From: Jeannine Rustad Zigner
To: internet:denzil.noble@dc.gov; internet:theresa.Lewis@dc.gov
Date: 8/27/2003 5:24PM
Subject: 210 D Street, S.E.

Since our meeting of August 19, we have been retained by the adjoining property owners to the above-referenced property. Attached is a letter outlining several concerns regarding the subdivision and construction at 210 D Street, S.E. By this letter, we are requesting a meeting within the next few days.

Please contact me at your earliest convenience.

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D.C. OFFICE OF ZONING
2003 SEP 12 PM 2:57

BZA
Case No. 17085
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO. 17085
EXHIBIT NO. 24

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

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August 27, 2003

BY FACSIMILE AND EMAIL
Ms. Teresa Lewis
Deputy Director/Chief of Staff
Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.W.
Washington, D.C. 20002

Mr. Denzil Noble
Acting Zoning Administrator
Building & Land Regulation Administration
Department of Consumer & Regulatory Affairs
941 North Capitol Street, NW, Room 2500
Washington, D.C. 20002

Re: 206, 208 & 210 D Street, S.E.; Square 763, Lots 26, 27 & 28

Dear Masseur/Madam:

As you may recall, at the conclusion of our August 19, 2003 meeting, I brought up the fact that we had been contacted by several neighbors of the above-referenced properties (hereinafter the "Properties") regarding concerns over the recent subdivision of the Properties, as well as the on-going construction. This letter shall serve to advise you that we have been retained by the neighbors adjoining the Properties along 2nd Street, S.E. (the "Neighbors") and to request a meeting as soon as possible to discuss the following issues.

Subdivision of the Properties. On or about September 30, 2002, the Properties were subdivided from one existing lot of record (Lot 4) into the three current nonconforming lots. As indicated below, each of the Properties is nonconforming by way of lot width and area.

Lot	Lot Width	Lot Area
26	16'	1,447 s.f.
27	16'	1,529 s.f.
28	16'	1,529 s.f.

None of the exceptions to the area requirements in the Zoning Regulations justify these nonconformities.

The required lot width and area are eighteen feet (18') and 1,800 s.f., respectively. 11

D.C.M.R. § 401.3. Even assuming the previous individual assessment and taxation lots (i.e. A&T Lots 800, 801 & 802) provide a basis for the current subdivision (which we submit would be erroneous), section 401.2 is inapplicable in the instant matter, as these properties are adjoining, unimproved properties. 11 D.C.M.R. § 401.2. Section 401.4 is likewise inapplicable, as Lot 4 was greater than 200% of the required lot width and lot area. Finally, Section 407.1 cannot apply, as the deviation on the lot area for each of the Properties is greater than two percent (2%). 11 D.C.M.R. § 407.1. Moreover, the deviation would not be "minor", as the end result – allowing three (3) new two-family flats in the CAP/R-4 zone district – would impair the purpose of the Zoning Regulations of controlling density in the CAP overlay. In light of the foregoing, the subdivision of the Properties is illegal and must be revoked.

Building Code Violations.

Section 112.9 of the D.C. Construction Code authorizes revocation of a permit for, *inter alia*, "false statement or misrepresentation of fact on application or plans" or if the construction does not comply with the construction code, permit or approved plans. 12 D.C.M.R. § 112.9.1 & 2; *see also* 12 D.C.M.R. § 113 *et seq.* (conditions of permits). The permits for the properties must be cancelled as they contain false statements, misrepresentations on submitted plans and construction is not in conformity with the permits and submitted plans.

False statements and misrepresentations include the following:[1]

1. The address of the owner of the Properties is listed as 210 D Street, S.E. However, this is one of the subject Properties and is currently unimproved;[2]
2. On the application for Lot 27, the owner failed to complete boxes 22 and 23 regarding disturbing the earth, despite the fact that the permit application is for a foundation;
3. A certificate of occupancy is attached to the applications, which certificate does not appear to pertain to the Properties;
4. The application for Lot 27 is unsigned;
5. Plans erroneously show the lot depths of 326 and 324 2nd Street, S.E. as 75'1/2". In fact, the depths of those properties are 81'9.5";
6. The owner's plans erroneously label a private easement to the west of Lot 28 as an "alley";
7. Upon information and belief, the foundation and footings for Lot 28 encroaches upon the properties at 324 and 326 2nd Street, S.E. and a private right of way behind 318, 320 and 322 2nd Street, S.E. Encroachment is approximately one foot;
8. The owner, without availing itself of the alley-closing procedures, has closed off access to the north-south alley to the east of the Properties and regularly closes off more street frontage than permitted by its public space permit; and

[1] We have only been able to obtain copies of the permit applications for Lots 26 and 27.

[2] However, it is suspected that there is someone living in the construction trailer.

9. On the Environmental intake form, the owner incorrectly states that its does not own adjoining property (box 1).

Section 3302.3 of the Building Code provides that:

> **Temporary encroachments:** Sidewalk sheds, underpinning and other temporary projective guards and devices shall not project beyond the interior and street lot lines except where required to ensure safety of the adjoining property and the public, *subject to approval.* Where necessary, *the written consent of the adjoining property owner shall be obtained.*

12A D.C.M.R. § 3302.3 (emphasis added).

Section 3310.2 provides:

> **Protection of Adjoining Property:** *If afforded the necessary* ***written*** *permission* to enter the adjoining lot, building or structure, the person causing demolition or excavation to be made *shall at all times and at his or her own expense* preserve and protect the lot, building or structure from damage or injury. If the necessary written permission is not afforded, it shall be the duty of the owner of the adjoining lot, building or structure to make safe his or her own property, for the prosecution of which said owner shall be granted the necessary written permission to enter premises for demolition or excavation. In the case of an existing adjoining or party walls which require underpinning, proper underpinning shall be provided in accordance with 3309.3 whether or not written permission to enter the adjoining lot is granted, provided adjoining owner has been given 30 days written notice by registered mail.

12A D.C.M.R. §3310.2 (emphasis added).

Finally, section 3310.7 provides that:

> **Sheeting and Shoring:** All excavations shall be protected by sheet piling or adequate shores of approved design in order to prevent excavation wall collapse and to protect adjoining building or property from damage.

In addition to encroaching upon the easement area to the east of the Properties, the owner has excavated the easement area. By letter dated August 7, 2003, the Neighbors notified the owner of the encroachment. Rather than cease construction in order to obtain the necessary written consent from the Neighbors to continue to use the easement, the owner simply responded that it hoped to restore the easement by October 30, 2003. Similarly, excavation has occurred in the public alley to the west of the Properties. The excavation in the easement area has

compromised the structural integrity of the brick fences at the rear of the Neighbors' properties, as no shoring has been provided. Likewise, the excavation in the public alley has compromised the safety of the alley.

Request For Meeting. Before construction proceeds any further causing potentially irreparable damage to the Neighbors' properties, we request a meeting with you to be scheduled within the next few days. The owner's disregard for the applicable regulations and the property of the Neighbors has raised great concerns. Given that there appears to be no justification for the subdivision, Rick Driest should be included in this meeting, as well as the new Zoning Administrator, if he is available.

I am available to meet any time after 10:00 a.m. on Friday, August 29, all day on Tuesday, September 2, after 10:30 a.m. on either Wednesday or Thursday, September 3 or 4, and between 10:30 and 2:00 on Friday, September 5.

Your prompt response to this request for a meeting is greatly appreciated.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler
Jeannine Rustad Zigner

cc: Mary Ann Snow (by email)
Louise Smith (by email)
Tracy Gruise