

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

INTERVENOR'S RESPONSE TO APPELLANT'S
MOTION TO AMEND APPEAL

I respectfully submit this response to the Board and ask that the Appellant's Motion to Amend the Pending Appeal be denied.

RESPONSE TO APPELLANT'S MISREPRESENTATION OF FACTS

In the Motion to Amend the Appeal, The Appellant deliberately misrepresents facts and situations concerning communications between the Appellant, DCRA and the Intervenor. In the second paragraph of Part 1. Background, he states the following: "Appellant has made several proposals to DCRA for continuing construction at the Property. These proposals have been provided to the Intervenor, but they have refused to meet with Appellant, although DCRA has graciously offered to host that meeting." The Appellant considers the request under 11DCMR 401.1 a "next step" after these failed "good faith" attempts to negotiate. Similar misrepresentations are made in the Appellant's letter of proposal to the Zoning Administrator [Appellant's Motion to Amend Appeal, Exhibit A]

JUN 27 2008

It is absolutely false that we, the Intervenor, refused to meet with the Developer, or to consider any proposal they might offer. The Intervenor did in fact meet with the Developer exactly for that purpose.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17747

EXHIBIT NO. 45

Board of Zoning Adjustment
District of Columbia
CASE NO. 17747
EXHIBIT NO. 45

A full 13 months passed between the time of the Zoning Administrator's decision to deny permit and the April 29 Hearing before the Board. The neighbors would have, at any time in that period, welcomed a proposal of compromise from the Developer, rather than go through litigation. On April 5, 2008, a meeting was held at the Property between the Developer, Ms. Wallace, and the Intervenor. This meeting was arranged and mediated by ANC3E representatives, Lucy Eldridge and Carolyn Sherman. The expressed purpose of this meeting was to give the Developer an opportunity to offer some compromise / relief concerning the objectionable scale of the proposed structure and the various other violations to adjacent properties. The Developer made no offers whatsoever to compromise or make changes to the structure so that it would not affect the adjacent properties so negatively. She stated that she would prefer go through with the BZA Hearing and would only seek to complete the structure as planned. Based on this and other meetings, The ANC wrote their resolution regarding this Appeal and has submitted it to the Board.

Subsequent communications between DCRA, the Intervenor, and the Developer have been improperly referenced in the Appellant's Motion to Amend the Appeal. Although the Developer offered to amend the structure, their proposed changes kept the non-conforming side yards and did little to relieve the Intervenor's issues. These unsuccessful attempts at compromise involved issues completely outside the scope of the Appeal (property damage, etc.). It is deeply perturbing that the Appellant should use these negotiations as the basis of their request under 11DCMR 401.1.

OPPOSITION TO MOTION TO AMEND THE APPEAL

The Amendment to the Appeal is based on the claim of the Appellant that the incomplete, nonconforming Addition in place at the site exists as a matter-of -right. This claim cannot be upheld for the following reasons:

1. The Developer purchased the original house in an obvious decrepit state. The Developer was put on notice of termite damage. She chose not to have a termite inspection because the condition of the property was irrelevant. The intention to raze the original house was made clear from the start of construction, in 2005, when the Developer demolished the rear of the house without permit.
2. Even if the Developer agreed to purchase the property 'as is' , and somehow unaware of it's condition, the structural damage to the entire original house was made totally clear to the Developer in March, 2005, when the rear of the house was demolished and the rest of the house was gutted. No construction had yet begun on the new "Addition". New Permits were required to allow any construction to continue. Had the Developer acted reasonably and responsibly, she would have at that time made the informed decision to construct a new building which conformed to the zoning requirements.
3. Although it was obvious in March, 2005 that the complete original house could not be salvaged, the Developer proceeded to replace it with an oversized "Addition", utilizing the non-conforming side yards of the original house. In the time it took to build the "Addition",

the Developer took no steps whatsoever to mitigate the structural damage to the original house, or to protect it from further deterioration. In fact, siding and roofing material were removed to further expose it to the elements. What was left of the original house was useful to the Developer only as long as it took to build the new structure.

4. The Developer waited until after the Addition was framed, a full 19 months after discovery of severe structural damage to the entire original house, to invite a structural engineer to evaluate the front of the original house and declare it dangerously unstable, and thereby pave the way for the rest of the original house to be removed.

5. Permits for construction at this site, issued by DCRA on the reliance of information from the Developer, were continually violated, resulting eventually in the total razing of the original house. Once the addition was 'under roof', In Application for the Fourth Building Permit, the Developer represented the Addition as the Existing Single Family Dwelling.

6. The remainder of the original house was finally razed in violation of the Fourth Building Permit.

These facts indicate with certainty that it was the Developer's intention to raze the entire original structure once the new, non-conforming "Addition" was "under roof".

In the request to the Zoning Administrator, which is the basis of the Motion to Amend the Appeal, the Developer holds that, because the shell of the new non-conforming

"Addition" now exists, it should be allowed to be expanded and completed. The "Addition" was built through a process of deception and continual violation of Building Permits. It is very difficult to think of a reason to reward such violations. The Developer should not benefit from a reversal of the Zoning Administrator's decision.

The Developer's claim that a casualty occurred, causing the collapse of the original house, cannot possibly be upheld. A casualty, as defined by Websters, is an accident, a sudden occurrence. The damage that made the original house unsalvageable was done by termites and rot. Both are characterized as progressive deterioration and can be prevented by adequate maintenance. Courts have decided that termite damage cannot be considered a "casualty" [see Intervenor's Statement on "casualty"].

The Developer's claim of estoppel should be barred by her bad faith / unclean hands. The Zoning Administrator is not estopped because the facts which caused the denial of the Fifth Building Permit could not have been known when the previous Permits were granted. The Developer's bad faith became apparent only over time.

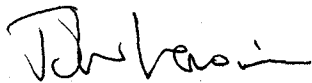
Laches does not apply because the developer was not prejudiced by the City's actions. The Developer can't claim that she would not have torn down the original house had the city told her she would lose the non-conforming side yard. The Developers own statements say that she had no choice but to tear down the original house. She cannot have it both ways. The City should not allow the Developer to profit from bad faith and negligence.

CONCLUSION

The facts remain: There is nothing left of the original structure. The Developer systematically and purposefully removed it in order to build a non-conforming structure. These facts have been clearly set forth in the original Appeal and the submissions of the Intervenors and DCRA.

For the foregoing reasons, the Appellant's Motion to Amend the Pending Appeal must be denied.

Respectfully Submitted,



6/26/08

John Lemoine

CERTIFICATE OF SERVICE

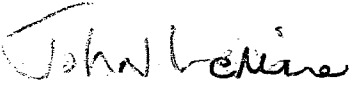
I hereby certify that a copy of the foregoing Intervener's response to the Appellant's Opposition to the Motion to Dismiss was served electronically and via first-class postage this 16th day of May, 2008, to the following:

Matthew J. Geen, Jr., Esq.
Melinda Bolling, Esq.
Office of General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol St., NE
Room 9400
Washington, DC 20002

J. Patrick Brown, Esq.
Greenstein DeLorme and Luchs, P.C.
1620 L ST. N.W.
Suite 900
Washington, DC 20036

Jack Simmons, Esq.
Mary Grumbine, Esq.
3952 Garrison St., NW
Washington, DC 20016

Lucy Eldridge, Esq.
ANC 3E
4104 Legation St., NW
Washington, DC 20015


John Lemoine