of laches." Town of Cameron v. Woodell, 150 N.C. App. 174, 563 S.E. 2d 198 (N.C. App. 2002).

If the District had a viable claim against the Current C of O, it waited far too long in seeking recourse. See, Federal Marketing Company v. Virginia Impression Products Company, 823 A.2d 513 (D.C. 2003); see also, Richards v. Mackall, 124 U.S. 183 (1838); Halstead v. Grinnan, 152 U.S. 412 (1894). The Court of Appeals in American University Park Citizens Association v. Burka, 400 A.2d 737 (D.C. 1979), stated that "[l]aches is the principle that equity

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will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant." Id. at 740 (internal quotations omitted).

The Current C of O was issued on September 9, 2003. See, Exhibit 7. In June and August, 2004, MLW submitted applications for construction permits with respect to the proposed renovations to the Property. See, Exhibits 8 and 9. On or about March 16, 2005 and June 21, 2005, the requested construction permits for the construction work authorizing the renovation of the existing five (5) unit apartment building located on the Property were issued. See, Exhibits 10 and 11. On or about November 3, 2005 construction on the Building commenced and has continued for more than a year at a cost of \$1,300,000.00. See, Exhibits 3 and 13. The District is barred by laches, as well as estoppel, discussed infra, from revoking the Current C of O over three (3) years after its issuance, more than one (1) year after issuance of building permits and one (1) year after the start of construction. Given the level of sustained scrutiny, bordering on obsession, that Mr. Crews and DCRA has directed at the Property, it is inexcusable that the Notice was filed at this late date.

MLW, in reliance on the issuance of the Current C of O, combined with the subsequent issuance of the construction permits authorizing the substantial renovations to the Property, expending significant amounts of money on the Property. See, Exhibit 3. It is without dispute that a change in the condition of the Property has occurred since the time the Current C of O was issued, and that said change in condition is directly related to the issuance of the Current C of O and the construction permits. Clearly, the District's delay in acting on its alleged claim, without making a concession as to the merits of the same, has operated to the extreme prejudice of MLW. The Notice may result in MLW defaulting on its construction loans and other financial obligations as to the Property.

VI. WITNESSES

In Support of this Appeal, MLW will introduce at least the following witnesses if a hearing is required:

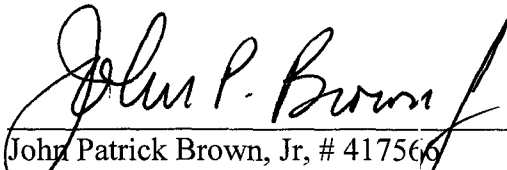
1. Ms. Mary Wagshal, MLW, LLC
2. Mr. Olutoye Bello, Zoning Expert

VII. CONCLUSION

For the foregoing reasons, the Zoning Administrator's action is founded on a legally insufficient basis and barred by the doctrine of estoppel and/or laches, and therefore, the Appeal must be GRANTED and DCRA directed to reinstate Certificate of Occupancy Number CO61776 without further delay or interference.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal and Statement in Support of Appeal was served via hand delivery, this 15th day of December 2006, upon the following:

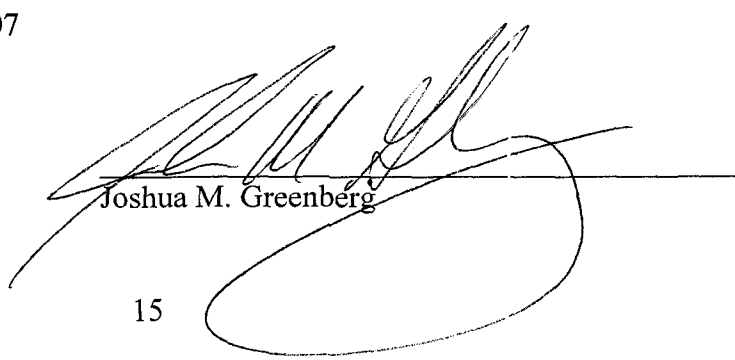
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