

DISTRICT OF COLUMBIA GOVERNMENT
BOARD OF ZONING ADJUSTMENT

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Appeal of:
Stephanie Wallace)
Re: 5013 Belt Rd., NW)
_____)

Appeal No. 17747

AFFIDAVIT OF MARY GRUMBINE

I, Mary Grumbine, being duly sworn, depose and state as follows:

1. I am over the age of 21 and make this affidavit on the basis of personal knowledge of the facts set forth herein.

2. I have previously filed an affidavit in this matter, which is attached to Intervenor's Motion to Dismiss.

3. I have lived at 3952 Garrison St., NW, for over thirty years and my property abuts 5013 Belt Rd., NW.

4. For many years, our neighbor at 5013 Belt Rd was Robin Mayer and we often visited each other's home and yards during the years that she lived there. Her home at 5013 Belt Rd., was a small, charming pre-1933 farm house. It was well-maintained while she lived there and she was quite happy and comfortable living there. She never mentioned any maintenance problems or structural problems. From my observations, the house was in good repair and structurally sound. Unfortunately, Robin decided to move to Florida and her sister sold the house in 2004.

5. In April 2004, 5013 Belt Rd. was sold. I did not see

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anyone move into the house at that time or at any time after the sale. The house was in pristine ^{-looking} condition when it was sold. ^(freshly painted exterior)

6. On a Sunday in January 2005, my peace was shattered by a constant pounding and the sound of heavy objects hitting the ground. I looked out a window and saw a large, open truck parked on my property in the back. Two men were standing on the roof of 5013 Belt Road, ripping off pieces of the roof and throwing them into the truck and onto the ground. My husband and I had been taking a nap but went outside to talk to the men. Pieces of roofing materials, including nails, wood, tarpaper, and shingling had been thrown inside the fenced portion of our backyard and were strewn all over our grassy easement where the truck was parked. Our dogs played every day in that backyard until that day; I have not been able to allow them to use the backyard for the more than three and a half years since that Sunday because of the debris thrown into our yard and because of the continuous discovery of nails and hazardous materials in the backyard.

7. My husband talked with the two men and told them that they were trespassing on private property and asked that they move the truck. They promised to clean up the mess and to leave quickly. Their large truck was filled with roofing materials. However, they made no attempt to clean up any of the roofing material before leaving. At the time, we thought that the new owner had hired the two men to put on a new roof before moving in.

8. The next Sunday more work was done dismantling the roof. My husband talked to the men who were there and

reiterated the fact that they were trespassing and that Sundays were not legal construction work days.

9. I attempted to find out the name of the new owner to contact that person. We sent a letter to 5013 Belt Road but the postal carrier brought it back saying that no one lived there and the letter itself was stamped "undeliverable." During the next month, we found out that Ms. Stephanie Wallace had listed her address as 5013 Belt Road on her building permit application. Exhibit 1 to Opposition's Presentation Exhibits ("Opp. Exhibits"). In fact, Ms. Wallace has never resided at 5013 Belt Road, although she continued to use 5013 Belt Road as her address on her building permit applications up until April 2007. I eventually found her true address in the phone book.

10. In February 2005, more workers appeared at 5013 Belt Road

Since I work at home, I saw them continuously trespass on our property. My husband & I posted our property but the workers at Belt Road repeatedly ignored those signs and my requests that they stay off our property. I was forced to call the police on a number of occasions. No posting of a building permit had taken place. My husband was not at home during the endless days that this construction took place and did not suffer through the constant noise and trespassing that disrupted my daily work. I also had constant discussions with the workers.

11. No work was done to repair the roof or to replace the roofing materials that had been taken off in January. In fact, at no time during the next two years was any attempt made by any of the workers to replace the roofing materials or to cover the

roof with a tarp to keep the elements out of the house. Exhibit 19 to Opp. Exhibits shows one of the pictures I took of some of the remaining roofing material on our property months after promises were made to remove it.

12. In March 2005, I watched workers deliberately tear down more than half of the remaining house. The house, even with the roofing materials taken off, was still visually in good shape. When people were inside, the house appeared stable. There appeared to be no reason to take down the back half of the house. Moreover, that work was done in violation of the District-issued first building permit.

13. In addition, the tearing down of the back half of the house appeared to be done at the exact same time as other materials were being taken out of the house. In other words, both activities were being done simultaneously which suggests that there was no time for the Developer or her contractor to be in the house and 'discover' that the back half was unstable. Certainly, it indicates an intention not to call for a structural engineer to determine whether or not the building was structurally sound.

14. After the back half of the house was torn down, the workers did nothing to protect or to shore up the remaining shell of the original house.

15. On March 13, 2005, we (along with other neighbors who owned property abutting 5013 Belt Road) received a letter from Stephanie Wallace asking to use our easement.

16. On March 17, 2005, a stop work order was issued (too

late) for working beyond the scope of the building permit. Exh. 4 to Opp. Exhibits.

17. Mr. Greg Gaddy telephoned me a number of times to set up a meeting to include Ms. Wallace, my husband and me, and the other neighbors who had refused to permit Developer to use their properties for her construction. On April 6, 2005, before that meeting took place, Mr. Premo sent us a letter apologizing for the trespassing. Exh. 2 to Opp. Exhibits. Nevertheless, after that meeting and Mr. Premo's letter acknowledging the trespass, construction workers continued to trespass on our property, ignoring and even removing the no trespassing signs and tape, to use our property for their construction activities. See pictures

18. On or about April 10, 2005, Ms. Wallace and Mr. Gaddy came to my home for a meeting. The neighbors, my husband, and I had asked to see the building plans in order to see what Ms. Wallace intended to construct. Neither Mr. Gaddy nor Ms. Wallace brought the plans as they had promised nor did they ever send us or show us the plans subsequently. Mr. Gaddy introduced Ms. Wallace as an "experienced developer" who had worked in a number of neighborhoods and he said that the neighbors were always happy with the results. Ms. Wallace also talked about her extensive experience. Ms. Wallace wanted to use our easement for her construction and in return convert it into a concrete driveway. Neither our ^{neighbors} ~~neighbors~~ nor ourselves wished to change the pleasant grassy area into a concrete strip and we denied Ms. Wallace's request in writing shortly after the meeting. We were all aware that Ms. Wallace would be able to sell her house for

more money if she could present the narrow lot with an apparent driveway next to it. That letter was signed by my husband, by me, and by Cynthia Brown and Lee Van Vorhees (owners of 3956 Garrison St.).

19. At that meeting, Ms. Wallace was told about the serious water problems in our neighborhood. We explained to her - and we showed her - that water from up the hill flowed through our property and had caused great problems until we had put in an expensive drainage pipe system. We told her about the numerous problems with water in the backyard of 5013 Belt Road, more serious because of an underground spring flowing through the property. We explicitly told her of the water flow problems from up the hill and how they would affect both the drainage from her property and that those problems would need to be addressed in any construction project.

20. Although we told her at that meeting that we would not allow her to use our property, she promised (1) to install a construction fence to protect our property, (2) to instruct her workers not to trespass on our property, and (3) to clean up the debris on our property. Ms. Wallace did not keep any of those promises.

21. On October 25, 2005, Ms. Wallace received another building permit. Workers were once again trespassing on our property and no construction fence had been erected. In fact, no construction fence was erected during any of her construction activities. No construction fence was erected until May 9, 2008, when Councilmember Cheh came, at the neighborhood's request, to see the

continuing safety concerns at 5013 Belt Road.

22. Ms. Wallace's second building permit specifically required that the work be done entirely on her own property and that she must shore up the original building to preserve the integrity of the project. Ms. Wallace violated both of those provisions. Her workers continued to trespass on our property; she failed to follow District regulations when she began the excavation; and she took no action to shore up the original building. For example, no notice of excavation was given to the neighbors and she took no steps to protect the neighboring properties during excavation. Inevitably, a cave-in occurred causing additional damage to our property. Exh. 18 to Opp. Exhibits. Developer's construction workers moved the survey stakes and the orange mesh fence onto our property without permission or consultation. All of the letters and telephone calls to Ms. Wallace regarding the damage caused by the cave-in during the following months were unanswered. Ms. Wallace, her contractor, or her business partner never apologized for or repaired the damage caused by the cave-in. Our property rights have been unlawfully taken by Ms. Wallace throughout the past years and Ms. Wallace violated the second building permit continuously.

23. In spite of Ms. Wallace's promises, her workers were constantly on our property. See Exh. 13 to Opp. Exhibits. See also exhibits submitted with prior filing by Intervenors.

24. In addition, the foregoing pictorial examples show the effects of Developer's intentional actions to destroy the original house. From the pristine, charming house in Exh. 22 to

months.

27. As Developer proceeded to back fill, pour concrete for a foundation, etc., her crew frequently blocked Belt Road for long periods of time and continually worked beyond legal working hours. The time period from January 2005 until the Stop Work Order of March 2007 was an interminable period of noise, inconvenience, and health and safety hazards for the entire neighborhood.

28. In June 2006, the District posted another notice of violation: the front of the original house was unsafe. Exh. 12 to Opp. Exhibits. The Developer did nothing in response to that notice of violation either. Of course, Developer and contractor caused the condition.

29. On June 19, 2006, the District issued Developer yet another notice of violation: Developer had left the excavation dirt unprotected in front of the house with still no fence or barrier. As a result of these continual violations, our neighbors were not able to allow their children to play freely any more. Several neighbors told me that they were worried about the lack of a construction fence and that they were worried about insect-borne diseases from the continuing standing water problems at 5013 Belt Road.

30. In the period of a few short days at the end of October 2006, Developer's workers framed in a huge shell on top of the foundation that had been poured earlier in the year.

31. In late February and early March 2007, I saw no posted permit. The workers started to take off the top floor of the remaining portion of the original house. One of the two people

there was standing, once again, on our property. I went out to ask what they were doing. The woman showed me a copy of a building permit. It did not appear to me that they were allowed to do what they were doing and I called the District's stop line. No inspector came out that day or the next day, so I called again.

32. The workers took down not only every remaining piece of the original house but they also used a piece of machinery to dig out pieces of the foundation. The permit I had seen (the fourth building permit) called for demolishing, not for razing. I therefore called the District once again. Exhibit 7 to Opp. Exhibits.

33. Developer violated the fourth building permit by razing the rest of the original house and foundation, which was beyond the scope of that permit. The application for the fourth permit seems to have been designed to mislead and/or confuse DCRA. It is my belief (and it was my intention to question the witnesses about this) that Developer intentionally did not include the request covered by the application for the fifth building permit in the request for the fourth building permit because to do so would have flagged the application for zoning review. If she had asked at the same time for a demolition permit and for a new foundation (footers), it is my understanding the fourth building permit application would certainly have gone through an extensive zoning review - something that Developer clearly did not want.

34. The District issued a stop work order dated March 21, 2007. Exhs. 6 and 7 to Opp. Exhibits.

35. On July 17, 2007, the District issued yet another notice of violation, ~~this time for~~ overgrown vegetation and lack of barriers. Exh. 16 to Opp. Exhibits. Like all of the preceding notices of violation, this one too was ignored by the Developer. These notices do not begin to tell the story of how the neighborhood was forced to suffer for all of these long years, day after day. Our neighborhood, Exh. 3 to Opp. Exhibits, was a quiet, peaceful place until Developer began this project. It is impossible for those who have not lived through three and a half years of problems caused by this Developer to imagine what it was like to have your property and and your life taken by someone who apparently only wanted to maximize profit.

36. On Thursday, January 10, 2008, I attended an ANC meeting in regard to Developer's appeal of the denial of the fifth building permit application. I was surprised by the large number of neighbors who attended the meeting because, as a past ANC Commissioner, it is rare to have such a large turnout. The Developer did not show up. Neighbors - some of whom were individuals who I had not met before - testified as to their dreadful experiences during Developer's long activities. The ANC did not take action, wanting to give the Developer another chance to make a presentation. I met many people there who said that they were horrified by Developer's actions even though they did not live in the immediate vicinity of 5013 Belt Road.

37. On Thursday, March 13, 2008, I attended another ANC meeting at which Developer and her attorney were present. They

did not respond well to the neighbors. They accused John Lemoine, for example, of causing the water problems at 5013 Belt Road. I, along with others, informed them in no uncertain terms that Ms. Wallace had been informed long before excavation of an underground spring that flowed through her property. The ANC took no action at this meeting, stating that it would set up a meeting at the site with the Developer before it acted. Mr. Brown and I argued whether the Developer could go on the property to work; I stated that a stop work order was in effect and he said that Developer could work on the property whenever she wanted. Of course, he never answered the question of why his client had not, at least, cleaned up the debris, closed the attractive nuisance, and protected her own property.

38. As if to prove a point, after that ANC meeting, on March 24, workers were on the Belt Road property, taking materials from the site and engaging in other activities inside the structure I could not see. I went over to see if they had a permit or if they were cleaning up the debris at last or doing anything to safeguard the property - and to find out who they were and whether they had a right to be there. They told me that they had a right to be there and had been authorized by Developer to take the various pieces of construction material I saw them putting into a truck. They said the materials were for use on another project. I took pictures of some of their activities and called the police. A police officer later told me that, in fact, Ms. Wallace had authorized their presence and their activities. Exh. Z to Intervenor's Opposition to Appellant's Motion for Summary

Judgment.

39. Jane Waldmann of the Tenleytown Historical Society, was one of the individuals at the ANC meeting who did not live in the immediate neighborhood. She said that she was so appalled by what the Developer was doing that she wrote to DCRA to complain and to inquire. She also wished to present her views to the BZA. Exh. F to Intervenor's Opposition to Appellant's Motion for Summary Judgment.

40. On April 5, 2008, there was a meeting at 5013 Belt Road conducted by Lucy Eldridge, ANC Commissioner, that included both the Developer and the neighbors.

41. When asked by Ms. Eldridge at that meeting, Developer stated that she would present no proposal to the neighbors as she was going to wait for the BZA's decision. Many of the neighbors asked her questions about her activities at the property. Her answers indicated a complete disdain for the suffering and damages that the neighborhood had experienced for more than three years. She stated that she "hadn't been over to the site for more than 21 months since it makes me want to vomit." Neighbors asked if she had any idea or whether she cared what it was like to have ^{there for} had to live/three long years. I spoke with Ms. Wallace at the meeting and she talked about how much she loved her horses (and how expensive it is to ride and to pay for their boarding), and how sorry her "friends at DCRA" were for her because neighbors called to complain "constantly" about her project.

42. Ms. Wallace promised Ms. Eldridge that she would, at least, clean up all the debris on the property and put up a

fence. Ms. Wallace agreed to do so immediately and said that she would find the money to do so, although she complained about how expensive the monthly mortgage was for her. Of course, no one at the time knew that she was also making plans to go to Europe in September and paying for that trip. She offered no apology. She also admitted that the workers had been taking off the roof (as we were walking along my property and showing her pieces still remaining of the roof) in January 2005, but she said that it was only on one Sunday.

43. As if to highlight the fire and safety concerns of the neighborhood, a lighter was found on a foundation window sill. It was removed and thrown away by my husband and me with Ms. Wallace's approval. A beer bottle was seen on the first floor of the flimsy wooden structure. Several neighbors said that their children called the wooden frame "the McFranken Mansion," after the Frankenstein castle.

44. The ANC approved a resolution on April 10, 2008, strongly opposing this appeal. Ms. Eldridge informed me that Developer's demeanor, the close proximity of the new foundation to the property lines, and Developer's indifference to what the neighborhood had experienced for over three years affected her very strongly, as did the site visit at which she could appreciate the massive size of the construction in relation to the lot and the neighboring properties, something that could not be fully appreciated without the site visit.

45. In April 2008, while preparing for the BZA hearing, I discovered that DCRA's only wall check in 2005 showed that the

plans of the Developer and the plat did not match. I called to request a wall check. DCRA has failed, to my knowledge, to conduct a wall check to this day. I believe that a wall check will show that Developer has impermissibly expanded the nonconforming use of the site, in that the foundation's walls are closer to my property line than the original house.

46. On Friday, April 26, 2008, since Developer had done nothing and summer was quickly approaching, the neighbors wrote to Mary Cheh, Councilmember for Ward 3, asking for help in regard to the fire and safety concerns at 5013 Belt Road. It was explained that there was a BZA appeal pending, but that the Developer had left the wooden structure open to the elements for more than 17 months with no barricade, even though she had been cited by the District in July 2007 and had promised the neighbors and the ANC that she would rectify the situation. She was told that the neighborhood was worried about the property being a fire hazard and a safety hazard, that police had run people out of the structure, and that a lighter and beer bottle had been found. It was mentioned that the wood and particle board frame had cracked, warped, and weathered for more than 17 months when it had been open to the elements. It was also mentioned that neighbors had learned on April 17 that no wall check was done after the inconsistent result in the beginning, even though neighbors had requested one.

47. Ms. Cheh revisited the property on May 9 with the Director of DCRA, the Senior Building Inspector, the Zoning Administrator, and several other individuals.

48. The Senior Building Inspector said that the wooden structure would have to come down because it was structurally unsafe. He also said, contrary to Developer's earlier assertions, that a stop work order was in place and that no work could be done other than to preserve and protect the open wood frame, to clear debris, and to safeguard the property. Ms. Cheh and the others said that they were taken aback by the close proximity of the overwhelmingly large walls next to 5011 Belt Road and the closeness of the foundation to the lot lines. The proximity of the foundation walls make it almost impossible to maintain, build, or repair the wooden frame without constant trespassing and taking of the neighbors' properties. Ms. Cheh, after being informed of the various existing notices of violation issued by DCRA, asked that DCRA take whatever actions it found appropriate. The head of DCRA said that if the Developer did not respond this time, the District would go ahead and take action to relieve the serious safety and fire hazards.

49. After three and a half years, a construction fence was finally erected the following week. Some attempt was made to cut down some of the highest weeds, but trash and debris were simply placed on the first floor of the wood frame. The beer bottle remained. Developer's own pictures show that no attempt has been made to cut the weeds again after that time.

50. Developer's story has been a hall of mirrors for the BZA. She has manufactured illusions and, each time one of them is shattered (such as the original building partially remaining in existence as she expressed in her pleadings and affidavit) and

her plat), she manufactures another. Her hall of mirrors includes (1) the illusion of financial trouble, yet she can support her horses, take a trip to Europe, etc. and (2) her experience and her "mistakes" in her affidavit and her pleadings, yet she holds herself out on her website as someone with twenty years in construction and zoning experience. Exh. 14 to Opp. Exhibits.

51. The truth is that in all my years as an attorney, part of that time as Actng City Attorney, Boulder, Colorado, representing the Zoning and Planning Boards and working on the Comprehensive Plan, and my years as an ANC Commissioner in Washington, DC, I have never seen a more blatant disregard for the laws of zoning and the laws of common decency than shown by this Developer. This is obvious, if for no other reason, than the fact that she started this project by taking off the roof and continued by not protecting her original investment: the original house. When told that she could not use our property, her crews continued to do so anyway. When the District tried to stop her illegal actions, she ignored the City. She has never relied on what the District allowed her to do as shown by the fact that she violated her building permits and paid no attention to the numerous notices of violation.

52. Developer claims to have suffered economic damages (now claiming to have spent more than \$1 million, although her pleadings claim ^{approximately} \$900,000), figures that do not net out the original purchase price of \$517,000. Yet, her activities have inflicted very serious economic and non-economic damages on her immediate neighbors and the neighborhood for more than three years. In

terms of fairness, the Developer has had far more than her share and the neighbors and the neighborhood have had none. The neighbors and I have suffered:

(a) The inability to peacefully enjoy our property.

(b) Economic damage to property in both a physical aspect and in a loss of economic value as a result of Developer's activities.

(c) Children and pets who cannot play safely and enjoy the neighborhood.

(d) The complete absence of a construction fence for more than three years.

(e) The existence of an attractive nuisance; as noted above, vagrants and others have been run out of the interior of the structure by the police.

(f) A fire hazard because the flimsy wooden frame has been standing open to the elements for more than seventeen months and it constitutes a fire hazard under District regulations.

(g) The loss of property value for more than three and a half years because no one wants to buy a house in a neighborhood with a problem like this one and because the structure is, and has been, an eyesore. See Exh. E to Intervenors' Opposition to Appellant's Motion for Summary Judgment.

(h) The forced changes in the ways that the neighbors have had to live (see letters to the BZA from some neighbors that are part of the file in this appeal), such as not seeing neighbors who no longer walk past 5013 Belt Road, not being able to open window shades because of the eyesore, not being able to use our

backyard, having the easement across our backyard remain a rutted, damaged piece of property, etc.

(i) Adverse health impacts, for example, from the many months of standing water.

(j) Loss of income to some neighbors who work at home.

53. The impact on the neighborhood is very important because of the balancing of the equities. Mr. Brown spoke about how much the Developer has spent and 'fairness' to her, but, when you add up all of the economic and non-economic impact on the neighbors, the impact is far greater to us and to the neighborhood.

54. I have been waiting for the chance to confront the Developer in a hearing for more than three years and I have been deprived of that opportunity because of a very real physical injury, as noted by the orthopedic surgeon's report. The BZA has deprived me of due process and the right to fully participate in the hearing. Important questions have not been asked and I have not been able to present my case. I have been granted rights of a party; Mr. Jack Simmons is not my attorney and does not represent me. By filing this affidavit, I do not waive the right to appeal the BZA's decision or its actions depriving me of my rights.

55. I am asking that the Zoning Administrator's^{decision} be upheld. In real estate parlance, it was apparent that 5013 Belt Road was treated as a "tear down," a property that developers were bidding on in order to tear down and replace the original house with a much larger one to maximize their profit. This is precisely what I believe this Developer has tried to do in this case. She has

proved that she had no intention of doing an 'addition' (more than 3 times the size of the original house) when (1) she started her project by tearing off the roof, (2) when, contrary to her first building permit, she tore down part of the original house itself, and (3) when she took no measures whatsoever to protect what was left of the original house. She left it open to the elements for more than 2 years before she came in with a letter from an engineer that the building was unsafe - but the District had notified her of that 7 months before, in June 2006.

56. Developer attempted to gain the advantage of a much larger house than she could have had, even by variance, by keeping the original house only until she had finally thrown up the flimsy, frame McMansion.

57. I, and my neighbors, have been put through her continuous violations of law, misrepresentations (mistakes?), and her irresponsibility for more than three and a half years. I ask that the BZA finally shatter this hall of mirrors and not accept her constructed illusions. I ask that the BZA affirm the decision of the Zoning Administrator and deny Developer's appeal.

FURTHER Affiant sayeth not.

Mary Grumbine
Mary Grumbine

County of Cumberland)
State of Maine) ss

Subscribed and sworn to before me this twelfth day of August, 2008.

Jacqueline N. Coy
Notary Public

My Commission expires:

9-20-2009

Jacqueline N. Coy
Notary Public, Maine
My Commission Expires 9/20/2009

Note: This affidavit was prepared on a manual typewriter, not on a computer and printer, and I apologize for any typographical errors.

Certificate of Service

This is to certify that the foregoing Affidavit of Mary Grumbine was served by first class mail on each of the following on August 14, 2008:

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