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ADVISORY NEIGHBORHOOD COMMISSION 3E

**TENLEYTOWN • AMERICAN UNIVERSITY PARK • FRIENDSHIP
HEIGHTS**

5425 Western Avenue NW
Washington DC 20015
www.anc3e.org

Resolution Opposing Appeal by Developer Stephanie Wallace
(BZA Appeal No. 17747)

Introduction

WHEREAS, In April 2004, developer Stephanie Wallace purchased the house at 5013 Belt Road. Since then, through a series of missteps on her part, she has created an untenable situation on Belt Road. She has erected the bones of a building that should never have been built (and would never have been if she had acted reasonably and rationally in the first place); she has deprived nearby residents of the ability to enjoy their own property by creating an unsightly and relentless eye-sore; she has put the neighbors at risk by not securing the property, thereby creating an attractive nuisance that might lure children, teenagers or even homeless people seeking shelter (indeed, on our last inspection of the site, we found an empty beer bottle and a lighter in the wood frame). And no doubt, this project has adversely impacted each of the neighbor's property values.

Whereas, On September 28, 2007, the Zoning Administrator denied developer Wallace's request for a fifth building permit and the developer appealed that decision to the Board of Zoning Adjustment (BZA). For reasons set forth below, ANC 3E urges the BZA to affirm the Zoning Administrator's decision.

The Construction

Whereas, Soon after purchasing the old farm house on Belt Road, developer Wallace applied for a permit to build an extension. Relying on a small bay window that jutted out for a few feet along the south side of the house, and a non-conforming side yard to the north, the developer requested and was granted a permit to build an extension with non-conforming side yards that dwarfed (before it ultimately consumed) the original house.

Whereas, Developer Wallace proceeded to work on the house and piece by piece the original structure disappeared—in its entirety. The developer herself readily concedes that there is not a single piece of the original house remaining. The final permit—the basis of this appeal—was denied for that reason: Applicable zoning regulations permit the construction of an addition with a non-conforming side yard only if it is, in fact, an addition to a non-conforming side yard. If there is nothing left of the original structure then there is no non-conforming side yard to extend. The Zoning Administrator properly concluded that there was no longer any basis for allowing the developer to build an extension with a non-conforming side yard as the original side yard ceased to exist.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17747
EXHIBIT NO. 21

Board of Zoning Adjustment
District of Columbia
CASE NO. 17747
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The New House

Whereas, New construction, which this is, must conform to the eight-foot side yard requirements, which this does not. The structure presently standing at 5013 Belt Road is grossly out of scale and proportion to its small lot. The erroneously grandfathered five-foot side yard places this enormous house stunningly and perilously close to its neighbor to the south, impinging on the owners' right to enjoy their property. Indeed, these neighbors have incurred significant property damage as a result of the construction. Developer Wallace has ignored repeated telephone calls and certified letters seeking redress. Finally, the aggrieved neighbors were forced, at great personal expense, to retain a lawyer to recoup their losses, which they have not yet been able to do. And each of the owners of the three adjacent lots to the north has suffered property damage as well, though not as significant.

The Appeal

Whereas, On appeal, developer maintains that she intended to build only an extension, but that due to extensive termite damage, the house fell apart as she proceeded to work, forcing her, bit by bit, ultimately to remove the entire original structure. Incredibly, she contends that the termite damage was an "Act of God" or a "casualty," which fact would entitle her, under applicable law, to proceed with the construction of a brand new house with a non-conforming side yard.

Whereas, Termite damage cannot be considered an "Act of God" or "casualty." A casualty is a sudden event or occurrence, like a bulldozer accidentally backing up into a house. There was no casualty here. The latent termite problem festered over years. The late discovery was the fault of the developer. She made an imprudent decision to waive inspection at the time she purchased the property. She should not now be rewarded for her bad judgment. Had she proceeded reasonably, she would have known of the termite damage and realized that the structure was not sound. And then she could have sought the proper permits for demolition and construction of a new house with conforming side yards, thereby avoiding the current problem.

Whereas, In addition to failing to take reasonable precautions regarding the termite damage, the developer also failed to exercise due care relating to the high water levels on the street. Her neighbors had warned her of the very high water levels and certainly a diligent review prior to commencing construction would have revealed the nature of the terrain and the likely problems. But the developer again failed to act reasonably and as a result encountered serious roadblocks. Troublesome as they were, none can be considered an Act of God or casualty. Reasonable preparation would have revealed the nature of the problems and enabled her to plan accordingly.

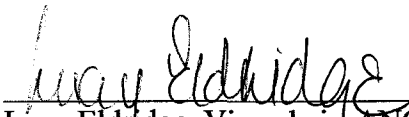
Whereas, Any claim on the part of the developer that the District is estopped from denying her the fifth building permit under the doctrine of laches must fail because in order to prevail on such a claim, developer Wallace must come to the situation with "clean hands," that is to say that she must prove that she acted appropriately under the

circumstances. There can be no question that her own missteps—whether intentional or merely reckless—make it impossible for her to demonstrate that she had clean hands.

THEREFORE BE IT RESOLVED that ANC 3E strongly opposes the appeal of developer Stephanie Wallace and respectfully urges the BZA to affirm the decision of the Zoning Administrator for the following reasons:

1. The developer sought a permit to build a non-conforming addition to a house. That permit was granted. At the moment the original structure ceased to exist, the Zoning Administrator was correct that there was no longer any basis for allowing developer Wallace to build an extension with a non-conforming side yard as there was no longer a non-conforming side yard to extend.
2. Developer cannot argue that the demise of the building was due to an “Act of God” or “casualty.” The collapse of the building was due to termite damage. Had she acted reasonably she would have known that the structure was unsound and could have made an informed decision to either demolish the house and construct a new building that conformed to the zoning requirements or simply walk away from the deal. Instead, she acted in a way that prevented her from reasonably discovering information she needed to know to proceed with her project. Instead of acting reasonably, and inspecting the house as a prudent home buyer would do, she chose instead to cover her eyes and ears and cross her fingers. Instead of surveying the land, she chose to stick her head in the sand and dig in the dark. Developer should not be rewarded for her bad judgment, but rather should be forced to play the hand that she dealt herself.
3. Any claim that the District should be estopped from denying the permit under the doctrine of laches must fail in this case because the developer acted in a manner so imprudent that she cannot claim to have proceeded with clean hands.

ANC 3E approved this resolution at its regularly scheduled meeting on April 10, 2008, which was properly noticed and at which a quorum was present. The resolution was approved by a vote of 3-0. Commissioners Lucy Eldridge, Carolyn Sherman, and Anne Sullivan were present.


Lucy Eldridge, Vice-chair, ANC 3E

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BOARD OF ZONING ADJUSTMENT
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EXHIBIT NO. _____

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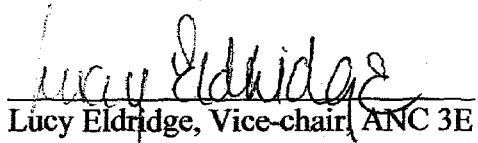
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