

January 22, 2014

By Hand Delivery

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18659

EXHIBIT NO. 43

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Re **BZA Application No. 18659; 4540 Lowell Street, NW; Square 1608, Lot 68; Response to the Party Opponent's Post-Hearing Submission**

Dear Chairman Jordan and Members of the Board,

I am writing on behalf of the Applicant in response to the party opponent's January 8, 2014 submission. At the close of the hearing on November 19, 2013, the Board closed the record and requested only the following information:

- 1) A statement of action and analysis by the Applicant's structural engineer,
- 2) A full set of shadow studies from both parties,
- 3) Copies of the applications for modification of the building plans, and
- 4) Proposed Findings of Fact and Conclusions of Law

In disregard of the limitations of this limited request, the party opponent (the "Opponent") opted, in large part, to try to make its case for the first time by submitting a considerable amount of unrequested new evidence after the record was closed. Submission of the additional evidence is a violation of 11 DCMR 3121.5, and there is no reason why the Opponent could not have presented this information at the hearing, when the information could have been fully evaluated, cross-examined, and rebutted.

The Applicant therefore requests that the Board not accept into the record any additional evidence not requested by the Board, including: (i) Opponent's Exhibit 3, an "e-mail chain" obtained at a meeting that the Opponent had with the Zoning Administrator a month after the record was closed; (ii) an inspection report of questionable credibility submitted by Mr. Cluff on June 26, 2013 (Paragraph 12 of the Opponent's Findings of Fact and Conclusions of Law), in which Mr. Cluff completely reverses the written representations he made on four previous occasions; (iii) hearsay evidence by a "licensed architect" (Paragraph 10 of Opponent's Findings of Fact and Conclusions of Law); and (iv) an August 8 report by inspector Cluff regarding work on the front porch, which happens to be unrelated to this application (Paragraph 13 of the Opponent's Findings of Fact and Conclusions of Law).

The additional information does nothing to rebut the Applicant's case, and in some cases actually makes it stronger, but it is nonetheless inappropriate for the Board to accept this information. In any event, the Applicant responds to the new information below.

I The Evidence and Testimony Supports Area Variance Relief

Even accepting all of the new information submitted by the Opponent, the evidence shows that the Applicant overwhelmingly satisfies the burden of proof for area variance relief.

A Unique Condition Leading Directly to a Substantial Practical Difficulty

The Applicant has shown that the property is subject to several very unique conditions and situations, foremost among them being:

1) the unsustainable condition of the west structural walls and bottom plate, which (a) the Applicant had no knowledge of until after the project was designed, commenced, and partially completed, and (b) even when he did know of the poor condition of the walls, the Applicant had no idea that the removal of those walls would have consequences for the previously-approved front powder room,¹ and

2) the ambiguously interpreted and unwritten "four-foot rule" which, as (eventually) applied to the unique facts in this case, worked to create an extreme practical difficulty for the Applicant by forcing him to remove a portion of his structure that existed as a covered porch since the 1930's and which was legitimately approved for construction in the original building permit just a few months earlier.

B Extent of the Practical Difficulty in Relation to the Degree of Variance Requested

The Opponent has submitted a large volume of misleading, false, or irrelevant information in an attempt to confuse the issue, impugn the character of the Applicant and his engineer, and overstate the effect of the requested variance relief. Although he was asked to submit his own shadow study, the Opponent neither submitted his own sun study nor responded to the Applicant's sun study. He merely submitted unauthenticated photographs that provide no meaningful rebuttal to the Applicant's sun studies.

On the other hand, it is not in dispute that removal of the front powder room would be an extreme practical difficulty to the Applicant. Compare this extreme practical difficulty with the degree of variance requested: the Applicant wishes to keep the originally approved front room construction, which amounts to closing off the walls of a covered porch that pre-dates (by sixty years) the regulations that rendered it nonconforming.²

¹ This point is supported by the opinion of two licensed structural engineers, and is not rebutted by the Opponent by anything other than a denial of the credibility of these engineers, without support for that accusation either.

² A falsehood repeated many times by the Opponent, and later apparently adopted by Mr. Cluff in his June 26 report, is that the replacement of the covered porch was not permitted. This is simply not true. The front room was permitted exactly as it is currently constructed, including removal of the roof of the old covered porch. This is illustrated in plan pages attached as Exhibit A.

Even taken as completely new construction, the front room represents about 1 5% of the floor area of the house, which is already tempered by the heightened lot occupancy and gross floor area restrictions of the Wesley Heights Overlay

C No Substantial Detriment to the Public Good

The Applicant has shown with reliable and authoritative sun studies -- and other photos of tree canopy -- that the one-story front room structure has, at worst (when not considering the tree canopy), a minimal impact on the Opponent's property for a few minutes very early in the morning for only four months out of the year, and no impact at all for the other eight months³ That conclusion does not include any consideration of the extensive tree canopy and foliage throughout those four months, which, from photos submitted by both parties, would appear to already greatly limit any sunlight that might have gone underneath the covered porch roof

Nothing in the photos submitted by the Opponent rebuts the Applicant's shadow study Nothing in these photos offers any evidence of what the Opponent has called a "severe" decrease in light and air from what the Opponent enjoyed before the Applicant closed their covered porch It is apparent from the Opponent's filings that he is attempting to confuse and conflate the impact of the front powder room with that of the matter-of-right structure behind it But the matter-of-right construction is not before the Board, and its compliance with the Zoning Regulations and Wesley Heights Overlay is not in dispute

D No Detriment to the Integrity of the Zone Plan

The Office of Planning's report, respectfully, makes unsupported conclusions about the Applicant's satisfaction of the variance test The OP report neglects the fact that the covered porch existed legally for eighty years, and that it was also legally approved for the current construction It also ignores the fact that the front room is hidden by trees, thirty feet from the curb, and is, by definition, a fairly common occurrence in the Wesley Heights neighborhood The OP report also simply repeated the Opponent's claims of a reduction in sunlight, without actually verifying the claim Finally, the Office of Planning insists that since the Zoning Administrator re-characterized the project as new construction, it could ignore the entire zoning history and permitting history, as well as the structural problems, on this property. But zoning history and permitting history are often considered by the Board to be unique conditions of a property, particularly in cases involving "new" construction that was already completed, but later disapproved, under unique circumstances

The uniqueness of this situation, and the fact that the relief merely grants that which would have been permitted but for the zoning technicality enforced after the front room was substantially completed, ensures the integrity of the Zoning Regulations and the Wesley Heights Overlay

II Response to the Opponent's Findings of Fact and Conclusions of Law

A Introduction In asserting that the Applicant does not satisfy the area variance test, the Opponent relies on a couple theories which are not responsive to the Applicant's showing that its property is subject to unique conditions that make compliance with the Zoning Regulations unnecessarily burdensome. In

³ Sun Studies completed using the Sketchup© 3D drawing computer program Study is completed by inserting dates and times The program itself produces the shadow based on those inputs

attempting to buttress their legal theories, the Opponent repeatedly – and inaccurately - impugns the integrity of the Applicant. In doing so, the Opponent shows either a lack of knowledge or a reckless disregard for the truth. Ironically, much of the evidence submitted by the Opponent is misleading or false, as the Applicant will explain below.

The Applicant believes, based on the Opponent's earlier submissions and other discussions between the Applicant and the Opponent, as well as discussion at the ANC meeting, that the source of the vehement opposition is related to the matter-of-right structure and not the closing in of the long-standing 10' x 10' one-story covered porch.

B Report of the Structural Engineer

The Opponent spends several paragraphs pressing a conclusion that the Applicant "has offered no reliable proof" that the removal of the walls which necessitated this case was necessary. The Opponent either ignores the report by the Applicant's licensed structural engineer, or casts aspersions on the integrity of Mr. Neubauer. For instance, in Paragraph 11, the Opponent concludes that there can be "only one" reason why the original structural engineer, Frank Chow, did not write the letters that Mr. Neubauer wrote. It is not clear why they assert that there can be "only one" reason why an owner would change structural engineers. At any rate, the reason why Mr. Neubauer wrote the letters is because Mr. Chow retired three years ago. Attached as Exhibit B is a letter from Mr. Chow not only noting his retirement but also concurring with Mr. Neubauer's opinion that the Applicant was required, for reasons of structural integrity, to demolish the subject walls.⁴

The Opponent also spends considerable effort arguing that Mr. Neubauer did not do an on-site inspection to "approve" the removal of the subject walls. The Applicant is not disputing this point. One of the unique conditions with this property was the structural integrity of the subject walls. The Applicant has shown, with Mr. Neubauer's report and now with Mr. Chow's report as well, that the subject walls were compromised by rot, mold, and termite damage, and could not be saved. This is one of the unique conditions which led directly to the Applicant's practical difficulty in complying with the Zoning Regulations, and the Opponent has submitted no credible evidence to rebut the opinion of two licensed structural engineers on this point. Mr. Neubauer has also submitted an additional response to the Opponent's January 8th filing, attached as Exhibit C.

C. The Bottom Plate

The Opponent submitted a photo (their Exhibit 6) which they claim proves that the plate mentioned in Mr. Neubauer's letter was intact and not rotted. But the Opponent is referring to the *sill* plate on top of the foundation wall, rather than the bottom plate above that, at floor level. This should have been obvious to the Opponent from their own photo, since the floor joists are shown in the photo above the sill plate. The sill

⁴ It is worth noting again that the removal of the subject walls had absolutely no impact on the Opponent or anybody else. The subject house was completed exactly as originally permitted. Removal of those walls did not change the façade or exterior walls of the house in any way. This issue relates only to the wood behind that façade. The Opponent has merely seized on the Applicant's unfortunate circumstances to continue to harass and impede completion of the matter-of-right house. It is also important to note, and it's not clear if the Opponents understand that, the matter-of-right portion of this house (about 98.5% of the entire house) will not be impacted by any denial in this case.

plate is indeed intact and was not removed. The bottom plate, at floor level, is the plate that the engineer was referring to as being damaged. See Exhibit D hereto for an illustration of this point.

D. The "Four-Foot Rule"

The Opponent's counsel also spends considerable space describing his interpretation of the permitting process. The implication seems to be that the Applicant should have known that removal of the west wall would change the entire characterization of the project. Not only that, but that such action would also change the status of the covered porch room that was approved for construction a few months earlier. This is too high of a standard for the Applicant to be held to, particularly when it took months for DCRA and the Zoning Administrator himself to figure out how exactly to apply the unwritten rule in this situation. What is now known as the "four-foot rule" is not written in the Building Code or the Zoning Regulations or in any other law. The Zoning Administrator himself admitted that he has only followed this "rule" for the past three years, and it took DCRA and the Zoning Administrator months (even after Zoning Division staff was involved) to decide how to apply this rule to this particular situation.⁵ The Applicant is not arguing before this forum that the Zoning Administrator was incorrect, but only that the timing of the decision, and the ambiguity of the rule, worked in connection with the poor condition of the original walls to create the Applicant's practical difficulty.

E. Self-Created Hardship Rule Does Not Apply to Area Variance Cases

The Opponent asserts that variance relief cannot be granted because – it claims – the Applicant's practical difficulty is "self-inflicted." It is well-established (and often-cited) law, however, that the self-created hardship rule does not apply in area variance cases. See *Association for Preservation of 1700 Block of N Street, N W v Bd of Zoning Adjustment*, 384 A 2d 674, 678; and *Salsbery v Bd of Zoning Adjustment*, D C App, 357 A 2d 402, 404 (1976), and *A L W, Inc v Bd of Zoning Adjustment*, D C App, 338 A.2d 428, 431 (1975), and *Gilmartin v Bd of Zoning Adjustment*, 579 A 2d 1164, 1169 (DC, 1990).

The practical difficulty in this case was not self-created anyway. To be self-created, the Applicant would have had to have knowledge (i) that the structural walls were rotted, and (ii) that removal of such walls would have such drastic consequences for a nonconforming porch in another section of the structure.⁶

F. No Discovery Outside of the Board's Request

The Opponent's counsel, in his paragraph 8, complains that he was not permitted to speak directly to the Applicant's witness, whom he contacted directly without notifying the Applicant or his counsel. The Opponent's counsel also included a letter in his filing in which he demanded some form of discovery from the Applicant's counsel. I am not aware of any provision for direct communication between the parties after

⁵ The Opponent also argues that the Applicant should not receive variance relief because he should have notified DCRA that the damaged walls were coming down. The Applicant is not disputing in this case that he did not do that, but the DCRA inspector Cluff and other inspectors visited the site often, and the Applicant did not think that such removal was a material item, since it was only a hidden structural wall, and it definitely did not know that such removal would impact the legality of the unrelated front porch room.

⁶ See Foxhall Citizens on page 762, noting that the subject construction creating the hardship must be done "with knowledge of the restrictions from which he [or she] seeks relief." Again, this only relates to *use* restrictions, not *area* restrictions, so the point does not apply in this case anyway.

the close of the hearing, and wished to adhere to the Board's request to submit information to the Board, not directly to the other parties. Therefore, I told Opponent's counsel that I would not be responding to his request, and that I did not think it appropriate for him to directly contact the Applicant's witnesses. At any rate, we have addressed all of Opponent's counsel's questions in this and the previous filing.

G The Late Cluff Report

After multiple inspections and reports from Inspector Cluff noting no violations or stop work orders, and endorsing the continuation of construction, and making no mention whatsoever of the demolition of the covered porch, Inspector Cluff issued a complete reversal in his June 26, report filed *after the stop work order*. See previous inspection results in Exhibit E hereto. In this report, Mr. Cluff wrote a detailed description claiming that he had repeatedly warned Mr. Xenophontos that he should not remove the covered porch or additional walls. Even assuming the credibility of this report – since all four previous inspection reports make no mention at all of these supposed exchanges – this report only strengthens the Applicant's case, for the following reasons: First, Mr. Cluff apparently believes that the violation was the removal and replacement of the covered porch, which he claims the Applicant was not permitted to do. This is not true, of course, as the approved permit plans included the replacement of the front powder room, and allowed for the removal of the covered porch (see plan pages attached as Exhibit A).

Second, the eventual violation, according to the Zoning Administrator's determination letter dated August 1, 2013 (attached hereto as Exhibit F), clearly explains that the reason that the covered porch is no longer legally nonconforming is because of the removal of the walls, and makes not mention at all of the removal and replacement of the covered porch. Mr. Cluff apparently misunderstood the root cause of the stop work order, which is further evidence that the regulations and (unwritten) rules at play here are ambiguous and not completely understood even by DCRA. As such, it would be unfair to have those rules apply so detrimentally to the Applicant in this case.

Third, from the June 26 notes, Mr. Cluff is unaware of some of the basic facts in this case. For instance, the Opponent highlights a quote from Mr. Cluff's report that reads "No permits were obtained for removing the front covered porch." This statement is just not true, as the Applicant did indeed obtain approval for removal of the covered porch replacement with the original building permit, as noted above and shown in the plan pages in Exhibit A hereto.

Finally, it doesn't make sense that Mr. Cluff would mention all of these comments only after the Stop Work Order was issued, rather than in his earlier real-time official reports. If what Mr. Cluff claimed to be warning Mr. Xenophontos about was material, then he would have – or should have – issued a stop work order months earlier. Instead, Mr. Cluff, and Mr. Rohan Reid of the Zoning Division, as noted in the record, continued to endorse the continued construction all the way up until the Zoning Administrator decided in late June to issue the Stop Work Order.

H The Opponent's Photos

The Opponent has submitted a series of photographs presumably in response to the Applicant's sun studies. None of the photos appear relevant to the issue of a decrease in light and air coming through the area underneath the covered porch roof. Some photos misrepresent the time of day. And other photos actually

buttress the Applicant's argument that the front porch structure has little or no impact on the light and air to the Bakers' property Attached hereto as Exhibit G is a frame by frame response to the subject photos

Also included in the Opponent's photos is the Opponent's attempt to support its claim that the new front porch structure has a "significantly higher roof" This is another misrepresentation by the Opponent without any basis in fact The current structure is lower in height than the previous structure. The Applicant addresses this particular misrepresentation in the attached Exhibit H

I Other Misleading Information

Perhaps the most egregious of the Opponent's misleading assertions is in paragraph 13 of its findings of fact and conclusions of law The Opponent's counsel states that on August 8, Mr Cluff visited the site and "made the following notes "

"Illegal construction w/out permit doing HVAC work - new dry wall & insulation & electrical work"

The Opponent filed a copy of the DCRA report corresponding to this statement, which is provided in very small print - almost impossible to read (his Exhibit 8) What the Opponent fails to note is that the above quoted statement is actually the text of the Opponent's original complaint to DCRA, not "notes" made by the DCRA inspector! So in an attempt to paint the Applicant as less than honest, the Opponent completely mischaracterizes comments made by the Opponent, projecting them onto DCRA

Opponent's counsel also fails to admit that by July 10, 2013, the Applicant had received permission from the Zoning Administrator to weatherize the main portion of the house, and later in August received permission to complete the entire house, but for the front powder room The Applicant has repeated this fact numerous times in several forums, and still has to defend against the Opponent's accusation; an accusation which is not supported by any notice, citation, or any other evidence that the Applicant actually violated any Stop Work Order Yet, even with this knowledge, the Opponent's counsel continues to make the assertion, calling it "another example of the Applicant's disregard for DCRA's rules and his proclivity to exceed the scope of what is permitted until caught violating the Zoning Regulations and explicit directions of staff."

In complete contradiction to the statement above, while the Stop Work Order was in full effect in early July, 2013, the Applicant suffered significant water intrusion into the unfinished house while it took DCRA a full week (from July 3 to July 10) to respond to the Applicant's desperate pleas for permission to weatherize the unfinished house (see e-mail attached as Exhibit I) If Mr Xenophontos was so flippant about following the stop work order, as the Opponent claims, why would the Applicant watch his own home suffer significant water damage rather than disregard DCRA's stop work order?

On that same exhibit page of the Opponent's (Exhibit 8), the Opponent extends the misrepresentation further, including another report from Mr Cluff, this one dated October 17, 2013 This report also includes the language of the citizen complaint regarding "illegal construction ." But in this case, the Applicant had once again received permission from the Zoning Administrator -- this time to weatherize the front room structure -- pursuant to the October 10th ZA letter (a copy of which was actually submitted by the Opponent on January 8, 2014) Again, why would the Opponent include this other report -- which actually notes the

Applicant's compliance in almost unreadable print – when the Opponent knows that the Zoning Administrator had granted the Applicant permission to do this work?

So the Applicant has never violated a Stop Work Order, has never been cited as violating the Stop Work Order, and has never received a notice or warning about violating the Stop Work Order. Yet the Opponent continues the relentless false attack against the Applicant. Perhaps this more than anything illustrates that the Opponent has no relevant information to rebut the Applicant's case, so it instead attempts to distract the Board and smear the Applicant. Attached as Exhibit J is an e-mail exchange between the Applicant's representative, K C Price, and Kathleen Beeton, the Deputy Zoning Administrator, which more accurately characterizes the efforts of the Applicant to comply with the applicable law.

The bottom line, of course, is that none of the information surrounding the stop work order is relevant to the BZA proceeding. The Applicant nevertheless feels compelled to defend its character against the onslaught of false accusations.

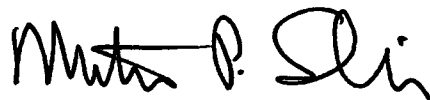
J No Motive

Property owners often go to great lengths, for zoning purposes, to keep a project categorized as an addition rather than new construction. Most often it is to avoid a parking requirement or to allow an apartment conversion in the R-4 zone. The Applicant in this case had no "zoning" purpose for avoiding categorization as new construction. In fact, if he had razed the entire building, the Applicant could have created a much larger basement than he has now (since the current basement footprint matches the original basement footprint) and he could have easily maximized the available gross floor area without building the front room. The Applicant assumed (mistakenly as it turns out) that retaining the original foundation, utilities, and as much of the original structural walls as possible, would make for a more timely and affordable construction process. Furthermore, if retaining the footprint of the legally nonconforming front porch was so critical, the Applicant would not have removed almost 30% of that footprint.

K Conclusion

The Applicant has satisfied all three prongs of the variance test with clear and convincing evidence, and the Opponent has provided no meaningful rebuttal to such evidence. For the Applicant to have to remove this front room, which was constructed in good faith, would be a catastrophic consequence for the Applicants, who are 18-year residents of the subject Property. The Applicant therefore requests that the Board grant the requested relief and allow the front room structure to remain.

Sincerely,



Martin P. Sullivan

enclosures

LIST OF EXHIBITS

- | | |
|-----------|---|
| Exhibit A | Permit Plan Pages Showing Conversion of Nonconforming Covered Porch |
| Exhibit B | Letter from Frank Chow, Engineer |
| Exhibit C | Letter from Robert Neubauer, Engineer |
| Exhibit D | Illustration of Bottom Plate/Sill Plate Issue |
| Exhibit E | Mr Cluff's Inspection Results |
| Exhibit F | ZA Letter Explaining the Stop Work Order |
| Exhibit G | Applicant's Response to Photographs |
| Exhibit H | Response to the Opponent's Misrepresentation of the Heights |
| Exhibit I | E-mail Exchange Granting Permission to Weatherize A Week After the Request |
| Exhibit J | E-mail Exchange Providing a Synopsis of Permit Process Prior to the Stop Work Order |

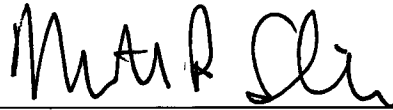
CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2014, a copy of the Applicant's Post-Hearing Submission was served by first-class mail to the following

Stephen Gyor
District of Columbia Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024

Penny Pagano
Chair, Advisory Neighborhood Commission (ANC) 3D
PO Box 40486
Palisades Station
Washington, D C 20016

Ed Donohue, Esq
Donohue & Stearns,
117 Oronoco Street
Alexandria, VA 22314

A handwritten signature in black ink, appearing to read "Martin P. Sullivan", is written over a horizontal line.

Martin P Sullivan

EXHIBIT A

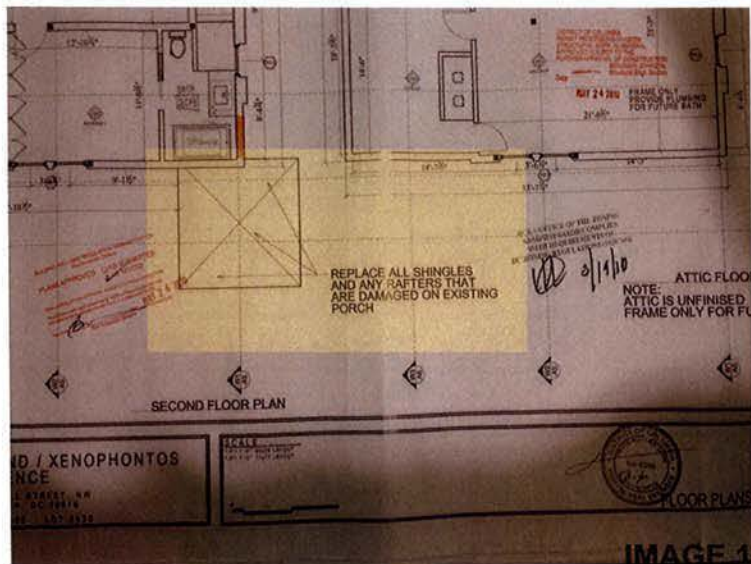


IMAGE 1

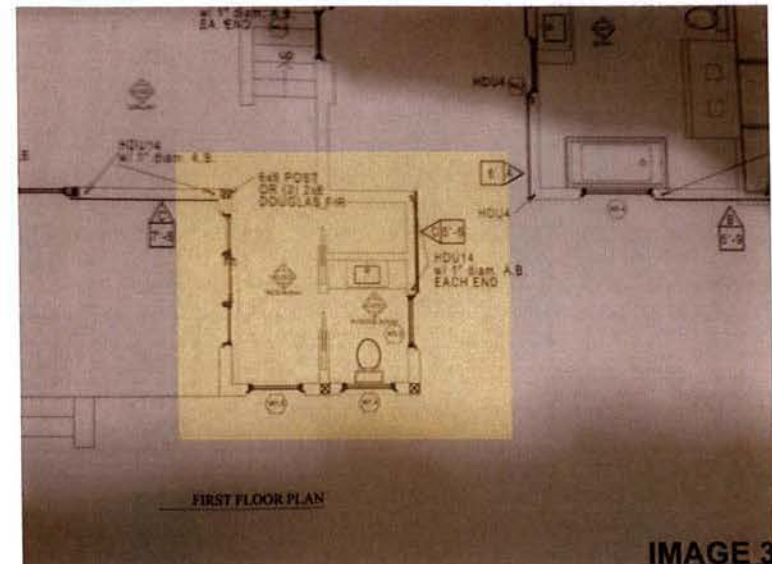


IMAGE 3

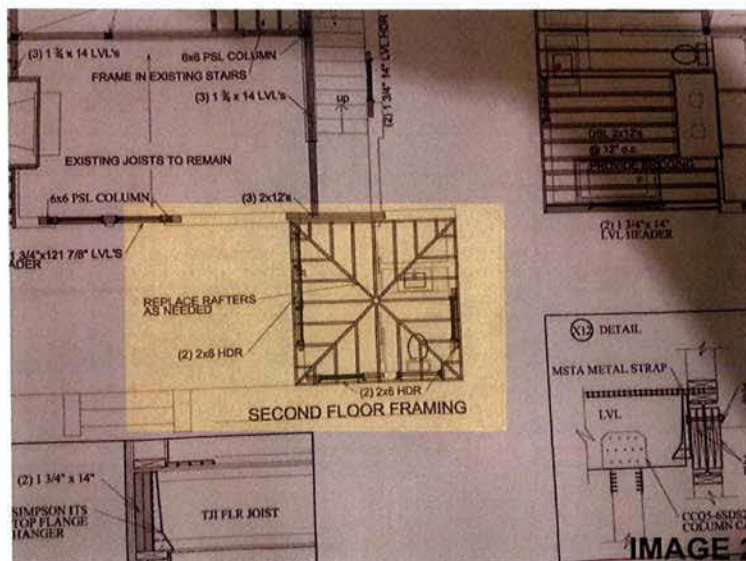


IMAGE 2

IMAGE 1 -
FROM ORIGINAL BUILDING PERMIT SET - INDICATION THAT SHINGLES AND DAMAGED RAFTERS WILL BE REPLACED. SIGNED AND STAMPED BY DCRA ZONING AND DCRA STRUCTURAL.

IMAGE 2 -
FROM ORIGINAL BUILDING PERMIT SET - INDICATION THAT REPLACEMENT OF RAFTERS AS NEEDED.

IMAGE 3 -
FROM ORIGINAL BUILDING PERMIT SET - SHEAR WALL DETAIL SHOWING NEW POST REQUIRED AND SHEAR WALLS REQUIRED FOR STRUCTURAL INTEGRITY OF ENCLOSED PORCH

EXHIBIT B

Frank H. Chow

10808 Rock Run Drive, Potomac, MD 20854

January 16, 2014

D.C. Board of Zoning Adjustment
441 4th Street, NW Room 200 South
Washington, D.C. 20001

RE: BZA Application No. 18659

Chairman Jordan and Members of the Board:

My name is Frank H. Chow and I am the original structural engineer who prepared all structural drawings for 4540 Lowell Street, NW, Washington DC, which were submitted to DCRA for permitting in May, 2010. My DC professional license is 8249, and even though I retained my license I officially retired in October 2010.

I understand that Mr. Xenophontos's and Ms. Goirand's neighbors have argued in public filings that the "only" possible reason that Mr. Robert Neubauer is now the structural engineer of record is because I would not opine on the condition of the original structural walls as Mr. Neubauer did. But the actual reason why I did not write such a determination is because I retired three years ago and was ably replaced by Mr. Neubauer on this project.

Nevertheless, I *have* now had the opportunity to review Mr. Neubauer's letters of May 9, 2013, November 14, 2013, and January 3, 2014 along with the photographs by which Mr. Neubauer made his determination that the subject walls required complete removal. Based on my review of those photographs, I agree completely with the determination made by Mr. Neubauer that (i) the photographs shown represent relevant portions of the west wall of the original structure, (ii) the structural walls on the west side of the structure were damaged to the point where keeping these walls would damage the integrity of the new construction, and (iii) the photographs provide ample information for me to provide such an opinion.

I hope you find this information helpful. If you need any further assistance I can be reached at (301) 814-1707

Sincerely,


Frank H. Chow, P.E.

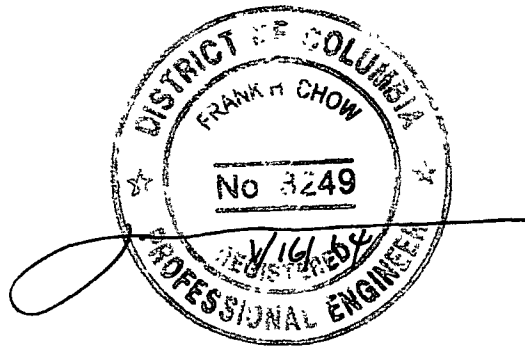


EXHIBIT C

NEUBAUER CONSULTING ENGINEERS, P.A.

**4701 SANGAMORE ROAD, SUITE N290, BETHESDA, MD 20816
(301) 263-2727 FAX (301) 263-1039**

January 20, 2014

Via E-mail Delivery

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: Engineer's Report in BZA Application
No.18659; Response to January 8, 2014
Submission by the Bakers

Dear Mr. Chairman and Board:

I have been requested to write a brief response to some of the information provided by the opposing party in the above-referenced BZA case. The attorney for the opposing party has made some possible misrepresentations and misleading comments regarding my review of the portions of damaged west wall at 4540 Lowell Street, NW.

First, I was not the original engineer for this project. I replaced the previous engineer, Mr. Frank Chow, not for any nefarious reasons as implied by the opposing party's attorney, but because Mr. Chow had retired.

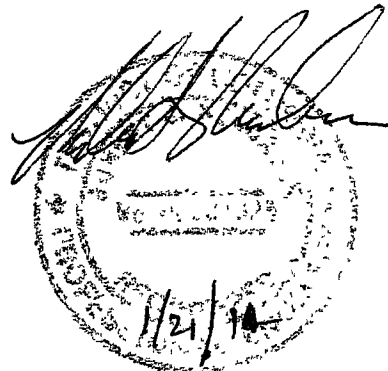
Second, it is not uncommon practice for an engineer to make determinations and provide opinions based on photographic evidence.

Third, the opposing party's attorney confuses a sill plate with a bottom plate. I had previously mis-identified the bottom plate of the stud wall in my original report as being the "sill plate". The sill plate in the photos he submitted appears intact, but the bottom plate of the wall was not, and it is this plate that was damaged and could not support the walls.

Sincerely,

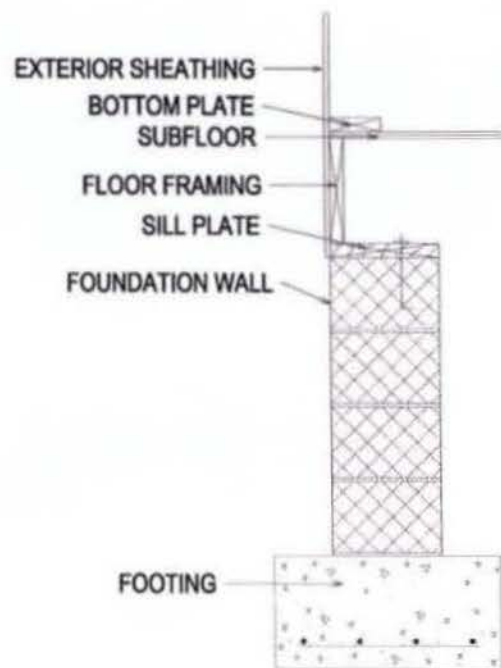


Robert Neubauer, P.E.



File: reside14/4540 Lowell St.5

EXHIBIT D



TYPICAL WALL SECTION

IN THE PHOTOGRAPH TO THE RIGHT SUBMITTED BY THE OPPONENT, THE OPPONENT HAS CONFUSED THE SILL PLATE FOR THE BOTTOM PLATE.

THE SILL PLATE WAS RETAINED - AS SHOWN IN THE PHOTOGRAPH. THE SILL PLATE IS A PRESSURE TREATED ITEM THAT IS BOLTED TO THE FOUNDATION WALL.

THE BOTTOM PLATE - THE ITEM REMOVED - IS LOCATED ON TOP OF THE SUBFLOOR, NOT PRESSURE TREATED, AND IF EXPOSED TO MOISTURE WILL ROT AND DETERIORATE WHICH WOULD REQUIRE REPLACEMENT OF THE ENTIRE WALL THAT IT SUPPORTS.

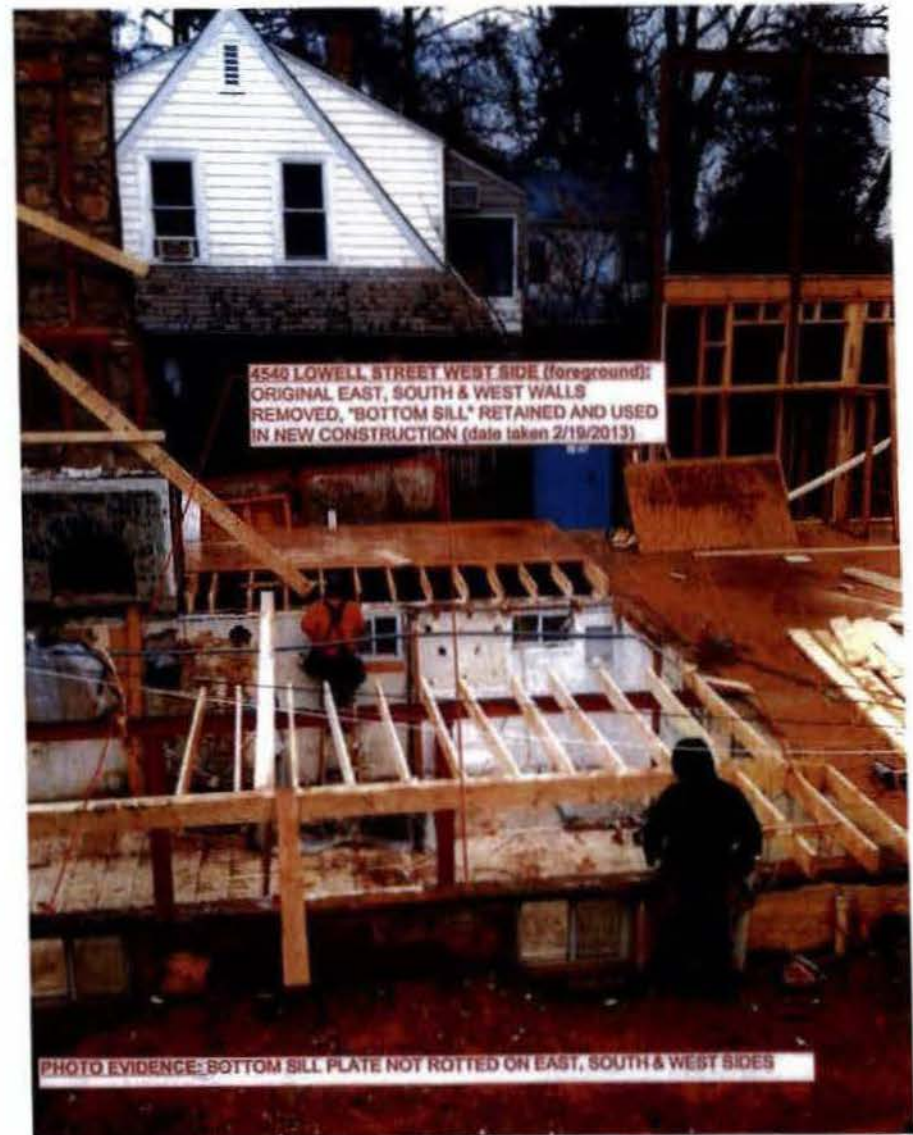


EXHIBIT E

First Inspection

- On February 27, in response to complaints from the neighbor to the west, DCRA's illegal construction inspector, Robert Cluff, visited the property for a comprehensive review for compliance.
- His conclusion: **"Owner/architect for the construction work at the above address, will revise current drawings and permits to reflect actual conditions. Also, he'll obtain a permit for the temporary structure built in the rear yard."**
- No violations were cited and work continued.

Second Inspection – 3.12.13

- On March 12, 2013, a second inspection by Mr. Cluff.
- Conclusion:

“As stated on my previous inspection, all current work is proceeding, per the approved set of drawings. The owner has applied and received a new Building Permit, and is obtaining a new permit for the storage shed.”

Third Inspection – 3.14.13

- On March 14, 2013, a third inspection by Mr. Cluff
- Request Comment:
To reassure permits and drawings have been submitted and obtained.
- Conclusion:

“Owner has obtained all current construction permits.”

Fourth Inspection

- On April 24, 2013, Mr. Cluff visits for a fourth time at the behest of the neighbors.
- Conclusion: He yet again finds no violations and notes in his report:

All photos have been turned over to Rohan Reid, in DCRA Zoning, for disposition. Rohan is setting up a meeting with the property owner.

EXHIBIT F

EXHIBIT # H2

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.**'

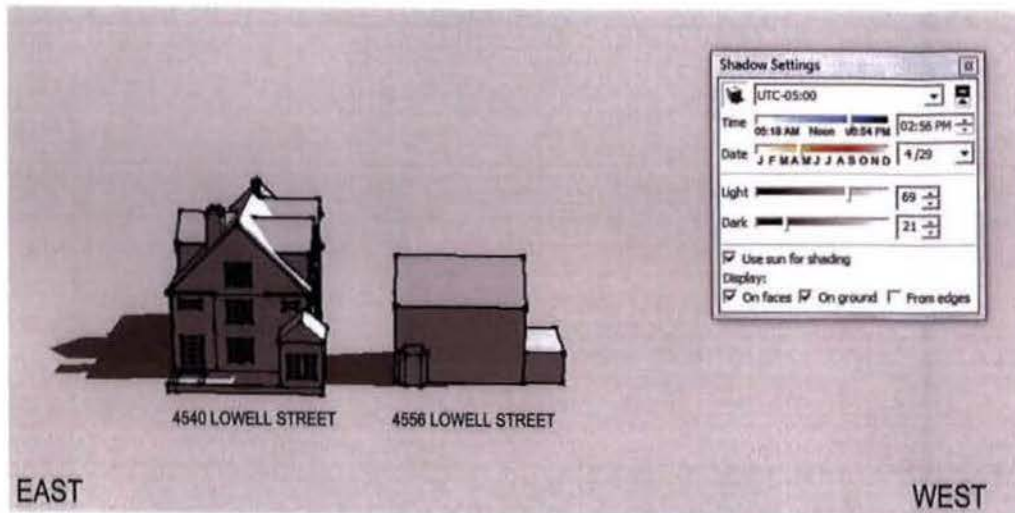
Please feel free to contact at 202-442-4576 if there are additional zoning inquiries.

Best regards,

Matthew Le Grant
Zoning Administrator

H2

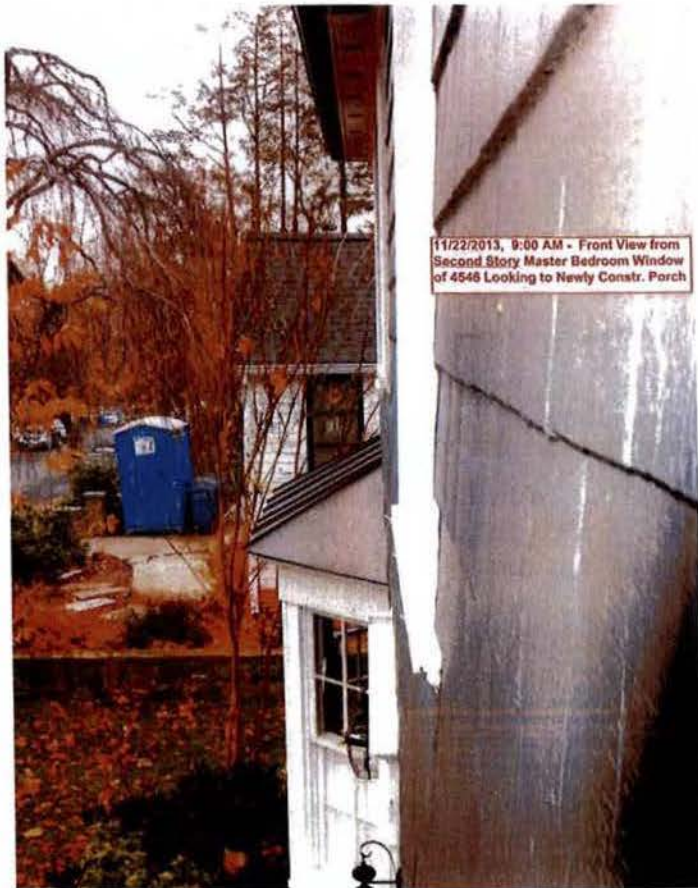
EXHIBIT G



It is not clear what the Opponents are trying to show with these two photographs, but on April 29th at 2:56 & 2:57 PM, the Applicant's house casts no shadow on the Opponent's house, nor is any sunlight coming through the open porch toward the Opponent's house. In fact, the Opponent's house is casting a shadow toward the Applicant's house, since at this time of day on April 29, the sun is already to the west of the Opponent's house.

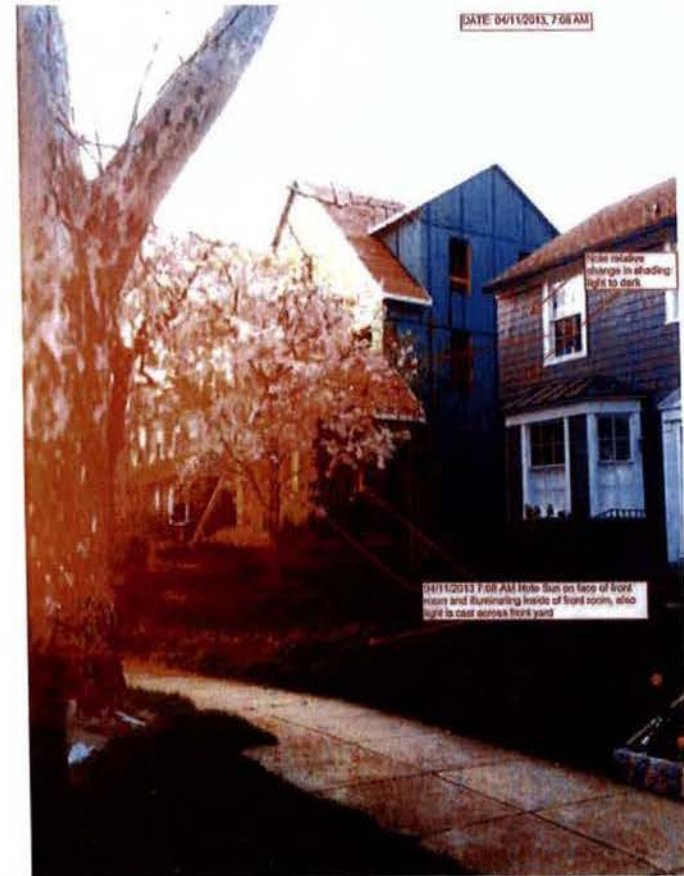
These pictures are useful, however, in showing the extensive amount of foliage and tree canopy present.





10

As in many of the photos, We do not know what the Opponent is trying to illustrate with this photograph. It provides no evidence that closing in the Applicant's porch materially impacted light and air to the Opponent's property. This photograph does, however, help to illustrate the significant amount of foliage and tree canopy already impacting light and air in the area of the Applicant's porch – even in late November!



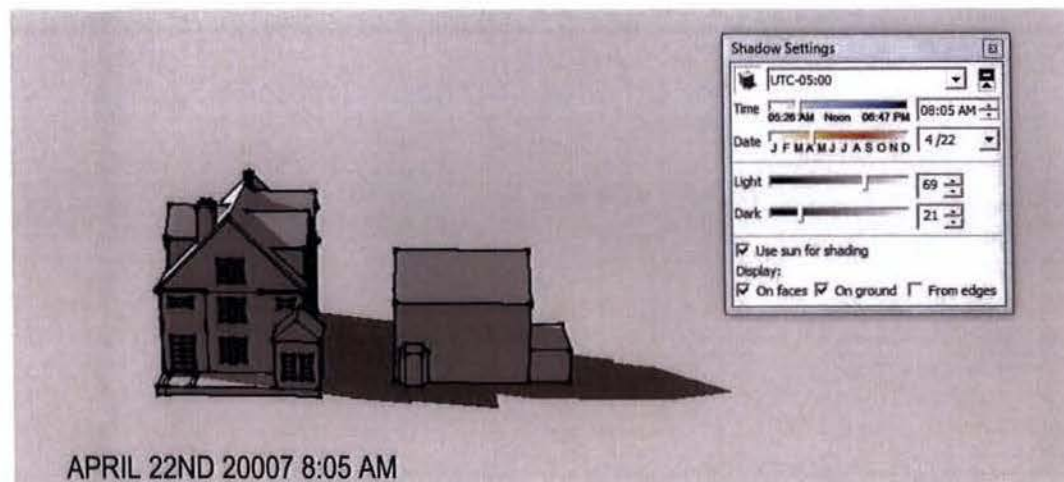
11

We do not know what the Opponent is trying to illustrate with this photograph. It provides no evidence that closing in the Applicant's porch materially impacted light and air to the Opponent's property. The photograph appears over-exposed, rather than representative of sunlight.

04/22/2007, 8:05 AM - Front View of 4546 & 4540 Showing Direct Sun to Bay Window



4

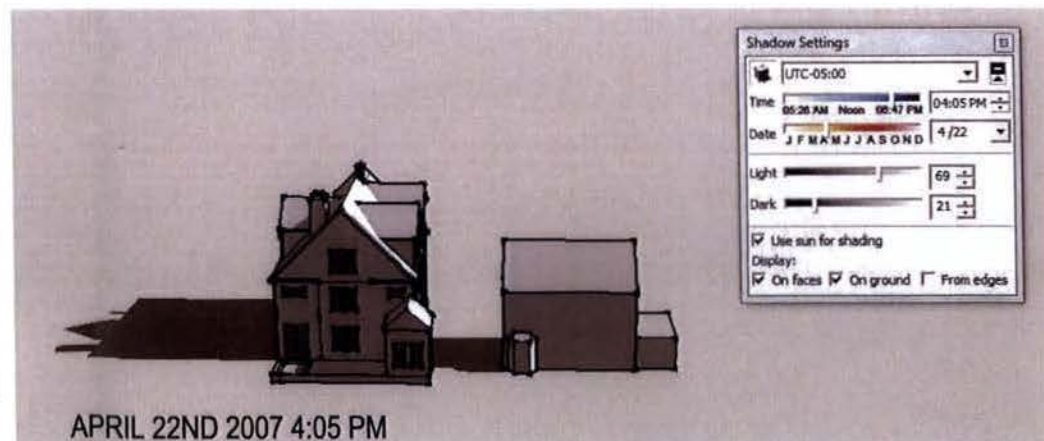


APRIL 22ND 2007 8:05 AM

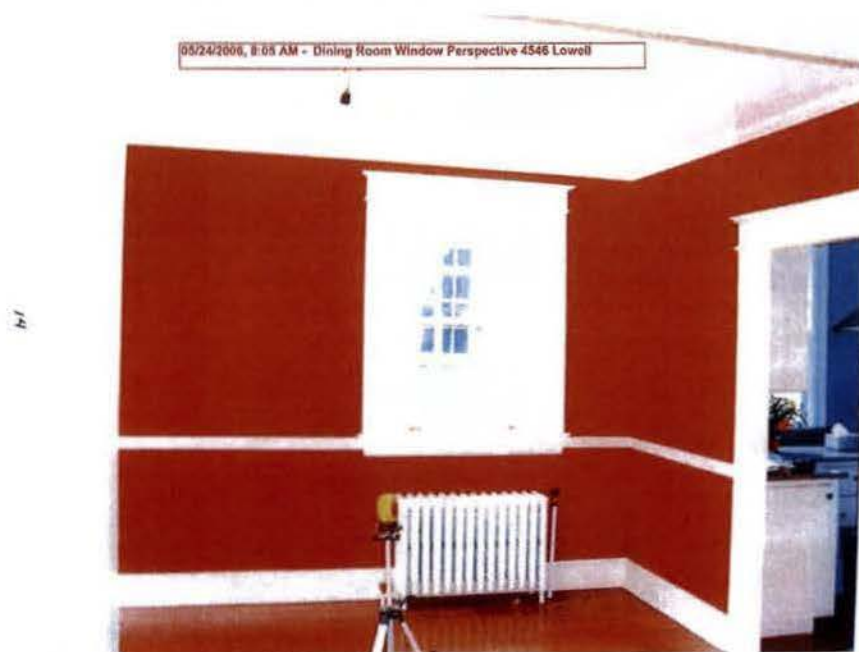
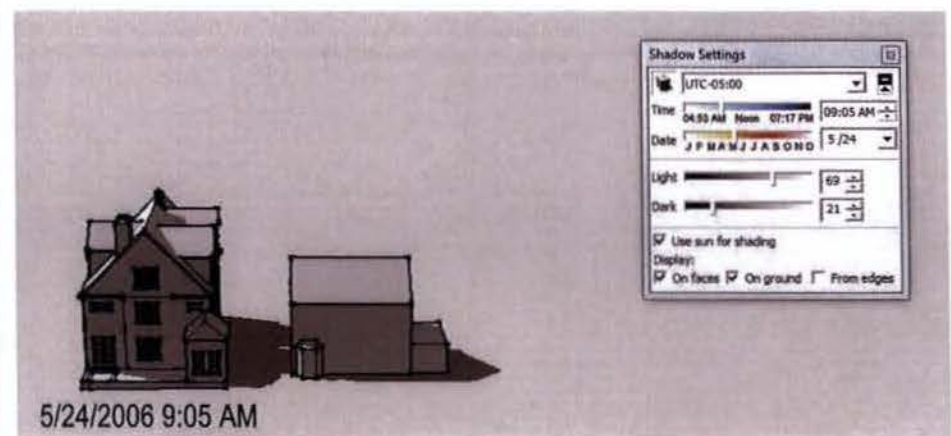
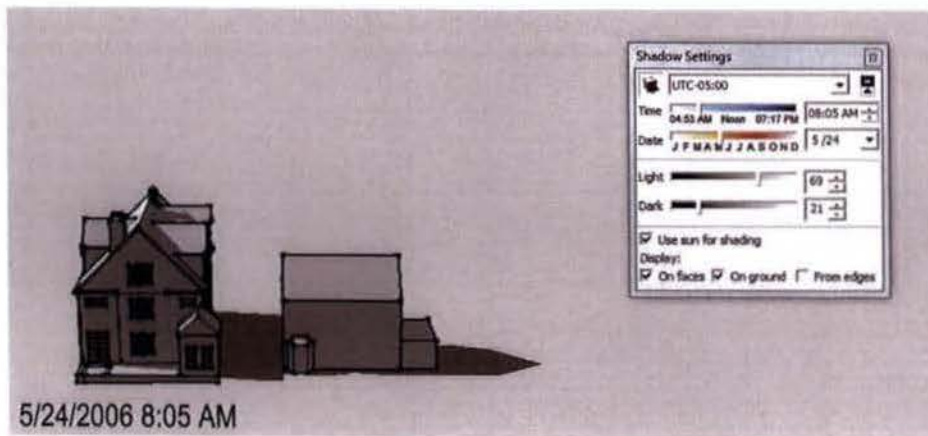
The time indicated on photo #4 is false. The picture clearly shows late afternoon sun and shadows across the front of the structure as well as the shadow cast upon 4540 Lowell Street by 4546 Lowell Street.

This picture clearly shows a time frame of around 4:00 pm.

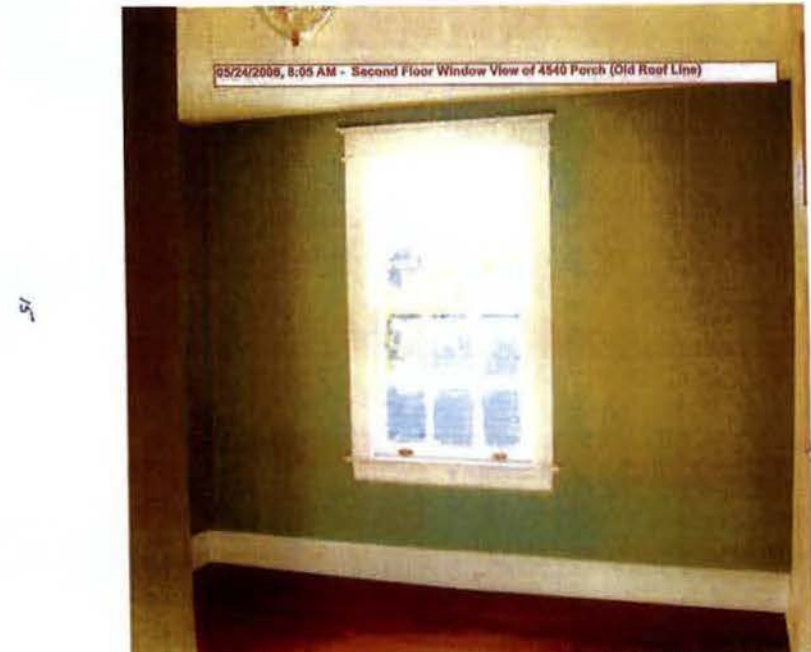
Please note the direct sunlight illuminating the west side of both the Opponent's bay window and the Applicant's roof.



APRIL 22ND 2007 4:05 PM



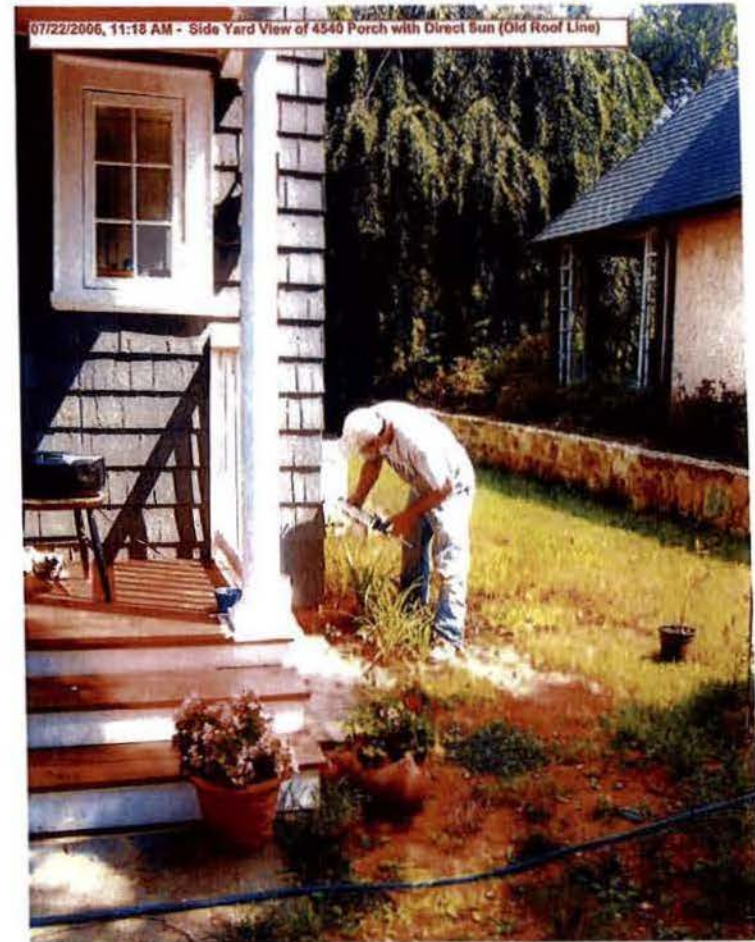
We do not know what the Opponent is trying to illustrate with this photograph. It provides no evidence that closing in the Applicant's porch materially impacted light and air to the Opponent's property.



We do not know what the Opponent is trying to illustrate with this photograph. It provides no evidence that closing in the Applicant's porch materially impacted light and air to the Opponent's property.



We do not know what the Opponent is attempting to illustrate from this photograph. It provides no evidence that closing in the Applicant's porch materially impacted light and air to the Opponent's property.

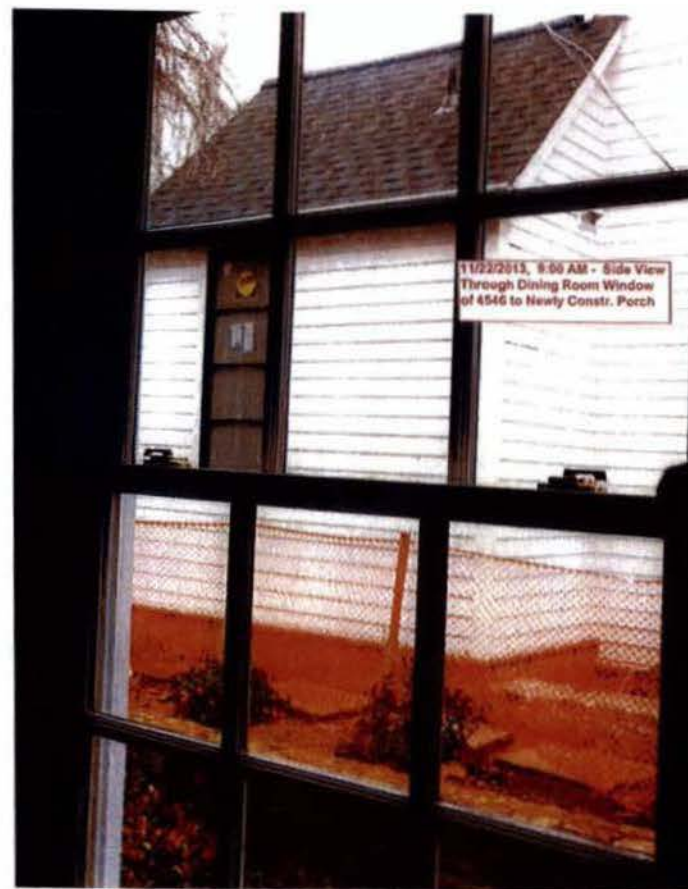


The direct sun that the Opponent references in this picture is coming from almost directly above the property (it is almost noon), and not coming through the open porch. This photograph is very helpful in showing the distance between the porch and the Opponent's house, as well as the extensive tree canopy in this area.



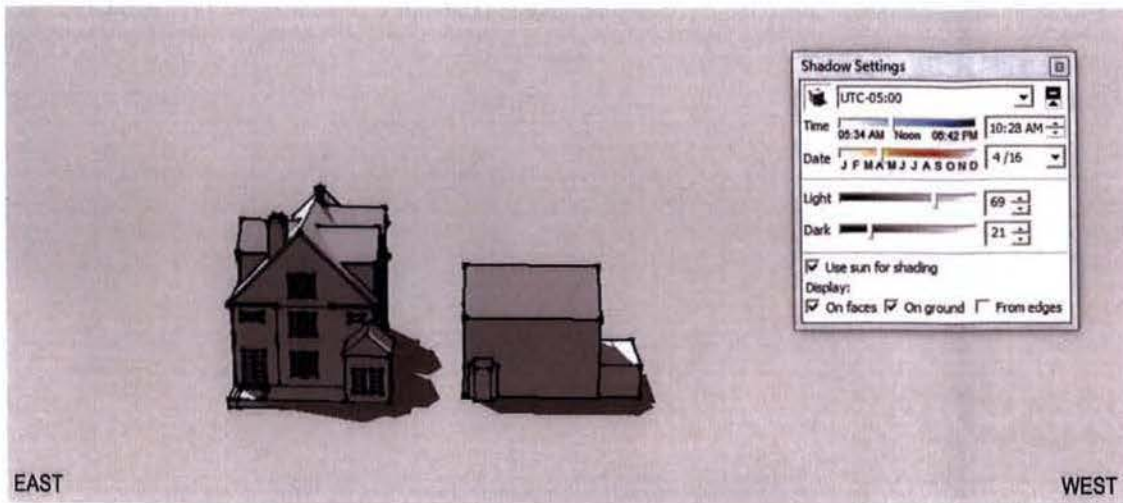
7

We do not know what the Opponent is trying to illustrate with this photograph. It provides no evidence that closing in the Applicant's porch materially impacted light and air to the Opponent's property.



8

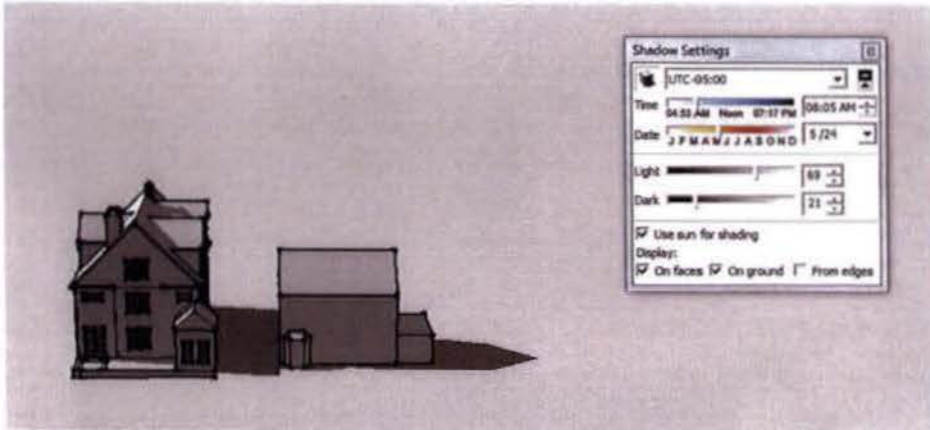
We do not know what the Opponent is trying to illustrate with this photograph. It provides no evidence that closing in the Applicant's porch materially impacted light and air to the Opponent's property. This photograph is, however, useful in showing the area of the pre-existing, legally nonconforming porch which was removed as part of this project (on the right side of the photo).



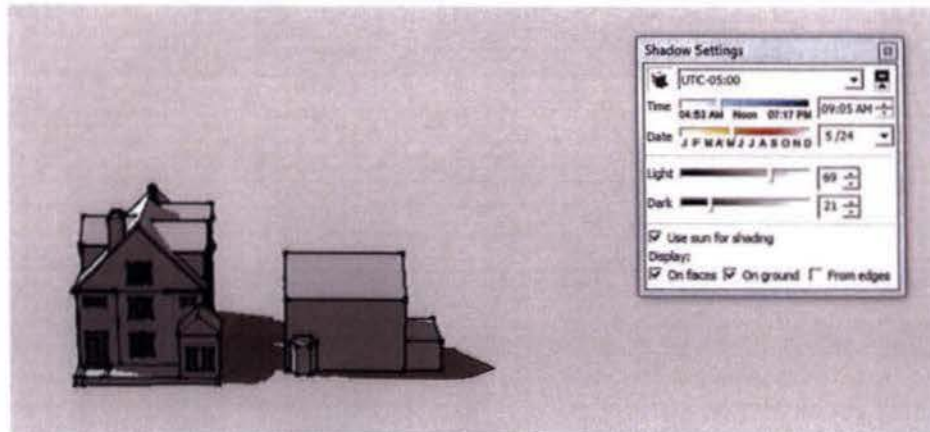
The Applicant presumes that the Opponents have included this photograph to show that their bay window received sunlight prior to the Applicant closing in the legally nonconforming porch. The Applicant does not dispute this claim, but the correlating sun study page shows clearly that the front porch had absolutely no impact on this sunlight. The sunlight reached the bay window in April, 2008 at 10:28 am, and it will still reach the bay window on April 16, 2014 at 10:28 a.m. (and earlier).



We do not know what the Opponent is trying to illustrate with this photograph. It provides no evidence that closing in the Applicant's porch materially impacted light and air to the Opponent's property.



5/24/2006 8:05am - The main structure casts a shadow over the legally nonconforming porch which would not have impact onto the Opponent's bay window.



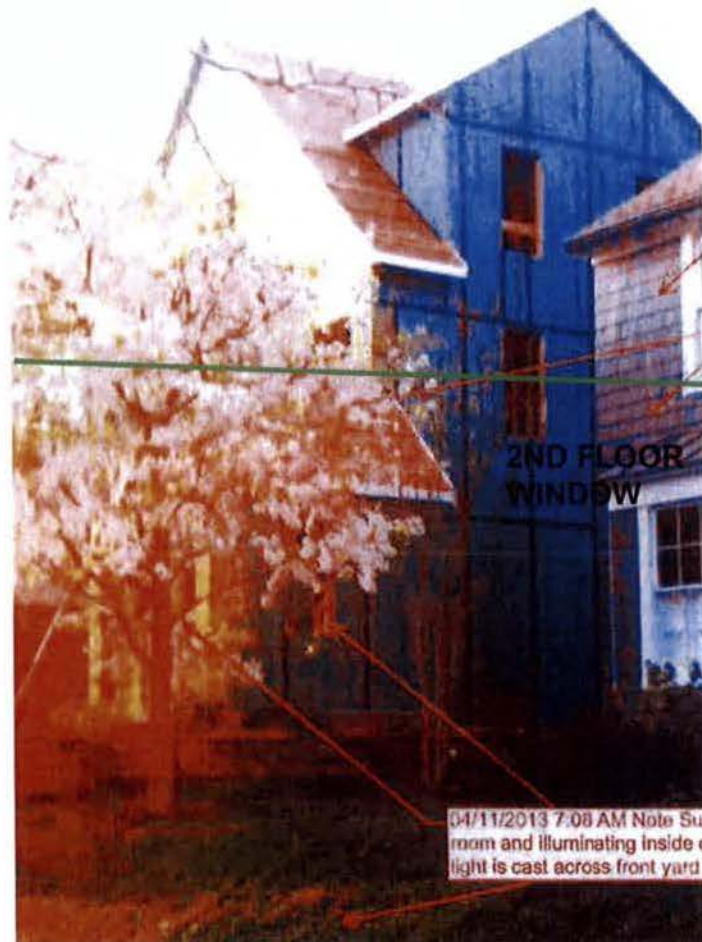
5/24/2006 - 9:05am - The above sun study shows that direct light would enter through the east bay window of the Opponents - very much like that of the provided picture #13. The picture looks to be closer to this time than 8:05 am.



We do not know what the Opponent is trying to illustrate with this photograph. It provides no evidence that closing in the Applicant's porch materially impacted light and air to the Opponent's property.

EXHIBIT H

EXISTING ROOF IS AT 3/4 OF 2ND FLOOR WINDOW,



NEW ROOF LINE IS AT 1/4 OF 2ND FLOOR WINDOW



- OLD ROOF LINE
- NEW ROOF LINE
- BAKERS ASSUMED ROOF LINE (NOT ACCURATE)

THE BAKERS' ARE INDICATING THAT THE EXISTING ROOF LINE IS AT THE BOTTOM OF THE 2ND FLOOR WINDOW - WHEN IN ACTUALITY THE EXISTING ROOF LINE IS SHOWN AT CENTER OF THE 2ND FLOOR FRAMED WINDOW. WE HAVE LOWERED THE EXISTING ROOF LINE AS SEEN IN THEIR PHOTO SHOWING THE NEW ROOF.

EXHIBIT I

91

Andreas Xenophontos

From: Reid, Rohan (DCRA) <rohan.reid@dc.gov>
Sent: Wednesday, July 10, 2013 12:00 PM
To: Artel Incorporated
Cc: Gamboa, Ferdinand (DCRA); LeGrant, Matt (DCRA)
Subject: RE: 4540 Lowell Street

Good morning Mr. Xenophontos,

Thank you for informing me that you are in receipt of the revocation notice from DCRA. We understand that you are upset; however, the determination to revoke the building permit was made based on noncompliance with the zoning regulations as detailed in the revocation notice. The letter also provides steps for curing the violation.

The Zoning Administrator has agreed to allow the waterproofing work that is necessary to secure the property as you described in your July 3, 2013 email to me. In addition, I spoke with Mr. Gamboa this morning and he was able to confirm with Inspector Fones that this work is necessary to secure the structural integrity of the building. **No additional work is permitted until the violations have been cured.** I have copied Mr. Gamboa and Mr. Le Grant on this email for their reference.

Regards,

Rohan Reid

Program Analyst | Office of the Zoning Administrator
Department of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th Street, SW, Suite E340 | Washington, DC 20024
(202) 442-4648 (p) | (202) 442-4863 (f) | rohan.reid@dc.gov | www.dcr.dc.gov



From: Artel Incorporated [mailto:andreas@artelincorporated.com]
Sent: Wednesday, July 10, 2013 11:06 AM
To: Reid, Rohan (DCRA)
Cc: Andreas Xenophontos
Subject: Re: 4540 Lowell Street

Dear Mr. Reid,

Yesterday I received a notice to revoke my building permit from Mr. Sabbakhan which I never expected and as you understand it's very upsetting to both my wife and my self. We are at total lose and we are not sure of what to do next. I have left several messages to Mr. Gamboa but I never heart from him. In the mean time the structure it's getting more and more damaged every time it rains and as you understand because of this stop work order I can't do anything about it.

Please be kind to advice me as to what to do.

Best,

91

EXHIBIT J



KC Price <kcdprice@gmail.com>

4540 Lowell Street, NW

Beeton, Kathleen A. (DCRA) <kathleen.beeton@dc.gov>

Mon, Jun 24, 2013 at 10 41 PM

To: KC Price <kcdprice@gmail.com>

Cc: "Gamboa, Ferdinand (DCRA)" <ferdinand.gamboa@dc.gov>, Andreas Xenophontos <andreas@artelincorporated.com>, "LeGrant, Matt (DCRA)" <matthew.legrant@dc.gov>

Thank you, KC, for your email. I appreciate your thorough discussion of the recent activity at the subject property and your concern about trying to resolve the issue(s) and secure the structure before you travel out of the country before week's end. I see that you have copied Mr. Le Grant on your email and I have also sent him an email asking him to review the case. I will be out of the office tomorrow for training, and will be back in on Wednesday. If you think of anything further to add, please go ahead and email all of the folks copied on this email.

Thank you again for contacting our office.

Best regards,

Kathleen

Kathleen A. Beeton, AICP
Deputy Zoning Administrator
Department of Consumer and Regulatory Affairs, Office of Zoning Administrator
1100 4th Street, SW, Suite E340
Washington, District of Columbia 20024
Office: 202.442.4559
Fax: 202.442.4871
Email: kathleen.beeton@dc.gov

OneCityYouth.DC.gov is your new, one-stop source for summer activities for District youth. Head to the site today for programs & services for young people across the District!

From: KC Price [mailto:kcdprice@gmail.com]

Sent: Monday, June 24, 2013 10:16 PM

To: Beeton, Kathleen A. (DCRA); LeGrant, Matt (DCRA); Gamboa, Ferdinand (DCRA); Andreas Xenophontos

Subject: 4540 Lowell Street, NW



KC Price <kcdprice@gmail.com>

4540 Lowell Street, NW

KC Price <kcdprice@gmail.com>

Mon, Jun 24, 2013 at 10 16 PM

To "Beeton, Kathleen A (DCRA)" <kathleen.beeton@dc.gov>, "LeGrant, Matt (DCRA)" <matthew.legrant@dc.gov>, ferdinand.gamboa@dc.gov, Andreas Xenophontos <andreas@artelincorporated.com>

Good Evening Kathleen,

Thank you again for your time today in regards to 4540 Lowell Street, NW -

I would like to start in saying that 4540 Lowell Street, NW is ready for close-in inspection in all disciplines and we were assured by Mr. Reid and Mr. Cluff on our 1st meeting that we should continue with the construction. We are now 2 months past this time without notification of the "hold" placed on June 12th, 2013 and are now matriculating expenses daily – Mr. Xenophontos
Both Mr. Xenophontos and myself will be traveling at the end of the week and request that this issue be resolved no later than Friday June 28th, 2013.

After speaking with you today over the phone while at DCRA Mr. Xenophontos and I met with Mr. Gamboa to ascertain when the inspection officer - Mr. Cluff – made reference to the structure being razed during his 3 inspections: There was not any reference made and compliance was met each time.

Inspection 1: 2-27-2013

No infractions or violations were found and construction was proceeded with. No stop work orders were issued. Compliance was cleared.

Inspection 2: 3-12-2013

Again, no infractions or violations were found and construction was proceeded with. No stop work orders were issued. Compliance was cleared.

Inspection 3: 4-24-2013

Again, no infractions or violations were found and construction continued. It should be noted that all framing as it exists now was viewed by Mr. Cluff and there was no mention on site or in his notes that the building had been razed. Again, compliance was cleared.

No record of infractions or violations exists in the inspectors report as clarified by Mr. Gamboa.

In regards to our meeting with Mr. Reid and Mr. Cluff on April 26th, 2013

We met with both in regards to an FAR issue which we provided our calculations and the original zoning reviewer cleared the FAR issue. We were verbally assured by both Mr. Reid and Mr. Cluff to continue with construction.

We were informed via email of the decision by Mr. Reid on May 10th, 2013. This is the 1st time that we notified that there was to be a 2nd Stage of re-examination regarding the existing structure and whether the structure has been razed. Mr. Reid referenced Permit #B130446 that was issued to replace existing damaged structural elements. Please see the attached letter from our engineer along with the pictures of the comprised structural members. This was sent Mr. Reid on May 15th, 2013.

On May 21st, 2013 we received Mr. Reid's response questioning further the remaining structure, asking for further pictures, asking if an in person inspection was done along with a report of the structurally

compromised elements and if one was submitted to obtain the prior referenced permit. When we were issued the permit - we presented the original stamped plans to the structural reviewer at the counter – Ms. Banko - She reviewed the original drawings, the revised drawings, and pictures showing the structurally compromised members and cleared structural compliance. It should be noted that we were never asked to provide nor informed at Screening or Plan review that a report should be provided, is required, or is needed in order to obtain the above referenced permit.

Again, we responded further citing and clarifying our engineer’s letter stating what we believed the issue was based on. We are happy to provide further pictures of the existing structure as needed and should be noted that all utilities are still in place. This property was not razed.

On June 13th we received Mr. Reid's email stating that we would receive a response that he would like to send via US Mail. We are still waiting for this letter to arrive to both myself and Mr. Xenophontos. Today is June 24th, 2013 and Mr. Xenophontos called to request the close-in inspection for all disciplines and was surprised to find out that there is a "hold" that does not allow this to occur. This was placed on June 12th, 2013 and we have not been notified in any form of communication from DCRA in regards to this.

Again, Mr. Xenophontos and I are both leaving at the end of the week. This matter should have and could have been resolved prior if anyone was notified of this hold. We must request that this matter be handled quickly and efficiently.

Please contact me at your earliest convenience to resolve this misunderstanding and should you require further information please do not hesitate in contacting us.

Our numbers are as follows,

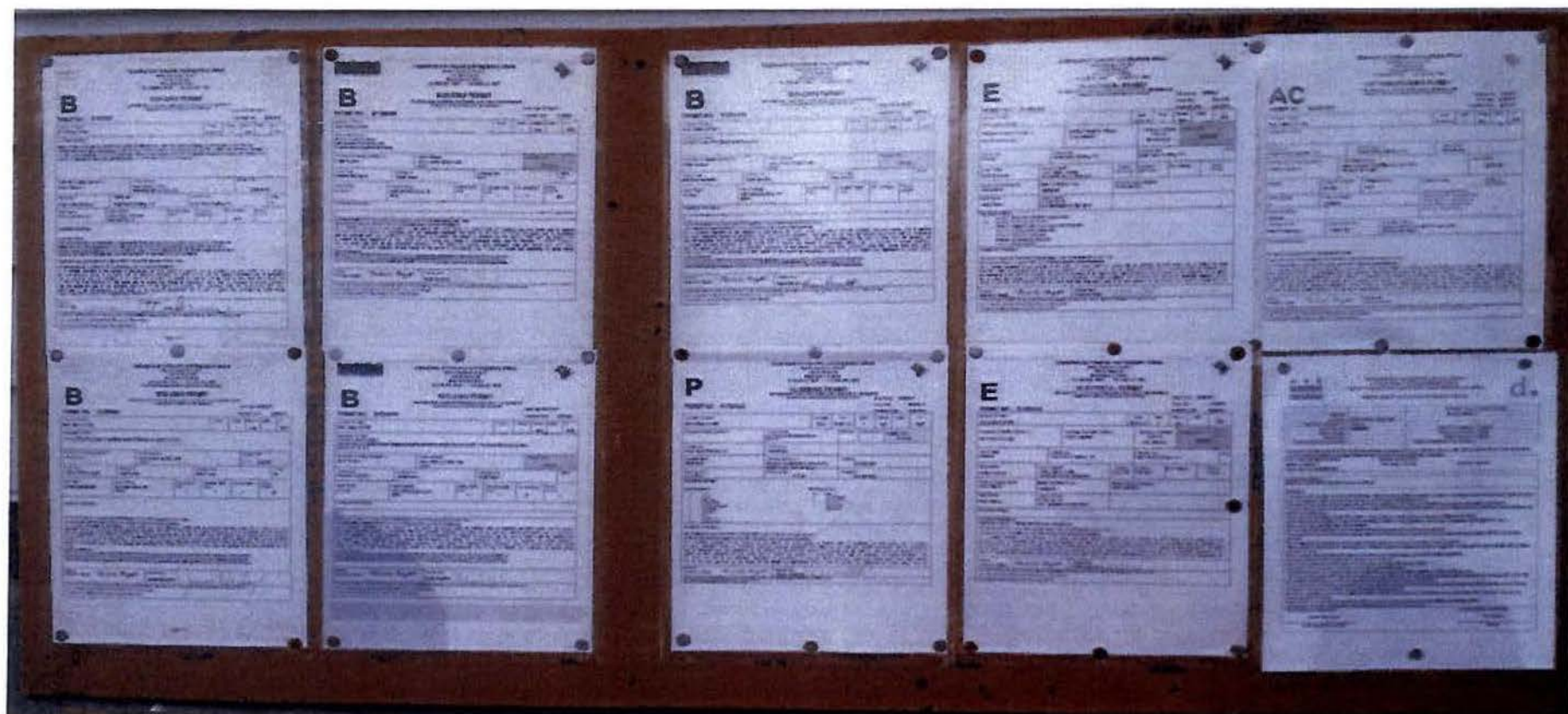
My number is: 912.604.8951

Andreas Xenophontos: 202.246.8838

Thank you again for your time Kathleen,

KC Price

 **4540 Lowell St, NW - Robert Neubauer Engineer.pdf**
427K



DCRA ISSUED PERMITS