

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Stephanie Wallace

BZA appeal No. 17747

ANC 3E

Public Hearing: July 15, 2008

**INTERVENER'S RESPONSE TO APPELLANT'S OPPOSITION TO
MOTION TO DISMISS**

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I, John Lemoine, respectfully submit this response to the Appellant's Opposition to Intervener's Motion to Dismiss (Ms. Grumbine and Mr. Simmons)

I support the Motion to Dismiss and the Request for Related Relief. The facts put forth in the Motion to Dismiss are completely substantiated and relevant. Indeed, in the Appellant's Opposition to the Motion to Dismiss, these facts are made even clearer. To support the Motion to Dismiss I incorporate by reference, The Appeal filed on October 19, 2007, My Intervener's Statement submitted to the Board on April 23, 2008, The Appellant's Pre-Hearing Statement and Motion for Summary Judgement, The Appellant's Opposition to Intervener's Motion to Dismiss as if fully set forth herein.

ARGUMENT

1. Structural damage was obvious upon inspection before Appellant purchased the property.

BOARD OF ZONING ADJUSTMENT
District of Columbia

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EXHIBIT NO. 35

Board of Zoning Adjustment
District of Columbia
CASE NO. 17747
EXHIBIT NO. 35

Exhibit A - letter from John Kreher, Construction Supervisor

With Developer's (Wallace) many years of experience in the construction business and the Contractor's (Premo) extensive experience in building and remodeling, the severe state of deterioration of this property would have been impossible for them to miss.

2. The Appellant was put on notice of the termite damage.

Exhibit B- seller's disclosure [see Lemoine Statement Exhibit L-5]

Even though explicit reference to termites is made in the seller's disclosure, Appellant purchased property 'as is'. Structural damage was obvious even before any siding or plaster was removed. The condition of the property was in fact irrelevant to the Developer and Contractor because it was their intention to demolish the entire original house and replace it with a completely new structure and , in doing so, gain the zoning advantage of the non-conforming side yard.

3. Contractor's statement reveals that termite damage and rot were not a result of casualty or 'act of God'. Contractor states that structural damage was caused by termites and rot long before the Appellant purchased the property. The property was purchased in this decrepit condition [Premo Affidavit at paragraphs 16 and 17].

4. Even if the Developer had purchased the property unaware of it's condition, the structural damage to the entire original house was made totally clear to the Contractor in March, 2005, when the complete interior was gutted. [Premo Affidavit at paragraphs

12].

The rear half of the house was also demolished at this time [Premo Affidavit 13] in violation of the first Building Permit. Severely damaged structural members were completely exposed.

EXHIBIT C- photos showing gutted interior, April 2005 [see Lemoine Statement, Exhibit L-7]

These statements in the Contractor's Affidavit are in direct contradiction to facts put forth in the Appeal, stating that damage to the front of the house was not discovered until October, 2006 [Appellant's Motion for Summary Judgement, page 6, paragraph 5] [Wallace Affidavit, page 3, No. 20].

5. Contractor waited until after the 'Addition' was under roof, **19 months** after discovery of severe structural damage to **entire** original house, to have a structural engineer evaluate the front of the original house and declare it dangerously unstable [Premo Affidavit paragraph 18] [Appellant's Opposition to Motion to Dismiss, Exhibit C] During this 19 months, nothing was done to protect the original house from the elements. In fact, siding and roofing were removed to further expose it.

6. In the Opposition to Motion to Dismiss, Appellant claims to have acted in Good Faith Reliance on the directions of DCRA. But from the very start, Permits issued by DCRA, on reliance of information from the Developer, were continually violated.

The First Building Permit was issued to build an addition and renovate the entire original

house. The back of the house was immediately demolished, beyond the scope of the First Building Permit.

The First Building Permit would allow the extension, but not the expansion, of the non-conforming side yard. On the South side of the house, **only a small jut-out on the ground floor had the non- conforming side yard.**

EXHIBIT D- photo of Original House, ca. 2003 [see Lemoine Statement, Exhibit L- 1]

The back of the original house which was to be extended was razed in March, 2005, **without Permit.** The structure built in place of the demolished back part did not just rebuild it as it was, it expanded it greatly in both height and width.

EXHIBIT E- photo of Addition [see Lemoine Statement Exhibit L-2]

7. In the period in which the Addition was constructed, 19 months, **no measures whatsoever** were taken to protect and preserve what was left of the original house. It was left open and exposed to weather for all this time, deteriorating even further. If the Developer had revealed the intention to remove the entire structure in applications for the First Building Permit, the Permit would never have been granted.

8. Once the Addition was built, it was time to remove the remainder of the original structure, as planned. The dissimulation is made obvious in the Developer's Application for the Fourth Building Permit. In this Application the **Addition** then becomes the 'Existing SFD'. What problem would a reviewer at DCRA see in removing the dangerously unsound front part of an existing structure? Especially if this reviewer was

uninformed of the Permit history and the conditions which had allowed the non-conforming side yards of the new structure.

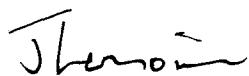
9. Contrary to the 'facts' put forth in the Appeal [Motion for Summary Judgement, Wallace Affidavit , paragraph 23] **absolutely nothing** remains of the Original Single Family Dwelling.

CONCLUSION

For the foregoing reasons, the Motion to Dismiss and Request for Related Relief must be granted. The Original Single Family Dwelling was intentionally and systematically razed. Nothing remains of it. Therefore there is no basis for this Appeal.

The Addition which was built is an illegal structure and should be taken down.

Respectfully submitted,



John Lemoine
5011 Belt Rd. NW
Washington, DC 20016
202-528-2918

EXHIBIT A

May 11, 2008

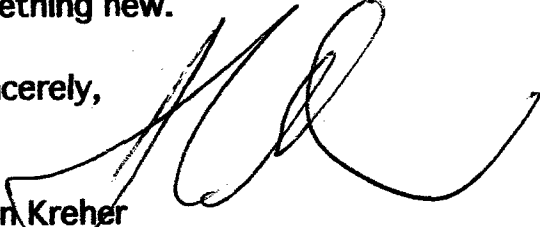
To Whom It May Concern,

I am a construction supervisor with Added Dimensions, Inc., of Takoma Park, MD. I have been in the construction business for over 30 years, working in residential remodeling and new construction.

Around February of 2004, Mr. John Lemoine called and asked if I would inspect a house he was considering renovating. The house was located at 5013 Belt Rd. NW in the District of Columbia.

I met with Mr. Lemoine at the property. Upon inspection it was obvious that the house was in bad shape structurally. It was an old, wood frame house with very low, crumbling concrete footings. The wood structural members were basically sitting on the ground in a wet location and there were obvious signs of severe deterioration. I advised Mr. Lemoine that, because of this damage, renovating the house would be extremely problematic and that it really should be torn down and replaced with something new.

Sincerely,



John Kreher
3124 Jennings Rd.
Kensington, MD 20895

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Intervener's response to the Appellant's Opposition to the Motion to Dismiss was served electronically and via first-class postage this 16th day of May, 2008, to the following:

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John Lemoine