

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

Appeal of Ms. Stephanie Wallace

BZA Appeal No. 17747

ANC 3E

Public Hearing: April 29, 2008

**APPELLANT'S PRE-HEARING STATEMENT
AND MOTION FOR SUMMARY JUDGMENT**

The Appellant, Ms. Stephanie Wallace, by and through undersigned counsel, respectfully submits this Pre-Hearing Statement and Motion for Summary Judgment on her Appeal of the Zoning Administrator's September 28, 2007 decision to deny a April 17, 2007 building permit application for "Revision To [Building Permit] B468280 [December 9, 2004; "Addition To Single-family House To Include New Kitchen, Family Room, Master Suite, Baths, Attic & Basement" ("Original Building Permit") Exhibit A] To Reflect New Footer And New (2) Story Structure Replacing Existing" to reconstruct a pre-existing portion of single-family house with a non-conforming side yard that The Zoning Administrator alleges (i) that the previously existing structure had been intentionally destroyed and as a result the non-conforming side yard cannot be restored and does not comply with the provisions of 11 DCMR § 405.8 and (ii) that the unforeseen termite damage which made a portion of the pre-existing single-family house structurally unsound is not a "casualty or Act of God" and does not comply with the provisions of 11 DCMR § 2001.6. Exhibit B.

In additional support of this Motion, the Appellant specifically incorporates by reference her Appeal filed on October 19, 2007, as if fully set forth herein.

I. BASIS FOR APPEAL

A. DCRA Authorized Reconstruction of Termite – Damaged Structure

The Zoning Administrator has attempted to retract DCRA's previous approval to allow Appellant to demolish and rebuild only a portion of an existing structurally unstable single-family

BOARD OF ZONING ADJUSTMENT
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house per the existing permits and plans. Building Permit No. B103710, issued to “DEMOLISH A PORTION OF AND [sic] EXISTING SFD DUE TO THE STRUCTURAL INTEGRITY AND POSSIBLE COLLAPSE OF THE HOUSE WHICH IS DANGEROUSLY UNSOUND. **REBUILD STRUCTURE TO CURRENT BUILDING CODE SPECIFICATIONS PER PER (sic) EXISTING PERMITS AND PLANS,**” (“Fourth Building Permit”) Exhibit C (*Emphasis added*), clearly authorized Appellant to demolish that portion of the then existing single-family structure, which was dangerously unstable, and rebuild in accordance with project plans as was originally intended – i.e., rebuilding exactly that which had to be torn down. Significantly, a portion of the existing original single-family dwelling was not demolished. Exhibit D (Site Plan showing only portion of original structure demolished) and Exhibit E (Photograph showing original structure before approved demolition).

B. Reconstruction Authorized by § 2001.6

The Zoning Regulations, §§ 405.8 and 2001.6 authorize rebuilding of the portion of the structure destroyed by casualty and/or Act of God.

C. DCRA’s Action is Estopped and Barred by Laches

Under the circumstances of this case, the Zoning Administrator and/or DCRA are estopped from denying the application to revise the Original Building Permit and such action is also legally barred by the doctrine of Laches.

II. EXECUTIVE SUMMARY

In good faith reliance on its right to proceed with the construction of an addition to and renovation of an existing single-family house pursuant to several DCRA issued building permits, Appellant has obtained Nine Hundred Thousand Dollars (\$900,000.00) in construction financing, expended at least Six Hundred Twenty-Three Thousand Dollars (\$623,000.00) of the financing and approximately One Hundred Ninety-Three Thousand Dollars (\$193,000.00) out-of-pocket, to date.

The original budget for construction was Five Hundred Thousand Dollars (\$500,000.00). The current budget for construction is Seven Hundred Fifty Thousand Dollars (\$750,000.00).

The following is an outline of the major events preceding the issuance of the September 28, 2007 decision to deny, each of which is discussed at greater length below, but collectively clearly justify Appellant's request for granting this Appeal:

April 2004:	Appellant acquired the Property (as hereinafter defined).
December 9, 2004:	DCRA issued the Original Building Permit.
February 2005:	First stop work order issued stating that no permit was posted on site.
February 17 - 22, 2005:	Demolition of existing single-family house interior commenced.
March 2, 2005:	Demolition of existing plumbing system caused portion of rear of existing single-family house to fall.
March 3 - 4, 2005:	Investigation of dropped rear of existing single-family house; first discovery of severe termite damage.
March 5 - 8, 2005:	Removal of remainder of rear in effort to prevent failure of entire structure.
March 8, 2005:	Second stop work order issued stating that work was beyond the scope of the permit.
October 4, 2005:	Second building permit, B477334 issued, revising the Original Building Permit to allow for removal and replacement of damaged wood at rear of existing single-family house and revise plans to address wall failure; Second stop work order released.
November 29, 2005:	Excavation for rear addition commenced; excavation caved in due to high water table making ground unstable
~ November 30, 2005:	Appellant's Contractor met with DCRA to discuss how to stabilize; emergency action taken to stabilize excavation site; shoring for addition installed.
April 21, 2006:	Third building permit, B91338, issued revising Original Building Permit to update foundation, basement and structural drawings to respond to unforeseen ground water problems.
October 23 - November	Addition framed and first floor of existing single-family house

- 1, 2006:** framed; preparation to lift front of existing single-family house led to discovery that the front was rotten with termite damage.
- ~ November 2, 2006:** Appellant's Contractor met with DCRA to determine if front of existing single-family house could be removed and replaced; DCRA advised that removal and replacement were acceptable under the circumstances.
- February 14, 2007:** Fourth building permit, B103710, issued to demolish a portion of the existing single-family house due to structural integrity and rebuild the structure in accordance with existing permits and plans.
- ~ March 12 - 15, 2007:** Front of existing single house demolished
- ~ March 21, 2007:** DCRA declared building permit B103710 to be a fake, issued the third stop work order and a fine of \$4,000.00.
- ~ March 23, 2007:** Appellant's Contractor met with DCRA which determined building permit B103710 to be valid; DCRA requested additional plans.
- April 17, 2007:** Appellant submitted application for fifth building permit to re-construct the existing single-family house to former specifications.
- April 20, 2007:** Former Zoning Administrator, Mr. Bill Crews, placed a hold on the building permit application, but never responded to Appellant before being terminated as Zoning Administrator on June 14, 2007.
- September 28, 2007:** Acting Zoning Administrator, Mr. Matthew LeGrant, denied the building permit application.

III. BACKGROUND

The Appellant, Ms. Stephanie Wallace, is the owner of 5013 Belt Road, N.W. (Square 1756, Lot 64) ("Property"). The Property is zoned R-1-B and has a lot area of 4,500 square feet and a lot width of thirty feet (30 ft.). The Appellant acquired the Property in April 2004 at the height of the real estate market when it was impossible to request an inspection contingency to the sale due to the multiple bids being made for the Property. At that time, the Property was improved with a vacant single-family house constructed in 1933 with five (5) foot side yards. In July, 2004, the Appellant applied for a Building Permit to renovate the existing single-family house and to construct an addition thereto in accordance with the applicable Zoning Regulations.

On December 9, 2004, the Department of Consumer and Regulatory Affairs (“DCRA”) issued the Original Building Permit authorizing the Appellant to construct “ADDITION TO SINGLE-FAMILY HOUSE TO INCLUDE NEW KITCHEN, FAMILY ROOM, MASTER SUITE BATHS, ATTIC & BASEMENT. SEPARATE ELEC., PLUMB., & MECH. INSTALLATION PERMITS ARE REQUIRED.” Exhibit A.

From February 17 to February 22, 2005, as authorized by the Original Building Permit, the Appellant began demolition of the interior of the existing single-family house.

On or about February, 2005, a stop work order was issued by DCRA founded on a neighbor’s complaint that no permit was posted on the site. This stop work order was resolved.

On March 2, 2005, the existing plumbing system was demolished. During the course of the authorized demolition of the existing plumbing system, the rear of the existing single-family house dropped when the plumbing stack was removed.

On March 3 and March 4, 2005, an investigation of the dropped rear of the house resulted in the discovery of severe termite damage which had disconnected the floor beams from the walls.

On March 5 through March 8, 2005, the rear of the existing single-family house was removed to prevent the entire house from also falling. The Contractor took measures to brace the remaining structure of the single-family house.

On March 8, 2005, a second stop work order was issued (the “Second Stop Work Order”), stating that the work was beyond the scope of the permit based on the Contractor’s efforts to replace the damaged wood.

On October 4, 2005, a second building permit, Building Permit No. B477334 was issued, revising the Original Building Permit to delete structural drawings which were no longer adequate for the project, substituting five new signed and sealed drawings, and to allow underpinning of the existing

structure and to remove and replace damaged wood at the rear of the existing single-family house in order “to preserve the integrity of the project”, was issued (the “Second Building Permit”). Exhibit F. On or about October 4, 2005, the Second Stop Work Order was released by DCRA.

On November 29, 2005, the excavation for the approved rear addition was started. The excavation caved in due to the high water table which had made the ground unstable. A neighbor complained to DCRA concerning the cave-in.

On or about November 30, 2005, the Contractor met with DCRA to discuss the process to stabilize the site. No stop work order was issued. The excavation site was backfilled with stone to stabilize it and the shoring for the addition installed.

On April 21, 2006, a third building permit, Building Permit No. B91338 (the “Third Building Permit”), was issued to revise the Original Building Permit with updated foundation, basement, and structural drawings to respond to the unforeseen ground water problems. Exhibit G. The Third Building Permit permitted the Appellant to raise the existing single-family house by four feet (4 ft.).

From October 23 to November 1, 2006, the addition to the existing single-family house was framed and the first floor of the existing single-family house was framed in. The Contractor prepared to lift the front of the existing single-family house and discovered the front to be rotten with termite damage. Appellant’s engineer determined that lifting the existing single-family house was unsafe and would cause the structure to collapse. Exhibit H.

On or about November 2, 2006, Appellant’s Contractor met with DCRA to determine if the front of the existing single-family house could be removed and replaced. DCRA advised the Contractor that removal and replacement were acceptable under the circumstances. Appellant’s Contractor drafted revised plans and submitted for a building permit.

On February 14, 2007, a fourth building permit, Building Permit No. B103710 (the “Fourth Building Permit”), was issued to “DEMOLISH A PORTION OF AND [sic] EXISTING SFD DUE TO THE STRUCTURAL INTEGRITY AND POSSIBLE COLLAPSE OF THE HOUSE WHICH IS DANGEROUSLY UNSOUND. REBUILD STRUCTURE TO CURRENT BUILDING CODE SPECIFICATIONS PER PER [sic] EXISTING PERMITS AND PLANS.” Exhibit C. The Fourth Building Permit allowed the demolishing and rebuilding of the front portion of the existing single-family house. Exhibits D and E. The Fourth Building Permit was approved by Zoning before it was issued. Exhibit C.

On March 12 to March 15, 2007, the front portion of the existing single-family house was demolished pursuant to the Fourth Building Permit. Exhibits D and E.

On or about March 21, 2007, in response to a neighbor complaint, DCRA declared the Fourth Building Permit to be a “fake” and issued a stop work order and fine of \$4,000.00 (the “Third Stop Work Order”).

On or about March 23, 2007, the Appellant’s Contractor met with DCRA and determined that the Fourth Building Permit was valid. At that time, DCRA requested additional drawings which were prepared and provided.

On April 17, 2007, Appellant submitted an application for a fifth building permit to reconstruct a single-family house with a non-conforming side yard (the “Fifth Building Permit Application”). Exhibit I.

On April 20, 2007, former Zoning Administrator, Mr. Bill Crews, stopped the permit process by placing an administrative hold on the Fifth Building Permit Application. On September 28, 2007, Zoning Administrator, Mr. Matthew Le Grant denied the Fifth Building Permit Application. Exhibit B.

IV. 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 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); BZA Appeal No. 17591 of MLW, LLC (Board granted summary judgment in favor of Appellant and against DCRA on May 1, 2007).

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

V. MATERIAL FACTS NOT IN DISPUTE

The following material facts are not disputed:

1. The Appellant purchased the Property in April 2004. Affidavit of Stephanie Wallace ("Wallace Affidavit") at Paragraph 2. Exhibit J.
2. As a result of the competitive real estate market at the time, Appellant was unable to obtain an inspection contingency. Id.
3. The Appellant was unable to conduct a termite inspection before purchasing the Property. Id.
4. The Appellant's construction lender did not require a termite inspection. Id.
5. When the Appellant purchased the Property, it was improved with a vacant single-family dwelling constructed in 1933 with five (5) foot side yards. Wallace Affidavit at Paragraph 3.
6. The Appellant had no knowledge of the existence of termites and/or termite damage to the rear of the existing and original structure until later discovered after construction began in March 2005. Wallace Affidavit at Paragraphs 4 and 5.
7. The Appellant did not discover the termite damage to the front portion of the existing single-family dwelling until that phase of the construction was begun in November 2006. Wallace Affidavit at Paragraph 6.
8. In July, 2004, The Appellant applied for a Building Permit to renovate the existing single-family house and to construct an addition to the rear in accordance with the applicable Zoning Regulations. Wallace Affidavit at Paragraph 7.
9. On December 9, 2004, the Department of Consumer and Regulatory Affairs ("DCRA") issued the Original Building Permit authorizing Appellant to construct "ADDITION TO SINGLE-FAMILY HOUSE TO INCLUDE NEW KITCHEN, FAMILY ROOM, MASTER SUITE BATHS, ATTIC & BASEMENT. SEPARATE ELEC., PLUMB., & MECH. INSTALLATION PERMITS ARE REQUIRED." Wallace Affidavit at Paragraph 8

10. In reliance on the Original Building Permit, the Appellant obtained Nine-Hundred Thousand Dollars (\$900,000.00) in construction financing. Wallace Affidavit at Paragraph 9.
11. Additionally, in reliance on the Original Building Permit, the Appellant entered into a construction contract with Mr. Allen Premo and his construction company, Premo Building and Remodeling, Inc. (the "Contractor"). Wallace Affidavit at Paragraph 10.
12. To date, the Appellant has expended at least Six-Hundred Twenty-Three Thousand Dollars (\$623,000.00) of the construction financing and an additional One-Hundred Ninety-Three Thousand Dollars (\$193,000.00) in out-of-pocket expenses. Wallace Affidavit at Paragraph 11.
13. On February 17 to February 22, 2005, as authorized by the Original Building Permit, the Contractor began demolition of the interior of the existing single-family house. Wallace Affidavit at Paragraph 12.
14. On March 2, 2005, the existing plumbing system was demolished. During the course of the authorized demolition of the existing plumbing system, the rear of the existing single-family house dropped when the plumbing stack was removed. Wallace Affidavit at Paragraph 13.
15. On March 3 and March 4, 2005, an investigation of the dropped rear of the house by the Contractor resulted in the discovery of severe termite damage which had disconnected the floor beams from the walls. Wallace Affidavit at Paragraph 14.
16. On March 5 through March 8, 2005, the rear of the existing single-family house was removed to prevent the entire house from also falling. The Contractor took measures to brace the remaining structure of the single-family house. Wallace Affidavit at Paragraph 15.
17. On October 4, 2005, a second building permit, Building Permit No. B477334 was issued, revising the Original Building Permit to delete structural drawings which were no longer adequate for the project, substituting five new signed and sealed drawings, and to allow underpinning of the existing structure and to remove and replace damaged wood at the rear of the existing single-family house in order "to preserve the integrity of the project", was issued (the "Second Building Permit"). Wallace Affidavit at Paragraph 16.
18. On November 29, 2005, the excavation for the approved rear addition was started by the Contractor. The excavation caved in due to the high water table which had made the ground unstable. A neighbor complained to DCRA concerning the cave-in. Wallace Affidavit at Paragraph 17.
19. On or about November 30, 2005, the Contractor met with DCRA to discuss the process to stabilize the site. No stop work order was issued. The excavation site was backfilled with stone to stabilize it and the shoring for the addition installed. Wallace Affidavit at Paragraph 18.

20. On April 21, 2006, a third building permit, Building Permit No. B91338 (the "Third Building Permit"), was issued to revise the Original Building Permit with updated foundation, basement, and structural drawings to respond to the unforeseen ground water problems. The Third Building Permit permitted My Contractor to raise the existing single-family house by four feet (4 ft.). Wallace Affidavit at Paragraph 19.
21. From October 23 to November 1, 2006, the addition to the existing single-family house was framed and the first floor of the existing single-family house was framed in. The Contractor prepared to lift the front of the existing single-family house and discovered the front to be rotten. Wallace Affidavit at Paragraph 20.
22. The Contractor's engineer determined that lifting the existing single-family house was unsafe and would cause the structure to collapse. Wallace Affidavit at Paragraph 20.
23. On or about November 2, 2006, the Contractor met with DCRA to determine if the front of the existing single-family house could be removed and replaced. DCRA specifically advised the Contractor that removal and replacement were acceptable under the circumstances. As directed by DCRA, My Contractor drafted revised plans and submitted for a building permit. Wallace Affidavit at Paragraph 21.
24. On February 14, 2007, a fourth building permit, Building Permit No. B103710 (the "Fourth Building Permit"), was issued to "DEMOLISH A PORTION OF AND [sic] EXISTING SFD DUE TO THE STRUCTURAL INTEGRITY AND POSSIBLE COLLAPSE OF THE HOUSE WHICH IS DANGEROUSLY UNSOUND. REBUILD STRUCTURE TO CURRENT BUILDING CODE SPECIFICATIONS PER PER [sic] EXISTING PERMITS AND PLANS." Wallace Affidavit at Paragraph 22.
25. The Appellant relied on the directions of DCRA and the Fourth Building Permit to allow the partial demolishing and rebuilding of a portion of the front of the existing single-family house. Wallace Affidavit at Paragraph 23.
26. If the Appellant had known that rebuilding of the existing single-family dwelling would subsequently not be permitted by the Zoning Administrator and/or DCRA, she would not have proceeded with the DCRA-authorized demolition of a portion of the original structure. Wallace Affidavit at Paragraph 24.
27. On March 21, 2007, in response to a neighbor complaint, DCRA declared the Fourth Building Permit to be a "fake" and issued a stop work order and proposed fine of \$4,000.00. Wallace Affidavit at Paragraph 25.
28. On or about March 23, 2007, the Contractor met with DCRA and determined that the Fourth Building Permit was valid. At that time, DCRA requested additional drawings which were prepared and provided. Wallace Affidavit at Paragraph 26.
29. On April 17, 2007, the Contractor submitted an application for a fifth building permit to reconstruct a single-family house with a non-conforming side yard (the "Fifth Building Permit Application") as directed by DCRA. Wallace Affidavit at Paragraph 27.

30. On April 20, 2007, former Zoning Administrator, Mr. Bill Crews, stopped the permit process by placing an administrative hold on the Fifth Building Permit Application. Before he was terminated on June 14, 2007, Mr. Crews refused to respond to all the Appellant's inquiries about the Fifth Building Permit Application. Wallace Affidavit at Paragraph 28.

31. More than five (5) months later, on September 28, 2007, the then Interim Zoning Administrator, Mr. Matthew Le Grant denied the Fifth Building Permit Application. Wallace Affidavit at Paragraph 29.

32. The Contractor has advised the Appellant that the cost of reconstructing the original single-family dwelling which was partially demolished as authorized by DCRA and the Fifth Building Permit will be less than One-Hundred Thirty-Five Thousand Dollars (\$135,000.00). Wallace Affidavit at Paragraph 30.

33. In reliance of the Original Building Permit, Second, Third and Fourth Building Permits, as well as the direct instructions of DCRA on numerous occasions, the Appellant continued construction activities and continued to expend substantial amounts of money. Wallace Affidavit at Paragraph 31.

VI. ARGUMENT

A. The Project Is Permitted As A Matter-of-Right

The Original Building Permit, in all respects complied with the applicable Zoning Regulations, including specifically 11 DCMR §§ 405.8 and 2001.3. In accordance with Section 405.8, a building with a side yard with a width of less than eight feet (8 ft.), which existed on or before May 12, 1958, may have an addition provided that the width of the existing side yard is not be decreased and the width of the existing side yard shall be a minimum of five feet (5 ft.). The side yards of the existing single-family house are five feet (5 ft.) in width establishing a "non-conforming structure." 11 DCMR § 199.1.

Pursuant to § 2001.3, additions may be made to a non-conforming structure so long as (i) the structure conforms to percentage of lot occupancy requirements and (ii) the addition itself conforms to use and structure requirements and neither increases or extends any existing, nonconforming aspect of the existing structure nor create any new non-conformity of structure and addition combined. The

Property with the existing single-family house has a non-conforming lot area, lot width and side yard. 11 DCMR § 199.1.

Specifically, the existing single-family house provided a lot occupancy of only 11.3 percent (11.3%). The maximum lot occupancy permitted in the R-1-B zone district for a single-family house is forty percent (40%). With the approved and permitted addition, the lot occupancy for the Property is proposed to be 39.5 percent (39.5%). The existing house also had a nonconforming lot area of 4,500 square feet, a lot width of thirty feet (30 ft.), and non-conforming side yards of five feet (5 ft.). With the addition, the existing single-family house does not increase nor extend any non-conforming aspect of the Property. Accordingly, the proposed addition was permitted as a matter-of-right under § 2001.3.

When the Appellant purchased the Property in 2004 and applied for the Original Building Permit, it was the Appellant's intent to only renovate the existing single-family house (i.e., modernize the building with new plumbing, electrical and HVAC systems) and build an addition thereto. Every action taken by Appellant since commencing the construction under the Original Building Permit has been towards realizing the initial intent to renovate the existing house and building the addition. The Appellant could not have discovered until after the demolition of the plaster and floor coverings of the house that, due to the termite damage and rot, the structural members of the house were unsound and that the foundation and footings of the house were so far beyond repair that they needed to be replaced.

B. Appellant Relied on DCRA Permits and Guidance

Each of the Second Building Permit, Third Building Permit and Fourth Building Permit were sought by the Appellant based on guidance from DCRA in an effort to preserve the existing single-family house and to continue the project as originally planned. The numerous building permits sought and obtained have been required to ensure safety and compliance with the Construction Codes and were entirely consistent with the Zoning Regulations. At all times, the Appellant acted in close

consultation with and upon the direct advice provided by DCRA. Many of the permits were sought in direct response to requests from DCRA inspectors.

In addition, the Fourth Building Permit to demolish and rebuild only a portion of the existing single-family house was specifically obtained under the guidance of DCRA, after the Appellant's engineer voluntarily brought forward its concerns of the unsafe condition of the existing structure and its possible collapse. DCRA advised Appellant's Contractor that removal and replacement of a portion of the existing single-family house was not only acceptable under the circumstances, but required for safety purposes to rescue the structural integrity of the project and prevent collapse of a portion of the existing and original single-family dwelling.

The Appellant specifically, and to her extreme disadvantage, relied on the advice of DCRA and the Fourth Building Permit. It is clear that Appellant would not have followed DCRA's advice and acted in accordance with the Fourth Building Permit, if she knew that DCRA would change its mind and require yet a fifth building permit which would then be denied. DCRA's conduct is entirely disingenuous, unsupported by the facts and demonstrates bad faith on the part of Mr. Crews. The end result is undeniable. The Appellant specifically relied on DCRA, but is now be in a punished for following that advice.

C. Appellant Complied with § 2001.6

For a non-conforming structure, 11 DCMR § 2001.6, provides:

If a casualty or act of God results in damage to an extent of seventy-five percent (75%) or less of the cost of reconstructing the entire structure, the structure may be restored or reconstructed to its previous condition or to a more conforming condition; provided, that the reconstruction or restoration shall be started within twenty-four (24) months of the date of the destruction and continued diligently to completion.

Thus, the Zoning Regulations clearly allow for the replacement of a portion of the original structure under these circumstances. Termite damage and structural failure of the footings and foundation constitute a casualty or Act of God that the Appellant only discovered as construction progressed. The

destruction she discovered constituted more than sufficient grounds for emergency remedial measures to ensure the safety of the structure.

This damage is entirely analogous to a natural disaster or casualty and the Zoning Regulations allow for the repair and reconstruction of the existing nonconforming structure under such circumstances. Webster's Unabridged Dictionary defines "casualty" as "a person or thing that has failed, been injured, lost, or destroyed as the result of an uncontrollable circumstance or election." The termite damage was an uncontrollable circumstance as were the failed footings. Unfairly and irrelevantly, DCRA seeks to deny that a casualty occurred by blaming the Appellant for a "lack of maintenance of the structure." This is totally at odds with the "no fault" definition of casualty and the facts in this case. Certainly, the Appellant had no control over the Property and its maintenance prior to April 2004. Given the extent of termite damage that existed, it is clear that the damage was done long before the Appellant owned the Property. No amount of maintenance after acquiring the Property, would have prevented the damage that existed and the casualty that occurred.

Once discovered by the Contractor, the Appellant acted diligently to complete the permitted reconstruction and restoration of only a portion of the original single-family dwelling within the 24 month time period. Even though a portion of the original house must be reconstructed as a result of a "casualty" to the Property, the restoration plan is exactly the same size as the original structure including the layout of the floors, placement of the door, windows and pitch of the roof. Significantly, the Appellant has neither sought, nor obtained any zoning advantage as a result of these unforeseen circumstances. Despite enormous disadvantages suffered by the Appellant, she acted in accordance with the specific guidance provided by DCRA, in order to fulfill the project as originally contemplated and approved by DCRA in accordance with the applicable Zoning Regulations.

Additionally, in BZA Order No. 17270 (Application of Thomas and Kathryn Toggas), the Board of Zoning Adjustment approved the reconstruction of a den with a non-conforming side yard under § 405.8 as a matter-of-right. Exhibit K. Specifically, the property in BZA Order No. 17270 was improved with a pre-1958 structure, including a den that created a non-conforming side yard. The side yard was less than eight feet, but greater than five feet as permitted under § 405.8. As a result of Hurricane Isabel, the den suffered "severe water and structural damage" and was "deemed unsafe." As a result of the unsafe condition, the den was removed by the Toggas' with the intention of re-building a new structure on the same footprint, but without consulting with DCRA or obtaining a demolition permit. Further, unlike this case, the entire pre-1958 den was removed, including the foundation.

The Board concluded "that the exception to the side yard requirement granted by § 405.8 for the southwestern non-conforming side yard was not lost with the emergency removal of the den as a result of the damage from Hurricane Isabel, which constitutes a casualty or an Act of God." BZA Order No. 17270, Paragraph 12. Thus, the Board's decision in BZA Order No. 17270 directly supports the approval of the Fifth Permit Application to reconstruct part of the original non-conforming structure that suffered a "casualty," was deemed unsafe, and demolished in accordance with the advice and Forth Building Permit provided by DCRA.

Absent the delays created by the unjustified administrative hold placed by the former Zoning Administrator, Mr. Crews, and the subsequent denial by the current Zoning Administrator, the permitted work would be completed. The current assessed value for Tax Year 2008 of the original structure (before the addition) is \$180,090.00. Exhibit L. The cost of reconstruction and restoration of the portion of the original structure will not exceed \$135,068.00 (75% of the cost of reconstructing the original structure, excluding the partially (under roof, closed in) completed rear addition. Wallace Affidavit at Paragraph 30.

Moreover, pursuant to subsection 3203.11, the proposed use, construction, conversion, or alteration of a structure is authorized upon the issuance of a building permit and, “[a]t the time of the issuance of the building permit ..., the proposed use shall be designated in the provisional certificate of occupancy” (§3203.11(c)). Accordingly, upon the issuance of the Original Building Permit, Appellant’s proposed plan to construct the addition to the existing single-family house was approved by the District Government and Appellant’s rights to construct the addition to the existing single-family house vested. Moreover, the Appellant’s rights under the Second Building Permit, Third Building Permit and Fourth Building Permit which were sought to preserve the structural integrity of the existing single-family house, also vested.

There exists no legitimate basis for denying the Fifth Permit Application or in any other manner challenging the Original Permit Application. The Appellant has the absolute right to reconstruct the collapsed existing single-family house as requested through the Fifth Permit Application. Further, the Original Building Permit remains valid and fully in compliance with the Applicable Zoning Regulations and the Appellant is entitled to complete the work authorized by that permit.

D. DCRA is Estopped from Denying Appellant’s Right to Reconstruction

The District, and specifically, the Zoning Administrator, is estopped from denying the Fifth Permit Application. The record is clear that the Appellant; 1) made expensive and permanent improvements; 2) acted in good faith; 3) in justifiable reliance upon; 4) affirmative and repeated acts of the District and/or DCRA; 5) without notice of any kind that the improvements violated the Zoning Regulations; and 6) the equities and fundamental fairness overwhelming favor the Appellant. Bannum, Inc., v. District of Columbia Board of Zoning Adjustment, 894 A.2d 423, 431 (D.C. 2006).

Specifically, based on the undisputed record, the following facts are established:

1. The Appellant made expensive and permanent improvements valued at more than Eight-Hundred Sixteen Thousand Dollars (\$816,000), including construction of the rear addition and partial demolition of the original and existing single-family dwelling;
2. The Appellant acted consistently and repeatedly in good faith without achieving any advantage based on the direct guidance of DCRA and four building permits issued over a period of almost two (2) years. Bluntly, the Appellant fully and accurately informed DCRA of all the circumstances and actions and did exactly what she was told to do by DCRA;
3. The Appellant was entirely justified in relying upon the directions of DCRA and the four (4) issued and valid permits;
4. DCRA acted repeatedly and consistently to advise and authorize the Appellant's actions at every stage of this ordeal;
5. The Original Building Permit and each of the three (3) subsequent permits were approved in compliance with the Zoning Regulations. Faced with DCRA's repeated and consistent approvals, Appellant had no reason to believe or actual knowledge that her actions which were approved by DCRA at every step, were in any way in violation of the letter or spirit of the Zoning Regulations. Only in April 2007, without any notice, did Appellant have the first inkling that DCRA had any claim to a violation of the Zoning Regulations. Then, it took DCRA from April 17 to September 28, 2007 – more than five (5) months to reveal the alleged zoning violations;
6. The equities and fundamental fairness completely favor the Appellant who has been made a victim of its compliance with the directions and permits approved by DCRA.

E. DCRA's Action is Barred By Laches

Finally, the denial of the Fifth Permit Application is barred by the doctrine of laches, as the District "slept on its rights" with respect to any claim as to the ability and right of Appellant to rebuild the structurally unsound portion of the original and existing single-family house. 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 rebuilding of the structurally unsound single-family house, 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 Original Building Permit was issued on December 9, 2004. On or about February 17, 2005, restoration of the existing single-family house commenced. On October 4, 2005, the Second Building Permit was issued allowing to remove and replace damage wood at the rear of the existing single-family house where the rear wall fell. On February 14, 2007, the Fourth Building Permit was issued allowing for the demolition of a portion of the single-family house and rebuilding of same. Since February 17, 2005, the Appellant has expended at least \$816,000.00 on the construction of the addition to, and restoration of the existing single-family house. The District is barred by laches, as well as estoppel, discussed *infra*, from denying the Fifth Permit Application more than two (2) years after the first issuance of a building permit allowing the construction of the addition to the existing single-family house, almost twenty-four (24) months after issuance of the second building permit allowing the reconstruction of a portion of the existing single-family house, and over six (6) months after the issuance of the fourth building permit authorizing the demolition of the single-family house start of construction. Given Appellant's recurrent meetings with DCRA seeking guidance as to deal with the never-ending obstacles presented by the Property, and the level of scrutiny that DCRA has directed at the Property, it is inexcusable that the denial of the Fifth Permit Application was filed at this late date after the permit was filed on April 17, 2007 and no action occurred by DCRA until September 28, 2007.

Appellant, in reliance on the issuance of the Original Building Permit, combined with the subsequent issuance of the Second Building Permit, the Third Building Permit and the Fourth Building Permit authorizing the rebuilding of a portion of the existing and original single-family house, has expended significant amounts of money on the Property. It is without dispute that a change in the condition of the Property has occurred since the time the Original Building Permit, as well as the Fourth Building Permit were each issued, and that said change in condition is directly related to the

issuance of the each of the construction permits. Specifically, the Appellant demolished a portion of the original and single-family based on the advice of DCRA and Fourth Building Permit with the authorization to rebuild as a matter-of-right. 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 Appellant. The denial of the Fifth Permit Application may result in Appellant's defaulting on her construction loans and other financial obligations as to the Property.

VII. WITNESSES

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

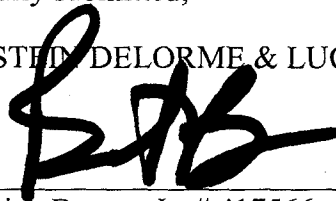
1. Ms. Stephanie Wallace, Appellant
2. Mr. Allen Premo, Contractor
3. Mr. Vincent Ford, Construction Expert

VIII. CONCLUSION

For the foregoing reasons, the Zoning Administrator's decision is incorrect as a matter of law and, therefore, Summary Judgment must be GRANTED and DCRA directed to issue the Fifth Building Permit Application and other permits, if required, to reconstruct the portion of the original single-family house which was destroyed by casualty and/or Act of God without further delay or interference.

Respectfully submitted,

GREENSTEIN, DELORME & LUCHS, P.C.

A large, bold, handwritten signature in black ink, appearing to be 'JPB', is written over the firm name.

John Patrick Brown, Jr, # 417566

Stephanie A. Baldwin, # 463370

1620 L Street, N.W.

Suite 900

Washington, D.C. 20036

(202) 452-1400

Counsel for Appellant – Ms. Stephanie Wallace

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellant's Pre-Hearing Statement and Motion for Summary Judgment was served as noted below, this 14th day of April, 2008, upon the following:

Electronically and By Hand

Matthew J. Green, Jr., Esq.
Melinda Bolling, Esq.
Office of General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Room 9400
Washington, D.C. 20002

Electronically and By First-Class Mail

Ms. Amy McVey
Chairperson
Advisory Neighborhood Commission 3E
4600 Albemarle St., NW
Washington, DC 20016

Electronically and By First-Class Mail

Ms. Lucy Eldridge
Advisory Neighborhood Commission 3E04
4104 Legation St., NW
Washington, DC 20015

Electronically and By First-Class Mail

Mr. John Lemoine
5011 Belt Road, NW
Washington, DC 20016



John Patrick Brown, Jr.

EXHIBIT A

P
E
R
M
I
T

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. B468280

Date 12/09/06 (Type) ADD/A/R/NEW CONST.

PER SUB 1756

Address of work 5013 BELT RD NW

Lot _____ Square _____

Permission is hereby granted to
STEPHANIE WALLACE

(Owner)

TOTAL PERMIT FEE \$

FILING FEE \$

DATE

FEE PAYABLE

\$1,800.00

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 202-692-4422 442-4641

ADDITION TO SINGLE FAMILY HOUSE TO INCLUDE NEW KITCHEN, FAMILY ROOM, MASTER SUI
BATHS, ATTIC & BASEMENT. SEPARATE ELEC., PLUMB., & MECH. INSTALLATION PERMITS
ARE REQUIRED.

Builder—

Value \$

No. of Bldgs. 3

Width of Bldgs.

Length

Height

No. of Stories

Zone R1B

To be occupied as

SFD

Height of terrace above grade

Projections:

Address of owner SAME AS ABOVE

Deposit No.

Amount \$

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D CLARK

32301

DIRECTOR

By

Permit Clerk

EXHIBIT B

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



September 28, 2007

John Patrick Brown, Jr.
Greenstein Delorme & Luchs, PC
1620 L Street NW – Suite 900
Washington DC 200036-5605

RE: 5013 Belt Road, NW Washington, DC
Square 1756, Lot 64

Dear Mr. Brown:

I apologize in the long delay in responding on this matter. I have had an opportunity to review your August 22, 2007 letter on this matter as well as consider the information and photographs you kindly provided to me and Matthew Green of the Office of General Counsel at our meeting of August 8, 2007.

I have concluded that that I am unable to approve the pending building permit to reconstruct the non-conforming single family house. As you are aware, under 11 DCMR 405.8, an existing house with a non-conforming side yard may be extended with only a five foot wide side yard for the addition, instead of the otherwise normally required eight foot side yard, if a non-conforming side yard is present. However, the existing side yard must be present to utilize this provision.

In this case, where a building permit was issued for a rear addition to an existing house with non-conforming five foot side yards, my ability to utilize the provision ended with the demolition of the house. There is not any existing non-conforming yard to extend and with the original house's removal, the construction becomes subject to the eight foot side yard setback requirements for the subject R-1-B District.

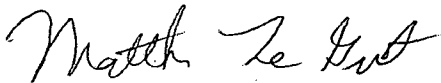
You have raised the issue of this case falling under the provisions of 11 DCMR 2001.6, which reads as follows:

Section 2001.6 If a casualty or act of God results in damage to an extent of seventy-five percent (75%) or less of the cost of reconstructing the entire structure, the structure may be restored or reconstructed to its previous condition or to a more conforming condition; provided, that the reconstruction or restoration shall be started within twenty-four (24) months of the date of the destruction and continued diligently to completion.

In order to use this section a casualty or act of God must have occurred. I have reviewed your arguments and cannot find that the termite damage that you noted as having made the building structurally unsound is either a casualty or act of God. The damage resulting from this termite activity is a result of lack of maintenance of the structure, not a either a sudden occurrence resulting from a 'casualty' or a natural disaster such as an 'act of God'.

I suggest that your recourse at this point is to either appeal my determination to the Board of Zoning Adjustments or to file a variance application for side yard relief to the same body.

Sincerely,



Matthew Le Grant,
Acting Zoning Administrator

cc: Matthew Green, Office of General Counsel

EXHIBIT C



Department of Consumer and Regulatory Affairs

Building and Land Regulation Administration

941 North Capitol Street N.E. Room 2100

Washington D.C. 20002

Tel: (202) 442-4470

Fax: (202) 442-4862

B

Building Permit

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

PERMIT NO. 103710

DATE: 2/14/2007

ADDRESS OF PROJECT: 5013 BELT RD NW		SSL: SQ: 1756 WARD: 3 ZONE R-1-B	LOT: 64
DESCRIPTION OF WORK: DEMOLISH A PORTION OF AN EXISTING SFD DUE TO THE STRUCTURAL INTEGRITY AND POSSIBLE COLLAPSE OF THE HOUSE WHICH IS DANGEROUSLY UNSOUND. REBUILD STRUCTURE TO CURRENT BUILDING CODE SPECIFICATIONS PER PER EXISTING PERMITS AND PLANS.			
PERMIT TYPE: ALTERATION AND REPAIR/PA	PLANS (Y/N) Y	EXISTING USE: RESIDENTIAL ONE/TWO FAMILY	PROPOSED USE: Residential One/Two Family
PERMISSION IS HEREBY GRANTED TO OWNER: STEPHANIE WALLACE		PERMIT FEE: \$410.00	
AGENT NAME: JAMES F. SMITH MR. PERMIT 202-462-7662			
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES. ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS. TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639. TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639.			
Interim DIRECTOR: Lisa M. Morgan	PERMIT CLERK: 		EXPIRATION DATE: 2/14/2008

CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to insure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.
NOTIFY THE BUILDING INSPECTOR THE DAY THE WORK STARTS. PHONE: (202) 442-4641 941 NORTH CAPITOL ST NE WASHINGTON DC 20002

A separate permit is required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.



PDF

EXHIBIT D

ADDITION AND RENOVATION PROJECT

5013 Belt Road, N.W.

Washington, DC 20016

MARTIN A. CIZLER
Registered Architect
12530 Milestone Manor Lane
Germantown, MD 20876

RENOVATION PROJECT
5013 Belt Road, N.W.
Washington, DC 20016

Cover Sheet, Site Plan,
General Notes and
List of Drawings

Project No.
04001

Date:
07-04

Sheet No.

RCS-1

GENERAL NOTES FOR RESIDENTIAL CONSTRUCTION

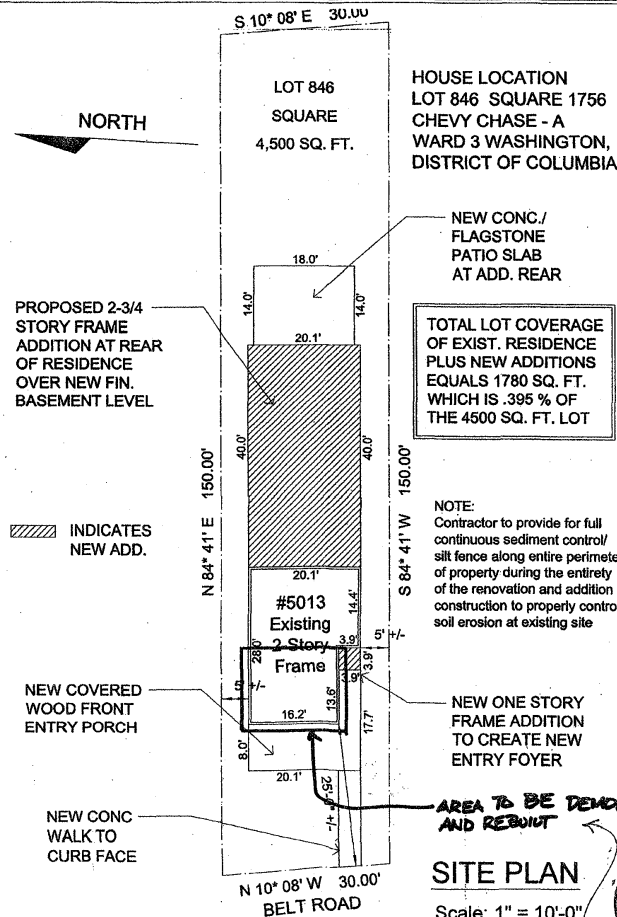
ADDITION AND RENOVATION PROJECT - 5013 BELT ROAD, N.W., WASHINGTON, DC 20016-4234

1. All work shall conform to the applicable sections of the Washington, D.C. building code sections of the single family guidelines and all other applicable building codes.
ALL WORK TO CONFORM WITH THE DISTRICT OF COLUMBIA BUILDING CODES.
2. Stake off area of new construction and designate trees and shrubs for removal. Protect all landscaping beyond the areas of construction as required by the site. Protect all shrubs and trees that are to remain.
3. Contractor to evaluate the required electrical service. Electrical subcontractor to review the drawings and existing service and provide the panel to satisfy all load requirements for any new construction as designed on the plans.
4. Coordinate phasing and time limits for new construction with the owner so as to establish an acceptable payment schedule related to the status of the project.
5. Mechanical, Electrical and Plumbing subcontractors to review drawings and bring any questions related to specifications to the attention of the Owner or the Architect.
6. The General Contractor or subcontractors shall obtain other permits required for the construction of the project, unless otherwise informed by the Architect. THE GENERAL DISTRICT OF COLUMBIA BUILDING PERMIT SHALL BE OBTAINED BY THE OWNER OR THEIR AUTHORIZED AGENT.
7. All Contractors to store materials and equipment in a safe and suitable area during the construction process. The Owner is not responsible for any losses of materials. All debris at the construction site shall be periodically removed from the site at intervals so as not to create a site hazard or create a visual hazard to the Owner.
8. General Contractor shall be licensed in the District of Columbia and shall guarantee the project, labor and material for a period of one year after the punch list is completed by the Owner or Architect, as per County laws require.
9. The General Contractor shall provide competent daily supervision of the project.
10. The General Contractor shall carry Workman's Compensation insurance for every person employed by him on the premises and shall maintain such insurance in full force during the entire term of this contract. The General Contractor shall carry Comprehensive General and Automotive Liability Insurance and Property Damage Insurance of \$125,000 to \$150,000 minimum. The Owner can amend these requirements if specified on the contract with the General Contractor.
11. All drawings, specifications and copies furnished by the Architect are the documents for construction for this project only and shall not be used in any other circumstance.
12. The General Contractor shall carefully study and compare the contract documents and report to the Architect any error, inconsistency or omission he may discover.
13. The General Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and shall guarantee no mechanics liens against such project at completion.
14. The Contract Sum is stated in the binding agreement and is the total amount payable by the Owner to the General Contractor for the performance of the Work under the Contract Documents. A Change Order is written by the General Contractor and signed by the Owner, which designates the addition, deletion or revision to the contract. The Change Order must also designate the change in the original Contract Sum and be accepted by the Owner before it becomes part of the contract.
15. The General Contractor shall submit a progress payment, based on the original contractual agreement, to the Architect and the Owner. This payment relates only to the Work which has been completed to date. The Architect shall have seven business days to provide approval to the owner.

THE PROCEEDING UNLESS AMENDED WITH THE APPROVAL OF THE OWNER IS TO BE CONSIDERED ALONG WITH THESE DRAWINGS AS PART OF THE PROJECT CONTRACT DOCUMENTS.

CONTRACTOR DATE:

OWNER DATE:



HOUSE LOCATION
LOT 846 SQUARE 1756
CHEVY CHASE - A
WARD 3 WASHINGTON,
DISTRICT OF COLUMBIA

NEW CONC./
FLAGSTONE
PATIO SLAB
AT ADD. REAR

TOTAL LOT COVERAGE
OF EXIST. RESIDENCE
PLUS NEW ADDITIONS
EQUALS 1780 SQ. FT.
WHICH IS .395% OF
THE 4500 SQ. FT. LOT

NOTE:
Contractor to provide for full
continuous sediment control/
silt fence along entire perimeter
of property during the entirety
of the renovation and addition
construction to properly control
soil erosion at existing site

NEW ONE STORY
FRAME ADDITION
TO CREATE NEW
ENTRY FOYER

AREA TO BE DEMOLISHED
AND REBUILT

SITE PLAN

Scale: 1" = 10'-0"

RCS-1

RA-1

RA-2

RA-3

RA-4

RA-5

RA-6

RA-7

RA-8

A-9

A-10

LIST OF DRAWINGS

COVER SHEET, SITE PLAN, GENERAL
NOTES & LIST OF DRAWINGS

EXISTING DEMOLITION FIRST
AND SECOND FLOOR PLANS

EXISTING DEMOLITION
EXTERIOR ELEVATIONS

PROPOSED ADD. BASEMENT
AND FIRST FLOOR PLANS

PROPOSED ADD. SECOND AND
UPPER LEVEL FLOOR PLANS

PROPOSED ADDITION
EXTERIOR ELEVATIONS

PROPOSED ADD. FOUNDATION, FIRST
AND SECOND FLOOR FRAMING PLANS

PROPOSED ADD. UPPER LEVEL FLOOR
AND RAFTER JOIST FRAMING PLANS

PROPOSED ADDITION BUILDING
SECTION, DIAGRAMS, DETAILS AND
SCHEDULES

PROPOSED ADDITION BASEMENT AND
FIRST FLOOR ELECT. AND LIGHTING
PLAN LAYOUTS AND SCHEDULE

PROPOSED ADDITION SECOND AND
UPPER LEVEL ELECT. AND LIGHTING
PLAN LAYOUTS



RA REVISIONS TO
EXIST. HOUSE ONLY
(DEMOLISH & RE-BUILD)
DRAWING RA-1 - RA-8

EXHIBIT E



EXHIBIT F

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration

941 North Capitol Street N.E. Room 2100

Washington D.C. 20002

Tel:(202) 442-4470

Fax:(202) 442-4862

B

Building Permit

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

PERMIT NO. B477334

DATE: 10/4/2005

ADDRESS OF PROJECT: 5013 BELT RD. N.W.		SSL: SQ: 1756 WARD: ZONE:	LOT: 0846
DESCRIPTION OF WORK: REVISE PERMIT NUMBER B46820 TO DELETE THE STRUCTURAL DRAWING S-1 WHICH WAS NOT ADEQUATE FOR THIS PROJECT AND SUBSTITUTE FIVE NEW SIGNED AND SEALED DRAWINGS. UNDERPIN A PORTION OF THE EXISTING BUILDING			
PERMIT TYPE: UNDERPINNING	PLANS INCLUDED: YES	EXISTING USE: SFD	PROPOSED USE: SAME (2+B)
PERMISSION IS HEREBY GRANTED TO OWNER: STEPHANEE WALLACE		PERMIT FEE: \$165.00	
AGENT NAME: JAMES F. SMITH, MR. PERMIT, LLC AGENT			
CONDITIONS / RESTRICTIONS: ENTIRELY ON OWNER'S LAND WITH ADDED COST (UNDERPINNING NOT ORIGINALLY PERMITTED). REMOVE AND REPLACE AND DAMAGED WOOD IN ACCORDANCE WITH THE STRUCTURAL PLANS TO PRESERVE THE INTEGRITY OF THE PROJECT. ALL OTHER CONDITIONS OF THE ORIGINAL BUILDING PERMIT ARE TO REMAIN THE SAME EXCEPT AT AMENDED PER ATTACHED PLANS WITH ADDED COST. TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639.			
DIRECTOR: PATRICK J. CANAVAN		PERMIT CLERK: B. HAMILTON	EXPIRATION DATE: 10/4/2006

CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to insure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.
NOTIFY THE BUILDING INSPECTOR THE DAY THE WORK STARTS. PHONE: (202)442-4541 941 NORTH CAPITOL ST NE WASHINGTON DC 20002.

A separate permit is required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.

EXHIBIT G

B

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street N.E. Room 2100
Washington D.C. 20002

Tel: (202) 442-4470

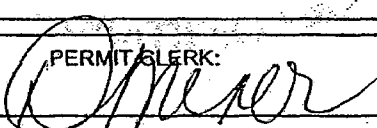
Fax: (202) 442-4862

Building Permit

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

PERMIT NO. 91338

DATE: 4/21/2006

ADDRESS OF PROJECT: 5013 BELT RD NW		S S L:	SQ: 1758	SX:	LOT: 846
		WARD:	4 ZONE R-1-B		
DESCRIPTION OF WORK: REVISE BUILDING PERMIT NUMBER B# 46820 TO DELETE THE FOUNDATION DRAWING AND THE CROSS SECTION ELEVATION AND SUBSTITUTE A REVISED BSMT, STRUCTURAL DRAWING AND REVISED CROSS SECTION ELEVATION DRAWING. THIS PERMIT REVISION WILL RAISE THE HOUSE UP BY APPROXIMATELY FOUR FEET.					
PERMIT TYPE: AMENDMENT	PLANS (Y/N): Y	EXISTING USE: RESIDENTIAL ONE/TWO FAMILY		PROPOSED USE: Residential-One/Two Family	
PERMISSION IS HEREBY GRANTED TO OWNER: STEPHANIE WALLACE				PERMIT FEE: \$210.00	
AGENT NAME: JAMES SMITH					
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES ; ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS ;					
TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639:					
DIRECTOR: Dr. Patrick Canavan, Psy. D.		PERMIT CLERK: 		EXPIRATION DATE: 4/21/2007	

CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to insure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.
NOTIFY THE BUILDING INSPECTOR THE DAY THE WORK STARTS. PHONE: (202)442-4641 941 NORTH CAPITOL ST NE WASHINGTON DC 20002.

A separate permit is required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.

EXHIBIT H

ADVANCED STRUCTURAL ENGINEERING, LLC
Designs – Inspections – Consulting

19245 Gunnerfield Lane
Germantown, MD, 20874
(240) 483-6338
asecorp@comcast.net

Tuesday, January 09, 2007

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capital St. N.E
Washington DC, 20002

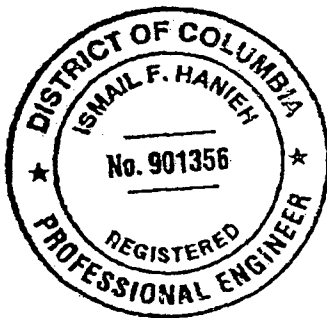
Subject: 5013 Belt Rd NW
Washington, DC 20705
Building Permit No. 91338

To Whom It May Concern:

Per the subject building permit conditions for the listed address, the Owner is required to save the existing house and raise the floor elevation approximately four feet. Upon exposing the structural elements of the existing house, Advanced Structural Engineering was called to inspect the structural integrity of the house and to determine if the house structure is sound and if it can be lifted as required above.

After inspecting the structure, it was determined that the structural elements of the house are not in any shape to be lifted without causing some major damage and possible collapse of the house. As a result, it would be safer to demolish the existing structure and rebuild it to match the existing plans and specifications and per the current building code requirements.

Should you have any questions or if you would like to inspect the existing property as well, please let us know.



Regards,

Advanced Structural Engineering, LLC

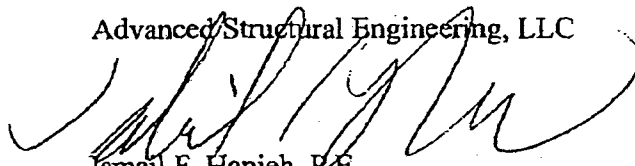

Ismail F. Hanieh, P.E.
(DC License No. PE 901356)

EXHIBIT I

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
N.C.P.C. No:	O.G. No:	R-1-B	105-843	By:	
H.P.A. No:	S.L. No:	Ward No: 3	Receipt No:	Date:	Receipt No:



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION PERMIT SERVICE CENTER
Tel 202-442-4589 Fax 202-442-4862

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY
(PRINT IN INK OR TYPE, DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

MSRA-33
(Rev. 2004)

CLEARANCE TO FILE By: _____ Date: _____	ERASING, CROSSING OUT, WRITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION
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1. Address of Proposed Work 5013 BEECH ROAD N.W.						Suite No. 843	3. Square 1756	4. Application Date 4.17.07
5. Owner of Building or Property STEPHANIE WAGNER			6. Address (include Zip Code) 2215 49th ST N.W.			7. Phone 202-606-5309		
8. Agent for Owner: (if applicable) ALLEN PREMIO			9. Address (include Zip Code) 10201 W. HUNTER RD.			10. Phone 202-672-2391		
11. Type of Proposed Work (check all applicable boxes)								
☐ New Building ☒ Addition ☐ Alteration and Repair ☐ Raze Building ☐ Retaining Wall ☐ Fence ☐ Shed ☐ Awning ☐ Garage ☐ Sign ☐ Projection ☐ Other (Specify) <u>FOOTER</u>								
12. Description of Proposed Work EXPAND (ALTER) PERMIT #105840 TO REFLECT NEW FOOTER AND REINFORCING TO NEW CONCRETE STRUCTURE. REPAIRING EXISTING. (Structural only)								
13. Existing Use(s) of Building or Property SFD			14. Ex. No of Stories of Bldg 3		15. Ex No of Dwelling Units 1		Official Use Only Miscellaneous FEE \$ 200	
16. Proposed Use(s) of Building or Property SFD			17. Prop No of Stories of Bldg 3		18. Prop. No of Dwelling Units 1		By: <u>W</u> Date: <u>4/20/07</u>	
19. Starting Date		20. Completion Date of work		21. Method of Removing Construction Debris ☒ Pick-up Truck ☒ Other (specify) <u>DUMP TRUCK</u>		22. Does the proposed work involve disturbing the earth or razing a building? ☐ Yes, answer q. 23 ☐ No, SKIP q. 23-27		
23. Is the area of disturbed earth more than 50 sq. ft? ☐ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25		24. Soil Erosion Control Methods		25. Area of Offsite Drainage sq. ft.		26. No of Footings or Columns 1		27. Size of Footings or Columns 14" x 14"

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION D)

Complete Section B if the proposed work is new building, addition or alteration. (Page 2)
Complete Section C if the proposed work is razing a building. (Page 2)
Complete Section D if the proposed work is a retaining wall. (Page 2)
Complete Section E if the proposed work is a fence. (Page 3)
Complete Section F if the proposed work is a shed/garage. (Page 3)
Complete Section G if the proposed work is an awning. (Page 3)
Complete Section H if the proposed work is a sign. (Page 3)

OFFICIAL USE ONLY				
	R	P	H	A
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E				
F				
S				
W U Y C U No				
PLANS				
U No U S M U Lg				

Page 4..

A. PERMIT CONTROL		C. PLANS AND APPLICATION APPROVAL	
☐ 1. Fine Arts by: _____ Date: _____	☐ 1. Information Counter by: <u>YAG</u> Date: <u>4/17/07</u>	☐ 2. Historic by: _____ Date: _____	☐ 2. Information Center by: _____ Date: _____
☐ 3. Cap. Gateway by: _____ Date: _____	☐ (a) ABRA by: _____ Date: _____	☐ 4. NCPC: _____ Date: _____	☐ (b) Noise Control by: _____ Date: _____
☐ 5. W.H.Obs. District by: _____ Date: _____	☐ (c) Industrial Safety by: _____ Date: _____	☐ 6. Flood Control by: _____ Date: _____	☐ (d) Vector Control by: _____ Date: _____
☐ 7. WMATA by: _____ Date: _____	☐ (e) D.C. Animal by: _____ Date: _____	☐ 8. General Liability Ins. Policy _____ Date: _____	☐ (f) Police Dept. by: _____ Date: _____
☐ 9. Rental Accom. by: _____ Date: _____	☐ Zoning by: _____ Date: _____	☐ 10. General Liability Ins. Policy _____ Date: _____	☐ Zoning Update by: _____ Date: _____
☐ 11. Chantown Dist. by: _____ Date: _____	☐ Zoning Overlay approval by: _____ Date: _____	☐ 12. General Liability Ins. Policy _____ Date: _____	☐ 4. DDOT - Permit and Records Division/Deposit # _____
☐ 13. Utility Clearance by: _____ Date: _____	☐ 5. Water/Sewer Design Branch _____ Date: _____	☐ 14. General Liability Ins. Policy _____ Date: _____	☐ Sidewalk Deposit \$ _____ Driveway Deposit \$ _____
☐ 15. General Liability Ins. Policy _____ Date: _____	☐ Consumer Eng. by: _____ Date: _____	☐ 16. General Liability Ins. Policy _____ Date: _____	☐ 6. Environmental Regulation Administration
B. CLEARANCE TO FILE PLANS		☐ Environmental Policy Review	
☐ 1. Zoning by: _____ Date: _____	☐ 2. DDOT - Permit and Records Division	Control No. _____ Date: _____	
Access to Parking Street ☐ Street ☐ Alley	Cleared by: _____ Date: _____	☐ Erosion Control by: <u>DE</u> Date: <u>4/18/07</u>	
☐ 3. DDOT - Consumer Engineer	Cleared by: _____ Date: _____	☐ Storm Water Mgmt. by: _____ Date: _____	
☐ 4. ERA - Erosion Control	Cleared by: _____ Date: _____	☐ Air Quality by: _____ Date: _____	
Restrictions of the Permit		☐ Underground Storage by: _____ Date: _____	
<u>AS per APP 4 plans I'dg OK to go through permit process</u>		☐ 7. Mechanical Eng. Review by: _____ Date: _____	
TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639 <i>Hold for</i>		☐ 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: <u>James A. Jones</u> Date: <u>4/17/07</u>	
☐ 16. Historic Pres. Div. by: _____ Date: _____			
☐ 17. EISF: _____ Date: _____			
☐ 18. Structural Eng. by: <u>W. H. C.</u> Date: <u>4/20/07</u>			
☐ 19. Permit and Certificate Associate Counter by: _____ Date: _____			
☐ 20. QC By: _____ Date: _____			
ZONING		DDOT - PUBLIC SPACE	
Conf O Number _____ Date: _____	☐ New Bldg	Street Name: _____	
Existing Use(s) _____	☐ P.O.D.	Street Width: _____	
Proposed Use _____	☐ File in room 2124	Road Width: _____	
		Sidewalk Width: _____	
		Parking: _____	
Job No. _____	BZA Case No _____	Restrictions: _____	
	PUD Order No _____		

EXHIBIT J

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

Appeal of Ms. Stephanie Wallace

BZA Appeal No. 17747

ANC 3E

Hearing Date: April 29, 2008

AFFIDAVIT OF STEPHANIE WALLACE

I, Stephanie Wallace, 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 acquired the property at 5013 Belt Road, N.W. (Square 1756, Lot 64) (the "Property") in April 2004 during the height of the real estate market when it was impossible to request an inspection contingency to the sale due to the multiple bids being made for the Property. As a result, no termite inspection was permitted by the Seller or undertaken before acquiring the Property. My construction financing lender did not require a termite inspection.
3. At that time, the Property was improved with a vacant single-family house constructed in 1933, with five (5) foot side yards.
4. At the time I acquired the Property, I had no knowledge of the existence of termites or the extent of termite damage that was later discovered during construction. Termites and termite damage were not visible.
5. I did not first discover the presence of termites or the existence and extent of termite damage until early March 2005 when construction began on the rear of the existing structure.
6. The termite damage to the front portion of the existing single-family dwelling was not discovered until that phase of the construction was begun in November 2006.

7. In July, 2004, I applied for a Building Permit to renovate the existing single family house and to construct an addition to the rear in accordance with the applicable Zoning Regulations.

8. On December 9, 2004, the Department of Consumer and Regulatory Affairs ("DCRA") issued the Original Building Permit authorizing me to construct "ADDITION TO SINGLE FAMILY HOUSE TO INCLUDE NEW KITCHEN, FAMILY ROOM, MASTER SUITE BATHS, ATTIC & BASEMENT. SEPARATE ELEC., PLUMB., & MECH. INSTALLATION PERMITS ARE REQUIRED."

9. In reliance on the Original Building Permit, I obtained Nine-Hundred Thousand Dollars (\$900,000.00) in construction financing.

10. Additionally, in reliance on the Original Building Permit, I entered into a construction contract with Mr. Allen Premo and his construction company, Premo Building and Remodeling, Inc. ("Mr. Premo" and/or collectively, "My Contractor").

11. To date, I have expended at least Six-Hundred Twenty-Three Thousand Dollars (\$623,000.00) of the construction financing and an additional One-Hundred Ninety-Three Thousand Dollars (\$193,000.00) in out-of-pocket expenses.

12. On February 17 to February 22, 2005, as authorized by the Original Building Permit, My Contractor began demolition of the interior of the existing single family house.

13. On March 2, 2005, the existing plumbing system was demolished. During the course of the authorized demolition of the existing plumbing system, the rear of the existing single family house dropped when the plumbing stack was removed.

14. On March 3 and March 4, 2005, an investigation of the dropped rear of the house by My Contractor resulted in the discovery of severe termite damage which had disconnected the floor beams from the walls.

15. On March 5 through March 8, 2005, the rear of the existing single family house was removed to prevent the entire house from also falling. My Contractor took measures to brace the remaining structure of the single family house.

16. On October 4, 2005, a second building permit, Building Permit No. B477334 was issued, revising the Original Building Permit to delete structural drawings which were no longer adequate for the project, substituting five new signed and sealed drawings, and to allow underpinning of the existing structure and to remove and replace damaged wood at the rear of the existing single family house in order "to preserve the integrity of the project", was issued (the "Second Building Permit").

17. On November 29, 2005, the excavation for the approved rear addition was started by My Contractor. The excavation caved in due to the high water table which had made the ground unstable. A neighbor complained to DCRA concerning the cave-in.

18. On or about November 30, 2005, the contractor met with DCRA to discuss the process to stabilize the site. No stop work order was issued. The excavation site was backfilled with stone to stabilize it and the shoring for the addition installed.

19. On April 21, 2006, a third building permit, Building Permit No. B91338 (the "Third Building Permit"), was issued to revise the Original Building Permit with updated foundation, basement, and structural drawings to respond to the unforeseen ground water problems. The Third Building Permit permitted My Contractor to raise the existing single-family house by four feet (4 ft.).

20. From October 23 to November 1, 2006, the rear addition to the existing single family house was framed and under roof and the first floor of the existing single-family house was framed in. My Contractor prepared to lift the front of the existing single family house and discovered the front to be rotten. My Contractor's engineer determined that lifting the existing single family house was unsafe and would cause the structure to collapse.

21. On or about November 2, 2006, My Contractor met with DCRA to determine if the front of the existing single family house could be removed and replaced. DCRA specifically advised My Contractor that removal and replacement were acceptable under the circumstances. As directed by DCRA, My Contractor drafted revised plans and submitted for a building permit.

22. On February 14, 2007, a fourth building permit, Building Permit No. B103710 (the "Fourth Building Permit"), was issued to "DEMOLISH A PORTION OF AND [sic] EXISTING SFD DUE TO THE STRUCTURAL INTEGRITY AND POSSIBLE COLLAPSE OF THE HOUSE WHICH IS DANGEROUSLY UNSOUND. REBUILD STRUCTURE TO CURRENT BUILDING CODE SPECIFICATIONS PER PER [sic] EXISTING PERMITS AND PLANS."

23. My Contractor and I relied on the directions of DCRA and the Fourth Building Permit to allow the partial demolishing and rebuilding of the front of the existing single family house. A portion of the original and existing single-family dwelling was not demolished and remains in place.

24. If My Contractor and/or I had known that rebuilding of a portion of the existing single-family dwelling would subsequently not be permitted by the Zoning Administrator and/or DCRA, we would not have proceeded with the DCRA-authorized demolition of a portion of the original structure.

25. On March 21, 2007, in response to a neighbor complaint, DCRA declared the Fourth Building Permit to be a "fake" and issued a stop work order and proposed fine of \$4,000.00.

26. On or about March 23, 2007, My Contractor met with DCRA and determined that the Fourth Building Permit was valid. At that time, DCRA requested additional drawings which were prepared and provided.

27. On April 17, 2007, My Contractor submitted an application for a fifth building permit to reconstruct a single family house with a non-conforming side yard (the "Fifth Building Permit Application") as directed by DCRA.

28. On April 20, 2007, former Zoning Administrator, Mr. Bill Crews, stopped the permit process by placing an administrative hold on the Fifth Building Permit Application. Before he was terminated on June 14, 2007, Mr. Crews refused to respond to all our inquiries about the Fifth Building Permit Application.

29. More than five (5) months later, on September 28, 2007, the then Interim Zoning Administrator, Mr. Matthew Le Grant denied the Fifth Building Permit Application.

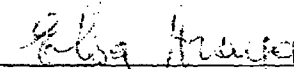
30. My Contractor has advised me that the cost of reconstructing the portion of the original single-family dwelling which was partially demolished as authorized by DCRA and the Fifth Building Permit will be less than One-Hundred Thirty-Five Thousand Dollars (\$135,000.00).

31. In reliance on the Original Building Permit, Second, Third and Fourth Building Permits, as well as the direct instructions of DCRA on numerous occasions, I continued construction activities and continued to expend substantial amounts of money.

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FOR SIGNATURE PAGE**


Stephanie Wallace

Subscribed and sworn to me this 16th day of April, 2008.


Notary Public

My Commission Expires:

ELSA ARAYA
Notary Public, District of Columbia
My Commission Expires 09-14-2011

EXHIBIT K

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 17270 of Thomas and Kathryn Toggas, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing single-family detached dwelling under § 223 not meeting the side yard (§ 405) requirements in the R-1-B district at premises 3112 Legation Street, N.W. (Square 2293, Lot 835).

HEARING DATES: January 18, 2005

DECISION DATE: February 1, 2005, February 15, 2005

DECISION AND ORDER

Thomas and Kathryn Toggas ("Applicants"), owners of the property that is the subject of this application ("subject property"), filed an application with the Board of Zoning Adjustment (the "Board" or "BZA") on November 5, 2004. The Applicants sought a special exception under section 223 of the Zoning Regulations to construct an addition to their dwelling where the addition would not conform to the minimum side yard requirements of 11 DCMR § 405.

Following a hearing on January 18, 2005, the Board held a public decision meeting on February 1, 2005, at which it determined that more information was needed before a decision could be made. The decision meeting was postponed until February 15, 2005, when the Board voted 4-1-0 to approve the application.

Preliminary Matters

Notice of Application and Notice of Public Hearing. By memoranda dated November 9, 2004, the Office of Zoning ("OZ") gave notice of the filing of the application to the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 3/4G, Single Member District/ANC 3G03, and the Council Member for Ward 3. Pursuant to 11 DCMR 3113.13, OZ published notice of the public hearing in the *District of Columbia Register* and on November 18, 2005, sent notice to the Applicant, all property owners within 200 feet of the subject property, ANC 3/4G, and OP. The Applicant posted the property 15 days prior to the hearing, thereby informing the public of the pending application and the January 18, 2005 hearing date. The Applicant filed a notarized Affidavit of Posting with the Board verifying that the property was posted in a timely manner.

Request for Party Status. ANC 3/4G was automatically a party to this proceeding. The Board granted requests for opposition party status to Mrs. Cecile B. Kelly, owner of 5442 31st Street, N.W., which is northeast of the subject property, and Joseph and Cynthia

Dempsey, owners of 3114 Legation Street, N.W., which is immediately adjacent to the southwest side of the subject property. The Board denied requests for opposition party status from Scott and Gayle Moseley and Reginald A. White and Brenda Scott-White, residents of the 3100 block of Legation Street, N.W., finding that they were not more uniquely affected by the application than the general public.

Government Reports. The Office of Planning, by report dated January 11, 2005, recommended approval of the special exception request, concluding that the addition would be in harmony with the general purpose and intent of the Zoning Regulations and Map, and that the proposed changes would not tend to adversely affect the use of neighboring properties. OP's recommendation was subject to two conditions: (1) that a 7-foot high sight-tight fence be provided around the rear and southwest side yards of the property, and (2) that the proposed third floor window on the southwest side of the addition be eliminated.

ANC Report. At a regularly scheduled meeting on December 13, 2004, with a quorum present, ANC 3/4G passed a resolution, by a vote of 6-0-1, recommending denial of the application. Included in the ANC's reasons for opposing the special exception application were (i) the size of the addition, (ii) the concern that Applicants might have been building without required permits, (iii) possible loss of privacy, and (iv) the property line erosion issue with the adjoining neighbor to the southwest. The ANC also recommended that the Applicants and their neighbors agree to a construction management plan and a landscape buffer plan.

Parties in Opposition. Mrs. Kelly stated that the addition would create a less pleasant view from the rear of her property and would limit the feeling of space that is currently enjoyed. She further indicated that without sufficient side yard space along the alley side of the addition, there was no possibility of landscaping which would soften the claimed impact of the addition. She expressed concern that, due to its length and massing, the addition would diminish the real estate value of her property.

Joseph and Cynthia Dempsey were represented at the public hearing by their counsel, George R. Keys, Jr., Esq. The Dempseys were concerned that the addition would be located too close to their property. They indicated that the addition would diminish their privacy, further obscure their view of the street from their northeast side and rear yards, and significantly reduce the amount of sunlight to their rear yard and their northeast side yard.

Persons in support or opposition. The Board heard testimony in support of the application from Mr. Martin Fuchs, a resident of the dwelling at 3101 Legation Street, N.W. The Board heard testimony in opposition from Mr. Moseley and Mr. White. The Applicants submitted a petition signed by 28 neighbors in support of the application.

FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. The subject property is located in an R-1-B zone in the Chevy Chase neighborhood of Ward 3 at 3112 Legation Street N.W. (Square 2293, Lot 835). The property is improved with a three-story one-family detached dwelling constructed in 1932. A one-story den addition was added on the west side of the dwelling shortly after its construction and before 1958. Also on the property is a one-story accessory building located within the rear yard.
2. The surrounding area is zoned R-1-B and is developed with single-family detached dwellings, some of which have three-story additions.
3. The subject property fronts on Legation Street and abuts a 15-foot public alley at its rear. Immediately to the northeast of the property is a 15-foot wide public alley and immediately to its southwest is the Dempsey property. The 15-foot wide public alley to the northeast abuts approximately the front half of the subject property, then the property line turns to the south and no longer abuts the alley. A 15-foot wide public alley also abuts approximately the rear half of the property on the southwestern side.
4. The Applicants propose to construct a rear addition which will wrap around the southwestern corner of the dwelling and continue along the southwestern side of the dwelling. They also propose to construct a front porch addition along the Legation Street frontage.¹
5. The subject property is comprised of one large lot with a depth of approximately 195 feet and a lot area of 7,205 square feet, well above the 5,000 square-foot lot area required. *See*, 11 DCMR § 401.3.
6. The subject property has a lot width of 40 feet at the front and 36 feet at the rear.² The narrowest part of the property is in the center, at the point where it turns southward away from the alley bounding it to the northeast.
7. Section 223 permits a maximum lot occupancy of 50 percent in an R-1 zone. With the construction of the proposed additions to the subject property, the lot occupancy will be 34 percent.

¹There was some dispute whether this porch would cross the building restriction line, but as this is a public space issue, and not a zoning issue, the Board declined to address it.

²The R-1-B zone requires a minimum lot width of 50 feet for all structures. The Applicants' lot width is therefore substandard. Although this was not separately mentioned in the advertisement of the application, the relief required is subsumed within the relief requested pursuant to § 223. *See*, 11 DCMR § 223.1.

8. Eight foot side yards are required in the R-1-B zone district. 11 DCMR § 405.9. The currently existing side yard to the northeast of the subject dwelling measures 1.77 feet. The northeastern wall of the rear addition will continue the line of the northeastern side of the dwelling, extending this nonconforming side yard along the northeastern side of the addition.³
9. On the southwest side of the property, the depth of the existing side yard, between the den addition and the lot line, measures at least 5.01 feet. The Board finds that because the subject dwelling existed before May 12, 1958 and has a side yard of less than 8 feet, but more than 5 feet, which is not being decreased, an extension or addition may be made to the southwestern side of the dwelling with no zoning relief. *See*, 11 DCMR § 405.8.
10. Due to severe water and structural damage caused by Hurricane Isabel in September 2003, the den was deemed unsafe. As a result, the Applicants removed the den during the winter of 2003-04, with the intention of building a new structure on the same footprint as a part of the construction proposed here.
11. Section 2001.6 of the Zoning Regulations allows a nonconforming structure which is destroyed by an act of God to an extent of less than 75% of the cost of reconstructing the entire structure, to be restored or reconstructed to its previous condition, provided that the reconstruction or restoration shall be started within twenty-four months of the date of the destruction and continued diligently to completion. *See*, 11 DCMR § 2001.6.
12. On August 6, 2004, within the 24-month period stipulated in § 2001.6, the Department of Consumer and Regulatory Affairs ("DCRA") issued Permit No. B465160 to the Applicants for the subject property to "excavate and build foundation." Applicants began the excavation on the subject property and construction of the foundation. Therefore, the Board finds that the exception to the side yard requirement granted by § 405.8 for the southwestern non-conforming side yard was not lost with the emergency removal of the den as a result of the damage from Hurricane Isabel, which constitutes a casualty or an Act of God.
13. On September 16, 2004, the Applicants were notified by DCRA that they required a special exception pursuant to § 223 in order to permit the construction of the addition.

Section 223 Provisions re: Light, Air, and Privacy

14. The dwelling owned by opposition party Mrs. Kelly fronts on 31st Street, N.W. Its rear yard abuts the opposite side of the alley which abuts the northeast side of the

³This requires relief from § 2001.3, which prohibits extension of a nonconformity. This relief was not specifically advertised, but is again subsumed within the relief requested pursuant to § 223. *See*, 11 DCMR § 223.2.

subject property. Between the rear wall of the Kelly home and the alley is a distance of 56 feet, 9 inches. This, plus the 15-foot width of the alley and the 1.77-foot width of the Applicants' northeast side yard, creates a distance of approximately 72 feet from the dwelling of Mrs. Kelly to the subject addition.

15. In Mrs. Kelly's rear yard is a 22-foot wide 2-car garage and a continuous line of evergreen trees growing along the rear property line, both of which minimize the visibility of the Applicants' dwelling and the subject addition.
16. The three windows on the northeast side of the proposed addition are approximately 20 feet from Mrs. Kelly's garage. One is 7 feet from the floor, one is 6 1/2 feet from the floor, and the third is a basement window which will be obscured by plantings.
17. The proposed addition on the southwest side of the property will not be less than 5.01 feet from the lot line with the Dempsey property, the same depth that existed prior to the demolition of the den.
18. The Applicant plans to erect a 7-foot sight-tight privacy fence or wall along the entire 150-foot southwestern lot line, effectively shielding the first floor of the addition from the first floor of the Dempsey home, maintaining the privacy of the Dempsey property.
19. On the southwest side, the rear portion of the proposed addition immediately adjacent to the existing dwelling is three stories, but the top two stories are actually a sloped roof with skylights, not a vertical wall. The addition then continues further into the rear yard, but at a height of only one story and this one-story part of the addition is set back approximately 17 feet from the southwestern lot line with the Dempsey property.
20. The Board credits the Applicants' sun path study prepared by a licensed architect. Because the subject property is located northeast, and not due east, from the neighboring Dempsey property, potential impact or reduction of light is minimized. According to the sun path study, the worst case scenario is that on the shortest day of the year, the proposed addition will cast only minimal shade on the northeastern side of the Dempsey dwelling, equal to less than 10% of the square footage of the side of the dwelling, at maximum shade exposure at 8:00 a.m., and decreasing each minute thereafter. On all other days of the year, the shade cast will be less.
21. Three of the five windows on the southwest side of the addition are located in areas where the Applicants will not spend significant amounts of time – two of them are skylights on the sloped roof, two are staircase windows, and one is in a

spare room. The other two windows (on the first floor) will be shielded by the 7-foot privacy fence.

22. The design of the addition complements the existing dwelling and is not out of character with the other dwellings, or the other additions, in the neighborhood.

CONCLUSIONS OF LAW

The Board is authorized to grant special exceptions where, in its judgment, the special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring properties. 11 DCMR § 3104. Pursuant to § 223, the Board may permit, by special exception approval, an addition to a one-family dwelling that does not comply with requirements pertaining to minimum lot dimension, lot occupancy, rear and side yards, courts, and nonconforming structures, subject to the provisions enumerated in § 223. The provisions of § 223 relevant here are: that the proposed addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular (a) the light and air available to neighboring properties must not be unduly affected; (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised; and (c) the addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. 11 DCMR § 223.2.

The Board concludes that the Applicants' proposed addition will not unduly affect the light and air available to neighboring properties. There was no evidence that the front of the Kelly home, indeed that any part of the home, would experience a reduction of light or air due to the proposed addition. The home itself fronts on 31st Street, N.W., and its 56-foot rear yard stretches toward the 15-foot public alley and the subject property. There is a substantial distance of approximately 72 feet between the rear of the Kelly home and the northeast side of the proposed addition. This distance is enough to maintain sufficient light and air to the Kelly home.

On the southwest side of the subject property, the addition will minimally, but not unduly, increase the shade to the Dempsey property. *See*, Finding of Fact No. 20. The part of the proposed addition immediately adjacent to the rear of the existing dwelling will be three stories, but not an unrelenting three-story vertical wall. The two top stories are not vertical to the ground, but actually present as a sloped roof, sloping gradually away from the southwestern side of the property. Due to the slope, any impact on light and air is mitigated. Moreover, although the addition will rise to three stories, the existing house is already three stories tall.

The Board also concludes that the privacy of use and enjoyment of neighboring properties will not be unduly compromised. The windows on both sides of the addition have been placed so as not to impact the privacy of the neighbors' properties. Because of the substantial distance from the rear of the Kelly home to the addition, the Board fails to see how the addition will have any compromising effect on the privacy of use and enjoyment of the Kelly property to the northeast. The view from the Dempsey property to Legation Street may be slightly impacted by the addition, but it was already impeded by the prior den addition, and any slight further impact is not undue. Nor will the addition compromise the Dempseys' privacy in their rear yard because of the sensitive placement of the windows on the addition and the construction of a 7-foot sight-tight fence running the length of the western lot line.

With the addition, the subject dwelling will be similar in height to other dwellings within the surrounding area, many of which have been added to and expanded. The side yards will continue their existing depth and are similar in character and depth to other side yards in the neighborhood. The addition has been designed to complement the dwelling and the neighborhood and its rooflines have been varied in order to break up its massing. The Board concludes that the addition, together with the existing dwelling, will not substantially visually intrude on the character, scale, and pattern of houses along Legation Street. There are always some impacts from a change such as the addition that the Applicant is proposing, but after considering the opposition to the application, the Board concludes that granting the special exception will be in harmony with the Zoning Regulations and Zoning Maps.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or not did not find their views persuasive. OP recommended approval of the application and the Board agrees with this recommendation. The ANC recommended denial of the application, citing objections concerning the size of the addition, possible loss of privacy, building without proper permits, and erosion issues. The latter two issues are not within the Board's jurisdiction under the Zoning Regulations. The first two issues are properly before the Board, but the Board does not find the ANC's views persuasive for the reasons set forth above.

For the reasons stated above, the Board concludes that the Applicants satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the side yard requirement in the R-1-B zone.

Accordingly, it is **ORDERED** that the application is **GRANTED**, subject to the following **CONDITION**:

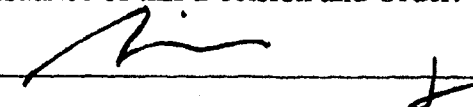
1. Applicant will construct a 7-foot high sight-tight fence, barrier, wall or other enclosure around the rear yard and southwest side yard of the subject property.

VOTE: **4-1-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann II and Gregory Jeffries to approve, Ruthanne G. Miller to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this Decision and Order.

ATTESTED BY: _____


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JUL 20 2005

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IS VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT OF DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 17270

As Director of the Office of Zoning, I hereby certify and attest that on July 20, 2005, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

John Patrick Brown, Esq.
Greenstein DeLorme & Luchs PC
1620 L Street, N.W., Suite 900
Washington, D.C. 20036-5605

Thomas & Kathryn Toggas
3112 Legation Street, N.W.
Washington, D.C. 20015

Joseph & Cynthia Dempsey
3114 Legation Street, N.W.
Washington, D.C. 20015

Cecile B. Kelly
5442 31st Street, N.W.
Washington, D.C. 20015

Chairperson
Advisory Neighborhood Commission 3/4G
Chevy Chase Community Center
P.O. Box 6252
Washington, DC 20015

Single Member District Commissioner 3/4G03
Advisory Neighborhood Commission 3/4G
Chevy Chase Community Center
P.O. Box 6252
Washington, DC 20015

BZA APPEAL NO. 17270
PAGE NO. 2

Acting Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

Councilmember Kathleen Patterson
Ward 3
1350 Pennsylvania Avenue, N.W.
Suite 107
Washington, DC 20004

Ellen McCarthy, Interim Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein
Office of the Attorney General
441 4th Street, N.W., 7th Floor
Washington, DC 20001

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning 

rsn

EXHIBIT L

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Property Detail

Address: 5013 BELT RD

SSL: 1756 0064

Record Details

Neighborhood:	CHEVY CHASE	Sub-Neighborhood:	A
Use Code:	12 - Residential-Detached-Single-Fa	Class 3 Exception:	No
Tax Type:	TX - Taxable	Tax Class:	001 - Residential
Homestead Status:	** Not receiving the Homestead Deduction		
Assessor:	CAROLYN MONK		
Gross Building Area:		Ward:	3
Land Area:	4,484	Triennial Group:	3

Owner and Sales Information

Owner Name: STEPHANIE A WALLACE
 Mailing Address: 5013 BELT RD NW; WASHINGTON DC20016-4234
 Sale Price: Not Available
 Sale Date: Not Available
 Instrument No.:

Tax Year 2008 Preliminary Assessment Roll

	Current Value	Proposed New Value (2008)
Land:	\$358,320	\$364,150
Improvements:	\$163,190	\$180,090
Total Value:	\$521,510	\$544,240
Taxable Assessment: *	\$521,510	\$544,240

* Taxable Assessment after Tax Assessment Credit and after \$60,000 Homestead Credit, if applicable. ([Click here for more information](#)).

** If you believe you should be receiving tax relief through the Homestead deduction program and if you are domiciled in the District and this property is your principal place of residence, you can access the link below, complete the form, and return it per the instructions. For additional information regarding the Homestead program, call (202) 727-4TAX. Click here to download the Homestead Deduction and Senior Citizen Tax Relief application *

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All information below will be updated on a monthly basis.

Building Type	Single
Building Style	2 Story
Living Area	956
Year Built	1933
Bed Rooms	2
Bath Rooms	1
1/2 Bath Rooms	0
Total Rooms	5
Wall	Wood Siding
Floor	Hardwood
Heat	Hot Water Rad
Air Conditioning	Yes
Fireplace(s)	1

****Click here to view the Glossary of Terms for the Property
Features data.**

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