Before
The Board of Zoning Adjustment of
The District of Columbia

Appeal of Diana de Brito and Jonathan Gottlieb of Building Permit No. B451175 Building Permit No. B452577 Building Permit No. B452735 Building Permit No. B455009 Building Permit No. B472018 2620 Foxhall Road, N.W.	Appeal Number 17391

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Appellants Amended and Restated Statement in Support of Their Appeal

January 9, 2006

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17391
EXHIBIT NO. 29

Diana de Brito
Jonathan Gottlieb
Appellants

Board of Zoning Adjustment
District of Columbia
CASE NO. 17391
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I. Introduction

Diana de Brito and Jonathan Gottlieb (the "Appellants") hereby appeal from a series of five administrative decisions of the Department of Consumer and Regulatory Affairs, Building and Land Regulation Administration ("DCRA"), to issue a series of five building permits to Eugene A. Ludwig and Carol Ludwig. The series of five building permits purported to authorize the Ludwigs to build a mansion, a second house, a tennis court, a pool, various structures, various fences, gates and walls on their property located at 2620 Foxhall Road, N.W., Square 1397, Lot 1031 (the ""Ludwig Estate"). This series of five administrative decisions violate numerous provisions of the Zoning Regulations of the District of Columbia and other regulations and laws.

II. The Appellants

Appellants reside with their children at 4610 Dexter Street, N.W., Square 1397, Lot 1032. Appellants and their family live in a single story ranch style house built in the 1950s. Appellants' property consists of 28,562 square feet (approximately two thirds of an acre). The Appellants' property is located within the Wesley Heights Overlay District. Appellants purchased their property on January 31, 2003.

The Appellants' property borders a portion of the north side of the Ludwig Estate. Accordingly, the backyard of Appellants' property abuts one of the required side yards of the Ludwig Estate. The Appellants' backyard slopes down from the Ludwig estate to a patio immediately behind the Appellants house. The Appellants have no walls or fences on the property lines between their home and homes on either side of them on Dexter Street, N.W.

III. The Ludwig Estate

The Ludwig Estate is located at 2620 Foxhall Road, N.W., Square 1397, Lot 1031. The Ludwig Estate consists of 124,980 square feet (approximately three acres). The property is owned by Eugene Ludwig and Carol Ludwig (the "Ludwigs"). The Ludwig Estate is so enormous that it borders twelve other residential properties, including five properties on Dexter Street that are in the Wesley Heights Overlay

District. The natural grade of the Ludwig Estate is to slope down rather dramatically from Foxhall Road to the rear of the Estate. The Ludwig Estate is zoned R-1-A, low density residential.

The Ludwigs purchased their estate on July 2, 1999. In 1999, the Ludwig Estate was vacant. For most of the twentieth century, a single family house occupied the property that was the Ludwig Estate. The house was small compared to the stone mansion that the Ludwigs would build. Moreover, the lot was wooded with many old large trees. The lot did not have a tennis court, a pool, a second house, large terraces or the enormous platform structures that the Ludwigs would build. That house was demolished in the 1990's. At the time, the Ludwig Estate was part of the Wesley Heights Overlay District.

IV. Overview of the Six Year Development of The Ludwig Estate

It took over six years for the Ludwigs to develop the Ludwig Estate and the work continues. The estate continued to be vacant for much of this period.

The Ludwigs had two plans to develop the Ludwig Estate. The first plan was drafted in 2000, but was abandoned by the Ludwigs. A second plan was drafted in 2003.

In 2003 construction began. By the summer of 2005, most of the construction was completed. In the summer of 2005, the Ludwigs moved into their mansion, but the construction continued. In fact work that was authorized in the permits issued in 2003 was still being completed in 2005. As of January 2006, construction continues in the required side yard adjacent to the Appellants property.

V. The First Plan to Develop the Ludwig Estate 1999 - 2000

On June 1, 2000, less than a year after they purchased the Ludwig Estate, the Ludwigs applied for a building permit. The permit described the proposed work as the following:

1) New residential dwelling;
2) Attached garage;
3) Tennis court;
4) Terrace;
5) Future swimming pool; and
6) Retaining wall, material concrete block.

The Ludwigs' architect for their first plan was Hugh Jacobson. The engineer was Kamel Engineering. The building contractor was Design/ Build Inc.

On December 21, 2000, DCRA issued Building Permit Number B433940 to the Ludwigs (the "2000 Building Permit"). No work was performed pursuant to the 2000 Building Permit, however. The Ludwigs appear to have used these plans as a basis for their second attempt at development of the Ludwig Estate.

VI. The Second Plan to Develop the Ludwig Estate 2001 - 2006

During 2001 and 2002, the Ludwigs continued to work on planning the development of the Ludwig Estate. Although they changed architects, engineers and other consultants, the plan was similar to the first plan. The second architect was Stephen Muse. The Engineer was Ehlert Bryan, Inc. The Building Contractor was Sandy Spring Builders, Inc.

In 2003, the Ludwigs embarked upon a two year project to develop the Ludwig Estate. Construction began in 2003. The Ludwigs moved into their mansion in the summer of 2005. Most of the construction has been completed, although some continues as of January 2006.

The second multi-million dollar plan included construction of the following:

1. multiple platform structures (consisting of concrete, metal, gravel, fill of undetermined origin and quality and other unknown materials) some of which are located in the required rear and side yards which function to elevate the height of the main house, tennis court, pool, second house and the property by as much as seventeen feet;
2. a multitude of fences, walls and gates located on top of the elevated platform structures in the required rear and side yards and elsewhere;
3. a "trash enclosure" located on top of the elevated platform structures in one of the required side yards;
4. a three story mansion located on top of the elevated platform structures that extends most of the width of the property
    a. with an estimated floor area of over twenty thousand square feet (according to one of the Ludwigs' applications)
    b. with a volume of over two hundred thousand cubic feet (according to one of the Ludwigs' applications);
5. a tennis court located in the required rear yard on top of two elevated platform structures both of which are topped by fences that are seven feet high;
6. a swimming pool located on top of the elevated platform structures; and
7. a second house located on top of the elevated platform structures.

A critical aspect of the Ludwigs plan was to enhance the views from the mansion and create total privacy for the Ludwigs by elevating the Ludwig Estate above the height of the neighboring properties.

The Ludwigs elevated the level of their three acre estate by as much as seventeen feet above the natural grade. They accomplished this remarkable transformation by constructing enormous platform structures that take up a large portion of the Ludwig Estate. These platform structures consisting of a variety of components including,

but not limited to, the following:

1. thousands of cubic yards of fill of undetermined composition, origin and quality trucked in to the Ludwig Estate from one or more undisclosed offsite locations;
2. poured concrete;
3. gravel;
4. metal rods;
5. metal mesh; and
6. other undetermined materials.

Where there was nothing between the ground and the sky, the Ludwigs deposited tons of fill to artificially raise their property above the property of the twelve neighboring properties.

In addition, the top of these platform structures include multiple fences, including solid wood fences, gates and a tennis court. The platform structures occupy the entire required side yard next to the Appellants' property and most of the required rear yard of the Ludwig Estate.

As a result of the platform structures, the mansion, the second house, the pool, the tennis court and the entire property loom high above all the neighboring properties, blocking sunlight and air, creating an eyesore, dramatically increasing runoff of water and silt and depressing property values.

A second major characteristic of the Ludwigs development plan was to maximize the open space near the Ludwigs mansion by pushing various structures to the outer edges of the Ludwig Estate allowing little or no buffer and setbacks from neighboring properties. Accordingly, some of the platform structures, the tennis court, the pool and a second house are closer to the homes of the Appellants and the neighbors than they are to the home of the Ludwigs. Accordingly, the Ludwigs who had three acres of land, nonetheless built their estate ignoring requirements for required rear yards and required side yards.

VII. The Ludwigs' Piecemeal Strategy for Applying for Building Permits

A. Overview of The Ludwigs' Piecemeal Strategy

In 2000, the Ludwigs had applied for and received a single permit for their first plan to develop the Ludwig Estate. In contrast, for their second plan, the Ludwigs applied for a series of five permits over a two year period. This was misleading.

Moreover, at least twice in 2003, the Ludwigs, through their authorized agent, stated and certified to the District of Columbia that they did not plan any "additional activity" for their estate "during the next three years that requires a permit." Despite their certification, the Ludwigs applied for five permits over the two year period.

Instead of submitting one application for approval of their comprehensive plan, the Ludwigs submitted five applications for approval of various components of the plan over a two year period. These multiple applications reflected different components of the same plan.

They delayed submission of applications in the hope of avoiding a full review and assessment of the entire project.

For instance, in 2003 the Ludwigs submitted an application to build a pool. But the Ludwigs did not include in their application the fences for the pool, which were necessary. Instead, the Ludwigs applied separately for a permit for these fences. The Ludwigs delayed for two years, until 2005, the submission of a separate application to build fences. According to their 2005 application, the fences were needed "to meet pool enclosure requirements." DCRA issued a separate permit for the pool in 2003 and a separate permit for the pool fences in 2005.

Likewise, in 2003 the Ludwigs submitted multiple applications to build various retaining and other walls. DCRA issued permits for the so-called walls in 2003. But the Ludwigs delayed for two years, until 2005, the submission of a separate application to build fences on top of the so-called walls. In their recent application for the Fence Permit, the Ludwigs referred to the newly constructed walls as "existing walls" despite the fact that the walls had only been constructed within the

past two years. In the required rear yard, the Ludwigs built two walls and two platforms.

The effect of this piecemeal approach has been to obfuscate the plan from both regulators and the public. By filing multiple applications over a two year period, the Ludwigs have made it difficult for anyone to piece together the various applications to get a full understanding of the entire project. The Ludwigs should not be allowed to benefit from this attempt to mislead. That would be unfair to the Appellants, to other neighbors and to the city.

B. The Ludwigs' First Application for a Building Permit

On March 5, 2003 the Ludwigs, applied to DCRA for their first of five building permits for development of the Ludwig Estate. In their first application, the Ludwigs sought authorization from DCRA for the following:

1. sitework for a future single family dwelling;
2. grading for a future single family dwelling;
3. construction of a "new twelve foot retaining wall" and
4. construction of a tennis court.

The tennis court and "new twelve foot retaining wall" were part of an enormous platform structure built entirely in the required rear yard of the Ludwig Estate.

Although the Ludwigs applied for a permit to build a tennis court in 2003, they did not apply for a fence for the tennis court until two years later. In 2005, the fence was added to the already enormous platform structure.

As discussed below, DCRA issued Building Permit Number B451175 on May 9, 2003.

C. The Ludwigs' March 2003 Certification That They Did Not Plan Any Additional Activity During the Next Three Years

On March 5, 2003, as part of their First Application, the Ludwigs, through their authorized agent, stated and certified to the District of Columbia that they did not plan any "additional activity" for their estate "during the next three years that requires a permit." The certification includes an acknowledgment by the agent that "The making of false statements on this application is punishable by criminal penalties. (DC Code Sec. 22-2514)" This acknowledgement is immediately above the signature line for the owner or authorized agent.

Despite their certified statement, the Ludwigs subsequently applied for four separate permits for their estate starting almost immediately after they made their certified statement.

D. The Ludwigs' Second Application for a Building Permit

On March 12, 2003 only one week after certifying that they did not plan any "additional activity" for their estate "during the next three years that requires a permit," the Ludwigs nonetheless applied to DCRA for their second of what was to become a series of five building permits for their estate.

In their second of five applications, the Ludwigs sought authorization from DCRA to perform the following work:

1. sitework and grading:
2. construction of a three story wood frame house;
3. stone veneer basement;
4. new driveway;
5. stone retaining walls; and
6. bluestone terraces.

It is not credible to believe that one week earlier, when the Ludwigs made their certification, the Ludwigs did not plan this extensive activity for their estate.

The retaining walls were part of the platform structures that were located in the required rear and side yards and within ten feet of the party line.

As discussed below, DCRA issued Building Permit Number B455009 on September 15, 2003.

E. The Ludwigs' Third Application for a Building Permit

On May 27, 2003, two months after certifying that they did not plan any "additional activity" for their estate "during the next three years that requires a permit," the Ludwigs applied to DCRA for their third of five building permits for their estate.

In their third of five applications, the Ludwigs sought authorization from DCRA for "footings and foundation for new single family home." It is not credible to believe that two months earlier the Ludwigs did not plan this activity for their estate.

As discussed below, DCRA issued Building Permit Number B452577 on June 26, 2003.

F. The Ludwigs' Fourth Application for a Building Permit

On July 1, 2003, approximately a month after filing their third application, the Ludwigs applied to DCRA for their fourth of five building permits for their estate. They filed a third application despite having certified four months earlier when they filed their first permit application that they did not plan any "additional activity" for their estate "during the next three years that requires a permit."

In their fourth application, the Ludwigs sought authorization from DCRA for a tennis court.

As discussed below, DCRA issued Building Permit Number B452735 on July 1, 2003.

G. The Ludwigs' June 2003 Certification That They Did Not Plan Any Additional Activity During the Next Three Years

On June 30, 2003, as part of their fourth application for a permit, the Ludwigs, through their authorized agent, stated and certified to the District of Columbia that they did not plan any "additional activity" for their estate "during the next three years that requires a permit." The certification includes an acknowledgment by the agent that "The making of false statements on this application is punishable by criminal penalties. (DC Code Sec. 22-2514)" This acknowledgement is immediately above the signature line for the owner or authorized agent.

Despite their second certified statement, the Ludwigs subsequently applied for a fifth permit for their estate.

H. The Ludwigs' Fifth Application for a Building Permit

On April 21, 2005, after certifying twice that they did not plan any "additional activity" for their estate "during the next three years that requires a permit," the Ludwigs applied to DCRA for their fifth of five building permits for their estate.

This permit application was not a mere afterthought on the part of the Ludwigs. In their fifth application, the Ludwigs sought authorization from DCRA for construction of the following:

1. various fences;
2. various gates; and
3. a "trash enclosure."

According to the Ludwigs application the various fences and gates were needed "to meet pool enclosure requirements." The pool purportedly had been constructed pursuant to permits issued two years earlier in 2003. If these fences were required for the pool, they should have been sought when the Ludwigs sought a permit for the pool.

Moreover, some of the fences were to enclose the tennis court. The tennis court had been constructed pursuant to permits issued two years earlier in 2003.

While the Ludwigs stated that the fences would be 7 feet height "Max," the Ludwigs built the fences on top of the "existing wall[s]." Accordingly, the fences far exceeded the seven foot height restriction. The Ludwigs 2005 application did not indicate that:

1. the "existing walls" were as high as twelve feet;
2. the "existing walls" had been built pursuant to permits issued two years earlier in 2003; and
3. the "existing walls" were part of enormous platform structures that the Ludwigs had constructed throughout their estate including the required rear yard and the required side yard.

The fences, gates and trash enclosures were located within ten feet of the party line.

As discussed below, DCRA issued Building Permit Number B472018 on April 27, 2005.

Until DCRA granted the Ludwigs this permit in 2005, appellants had no way to determine that the Ludwigs were going to build fences, gates and other structures, and that they were going to place these on top of the enormous platform structures in the required side and rear yards which they built under permits issued in 2003. Moreover, until then, the Appellants could not assess the impact of the entire development on them. The Ludwigs created a puzzle of five pieces; without all the pieces it was not possible to see the entire puzzle.

VIII. The Series of Five Administrative Decisions

A. Overview of The Five Building Permits

Appellants appeal from a series of five decisions of the DCRA which authorized construction of different components of the Ludwigs' second plan to develop the Ludwig Estate. All the permits issued to the Ludwigs for development of the Ludwig Estate together are hereby referred to as the "Five Building Permits."

The five permits are all interrelated. They all involve the same development of a single property within a two year period designed by a single architect and built by a single contractor. The propriety of the

series of Five Building Permits should be considered and assessed together.

B. The First Building Permit

First, Appellants appeal from the decision of D. Clark, then the Director of the Department of Consumer and Regulatory Affairs to issue Building Permit Number B451175 to the Ludwigs on May 9, 2003 (the "First Building Permit"). The First Building Permit authorized the Ludwigs to perform the following work:

1. sitework for a future single family dwelling;
2. grading for a future single family dwelling;
3. construction of a "new twelve foot retaining wall" and
4. construction of a tennis court.

C. The Second Building Permit

Second, Appellants appeal from the decision of D. Clark, then the Director of the Department of Consumer and Regulatory Affairs to issue Building Permit Number B452577 to the Ludwigs on June 26, 2003 (the "Second Building Permit"). The Second Building Permit authorized the Ludwigs to perform the following work:

1. footings; and
2. foundation.

The footings and foundation authorized by the Second Building Permit was built on top of the platform structure which had been built purportedly under the First Building Permit which authorized sitework for a future single family dwelling, grading for a future single family dwelling and construction of a "new twelve foot retaining wall."

D. The Third Building Permit

Third, Appellants appeal from the decision of D. Clark, then the Director of the Department of Consumer and Regulatory Affairs to issue Building Permit Number B452735 to the Ludwigs on July 1, 2003 (the "Third Building Permit"). The Third Building Permit authorized the Ludwigs to construct a tennis court.

The tennis court authorized by the Third Building Permit was built on top of the platform structure in the required rear yard which

had been built purportedly pursuant to the First Building Permit which authorized grading and construction of a "new twelve foot retaining wall."

E. The Fourth Building Permit

Fourth, Appellants appeal from the decision of D. Clark, then the Director of the Department of Consumer and Regulatory Affairs to issue Building Permit Number B455009 to the Ludwigs on September 15, 2003 (the "Fourth Building Permit"). The Fourth Building Permit authorized the Ludwigs to perform the following work:

1. sitework and grading:
2. construction of a three story wood frame house;
3. stone veneer basement;
4. new driveway;
5. stone retaining walls; and
6. bluestone terraces.

The house, basement, driveway and terraces authorized by the Fourth Building Permit were built on top of the platform structure which had been built purportedly pursuant to the First Building Permit which authorized sitework for a future single family dwelling; and grading for a future single family dwelling.

The house authorized by the Fourth Building Permit was built on top of footings and foundation which purportedly had been authorized by the Second Building Permit.

Some of the stone retaining walls authorized by the Fourth Building Permit were built in the required side yard to contain the thousands of cubic yards of fill of undetermined composition, origin and quality that the Ludwigs trucked in to the Ludwig Estate from one or more undisclosed offsite locations purportedly pursuant to the First Building Permit which authorized "grading."

Some of the stone retaining walls authorized by the Fourth Building Permit were built in the required rear yard within a few feet of a twelve foot high retaining wall also in the required rear yard purportedly pursuant to the First Building Permit.

F. The Fifth Building Permit

Fifth, Appellants appeal from the decision of Patrick J. Canavan, then the Acting Director of the Department of Consumer and Regulatory Affairs (the "Acting Director"), to issue Building Permit Number B472018 to the Ludwigs on April 27, 2005 (the "Fifth Building Permit"). The Fifth Building Permit authorized the Ludwigs to build 862 linear feet of fence "to meet pool enclosure requirements" with a height of seven feet of the following three types:

1. black vinyl coated fence;
2. natural wood "privacy fence;" and
3. wrought iron (black fence).

In addition, the permit appears to authorize the building of the following:

1. a "trash enclosure" and
2. various gates.

The various fences and gates authorized by the Fifth Building Permit were built, according to the Ludwigs' application "to meet pool enclosure requirements;" but the pool had previously been built by the Ludwigs pursuant to the Fourth Building Permit.

The various seven foot high fences and gates and the trash enclosure authorized by the Fifth Building Permit were built on top of the platform structures, as high as twelve feet, that the Ludwigs had previously built purportedly pursuant to the First Building Permit and the Fourth Building Permit. The combined height of these structures far exceeds seven feet. Some of these combined structures are in required side yards and required rear yards.

A portion of the seven foot high fences authorized by the Fifth Building Permit were built in the required rear yard within a few feet of a platform structure over twelve fee high that the Ludwigs had previously built in the required rear yard purportedly pursuant to the First Building Permit.

IX. The Manner in Which the Appellants Are Aggrieved by the Series of Five Administrative Decisions

As a result of the errors in issuing the Five Building Permits, the Appellants have been irreparably harmed. These errors have harmed the health, safety and welfare of the Appellants and the eleven other neighbors whose properties border the Ludwig Estate. They have suffered significant losses in the value of their properties as a result of the errors committed in issuing the Five Building Permits.

The Appellants and their neighbors have been particularly adversely affected by the various structures, including the platform structures and tennis court that were improperly constructed in the required side yard and required rear yard of the Ludwig Estate contrary to the Zoning Regulations. They are eyesores that loom over the Appellants' property and those of their neighbors. They inhibit enjoyment of the backyards of the Appellants and the neighboring properties and have depressed the property value of these properties.

Given the Appellants southern exposure, the Ludwigs' platform structure including the concrete wall and the solid wood fences in the required side yard block light and air particularly in the rear of the Appellants property and those of their neighbors. This endangers trees, inhibits growth of grass and plants, and increases erosion. Moreover, it conflicts with the design and appearance of the neighborhood.

The elaborate platform structures, improperly located in the required yards, dramatically increase the runoff creating damage to the homes, trees and property of the Appellants and their neighbors. The runoff endangers the roots of the many trees. The combination of the high amount of runoff and the lack of sunlight creates a serious erosion problem. Moreover, because the Appellants do not know the origin or quality of the fill the Ludwigs imported to their estate, the Appellants do not know whether the silt and water that regularly stream off the Ludwig Estate is hazardous to plants or humans.

The effect of errors in issuing the Five Permits is to dramatically alter the character of the neighborhood. Since the Ludwigs elevated the height of their estate, the mansion, the tennis court and the other platform structures tower over all twelve properties that border the Ludwig Estate threatening existing trees, limiting the access of air and

light and conflicting with the design and appearance of the five homes in the Wesley Heights Overlay District.

These errors threaten to establish dangerous precedents for the future of the Wesley Heights Overlay District and our entire community.

X. The Errors in the Series of Five Administrative Decisions

The Acting Director and the Director erred in granting the Five Building Permits because the Five Building Permits violate numerous provisions of applicable laws and regulations including, but not limited to, the following:

- 11 DCMR 101.1 which requires that "[i]n their interpretation and application," the provisions of the Zoning Regulations of the District of Columbia "shall be held to be the minimum requirements...;"

- 11 DCMR 101.1 (a) which requires that "[i]n their interpretation and application," the provisions of the Zoning Regulations of the District of Columbia "shall be held to be the minimum requirements....to provide adequate light and air;"

- 11 DCMR 101.1 (b) which requires that "[i]n their interpretation and application," the provisions of the Zoning Regulations of the District of Columbia, "shall be held to be the minimum requirements....to prevent ...the overcrowding of land;"

- 11 DCMR 101.1 (c) which requires that "[i]n their interpretation and application," the provisions of the Zoning Regulations of the District of Columbia, "shall be held to be the minimum requirements" to protect property;

- 11 DCMR 101.2(a) which states that in interpretation and application of the Zoning Regulations of the District of Columbia, it should be considered that the regulations

were "designed with consideration of the "character of the respective districts;"

- 11 DCMR 101.2(c) which states that in interpretation and application of the Zoning Regulations of the District of Columbia, it should be considered that the regulations were "designed with consideration of the...encouragement of ...land values in those districts;"

- 11 DCMR 101.3 (a) which requires that the Zoning Regulations of the District of Columbia "shall govern whenever they . . . require larger yards, courts or other open spaces" than "any statute or ...any other municipal regulations;"

- 11 DCMR 101.3 (c) which requires that the Zoning Regulations of the District of Columbia "shall govern whenever they . . . require a greater percentage of lot to be unoccupied" than "any statute or...any other municipal regulations;"

- 11 DCMR 101.3 (d) which requires that the Zoning Regulations of the District of Columbia "shall govern whenever they. . . impose other higher standards than are required in or under any statute or by any other municipal regulations;"

- 11 DCMR 199.2 (d) which specifies that for purposes of the Zoning Regulations of the District of Columbia, "the word 'shall' is mandatory and not discretionary;"

- 11 DCMR 199.1 which defines the term "structure" to be "anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including . . . retaining walls;"
- 11 DCMR 199.1 which in defining the term "yard" requires that "a yard required by the provision of this title shall be open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title' and which further requires that "no building or structure shall occupy in excess of fifty percent (50%) of a yard required by this title;"

- 11 DCMR 2503.1 which requires that "every part of a yard required under this title shall be open and unobstructed to the sky from the ground up;"

- 11 DCMR 405.9 which requires that the Ludwig Estate provide a side yard with "a minimum depth" of eight feet;

- 11 DCMR 199.1 which defines the term "yard, side" as "a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure;"

- 11 DCMR 404.1 which requires that the Ludwig Estate provide a rear yard with "a minimum depth" of twenty five feet;

- 11 DCMR 199.1 which in defining the term "yard, rear" requires that "the rear yard shall be for the full width of the lot and shall be unoccupied;"

- 11 DCMR 2503.3 which permits construction of "a fence or retaining wall" in a required open space such as a side yard or rear yard but only if it is "constructed in accordance with the D.C. Building Code;"

- 12 DCMR 3110.3.3 which requires that fences such as those approved in the Fence Permit that are within ten feet of the party line "shall not exceed 7 feet in height;"

- 12 DCMR 3110.1.1 which requires that "fence walls shall conform to the requirements for fences;"

- 12 DCMR 3110.3.5 which requires that "gates shall not exceed the height of the fence;"

- 12 DCMR 3110.1.3 which requires that "measurement of the height of fence shall be made from the top of the fence to grade;"

- 11 DCMR 400.1 which requires that "the height of buildings or structures. . . shall not exceed . . .a maximum height of 40 feet;"

- 11 DCMR 2500.2 which requires that an accessory building "shall be located only in a rear yard;"

- 11 DCMR 2503.2 which requires that a structure may occupy a required yard such as a rear yard and side yard but only if "no part" of the structure is more than four feet above the grade "at any point;"

- 11 DCMR 400.5 which requires that a "building or structure shall be removed from all lot lines of its lot for a distance equal to the height of the building or structure above the natural grade;"

- 11 DCMR 2500.2 which requires that a "an accessory building shall be located only in a rear yard;"

- 11 DCMR 2500.4 which requires that a "an accessory building . . . shall not exceed one (1) story or fifteen feet in height;

- 11 DCMR 2500.9 which requires that a "an accessory building shall not obstruct light and ventilation required by other regulations;

- 11 DCMR 1541.3 which provides that one of the purposes of the Wesley Heights Overlay District is to "preserve existing trees;"

- 11 DCMR 1541.3 which provides that one of the purposes of the Wesley Heights Overlay District is to "preserve...access to air and light;"

- 11 DCMR 1541.3 which provides that one of the purposes of the Wesley Heights Overlay District is to "preserve ... the harmonious design and attractive appearance of the neighborhood;"
- 11 DCMR 1543.2 which requires that "no structure, including accessory buildings, shall occupy an area in excess of thirty percent (30%) of the lot;

- 11 DCMR 403.2 which requires that "no structure, including its accessory building," shall occupy an area in excess of . . . of forty percent (40%) of the lot; and

- 11 DCMR 1543.3 which requires that "the gross floor area of all buildings and structures on the lot shall not exceed the sum of two thousand square feet plus forty percent of the area of the lot."

XI. The Appellants' Basis for Proving Their Case

Appellants intend to prove their case by providing documentation of each of the violations, expert and eyewitness testimony as well as analysis of the applicable laws and regulations.

XII. The Relief Requested

Appellants respectfully request that the Board of Zoning Adjustment enter relief consistent with 11 DCMR 3100.4 and other applicable law including, but not limited to, the following:

1. reverse each of the decisions relating to the issuance of each of the Five Building Permits to the extent that they violate the letter and the sprit of applicable laws and regulations;

2. vacate each of the Five Building Permits to the extent that they violate the letter and the sprit of applicable laws and regulations;

3. order the Ludwigs to remove all, or that portion of, structures including platforms, tennis courts, fences, gates and walls and any other changes to the Ludwig Estate to the extent that they violate the letter and the sprit of applicable laws and regulations and return the property to its original condition; and

4. order such further relief that is just and proper.

XIII. Conclusion

Appellants respectfully request that the Board of Zoning Adjustment enforce the letter and the spirit of the laws and regulations of the District of Columbia, including the Zoning Regulations of the District of Columbia, to protect the interests of homeowners in this and other neighborhoods against excessive development.

Respectfully submitted,

Diana de Brito and Jonathan Gottlieb

Diana de Brito and Jonathan Gottlieb

Certificate of Service

I, Jonathan Gottlieb, hereby certify that I caused to be delivered a copy of this Amended and Restated Statement upon each of the following persons:

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