

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

In re:)
Stephanie Wallace,)
)
Appellant,)
)
)
)
)
)

BZA Appeal No. 17747

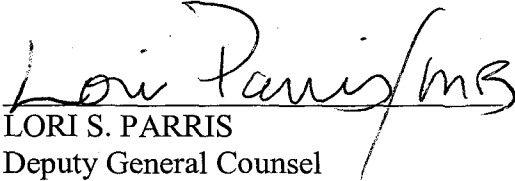
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PRAECIPE

The District of Columbia Department of Consumer and Regulatory Affairs ("District" or "Appellee"), by and through Undersigned Counsel, contacted ANC Commissioner Lucy Etheridge after filing its Motion to Continue the Hearing scheduled for Tuesday, April 29, 2008. Ms. Etheridge consented to the relief sought.

Respectfully submitted,

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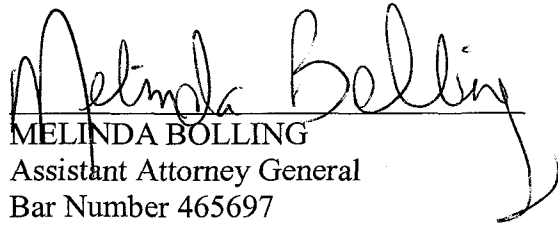
BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17747

EXHIBIT NO. 29

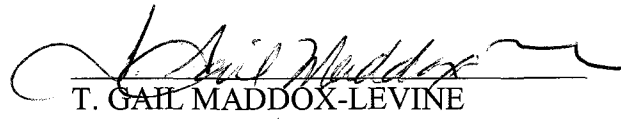
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District of Columbia
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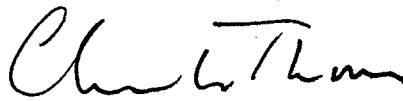
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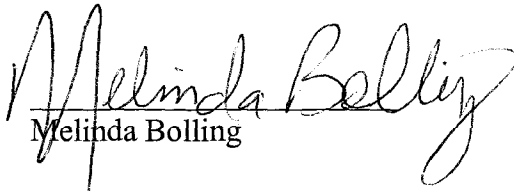
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Praecipe was served via first-class postage prepaid mail this 25th day of April 2008, to the following:

The Honorable Neil O. Albert
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Melinda Bolling

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

441 4th Street, N.W.
Washington D.C. 20001

In re:
Appeal of Stephanie Wallace,
Appellant

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Appeal No. 17747

**DISTRICT OF COLUMBIA'S OPPOSITION
TO APPELLANT'S MOTION FOR SUMMARY JUDGMENT**

The Appellee, the District of Columbia ("District"), by and through Undersigned Counsel, respectfully moves the Board of Zoning Adjustment ("Board") to deny Appellant's Pre-Hearing Statement and Motion for Summary Judgment ("Motion"), filed on April 14, 2008 by Stephanie Wallace ("Appellant"). The Board should deny the pending Motion because (1) Appellant has failed to demonstrate that there is no genuine factual dispute, (2) Appellant has failed to demonstrate that she is entitled to judgment as a matter of law, (3) the doctrine of equitable estoppel does not prevent the District from denying a Building Permit application that is violative of District law, and (4) the doctrine of laches is not applicable when the District has responded promptly to every amended permit application filed by the Appellant.

BACKGROUND

The appeal before the Board is the result of Appellant's construction of an illegal addition to a single family dwelling ("SFD") located at 5013 Belt Road, NW. The addition is outside the scope of the building Permit that was issued to Appellant, and is therefore in direct violation of the District of Columbia's Building Code and Zoning Regulations .

STATEMENT OF FACTS

On August 9, 2004 Appellant applied to the District's Department of Consumer and Regulatory Affairs ("DCRA") for a construction permit to renovate a 2-story single family dwelling to a 3-story single family dwelling at 5013 Belt Road, NW ("the Property"). *See*, Statement of Undisputed ¶3. Along with the permit application that was submitted to DCRA, Appellant included a drawing, which depicted a 20.1' x 14.4' x 13.6' x 16.2' x 28' "existing 2 ½ -story frame" pre-existing SFD as a part of the overall construction project contemplated at the property. *See*, Statement of Undisputed Facts ¶3. On December 9, 2004, Appellant was approved to construct an "addition to [a] single family house to include [a] new kitchen, family room, master suite, baths, attic & basement" under Building Permit # B468280. *See*, Statement of Undisputed Facts ¶4.

However, on March 17, 2005, DCRA issued a Stop Work Order at the property stating that appellant was "working beyond the scope. Razing of building. Need to resubmit plans and plat." *See*, Statement of Undisputed Facts ¶5. Accordingly, on October 4, 2005, Building Permit # B477334 was issued to Appellant to revise Building Permit # B46820. *See*, Statement of Undisputed Facts ¶7. The new permit allowed for Appellant to "remove and replace an[y] 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..." *See*, Statement of Undisputed Facts ¶7.

Subsequently, on April 21, 2006, Building Permit # B477334 was amended by the issuance of Building Permit # B91338, which allowed the Appellant to raise the house up at the Property by approximately four feet. *See*, Statement of Undisputed Facts ¶9.

However, on January 9, 2007, DCRA was contacted by Ismaik Hanieh, P.E., a structural engineer hired by the Appellant, concerning the property. In his letter to DCRA, Mr. Hanieh stated that “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 per the current building code requirements.” *See*, Statement of Undisputed Facts ¶10. However, DCRA did not approve demolishing the existing structure, but rather issued Building Permit #B103710, on February 14, 2007, which allowed Appellant to “demolish a portion of an[...] existing SFD due to structural integrity and possible collapse of the house which is dangerously unsound. Rebuild structure to current building code specifications per existing permits and plans.”. *See*, Statement of Undisputed Facts ¶12.

Nevertheless, neighbors reported to DCRA that the remaining portion of the pre-existing house was razed on March 12, 2007. *See*, Statement of Disputed Facts ¶3. Therefore, on March 21, 2007, another Stop Work Order was posted on the property, stating “exceeding scope of raze permit took down entire house. Exceed Scope of Building Permit. Building all new SFD. Ongoing work [does] not match approved plans on site!!!” *See*, Statement of Undisputed Facts ¶13. This Stop Work Order was issued because the District did not authorize the SFD to be constructed as Appellant has constructed it. *See*, Statement of Disputed Facts ¶4.

On April 17, 2007, Appellant filed a building permit application to revise Building Permit #B468280. *See*, Statement of Undisputed Facts ¶15. In her application, Appellant sought to use the demolition of the pre-existing SFD, caused by a foreseeable

termite infestation, as the basis upon which the newly constructed SFD should be permitted with nonconforming side yards. *See*, Statement of Disputed Facts ¶4. As a result, Appellant's April 17, 2007 building permit application was denied by the Zoning Administrator ("ZA") in a determination letter dated September 28, 2007. *See*, Statement of Undisputed Facts ¶16. In the letter, the ZA concluded that he was unable to approve the pending building permit, allowing reconstruction of the preexisting, nonconforming SFD, because his ability to utilize the exception under 11 D.C. Mun. Reg. §405.8¹ ended when the pre-existing house was demolished. *See*, Statement of Disputed Facts ¶5. The ZA's determination letter forms the basis of the present appeal, which was filed on October 19, 2007 with the BZA. *See*, Statement of Undisputed Facts ¶17. On September 28, 2007, Ms. Wallace filed her appeal of that determination with the BZA. *See*, Statement of Undisputed Facts ¶17. Appellant now seeks summary judgment in this matter. *See*, Statement of Undisputed Facts ¶18.

SUMMARY JUDGMENT STANDARD

The District of Columbia Court of Appeals ("DCCA") established a consistent standard of review for motions for summary judgment, whereby "[s]ummary judgment is appropriate only when the record, viewed in the light most favorable to the non-moving party, establishes that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *See*, Super. Ct. R. 56 (2005); *see also*, TV Capital Corp. v. Paxson Communs. Corp., 894 A.2d 461, 466 (D.C. App 2006),

¹ 11 D.C. Mun. Reg. §405.8 states: "In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.)."

quoting Taylor v. Akin, Gump, Strauss, Hauer & Feld, 859 A.2d 142, 146 (2004).²

Likewise, a party opposing a motion for summary judgment may not rely on "mere allegations or denials" in its opposition to a movant's motion for summary judgment. *See*, Super. Ct. R. 56(e). Rather, the non-movant must demonstrate specific facts showing a "genuine issue for trial." *Id.*

The movant is not required to produce evidence showing the absence of a material fact. Jeffrey V. Robinson v. District of Columbia, et al., 97CV787 (RWR) Slip op. at 11 (D.D.C. March 31, 1998). Rather, "the burden on the moving party may be discharged by 'showing' . . . that there is an absence of evidence to support the nonmoving party's case." *See*, Celotex Corp. v. Catrett, 477 U.S. 317 at 325, (S. Ct. 1986) Although all reasonable inferences are drawn in favor of the non-movant, that party "bear[s] the burden of pointing to 'affirmative evidence' establishing a genuine factual dispute." Coward v. ADT Security Sys. Inc., 140 F.3d 271, 273 (D.C. 1998).

Because "[s]ummary judgment is an extreme remedy that entitles the moving party to judgment as a matter of law only when no genuine issue of material fact present when the motion is made, the moving party has the burden of proof; and any doubt as to the existence of any genuine issue of fact must be resolved against the movant. *See*, Musa v. Continental Insurance Co., 644 A.2d 999 (D.C. 1994); Townsend v. Waldo, 640 A.2d 185 (D.C. App. 1994); and Graff v. Malawer, 592 A.2d 1038, 1040 (D.C. App. 1991). Therefore, to prevail in its opposition to a Motion for Summary Judgment, the

² In deciding whether there is a disputed issue of material fact, the Court must view the underlying facts and draw all reasonable inferences in favor of the non-moving party. *See*, Meyer v. Riegel Prods. Corp., 720 F.2d 303, 307 n.2 (U.S. App. 1983), cert. dismissed, 465 U.S. 1091 (1984); *see also*, TV Capital Corp., 894 A.2d at 466 quoting Adickes v. S. H. Kress & Co., 398 U.S. 144, 158-59 (1970) ("[a]ny inferences that can be reached from subsidiary facts are resolved against the moving party."). Material facts are those that "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

District need only show that there is sufficient evidence to support a claimed factual dispute, requiring the Board to resolve the parties differing versions of the truth at the hearing. *See, Nader v. Toledano*, 408 A.2d 31, 42 (D.C. App. 1979), cert. denied, 444 U.S. 1078 (1980). Accordingly, it is the position of the District that because there is a plethora of genuine issues of material fact in dispute in this case, Appellant's pending Motion must be denied.

**APPELLANT'S CONSTRUCTION EXCEEDED THE SCOPE OF THE PERMIT,
IN VIOLATION OF DISTRICT LAW,
THUS SUMMARY JUDGMENT SHOULD BE DENIED**

The Appellant cannot support its petition for summary judgment because the District has evidence to prove that (1) Appellant's construction exceeded the scope of her approved building permits; (2) an illegal structure was erected; (3) both the March 17, 2005 and the March 21, 2007 Stop Work Orders were in compliance with the Building Code; and (4) Appellant's construction violated the Zoning Regulations. Therefore, this Board must deny the Appellant's Motion for Summary Judgment.

Appellant Exceeded the Scope of Her Building Permits

The Building Code, specifically 11 DCMR §3205.5 require any person who constructs any building, structure, or any part of any building or structure to comply with the building permit issued for that project³. Accordingly, on December 9, 2004, the District approved Appellant's submitted plans to construct an "addition to [a] single family house to include [a] new kitchen, family room, master suite, baths, attic & basement." These plans specified that an addition would be constructed onto a pre-

³ 11 DCMR §3205.5 states "3205.5 Any person who erects, constructs, reconstructs, alters, converts, owns, controls, occupies, maintains, or uses any building, structure, or any part of any building or structure shall at all times comply with any condition to the issuance of the building permit for the building, structure, or part thereof."

existing single family dwelling at the Property. Therefore, the District issued Building Permit #B468280, on December 9, 2005, authorizing the addition to begin. However, in response to neighbor complaints, DCRA performed a site inspection at the Property in March of 2005, and determined that the Appellant exceeded the scope of Building Permit #B468280 by performing demolition work at the property. As a result, a Stop Work Order was issued on March 17, 2005, charging that Appellant violated 12 DCMR §114.1⁴ by “working beyond the scope. Razing of building. Need to resubmit plans and plat.” See, Exhibit 1.

Appellant further exceeded the scope of her Building Permit in March of 2007, when she demolished the pre-existing house at the property on which she was approved to construct the addition. In her Motion, Appellant alleges that the remaining portion of the house was demolished “pursuant to the fourth Building Permit”, referring to Building Permit #B103710. See, Exhibit 2. However, Building Permit #B103710 authorized Appellant only to “demolish a portion of an[.] existing SFD due to structural integrity and possible collapse of the house which is dangerously unsound. [emphasis added]” *Id.* Therefore Appellant again exceeded the scope of her building permit by demolishing the entire preexisting structure. As a result, a Stop Work Order was issued on March 21,

⁴ The D.C. Municipal Regulation, 12A DC Mun. Reg §114.1 states: “Notice to Owner or Other Responsible Person. Upon notice from the code official that work on any building or structure is being performed contrary to the provisions of the Construction Codes or in an unsafe and dangerous manner, the property shall be posted and such work shall be immediately stopped until the situation is corrected. The stop work order shall be in writing, in a form prescribed by the code official, containing a description of the right to appeal the order, and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work. The stop work order shall state the address of the property and the specific section or sections of the Codes violated. If no responsible person is present to receive the order, the property may be posted, and the stop work order along with an appeals form shall be sent to the owner by first class mail within three (3) working days. No stop work order shall be issued nor considered valid unless it contains all the above information, the name and the telephone number of the official empowered to review the order, and the signature of the issuing official.”

2007 for “exceeding scope of raze permit took down entire house. Exceed Scope of Building Permit. Building all new SFD...”. See, Exhibit 3.

Contrary to authorized Building Permits #B468280 and #B103710, Appellant exceeded her submitted and approved plans by partially demolishing and then completely razing the pre-existing single family home at 5013 Belt Road, N.W. These actions and the Appellant’s subsequent failure to remedy the renovation and construction deviations are violations of the District’s Building Code and Zoning Regulations. Therefore, Appellant’s construction is outside of the scope of her submitted plans and she cannot prove that her existing project does not violate 12A DCMR §§ 105.1(1)⁵ and 105.1.4(1)⁶ and 11 DCMR §§405.8⁷ and 2001.6⁸. Therefore, summary judgment should be denied.

Appellant Erected an Illegal Structure

The site of the construction at issue is located at 5013 Belt Road, N.W. This property is also located within a R-1-B District. Single family dwellings located in such a District are required to have side yards that are at least eight feet wide. See, 11 D.C. Mun. Reg. § 405.9⁹. However, the pre-existing single family dwelling that was located

⁵ 12A DC Mun. Reg §105.1 states “ A permit shall be obtained from the code official before any of the construction activities or regulated actions specified in Sections 105.1.1 through 105.1.13 shall begin. Depending on the scope of work, as specified in Sections 105.1.1 through 105.1.13, a construction project shall require one or more of the following types of permit: [...] Building permit.”

⁶ 12A DC Mun. Reg §105.1.4 states “A building permit is required for the following activities: [...] 1. New construction, including constructing, adding to or moving a building or structure”

⁷ 11 DC Mun. Reg. §405.8 states “405.8 In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).”

⁸ 11 DC Mun. Reg. § 2001.6 states “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.”

⁹ 11 D.C. Mun. Reg. § 405.9 states “[s]ide yards shall be provided on lots in Residence Districts as set forth in the following table, subject to the special requirements of other provisions of this chapter:” (table omitted).

on the property, prior to March 2007, was constructed in 1933. *See*, Exhibit 4. Because it was constructed before May 12, 1958, it qualified for an exemption from the eight foot side yard under the Zoning Regulations. More specifically, §405.8 provides that the preexisting house at issue, which existed on or before May 12, 1958, could have an addition constructed, provided that the width of the existing side yard is at least five feet (5 ft.) in width. *See*, 11 D.C. Mun. Reg §405.8. Essentially, this provision allowed the Appellant to utilize the side yard exemption, provided by the pre-existing, nonconforming house, to extend the structure's nonconforming side yards with the addition.

However, when the pre-existing house was demolished by the Appellant on March 12, 2007, the non-conforming exception was no longer available to be used a basis for the nonconforming exception, because the pre-existing 1933 house had been removed. Nevertheless, Appellant continued to construct her addition in contradiction to the building permit under which she was allowed to build – building permit # B103710.

While continuing to build, Appellant submitted an application for a new building permit on April 17, 2007. The application sought approval for her to reconstruct the pre-existing house. This application was denied by the Zoning Administrator on September 28, 2007 on the basis of Zoning Regulation §11-405.8, which provided that an existing house with a nonconforming side yard may be extended with only a five foot wide side yard if the nonconforming side yard is present. *See*, 11 DC Mun Reg §405.8. However, with the pre-existing house gone, the nonconforming side yard exception also ceased to exist. Therefore, the provision in §405.8 could not be used to rebuild the pre-existing

house and the construction that Appellant erected is illegal under the current building permit, #B103710.

The Zoning Administrator also determined that Zoning Regulation §11-2001.6, which allowed one to rebuild a structure if a casualty or act of God caused damage to the structure, was not applicable to the Appellant's project. *See*, 11 DC Mun. Reg. §2001.6. The Zoning Administrator based this decision on the fact that the damage that made the pre-existing house structurally unsound was caused by termite damage, which is neither a casualty nor and act of God. Therefore, the construction that Appellant erected is illegal under the current building permit, #B103710.

As 11 DCMR §§405.8 and 2001.6 prohibit the Appellant from constructing a nonconforming addition where the pre-existing, nonconforming SFD is demolished in the absence of a casualty or act of God, the cause for the demolition of the pre-existing structure is clearly in dispute. Therefore, summary judgment is not proper and Appellant's Motion should be denied. *See*, McCoy v. Quadrangle Development Corp., 470 A.2d 1256, 1259 (D.C. 1983) ("If the record is unclear as to whether a genuine issue of material fact is presented, the trial court must deny the motion.") *See also* Franklin Investment Co. v. Huffman, 393 A.2d 119, 121 (D.C. 1978).

In conclusion, Appellant's Motion is silent with respect to the underlying issue – whether Appellant's construction conforms to the District's Building Code. As the Appellant has performed construction that does not conform to the submitted plans and Building Permits, built additions that exceed the submitted plans and Building Permits, and did not receive variances from the BZA for nonconforming side yards in the absence of the pre-existing house, the District has determined that the construction to Appellant's

property exceed the scope of all Building Permits. Therefore, the ultimate issue before this Board is clearly in dispute – whether Appellant may continue to construct a non-conforming addition when the basis for the nonconforming exception has been demolished. On this issue, Appellant’s Motion for Summary Judgment should be denied.

**THE DOCTRINE OF EQUITABLE ESTOPPEL IS NOT APPLICABLE
BECAUSE THE DISTRICT CAN CORRECT A TECHNICALLY INCORRECT
STOP WORK ORDER BY REISSUING A NEW STOP WORK ORDER**

Appellant’s motion for summary judgment should also be denied because she cannot meet the elements of equitable estoppel. Estoppel is defined as “a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true.”¹⁰ There are six elements of an equitable estoppel claim: “(1)expensive and permanent improvements, (2) made in good faith, (3) in justifiable and reasonable reliance upon, (4) affirmative acts of the District government, (5) without notice that the improvements might violate the zoning regulations; and (6) equities that strongly favor the petitioner.” *See, Bannum, Inc. v. D.C. Board of Zoning Adjustment*, 894 A.2d 423, 431 (D.C. 2006); *See also, Interdonato v. District of Columbia Board of Zoning Adjustment*, 429 A.2d 1000, 1003 (D.C. 1981).

Appellant argues incorrectly that the District is barred from denying her application to reconstruct the pre-existing, nonconforming SFD at the property by the Doctrine of Equitable Estoppel. Additionally, Appellant mistakenly reasons that the 11 DC Mun. Reg. §§405.8 and 2001.6 of the Zoning Regulations support her position.

First, the Appellant incorrectly argues that expensive and permanent improvements were made “in direct reliance” on the District. This is false as the District affirmatively gave the Appellant notice that adherence to the approved Building Permits

¹⁰ Black’s Law Dictionary, Seventh Edition (1999).

and the Zoning Regulations were mandatory by the inclusion of a statement to which the Owner must certify that she is “the owner of the property; that the application and plans are complete and correct to the best of [her] knowledge and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.” *See*, Exhibit 5. Accordingly, Appellant could not have relied on the District when financing this project because the renovation did not conform to the Building Permits authorized and approved by the District.

Second, Appellant inaccurately argues that “in good faith” she relied on the District’s Building Permits. The Building Permits did not allow the construction completed by Respondent. Additionally, the Appellant was informed by the District on March 17, 2005 and on March 21, 2007 that she exceeded the scope of the construction allowed by her Building Permits. On August 22, 2005, Appellant filed a Building Permit Application for the Property, seeking approval to “underpin/remove and replace wood...to preserve the structural integrity of the project” but she did not include a request to raze the pre-existing SFD because she knew or should have known on December 9, 2004 when the first Building Permit (# B468280) was issued, by the explicit terms of her permit that she was authorized only to construct an “addition”¹¹. The construction of an “addition” would necessarily require that the pre-existing structure remain in tact for the approved addition to be added onto it. Again, on March 10, 2006, the Appellant filed a Building Permit Application for the Property, seeking approval to “raise the house up by approximately 4 feet”, but she did not include a request to raze the pre-existing SFD

¹¹ Building Permit (# B468280) expressly authorized appellant to construct an “addition to [a] single family house to include [a] new kitchen, family room, master suite, baths, attic & basement.”

because she knew or should have known on December 9, 2004, when the first Building Permit (# B468280) was issued, that the approved addition required the pre-existing, nonconforming structure to remain in tact. Appellant therefore, ignored the District's Building Permit directives and subsequent Stop Work Orders and filed Building Permit applications with false plans to incorporate the pre-existing, nonconforming structure in her construction, while she, continually failed to protect the 72-year old, pre-existing, wooden structure from the elements – despite its alleged structural instability. The District argues that the Appellant knew or should have known that without the pre-existing, nonconforming structure in place, the addition would violate the Zoning Regulations. Therefore when the Appellant exceeded the scope of the approved Building Permits, the “good faith” requirement was completely negated.

Likewise, the Appellant cannot meet the third and fourth elements of “justifiable and reasonable reliance upon” the “affirmative acts of the District government.” Bannum, Inc. v. D.C. Board of Zoning Adjustment, 894 A.2d at 431. All construction and renovation required the Appellant to follow the authorized Building Permits to construct the addition according to what was approved. Again, the Appellant ignored the limitations set by the Building Permits. Therefore, the unapproved addition, constructed by the Appellant, is illegal and exceeds the scope of the Building Permits authorized by the District. As the Appellant did not follow the approved Building Permits, she fails to meet either the third or fourth element of estoppel. The Building Permit applications signed by the Appellant indicate that she agreed to construct in conformance with the D.C. Building Code, the Zoning Regulations and other applicable laws and regulations of the District of Columbia. However, by failing to construct the addition per the approved

plans, she negated the ability to justifiably rely on the affirmative acts of the District, which are represented by the Building Permits issued.

The Appellant also completely fails to meet the fifth element of estoppel, regarding notice. The Building Permit applications and the Building Permits that were issued contain language requiring all construction to be in accordance with the Zoning Regulations. *Id.* However, the Appellant submitted building plans reflecting the use of a structure, which she then impermissibly demolished without the District's authorization. When the partial destruction and eventual total demolition of the pre-existing, nonconforming structure was discovered by the District on March 17, 2005 and on March 21, 2007 respectively, Stop Work Orders were issued and Appellant was therefore on notice that her construction was not in accordance with the Zoning Regulations. Thus any continued construction, without Building Permits issued that authorized demolition of the pre-existing structure, was done by the appellant at her peril.

Appellant did seek to revise her Building Permits. However, in doing so she represented to the District that there was newly discovered termite damage at the property that justified her amending the construction plans. However, Appellant is an experienced Developer in the District¹² who knew or should have known that the basis upon which her nonconforming addition was originally approved under the Zoning Regulations was the fact that a pre-existing, nonconforming structure was present. Furthermore, she knew or should have known that without the pre-existing, nonconforming structure, she would not be entitled to construct a nonconforming addition.

¹² See Exhibit 7.

Additionally, the language in the Building Permits provided notice to the Appellant that: “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.” *Id.* Furthermore, the Appellant is given notice of what can happen if the work does not conform to the approved application and plans on file: “[District can] 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.” *Id.* Therefore, the Appellant does not meet the fifth element of notice required for an estoppel defense. Here, the Appellant had notice that all construction had to conform to the Building Permits and Zoning Regulations.

Lastly, the equities favor the District enforcing the Zoning Regulations for the protection of the public over allowing the Appellant to contradict the approved Building Permits by constructing an addition in violation of District law. Therefore, Appellant does not meet the sixth element of equitable estoppel.

Furthermore, the District has never changed the essence of the violations cited in the two Stop Work Orders issued in this matter. At no time did the District contradict the notices, which advised the appellant that her construction exceeded the scope of what she was approved to build under the issued Building Permits. Thus, Appellant’s argument that the District is barred from preventing her from constructing a nonconforming addition in the absence of the pre-existing, nonconforming house fails, and the Appellant’s motion for summary judgment should be denied.

THE DOCTRINE OF LACHES IS NOT APPLICABLE WHEN THE DISTRICT HAS RESPONDED PROMPTLY TO EVERY CLAIM FROM APPELLANT

Appellant's motion for summary judgment should also be denied because the District promptly responded to every claim of the Appellant and she was not prejudiced by any actions of the District.

Laches is defined as "unreasonable delay or negligence in pursuing a right or claim in a way that prejudices the party against whom relief is sought."¹³ Laches has two elements: the party asserting a claim of laches must show both (1) that it has been prejudiced by the delay and (2) that the delay was unreasonable. Beins v. District of Columbia Board of Zoning Adjustment, 572 A.2d 122, 126 (D.C. 1990). The defense of laches "is judicially disfavored in the zoning context because of the public interest in enforcement of the zoning laws." Goto v. District of Columbia Bd. of Zoning Adjustment, 423 A.2d 917, 925 (D.C. 1980). Likewise, in the context of residential construction, there is public interest in the enforcement of building code regulations.

First, the Appellant cannot assert a claim of laches because the project's delay is due to her own failure to adhere to the Building Permits issued by the District. Appellant has sought and been approved for four Building Permits for the same project. Each revision was approved by the District in a timely manner. The fact that this project has been in the construction phase for over two years has been caused by the Appellant's ever evolving discovery of structural problems at the property. It is the District's position that these structural problems were wholly foreseeable through a termite inspection that the Appellant chose to forego, by buying the house "as is", in her haste to expedite the purchase. *See*, Exhibit 6. Therefore, any prejudice experienced by the Appellant is due to her own intentional unwillingness to conform to the approved Building Permits.

Additionally, Respondent knew on March 17, 2005 and on March 21, 2007, that she was

¹³ Black's Law Dictionary, Seventh Edition (1999).

constructing her nonconforming addition outside the scope of what she was approved by the District to build there. Again, Appellant ignored the District's directives and proceeded at her own peril. Therefore, the Appellant cannot now argue prejudice due to a delay of the District. Hence, the Appellant fails to meet the first element of laches.

Second, the District issued the first Stop Work Order on March 17, 2005 – well before the construction of the nonconforming addition began. Therefore, the District did not delay giving the Appellant notice that the Building Permit must be followed without deviation. The Appellant was notified on both the Building Permits and subsequent Stop Work Orders. Now the Appellant cannot pursue a claim in equity caused by her own actions and negligence. Therefore, the defense of laches fails and the Appellant's motion for summary judgment should be denied.

WHEREFORE, the District respectfully requests that this Board deny the Appellant's Motion for Summary Judgment.

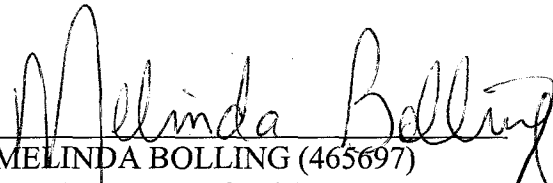
Respectfully submitted,

JILL STERN
General Counsel
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS


LORI S. PARRIS (467455)
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS



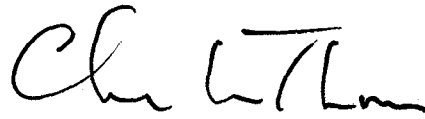
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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2008, a copy of the District's Opposition to Appellant's Pre-Hearing Statement and Motion for Summary Judgment was served via first class mail to John Patrick Brown, Greenstein DeLorme and Luchs, P.C., 1620 L Street N.W., Suite 900, Washington, D.C. 20036.

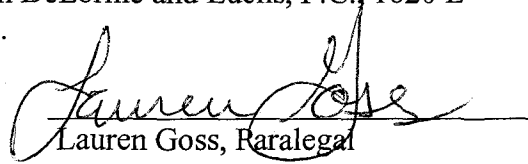

Lauren Goss, Paralegal

Exhibit 1

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

STOP WORK

ADDRESS : 5013 Belt Pl N.W.

LOCATION: (Section/s) DCMR 12 SECT. 114.1 Working beyond scope.
Reking of building. Need to resubmit plans and plot.

OPER Permits SHALL BE OBTAINED AND OR POSTED PRIOR TO THE CONTINUATION OF ANY WORK.
AND ALL PERSONS ACTING CONTRARY TO THIS NOTICE SHALL BE SUBJECT TO A FINE/PROSECUTION OR BOTH.
APPLICATION FOR PERMIT(S) MUST BE FILED OR REMOVAL OF VIOLATION MUST OCCUR WITHIN 3 days
HOURS/DAYS FROM THE POSTING OF THIS NOTICE.

☒ Construction
442-4641

☐ Electrical
442-4643

☐ Plumbing
442-4642

☐ Elevator
442-4634

☐ Boiler
442-4630

Post

3-17-05

Antone

Time

Date

Official

Exhibit 2

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	SX:	LOT: 64
		WARD:	3 ZONE R-1-B		
DESCRIPTION OF WORK: DEMOLISH A PORTION OF AND 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: \$310.00		
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.

Exhibit 3

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

"No More Third Party inspections Allowed"

Fine

\$4,000.00
or more

All Work

STOP WORK

All Work

ADDRESS : 5013 Belt Rd NW

Exceeding Scope of Raze Permit Took down

VIOLATION: (Section/s) Entire House. Exceed Scope of Building
Permit. Building All New SFD. Ongoing Work Do not match Approved
Plans on Site!!! stop Work Order Posted

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

APPLICATION FOR PERMIT(S) MUST BE FILED OR REMOVAL OF VIOLATION MUST OCCUR WITHIN 0
HOURS/DAYS FROM THE POSTING OF THIS NOTICE.

☒ Construction
442-4641

☐ Electrical
442-4643

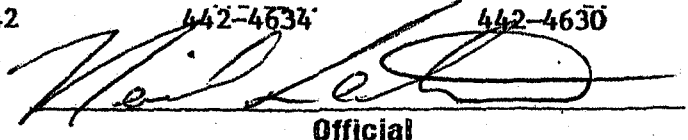
☐ Plumbing
442-4642

☐ Elevator
442-4634

☐ Boiler
442-4630

3:00 PM
Time

3/21/07
Date


Official

442-stop

Letren

Exhibit 4

PROPERTY RECORD FOR DISTRICT OF COLUMBIA**ESTIMATED ROLL CERTIFICATION DATE JANUARY 1, 2007****Owner:** STEPHANIE A WALLACE; Owner Occupied**Mailing Address:** 5013 BELT RD NW, WASHINGTON, DC 20016-4234**Property Address:** 5013 BELT RD, WASHINGTON, DC 20016-4234******* ASSESSMENT INFORMATION *********Assessor's Parcel Number:** 1756 0064**Legal Description:** CITY: WARD 003**Brief Description:** SQUARE 1756 LOT 0064 NBHD: CHEVY CHASE**Market Value Year:** 2007**Market Land Value:** \$ 358,320**Market Improvement Value:** \$ 163,190**Total Market Value:** \$ 521,510**Land Use:** RES SINGLE FAMILY DETACHED**Assessment Year:** 2007**Total Assessed Value:** \$ 521,510******* TAX INFORMATION *********Tax Amount:** \$ 4,589.28**Tax Year:** 2007******* PROPERTY CHARACTERISTICS *******

Year Built:	1933	No. of Buildings:	
Stories:	2	Style:	
Units:		Air Conditioning:	Yes
Bedrooms:	2	Heating:	Hot Water
Baths:	1.00	Construction:	
Partial Baths:		Basement:	
Total Rooms:	5	Exterior Walls:	Wood Siding
Fireplace:	1	Foundation:	
Garage Type:		Roof:	Composition Shingle
Garage Size:		Elevator:	
Pool/Spa:		Lot Size:	4484 SF
		Building Area:	956

Exhibit 5
(see page three for owner's certification)

04-00262

APC No.	OG No.	PERMIT NUMBER	By:
PA No.	SL No.	Ward No.	Receipt No.
Date:		Receipt No.	

★★★ GOVERNMENT
OF THE DISTRICT
OF COLUMBIA
BLRA-33
(Rev. 10/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (727-7050)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY

(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

FEARANCE TO FILE

Date:

ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1. Address of Proposed Work: 5013 Belt Rd NW Wash DC 20016		Suite No.:	2. Plot: Sub	3. Square: 1756	4. Application Date: 8/9/04 7/26/04
5. Owner of Building or Property: Stephanie Wallace		6. Address: (include Zip) 5013 Belt Rd NW Wash DC 20016		7. Phone: 202 686 5309 Work: 202 374 8243 Home:	
8. Agent for Owner: (if applicable)		9. Address: (include Zip)		10. Phone: Work: Home:	

11. Type of Proposed Work (check all applicable boxes):

- | | | |
|--|---|--|
| ☐ New Building | ☐ Retaining Wall | ☐ Garage |
| ☒ Addition | ☐ Fence | ☐ Sign |
| ☐ Alteration and Repair | ☐ Shed | ☐ Other (Specify) _____ |
| ☐ Raze Building | ☐ Awning | |

12. Description of Proposed Work:

addition to single family house to include New Kitchen, family room, master suite, baths, attic & basement
E.C Fee Inside CAG 11/03/04

3. Existing Use(s) of Building or Property: Home SFD		14. Ex. No. of Stories of Bldg.: 2	15. Ex. No. of Dwelling Units: 1	Official Use Only Miscellaneous FEE	
6. Proposed Use(s) of Building or Property: Home SFD		17. Prop. No. of Stories of Bldg.: 3	18. Prop. No. of Dwelling Units: 1	By: _____ Date: _____	
9. Starting Date of Work: 9/1/04	20. Completion Date of Work: 3/1/04	21. Method of Removing Construction Debris: ☒ Pick-up Truck ☐ Dumpster ☐ Other (specify):		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: Soil Fencing	25. Area of Offsite Drainage: sq. ft.	26. No. of Footings or Columns: 1	27. Size of Footings of Columns: sq. ft.	

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I).

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		
M	2143-C				
P					
E					
S					
w: ☐ Yes: ☐ No:					
PLANS:					
☐ No:					
☐ Sm: ☐ Lg:					

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

Contractor's Name: Martin Cizler		29. Lic. No.: 0012918	30. Architect's Address: (include Zip) Germanstown 12530 Milestone Manor Lane MD 20874		31. Phone: 703 267 6748
Owner's Name:		33. Lic. No.:	34. Engineer's Address: (include Zip)		35. Phone:
Building Contractor's Name: TBD		36A. Lic. No.:	37. Contractor's Address:		38. Phone:
Type of Construction: Masonry ☐ Steel ☐ Fully Sprinklered ☐ Standpipe System ☐ Wood ☐ Other: ☐ Partially Sprinklered ☒ None ☐ Concrete ☐ Other: ☐		40. Fire Suppression: ☐ Fully Sprinklered ☐ Standpipe System ☐ ☐ Partially Sprinklered ☒ None ☐ ☐ Other:		41. Booster Pump: ☐ New ☐ Existing ☒ None	42. Total Lot Area: 4500 sq. ft.
43. Breakdown of Lot Area (= 100%): a. Building: 29 % b. Paved Area: 0.05 % c. Greenery: 66 %		44. Present Gross Floor Area of Bldg.: 1019 sq. ft.		45. Proposed Gross Floor Area of Bldg.: 3419 sq. ft.	
46. Floors involved in this permit: ☐ All ☒ Floors 3		47. Projection beyond building line? ☐ Yes, answer q. 48-52 ☐ No, SKIP q. 48-52		48. Lumber and type of projection: Roof projection only	
49. Distance of projection:		50. Width of projection:		51. Width of building frontage: ft.	
52. Signature of Owner (projection only):		53. Water or Sewer Excavation? ☒ Yes ☐ No		54. Driveway Construction? ☐ Yes ☒ No	
55. Sheet piling/Shoring Necessary? ☐ Yes ☒ No		56. Elevators involved? ☐ Yes, answer q. 57 ☒ No, SKIP q. 57		57. No. and type of elev.:	
58. Plans Certified by Engineer? ☐ Yes, cert. is attached ☐ No		Estimated Cost of Work: New/Add.: \$ 150,000 Alt/Rep.: \$ 60,000 Total: \$ 210,000 Volume of New Bldg. or Addition: 26000 cubic ft.		OFFICIAL USE ONLY Alter/Repair FEE: \$1230.00 New Const. FEE: \$780.00 Filing Fee: \$210 TOTAL PERMIT FEE: \$1800.00 By: EB Date: 12/8 By: EB Date: 12/8 By: W Date: 9/6/04 By: EB Date: 12/8	

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

Raze Contractor's Name:		62. Contractor's Address: (include Zip)		63. Phone:	
Insurance Company:		65. Policy or Certif. No.:	66. Expir. Date:	67. Raze Method:	
Building Material:	69. Raze Entire Building? ☐ Yes ☐ No	70. Building Condemned? ☐ Yes ☐ No	70A. Building Vacant? ☐ Yes ☐ No	71. Public Space Vault? ☐ Yes ☐ No	72. Disconnect Water and/or Sewer? ☐ Yes ☐ No
73. Size of Water Connection: in.		Plumber's Name:		75. Lic. No.	76. Length: ft.
77. Width: ft.		78. Height: ft.		79. Volume: cu. ft.	
80. Party Wall? ☐ Yes ☐ No		Asbestos in the Building? ☐ No ☐ Yes, Location		82. Raze Contractor Signature:	
83. Owner's Signature:		OFFICIAL USE ONLY FEE: \$ By: Date:			

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations.

Cost of Work:	85. Material:	86. Height: ft.	87. Color:	88. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*	
Signature of Adjoining Owner:		90. Phone: Work Home		OFFICIAL USE ONLY FEE: \$ By: Date:	
Address of Adjoining Owner:		92. Lot:		93. Square:	

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations

94. Material and type:	95. Height: ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land
------------------------	--------------------	------------	--

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

98. Signature of Adjoining Owner:	99. Phone: Work Home	OFFICIAL USE ONLY FEE By: Date:
100. Address of Adjoining Owner:	101. Lot: 102. Square:	

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number:	104. Length: ft.	105. Width: ft.	106. Area: sq. ft.	107. Height: ft.	108. Volume: cu. ft.	109. Estimated Cost of Work: \$	OFFICIAL USE ONLY FEE By: Date:
110. Material of Roof:	111. Material of Sides:	112. Wall thickness: ☐ External () inches ☐ Party () inches			113. Color:		

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color:	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line _____ in. Beyond pt. of attachm. _____ in.	118. Height of lowest part of awning: (a) _____ ft above sidewalk (b) _____ ft above parking (c) _____ ft above grade	OFFICIAL USE ONLY FEE By: Date:
119. Material of Frame:	120. Material of Covering:	121. Lettering on Awning? ☐ Yes ☐ No	122. Fixed posts? ☐ Yes ☐ No	123. Over sidewalk cafe? ☐ Yes ☐ No	

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number:	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No, SKIP q. 126-132	126. Type: ☐ Incandes. ☐ Fluoresc. ☐ Neon	127. Power _____ VA	128. Electrical Contractor: Lic. No.:
129. Address of Electrical Contractor (include Zip)		130. Signature of Licensed Electrician:		131. Phone: 132. License No.:
133. Height relative to building and ground: (a) _____ ft _____ in above sidewalk (b) _____ ft _____ in above roof (c) _____ ft _____ in is bldg height (d) _____ ft _____ in above projection or window (e) _____ ft _____ in from roof to sign's bottom		134. Material of Sign:	135. Type of Sign:	136. Color:
141. C of O Number for Building:		142. Sign Contractor Lic. No.:	OFFICIAL USE ONLY Sign FEE Elect. FEE Total FEE \$ \$ \$ By: Date: By: Date: BY: Date:	
143. Sign Contractor's Address:		144. Phone:		

(I) APPLICANT'S SIGNATURE

A. OWNER: I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner: _____ Address: 5013 Bell Rd Wash DC 20014 Date: 7/26/04

B. AGENT: I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent: _____ Address: _____ Date: _____

Exhibit 6



Greater Capital Area Association of REALTORS®, Inc.

INCLUSIONS/EXCLUSIONS DISCLOSURE AND ATTACHMENT TO LISTING AGREEMENT

ADDRESS 5013 BELT ROAD, NW WASHINGTON, DC 20016

FOR USE WITH REGIONAL CONTRACT

PERSONAL PROPERTY, FIXTURES, AND UTILITIES: Unless otherwise negotiated in a contract of sale, the purchase price shall include the following personal property and fixtures: A. Any existing built-in heating and central air conditioning equipment, plumbing and lighting fixtures, sump pump, attic fans, storm windows, storm doors, screens, installed wall-to-wall carpeting, window shades, blinds, smoke and heat detectors, tv antennas, exterior trees and shrubs and B. The items marked YES below as currently installed or offered.

Included YES NO	Included YES NO	Included YES NO	Included YES NO
☒ Stove or Range	☒ Disposer	☐ Ceiling Fan(s) #	☐ Alarm System ☐ Leased
☐ Cooktop	☐ Freezer	☒ Washer	☐ Intercom
☐ Wall Oven(s) #	☐ Window Fan(s) #	☒ Dryer	☐ Storage Shed(s) #
☒ Refrigerator(s) #	☐ Window A/C Unit(s) #	☐ Furnace Humidifier	☐ Garage Opener(s) #
☐ w/ Ice maker	☐ Pool, Equip. & Cover	☐ Electronic Air Filter	☐ w/ remote(s) #
☒ Dishwasher	☐ Hot Tub, Equip. & Cover	☐ Central Vacuum	☐ Playground Equipment
☐ Built-in Microwave	☐ Satellite Dish & Equip	☐ Water Treatment System	☐ Wood Stove
☐ Trash Compactor	☐ Window Treatments	☒ Exhaust Fan(s)	☐ Fireplace Screen/ Doors

ADDITIONAL INCLUSIONS (SPECIFY):

HOUSE IS BEING SOLD

ADDITIONAL EXCLUSIONS (SPECIFY):

"AS IS" - Including Termites

FOR USE WITH MAR CONTRACT

INCLUSIONS/EXCLUSION: Unless otherwise negotiated in a contract of sale, the purchase price shall include all permanently attached fixtures, including all smoke detectors. Certain other now existing items which may be considered personal property, whether installed or stored upon the property, are included or excluded, as follows (if neither column is checked, it shall be considered excluded):

Included YES	Included YES	Included YES	Included YES
☐ Stove or Range	☐ Dishwasher	☐ Ceiling Fan(s) #	☐ Alarm System ☐ Leased
☐ Cooktop	☐ Freezer	☐ Clothes Washer	☐ Intercom
☐ Wall Oven(s) #	☐ Window Fan(s) #	☐ Clothes Dryer	☐ Storage Shed(s) #
☐ Refrigerator(s) #	☐ Fireplace Screen/Door	☐ Furnace Humidifier	☐ Garage Opener(s) #
☐ w/ Ice maker	☐ Pool, Equip. & Cover	☐ Electronic Air Filter	☐ w/ remote(s) #
☐ Built-in Microwave	☐ Hot Tub Equip. & Cover	☐ Water Filter	☐ Playground Equipment
☐ Trash Compactor	☐ Screens	☐ Water Softener	☐ Wood Stove
☐ Exist. W/W Carpet	☐ Storm Windows	☐ Drapery/Curtains	☐ T.V. Antenna
☐ Garbage Disposer	☐ Storm Doors	☐ Drapery Curtain Rods	☐ Satellite Dish
☐ Exhaust Fan(s)	☐ Window A/C Unit(s) #	☐ Shades/Blinds	☐ Central Vacuum

ADDITIONAL INCLUSIONS (SPECIFY):

ADDITIONAL EXCLUSIONS (SPECIFY):

WATER, SEWAGE, HEATING AND CENTRAL AIR CONDITIONING: (Check all that apply)

Water Supply: ☒ Public ☐ Well Hot Water: ☐ Oil ☒ Gas ☐ Elec. ☐ Other
Sewage Disposal: ☒ Public ☐ Septic # BR Air Conditioning: ☐ Oil ☐ Gas ☐ Elec. ☐ Heat Pump ☐ Other
Heating: ☐ Oil ☒ Gas ☐ Elec. ☐ Heat Pump ☐ Other

I/We the Seller(s) of the above referenced property, have completed these checklists disclosing what conveys with the property and give permission to make this information available to prospective buyers.

Seller

Date

Seller

Date

This recommended form is the property of the Greater Capital Area Association of REALTORS®, Inc. and is for use by members only.
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UDAR FORM # MC & LC 910A - 5/2000
LF250



EQUAL OPPORTUNITY
F.M.I. E. DATE:

Exhibit 7

About Stephanie Wallace

Stephanie Wallace has been in the real estate construction and development business for over 20 years. As the project manager for a New York based real estate Company from 1983 to 1994, she was in charge of building single family homes in New York City, building an upscale, waterfront condominium complex in Miami Beach, Florida and the renovation and condominium conversion of 220 apartments in College Park, Maryland.

She parlayed her real estate experience into her own business by creating a real estate marketing company, which focused on all aspects of the marketing of new and old developments. Ms. Wallace created brochures, established on-site offices, and constructed model apartments which provided her clients with a dramatic increase of sales and revenue.

The highlight of Ms. Wallace's New York career was the renovation of a loft building in the Chelsea neighborhood of New York City. This venture was a pioneering project and is now a model for New York developers throughout the city. Stephanie had the unique vision to see the potential of selling luxury loft space, with high end kitchen and baths, fireplaces, two story spaces and other high end amenities. Her responsibilities included, finding the location, changing the zoning to accommodate the 28 residential units and working with architects from the design through construction phases. The project set record high prices for the area. She then followed up this success with similar projects in New York City as well as Chicago.

Stephanie relocated to Washington DC in 1995 and began to build a new business associated with real estate and construction. She designed, built, owned and operated a number of restaurants in both Washington DC and North Carolina.

Stephanie Wallace founded Stephco in order to return to her passion and exercise her talents in construction and design.

441 4th Street, N.W.
Washington D.C. 20001

Appeal No. 17747

The District of Columbia (“District”), by and through Undersigned Counsel, submits the following statement of material undisputed facts:

1. 5013 Belt Road, NW (“the Property”) is located in an R-1-B District.
2. On April 9, 2004, Stephanie Wallace (“Appellant”) purchased the Property.
3. On August 9, 2004 Appellant applied to the District’s Department of Consumer and Regulatory Affairs (“DCRA”) for a construction permit to renovate a 2-story single family dwelling to a 3-story single family dwelling at the Property, and she submitted drawings that depicted a 20.1’ x 14.4’ x 13.6’ x 16.2’ x 28’ “existing 2 ½ -story frame” pre-existing SFD as a part of the overall construction project contemplated at the property.
4. On December 9, 2005, DCRA issued Building Permit #B468280 to Appellant, authorizing her to construct the “addition to single family house to include new kitchen, family room, master baths, attic & basement“.
5. On March 17, 2005, DCRA posted a construction Stop Work Order at the Property because it determined that Appellant was “working beyond the scope. Razing of building. Need to resubmit plans and plat.”

6. On September 22, 2005, Appellant applied for an amended Building Permit to allow for “underpinning”.
7. On October 4, 2005, Building Permit # B477334 was issued to Appellant to revise Building Permit # B46820. The new permit directed appellant to submit new plans and authorized her to “underpin a portion of the existing building [...] remove and replace an[y] 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...”.
8. On March 10, 2006, Appellant applied to DCRA to revise Building permit #B477334 to delete the foundation drawing and the cross section elevation and substitute a revised basement structural drawing and revised cross section elevation drawing. Appellant also request authorization to raise the house up approximately four feet.
9. On April 21, 2006, Building Permit # B91338 was issued to revise Building Permit #B46820 to allow for appellant’s substitution of revised basement, structural and elevations drawings and to authorize her to “raise the house up by approximately four feet”.
10. On January 9, 2007, Ismaik Hanieh, P.E., a structural engineer hired by the Appellant, wrote to DCRA concerning the property. In his letter, Mr. Hanieh stated that “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 per the current building code requirements.”

11. On February 13, 2007, Appellant submitted a building permit application for approval to perform a partial demolition of the existing single family dwelling at the Property.
12. On February 14, 2007, DCRA issued Building Permit #B103710, which allowed Appellant to “demolish a portion of an[...] existing SFD due to structural integrity and possible collapse of the house which is dangerously unsound. Rebuild structure to current building code specifications per existing permits and plans.”
13. On March 21, 2007, DCRA posted another Stop Work Order at the Property because Appellant was found to be “exceeding scope of raze permit took down entire house. Exceed Scope of Building Permit. Building all new SFD. Ongoing work [does] not match approved plans on site!!!”
14. Also on March 21, 2007, Appellant’s contractor, Premo Allen, was cited in Notice of Infraction # I700301 for violating 12A D.C. Mun. Reg. §105.1 “constructing without permit”
15. On April 17, 2007, Appellant filed a building permit application to revise Building Permit #B468280 to “reflect new footer and new two(2) story structure replacing existing” and to reconstruct the previously existing structure.
16. That application was denied on September 28, 2007 in a determination issued by Zoning Administrator (“ZA”) Matthew LeGrant, which stated that “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. . . . In this case, where a building permit was issued for a rear addition to an existing house with non-

conforming five foot side yards, [the ability to utilize the provision [noted above] ended with the demolition of the house.”

17. On October 19, 2007, Appellant filed her notice of appeal with the Board of Zoning Adjustment regarding the ZA’s determination.

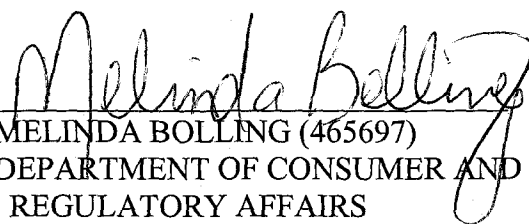
18. On April 14, 2008, Appellant filed a Pre-Hearing Statement and Motion for Summary Judgment, which is now pending before the Board.

Respectfully submitted,

JILL STERN
General Counsel
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REGULATORY AFFAIRS

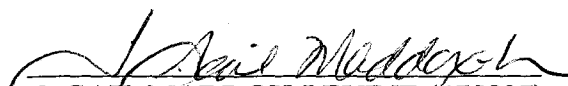

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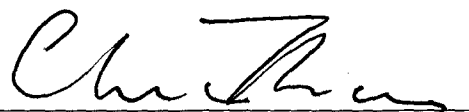
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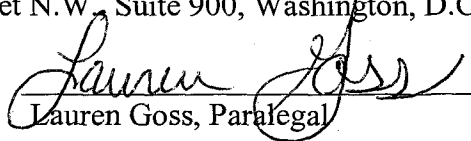


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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2008, a copy of the District's Statement of Material Undisputed Facts was served via first class mail to John Patrick Brown, Greenstein DeLorme and Luchs, P.C., 1620 L Street N.W., Suite 900, Washington, D.C. 20036.


Lauren Goss, Paralegal

441 4th Street, N.W.
Washington D.C. 20001

Appeal No. 17747

The District of Columbia (“District”), by and through Undersigned Counsel, submits the following statement of material disputed facts:

1. Neither Building Permit #B468280, nor any of its subsequent revisions, authorized Stephanie Wallace (“Appellant”) to raze the pre-existing single-family home located at 5013 Belt Road, N.W. (“the Property”).
2. Neither Building Permit #B468280, nor any of its subsequent revisions, authorized Appellant to construct a new single family house with non-conforming side yards at the Property.
3. Appellant impermissible razed the pre-existing single family house at the Property on March 12, 2007.
4. On March 21, 2007, the District issued a stop Work Order because the Appellant was not authorized to raze the pre-existing single family house, which was located on the Property prior to May 12, 2007, nor was Appellant authorized to construct a new single family home on the Property.
5. Appellant may not reconstruct the pre-existing single family home that was located at the Property before March 2007 because such construction is not authorized by 11

D.C. Mun. Reg. §405.8¹, as the nonconforming side yard allowance provision of §405.8 conditions such construction upon the existence of a pre-May 12, 1958 structure being present – which is not the case now at 5013 Belt Road, NW.

6. Appellant may not reconstruct the pre-existing single family home that was located at the Property before March 2007 because such construction is not authorized by 11 D.C. Mun. Reg. §2001.6², as the original, pre-existing home was demolished because of termite damage and not because of a casualty/act of God.
7. The District is not estopped from denying Appellant's April 17, 2007 building permit application, submitted to revise Building Permit #B468280 by "reflect[ing a] new footer and new two(2) story structure replacing existing" and by reconstructing the previously existing structure at the Property because Appellant is unable to satisfy the requirements for such a remedy³.
8. The District is not barred by laches from denying Appellant's April 17, 2007 building permit application because she has not satisfied her burden to satisfy the requirements for such a remedy⁴.

¹ 11 D.C. Mun. Reg. §405.8 states "In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.)."

² 11 D.C. Mun. Reg. §2001.6 states "[i]f 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.

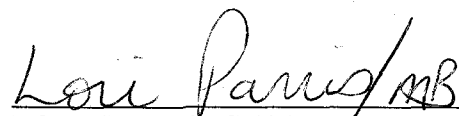
³ Estoppel is defined as "a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true."³ There are six elements of an equitable estoppel claim: "(1) expensive and permanent improvements, (2) made in good faith, (3) in justifiable and reasonable reliance upon, (4) affirmative acts of the District government, (5) without notice that the improvements might violate the zoning regulations; and (6) equities that strongly favor the petitioner." See, Bannum, Inc. v. D.C. Board of Zoning Adjustment, 894 A.2d 423, 431 (D.C. 2006); See also, Interdonato v. District of Columbia Board of Zoning Adjustment, 429 A.2d 1000, 1003 (D.C. 1981).

⁴ Laches is defined as "unreasonable delay or negligence in pursuing a right or claim in a way that prejudices the party against whom relief is sought."⁴ Laches has two elements: the party asserting a claim

9. Appellant's pending Motion is unmeritorious because Building Permit #B103710 allowed Appellant to "demolish [only] **a portion of** the pre-existing SFD due to structural integrity problems. Therefore, once Appellant exceeded the scope of her Building Permit by razing the entire structure, she lost her ability to challenge the lawful consequences of her own impermissible actions.
10. Appellant's pending Motion is unmeritorious because the District responded in a timely manner to all of appellant's revisions of the original permit.
11. Appellant's pending Motion is also unmeritorious because the poor condition of the pre-existing single family house, which the Appellant purchased without inspection, is the source of her present construction woes, and not the actions/responsibility of the District.

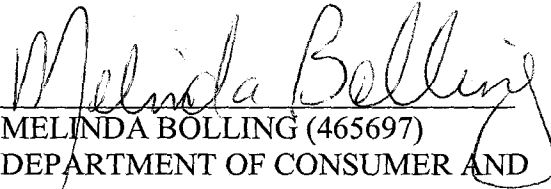
Respectfully submitted,

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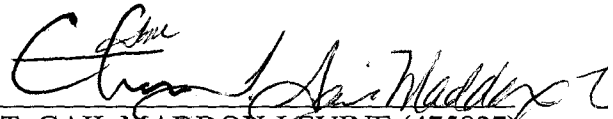

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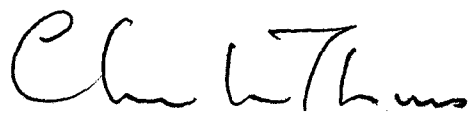
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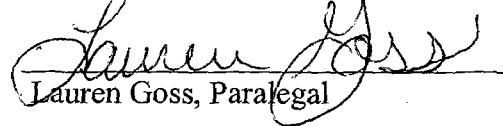
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