

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of 1231 Morse Street, Inc.

BZA Appeal No. 17657
Hearing Dates: October 2, 16, and 30, 2007
ANC 5B

**APPELLANT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
ITS CLAIMS OF ESTOPPEL AND LACHES AGAINST DCRA**

The Appellant, 1231 Morse Street, Inc., by and through undersigned counsel, respectfully submits this Appellant's Supplemental Memorandum in Support of Its Claims of Estoppel and Laches Against DCRA as requested by the Board at the December 4, 2007 Public Meeting. In support of this Supplemental Memorandum, the Appellant states as follows:

I. CHRONOLOGY OF EVENTS

For the Board's reference and convenience, the following comprehensive chronology of events is well-established and not reasonably disputed. This chronology paints a clear picture of DCRA's inexcusable delay and misconduct in these matters and how Appellant has been repeatedly victimized.

September 5, 2005:

Appellant was granted a building permit to "Build an addition to (a single family dwelling) SFD/convert SFD to 11-unit apt. (apartment building) as per Plat/Plans" ("Original Building Permit"). Affidavit of Mr. Taiwo Demuren attached as Exhibit C to Appellant's Pre-Hearing Statement and Motion for Summary Judgment ("Demuren Affidavit"), Paragraph 7, attached herein as Exhibit 1; October 2, 2007 BZA Hearing Transcript ("October 2 BZA Transcript"), Pages 150-152.

February 2006:

Approximately three months after the date of the Original Building Permit, during which time construction progressed from the rear of the lot to the front where the existing structure sat, it became apparent to the Appellant that the existing structure was structurally unsound and in risk of collapse based on the condition of the foundation. Demuren Affidavit, Paragraph 9; October 2 BZA Transcript, Pages 150-151. Appellant followed proper procedure and

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promptly notified DCRA and requested an inspection. October 2 BZA Transcript, Page 246. Based upon a field determination by DCRA that the structure was unsound, Appellant requested the issuance of the emergency demolition permit as required by DCRA. Demuren Affidavit, Paragraph 10; October 2 BZA Transcript, Page 162.

February 14, 2006:

Appellant was granted a permit to demolish the existing single-family dwelling structure on an emergency basis because it was unsafe. ("Emergency Demolition Permit"). Demuren Affidavit, Paragraph 11. The Appellant was instructed by DCRA to bring the walls to a "safe height". October 2 BZA Transcript, Pages 165, 167, 169, 175-177. The permit contained a typographical error for the date as "12/14/2006," not correctly as "2/14/2006."¹

**February 20, 2006:
(President's Day)**

Remaining walls of single-family dwelling collapsed.

February 21, 2006:

DCRA inspector, G. Davidson issued a Stop Work Order ("First Stop Work Order") to Mr. Taiwo Demuren, President of 1231 Morse Street, Inc. The First Stop Work Order was post-dated to February 28, 2006 to allow Appellant to back fill and brace with earth the approximately five deep (5') walls of the excavated area. Demuren Affidavit, Paragraphs 15-18; October 2 BZA Transcript, Pages 151-152, 289.

The Appellant appealed the First Stop Work Order to the Code/Reviewing Official and then the Director of DCRA pursuant to 12 DCMR § 112.1.2. Demuren Affidavit, Paragraphs 19-20.

March 31, 2006:

Mr. Lennox Douglas, then Acting Administrator of the Building and Land Regulation Administration at DCRA writes to Appellant's counsel alleging that the original Building Permit and Emergency Demolition

¹ DCRA now claims that the Emergency Demolition Permit was issued on December 14, 2005, but has not presented any evidence, including documentary or testimony, to support that claim. DCRA has been unable to locate in its files for the Emergency Demolition Permit application or other official documentation. Based on DCRA's newly embraced theory of the Emergency Demolition Permit issued on December 14, 2005, the Appellant would have obtained the permit and then waited two (2) months until February 14, 2006 to use that permit. Under all the circumstances and testimony, DCRA's theory is not credible.

Permit were invalid and improperly obtained based on “falsifications”. DCRA’s Supplemental Witnesses Evidence List filed on October 26, 2007, attached as Exhibit 2, herein; October 30 BZA Transcript, Page 145.

January 16, 2007:

The Appellant submits the Revised Permit Application in accordance with discussions with DCRA. October 2 BZA Transcript, Pages 224-225; Demuren Affidavit, Paragraph 23.

January 18-19, 2007:

The Revised Permit Application is approved by Zoning Technician, Ms. Xuan Mac, but her decision is later overruled by the former Zoning Administrator on March 5, 2007. Demuren Affidavit, Paragraphs 24-25.

October 17, 2006:

The Appellant filed a Petition for Hearing and Appeal of the First Stop Work Order with the Office of Administrative Hearings (“OAH”). Demuren Affidavit, Paragraph 21.

December 15, 2006:

Appellant’s counsel and Mr. Olutoye Bello meet with DCRA’s counsel and Mr. Lennox Douglas. DCRA advised Appellant to file revised Building Permit Application, Demuren Affidavit, Paragraph 22; October 2 BZA Transcript, Pages 224-225.

March 5, 2007:

Former Zoning Administrator issued a Zoning Denial Letter for the Revised Permit Application. Demuren Affidavit, Paragraph 25.

March 27, 2007:

Judge Claudia Barber, after a March 19, 2007 Bench Decision, issued a Final Order Entering Judgment in Favor of Appellant finding on a Summary Adjudication that the First Stop Work Order was invalid as a matter of law based on DCRA’s failure to comply with the “clear and unambiguous” language of 12 DCMR § 114.1. (“OAH Decision”).

April 9, 2007:

DCRA issued a second Stop Work Order (“Second Stop Work Order”) to Appellant, based on the same facts and circumstances and alleging substantially the same violations as were at issue in the First Stop Work Order for which OAH entered judgment in favor of the Appellant and against DCRA. Demuren Affidavit, Paragraph 28.

April 12, 2007:

DCRA posted a third stop work order (“Third Stop Work Order”). DCRA provided no notice of any kind

of the Third Stop Work Order and Appellant did not learn of this new stop work order until Appellant's counsel was contacted by DCRA's counsel on May 8, 2007 in response to the pending OAH appeal of the Second Stop Work Order. At the same time, DCRA informed Appellant's counsel of the fourth stop work order dated May 8, 2007. Demuren Affidavit, Paragraph 29.

April 20, 2007

The Appellant filed this BZA Appeal of the Zoning Administrator's denial of the Revised Permit Application. BZA Record, Exhibit _____.

April 23, 2007:

The Appellant filed an Appeal of the Second Stop Work Order with the Code/Reviewing Official, Mr. Nicholas Majett. Mr. Majett never responded to the Appeal. Demuren Affidavit, Paragraphs 30-31.

April 27, 2007:

The Appellant filed the required second stage Appeal with DCRA's then Interim Director, Ms. Linda K. Argo. Again, Ms. Argo never responded to the Appeal and provided no notice that the Second or Third Stop Work Orders had been removed or rescinded. As a direct result, Appellant was forced to file the pending OAH Appeal of the Second Stop Work Order as well as appeals of the Third and Fourth Stop Work Orders. Demuren Affidavit, Paragraphs 32-34.

May 8, 2007:

DCRA posted a fourth stop work order ("Fourth Stop Work Order") at the Property. No notice of the Fourth Stop Work Order was provided to Appellant as required under 12A DCMR § 114.1. Demuren Affidavit, Paragraph 35.

May 18, 2007:

Appellant filed an appeal of the Third and Fourth Stop Work Orders with the Code/Reviewing Official, Mr. Nicholas Majett. Demuren Affidavit, Paragraph 36.

May 23, 2007:

Mr. Majett summarily denied Appellant's appeal of the Fourth Stop Work Order citing, without specificity or explanation, the entire Chapter 1 of the Building Code. Mr. Majett did not respond to the appeal of the Third Stop Work Order. Demuren Affidavit, Paragraph 37.

May 24, 2007:

Appellant filed an Appeal of the Third and Fourth Stop Work Orders to the then Interim DCRA Director, Ms. Linda K. Argo. Demuren Affidavit, Paragraph 38.

May 29, 2007:

Ms. Argo summarily denied Appellant's appeal of the Fourth Stop Work Order citing, without specificity or explanation, the entire Chapter 1 of the Building Code ("Final Decision"). Ms. Argo's Final Decision did not respond to the appeal of the Third Stop Work Order. Demuren Affidavit, Paragraph 39.

June 5, 2007:

DCRA filed a Motion to Dismiss of the pending OAH appeal of the Second Stop Work Order as Moot based on the issuance of the Fourth Stop Work Order. Demuren Affidavit, Paragraph 40.

June 15, 2007:

Appellant filed a Notice of Appeal of Ms. Argo's final decision regarding the Third and Fourth Stop Work Orders with OAH. Demuren Affidavit, Paragraph 41.

July 20, 2007:

DCRA served Appellant's counsel with the Notice to Revoke Permits. Demuren Affidavit, Paragraph 42.

July 25, 2007:

OAH granted Appellant's Motion to Consolidate the three (3) pending Stop Work Order Appeals and denied DCRA's Motion to Dismiss as Moot. Demuren Affidavit, Paragraph 43.

August 9, 2007:

The Appellant filed a Notice of Related Appeal of the Notice to Revoke Permits and Motion to Amend Pending Appeal. BZA Record, Exhibit _____.

II. THE DISTRICT IS ESTOPPED FROM DENYING THE REVISED PERMIT APPLICATION AND REVOKING THE ORIGINAL BUILDING PERMIT AND EMERGENCY DEMOLITION PERMIT

The District of Columbia is estopped from denying the Revised Permit Application and revoking the Original Building Permit and the Emergency Demolition Permit. The Appellant has already acted in good faith reliance, to its detriment, on the Original Building Permit and the Emergency Demolition Permit, and DCRA's recommendation to submit the Revised Permit Application.

There is a substantial body of case law applying estoppel to municipal corporations, including, specifically the District of Columbia. See i.e., District of Columbia v. Cahill, 54 F.2d 453, 454 (D.C. 1931) (where a party acting in good faith under affirmative acts of a city has

made such expensive and permanent improvement that it would be highly inequitable and unjust to destroy the rights acquired, the doctrine of equitable estoppel will be applied); Bannum, Inc. v. District of Columbia Board of Zoning Adjustment, 894 A.2d 423 (D.C. 2006); Saah v. District of Columbia Board of Zoning Adjustment, 433 A.2d 1114 (D.C. 1981); Goto v. District of Columbia Board of Zoning Adjustment, 423 A.2d 917 (D.C. 1980); Wieck v. District of Columbia Board of Zoning Adjustment, 383 A.2d 7 (D.C. 1978); Smith v. District of Columbia Board of Zoning Adjustment, 342 A.2d 356 (D.C. 1975).

Most recently, the D.C. Court of Appeals has repeated the six part test required to successfully establish an estoppel claim against the D.C. government, including: 1) expensive and permanent improvements; 2) made in good faith; 3) in justifiable and reasonable reliance upon; 4) affirmative acts of the District Government; 5) without notice that the improvements might violate the Zoning Regulations; and 6) the equities strongly favor the petitioner. Bannum, Inc. at 431; District of Columbia Department of Consumer and Regulatory Affairs v. Vu, CR-C-06-100009, (OAH, October 16, 2006). Finally, the District, and specifically, the Zoning Administrator, and DCRA are estopped from denying the Revised Permit Application and revoking the Original Building Permit and Emergency Demolition Permit.

It is indisputable that the Appellant undertook the present action, including but not limited to, incurring substantial debt, contracting with several contractors, allowing substantial and costly work to be performed on the Property and making other expensive and permanent improvements to the Property, in reliance on the Original Building Permit and the Emergency Demolition Permit issued under the direction of DCRA, long before the issuance of the former Zoning Administrator's March 6, 2007 denial of the Revised Permit Application and the July 19, 2007 Notice to Revoke Permits.

To date, the Applicant had incurred debt for the acquisition of the Property, including at least Two-Hundred Twenty Five Thousand Dollars (\$225,000.00) in high-interest carrying charges since the First Stop Work Order was issued twenty-two (22) months ago; Demuren Affidavit, Paragraphs 5 and 8; October 2 BZA Transcript Page 315; and Five-Hundred Fifty Thousand Dollars (\$550,000.00) in construction costs, Demuren Affidavit, Paragraph 8; October 2 BZA Transcript, Page 152. Additionally, the four stop work orders over a period of fifteen (15) months has prevented Appellant from obtaining lower-interest construction financing, Demuren Affidavit, Paragraph 8. This substantial financial investment and expenditure of funds, and the actions of the Appellant, were made in direct reliance on the affirmative acts of the District, including the issuance of the Original Building Permit and Emergency Demolition Permit, as well as DCRA's recommendation to submit the Revised Permit Application.

Having sought the assistance of DCRA, obtained the Emergency Demolition Permit and followed DCRA's instructions, the Appellant was "surprised" by DCRA's enforcement actions. October 2 BZA Transcript, Pages 153, 337. The Appellant acted "correctly" in notifying DCRA of his concerns about the structural integrity of the existing building. October 2 BZA Hearing, Page 246.

The Appellant's reliance on the repeated affirmative acts of the District were at all times in good faith, justified and reasonable under the circumstances for the purpose of investing in an aging vacant property and the construction of an addition thereto, for use as a rental accommodation. When the Appellant acquired the Property, obtained the original Building Permit and began construction, he had no knowledge or reason to believe that the existing structure had structural problems. October 2 BZA Transcript, Pages 154, 164. Appellant had no plan to replace the existing foundation walls which were subsequently damaged and destroyed by the unforeseen collapse. October 2 BZA Transcript, 190, 282. Notwithstanding the

allegation in the Notice to Revoke Permits, Mr. Douglas admitted he never inspected the Property until April 2007 and had “no idea” what the Appellant’s intent was when filing the Original Building Permit in April 2005. October 30 BZA Transcript, Pages 183, 192, 193.

In a matter decided by the Office of Administrative Hearings, captioned District of Columbia Department of Consumer and Regulatory Affairs v. Vu, supra, the District was estopped from revoking a building permit as the homeowner had debt of in excess of One Million Dollars (\$1,000,000.00) and the expenditure of the funds was in good faith and in justifiable and reasonable reliance on affirmative acts of DCRA, including instructions from DCRA to bring the structure to a “safe height”. October 2 BZA Transcript, Pages 165, 347. District of Columbia Department of Consumer and Regulatory Affairs v. Vu, CR-C-06-100009, (OAH, October 16, 2006).²

At no time prior to initiating the extensive and expensive construction at the Property or initiating the emergency demolition of the single family dwelling did the Appellant have any notice that the Original Permit and/or Demolition Permit were in violation of the Zoning Regulations and made no misrepresentations in any of the permit applications. October 2 BZA Transcript, Pages 157, 223, 231. Only after the emergency demolition had occurred did the former Zoning Administrator raise a challenge to the approvals granted. The former Zoning Administrator’s assumption and accusation that the Appellant had intentionally razed the existing single family dwelling and/or misrepresented the facts in the various permit applications is without any basis in fact or law.

² The Court of Appeals in Saah v. District of Columbia Board of Zoning Adjustment, supra, found that equitable estoppel applied against the District when significantly less money had been expended to complete less construction than in Vu. In Saah, the homeowner spent over one-quarter of a million dollars (\$225,000.00) for sixty percent (60%) completion.

The equities in this case overwhelmingly favor the Appellant. On the basis of the Original Building Permit, the Appellant began construction and reasonably continued for more than a year at a cost exceeding \$550,000.00. Since the posting of the First Stop Work Order, the Appellant has not been able to substantially continue construction on the Property. As such, for approximately twenty-two (22) months, the Property has been left with a partially completed and uninhabitable structure. Currently, construction is approximately thirty percent (30%) completed (fully under roof and water-tight, October 2 BZA Transcript, Page 189), and denying the Revised Permit Application and revoking the Original Building Permit and Emergency Demolition Permit have the domino affect of leaving the Property in this unfinished state. As in the Vu case, this result would be “ruinous” to the Appellant, precipitating a default in the acquisition loan and erecting a barrier to obtaining permanent financing and subjecting the Property to foreclosure. Further, the current Zoning Administrator, Mr. Matthew LeGrant, testified that the substantially completed structures appears to comply with the Original Permit for Conversion to an 11-unit apartment building and as approved is a confirming use and conforming structure in the R-4 Zone. October 30 BZA Transcript, Pages 273, 284, 288-289, 292-297. Mr. LeGrant also testified that the Original Building complied with the Zoning Regulations when issued. *Id.*, Page 293. “In zoning, the equities can be so compelling as to favor the individual property owner.” Wieck at 13.

**A. REVOCATION OF THE ORIGINAL BUILDING PERMIT AND
EMERGENCY DEMOLITION PERMIT IS BARRED BY THE
DOCTRINE OF LACHES**

The Notice to Revoke Permits is barred by the doctrine of laches, as the District "slept on its rights" with respect to any claim as to the Original Building Permit and the Emergency Demolition Permit. See, 11 D.C.M.R. 3112.2(a); see also, Appeal No. 16849 of Robert Lehrman; Appeal No. 14110 of the Residential Action Coalition; Georgetown Residents Alliance

v. District of Columbia Board of Zoning Adjustment, 816 A.2d 41 (D.C. 2003); Waste Management of Maryland, Inc. v. District of Columbia Board of Zoning Adjustment, 775 A.2d 1117 (D.C. 2001).

"To prevail on the affirmative defense of laches, the party asserting the defense bears the burden of proving that (1) the claimant knew of the existence of the grounds for the claim; (2) the delay was unreasonable and must have worked to the disadvantage, injury or prejudice of the party asserting the defense; (3) the delay of time has resulted in some change in the condition of the property or in the relations of the parties; however, the mere passage of time is insufficient to support a finding of laches." Town of Cameron v. Woodell, 150 N.C. App. 174, 563 S.E. 2d 198 (N.C. App. 2002).

If the District had a viable claim against the issuance of the Original Building Permit and the Emergency Demolition Permit, it waited far too long in seeking recourse. See, Federal Marketing Company v. Virginia Impression Products Company, 823 A.2d 513 (D.C. 2003); see also, Richards v. Mackall, 124 U.S. 183 (1888); Halstead v. Grinnan, 152 U.S. 412 (1894). The Court of Appeals in American University Park Citizens Association v. Burka, 400 A.2d 737 (D.C. 1979), stated that "[l]aches is the principle that equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant." Id. at 740 (internal quotations omitted).

The Original Building Permit was issued on September 6, 2005. BZA Appeal Exhibit C. On or about September 7, 2005 construction at the Property commenced and continued for five (5) months at a cost of \$550,000.00. The Emergency Demolition Permit was issued on February 14, 2006. BZA Appeal Exhibit D. Mr. Douglas testified that based on his March 31, 2006 letter, the Original Building Permit and Emergency Demolition Permit should have been revoked then. October 30 BZA Transcript, Pages 187-188. However, Mr. Douglas waited sixteen (16) months

until July 2007 to issue the Notice to Revoke Permits. Id. Even after Mr. Crews' Zoning Denial Letter in March 2007, Mr. Douglas still waited more than four (4) months to act. October 30 BZA Transcript, Pages 189-190. The District is barred by laches, as well as estoppel, discussed infra, from revoking the Original Building Permit and the Emergency Demolition Permit more than two (2) years after the issuance of the Original Building Permit and the start of construction. Given the level of sustained scrutiny that the former Zoning Administrator and DCRA has directed at the Property, it is inexcusable that the Notice to Revoke Permits was filed at such a late date.

The Appellant, in reliance on the issuance of the Original Building Permit authorizing the construction of the addition to the single family dwelling, combined with the subsequent issuance of the Emergency Demolition Permit authorizing the demolition of the single family dwelling, has expended significant amounts of money on the Property. It is without dispute that a change in the condition of the Property has occurred since the time the Original Building Permit was issued, and that said change in condition is directly related to the issuance of the Original Building Permit and Emergency Demolition Permit. Clearly, the District's delay in acting on its alleged claims, without making a concession as to the merits of the same, has operated to the extreme prejudice of the Appellant. The Notice to Revoke Permits may result in the Appellant defaulting on its acquisition loans and other financial obligations as to the Property.

III. CONCLUSION

For the foregoing reasons, the Appellant's claims of Estoppel and Laches against DCRA are valid and the Appeal of the March 6, 2007 Zoning Letter and July 20, 2007 Notice to Revoke Permits must be GRANTED.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

A large, bold, handwritten signature in black ink, appearing to read 'JPB', is written over the firm name.

John Patrick Brown, Jr, # 417566

Stephanie A. Baldwin, # 463370

1620 L Street, N.W.

Suite 900

Washington, D.C. 20036

(202) 452-1400

Counsel for Appellant – 1231 Morse Street

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellant's Supplemental Memorandum in Supports of Its Claims of Estoppel and Laches Against DCRA was served by electronic and first-class mail, this 17 day of December 2007, upon the following:

Jill Stern, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Room 9400
Washington, D.C. 20002

Doris Parker-Woolridge, Esq.
Assistant General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Room 9400
Washington D.C. 20002

Mr. William Shelton
Chairperson
Advisory Neighborhood Commission 5B01
1437 Montana Ave., N.E.
Washington, DC 20018

Ms. Elise Bernard
Advisory Neighborhood Commission 5B08
1220 Florida Ave., N.E.
Washington, DC 20002



John Patrick Brown, Jr.

EXHIBIT 1

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of 1231 Morse Street, Inc.

BZA Appeal No. 17657

ANC 5B

Hearing Date: October 2, 2007

AFFIDAVIT

I, Taiwo Demurren, duly sworn, depose and state as follows:

1. I am over twenty one (21) years of age and make this Affidavit based on personal knowledge of the facts set forth herein.
2. I am the President of 1231 Morse Street, Inc. ("Appellant"), a District of Columbia corporation which owns the real property and improvements located at 1233 Morse Street, N.E. (Square 4069, Lot 130) (the "Property"), and am authorized to make this Affidavit on behalf of 1231 Morse Street, Inc. in support of the above-captioned BZA Appeal, as amended.
3. The Appellant is the owner of 1233 Morse Street, N.E. (Square 4069, Lot 130 (formerly Lots 810, 812 and 816)) ("Property").
4. The Property is zoned R-4 and has a lot area of 10,443 square feet.
5. The Appellant acquired the Property in April and November 2004, which was at that time was improved with a vacant single-family dwelling constructed in 1940. The acquisition of the Property was originally financed by a Mortgage with an interest rate of 18% which was to be replaced by construction financing at a lower interest rate during the construction phase.
6. On April 12, 2005, the Appellant applied for a Building Permit to construct an addition to the single-family dwelling and convert the single-family dwelling to an eleven (11)

unit apartment building in accordance with the applicable Zoning Regulations. The building permit application was accurate, submitted in good faith and did not misrepresent the Appellant's plans and/or true intentions for the project.

7. On September 6, 2005, DCRA issued the Original Building Permit authorizing the Appellant to "BUILD ADDITION TO SFD/CONVERT SFD TO 11-UNIT APT."

8. On or about September 7, 2005, the Appellant in reliance on the Original Permit began construction of the addition to the single family dwelling at the rear of the Property. Until construction was halted by DCRA, Appellant had spent approximately \$550,000.00 in construction costs to complete at least thirty percent (30%) of the approved work. Additionally, while work has been halted since February 2006, Appellant has incurred \$225,000.00 in high interest finance charges. Since the issuance of the First Stop Work Order, Appellant has been unable to obtain lower-interest rate construction financing which was applied for prior to the First Stop Work Order.

9. On or about February 7, 2006, during the construction of the addition, the Appellant became concerned about the structural integrity of the single-family dwelling, notified DCRA of the concern and requested an inspection of the Property.

10. After inspection, DCRA inspectors confirmed that the existing single family dwelling was unsafe and instructed the Appellant to obtain an emergency demolition permit.

11. On February 14, 2006 [a typographical error shows the permit dated December 14, 2006], DCRA issued Building Permit No. B478420 authorizing the emergency demolition. Appellant in good faith complied with the Demolition Permit and instructions from DCRA.

12. On or about February 15, 2006, the Appellant began the authorized emergency demolition.

13. On Saturday, February 18, 2006, the Appellant ceased demolition activities mistakenly believing that construction activities were limited to Monday through Saturday, from 7:00 am to 7:00 pm.¹

14. During the course of that weekend, heavy rains and wind caused the collapse of the remaining walls of the single-family dwelling.

15. After the collapse, DCRA instructed the Appellant to stabilize the Property by placing block foundation walls to grade to prevent collapse of the excavated area of the single-family dwelling.

16. On February 22, 2006, DCRA issued the Appellant a written notice of a Stop Work Order to be post dated to February 28, 2006 to allow Appellant to back fill and brace the ground in order to stabilize the Property and prevent damage to the adjoining property.

17. On February 27, 2006, DCRA inspection reported that the existing structure had been razed.

18. On February 28, 2006, DCRA posted the Property with a Stop Work Order ("First Stop Work Order").

19. The Appellant appealed the First Stop Work Order to the Code/Reviewing Official and then the Director of DCRA pursuant to 12 DCMR § 112.1.2.

20. The Code/Reviewing Official did not timely respond to the appeal of the First Stop Work Order, and the Director of DCRA never responded to the subsequent appeal of the First Stop Work Order.

21. On October 17, 2006, the Appellant filed an appeal with the Office of Administrative Hearings (Case No. OAH-CR-C-06-100032).

¹ Emergency demolition activities are not subject to the standard construction hours of operation.

22. In an attempt to resolve the First Stop Work Order appeal, the Appellant and DCRA entered into discussions.
23. On January 16, 2007, the Appellant filed the Revised Permit Application based on the settlement discussions Appellant had with DCRA.
24. On January 18-19, 2007, the Revised Permit Application was processed as a “walk-through” permit. A Zoning Review Technician approved the Revised Permit Application on January 18, 2007.
25. On March 5, 2007 overruled the Zoning Technician’s January 18, 2007 approval of the Revised Permit Application. Then on March 6, 2007, the former Zoning Administrator, Bill Crews issued a denial letter for the Revised Permit Application.
26. On March 19, 2007, OAH conducted a hearing on the Appellant’s Motion to Dismiss the First Stop Work Order as invalid on its face for DCRA’s failure to comply with the clear and explicit requirements set forth in 12 DCMR § 114.1.
27. On March 27, 2007, OAH issued a written decision in favor of the Appellant and against DCRA granting the Appellant’s Motion for Summary Adjudication finding that the First Stop Work Order issued by DCRA was invalid as a matter of law.
28. On April 9, 2007, DCRA issued a second Stop Work Order (“Second Stop Work Order”) alleging the same alleged violations of the First Stop Work Order, as well as six additional and unsubstantiated charges and proposed fines of \$16,000.00.
29. On April 12, 2007, DCRA posted a third Stop Work Order (“Third Stop Work Order”): DCRA provided no notice of any kind of the Third Stop Work Order as required under 12A DCMR §114.1.

30. On April 23, 2007, the Appellant filed an appeal of the Second Stop Work Order with the Code/Reviewing Official.

31. The Code/Reviewing Official did not respond to the appeal of the Second Stop Work Order.

32. On April 27, 2007, the Appellant filed the second stage appeal of the Second Stop Work Order with the Director of DCRA.

33. The Director of DCRA did not respond to the Appeal.

34. On May 7, 2007, Appellant filed the pending OAH Appeal of the Second Stop Work Order.

35. On May 8, 2007, Appellant's counsel was contacted by DCRA's counsel in response to the pending OAH appeal of the Second Stop Work Order and was given first notification of the Third Stop Work Order (dated April 12, 2007) and notice of the fourth Stop Work Order ("Fourth Stop Work Order") of the same date. No notice of the Fourth Stop Work Order was ever provided to Appellant as required under 12A DCMR § 114.1.

36. On May 18, 2007, Appellant filed an appeal of the Third Stop Work Order and Fourth Stop Work Order with the Code/Reviewing Official.

37. On May 23, 2007, the Code/Reviewing Official summarily denied Appellant's appeal of the Fourth Stop Work Order citing, without specificity or explanation, the entire ninety-three (93) pages of Chapter 1 of the Building Code. The Code/Reviewing Official did not respond to the appeal of the Third Stop Work Order.

38. On May 24, 2007, Appellant filed an appeal of the Third Stop Work Order and Fourth Stop Work Order to the Director of DCRA.

39. On May 29, 2007, the Director of DCRA summarily denied Appellant's appeal of the Fourth Stop Work Order citing, without specificity or explanation, the entire ninety-three (93) pages of Chapter 1 of the Building Code. The Director of DCRA did not respond to the appeal of the Third Stop Work Order.

40. On June 5, 2007, DCRA filed a Motion to Dismiss of the pending OAH appeal of the Second Stop Work Order as moot based on the issuance of the Fourth Stop Work Order.

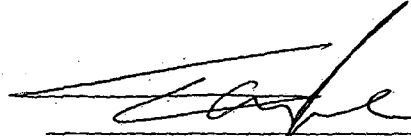
41. On June 15, 2007, Appellant filed a Notice of Appeal with OAH of the Third Stop Work Order and the Director of DCRA's decision to deny the appeal of the Fourth Stop Work Orders.

42. On July 20, 2007, DCRA served Appellant's counsel with the Notice to Revoke Permits.

43. On July 25, 2007, OAH granted Appellant's Motion to Consolidate the appeals of the Third Stop Work Order and Fourth Stop Work Order with the appeal of the Second Stop Work Order, and denied DCRA's Motion to Dismiss as moot.

44. The OAH hearing on the Second, Third and Fourth Stop Work Orders has been continued until after this BZA Appeal hearing.

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For Signature Page**


Taiwo Demurren

Subscribed and sworn to me this _____ day of September, 2007.

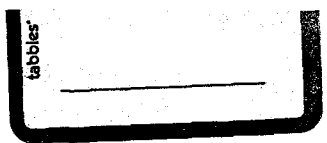

Notary Public

My Commission Expires:

YVETTE D. MOORE
A Notary Public Of District Of Columbia
My Commission Expires January 1, 2008

EXHIBIT 2

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



Building and Land Regulation Administration
Office of the Administrator

March 31, 2006

Mr. Lyle M. Blanchard
Greenstein Delorme & Luchs, P. C.
1620 L Street, NW—Suite 900
Washington DC 20036-5605



Subject: Stop Work Order – 1233 Morse Street, NE

Dear Mr. Blanchard:

This is in response to the appeal forwarded to this office, dated March 10, 2006 regarding the Stop Work Order (SWO) placed at 1233 Morse Street, NE.

Regarding the allegedly improper, incorrect, invalid Stop Work Order (SWO), the SWO was issued pursuant to the DCMR Title 12 Section 114A, which clearly states that a Stop Work Order is necessary *“when work on any building or structure is being performed contrary to the provisions of the Construction Codes or in an unsafe and dangerous manner, the property shall be posted and such work shall be immediately stopped until the situation is corrected.”*

Mr. Demuren was issued a permit on September 5, 2005 to “Build an addition to the existing single family dwelling (SFD) and to convert the SFD to an 11 unit apartment.” However, based upon inspection conducted on February 27, 2006, the existing building was razed without the proper permits; thus, creating a condition of constructing a new building without the proper permits.

A second permit was issued on December 14, 2005, as an emergency demolition. The actual permit indicated the date of issuance is December 14, 2006, evidently in error. This permit was only to remove a partial exterior wall and bring the building to a safe height.

Since the ongoing construction is to build a new building the proper permits must be acquired to ensure compliance with the District of Columbia Building Codes and Zoning Regulations. Thus this work was not stopped based upon “mere speculation,” but on the fact the permit was issued for an addition and a new four (4) story is being constructed.

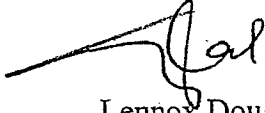
EXHIBIT "E"



Therefore, based on the aforementioned, the SWO remains in effect until the conditions of the SWO are met.

If you have additional questions regarding this matter, please contact me at (202) 442-4542.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lennox Douglas', with a long horizontal stroke extending to the left.

Lennox Douglas, Acting
Administrator

cc: Neil Stanley
David Janifer
Hardat Mahase