
FORM 140 - PARTY STATUS REQUEST

Before completing this form, please review the instructions on the reverse side.

PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.
(Please see reverse side for more information about this distinction.)

NAME: Last **Baker** First **Peter** Middle I. **G.**

ADDRESS: Street **4546 Lowell Street, NW** Apt. # (if any) City **Washington** State **D.C.** Zip Code **20016**

Phone No. (202) 333-5800(o); (202) 255-1411 (c) Fax No. (202) 333-5803 E-Mail **bpg7@erols.com**

I hereby request to appear and participate as a party.

Signature *Peter Baker*

Date **October 16, 2013**

Will you appear as a(n)

☐

Proponent

☒

Opponent

Will you appear through legal counsel?

☒

Yes

☐

No

If yes, please enter the name and address of such legal counsel.

NAME: Last **Donohue** First **Edward** Middle I. **L.**

ADDRESS: Street **117 Oronoco Street** Ste. # (if any) City **Alexandria** State **VA** Zip Code **22314**

Phone No. (703) 549-1123 Fax No. n/a E-Mail **edonohue@donohuesteams.com**

WITNESS INFORMATION:

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the person's behalf;
2. A summary of the testimony of each witness (*Zoning Commission only*);
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts (*Zoning Commission only*); and
4. The total amount of time being requested to present your case (*Zoning Commission only*).

PARTY STATUS CRITERIA:

On a separate piece of paper, please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)
3. What is the distance between the person's property and the property that is the subject of the appeal or application before the Commission/Board? (Preferably no farther than 200ft.)
4. What are the environmental, economic or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?
5. Describe any other relevant matters that demonstrate how the person will be affected or aggrieved if the action requested of the Commission/Board is approved or denied.
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

CASE NO. **18659**

EXHIBIT NO. **25**

Except for the applicant, appellant or the ANC, to participate as a party in a proceeding before the Commission/Board, any affected person shall file with the Zoning Commission or Board of Zoning Adjustment, this Form 140 not less than fourteen (14) days prior to the date set for the hearing.

Board of Zoning Adjustment
District of Columbia
CASE NO. 18659
EXHIBIT NO. 25

**Party Status Request
Supplement to Form 140
Board of Zoning Adjustment Case No. 18659**

I. WITNESS INFORMATION - List of witnesses who will testify on the person's behalf:

1. Mr. Peter G. Baker
2. Mrs. Sally W. Baker

II. PARTY STATUS CRITERIA

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?

The Applicant is seeking the special exception and variance in case No. 18659 in order to obtain retrospective approval for construction in violation of the building permits he obtained (B1003061, B1107491, B1202735 and B1209664). Peter and Sally Baker brought the violations and illegal construction at 4540 Lowell Street to the attention of DCRA who subsequently filed the Stop Work Order on June 26, 2013 and Notice of Revocation of Building Permits on July 3, 2013. The Zoning Administrator reiterated the findings of violations in a letter dated August 1, 2013. As a result, an action (2013-DCRA-00065) against the Applicant is currently pending in the Office of Administrative Hearings ("OAH") pending the Board of Zoning Adjustment's ("BZA") determination in this case. The Bakers notified DCRA of the violations as they directly impacted their adjacent property at 4546 Lowell Street and enjoyment thereof. In razing the existing structure, the Applicant forfeited the legally nonconforming classification of the residence and with it, the reduced setback requirements. In so doing, Applicant subjected the new construction to the requirements of the current District of Columbia Zoning Ordinance ("the Zoning Ordinance.") Specifically, Petitioners' new construction must comply with eight foot (8') side yard setback requirement pursuant to §405.9 of the Zoning Ordinance. The illegal construction completed (and continued construction subsequent to the issuance of the Stop Work Order and Notice of Revocation of Building Permits) has decreased the space between the Bakers' property line and the Petitioners' new home by 4.3 to 5 feet (measurements differ based upon drawings, site measurements, etc.) The Bakers are entitled to the side yard prescribed by §405.9 and the light and air it affords their residence. The open-air porch that existed prior to the Applicant's unpermitted construction allowed a significant amount of air and light onto the Bakers front yard. Now that the open-air porch has been replaced with an enclosed portion of new construction in violation of the Zoning Ordinance, the light and air previously enjoyed by the Bakers has been severely reduced.

The Wesley Heights Overlay Districts, per §1541.1, "is established to preserve and enhance the low density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area." The purposes of the WH Overlay are set forth in §1541.3 and are as follows: " (a) Preserve in general the current density of neighborhood; (b) Allow reasonable opportunities for owners to expand their dwellings; and (c) Preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood." The Applicant's violations of the front and side yard setback requirements have significantly degraded the amount of light and air previously afforded his residence so much so that he was forced to remove a garden that could no longer thrive. The design is both out of compliance with the applicable zoning provisions and is not harmonious with the neighborhood as a whole.

2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)

Peter and Sally Baker are the owners of 4546 Lowell Street, NW Washington, D.C. 20016. There is also an existing contractual relationship between the Bakers and the Applicant. There is currently a stone wall belonging to the Applicant that is located on the Bakers' property (the Applicant's stone wall encroaches on the Bakers' property by 35 inches). It has been allowed to remain there by the terms of a non-exclusive revocable license agreement to which the Bakers are the Licensors and the Applicant is the Licensee.

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3. What is the distance between the person's property and the property that is the subject of the appeal or application before the Commission/Board? (Preferably no farther than 200ft.)

The distance between the Bakers' real property and that of the Applicant is 0 feet as they share a common boundary line. The side yard setback distance to the common property line is between 3 and 3.7 feet.

4. What are the environmental, economic or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?

As noted above, the reduction in the side yard setback to between 3 and 3.7 feet from the required 8 feet in conjunction with the enclosure of formerly open-air porch significantly reduces the light and air afforded the Bakers property – light and air that they are entitled to pursuant to §405.9 of the Zoning Ordinance. This reduction in the side yard setback, combined with the fact that the Applicant is also asking the BZA to retroactively approve his violation of the 13-foot front yard setback per §1543.4 (Applicant provides only 2 feet, 4 inches) substantially impairs the privacy, view shed and light from the Bakers' property. As a result of the Applicant's violations of front and side yard setbacks, the value of the Bakers' residence will also clearly be negatively affected. Furthermore, given the Applicant's failure to obtain the correct permits and his disregard for the Stop Work Order and Notice of Revocation of Building Permits (Applicant has continued construction in violation of both) Advisory Neighborhood Commission 3D is seeking to meet with the Zoning Administrator and have wall checks confirmed.

5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.

The Power Point slides and photographs presented to ANC 3D at its October 2, 2013 meeting are attached and illustrate the Applicant's violations and the direct and significant impact to the Bakers' property.

6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

The Bakers' property is the closest to the subject parcel. The parcel to the east of the subject parcel is separated by a drive way. The Applicant's violation of the front and side yard setback most significantly, egregiously and uniquely affect the Bakers as no other parcel is closer. Specifically, the open-air porch that is now enclosed and that violates the front and side yard setbacks is on the west side of Applicant's home and infringes on the side yard setback proscribed by §405.9 that protects the Bakers' allotment of light and air.

III. Attachments

- A. Stop Work Order dated July 26, 2013
- B. Notice of Revocation of Building Permits dated July 3, 2013
- C. Zoning Compliance Decision Letter dated August 1, 2013
- D. Non-Exclusive Revocable License Agreement
- E. Motion to Intervene (2013-DCRA-00065)
- F. Reply to Opposition to Intervene (2013-DCRA-00065)
- G. Power Point Presentation from ANC 3D – October 2, 2013

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- A. Stop Work Order dated July 26, 2013

GOVERNMENT OF THE DISTRICT OF COLUMBIA



DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS
Inspections & Compliance Administration
1100 4th Street, SW – Fourth Floor
Washington, DC 20024

1301670

STOP WORK ORDER

4540 Lowell St. NW
(Address)

You are hereby ordered to IMMEDIATELY STOP all work at this building or structure.

- ☒ You are performing work that violates the Construction Code:
☒ You are performing work in an unsafe and dangerous manner:

Code Section (s)	Violation (s)	What You Must Do to Correct the Violation (s)
2A DCMR 105	Work performed without permits	Satisfy this Stop Work Order

Do NOT work at this address until you:

- ☒ Correct the violation(s)
☒ Pay the fine amount
☒ Obtain and post the required permit(s)
☐ Electrical ☐ Plumbing ☒ Construction ☐ Boiler ☐ Fire ☐ Elevator ☐ Other _____
☒ Receive approval from the Code Official to remove the Stop Work Order.

WARNING

Unauthorized removal of a posted Stop Work Order is a Construction Code violation, subject to penalties and injunctive relief under DC Official Code §6-1406 and §6-1407 and 12A DCMR §114.3.

A Stop Work Order for illegal construction under 12A DCMR §113.7 and §114.6 requires you to stop all work at the building or structure, whether or not the work requires building permits.

It is a Stop Work Order violation for an owner or agent to enter the site for any reason without the Code Official's approval. (The Building Official may allow temporary access to ensure the property's security and safety, under 12A DCMR §114.8.1.)

Anyone who continues any work in or around a structure posted with a Stop Work Order – except to do work that the Building Official approves to remove a violation or unsafe condition – is subject to penalties and injunctive relief under DC Official Code §6-1406 and 12A DCMR §105.8 and 12A DCMR §114.10.

RIGHT TO APPEAL

You have the right to appeal this Order to the Reviewing Official (Rabbiah Sabbakhan, Chief Building Code Official, Inspections and Compliance Administration) within 15 days of its posting, under 12A DCMR §114.11.1. You may call the Reviewing Official at (202) 442-7867. You may obtain a Stop Work Order Appeal Request Form at the address above or at dcra.dc.gov. If the Reviewing Official denies your appeal or takes no action within 10 working days of receiving it, you may appeal to the DC Office of Administrative Hearings (OAH). You may deliver your written request for a hearing to OAH at 441 4th Street, NW, Suite 10406, Washington, DC 20002 or mail it to PO Box 77718, Washington, DC 20013-8713.

Signature of Issuing Official

Date

Time

Badge Number

Phone Number

[Signature] 6/26/13 1:10 PM
2009 202-442-5000

**Party Status Request
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B. Notice of Revocation of Building Permits dated July 3, 2013



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**

**Inspection and Compliance Administration &
Permits Operation Division**

July 3, 2013

VIA FIRST CLASS MAIL

Elodie G. Goirand
4540 Lowell Street, NW
Washington, DC 20016

KC Price (agent)
1829 California Street, NW, #14
Washington, DC 20009

**NOTICE TO REVOKE BUILDING PERMIT NOS. B1003061, B1107491, B1202735, and
B1209664**

This is official notice from the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") that Building Permit No. B1003061 is hereby revoked, effective ten (10) business days from the date of service of this notice. The grounds for revocation are found under 12A DCMR § 105.6(2), which authorizes DCRA to revoke a building permit when the construction does not comply with the permit or the approved plans.

Permit No. B1003061 was issued on June 4, 2010 and was valid for one year. It was then extended three times by the issuance of three extension permits: nos. B1107491 issued on May 31, 2011, B1202735 issued on December 8, 2011, and B1209664 issued on June 4, 2012.

Permit No. B1003061 allowed for the renovation of an existing single-family dwelling and a new, two-story addition at 4540 Lowell Street, NW (the "Property"). The approved plans show that some exterior walls of the existing dwelling were to remain; however, DCRA's inspection of the Property revealed that all of the exterior walls above grade were removed. Thus, DCRA has determined that the existing single family dwelling has been razed and that you have exceeded the scope of Permit No. B1003061.

Accordingly, DCRA has determined that the construction at the Property does not comply with the approved plans and Building Permit No. B1003061 and its subsequent extensions (Permit nos. B1107491, B1202735, and B1209664) will be revoked effective ten (10) business days from the date of service of this notice.

To cure this violation, you must submit revised plans to DCRA that accurately depict the scope of work for this project, including the demolition of the exterior walls. **Be further advised that as a result of your demolition of the exterior walls below 4 feet in height, the Zoning Administrator has determined that any nonconformities (including the non-conforming side yard) of the previously existing dwelling have been extinguished and that any future construction on the site will be considered new construction.**

RIGHT TO APPEAL

You have the right to appeal the revocation of your building permit. To appeal, you must mail or hand-deliver a request for a hearing to the Office of Administrative Hearings at 441 4th Street, NW, Suite 450N, Washington DC 20001 within ten (10) days. If you do not request a hearing within the time and manner specified in this notice, your permit will be immediately revoked without any further written notice. 12A DCMR § 105.6.1(1).

Any questions about this letter may be directed to my office at (202) 442-4542.

Date: 7-8-13


Rabbiah Sabbakhan
Chief Building Official

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C. Zoning Compliance Decision Letter dated August 1, 2013

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



August 1, 2013

VIA FIRST CLASS MAIL

Elodie G. Goirand
Andreas Xenophontos
4540 Lowell Street, NW
Washington, DC 20016

Re: 4540 Lowell Street, NW

Dear Mrs. Goirand and Mr. Xenophontos:

Thanks for submitting the drawings showing the extent of the building retention at 4540 Lowell St, NW. I have completed my review and based on the totality of the information that has been furnished to me, I have determined that you have deviated from the approved plans and have not retained a sufficient amount of the pre-existing structure so that it does not constitute a raze.

I am upholding my initial decision from the July 3, 2013 notice that was communicated to you. As stated in that letter, 'to cure this violation, you must submit revised plans to DCRA that accurately depict the scope of work for this project, including the demolition of the exterior walls. **Be further advised that as a result of your demolition of the exterior walls below 4 feet in height, the Zoning Administrator has determined that any nonconformities (including the non-conforming side yard) of the previously existing dwelling have been extinguished and that any future construction on the site will be considered new construction.'**

Please feel free to contact at 202-442-4576 if there are additional zoning inquiries.

Best regards,

Matthew Le Grant
Zoning Administrator

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D. Non-Exclusive Revocable License Agreement

LICENSE AGREEMENT

THIS License Agreement (the "License"), made this 12 day of January, 2005, by and between Susan Derecskey, (the "Licensor") and Elodie G. Goirand (the "Licensee").

Licensor is the owner of certain real property located in the District of Columbia, which property is known as 4546 Lowell Street, N.W., Lot 0051 in Square 1608 and is more particularly described on the attached Schedule A ("Licensor's Property"), which is adjacent to: the property located at 4540 Lowell Street, N.W., Lot 0820 in Square 1608 and is more particularly described on the attached Schedule B ("Licensee's Property"). Licensee desires to obtain a non-exclusive revocable license, on the terms set forth herein, to use a portion of Licensor's Property for its "Stone Wall," on a portion of the Licensor's Property being the same area on which the Stone Wall is presently situated (the "Licensed Property").

In consideration of the sum of ten dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- (1) Licensor grants to Licensee the right to permit the Stone Wall to remain where currently located on Licensor's Property.
- (2) At such time as title to Licensee's Property is no longer vested in Licensee, the License shall be revocable by Licensor or her successors in interest upon notice, whereupon Licensee shall remove the Stone Wall at its sole expense and return the Licensor's Property to its original condition within ninety (90) days of transmission of such notice.
- (3) Licensor acknowledges that Licensee has already constructed the Stone Wall on the Licensed Property. Licensee, together with her heirs, executors, personal representatives, successors and assigns, shall have the right and duty to maintain the safe condition and aesthetics of the Stone Wall, and Licensee, together with her heirs, executors, personal representatives, successors and assigns, agrees that she shall not enlarge or replace the existing Stone Wall.
- (4) Licensee, together with her heirs, executors, personal representatives, successors and assigns, shall indemnify and hold harmless Licensor and its invitees from any claim, including attorneys' fees and costs, arising out of the use or condition of the Licensed Property, including the existence, use or condition of the Stone Wall, as to any person or any

property.

- (5) Licensee agrees that she will bear all costs associated with the maintenance of the Stone Wall and that, in the event that she, or her heirs, executors, personal representatives, successors or assigns, fail to properly maintain the Stone Wall, Licenser may, upon written notice, make such repairs as Licenser, in her sole discretion, deems necessary, whereupon Licensee shall reimburse Licenser for the costs associated with such repairs. Licenser shall be reimbursed all fees and expenses incurred in enforcing this Agreement.
- (6) The terms of this Agreement shall be binding upon the parties' heirs, executors, successors and assigns.

IN WITNESS WHEREOF the parties have duly executed this License and affixed their seals as of the date set forth above.

LICENSOR:

Susan Derecskey (SEAL)
Susan Derecskey

121-26-6982

ss

I HEREBY CERTIFY that on this 13th day of January, 2005, before me, the subscriber, a Notary Public for the aforesaid jurisdiction, personally appeared Susan Derecskey, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and she acknowledged that she executed the foregoing License Agreement as her voluntary act and deed for the purposes therein contained.

AS WITNESS my hand and notarial seal.

Regina M. Sanko
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

Regina M. Sanko
Notary Public
New Castle County, Delaware
My Commission Expires
August 9, 2006

LICENSEE:


_____(SEAL)
Elodie G. Goirand

DISTRICT OF COLUMBIA ss

I HEREBY CERTIFY that on this 12th day of January, 2005, before me, the subscriber, a Notary Public for the aforesaid jurisdiction, personally appeared Elodie G. Goirand, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and she acknowledged that she executed the foregoing License Agreement as her voluntary act and deed for the purposes therein contained.

AS WITNESS my hand and notarial seal.



Notary Public

[NOTARIAL SEAL]
My Commission Expires: 4-14-07

**Party Status Request
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E. Motion to Intervene (2013-DCRA-00065)

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
441 Fourth Street, NW
Washington, DC 20001
Telephone: 202.442.9094
Facsimile: 202. 442.9451**

ELODIE GOIRAND AND

ANDREAS XENOPHONTOS

PETITIONERS

V.

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY
AFFAIRS

RESPONDENT.

Case No. 2013-DCRA-00065

MOTION TO INTERVENE

Pursuant to §2816.2 of the D.C. Municipal Regulations, Edward L. Donohue hereby moves, on behalf of Peter and Sally Baker, to intervene in the above-captioned matter as a third-party respondent.

This subject case involves construction and demolition in violation of obtained permit numbers B1003061, B1107491, B1202735 and B1209664 at property located at 4540 Lowell Street, N.W. and owned by Petitioners. The violations were initially brought to the attention of DCRA by Mr. and Mrs. Baker in May of this year.

As a result, DCRA issued a *Stop Work Order* (Attachment 1) on June 26, 2013 and subsequently a *Notice to Revoke* (Attachment 2) the previously issued permits on July 3, 2013.

On July 25, 2013 Administrative Law Judge Barber issued an Order for Status Report (Attachment 3) to be delivered on or before Monday, August 26, 2013.

On August 1, 2013 the District of Columbia Zoning Administration issued a Letter to Petitioners (Attachment 4) upholding the previous Revocation of Permits.

Since the issuance of Judge Barber's Order, we have made several attempts to contact the Zoning Administrator, DCRA staff and the Assistant Attorney General representing DCRA in the matter to determine next steps. The Bakers have also witnessed continuing daily work and have contacted DCRA's Inspection and Enforcement Division to report the ongoing work, but nothing has been done.

On July 26, 2013 staff at the Office of Administrative Hearings informed us that the only means of accessing information or documents related to the case would be to file a Freedom of Information ("FOIA") Request with the office. On July 30, 2013 we filed the requested FOIA request letter (Attachment 5) with Mr. Robert Dillard. To date, we have received only partial information in a response that did not include a copy of Petitioners' appeal which was due to be filed within 15 days of its posting pursuant to 12A DCMR §114.11.1 with the Inspections and Compliance Division.

Finally, beginning in August, we have been in contact with Assistant Attorney General to obtain an update on enforcement and offered to supplement with information from the Bakers. We have asked for consent to intervene.

Given that the Bakers own the property adjacent to the subject parcel and initiated the present action, we ask this Court to grant them party status as they are an interested party to the action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E.L. Donohue", written over a horizontal line.

Edward L. Donohue (D.C. Bar No. 412301)

Dated: August 26, 2013

Counsel for Peter and Sally Baker

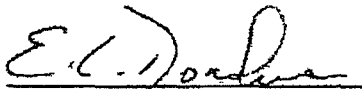
Certificate of Service

I hereby certify, that a copy of the foregoing Motion to Intervene was sent by First Class Mail to:

Melinda Bolling, Esquire
Department of Consumer and Regulatory Affairs
1100 Fourth Street, SW
Washington, DC 20024
ATTN: Jay Surabian, Esquire

Elodie Goirand and Andreas Zenophontos
4540 Lowell Street, NW
Washington, DC 20016

KC Price
1829 California Street, NW #14
Washington, DC 20009

A handwritten signature in black ink, appearing to read "E.L. Donohue", written over a horizontal line.

Edward L. Donohue
Donohue & Stearns, PLC

**Party Status Request
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Board of Zoning Adjustment Case No. 18659**

F. Reply to Opposition to Intervene (2013-DCRA-00065)



DONOHUE & STEARNS, PLC

September 18, 2013

Judge Barber
District of Columbia Office of Administrative Hearings
441 Fourth Street, NW, Suite 450 North
Washington, DC 20001

Cc: Mr. Martin Sullivan
Mr. Jay Surabian

Re: 2013-DCRA-00065; Motion to Intervene

Judge Barber:

I represent the Movants, Peter and Sally Baker, and am writing to address statements made by Mr. Surabian in Respondent's Opposition to Motion to Intervene.

Contrary to what Mr. Surabian alleges, Movants meet both of the criteria set forth in Office of Administrative Hearing ("OAH") Rule 2816.2 in their interest in the subject matter of Case No. 2013-DCRA-00065 and the inadequate representation to date of this interest.

Movants brought the violations and illegal construction at 4540 Lowell Street to the attention of DCRA who subsequently filed the Stop Work Order and Notice of Revocation of Building Permits. Movants notified DCRA of the violations as they directly impacted Movants' adjacent property and enjoyment thereof. In razing the existing structure, Petitioners in the present action forfeited the legally nonconforming classification of the residence and with it, the reduced setback requirements. In so doing, Petitioners subjected the new construction to the requirements of the current District of Columbia Zoning Ordinance ("the Zoning Ordinance.") Specifically, Petitioners' new construction must comply with eight foot (8') side yard setback requirement pursuant to §405.9 of the Zoning Ordinance. The illegal construction completed (and continued construction subsequent to the issuance of the Stop Work Order and Notice of Revocation of Building Permits) has decreased the space between the Movant's property line and the addition to Petitioners' home by 4.3 feet. Movants are now entitled to the side yard prescribed by §405.9 and the light and air it affords their residence.

In alleging that Movants fail to satisfy this first criteria of standing, Mr. Surabian cites *York Apartments v. District of Columbia Zoning Commission* where the D.C. Court of Appeals held that a tenants' association lacked the requisite standing to challenge the development of an adjacent lot. This case is distinguishable from the present one in that the tenants' association in

York “failed to allege any actual injuries suffered by its members that are not generalized grievances.” *York Apartments v. District of Columbia Zoning Commission*, 856 A.2d 1079, 1084 (D.C. 2004). As articulated by the *York* Court, the basic principles of standing are as follows:

The *sine qua non* of constitutional standing to sue is an actual or imminently threatened injury that is attributable to the defendant and capable of redress by the court. The plaintiff, or those whom the plaintiff properly represents, must have suffered an injury in fact — an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. *Id.*

Unlike the tenants’ association, Petitioners’ illegal construction in violation of the mandates of the Zoning Ordinance, specifically the side yard setback requirements of §405.9, have directly and negatively impacted Movants’ property and their enjoyment of the same. The new construction encroaches 4.3 feet further towards Movants’ property line than is allowed by the Zoning Ordinance and they have, therefore, suffered an injury in fact. Section 405.9 of the Zoning Ordinance protects Movants’ legally protected interest in the eight-foot (8’) separation between their property line and that of Petitioners. This right is concrete and actual now that Petitioners have erected the new construction in violation of the Zoning Ordinance, the Stop Work Order and the Notice of Revocation of Building Permits.

Mr. Surabian further alleges that Movants have failed to demonstrate that their interests are inadequately represented. Since the issuance of the Stop Work Order and Notice of Revocation of Building Permits, Movants have observed, on a daily basis, continued construction at 4540 Lowell Street NW that exceeds the scope of “securing the premises” (the limit of work allowed after issuance of the Stop Work Order). Mr. Surabian offers Petitioners’ applications to the D.C. Board of Zoning Adjustment (“BZA”) for a Special Exception and Area Variance as evidence of progress. The inadequate representation of concern to Movants, however, is that of the Respondent. Petitioners’ requests to the BZA to retroactively approve illegal construction do *nothing* to further the interest of Movants and Respondent’s lack of action has permitted the continued infringement of the eight-foot (8’) side yard by Petitioners. Petitioners’ filing with the BZA is irrelevant in a determination of adequacy of representation of Movants’ interest by Respondent.

It should be noted that Petitioners’ applications to the BZA were made on or about August 23, 2013. I initiated communications with Mr. Surabian the week of August 1, 2013. At no point did Mr. Surabian notify Movants of Petitioners’ filing with the BZA. In fact, in an email dated August 23, 2013, after several emails and calls went unanswered by Mr. Surabian, I requested a call to discuss DCRA’s position and strategy moving forward and offered to supplement with photographs and additional evidence of continued illegal construction. In that email, I explained that should no response be provided, we would seek to become involved in the case. Mr. Surabian failed to provide any reply. Had counsel informed Movants that a Special Exception and Area Variance application had been filed with the BZA and that Respondent would pursue the present action, Movants could have turned their attention to opposing the BZA applications. Only on September 15, 2013 did Movants learn of the pending applications before the BZA (and

not from Mr. Surabian). Movants had no knowledge of the BZA submission when they filed the Motion to Intervene and Mr. Surabian made no attempt to notify them of the filings.

Mr. Surabian cites *Calvin-Humphrey v. District of Columbia* in asserting that there exists a presumption of adequacy of the representation by government officials where there is an issue of policy “vested in the discretion of the city government.” *Calvin-Humphrey v. District of Columbia*, 340 A.2d 795, 800 (D.C. 1975). Counsel ignores that portion of the Court of Appeals decision that states,

We cannot agree with appellees in this case, however, that representation by the District must always be deemed adequate unless it can be shown that there is collusion between the parties, that the interest of the representative is adverse to that of the intervenor, or that the representative has failed in his duty vigorously to prosecute or defend the suit. *Id* at 801.

The Court goes on to explain that:

The Supreme Court has in our view rejected such a rigid approach to the representation requirement. In *Trbovich v. United Mine Workers*, *supra*, the Court held it was unnecessary for the proposed intervenor to demonstrate that the public official on whose side he wished to intervene had failed in fulfillment of his statutory duty of representation.

The United States Court of Appeals for the District of Columbia Circuit has found inadequate representation where the intervenor wants to assert a different or additional ground in support of the representative's position, *Atlantic Refining Co. v. Standard Oil Co.*, *supra*; or to represent a narrower interest, *Smuck v. Hobson*, *supra*; or a broader interest, *Nuesse v. Camp*, *supra*, than does the original party. *Id.*

Here, Movants have significant additional grounds for their position (which they have on several occasions offered to share with Respondent) and seek to represent the narrower interest of the impact to their specific parcel and view shed.

Furthermore, the ongoing illegal construction pursued at 4540 Lowell Street in violation of the Stop Work Order and Notice of Revocation of Building Permits demonstrates that Respondent has not been vigilant in enforcement. This lack of enforcement directly impacts Movants.

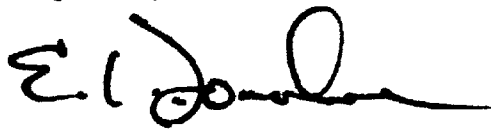
Mr. Surabian alleges that counsel for Movant's failed to comply with OAH Rule 2813.5 which requires a party to make a good faith effort to obtain the other parties' consent to intervene. Mr. Surabian has been hostile to Movants' requests for information and offers to provide information from the initial phone call placed the week of August 1, 2013. Despite having asked that I call him at 10:00am to discuss the coordination of efforts Mr. Surabian ignored my call on August 8, 2013 and repeated subsequent attempts to make contact. Unable to obtain any information on the status of the case and given the continued work being performed at 4540 Lowell Street NW, Movants moved to intervene in order to be kept apprised of an action that directly impacted their

property. On August 23, 2013, three (3) days before filing the *Motion to Intervene*, I again attempted to contact Mr. Surabian via email to request a call. I explained that should no response be provided, we would move to become involved in the case. As of August 26, 2013, having heard nothing back from Mr. Surabian, I moved, on behalf of Peter and Sally Baker, to intervene in Case No. 2013-DCRA-00065.

From the initial phone call at the beginning of August, counsel for Respondent has been hostile and has withheld information from the Movants who stand to be most dramatically affected by Petitioners' continued illegal activities. The statements made in the *Motion to Intervene* are documented in the attached August 23, 2013 email. OAH Rule 2813.5 requires that consent be sought, not obtained, and Mr. Donohue sought said consent from Mr. Surabian. His request went unanswered. I am unable to understand why Mr. Surabian is reluctant to accept Movants assistance as we had hoped to provide him with evidence to supplement his case.

Movants have no objection to the Opposition to Motion to Intervene filed by Mr. Martin Sullivan on behalf of Petitioners.

Respectfully,

A handwritten signature in black ink, appearing to read 'E. L. Donohue', written over a horizontal line.

Edward L. Donohue

Counsel for Movants, Peter and Sally Baker

Attached: Email from Edward L. Donohue to Jay Surabian dated August 23, 2013

**Party Status Request
Supplement to Form 140
Board of Zoning Adjustment Case No. 18659**

G. Power Point Presentation from ANC 3D – October 2, 2013

ANC 3D
October 2, 2013 – 7:00pm



Advisory Neighborhood Commission 3D

A.U., Foxhall, Kent, New Mexico/Cathedral, Pallsades, Spring Valley, & Wesley Heights

BZA Case No. 18659

- ▶ Applicant is retroactively seeking approval for construction that has already been completed in violation of:
 - ▶ The D.C. Zoning Regulations
 - ▶ Stop Work Order – June 26, 2013
 - ▶ Notice of Revocation of Building Permits – July 3, 2013

4540 Lowell Street, NW

▶ The Property

- ▶ 4540 Lowell Street, NW Washington, DC 20016
- ▶ R-1-B District – High density, single-family residential zone
- ▶ Wesley Heights Overlay
 - ▶ Wesley Heights Overlay District - established to preserve and enhance the low density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area.
 - ▶ The purposes of the WH Overlay are to preserve in general the neighborhood, allow reasonable opportunities for owners to expand their dwellings, and preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood.
 - The non-compliant construction severely reduces the air and light to the adjacent parcel.
 - ▶ All residential buildings shall have a front yard setback equal to or greater than the average setback of all structures on the same side of the street in the block where the building in question is located. (§1543)
 - The Applicant's violation of the front yard setback requirement (13 feet to 2'4") significantly impacts the general appearance of the neighborhood, light and air.

Applicant Failed to Obtain the Correct Permit

▶ Applicant/ Property Owner

- ▶ Architect with experience in D.C.
- ▶ Applicant obtained building permits to allow for an addition to his home, when, in reality, he was razing the existing structure and erecting an entirely new one.
- ▶ Applicant began securing permits in 2010 and received numerous extensions – the last expired just prior to the commencement of construction in December of 2012.
- ▶ Applicant should have secured a razing permit pursuant to 12 DCMR §105.1.17: A raze permit is required to secure the right to remove a building or structure down to the ground.

▶ Why did the Applicant not want to have the work categorized as a raze?

- ▶ §11-405.8: 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.).”
- ▶ When applied to the present case, since the project has been classified as a raze, then the new structure will not benefit by being grandfathered in under the old setback of three feet (3’.) Rather, it is subject to the eight foot (8’) side yard setback requirement.

Timeline

► March - May 2013

- Adjacent property owners repeatedly notified DCRA of Applicant's illegal construction

► June 26, 2013

- DCRA issues a **Stop Work Order** (6.26.13)

GOVERNMENT OF THE DISTRICT OF COLUMBIA


Department of Consumer & Workforce Affairs
Inspections & Compliance Administration
1100 4th Street, SW - Fourth Floor
Washington, DC 20024

1301670

STOP WORK ORDER

454D LAUREL ST. NW
(Address)

You are hereby ordered to **IMMEDIATELY STOP** all work at this building or structure.

- ☒ You are performing work that violates the Construction Code:
☒ You are performing work in an unsafe and dangerous manner:

Code Section (s)	Violation (s)	What You Must Do to Correct the Violation (s)
2402.105	WORK PERFORMED WITHOUT PERMITS	Satisfy This STOP WORK ORDER

Do NOT work at this address until you:

- ☒ Correct the violation(s)
☒ Pay the fine amount
☒ Obtain and post the required permit(s)
☐ Electrical ☐ Plumbing ☒ Construction ☐ Boiler ☐ Fire ☐ Elevator ☐ Other _____
☒ Receive approval from the Code Official to remove the Stop Work Order.

WARNING

Unauthorized removal of a posted Stop Work Order is a Construction Code violation, subject to penalties and injunctive relief under DC Official Code §5-1406 and §5-1407 and 12A DCMR §114.9.

A Stop Work Order for illegal construction under 12A DCMR §113.7 and §114.6 requires you to stop all work at the building or structure, whether or not the work requires building permits.

It is a Stop Work Order violation for an owner or agent to enter the site for any reason without the Code Official's approval. (The Building Official may allow temporary access to ensure the property's security and safety, under 12A DCMR §114.9.1.)

Anyone who continues any work in or around a structure posted with a Stop Work Order - except to do work that the Building Official approves to remove a violation or unsafe condition - is subject to penalties and injunctive relief under DC Official Code §5-1406 and 12A DCMR §106.6 and 12A DCMR §114.10.

RIGHT TO APPEAL

You have the right to appeal this Order to the Reviewing Official (Rabbi Shabbethan, Chief Building Code Official, Inspections and Compliance Administration) within 15 days of its posting, under 12A DCMR §114.11.1. You may call the Reviewing Official at (202) 462-7897. You may obtain a Stop Work Order Appeal Request Form at the address above or at dcra.dc.gov. If the Reviewing Official denies your appeal or takes no action within 10 working days of receiving it, you may appeal to the DC Office of Administrative Hearings (OAH). You may deliver your written request for a hearing to OAH at 441 4th Street, NW, Suite 1002, Washington, DC 20002 or mail it to PO Box 77718, Washington, DC 20013-8718.

Signature of Issuing Official 

Date 6/26/13 Time 1:10 PM

Badge Number 2002

Phone Number 202-492-5700

Timeline



GOVERNMENT OF THE DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Inspection and Compliance Administration &
Permits Operation Division

- ▶ **July 3, 2013**
 - ▶ The Zoning Administrator issues a **Notice of Revocation of Building Permit** for Permit Nos. B1003061, B1107491, B1202735 & B1209664 (7.3.13)

July 3, 2013

VIA FIRST CLASS MAIL

Elodie G. Golrand
4540 Lowell Street, NW
Washington, DC 20016

KC Price (agent)
1829 California Street, NW, #14
Washington, DC 20009

NOTICE TO REVOKE BUILDING PERMIT NOs. B1003061, B1107491, B1202735, and B1209664

This is official notice from the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") that Building Permit No. B1003061 is hereby revoked, effective ten (10) business days from the date of service of this notice. The grounds for revocation are found under 12A DCMR § 105.6(2), which authorizes DCRA to revoke a building permit when the construction does not comply with the permit or the approved plans.

Permit No. B1003061 was issued on June 4, 2010 and was valid for one year. It was then extended three times by the issuance of three extension permits: nos. B1107491 issued on May 31, 2011, B1202735 issued on December 8, 2011, and B1209664 issued on June 4, 2012.

Permit No. B1003061 allowed for the renovation of an existing single-family dwelling and a new, two-story addition at 4540 Lowell Street, NW (the "Property"). The approved plans show that some exterior walls of the existing dwelling were to remain; however, DCRA's inspection of the Property revealed that all of the exterior walls above grade were removed. Thus, DCRA has determined that the existing single family dwelling has been razed and that you have exceeded the scope of Permit No. B1003061.

- ▶ **July 30, 2013**
 - ▶ We filed a FOIA request to obtain documents in the case from OAH

Timeline

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



- ▶ July 3, 2013 – Present
 - ▶ Applicant continues construction in violation of the Zoning Regulations, the Stop Work Order and the Notice of Revocation
 - ▶ Adjacent Property owners call Inspections & Compliance Administration to report ongoing violations
- ▶ August 1, 2013
 - ▶ Zoning Administrator issues letter finding Applicant razed the old structure and new structure must comply with current Zoning Regulations
- ▶ Case No. 2013-DCRA-00065 is currently pending in the Office of Administrative Hearings.
- ▶ August 26, 2013
 - ▶ Despite requests to be updated on the case, counsel for OAH has been unresponsive and so we filed a Motion to Intervene.

August 1, 2013

VIA FIRST CLASS MAIL

Elodie G. Goirand
Andreas Xenophontos
4540 Lowell Street, NW
Washington, DC 20016

Re: 4540 Lowell Street, NW

Dear Mrs. Goirand and Mr. Xenophontos:

Thanks for submitting the drawings showing the extent of the building retention at 4540 Lowell St, NW. I have completed my review and based on the totality of the information that has been furnished to me, I have determined that you have deviated from the approved plans and have not retained a sufficient amount of the pre-existing structure so that it does not constitute a raze.

I am upholding my initial decision from the July 3, 2013 notice that was communicated to you. As stated in that letter, 'to cure this violation, you must submit revised plans to DCRA that accurately depict the scope of work for this project, including the demolition of the exterior walls. Be further advised that as a result of your demolition of the exterior walls below 4 feet in height, the Zoning Administrator has determined that any nonconformities (including the non-conforming side yard) of the previously existing dwelling have been extinguished and that any future construction on the site will be considered new construction.'

Please feel free to contact at 202-442-4576 if there are additional zoning inquiries.

Best regards,

Matthew Le Grant
Zoning Administrator

Why are We Here?

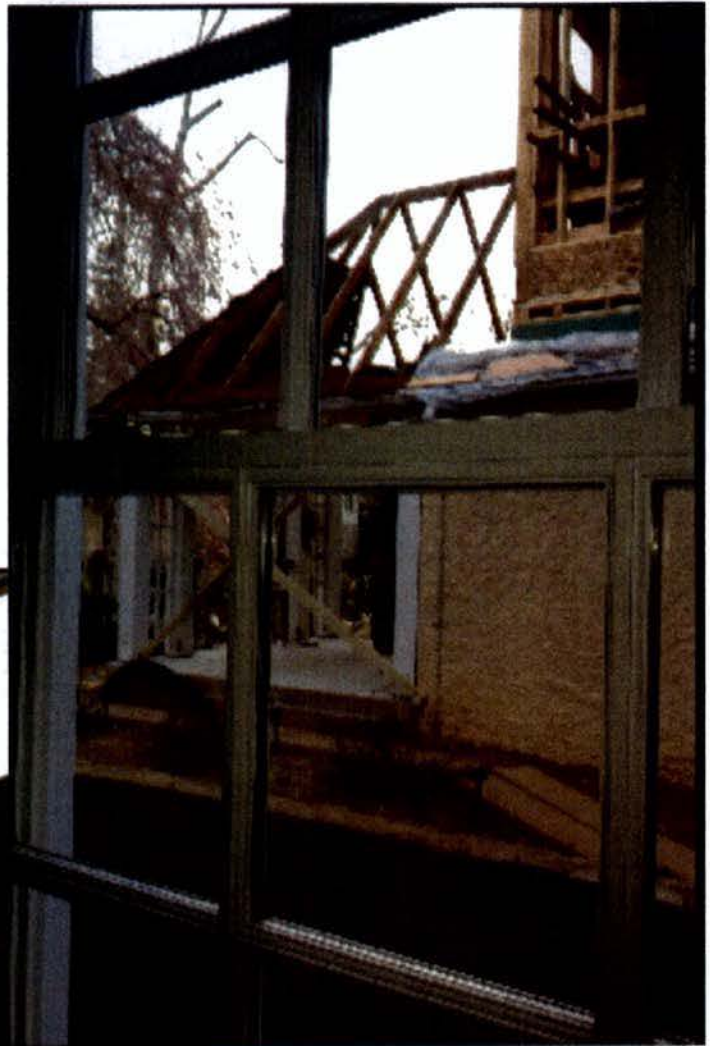
- ▶ Applicant chose to ignore and continues to ignore the SWO and Notice of Revocation issued by DCRA.
- ▶ If the OAH finds in favor of DCRA, Applicant must remove the portions of the building that do not meet setback requirements.
 - ▶ By the terms of the SWO, Applicant was only permitted to secure the premises from water damage
 - ▶ Applicant went far beyond the allowed scope of work and is close to completing the project
- ▶ Applicant is hoping :
 1. OAH grants relief
 2. BZA retroactively approves setback violations

The Violations

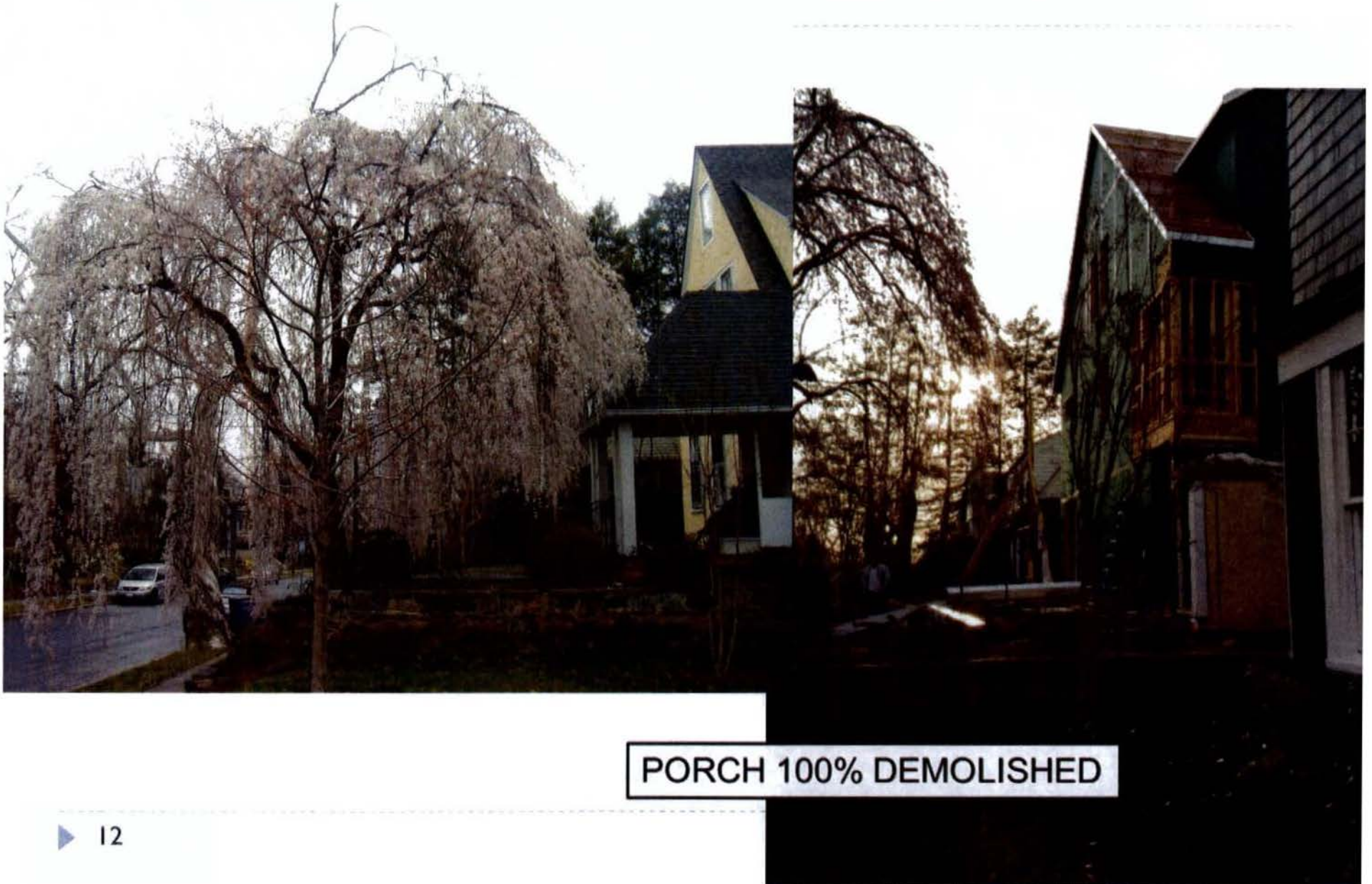
- ▶ **§ 11-405.9 mandates a side yard setback in the R-1-B District of 8 feet.**
- ▶ **As previously noted, had the Applicant not razed the existing structure which pre-dated May 12, 1958, he would have retained the side yard setback of 3 feet. When he chose to raze the structure, he removed himself from the protection of § 11-405.8 and became subject to the 8-foot setback. Only 3.7' are provided.**
- ▶ **By razing the pre-existing structure, the Applicant also forfeited the protection of the reduced front yard which also must now conform to the Zoning Regulations (13 feet are required.)**

Previous Conditions





FRONT PORCH – BEFORE AND AFTER

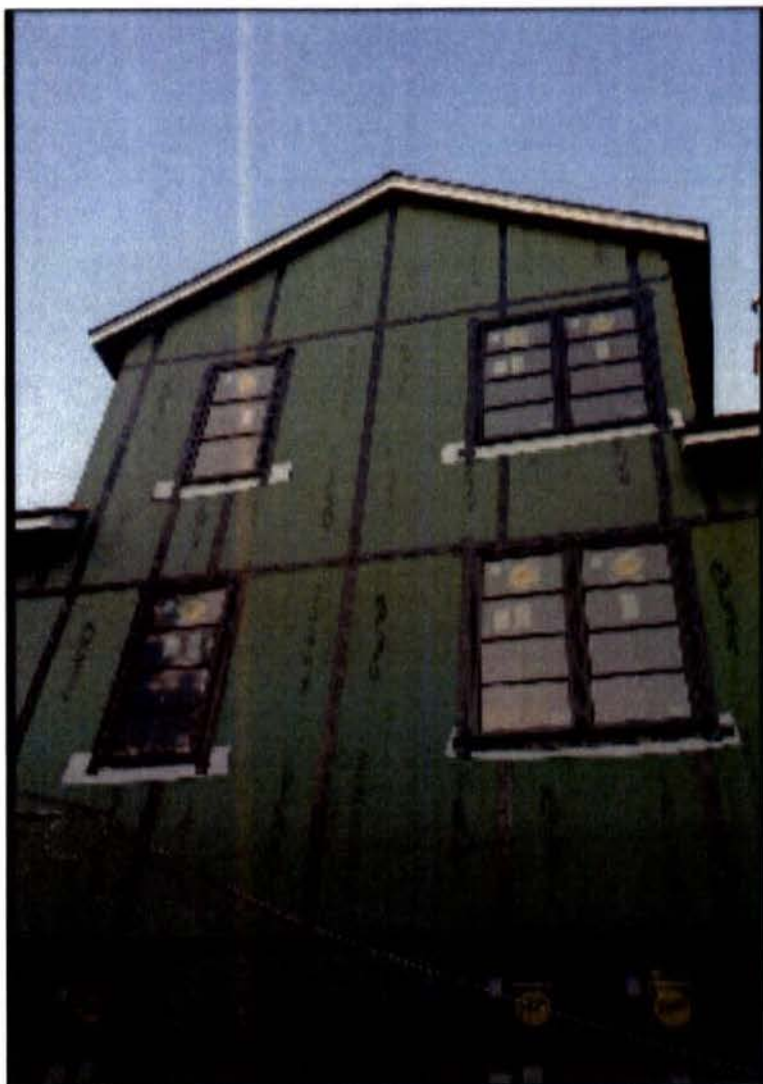


New Non-Compliant Structure



SIDE YARD-WEST VIEW:

Impact to adjoining parcel is significant reduction in light & air.



Side Yard – Setback Violations







Continuing Work – All after SWO & Notice of Revocation were Issued

- Metal Crafters arrived on July 14, 2013
- Plumbers & Crane arrived September 12, 2013
- Various unmarked construction crews arrive daily beginning at 6:30 am



Multiple Violations/ Wrong Relief

- ▶ Now that the Applicant's violations have been brought to light, he is seeking the ANC's support and the BZA's retroactive approval to correct both the infraction noted by the adjacent property owners as well as further violations (*front yard setback requirement per §11-1543.4 is 13 feet and Applicant provides only 2' 4"*).
- ▶ APPLICANT IS SEEKING THE WRONG RELIEF – Applicant sites the standards in §223.2 & §223.5 in supporting the Special Exception relief from the side yard setback of 8' (§405.9) for an addition
 - ▶ §223.2 - The addition or accessory structure shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
 - a) The light and air available to neighboring properties shall not be unduly affected;
 - b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
 - c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; and
 - ▶ §223.5 - This section may not be used to permit the introduction or expansion of a nonconforming use.
- ▶ BOTTOM LINE: DCRA'S DETERMINATION THAT THE PROJECT CONSTITUTES A RAZE REMOVES IT FROM THIS SECTION - - EVEN IF THIS SECTION WERE APPLICABLE, APPLICANT DOES MEET ANY OF THE STANDARDS IN A) THROUGH C).

