

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

Appeal of Ms. Stephanie Wallace

BZA Appeal No. 17747

ANC 3E

Public Hearing: July 15, 2008

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**APPELLANT'S NOTICE OF RELATED APPEAL AND MOTION TO
AMEND APPEAL TO INCORPORATE DIRECTLY RELATED
DENIAL BY ZONING ADMINISTRATOR UNDER 11 DCMR § 401.1**

The Appellant, Ms. Stephanie Wallace, by and through undersigned counsel, respectfully submits this Notice of Related Appeal and Motion to Amend Pending Appeal to Incorporate Directly Related Denial By the Zoning Administrator Under 11 DCMR § 401.1. In support of this Motion, the Appellant states as follows:

I. BACKGROUND

On October 19, 2007, the Appellant filed the pending 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")] 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 (the "Pending Appeal").

The Appellant and DCRA have in good faith met on several occasions to discuss the Pending Appeal and opportunities to resolve the long-standing dispute. The Appellant has made several

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BOARD OF ZONING ADJUSTMENT

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EXHIBIT NO. 40

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proposals to DCRA for continuing construction at the Property. These proposals have been provided to Intervenor, but they have refused to meet with Appellant, although DCRA has graciously offered to host that meeting. As the next step in the discussions with DCRA, by letter dated May 29, 2008, the Appellant requested the Zoning Administrator to accept or deny the Appellant's request under 11 DCMR § 401.1 to "enlarge or replace" the existing rear addition as a matter-of-right. Exhibit A. The Zoning Administrator has not timely responded to the Appellant's request which constitutes a denial and/or refusal. ("§ 401.1 Denial"). The Appellant hereby respectfully challenges and appeals this decision, denial and/or refusal by the Zoning Administrator in violation of 11 DCMR § 401.1.

The § 401.1 Denial arises out of and is directly related to the Appellant, her property at 5013 Belt Road, N.W., and the subject matter of the Pending Appeal. The §401.1 Denial and the Pending Appeal arise from the same facts and circumstances and arose during and as a direct result of ongoing discussions between DCRA and the Appellant.

II. ARGUMENT

A. Jurisdiction

The Board has jurisdiction to hear this appeal of the § 401.1 Denial. Pursuant to 11 DCMR § 3100.2, the Board is authorized to hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations, Title 11 DCMR." The § 401.1 Denial specifically relies on the Zoning Regulations as the alleged basis for denial or refusal of the Appellant's request to "repair or replace" the existing rear addition on the Property.

B. Timeliness of Appeal

Under 11 DCMR § 3112.2, the appeal of the § 401.1 Denial must be filed within sixty (60) days of that decision. The § 401.1 Denial became effective on May 30, 2008. This Notice of Related Appeal and Motion to Amend Pending Appeal to Incorporate an Appeal of the § 401.1 Denial is being filed immediately and clearly within sixty (60) days of the decision, denial and/or refusal appealed. The Appeal is timely, whether consolidated with the Pending Appeal or, in the unlikely event, the Board decides to docket and hear this directly related matter separately. DCRA, the affected Advisory Neighborhood Commission, and the Intervenors' are fully and directly on notice of this Related Appeal of the § 401.1 Denial.

C. Judicial Economy and Fundamental Fairness

It cannot be disputed that it is in the interest of judicial economy and fundamental fairness to Appellant and the other interested parties that the pending Appeal and the newly established § 401.1 Denial be litigated at the same time. It is clearly in every ones interest that a full, complete and fair resolution of this situation be reached as soon as possible. DCRA, ANC 3E, and the Intervenors will not be prejudiced and should welcome the opportunity to resolve all of the outstanding claims in a single consolidated proceeding. The Appellant will continue to be substantially prejudiced by the delay and burden of pursuing separate Appeals of what is the same matter. *See*, Appeal No. 17468-A (Nov. 15, 2006) (accepting "cross-appeal" on the same facts and circumstances as original appeal (which was dismissed as untimely) provided sufficient time for ANC to participate fully); Appeal No. 17657 of 1231 Morse Street, Inc. (decision not issued) (allowing Notice of Related Appeal and Motion to Amend based on new action by DCRA, but based on same facts and circumstances); and Appeal No. 17698 of Fifth Street, LLC (dismissed by agreement of parties) (allowing Notice of Related

Appeal and Motion to Amend based on a new action by DCRA, but based on same facts and circumstances).

III. CONCLUSION

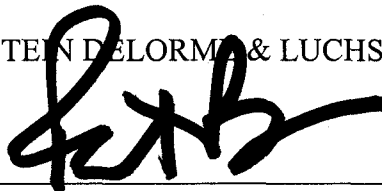
As amended, the Notice of this Appeal should be revised to read as follows:

Appeal of Stephanie Wallace pursuant to 11 DCMR §§ 3100 and 3101, from the a) September 28, 2007, decision of the Zoning Administrator ("ZA"), to deny the issuance of a building permit allowing the reconstruction of a portion of a pre-existing one-family dwelling; and b) May 30, 2008 Denial by the Zoning Administrator of the Appellant's request to "enlarge or replace" the existing rear addition under § 401.1, in the R-1-B District at premises 5013 Belt Road, N.W. (Square 1756, Lot 64).

For the foregoing reasons, the Appellant's Motion to Amend the Pending Appeal must be GRANTED and the hearing on the Amended Appeal should proceed on July 15, 2008, as previously scheduled.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



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Counsel for Appellant – Ms. Stephanie Wallace

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellant's Notice of Related Appeal and Motion to Amend Appeal to Incorporate Directly Related Denial Under 11 DCMR § 401.1 was served as noted below, this 2nd day of June, 2008, upon the following:

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EXHIBIT A

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May 29, 2008

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**BY ELECTRONIC MAIL
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Mr. Matthew LeGrant
Zoning Administrator
c/o Matthew J. Green, Esq.
Melinda Bolling, Esq.
Office of General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Room 9400
Washington, DC 20002

Re: **BZA Appeal No. 17747**
5013 Belt Road, NW ("Property")

Dear Mr. LeGrant:

While reserving our respective rights under the pending appeal, we have also discussed on several occasions a resolution of the appeal which would allow my client to construct a matter-of-right addition to the existing structure on the Property. These discussions have been cordial and instructive and have resulted in this proposal authorized under 11 DCMR § 401.1 for your review and approval.

The following background is relevant and undisputed. As you are aware, the Property with a lot area of 4,500 square and lot width of thirty (30) feet was improved with a single-family structure dating back to at least 1933. The original structure had side yards of five (5) feet. On December 9, 2004, DCRA issued Building Permit No. B468280 authorizing an addition to the rear of the original single-family dwelling. As authorized by § 405.8, the rear addition had five (5) foot side yards in conformance with the applicable Zoning Regulations. As shown in the attached photograph, the approved rear addition was constructed and was closed in and under roof while the original 1933 structure remained in place. Subsequently, my client as directed by DCRA obtained Building Permit No. 103710 and demolished and removed the original 1933 single-family portion of the existing structure. All that remains on the Property is the approved rear addition which under § 405.8 was substantially constructed with conforming five (5) foot side yards.

Mr. Matthew LeGrant

May 29, 2008

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Under § 401.1, my client proposes to construct as a matter-of-right an addition to the existing rear addition ("New Addition"). The proposed New Addition will be the same conforming use (single-family dwelling) and will comply with all the applicable area restrictions, including lot occupancy (40%), height (40 ft/3 stories), side yards (8 ft.), and rear yard (25 ft.). Also, under § 401.1, my client would be entitled as a matter-of-right to "replace" the existing structure with an entirely new structure with 8 foot side yards and in compliance with the lot occupancy, height, and rear yard requirements.¹

As proposed, the New Addition complies with the specific requirements of § 401.1, which provides:

Except as provided in chapters 20 through 25 of this title and in the second sentence of this subsection, **in the case of a building located, on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title.** Notwithstanding the above, the lot area requirements of § 401.3 must be met when the building is being converted to a use or replaced by a building intended to house a use that would require more lot area or lot width than is on the building's lot.

Emphasis Added.

Obviously, the original 1933 structure and the lot it was located on predated the adoption of the Zoning Regulations on May 12, 1958. Also, the Property with a lot area of 4,500 square feet and lot width of 30 feet does not meet the minimum requirements in the R-1-B zone under § 401.3 for lot area of 5,000 square feet and lot width of 50 feet. However, my client proposes to "enlarge or replace" the original building with the New Addition that "complies with all other provisions of this title," including lot occupancy, height, side yard, and rear yard.

None of the enumerated exceptions to § 401.1 are applicable. The New Addition does not convert or change the existing single-family use and, therefore, the lot area and lot width requirements under § 401.3 remain unchanged. Finally, Chapters 20 (Nonconforming Uses and Structures), 21 (Off-Street Parking), 22 (Off-Street Loading), 23 (Garages, Carports, Parking Lots), 24 (Planned Unit Developments) and 25 (Miscellaneous Zoning Requirements) are each not applicable under these circumstances. In fact, Chapter 20, including Sections 2001.5 (allowing complete reconstruction of a structure with nonconforming lot occupancy, lot area and lot width)

¹ As a practical matter, this permitted new replacement structure would be allowed a greater lot occupancy and height than the originally approved addition, the reconstruction sought under the pending appeal or any of the scaled back settlement proposals rejected by the Intervenor.

GREENSTEIN DELORME & LUCHS, P.C.

Mr. Matthew LeGrant
May 29, 2008
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and 2001.3 (enlargements or additions) are entirely consistent with the letter, spirit and purpose of § 401.1.

Given the upcoming BZA appeal hearing schedule and the Intervenors' unwillingness to meet with DCRA and my client and rejection of my client's most recent settlement proposals, your prompt response would be greatly appreciated. If this proposal for the New Addition as a matter-of-right is satisfactory, please signify your acceptance by signing below. If you are unable to respond by the close of business of Friday, May 30, 2008, my client's proposal will be deemed DENIED.

Thank you for your cooperation and timely response.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.



By: _____
John Patrick Brown, Jr.

JPB:prm
Attachments

**ACCEPTED FOR ZONING
COMPLIANCE SUBJECT TO FINAL
REVIEW AND ISSUANCE OF ANY
REQUIRED BUILDING PERMITS**

DENIED FOR ZONING COMPLIANCE

By: Matthew LeGrant (Date)
Zoning Administrator

By: Matthew LeGrant (Date)
Zoning Administrator

