BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal of Robert Lehrman, from decision of Zoning Administrator Allowing Building Permit Causing the Illegal Removal of Trees Protected by The Woodland Normanstone Tree and Slope Overlay District, at the premises 2221 30th Street, N.W. (Square 2198, Lot 6)	) BZA No. 16849

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ROBERT LEHRMAN'S PRE-HEARING STATEMENT AND REQUEST FOR A STAY

INTRODUCTION AND OVERVIEW

This pre-hearing statement and request for a stay is filed by Mr. Robert Lehrman in support of his appeal of the determination by the D.C. Zoning Administrator, issued on October 10, 2001, as amplified by the letter from Mr. Gregory Love dated December 10, 2001. These determinations concluded that Mr. Melvyn Estrin ("the owner") was entitled to a building permit to raze and re-construct a dwelling on the above-referenced lot within the Woodland Normanstone Overlay District, without regard to the fact that two old growth trees on the property were unnecessarily destroyed as a direct result of the owner's willful refusal to protect old growth trees located within the zone of construction, in violation of 11 DCMR §§ 1511-1515. Mr. Lehrman has appealed the Zoning Administrator's failure to enforce the tree removal restrictions imposed by the zoning regulations on such tree and slope protection districts, and herewith request this Board to immediately issue a stay of the building permit pending the outcome of this appeal in order to preserve this Board's ability to meaningfully enforce these tree removal restrictions and protect the remaining old growth tree on the property that continues to be at risk as a result of ongoing construction activities.

BZA
Case No. 16849
Exhibit No. 19

Board of Zoning Adjustment
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CASE NO.16849
EXHIBIT NO.19

This case presents important issues regarding the role of the Zoning Administrator in the administration and enforcement of the Tree and Slope Protection Overlay District, which is designed to preserve and protect mature, old-growth trees in the District of Columbia. The Mayor has recently discussed the importance of expanding the District's tree population as a way of enhancing the quality of life in this city, see Washington Post (Sept. 6, 2001), attached as Exhibit 1, and the Tree and Slope Protection Overlay District plays a vital role in that effort.

Appellant Robert Lehrman is filing this appeal because of the important practical and policy issues presented when, as here, a nearby landowner obtained a building permit to construct an addition to his house, yet utterly failed to take basic steps in advance to protect several old-growth trees on his property and, indeed, materially misrepresents the nature of the destructive activities on his property in his permit application. This misrepresentations and omissions, coupled with the owner's failure to take precautions during the pre-construction stage, had fatal consequences to two old-growth trees on the property, and a third tree continues to be at risk as a result of ongoing construction on the site.

The Tree and Slope Protection Overlay District regulations prohibit a property owner from engaging in such destruction as a matter of right and require a hearing before this Board if such destruction is contemplated. The regulations also provide that when an otherwise unlawful removal or cutting of trees has occurred, the penalty is a prohibition on the issuance of a building permit for a seven year period from the unlawful cutting or removal.

Such a sanction is entirely appropriate here, and we urge the Board to use this case as a vehicle to advise property owners of the need to take affirmative steps *before* construction in order to protect regulated old-growth trees. Moreover, when, as here, the owner was advised of

the need to protect trees, but failed to take any precautionary measures, Mr. Lehrman asks the Board to stay the effect of the existing building permit. Given that the Overlay District affects primarily residential properties, it is possible that the seven-year period in the Zoning Regulations may be an insufficient deterrent to property owners who needlessly damage protected trees, yet may have no need for additional building permits once the construction has been completed.

According, Mr. Lehrman requests this Board to do the following: First, as an immediate matter, this Board should issue a stay of the building permit pending the issuance of a final order in this appeal, in order to preserve the *status quo* and ensure that the remaining at risk old growth tree on the property is protected. As the foregoing discussion will demonstrate, the building permit issued to the owner is not matter-of-right, because the owner willfully conducted demolition and construction activities that he knew and was specifically advised would fatally damage old growth trees that cannot be removed without approval by the Board of Zoning Adjustment (BZA), and this Board should therefore direct that this permit be revoked. Finally, this Board should impose the sanction directed by Section 1514.1(f) for the destruction of trees without BZA approval by imposing a moratorium on the issuance of any building permit to the owner for a seven year period or until a special exception is granted by this Board pursuant to Section 1515 of the Zoning Regulations.

BACKGROUND

I. Tree Removal Restrictions Applicable Tree and Slope Protection Districts.

The Woodland Normanstone Overlay Zone ("WNOD"), created in 1992, is one of only two Tree and Slope Protection Overlay districts that has been mapped to date by the Zoning Commission. The WNOD was created in recognition of the Woodland/Normanstone

neighborhood's unique topography and natural resources. One of the key purpose of the WNOD is to preserve the natural topography and retain mature trees in the area to the maximum extent feasible. See Zoning Commission Order No. 713, at 3 (Feb. 10, 1992).

The regulations applicable to Tree and Slope Protection Overlay Districts, such as the Woodland Normanstone Overly District, provide in pertinent part that:

> Construction of a building, an accessory building, or an addition to a building, . . shall be permitted as a matter-of-right only if the following tree removal limitations are complied with:
>
> * * *
>
> (b) The prohibitions in this section shall not apply to the removal of any dead or unhealthy tree or a tree that creates an unsafe condition. The need for removal of any such tree shall be certified by an arborist or other tree care professional;
>
> ©) No tree that has a circumference of seventy-five (75) inches or more at a height of four and one-half feet above ground shall be removed or cut down.
>
> * * *
>
> (f) Where removal or cutting of trees has occurred that would be prohibited by this section if a building permit were contemporaneously apply for, no building permit shall be issued for a period of seven years from such removal or cutting unless a special exemption is granted by the Board of Zoning Adjustment pursuant to Section 1515.

11 DCMR § 1514.1.

Any deviation from these restrictions must be approved by the BZA. Granting a special exception after a public hearing, and subject to specified protective requirements. *Id.* § 1515.1. These protective requirements include "tree protection practices during construction," such as buffering and other requirements," id. § 1515.(d), and requiring the owner to submit "[a] plan and statement indicating how trees to be preserved on the lot will be protected during the construction period, including reference to proposed procedures to guard against long-term damage by such factors as soil compaction." Id. § 1515.2(b).

II. Factual Background

Mr. Robert Lehrman owns property at 2900 Benton Place, N.W., which is his principal place of residence. Mr. Lehrman's property is within the Woodland Normanstone Overlay District (WNOD), a Tree and Slope Protection area mapped by the Zoning Commission. See Zoning Commission Order No. 713 (February 10, 1992). Mr. Lehrman is aware of the protections accorded to mature trees within the WNOD and the concomitant restraints on property owners imposed as a result of mapping of this tree and slope protection district and, in undertaking any renovations or construction on his own property, has taken great care so as to avoid harming mature trees on or near his property.

On or about May, 1999, Mr. Lehrman learned that Mr. Melvyn Estrin had purchased the property located at 2221 30th Street, N.W., on the same block as Mr. Lehrman's property. This property contains numerous old growth tulip poplar trees, many of which have circumferences in excess of 75 inches. Accordingly, by letter dated May 28, 1999, Mr. Lehrman specifically advised Mr. Estrin of the protections to old growth trees afforded by the WNOD. Mr. Lehrman enclosed with his letter a copy of the zoning regulations governing tree and slope protection overlay districts, and advised Mr. Estrin of the necessity of taking "proactive steps in advance, both in your design plans and in your construction site conditions to protect the trees and their fragile root systems." *See* Letter to Mr. Mel Estrin from Mr. Robert Lehrman (May 28, 1999) (attached as Exhibit 2).

On February 19, 2000, Mr. Estrin, through his agent, applied for a building permit to expand the existing first floor bedroom wing and add a story over existing 1st floor one story area, at 2221 30th Street, N.W. No request for tree removal was made in connection with the permit

application, and Mr. Estrin specifically represented on the permit application (item no. 22) that the proposed work would *not* involve disturbing the earth or razing a building. See Exhibit 3 (Building Permit B435446 and permit application). A building permit was issued on March 7, 2001. Id.

On or about July 19 or 20, 2001, a mature tulip poplar tree with a diameter of 34 inches and a circumference of more than 75 inches bordering the neighboring property belonging to Mr. and Mrs. Jordan at 2940 Benton Place, N.W. was damaged during construction. The tree was subsequently felled by construction workers due to concerns from a neighbor about the safety of the adjoining property. An additional mature tulip poplar with a ten foot (120 inch) circumference located in the center of the property showed a fresh gash measuring six to eight inches as well as heavy tire track marks over the roots, which damages were inflicted as a result of demolition and construction activities. Photographs showing the location of the damaged tree and the extent of the gash to on its trunk as well as the tire track marks over the roots, are attached as Exhibit 4.

Mr. Joseph Christopher, a certified arborist retained by Mr. Lehrman, examined the trees located on the Estrin property prior to the commencement of construction activities, and determined that at that time both of the above-referenced mature trees were free of significant defects. In August, 2001, Mr. Christopher again examined the Estrin property and determined that the old growth tulip tree in the center of the property had sustained damage to the tree trunk and roots as a result of construction activities which had destroyed this tree's chance of survival See Letters to Mr. Robert Lehrman from J. Christopher (Aug. 8, 2001, Aug.21, 2001, and March 11, 2002), attached as Exhibit 5.

Both Mr. Christopher and Mr. Lehrman will testify that no protective measures had been

taken to prevent this sort of damage to these trees from occurring, and that the demolition contractors told both Mr. Lehrman and Mr. Christopher that they had been given no directions concerning the need to protect the mature trees on the site. As Mr. Christopher pointed out, construction activities should have been preceded by an inspection of the tree to determine the actual location of root systems, and by efforts to design a demolition plan which did not disrupt the critical root zone of protected trees. Id A third old-growth tree on the northwestern corn er of property, which is unfenced and unprotected, continues to be at risk from ongoing construction activities.

A stop work order was subsequently issued by the Building and Land Regulation Administration ("BLRA") because demolition of the existing building on the site was beyond the scope of the approved plans, and because the owner had misrepresented on his permit application the extensive demolition and ground-disturbing activities taking place on the property as part of the work. On October 2, 2001, Advisory Neighborhood Commission (ANC) 3C, the affected ANC, unanimously passed a resolution requesting that the stop work order be maintained "until such time as WNOD issues are resolved by the BZA," and that the owner be direct to protect the remaining old growth trees on the property. See Exhibit 6.

However, by letter dated October 10, 2001, Mr. Michael Johnson ruled that an unsafe condition warranted the removal of the mature tree bordering the Jordan property, apparently based on a hand-written undated letter from "Lee's Tree Service" claiming that the felled tree "had been shifting due to moisture and due to the retaining wall around the tree shifting." The stop work order was lifted, and a new building permit was issued on October 16, 2001. A second stop work order was issued, but subsequently lifted as well.

Concerned that the decision of the Zoning Administrator had ignored the fatal damage to the old growth tulip poplar at the center of the property, Mr. Lehrman appealed to Mr. J. Gregory Love, Administrator of BLRA, to address this key issue. Mr. Lehrman forwarded to Mr. Love an independent report by Paul L. Wolfe, a professional arborist, who noted that the tulip tree in question was within three feet of a foundation excavation and that a section of the bark approximately three feet wide and five fee tall had been ripped from the base of the tree in a manner indicating damage by a piece of heavy machinery. See Letter to Mr. Robert Lehrman from Paul Wolfe, II, President of Integrated Plant Care, Inc. (Nov. 20, 2001), Exhibit 7. Mr. Wolfe explained that tulip trees, as a species, are one of the most sensitive trees to construction injury and are very intolerant to any changes within their micro-environment. In his opinion, the fact that one-third of the bark of the tree has been destroyed will lead to the death of the majority of roots below that area, and that the tree would be unlikely to live for more than two years. Id.

In response, Mr. Love issued a letter dated December 10, 2001, which amplified the Zoning Administrator's determination. With respect to the old growth tree at the center of the property, Mr. Love relied on a letter from "Lee's Tree Service" purporting to refute Mr. Wolfe's assertion that the tree had been fatally damaged within the last year by heavy machinery, and claiming that the tree was previously unhealthy. Mr. Love determined, based on this letter, that there was insufficient evidence to exercise the punitive authority of 11 DCMR § 1514.1(f). Mr. Lehrman thereupon filed this appeal.

II A Stay of the Building Permit Should Be Issued To Preserve This Board's Ability To Meaningfully Enforce the Tree Removal Restrictions Imposed by the WNOD

The mature tulip poplars at the center of the Estrin property and bordering the Jordan

property were both over 75 inches in circumference and, prior to the commencement of construction activities, had been observed by a certified arborist and found to be free of significant defects. Accordingly, a property owner may not receive a building permit that results in the removal of or fatal damage to these trees without the approval of the BZA. 11 DCMR § 1514.1(b). Yet these old growth trees have been killed as a result of Mr. Estrin's construction activities, without the required approval of the BZA, and a third tree continues to be at risk as a result of ongoing construction on the site.

The destruction of these trees could have been avoided had Mr. Estrin ensured that a certified arborist or other qualified tree care professional inspected the trees to determine their critical root zone prior to the commencement of construction activities, and had the plans for construction incorporated the recommended measures for protecting trees. Yet no such precautionary protective measures were taken in advance of construction activities. Mr. Estrin was specifically provided with a copy of the tree and slope protection regulations in advance of construction, and both Mr. Estrin and his contractor were advised by Mr. Lehrman in person before construction began of the necessity of taking protective measures. Mr. Estrin's failure to take these necessary measures in light of these facts amounts to a willful disregard for the tree removal limitations. As a result, the zoning regulations provide that "no building permit shall be issued for a period of seven years from such removal or cutting unless a special exemption is granted by the Board of Zoning Adjustment pursuant to Section 1515." 11 DCMR § 1514.1.

In this case, the penalties imposed by 11 DCMR § 1514.1(f) are particularly appropriate, in view of the egregious circumstances under which the trees were destroyed and the owner's flagrant disregard for the tree removal limitations as well as the pattern of repeated disregard for

governmental regulations, including providing false and misleading information on his building permit application. Not only were the trees destroyed as a result of demolition activities on the site that were beyond the scope of the initial permit, the destruction of these trees was completely unnecessary. The destruction of these trees could have easily been prevented had the owner taken reasonable, cost-efficient measures expressly recommended to him before commencing demolition and construction activities. Yet the owner failed to take even the most minimal measures that would have avoided the fatal damage to these trees. Specifically, the trees were not examined by a certified arborist to ascertain the location of their root systems, the demolition contractors were not instructed on the need to protect mature trees on the site, and none of the recommended, reasonable measures that could have avoided damage to these trees were incorporated into the construction plans.[1] The remaining undamaged old growth tree on the property continues to be unfenced and unprotected from ongoing construction activities.

However, the penalties set forth in the zoning regulations will be meaningless unless the building permit is stayed pending the hearing. Construction on the site is now well underway, and by the time the hearing on this appeal is concluded and a decision rendered by this Board, construction may well be completed, and the remaining old growth tree on the property may be

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[1] Despite the evidence that Mr. Estrin willfully neglected protected trees thereby causing their destruction, Mr. Love asserted that the penalties imposed by the zoning regulations (11 DCMR § 1514.1(f)) were not warranted in this case because these penalties were "designed to discourage willful damage and or removal of regulated trees for gain in the instance of contemporaneous application for public permit to construct where surreptitious removal of trees was effected in recent memory." This view has no support in the text of tree removal regulations or the regulatory history of their adoption. Rather, the regulations recognize the fact that a tree can be adversely affected by construction activities even where the trunk of the tree does not appear to be within the zone of construction, depending on the location of the tree's critical root zone, by prohibiting owners not only from removing but also "fatally damaging" protected trees, 11 DCMR § 1514.1(a), and by specifying protective measures for existing trees as a condition of BZA approval." Id. § 1515.2(b).

fatally damaged by this ongoing construction. Once construction is completed, the sole penalty imposed by the zoning regulations – a seven year moratorium on the issuance of any building permit without BZA approval – may be of limited utility. Without a stay of the building permit, the Board will be without any real ability to penalize the owner for his flagrant disregard for the law, and the owner will, in effect, be rewarded for his evasive conduct.

The text and structure of the regulations governing tree and slope protection districts make it clear that tree preservation goals are to be considered before permits issue, particularly given the irreversible nature of destruction of protected trees and the difficulty in arguing against a project once it is well underway. The District of Columbia Court of Appeals has not issued an opinion discussing the nature of irreparable injury in the context of the tree and slope protection rules, but the structure and purposes of that law are similar to other statutes that require agencies to consider specific factors before construction projects are authorized, and the case law there is instructive.

One such statute is the National Environmental Policy Act ("NEPA"), which mandates consideration of environmental concerns in conjunction with major federal projects. As one court noted, preliminary injunctive relief prohibiting the construction of a project with potential environmental impacts is often deemed necessary in the absence of legally sufficient compliance with NEPA. As one court noted:

> Without preliminary injunctive relief construction might well reach the stage of completion where for economic and other reasons it would be impossible to turn back or alter the project in light of what an [Environmental Impact Statement] revealed, and thus the environment might thereby be irreparably damaged.

Steubing v. Brinegar, 511 F.2d 498 (2d Cir. 1975). See I-291 Why? Association v. Burns, 372

F. Supp. 223 (D. Conn. 1974), aff'd mem., 514 F.2d 1077 (2d Cir. 1975).

In addition, allowing project commitments and environmental harm that will contaminate the NEPA process constitutes irreparable injury warranting preliminary injunctive relief. See Jones v. D.C. Redevelopment Land Agency, 499 F.2d 502 (D.C. Cir. 1973).

> Ordinarily when an action is being undertaken in violation of NEPA, there is a presumption that injunctive relief should be granted against continuation of the action until the agency brings itself into compliance.

Realty Income Trust v. Eckard, 564 F.2d 447, 457 (D.C. Cir. 1977). This is because the purpose of NEPA "is to minimize . . the risk of uninformed choice, a risk that arises in part from the practical fact that the bureaucratic decision makers (when the law permits) are less likely to tear down a nearly completed project than a barely started project." Sierra Club v. Marsh, 872 F.2d 497, 500-01 (1st Cir. 1989). In the Sierra Club case, then-First Circuit Judge Breyer explained:

> [A]s time goes on, it will become ever more difficult to undo an improper decision (a decision that, in the presence of adequate environment information, might have come out differently). The relevant agencies and the relevant interest groups . . . may become ever more committed to the action initially chosen. They may become ever more reluctant to spend even greater amounts of time, energy and money that would be needed to undo the earlier action and to embark upon a new and different course of action. . . *Given the realities, the farther along the initially chosen path the agency has trod, the more likely it becomes that any later effort to bring about a new choice . . . will prove an exercise in futility.*

Id. at 503 (emphasis added). Here, Mr. Lehrman has made every effort to get DCRA to preserve the *status quo* in this case, yet events now make it clear that stay of the building permit by this Board is the only means by which the *status quo* can be preserved. Accordingly, a stay of the construction permit during the pendency of this appeal is warranted.

III.. The Owner's After-the-Fact Attempts to Assert that Destroyed Trees Were Unsafe or "Unhealthy" Are Unreliable and Cannot Justify the Destruction of These Protected Tree Without BZA Approval.

The tree removal limitation contain an absolute prohibition against the removal of any tree within a Tree and Slope Protection district exception that has a circumference of 75 inches or greater without approval by the BZA. 11 DCMR § 1514.1©). The only exception to this rule is where the need for such removal of such trees is "certified" by an arborist or other tree care professional. Id. § 1514.1(b).

Here, the Zoning Administrator and Mr. Love relied on several after-the-fact letters from a company called "Lee's Tree Service" to determine that the tree removal/destruction fell within the exception permitting the removal of unsafe or unhealthy trees. One such letter, which was undated (but plainly produced after the tree's removal), asserted that the tree bordering the Jordan property was removed because it presented an unsafe condition, caused by "recent rains." A second letter from Lee Peyton, of Lee's Tree Service, dated November 28, 2001, acknowledged that a tree at the center of the Estrin property had sustained "a slight scrape" as a result of the removal of the wall of the house. The letter also stated that an examination of the tree after it was injured revealed that it was infected with "silver fish," which "thrive on rotten tissue underneath the tree bark," and that the root system had been fertilized with nutrients to help the tree heal. However, nothing in these rebuts the conclusions of two certified arborists, Mr. Christopher and Mr. Wolfe, that the trees were fatally damaged as a result of the owner's failure to protect these trees from demolition and construction activities on the property.

First, the letter dated November 28, 2001, from Mr. Lee Peyton of Lee's Tree Service does not provide reliable information certifying the need to remove this old growth tree at the center of the property without the required BZA review, based on the exception permitting the removal of "unhealthy" trees. As noted above, this tree was observed by Mr. Joseph Christopher

in May, 2000, who determined that this tree was without significant defects. There is no evidence in the record indicating that any tree professional retained by the owner ever examined this tree prior to the initiation of construction activities on the site or made any determination whatsoever regarding the health of this tree. Therefore, the only evidence before the Zoning Administrator was Mr. Christopher's letter indicating that, prior to the initiation of construction activities on the site, this tree was healthy.

Mr. Christopher also observed this tree in August, 2001, after the construction on the site had commenced. As asserted in Mr. Christopher's letter, it was evident that Mr. Estrin failed to have the protected trees on the site inspected by a certified arborist to determine their critical root zone and ascertain any defects that they might suffer from that could render them vulnerable to construction activities. As the attached photographs demonstrate, no protective fencing was erected around this tree and its root zone. As a result, heavy construction grading equipment was driven into the side of this tree, causing a gash in the tree trunk approximately one foot wide and six feet long, and grading activity using heavy equipment occurred over 100 percent of the tree's critical root zone, causing fatal harm to the tree by soil compaction. It is Mr. Christopher's opinion that this tree was fatally damaged as a result of the demolition activities taking place on the site, and has virtually no chance of recovery. Mr. Christopher's professional opinion was independently corroborated by Mr. Paul Wolfe, President of Integrated Plant Care, who by letter dated November 20, 2001, provided his opinion that the construction damage sustained by the tree had irreparably damaged the tree, and that the tree was unlikely to survive for more than two years. See Exhibit 7.

Mr. Love erred in accepting the representations by Mr. Lee Peyton in the November 28,

2001 letter from Lee's Tree Service as the "certification" required by the regulations to justify the destruction of "unhealthy" trees without BZA approval. The word "certify" is not defined by the zoning regulations. However, according to Webster's dictionary, the definition of "certify" is "to give reliable information." The letter from Lee's Tree Service does not provide reliable information demonstrating any need to remove this tree due to health problems (other than those attributable to the owner's own destructive actions). Indeed, it is unclear whether Mr. Peyton is even a certified arborist; a search of the database of certified arborists maintained by the International Society of Arboriculture (www.isa-arbor.com) failed to identify Mr. Peyton's name.

Rather, it is clear from the circumstances of this case that the tree was destroyed not because the owner determined that it had become "unhealthy," but as a result of damage sustained by this unfenced and unprotected tree during the demolition and construction activities occurring within the tree's critical root zone. Lee's Tree Service did not examine the tree prior to its destruction and cannot rebut Mr. Christopher's finding, based on his examination of the affected tree that it was free from significant defects prior to the commencement of construction. It is therefore irrelevant that Lee's Tree Service determined the tree was "unhealthy" after it was fatally damaged.

The Zoning Administrator took the view that the "certified" statement required from a tree professional in order to justify the peremptory removal of a tree need not be contemporaneous, since a "clear and present danger" posed by a protected tree may necessitate its removal prior to obtaining a certified statement. While this may be true in some cases, such as where a tree has been rendered unsafe or unhealthy by natural cases, the exception for the removal of "unhealthy"or unsafe trees obviously contemplates that such trees are being removed

because they are unhealthy or unsafe, and not because of they are in the path of construction activities. An after-the-fact statement by a tree professional that a dead tree was destroyed because it was "unsafe" or "unhealthy" is particularly suspect where, as here, there is a serious question about whether the unsafe or unhealthy condition of the tree was the result of the destructive actions of the owner in connection with permitted activities.

Moreover, after-the-fact certifications that a dead tree is "unhealthy" are inherently unreliable. In order to justify the peremptory removal of an unhealthy (but not yet dead) tree, a tree professional must examine the tree and make a determination that the tree is, in fact, "unhealthy" before it is destroyed. Obviously, any tree, after it is removed, is "unhealthy," and the existence of an after-the-fact determination to that effect does little to assure that the tree's removal was necessitated by the fact that the tree was unhealthy. Instead, in order for a tree professional to "certify" the need to remove an "unhealthy" tree, this certification must be made before the tree is removed. The same goes for determinations made that a tree is "unsafe."

Indeed, one can envision the sort of mischief that would result from allowing owners to make after-the-fact determinations that a tree was "unhealthy" or "unsafe" after its removal, without regard to whether the owner's construction activities recklessly or willfully caused or exacerbated the unsafe or unhealthy condition in the first instance. For example, an owner could willfully and "surreptitiously" remove protected trees standing on a construction site prior to applying for a building permit – exactly the circumstance cited in Mr. Love's letter as being appropriate for penalties – and then make a self-serving and unverifiable determination after-the-fact that the destruction of these trees was needed because they were "unhealthy." Such a ruling would allow the exception for the removal of unsafe or unhealthy trees to swallow the rule

requiring BZA review prior to removing old growth trees..

Finally, there is no support for the implication in Mr. Love's letter that the construction damage sustained by this tree was not "fatal" and could be remediated after-the-fact by "precautionary measures." Mr. Love relies on the November 28, 2001 letter from Lee's Tree Service which purports to rebut Mr. Christopher's conclusion that the tree was fatally damaged by asserting that the tree was afflicted with a pre-existing infestation of "silver fish," and stating that "the tree has a better chance of survival than some of the poorly maintained trees . . . in the existing neighborhood." This assertion regarding the damaged tree's relative chances of survival as compared to other unspecified trees in the neighborhood is absolutely meaningless. As Mr. Christopher has stated, the damage sustained to the tree's roots and trunk from the heavy construction equipment has so weakened this previously healthy tree that it has virtually no chance of recovery, and no amount of fertilizer or nutrients will repair this damage. Nothing in the letter from Lee's Tree Service contradicts this conclusion. Moreover, Mr. Love's focus on the fact that this tree has not yet been actually removed ignores the fact that the tree removal limitation prohibit not only removing but also fatally damaging trees. The fact that the owner has yet to physically remove this tree does not mean that this tree has not been fatally damaged.

In any event, the assertion by Lee's Tree Service in the November 28, 2001 letter that the fatally damaged mature tulip poplar at the center of the site was infested with "silver fish" does not constitute credible or reliable evidence. As stated in the attached letter of Rex A. Bastian, Ph.D, "Silverfish are household insects that live in damp, cool places such as basements and laundry rooms . . . [that] typically feed on starchy materials such as paper, cereal, wallpaper paste, and similar materials. **They are not found outside and do not infect trees or feed on wood."**

Letter to Joseph Christopher, The Care of Trees, from Rex A. Bastian, Ph.D. Vice President of Field Education and Development, The Care of Trees (Feb. 18, 2002) (emphasis in original), attached as Exhibit 8.. Instead, Dr. Bastian speculates that the representative from Lee's Tree Service saw earwigs, not silverfish. Earwigs "do not feed on wood or damage the bark of trees." Id. Accordingly, the November 28, 2001 letter from Lee's Tree Service does not provide the requisite certification that there was any need to remove this tree because it was "unhealthy."

A list of witnesses that will present testimony in this appeal is attached as Exhibit 9.

IV. The Zoning Administrator's Determination Is Inconsistent With the Comprehensive Plan And Fails to Give "Great Weight" to the Recommendation of the ANC.

The D.C. Comprehensive Plan, as amended, provides in pertinent part that:

> In issuing or processing any building or construction permit, or any Certificate of Occupancy, *the Zoning Administrator*, the Board of Zoning Adjustment, and the Zoning Commission, *shall* evaluate the proposal in conjunction with the applicable sections of the Comprehensive Plan and the Comprehensive Plan Maps.

10 DCMR § 112.6(d) (emphasis added). Here, there are a number of provisions of the Ward 3 Comprehensive Plan that support this appeal.

Specifically,, the Land Use Element of the Ward 3 plan states that "[t]he Woodland-Normanstone area has been mapped with the Tree & Slope Protection overlay (11 DCMR § 1511); this action should be monitored to ensure that the overlay, as drafted, accomplished its stated purposes." 10 DCMR § 1409.4(b)(1). Also, the Environment Element of the Ward 3 plan states as a goal that "any construction preserve natural features." Id. 1403.7(a)(1). The Comprehensive Plan states as a general, district wide policy to "[e]ncourage the planing and retention of private trees through planning, zoning, building regulations; and any discretionary governmental action, . . ." Id. § 405.2(h). In general, the Plan states prominently declares the

objective in residential neighborhoods "[t]o conserve and enhance the essentially satisfactory qualities of the District's many stable residential neighborhoods including those qualities that make them unique." Id. 1102.1(a).

In the Woodland-Normanstone area, the old growth trees are one of the neighborhood's most important features, giving the neighborhood its character, charm, and distinction. Indeed, the neighborhood was expressly exempted by Act of Congress in 1910 from the street grid plan to protect the old growth trees, and the WNOD was mapped in 1992 in recognition that of the importance of these trees to the neighborhood. As the Ward 3 plan further recognizes, enforcement of the WNOD is essential to ensuring that "the overlay, as drafted, accomplished its stated purposes." Id. § 1409.4(b)(1). Allowing private landowners to willfully and unnecessarily damage protected trees without BZA based on unreliable after-the-fact excuses that have been expressly refuted by the opinions of certified arborists will undermine these stated goals and objectives of the Comprehensive Plan.

Further, the Zoning Administrator failed to give "great weight" to the recommendation of the affected Advisory Neighborhood Commission (ANC), attached hereto as Exhibit 6. The ANC Act requires that thirty days written notice be sent by mail to each ANC affected by government actions or proposed government actions that fall within the scope of the Act. D.C. Code, § 1-261(b) (2000). Notice is required when the agency engages in "rulemaking," D.C. Code, § 1-261(a), or "before the formulation of any final policy decision or guideline with respect to ...licenses, or permits..." Id. § 1-261©)(1). In addition, the government action must also be of "significance to neighborhood planning and development." D.C. Code, § 1-251(d).

The Act further states that in the case of actions where ANCs are entitled to notice:

(A) The issues and concerns raised in the recommendations of the [ANC] shall be given *great weight* during the deliberations by the government agency and those issues *shall be discussed in the written rationale for the government action. Great weight requires acknowledgment of the Commission as to the source of the recommendations and explicit reference to each of the Commission's issues and concerns.*

(B) *In all cases the government entity is required to articulate its decision in writing. The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.*

Id. § 261(d)(3) (emphasis added).

The D.C. Court of Appeals has held that "great weight" means that the agency decision must give explicit reference to each ANC issue and concern and specific findings and conclusions with respect to each, explaining that the provision "is a statutory method of forcing an agency to come to grips with the ANC view--to deal with it in detail, without slippage." . Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1384 (D.C. App. 1977).

Here, ANC 3C forwarded its written resolution and recommendation to the Mr. J. Gregory Love, Administrator of the BLRA, with a copy to the Zoning Administrator, on October 2, 2001. Yet neither the October 10, 2001 ruling of the Zoning Administrator nor the December 10, 2001 ruling by Mr. Love even mentions the ANC resolution, much less give the issues and concerns the "great weight" required by law. Accordingly, this determination plainly violates the Comprehensive Plan and the ANC Act by failing to take into account the consideration required by these laws.

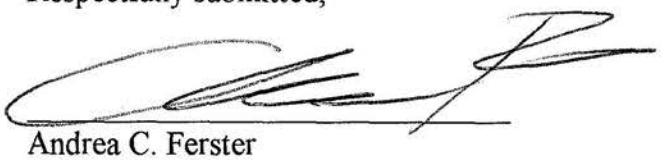
CONCLUSION

In sum, the refusal of the Zoning Administrator to enforce the tree removal restrictions

applicable to construction projects within the WNOD was arbitrary, capricious, and contrary to law. The Zoning Administrator ignored the pattern of behavior by the owner, who falsely represented on his building permit application that no ground-disturbing or demolition activities would occur in connection with the project, when in fact significant ground disturbing and demolition activities were occurring on the site and within close proximity to old growth trees, which ultimately resulted in fatal damage to two such trees. The Zoning Administrator also relied on after-the-fact letters allegedly "certifying" the need to remove these trees from a tree removal company without any inquiry into the credentials of the author. In doing so, the Zoning Administrator and Mr. Love ignored the expert opinion of two certified tree professionals that the standing old growth tree had been fatally damaged by heavy construction machinery. Moreover, Mr. Love's assertion that all necessary care and precautions had been taken to protect trees is unequivocally contradicted by photographs showing extensive excavation immediately next to the roots, heavy construction tire tracks around the critically sensitive root zone next to the tree, and extensive damage to the bark.

According, and for the foregoing reasons, Appellant believes that his appeal should be granted, and the building permit should be stayed immediately pending this appeal so that this Board can provide meaningful relief that protects the remaining old growth tree at risk on the property. In addition, the Board should reverse the determination by the Zoning Administrator in authorizing the issuance of this building permit without special exception review by this Board, and bar the issuance of any new building permit for a seven year period, unless a special exception is granted by this Board, as set forth in 11 DCMR § 1514.1(f).

Respectfully submitted,



Andrea C. Ferster
Cornish F. Hitchcock
1100 17th Street, N.W. 10th Fl.
Washington, D.C. 20036
(202) 974-5142

Counsel for Robert Lehrman

March 26, 2002

CERTIFICATE OF SERVICE

I hereby certify that, on March 26, 2002, a copy of the foregoing Pre-Hearing Submission and Motion for A Stay was served by first class mail, postage pre-paid, on:

Toye Bello, Zoning Administrator
Building and Land Administration
D.C. Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.W., 2nd Fl.
Washington, D.C. 20002

Charlotte Parker
Acting Deputy Corporation Counsel
441 4th Street, NW
Washington, DC 20001

Nancy J. MacWood, Chair, ANC 3C
2737 Devonshire Place, NW
Washington, D.C. 20008

Mr. Melvyn Estrin
Estrin International
7200 Wisconsin Ave., Suite 600
Bethesda, MD 20814



Andrea C. Ferster

Appeal of Robert Lehrman
BZA No. 16849

Exhibit 1

The Washington Post

METRO

THURSDAY, SEPTEMBER 6, 2001

A New Leaf for Tree-Challenged D.C.

By LINDA WHEELER
Washington Post Staff Writer

The District has a deficit of trees—551,040, to be exact.

A study by a nonprofit conservation group, American Forests, calculated that the city would need to plant that many trees to have an adequate "tree canopy." Officials with the Washington-based organization released the report at a news conference yesterday and were joined by D.C. Mayor Anthony A. Williams, who promised to take steps to make the District a greener place.

"Despite our best efforts, Washington, D.C., is a great place to be a tree," said Williams (D). "We are one big, giant greenhouse. We are muggy, damp and sunny. 'Let trees be' should be our motto."

Using satellite images, American Forests determined what portion of the land mass in the District and 19 other U.S. cities is covered by trees. It also studied the changes in urban landscapes by comparing aerial photos made over a 25-year period. The report concluded that the 20 metropolitan areas grew in square mileage by about 20 percent during that period, while the number of trees de-

See TREES, B4, Col. 5

Williams Says D.C. Needs to Branch Out

TREES, *From B1*

clined significantly.

The District's foliage covers 30 percent of the city's land, and the addition of 551,040 trees would increase that figure to 35 percent—still shy of the ideal tree coverage of 40 percent, the study said.

The ideal figure for a city depends on how much its climate can support trees. The benchmark is 30 percent for cities in the plains states and 25 percent for those in the dry Western states, American Forests said.

The 20 cities covered by the study have a total deficit of 634 million trees, said Gary Moll, an American Forests vice president.

The goal of the study is to make the planting and maintaining of trees as integral a part of city planning as decisions about buildings, streets and sidewalks, Moll said.

He said the benefits of a good tree canopy include less reliance on air conditioning to cool homes, fewer problems with storm-water runoff and reduced air pollution.

Williams told reporters that he is determined to remake the District into a "city of trees," as it was known in the 1920s. The city is planting about 4,000 trees a year, Williams said. To boost that total, he said, the city has accepted the offer of $50 million from the Casey Trees Endowment Fund, manpower help from the U.S. Department of Agriculture's forest division, and computer programming resources from American Forests.

The satellite images in the group's study show in detail where trees are needed most. For example, in the Northwest neighborhood of Woodley Park, where the news conference was held, trees are lacking along commercial Connecticut Avenue NW.

Williams said it's easy for politicians to embrace planting trees when times are good.

"When times get tougher, and they always do, we will have to have a program where trees are a *priority*," he said.

"A city is at its best when we are involved in public space," Williams said. "No one would allow their dining room or their living room or their front porch to run down. Because we

Appeal of Robert Lehrman
BZA No. 16849

Exhibit 2

ROBERT LEHRMAN

May 28, 1999

Mr. Mel Estrin
7200 Wisconsin Avenue
Bethesda, MD 20814

Dear Mel,

How goes it? When are you and your wife going to come visit? I hope you give me a call soon.

Yesterday, I met with Joseph Christopher, who takes care of the trees on my property. I mentioned to him that you might want to work with him to protect the beautiful old growth trees on your property. As a reminder, he can be reached at 301-948-5885. I worked with him during the construction phase of my house and he helped me protect a number of beautiful trees that could have been destroyed by the inherent shock and abuse that accompanies any construction project.

What I learned in that process, is that unless you take proactive steps in advance, both in your design plans and in your construction site conditions to protect the trees and their fragile root systems, you can end up unintentionally killing them as a by-product of the damage done during construction. While this requires some additional expense and time, it protects the trees for your enjoyment and also for maintaining the beauty of the neighborhood.

For your information (and for your contractor), I've enclosed a copy of the zoning overlay for our neighborhood that pertains to the trees. I thank you in advance for your sensitivity to this issue and would be happy to talk to you if I can be of any assistance in explaining what we did during our construction project.

I close with my best wishes and fond regards, and hope to hear from you soon.

All the best,

Robert

Robert Lehrman

BCC: Vernon Jordan
Joseph Christopher - The Care of Trees

1027 33rd Street, N.W., 2nd Floor, Washington, D.C. 20007 Phone: (202) 338-8400 Fax: (202) 338-8405

Appeal of Robert Lehrman
BZA No. 16849

Exhibit 3

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev. 9/30/01)

BUILDING PERMIT

PERMIT NO. B435446

(Type) ADD/A/R

Date 3/7/01
Address of work 2221 30TH STREET NW
Permission is hereby granted to (Owner) NEILE E STRIN
who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.
Authorized work and conditions of performance thereof:

Lot 6 Square 2198
TOTAL PERMIT FEE $
FILING FEE $
NO. DATE
FEE PAYABLE $ 3,043.00
FOR INSPECTIONS CALL KERRY 442-4641

EXPAND EXISTING 1ST FLOOR BEDROOM WING & ADD 2ND STORY OVER EXISTING 1ST FLOOR ONE STORY AREA. REMODEL INTERIORS & RESKIN EXTERIOR MASONRY VENEER IN EIFS. SEPARATE ELEC.,PLUMB., AND MECH. INSTALLATION PERMITS ARE REQUIRED.

Builder
Width of Bldg. Length Height No. of Stories 3
Zone TSP/R1A To be occupied as RESIDENTIAL
Height of terrace above grade Projections:
Address of owner 6508 KENHILL RD BETHESDA, MD
Deposit No. Amount $
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Value $ No. of Bldgs.

Chief, Permit Issuance Branch

Permit Clerk

C. FULLER 32301
DIRECTOR

PERMIT

01-00041

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
H.D.C. No.	O.G. No.	R10-1			B
P.A. No.	S.L. No.	Ward No.	Receipt No.	Date	Receipt No.

313-B

★ ★ ★ GOVERNMENT OF THE DISTRICT OF COLUMBIA
BLRA-33 (Rev. 10/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (727-7050)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY

(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

CLEARANCE TO FILE Date

ERASING, CROSSING OUT, WRITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1. Address of Proposed Work:	Suite No.:	2. Lot:	3. Square:	4. Application Date:
2221 30TH STREET NW	—	6	2198	3/15/2000

5. Owner of Building or Property:	6. Address: (Include Zip)	7. Phone:
MELVIN ESTRIN	6508 KENHILL ROAD BETHESDA MD 20817	Work: 301-941-8600 Home:
8. Agent for Owner: (if applicable)	9. Address: (Include Zip)	10. Phone:
DAVID ISAAC	2240 GALLOWS ROAD DUNN LORING VA 22027	Work: 703-849-1784 Home:

11. Type of Proposed Work (check all applicable boxes):

- ☐ New Building
- ☒ Addition
- ☒ Alteration and Repair
- ☐ Raze Building
- ☐ Retaining Wall
- ☐ Fence
- ☐ Shed
- ☐ Awning
- ☐ Garage
- ☐ Sign
- ☐ Other (Specify) _____

12. Description of Proposed Work:

EXPAND EXISTING 1ST FLOOR BEDROOM WING & ADD 2ND STORY OVER EXISTING 1ST FLOOR ONE STORY AREA. REMODEL INTERIORS & RESKIN EXTERIOR MASONRY VENEER IN EIFS.

13. Existing Use(s) of Building or Property:	14. Ex. No. of Stories of Bldg.:	15. Ex. No. of Dwelling Units:	OFFICIAL USE ONLY Miscellaneous Fee
RESIDENTIAL	2	1	
16. Proposed Use(s) of Building or Property:	17. Prop. No. of Stories of Bldg.:	18. Prop. No. of Dwelling Units:	Date
RESIDENTIAL	3	1	

19. Starting Date of Work:	20. Completion Date of Work:	21. Method of Removing Construction Debris:	22. Does the proposed work involve disturbing the earth or razing a building?
MAY 15 2000	MAY 15 2001	☐ Pick-up Truck ☒ Dumpster ☐ Other (specify):	☐ Yes, answer q. 23 ☒ No, SKIP q. 23-27

23. Is the area of disturbed earth more than 50 sq. ft.?	24. Soil Erosion Control Methods:	25. Area of Offsite Drainage:	26. No. of Footings or Columns:	27. Size of Footings of Columns:
☒ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25	SILT FENCE SEE NOTES	0 sq. ft.	PER PLANS	sq. ft.

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I).

Complete Section B if the proposed work is **new building, addition or alteration.** (Page 2)
Complete Section C if the proposed work is **razing a building.** (Page 2)
Complete Section D if the proposed work is a **retaining wall.** (Page 2)
Complete Section E if the proposed work is a **fence.** (Page 3)
Complete Section F if the proposed work is a **shed/garage.** (Page 3)
Complete Section G if the proposed work is an **awning.** (Page 3)
Complete Section H if the proposed work is a **sign.** (Page 3)

OFFICIAL USE ONLY

M					
E					YES NO
F					PLANS
S					SIGN

1-375

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

28. Architect's Name:	29. Lic. No.:	30. Architect's Address: (include Zip)	31. Phone:
JOHN NEUFELD ARCHITECTS	A-3039	2603C CHAIN BRIDGE ROAD FAIRFAX VA 22030	703-385-9696
32. Engineer's Name:	**33. Lic. No.:**	**34. Engineer's Address: (include Zip)**	**35. Phone:**
FRANK WILLIAMS AF	3217	8619 CRESTVIEW DRIVE FAIRFAX, VA 22031	703-573-7738
36. Building Contractor's Name:	**36A. Lic. No.:**	**37. Contractor's Address:**	**38. Phone:**
CROWELL & BAKER ASSOCIATES	30001704	152 ROLLINS AVENUE, SUITE 100 ROCKVILLE MD 20852	301-770-3360

39. Type of Construction	40. Fire Suppression:	41. Booster Pump:	42. Total Lot Area:	43. Breakdown of Lot Area (= 100%):
☐ Masonry ☐ Steel ☒ Wood ☐ Other: ☐ Concrete	☐ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☒ None ☐ Other:	☐ New ☐ Existing ☒ None	61160 sq. ft.	a. Building: 11 % b. Paved Area: 16 % c. Greenery: 73 %

44. Present Gross Floor Area of Bldg.:	45. Proposed Gross Floor Area of Bldg:	46. Floors Involved in this permit:	47. Projection beyond building line?
8911 sq. ft.	15721 sq. ft.	☒ All ☐ Floors	☐ Yes, answer q. 48-52 ☒ No, SKIP q. 48-52

48. Number and type of **projection:**	49. Distance of **projection:**	50. Width of **projection:**	51. Width of building frontage: ft. 52. Signature of Owner **(projection only):**

53. Water or Sewer Excavation?	54. Driveway Construction?	55. Sheeting/Shoring Necessary?	56. Elevators involved?	57. No. and type of elev.:	58. Plans Certified by Engineer?
☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No	☒ Yes, answer q. 57 ☐ No, SKIP q. 57	ONE RESIDENTIAL	☐ Yes, cert. is attached ☒ No

59. Estimated Cost of Work:
(a) New/Add.: $ 750,000
(b) Alt/Rep.: $ 125,000
Total: $ 875,000

60. Volume of New Bldg. or Addition: 162443 69400 cubic ft.

OFFICIAL USE ONLY

Alt/Repair FEE	New Const. FEE	Filing FEE	TOTAL PERMIT FEE
2530.00	1388.00	875.00	3043.00
BY:	Date:	BY:	Date:

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:	62. Contractor's Address: (include Zip)	63. Phone:

64. Insurance Company:	65. Policy or Certif. No.:	66. Expir. Date:	67. Raze Method:

68. Building Material:	69. Raze Entire Building?	70. Building Condemned?	70A. Building Vacant?	71. Public Space Vault?	72. Disconnect Water and/or Sewer?	73. Size of Water Connection:
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	in.

74. Plumber's Name:	75. Lic. No.	76. Length: ft.	77. Width: ft.	78. Height: ft.	79. Volume: cu. ft.	80. Party Wall? ☐ Yes ☐ No

81. Asbestos in the Building?	82. Raze Contractor Signature:	OFFICIAL USE ONLY
☐ No ☐ Yes, Location _____	83. Owner's Signature:	FEE: BY: DATE:

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations

84. Cost of Work: $	85. Material:	86. Height: ft.	87. Color:	88. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

89. Signature of Adjoining Owner:	90. Phone: Work Home	OFFICIAL USE ONLY
91. Address of Adjoining Owner:	92. Lot:	93. Square:

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations

94. Material and type:	95. Height: ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land *

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

98. Signature of Adjoining Owner:	99. Phone: Work Home	OFFICIAL USE ONLY: FEE	BY	Date
100. Address of Adjoining Owner:	101. Lot:	102. Square:		

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number:	104. Length: ft.	105. Width: ft.	106. Area: sq. ft.	107. Height: ft.	108. Volume: cu. ft.	109. Estimated Cost of Work: $	OFFICIAL USE ONLY: FEE
110. Material of Roof:	111. Material of Sides:	112. Wall thickness:: ☐ External ( ) inches ☐ Party ( ) inches				113. Color:	BY Date

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color:	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line ____ in. Beyond pt. of attachm. ____ in.	118. Height of lowest part of awning: (a) ____ ft above sidewalk (b) ____ ft above parking (c) ____ ft above grade	OFFICIAL USE ONLY: FEE
119. Material of Frame:	120. Material of Covering:	121. Lettering on Awning? ☐ Yes ☐ No	122. Fixed posts? ☐ Yes ☐ No	123. Over sidewalk cafe? ☐ Yes ☐ No	BY Date

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number:	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No, SKIP q. 126-132	126. Type: ☐ Incandes. ☐ Fluoresc. ☐ Neon	127. Power ____ VA	128. Electrical Contractor: Lic. No.:

129. Address of Electrical Contractor *(include Zip)*	130. Signature of Licensed Electrician:	131. Phone:	132. License No.:

133. Height relative to building and ground: (a) ____ ft ____ in above sidewalk (b) ____ ft ____ in above roof (c) ____ ft ____ in is bldg height (d) ____ ft ____ in above projection or window (e) ____ ft ____ in from roof to sign's bottom	134. Material of Sign:	135. Type of Sign:	136. Color:
	137. Width: ft.	138. Length: ft.	139. Area of Sign: sq. ft.
			140. Width of Business Frontage: ft.

141. C of O Number for Building:	142. Sign Contractor Lic. No.:	OFFICIAL USE ONLY: Sign FEE	Flash FEE	Total FEE
143. Sign Contractor's Address:	144. Phone:	BY Date	BY Date	BY Date

(I) APPLICANT'S SIGNATURE:

A. **OWNER:** I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner: _____ Address: _____ Date: _____

B. **AGENT:** I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent: [signature] Address: 2240 GALLOWAY RD Date: 4-19-2000
VIENNA VA 22182

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

Per D. Nash (WSH) not subject

- ☒ 1. Fine Arts by: _____ Date: _____
- ☐ 2. Historic by: _____ Date: _____
- ☐ 3. PADC by: _____ Date: _____
- ☐ 4. Cap. Gateway by: _____ Date: _____
- ☐ 5. W.H./ Obs. Precinct by: _____ Date: _____
- ☐ 6. Flood Control by: _____ Date: _____
- ☐ 7. WMATA by: _____ Date: _____
- ☐ 8. Condem. by: _____ Date: _____
- ☐ 9. RLA by: _____ Date: _____
- ☐ 10. Rental Accom. by: _____ Date: _____
- ☐ 11. Chinatown Distr. by: _____ Date: _____
- ☐ 12. Utility Clearance by: _____ Date: _____
- ☐ 13. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☐ 1. Zoning by: _____ Date: _____
- ☐ 2. DPW — Permit and Records Division
  Access to Parking Street ☐ Street ☐ Alley
  Cleared by: _____ Date: 3/29/01
- ☐ 3. DPW - Consumer Engineer
  Cleared by: _____ Date: _____
- ☐ 4. ERA - Erosion Control
  Cleared by: _____ Date: _____

Restrictions of the Permit:

SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICE OR OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639

C. PLANS AND APPLICATION APPROVAL

- ☐ 1. Information Counter by: _____ Date: 7/18/01
- ☐ 2. Information Center by: _____ Date: _____
  - ☐ (a) ABC Board by: _____ Date: _____
  - ☐ (b) Noise Control by: _____ Date: _____
  - ☐ (c) Industrial Safety by: _____ Date: _____
  - ☐ (d) Vector Control by: _____ Date: _____
  - ☐ (e) D.C. Animal by: _____ Date: _____
  - ☐ (f) Police Dept. by: NOT REQ'D Date: 10/26/00
- ☐ 3. Zoning by: _____ Date: _____
  Zoning Update by: _____ Date: _____
- ☒ 4. DPW - Permit and Records Division/Deposit # D82789
  Sidewalk Deposit $ 5,250 Driveway Deposit $ _____
  by: _____ Date: 3/29/01
- ☒ 5. Water/Sewer Design Branch
  Consumer Eng. by: _____ Date: 3/2/01
- ☒ 6. Environmental Regulation Administration
  - ☐ Environmental Policy Review
    Control No.: _____
    by: _____ Date: _____
  - ☐ Erosion Control by: _____ Date: 3-2-01
  - ☐ Storm Water Mgmt. by: _____ Date: _____
    Plan No. _____
- ☒ 7. Mechanical Eng. Review by: _____ Date: 4/22/01
- ☒ 8. Plumbing Eng. Review by: _____ Date: 1/22/01
- ☒ 9. Electrical Eng. Review by: _____ Date: 11-16-00 01-22-01
- ☐ 10. Health Plan Review
  - ☐ (a) Food Plan Review by: _____ Date: _____
  - ☐ (b) Medical X-ray Plan Rev. by: _____ Date: _____
- ☐ 11. D.C. Fire Dept. (Fire Prevention Plan Review Section) by: _____ Date: _____
- ☒ 12. Elevator Plan Rev. Sec. by: _____ Date: _____
- ☐ 13. Plumbing Insp. Rev. by: _____ Date: _____
- ☐ 14. Construction Insp. Branch (Field Check) by: _____ Date: _____
- ☐ 15. Historic Pres. Div. by: _____ Date: _____
- ☒ 16. Structural Eng. by: _____ Date: 3/8/01
- ☐ 17. Permit and Certificate Issuance Counter By: _____ Date: _____

☐ Q.C. By: _____ Date: 3/5/01

ZONING

C of O Number _____ Date _____

Existing Use(s) SFD

☐ New bldg.
☐ P.O.D.
☐ File in room 329

DPW — PUBLIC SPACE

Street Name: _____
Street Width: _____
Road Width: _____
Sidewalk Width: _____
Parking: _____
Restrictions: _____

Job No.:	BZA Case No.:	PUD Order No.:

Appeal of Robert Lehrman
BZA No. 16849

Exhibit 4

Photographs of 2221 30th Street, N.W.
Photographed by Robert Lehrman
August 2, 2001



Damage to trunk of old growth tulip poplar tree at center of property

Photographs of 2221 30th Street, N.W.
Photographed by Robert Lehrman
August 2, 2001



Damage to trunk of old growth tulip poplar tree at center of property

Photographs of 2221 30th Street, N.W.
Photographed by Robert Lehrman
August 2, 2001



Heavy construction equipment near old growth trees

Photographs of 2221 30th Street, N.W.
Photographed by Robert Lehrman
August 2, 2001



Fatally damaged old growth tulip poplar at center of property

Photographs of 2221 30th Street, N.W.
Photographed by Robert Lehrman
August 2, 2001



Excavation within three feet of fatally-damaged old growth tulip poplar tree at center of property

Photographs of 2221 30th Street, N.W.
Photographed by Robert Lehrman
August 2, 2001





Tire track marks over critical root system of old growth tulip poplar tree at center of property



REMAINS OF TREE



CLOSE UP
34" DIAMETER



→ CLOSE UP OF SITE WHERE
THE TREE WAS REMOVED

2221 30TH ST., NW

Appeal of Robert Lehrman
BZA No. 16849

Exhibit 5

the CARE of TREES
9228 GAITHER ROAD · GAITHERSBURG, MARYLAND 20877 · (301) 948-5885 · FAX (301) 948-4353

August 21, 2001

Mr. Robert Lehrman
2910 Benton Place, N.W.
Washington, D.C. 20008

Dear Mr. Lehrman,

In response to your request for additional information and clarification of prior communications, and in reply to the undated "Lee's Tree Service" memo, please be advised as follows:

1) I had inspected the 31-inch diameter old growth Tulip tree on the east side of the property at 2221 30th Street, NW prior to the beginning of demolition activities. At that time the tree was free of significant defects.

2) In my opinion, the demolition of structures around the retaining wall and disturbance of soil in the tree's critical root zone resulted in the structural instability of the tree, which was noted in the "Lee's Tree Service" memo.

3) In my professional experience, viewing the extent of demolition and the proximity of demolition to the tree, protective measures should have been employed to help the tree survive.

4) Protective measures could have included (but not been limited to):

- engaging a Certified Arborist to inspect the trees on the site prior to demolition activities;
- determination of actual location of root systems by exploratory excavation;
- engaging engineers to design a demolition plan which did not disrupt the tree's critical root zones.

In addition, particularly with respect to the 34-inch diameter Tulip tree in the center of the site, plans for protective fencing; root zone protection, such as mulch and/or geo-textile mats; and responsible monitoring of demolition activities would have provided a good defense against the kinds of damage which actually took place. Damage to the tree trunk and roots has effectively destroyed its chances of survival. Based upon my observations of the site through the demolition process and conversation with the demolition contractor, it was clear that no protective measures whatsoever were taken.

Please call me if I can be of any further service in this matter.

Sincerely,



Joseph Christopher
ISA Certified Arborist
Maryland Licensed Tree Expert



the CARE of TREES
9228 GAITHER ROAD · GAITHERSBURG, MARYLAND 20877 · (301) 948-5885 · FAX (301) 948-4353

8 August, 2001

Mr. Robert Lehrman
2910 Benton Place, N.W.
Washington, D.C. 20008

Dear Mr. Lehrman,

This note is to confirm our conversation of last Tuesday, 6 August, regarding the state of the trees on Mr. Estrin's lot.

In a letter dated 28 May, 1999, you referred Mr. Estrin to me as a resource for Tree Preservation. You also passed on to me contact information with which I tried to get ahold of Mr. Estrin, without success. As I recall, I called Mr. Estrin's office several times, leaving messages asking that he call me. At that time I did take an opportunity to look at the trees on the property, giving them an informal inspection in anticipation of Mr. Estrin's return call.

I recall reporting to you that the main shade trees there, Tulip trees of 31 and 35 inches dbh (diameter at breast height) were healthy, with full crowns, and no significant structural defects.

On 25 July I was at your house and noticed for the first time that demolition had begun at Mr. Estrin's property. I saw that the 31" Tulip tree was cut down and in pieces on the ground. A strip of bark approximately a foot wide and six feet long had been ripped from the base of the larger tree by grading equipment. The damage to the larger tree appeared to have been expanded when I looked at it the following week in your company. As a result of the mechanical damage to the tree's trunk and the extensive grading activity over 100% of its Critical Root Zone, it is my opinion that this tree's chances of survival range from very slim to none.

As we discussed, there seem to have been no efforts made to protect or preserve Old Growth Trees on the site.

Please call me if I can be of any further service in this matter.

Sincerely,

Joseph Christopher
Certified Arborist
The Care of Trees, Inc.

the CARE of TREES.
9228 Gaither Road · Gaithersburg, Maryland 20877 · (301) 948-5885 · Fax: (301) 948-4353

March 11, 2002

Mr. Robert Lehrman
2910 Benton Place, N.W.
Washington, D.C. 20008

Dear Mr. Lehrman,

I want update you on the condition of the remaining old growth Tulip tree on Mr. Estrin's lot at the corner of Benton Place and 30th Street, N.W.:

The tree is 35" diameter at breast height (dbh), and is located behind the house. At this time the base of the tree is concealed by newly built house structure. Prior to the erection of the new wing, I was able to see that the lower trunk was severely injured – what is called "mechanical damage" - probably caused by earth moving equipment. The damage included bark removal from at least 5 feet of the basal circumference and extends to at least 6 feet high. Such damage to the root flare is sufficient in itself to bring about the failure of the tree. Adding to the severity of the wounding was the application of black tree paint to the exposed sapwood. While such paint can reduce the cosmetic impact of the bark loss, research has shown for many years that it accelerates the process of decay.

The other major damage to the tree occurred in the process of site clearing and preparation, and was also a result of earth moving equipment activity. Before construction began, heavy equipment appeared to have completely destroyed the integrity of the surface soil throughout the area below the tree. The Critical Root Zone of the tree was scraped, churned and thoroughly compacted, as evidenced by tracks and piles of displaced soil (as well as the scarring to the trunk.) The effect of such damage, while not so visible as the trunk wounds, is just as severe, and takes the form of ruined root systems. Tulip trees are known to be particularly susceptible to root zone damage.

In my opinion the tree has little or no chance of survival. From the beginning of the process, when the tree was deprived of any protection, to the present, when the only "care " it appears to have received was harmful tree paint, I have to wonder if Mr. Estrin has received bad tree care advice or if he just ignored the good advice he was given.

Please call me if I can be of any further service in this matter.

Sincerely,

Joseph Christopher
Certified Arborist
The Care of Trees, Inc.

Appeal of Robert Lehrman
BZA No. 16849

Exhibit 6

ADVISORY NEIGHBORHOOD COMMISSION 3-C
GOVERNMENT OF THE DISTRICT OF COLUMBIA

CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS
MCLEAN GARDENS • WOODLEY PARK

Single Member District Commissioners
01-Cheryl A. Opacinch; 02-Kurt Vorndran; 03-Robert Martin
04-Richard C. Bartel (Vice Chair); 05-John Welsh; 06-Clifford C. Rohde (Secretary)
07-Lars Hydle (Treasurer); 08-Rosalyn P. Doggett; 09-Nancy J. MacWood (Chair)

2737 DEVONSHIRE PLACE, NW
WASHINGTON, D.C. 20008
TEL 202/232-2232 * FAX 202/232-0667
Email anc3c@worldnet.att.net
URL http://groups.yahoo.com/group/anc3c

October2, 2001

J. Gregory Love, Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
Government of the District of Columbia
941 North Capitol Street, NE
Washington, DC 20002

Re: ANC 3-C Resolution No. 2001-044 [Regarding Enforcement of Woodlands-Normanstone Tree and Slope Overlay]

Dear Mr. Love:

Attached is a resolution adopted unanimously by Advisory Neighborhood Commission 3C at its regular meeting of September 24, 2001. The resolution calls for the Department of Consumer and Regulatory Affairs (DCRA) to enforce the Woodland Normanstone Tree and Slope Overlay District regulations pertaining to 2221 30th Street, NW, where apparent violations of the regulations have occurred resulting in the loss of one mature growth tree protected by the regulations and the likely loss of a second.

The resolution was passed after consultation, prior to September 24th, with the owner of the 30th Street property and the neighbor lodging a complaint. ANC 3 C provided public notice that the issue would be addressed at its September 24th meeting.

As you noted in your letter of September 14, 2001 to Robert Lehrman, a stop work order has been issued for the 30th Street site because the demolition of the existing home was beyond the scope of the approved plans. We urge you to require resolution of the Tree

and Slope Overlay District issues prior to authorization of any additional construction work.

Sincerely,

Nancy J. MacWood
Chair, ANC 3C

Cc. David Clarke
Michael Johnson
Kathy Patterson
Robert Lehrman
Andrea Ferster
Whayne Quin
Melvin Estrin
Laurence J. Aurbach

ADVISORY NEIGHBORHOOD COMMISSION 3-C
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ANC 3C Resolution 2001-044

ANC 3C RESOLUTION FOR ENFORCEMENT OF WOODLANDS-NORMANSTONE TREE AND SLOPE OVERLAY

1. WHEREAS, by order issued on February 10, 1992 the DC Zoning Commission adopted the Woodland Normanstone Overlay District (WNOD), a tree and slope protection overlay district enacted for the purpose of preserving the natural topography and retention of mature trees in the area to the maximum extent feasible by placing strict tree removal limitations on property with the district; and

2. WHEREAS, the zoning regulations governing Tree and Slope Protection Overlay Districts provide that, within such districts, "No tree that has a circumference of seventy-five inches (75 in.) or more at a height of four and one-half feet (4 ½ ft.) above ground shall be removed or cut down." 11 DCMR, Para. 1514.1 (c); and prohibit "fatally damaging trees... having a circumference of twelve inches (12 in.) or greater at a height of four and one-half feet (4 ½ ft.) above ground." *Id.,* Para. 1514.1 (a); and require that any deviation from these restrictions must be approved by the Board of Zoning Adjustment (BZA) after a public hearing, subject to specified protective requirements. *Id.,* Para. 1515.1;

3. WHEREAS, the zoning regulations further provide that "Where removal or cutting of trees has occurred that would be prohibited by this section if a building permit were contemporaneously applied for, no building permit shall be issued for a period of seven years from such removal or cutting unless a special exception is granted by the Board of Zoning Adjustment pursuant to Section 1515." *Id.,* Para. 1514 (b);

4. WHEREAS, the property located at 2221 30th Street, NW (Lot 6, Square 2198), owned by Melvin Estrin, is included within the WNOD;

5. WHEREAS in July of 2001 two mature tulip poplar trees located on this property with diameters in excess of 75 inches at a height of 4 ½ feet above ground appear to have been fatally damaged as a result of demolition and construction work

undertaken on the property without measures adequately to protect these trees and their root zones, and one of these trees was later cut down by the property's owner in order to protect the adjoining property;

6. WHEREAS, in August 2001, the Building and Land Regulation Administration (BLRA) of the DC Department of Consumer and Regulatory Affairs (DCRA) issued a Stop Work order owing to the property owner's failure to obtain a permit to raze the existing house on the property; and

7. WHEREAS a request has been made by Mr. Robert Lehrman, a neighbor, to the Zoning Administrator of the DCRA that the matter be referred to the BZA for a public hearing under 11 DCMR Para. 1515.1;

8. NOW THEREFORE BE IT RESOLVED by ANC 3C that:

   I. The BLRA maintain the Stop Work order in place until such time as WNOD issues are resolved by the BZA;

   II. DCRA enforce the Tree and Slope Overlay Protection District regulations that pertain to 2221 30th Street;

   III. Until such time as building is permitted to resume at 2221 30th Street, the owner be directed by DCRA to restore and maintain the property to and in a safe, healthy and aesthetically attractive condition appropriate to the Woodland Normanstone neighborhood in which it is located;

   IV. DCRA order the owner to protect the remaining large trees on the property; and

9. BE IT FURTHER RESOLVED that the ANC Chair or her designee is authorized to testify at a BZA hearing on this matter.

This resolution was approved by the ANC 3-C by a unanimous vote at its regular public meeting on September 24, 2001, at which a quorum was present.

Attested by Nancy J. MacWood, Chair, on October 2, 2001
Date

Appeal of Robert Lehrman
BZA No. 16849

Exhibit 7

The Plant Health Specialists
INTEGRATED PLANT CARE
2279 Lewis Avenue ☐ Rockville, Maryland 20851
(301) 881-8130 • Fax (301) 881-3695

November 20, 2001

Mr. Robert Lehrman
1027 33rd St. NW Second Floor
Washington, DC 20007

Dear Mr. Lehrman,

Thank you for meeting with me this morning to look at a large tuliptree (Liriodendron tulipifera) at 2210 30th St., NW. You asked that I submit an opinion as to the health of the tree and its chances of survival given its present condition. Having not seen the tree previously, I can only base my opinion on what I observed today along with some historical knowledge of the tree species. I have no way of knowing what, if any, tree protection precautions that may have occurred during the construction process. I wish to report my findings.

The tuliptree in question is approximately 36" in diameter and located on the right side of the property. It is within three feet of a foundation excavation and there is no evidence of any tree protection fencing. A section of bark approximately 3 feet wide and 5 feet tall has been ripped from the base of the tree. This constitutes about a third of the circumference of the tree. From a distance of 50', I could see no indication of decay. The edges of the wound are quite jagged and I could not see any signs of callus formation. This would tend to indicate that the tree was damaged within the last year by a piece of heavy machinery.

Tuliptrees, as a species, are one of the most sensitive trees to construction injury. They are very intolerant to any changes within their micro-environment. Typically, tuliptrees are the first to die following soil or root disturbance.

Tuliptrees also do not tolerate wounding very well. Once a wound is made on the bark, this species does not wall off, or compartmentalize, the decayed tissue from the healthy tissue. This inability leads to the formation of an extensive cavity into the heartwood of the tree. Since wood not only provides storage of starches but also structural support, the integrity of the tree is compromised, eventually leading to failure.

I don't know if the roots were cut during the digging of the footings for the foundation. If that were the case, then approximately 40% of the roots were severed. Regardless whether roots were cut or not, the fact that one third of the bark as been destroyed will lead to the death of the majority of roots below that area.

Member National Arborist Association

I believe irreparable damage has been done to the tree and it is a liability. I would be surprised if it lives for more than two years. Even if it was to survive, it's days are numbered because of the wound at the base.

Please let me know if I may be of any further assistance.

Sincerely,

Paul L. Wolfe, II
President
Integrated Plant Care, Inc.

Appeal of Robert Lehrman
BZA No. 16849

Exhibit 8

the CARE of TREES
9228 Gaither Road · Gaithersburg, Maryland 20877 · (301) 948-5885 · Fax: (301) 948-4353

Febraury 18, 2002

Mr. Joseph Christopher
The Care of Trees
9228 Gaither Road
Gaithersburg, MD 20877

Dear Joseph:

You faxed me a letter from a person representing Lee's Tree Service, 16105 Morrow Road, in Poolsville, Maryland. In this letter, the author refers to inspecting a scrape on the side of a tree finding it "infected with silver fish." Silverfish, *Lepisma saccharina* are household insects that live in damp, cool places such as basements and laundry rooms. They are flat, elongated insects that are somewhat carrot shaped. Silverfish are a silvery gray in color and are about 1/3 to ¾ inch long. They typically feed on starchy materials such as paper, cereal, wallpaper paste, and similar materials. **They are not found outside and do not infect trees or feed on wood.**

Although I did not see the tree in question, I speculate that the person saw earwigs, *Forficula auricularia* under the bark, not silverfish. Earwigs are light to dark brown and have a pair of pincers on the rear of their abdomen. Earwigs commonly hide under loose bark during the day. Earwigs feed on decaying organic matter, but can attack flowers and vegetables, sometimes causing considerable damage. **They do not feed on wood or damage the bark of trees.**

I cannot comment on the condition of the tree referred to the letter. The presence of "silver fish," as alleged in the letter, however, is doubtful.

If you have other questions, please do not hesitate to call.

Sincerely,

Rex A. Bastian, Ph.D.
Vice President of Field Education and Development

CURRICULUM VITAE

REX A. BASTIAN, Ph.D.

The Care of Trees
2371 South Foster
Wheeling, Illinois 60090
(847) 394-8002

EDUCATION:

Doctor of Philosophy.

Iowa State University, December, 1988. Major: Entomology. Specialization in insect pests of urban landscape plants. Dissertation Title: 'Influence of temperature, host cultivar, and parasitism on mimosa webworm biology.' Major Advisor: Dr. E. R. Hart. GPA: 3.84/4.00.

Master of Science.

Iowa State University, 1982. Major: Horticulture. Minor: Plant Morphology. Advanced course work in plant physiology, plant pathology, plant breeding and genetics. Thesis Title: 'An alternative method for the field propagation of roses.' Major Advisor: Dr. Griffith J. Buck. GPA: 3.78/4.00.

Bachelor of Science.

Iowa State University, 1979. Major: Horticulture. Emphases in woody and herbaceous landscape plants combined with business specialization. GPA: 3.44/4.00.

Iowa State University, 1976. Major: Fisheries and Wildlife Biology. GPA: 3.33/4.00.

WORK AND TEACHING EXPERIENCE:

Jan. 1989–Present. Vice President: Field Education and Development, The Care of Trees, Wheeling, Illinois. Primary Duties: Responsible for supervision and direction of field education division of company, including metro Chicago, New York, Philadelphia, and Washington D.C. areas; Responsible for field and classroom training in plant health care practices; assist sales staff in diagnosis and treatment of pest and site related concerns; generation of newsletter and fact sheet material for both employee and client usage; consultation services for clients with reference to the areas of pest management and site/soil diagnostics.

Jan. 1984–Jan. 1989. Graduate Research Assistant, Department of Entomology, Iowa State University, Ames. Member of the forest entomology project. Primary Duties: Design and implementation of research studies on aspects of mimosa webworm ecology including thermal unit development models, assessment of potential host plant resistance among honeylocust cultivars, and the impact of parasitoids on local mimosa webworm populations; assist with statistical analysis of research data for other project members; involvement with all project research including studies on cottonwood leaf beetle, pine needle scale, and European alder leaf miner; responsible for the oral presentation of research papers, grant proposals and journal articles.

Aug. 1982–June 1983. Laboratory Instructor, Part-time, Department of Horticulture, Iowa State University, Ames. Primary Duties: Responsible for teaching laboratory sections in plant propagation, indoor home horticulture, and woody landscape plant identification.

Sept. 1981–Aug. 1982. Rank of Instructor, Department of Horticulture, Iowa State University, Ames. Primary Duties: Responsible for the development and teaching of a 3 semester credit course in outdoor home horticulture; responsible for teaching a 2 semester credit summer session course in indoor home horticulture; responsible for teaching all laboratory sections for courses in plant propagation and woody landscape plant identification; continued research work in field propagation of roses.

Sept. 1979–Sept. 1981. Graduate Assistant, Department of Horticulture, Iowa State University, Ames. Primary Duties: Investigation of alternative field production techniques for roses; assist teaching 2 laboratory sections in indoor home horticulture each quarter.

March, 1979–July 1979. Part-time employee, Earl May Garden Center, Ames, Iowa. Primary Duties: Retail sales, maintenance of nursery stock, and landscape planting.

June 1976–June 1978. Park Officer, Humboldt Country Conservation Board, Dakota City, Iowa. Primary Duties: Responsible for maintenance, enforcement, and user fee collection in country park system; Developed and instructed environmental education and hunter safety programs.

JOURNAL PUBLICATIONS:

Bastian, R. A. and E. R. Hart. 1991. Temperature effects on developmental parameters of the mimosa webworm (Lepidoptera: Plutellidae). Environ. Entomol. 20: 1141-1148.

Bastian, R. A. and E. R. Hart. 1990. First-generation parasitism of the mimosa webworm (Lepidoptera: Plutellidae) by *Elasmus albizziae* (Hymenoptera: Eulophidae) in an urban forest. Environ. Entomol. 19: 409-414.

Bastian, R. A., and E. R. Hart. 1990. Honeylocust clonal effects on developmental biology of mimosa webworm (Lepidoptera: Plutellidae). J. Econ. Entomol. 83: 533-538.

Miller, F. D., Jr., T. Cheetham, R. A. Bastian, and E. R. Hart. 1987. Parasites recovered from overwintering mimosa webworm, *Homadaula anisocentra* (Lepidoptera: Plutellidae). Great Lakes Entomol. 20: 143-146.

Hart, E. R., F. D. Miller, Jr., and R. A. Bastian. 1986. Tree location and winter temperature influence on mimosa webworm populations in a northern urban environment. J. Arboric. 12: 237-240.

Bastian, R. A., and G. J. Buck. 1980. An alternative technique for the field propagation of roses. Ia. St. J. Res. 55: 60-63.

BOOK CHAPTERS:

Marxman, J., and R. A. Bastian. 1997. Cultivating public confidence, pp. 171-175. *In* J. Lloyd [ed.], Plant health care for woody ornamentals. Int. Soc. Arboriculture., Savoy, Illinois.

EXTENSION PUBLICATIONS:

Bastian, R., and D. Lewis. 1987. Cockroaches and their control. Cooperative Extension Service Publication #IC-403, Rev., Iowa State University, Ames.

Lewis, D., W. Wintersteen, and R. Bastian. 1987. Insect galls on trees and shrubs. Cooperative Extension Service Publication #IC-417, Rev., Iowa State University, Ames.

TRADE PUBLICATIONS

Bastian, R. A. 1999. What do we do now regarding the Asian longhorned beetle? The Landscape Buyer. 6:1 pp. 29-30. MCD Marketing Assoc., Downers Grove, IL.

Bastian, R. A. 1999. In the wake of the Asian longhorned beetle. The Landscape Contractor. 40:3 pp. 30-37. IL Landscape Contractors Assoc., Lombard, IL.

Bastian, R. A. 1999. Keep a level head when dealing with gypsy moth. The Landscape Contractor. 40:1 pp. 70. IL Landscape Contractors Assoc., Lombard, IL.

Bastian, R. A. 1997. Dutch Trig: A potential weapon against Dutch elm disease. . The Landscape Contractor. 40:10 pp. 36-39. IL Landscape Contractors Assoc., Lombard, IL.

Bastian, R. A. 1997. Tough times for trees. Growing Trends. IL Nurserymen's Assoc., Springfield, IL, November.

Bastian, R. A. 1997. The business of plant health care. Arborist News. 6:2 pp. 29-32. Int. Soc. Arboric., Savoy, IL

Bastian, R. A. 1994. Preserve tree life during construction or pay the price. The Landscape Buyer. 1:4 16-17. MCD Marketing Associates, Downers Grove, IL

PAPER/POSTER PRESENTATIONS:

Jacobs, K. A., M. Lee, H. M. Griffiths, F. Miller and R. Bastian. 2001. A Clover proliferation phytoplasma associated with elm yellows in Illinois. International Society of Arboriculture meetings, Milwaukee, Wisconsin.

Bastian, R. A. 1994. Biological control needs of commercial landscape services in the Midwest. North Central Branch Meetings of the ESA, Springfield, Illinois.

Bastian, R. A., and E. R. Hart. 1988. Parasitism of the mimosa webworm by Elasmus albizziae (Hymenoptera: Plutellidae) in an urban forest. North Central Branch Meetings of the ESA, Denver, Colorado.

Bastian, R. A., and E. R. Hart. 1987. The effect of honeylocust cultivar on the development of the mimosa webworm. National Meetings of the ESA, Boston, MA.

Bastian, R. A., and E. R. Hart. 1986. Influence of temperature on the development of the immature stages of the mimosa webworm. National Meetings of the ESA, Reno, NV.

PROFESSIONAL AFFILIATIONS:

Illinois Arborist Association, President in 1996

Wisconsin Arborist Association

Entomological Society of America

International Society of Arboriculture

Vice Chair, Certification Test Committee

Member, Education Committee

National Arborist Association

Illinois Landscape Contractors Association

Appeal of Robert Lehrman
BZA No. 16849

Exhibit 9

Appeal of Robert Lehrman
BZA No. 16849

LIST OF WITNESSES

1. Robert Lehrman

2. Joseph Christopher

3. Laurence J. Aurbach, President
   Woodland Normanstone Neighborhood Association

4. Zoning Expert