HUNTON& WILLIAMS

HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

RICHARD L. AGUGLIA
DIRECT DIAL: 202-955-1634
EMAIL: raguglia@hunton.com

FILE NO: 64929.000002

February 18, 2004

By Hand Delivery

Board of Zoning Adjustment
c/o Geoffrey Griffis, Chair
441-4th Street, N.W.
Room 210
Washington, D.C. 20001

Re: ***February 24, 2004 Hearings:***
BZA Application No. 17108
(Application of Folger Park North, LLC for a variance) and

BZA Application No. 17085
(Appeal of Larry and Louise Smith and Mary Ann Snow regarding building permit)

Dear Chairman Griffis and Fellow Board Members:

This firm represents the applicant ("Folger") in Case No. 17108 as well as in opposition to the appeal in Case No. 17085.

Please be advised of the following in these cases:

Case No. 17108

Exhibit C – A portion of Exhibit C (subdivision plat) to our filing of February 10, 2004 was missing and is enclosed, together with other plats showing the subdivision history of the subject properties, in light of Office of Planning's response to this case.

Exhibit D – The Sanborn Map listed as Exhibit D to our filing of February 10, 2004 was difficult to read. An enlarged map is attached indicating the existence of three residences in 1928 where the subject properties are now built, together with the assessment record cards for those three 800 lots showing individual ownership prior to 1958.

BZA
Case No. 17085
Exhibit No. 44

Board of Zoning Adjustment
District of Columbia
CASE NO. 17085
EXHIBIT NO. 44

Exhibit F – Enclosed are color pictures to be substituted for those black and white pictures found in Exhibit F, which exhibit was attached to the applicant's filing of February 10, 2004 (Statement of the Case) in BZA Case No. 17108. As the firm's color copier was not functioning at the time of the filing, good cause exists for this substitution. Please note that five (5) additional color photos have been attached, which are the most recent photos of the subject 2 family flats, taken on February 14, 2004, plus one photo of the alleged easement taken pre-construction.

Response to Appeal in Case No. 17085

Background

In response to the supplemental appeal filed by the Smiths and Snow regarding the building permits issued for the subject properties, it is respectfully submitted that the real basis of their grievance is Folger's encroachment upon their alleged adjoining easement. As the easement is not part of the subject site, it has no place in this case, but is a separate civil matter between the parties.

Further, it is submitted that the Smiths and Snow have brought a "smear" campaign composed of a laundry list of false allegations in an attempt to discredit Folger's variance request in Case No. 17108 (hereinafter "Folger"). The Board should note that three of these allegations have been withdrawn (Nos. 2, 9 and 10) as set forth on the first page of their pre-hearing statement and response. The other 7 allegations all relate to the variance and subdivision issues which will be decided by the application for a variance.

The Appeal is Filed Out of Time

As supported by the Smiths and Snow own chronology of events attached to their pre-hearing statement and response, Snow attended the February 11, 2003 ANC 6B meeting on HPRB design review and obtained a copy of the building plans from the developer's representative. In addition, Louise Smith and Snow attended the February 27, 2003 HPRB meeting to discuss the design of the improvements to the subject properties. At that meeting, the subject properties' lot size was questioned by an HPRB member and confirmed independently by the Zoning Administrator's office.

On April 2, 2003, the developer filed three separate applications for a building permit for 206-208-210 D Streets, S.E. On April 21 and 29, 2003, the developer filed three (3) separate applications for a foundation permit for the same properties. On May 23, 2003, three (3) permits were filed for the construction of foundations for each subject property. These permits were posted on the trailer on the subject sites, immediately adjacent to the Smiths and Snow's properties.

Under Section 3112.2 of the Board's rules, the Smiths and Snow were required to file an appeal within sixty (60) days from the date they had notice or knowledge of the decision complained of, or reasonably should have had such notice or knowledge – specifically, the start of the building process by the granting of foundation permits.

In this case, the Smiths and Snow knew that the development would include 3-2 family flats on three lots less than 18' in width and 1,800' in size from both the ANC meeting and HPRB process, in February of 2003, well before the first permit for construction was issued in May of 2003.

Once the developer razed the Pepco substation in June of 2003 and began laying the concrete foundations on July 1, 2003, the Smiths and Snow knew that the construction process had begun. They knew because the demolition and construction was immediately adjacent to their homes; they knew or should have known that the initial building permit was issued because it was conspicuously posted on the construction trailer.

Since their appeal to DCRA was not filed until September 16, 2003, their subsequent appeal to this Board is too late and should be dismissed.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia

Attachments

By Mail

cc: ANC 6B
Attn: Julie Olson, Chair

By Hand Delivery

Richard Nettler, Esq.
Jeanine Rustad, Esq.

Selig Solomon, Esq. (letter only)

Chris Doerfler

Alger Stoneburner

ANC 6B
Attn: David Sheldon, Esq., SMD

Joel Lawson
Office of Planning

C

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., ~~12-19~~ 7/10/02, 2001

Plat for Building Permit of: SQ 763 LOTS 800 & 802

Scale: 1 inch = 20 feet Recorded in Book _____ Page _____

Receipt No. ~~6582~~ 9756

Furnished to: CAPITOL CITY DEVELOPMENT

Robert F. Dietz Jr.
Surveyor, D.C.

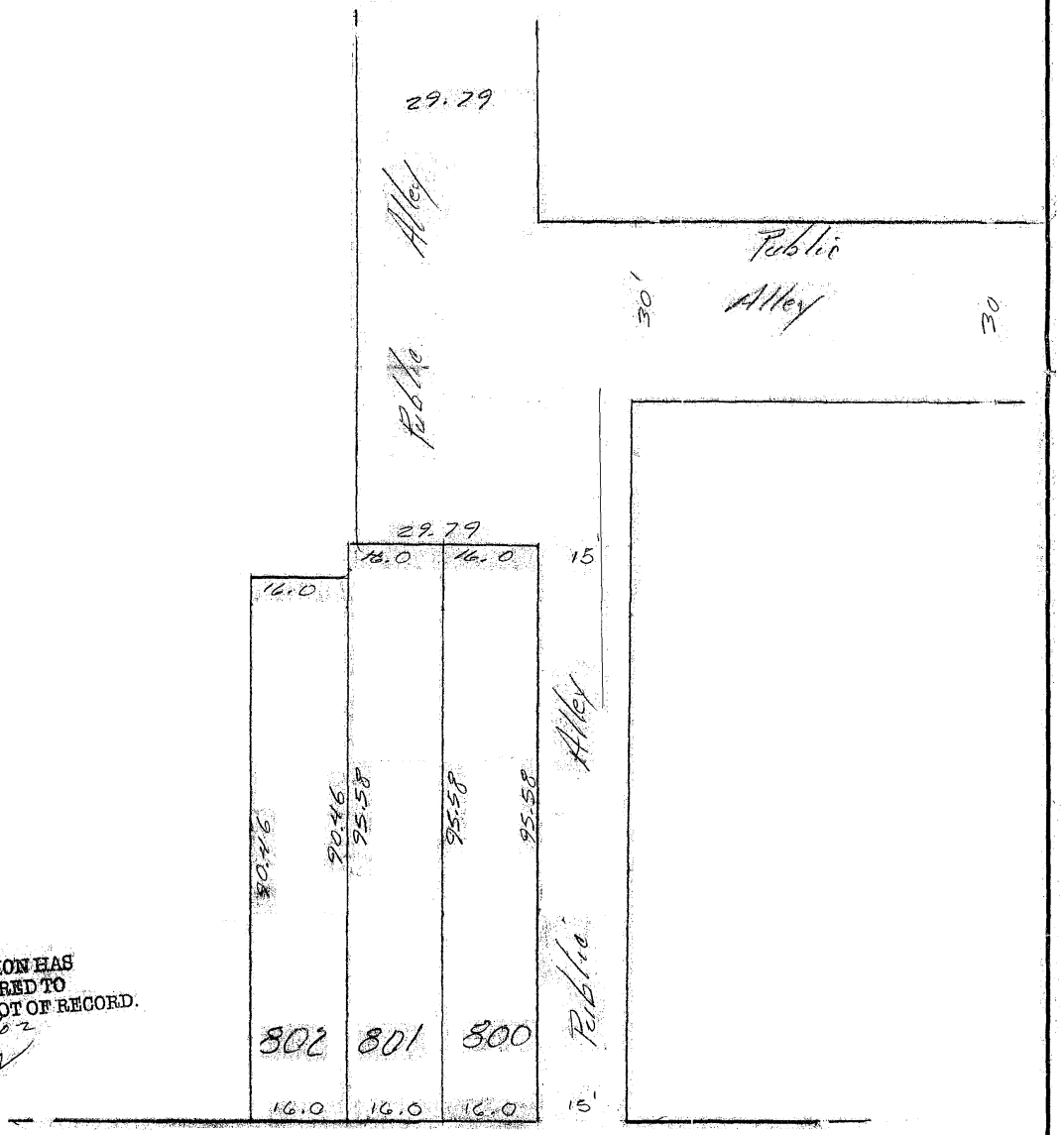
By: DA

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

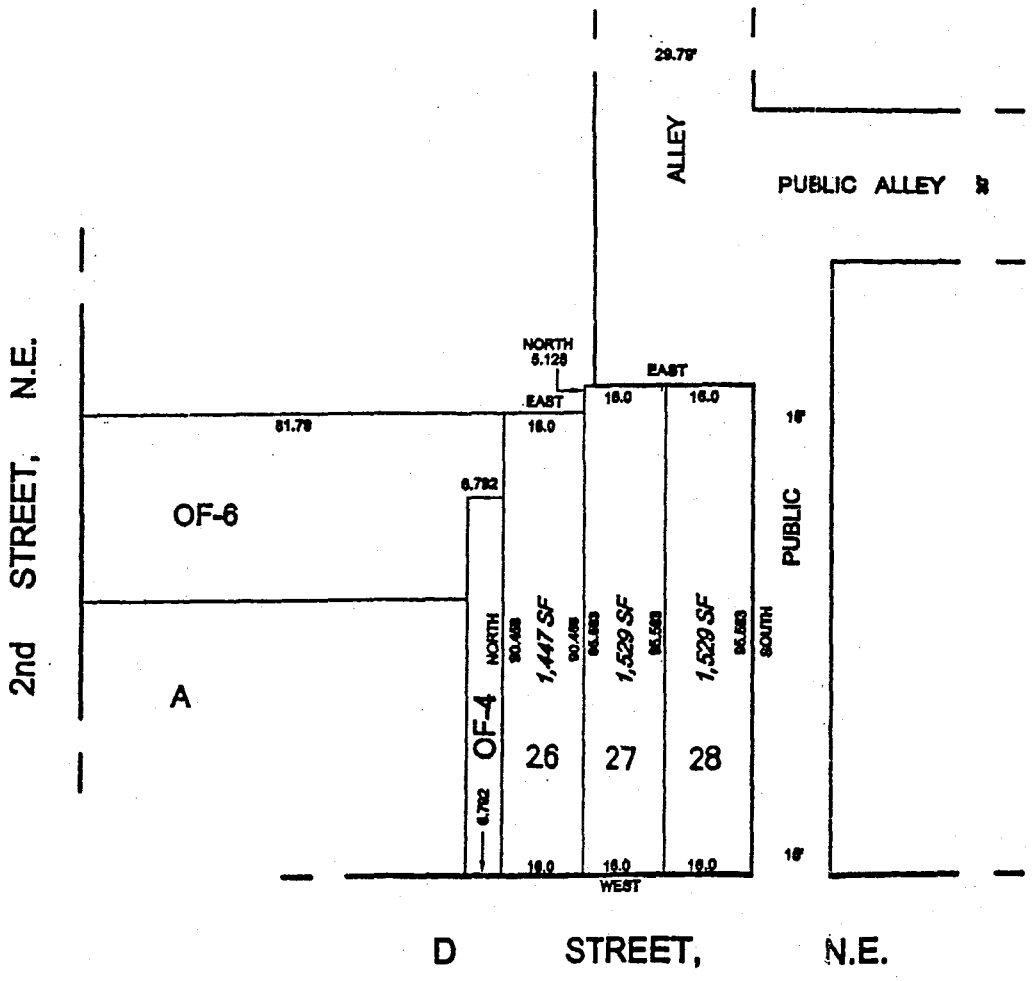


A SUBDIVISION HAS BEEN ORDERED TO CREATE A LOT OF RECORD.
7/10/02

D

STREET

SUBDIVISION
SQUARE 763



The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof; that there are no pending suits or actions that affect title to the property; that parties to any deeds of trust have hereon indicated their assent; and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby subdivides part of Original Lot 4, Square 793 and part of Lot 6, Square 793 (Book 86 Page 136) into three Lots and requests that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES

Cheri S. Sergent

Dianne L. Gantz

OWNERS

FOLGER PARK NORTH, L.L.C.

ALGER B. STONEBURNER, MEMBER

State of Virginia, County of Prince William, to-wit:

Subscribed and sworn before me this 12th day of September 2002

Notary Public

My Commission Expires 6/30/03

NUMBER OF TRUSTS: 1

ASSENT BY TRUSTEES:

Senior Vice President
Branch Banking + Trust

DEPARTMENT OF FINANCE AND REVENUE

9/23/ 2002

I certify that the following statements relating to this subdivision are correct.

1 Ownership agrees with our records: 9/23/02 KB

2 Real estate taxes are paid to: 9/30/02 KB

3 There are no unpaid assessments: 9/23/02 KB

Associate Director, Office of Real Property Tax

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-1405.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

9/30, 2002

I certify that this subdivision complies with all applicable provisions of DCMR11, Zoning Regulation of the District of Columbia.

Zoning District: Residence R-4 CAP

Zoning Administrator

Sept. 23, 2002

HISTORIC PRESERVATION

OFFICE OF THE SURVEYOR

September 30, 2002

I certify that this plat is correct and is hereby recorded.

Surveyor, D.C.

SURVEYOR'S OFFICE, D.C.

Made for: CAPITOL CITY DEVELOPMENT CORP.

Drawn by: L.S.S. Checked by: EE

Record and computations by: F. SLEEM

Received at: 8:00 AM on SEPTEMBER 30, 2002

Recorded in Book 176 Page 42 S.O.009755

Scale: 1 inch = 20 feet File No. 02-2966

SO-9755(2002)

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., July 10, 2003

Plat for Building Permit of SQUARE 763 LOT 26,27,28

Scale: 1 inch = 20 feet Recorded in Book 196 Page 42

Receipt No. 05735

Furnished to: ELIZABETH JOHNSON

Mich Ll
For Surveyor, D.C.

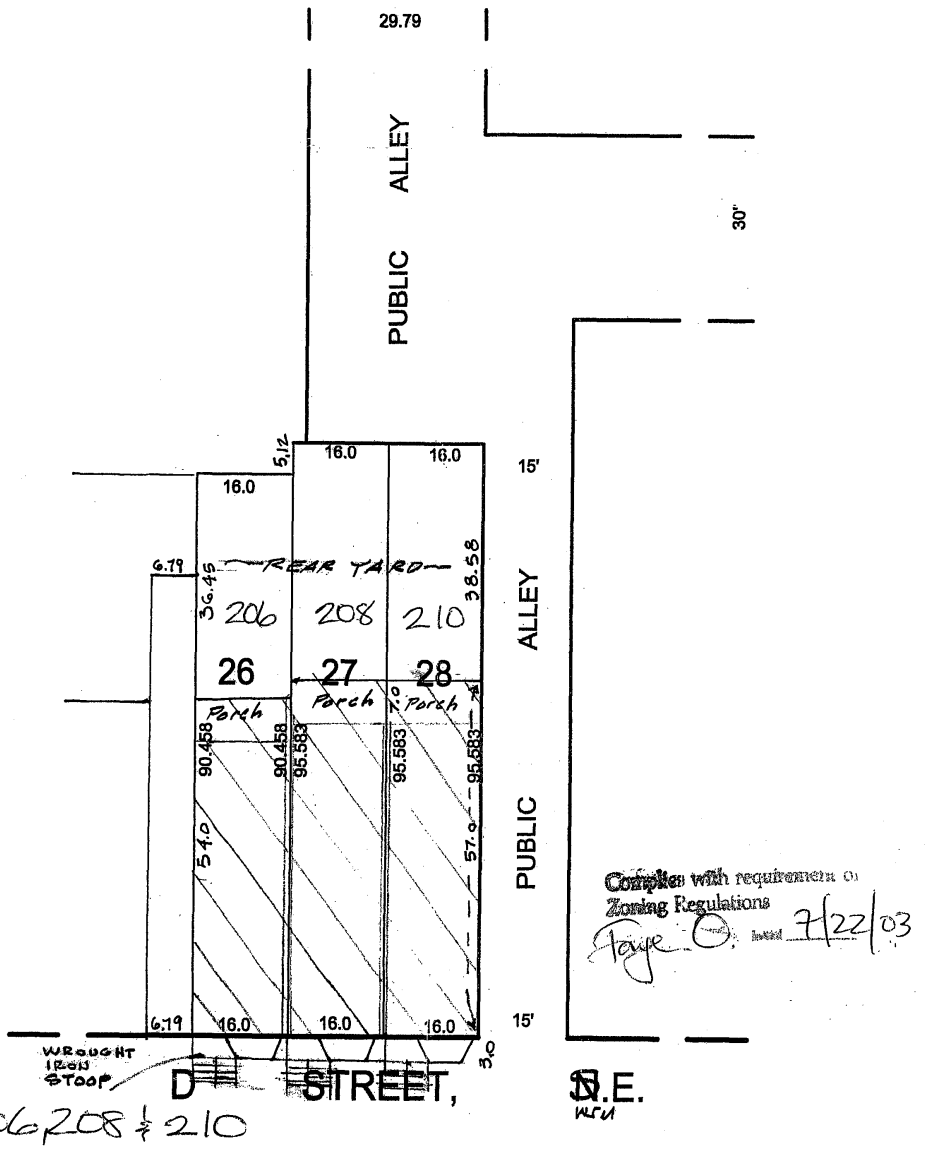
By: L.M.A. VTJ

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 7.12.03

(Signature of owner or his authorized agent)

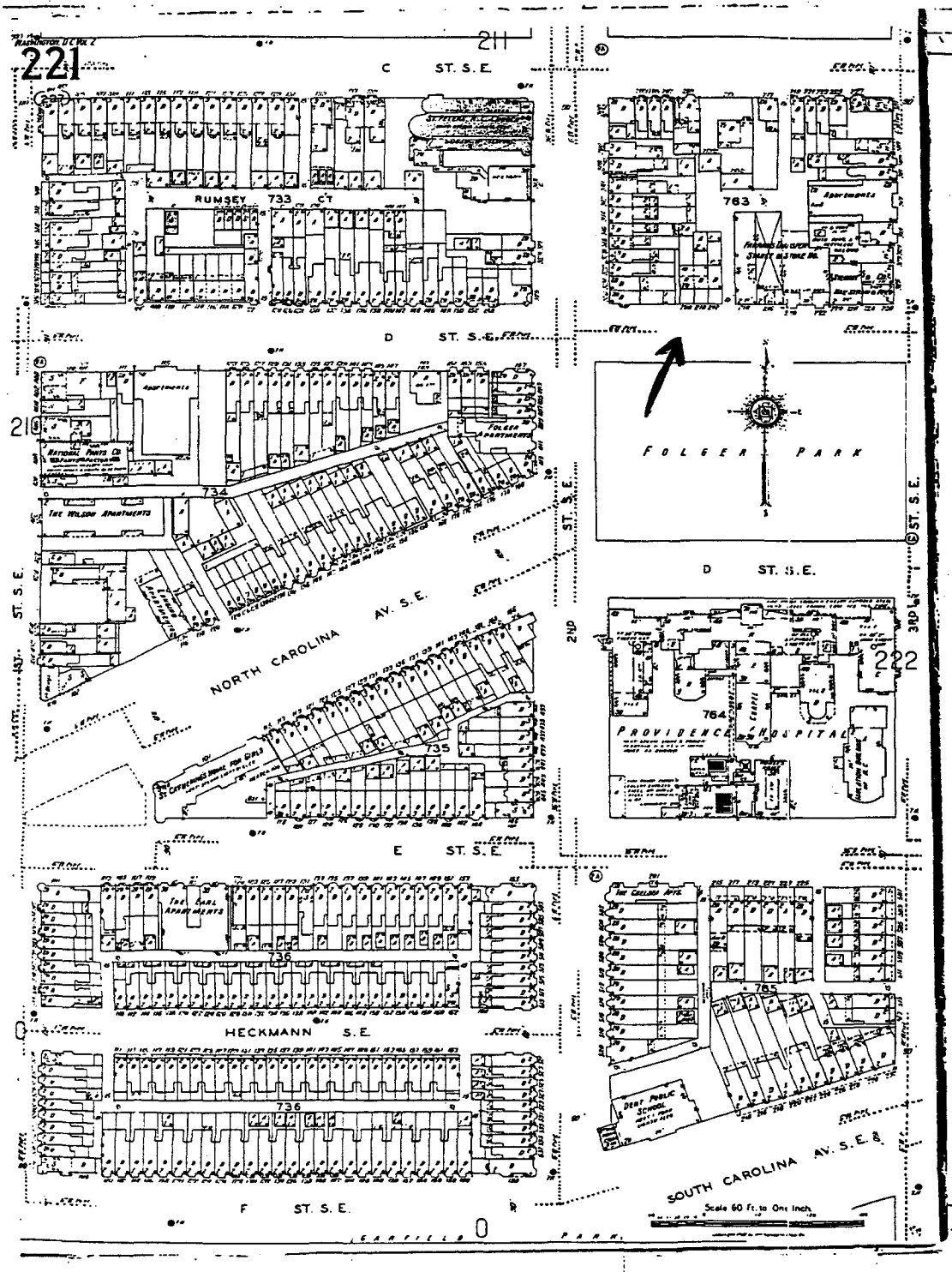
NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



Complies with requirements of Zoning Regulations
7/22/03

SO-05735(2003)

D



The Sanborn Library, LLC
This Sanborn® Map is a certified copy produced by Environmental Data Resources Inc. under arrangement with The Sanborn Library LLC. Information on this Sanborn® Map is derived from Sanborn field surveys conducted in
Copyright © 1926 The Sanborn Library LLC TDW
Year EDR Research Assistant
Reproduction in whole or in part of any map of The Sanborn Library, LLC may be prohibited without prior written permission from The Sanborn Library LLC

8/8/30-84 763-4

8/8/30 Chester J.Thomas et ux, Irene, entirety, to

Vernon G. Owen and
William G. Schafhirt, trs., to secure

Perpetual Building Association

$1,000.00

pt orig lt 4 in sq 763

beg onD st at se cor of said lt; w 16 ft; n 95 ft 7 in; e 16 ft; s 95 ft 7 in to beg.

Lt 800-212 - D.S.E.

5/29/39-15584 763-4

4/15/38 Rose J. Waggaman to

Loren M. Herbert;

$10.00.

pts orig lts 4 and 6 in sq 763; Now lt 802, sq 763.

Metes and bounds same as deed recorded same date, instr, 15583.

Lt 802-208-D.S.E.

763-4

6/9/42-16927

3/29/38 Nannie L. Florence, to

Joseph A. Herbert, Junior;

$10.00.

pts orig lts 4 and 6 in sq 763.

beg on line of s D St, 22 ft 9½ in e of sw cor of said lt 4; e with line of said st, 16 ft; n 95 ft 7 in, to rear line of said lt 4; w 16 ft; s 95 ft 7 in to D St, and beg.

Re-record of 2/1/39; instr, 2849; 7312/229.

W801-210-D 12

F



Looking east down D Street



View of corner of 2nd and D Street, SE



Looking west down D Street



Looking west down D Street





Easement – pre-construction (looking north from D Street)

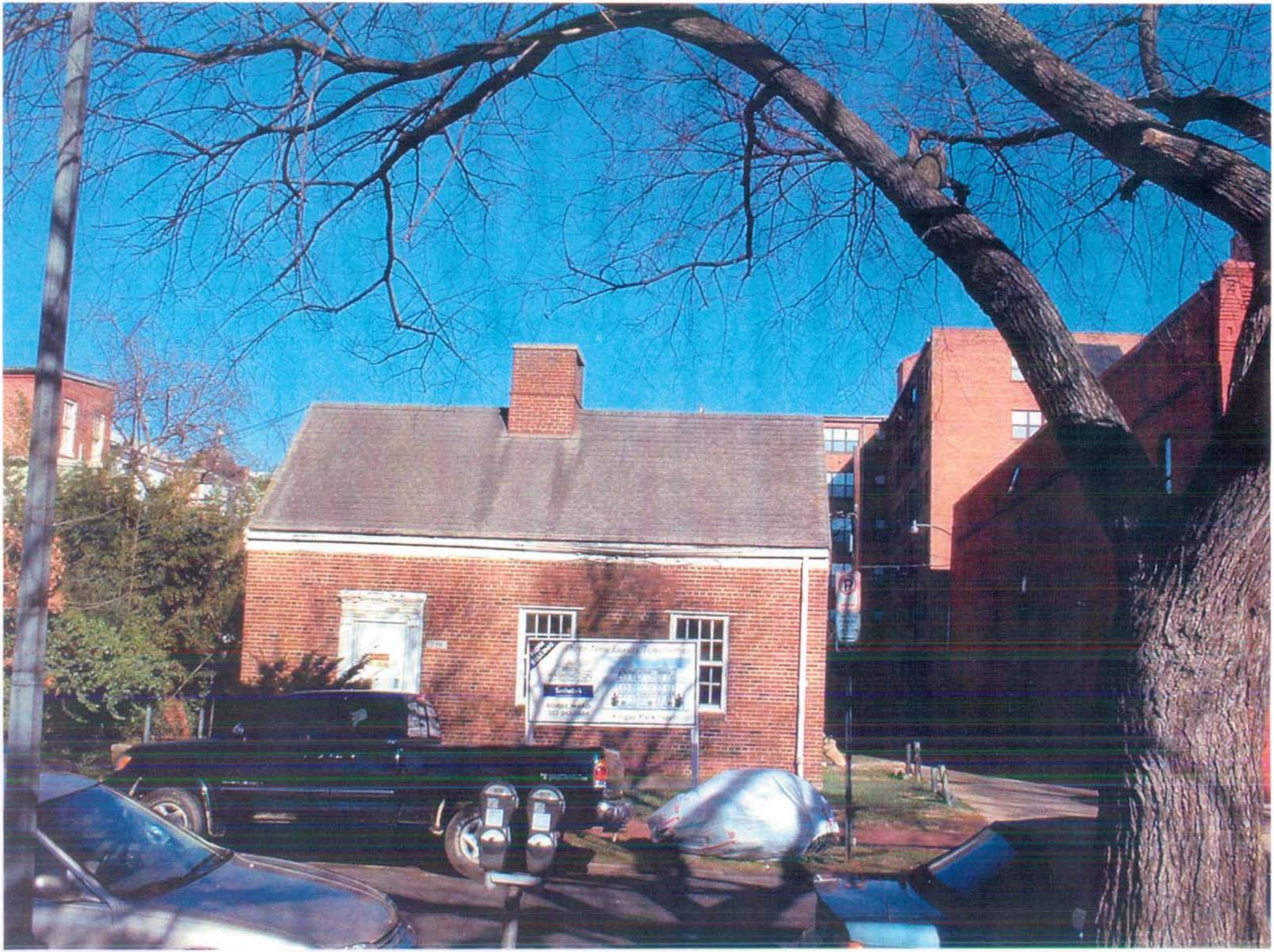








210 D St SE / Folger

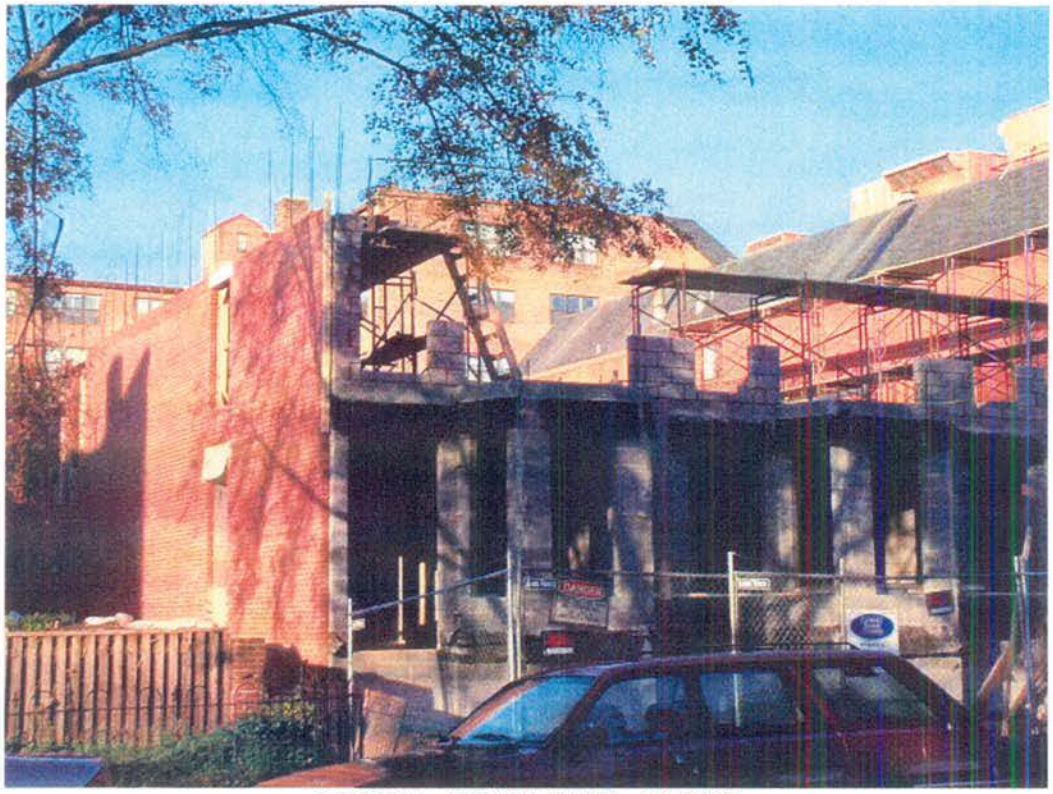






ARTIST'S DEPICTION OF NEW HOMES AT FOLGER PARK NORTH

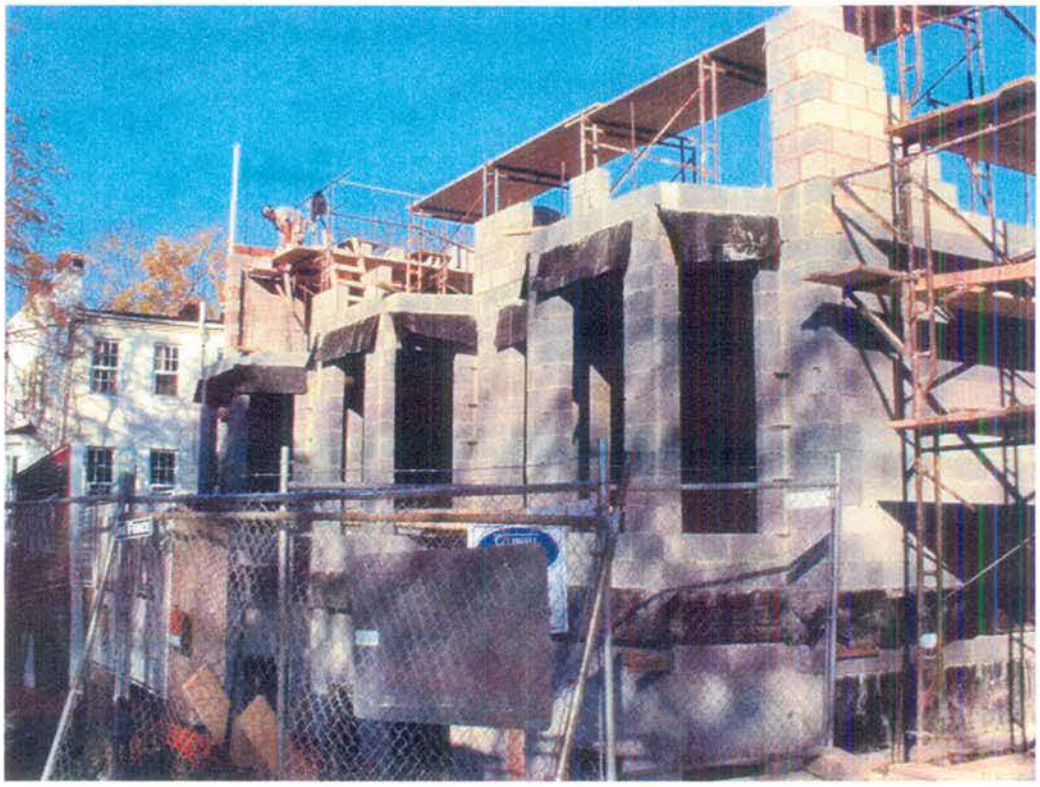




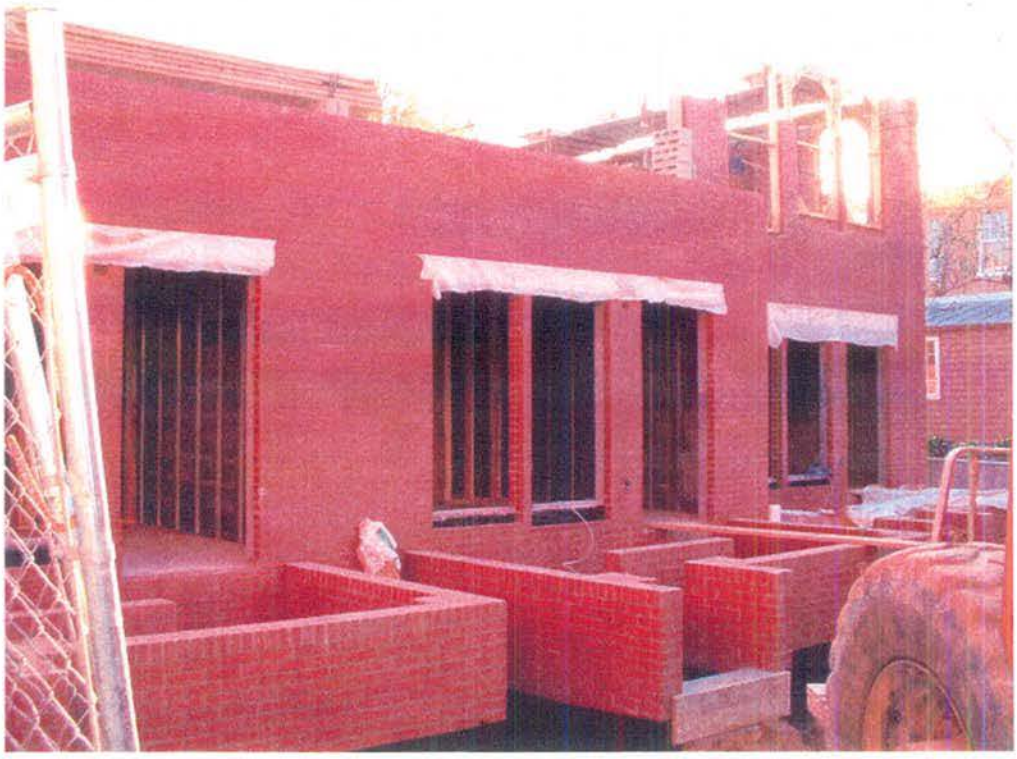
FRONT – WEST SIDE 11/3/03



FRONT 11/4/03 (WASHINGTON SPORTS CLUB TO RIGHT OF HOMES)



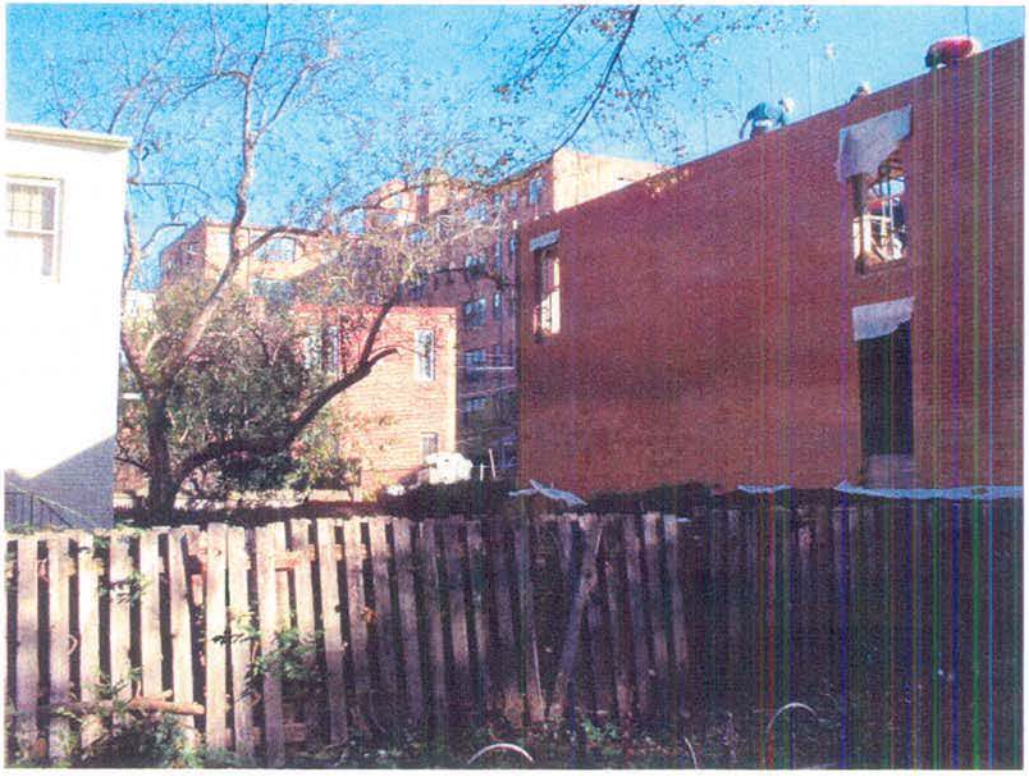
FRONT – EAST SIDE 11/4/03



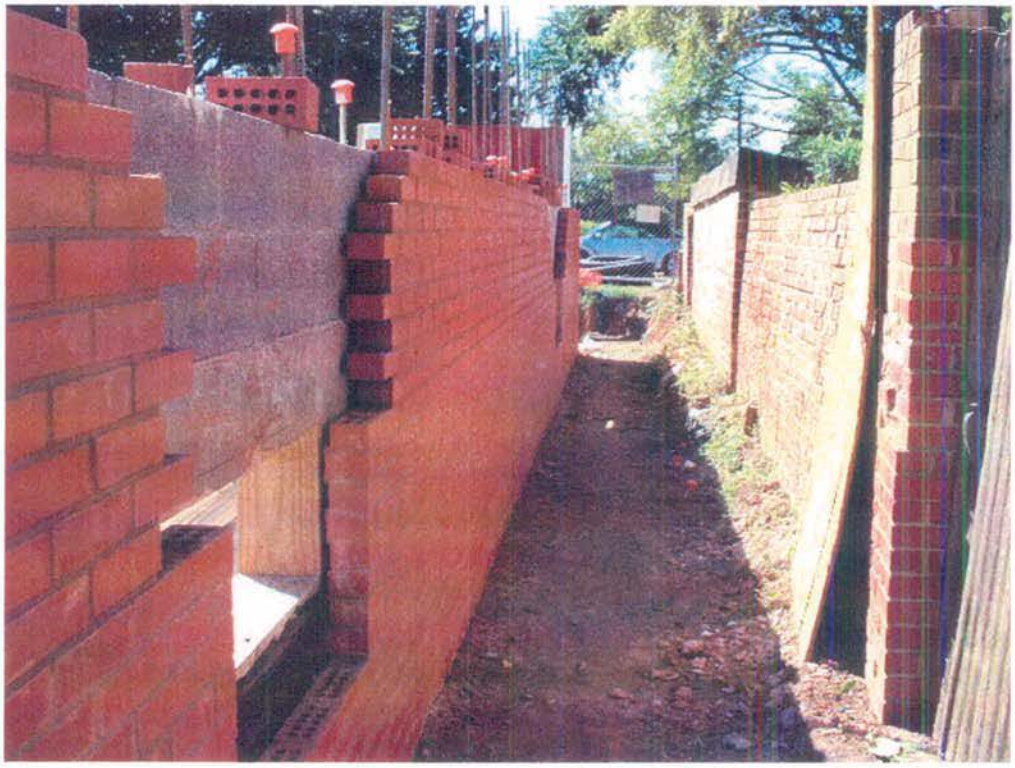
REAR 11/3/03



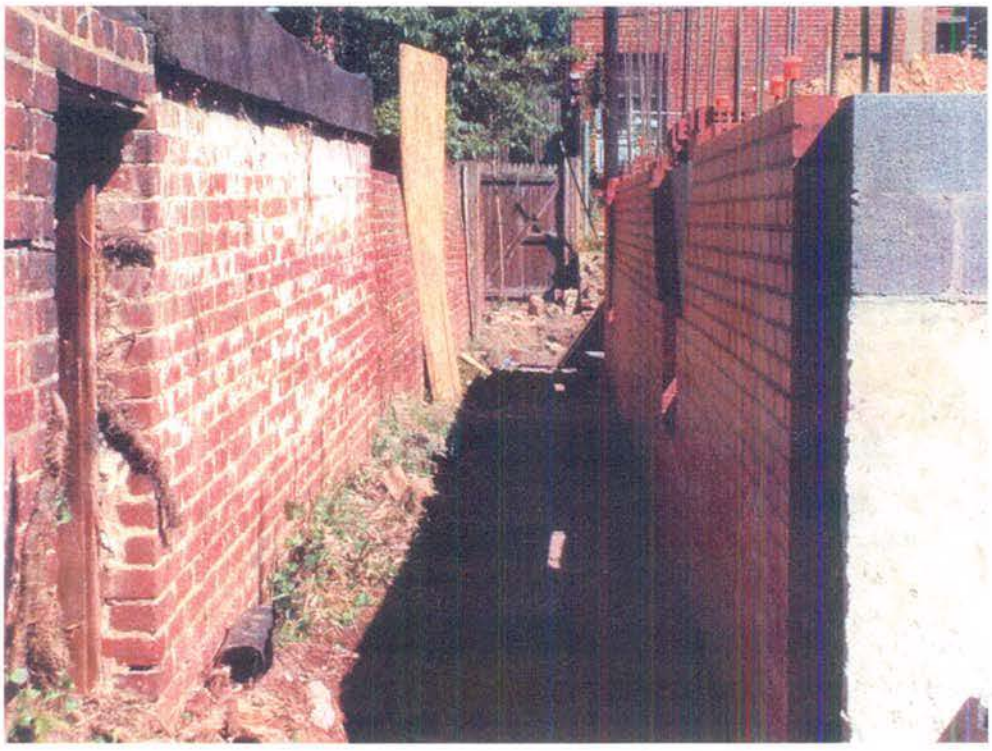
SIDE – WESTERN WALL 11/4/03



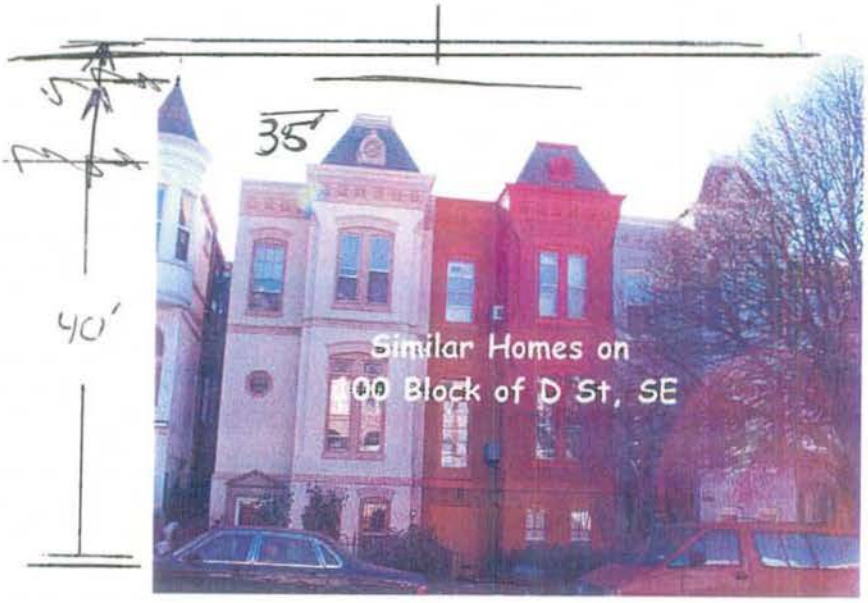
SIDE ELEVATION SHOWING SEPARATION FROM HOMES ON 2ND STREET

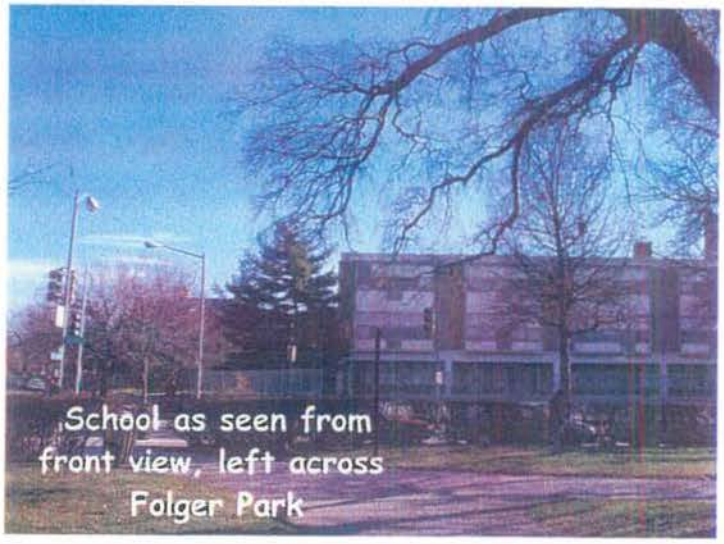


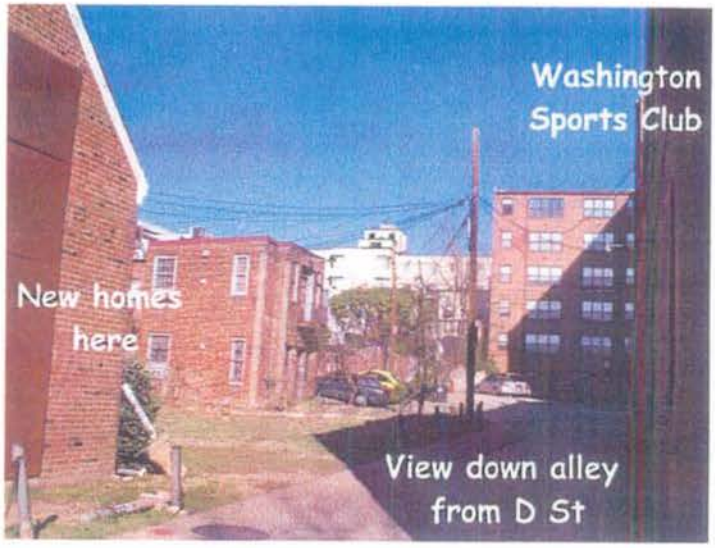
WESTERN BOUNDARY OF HOMES – VIEW TOWARD D STREET 9/8/03



WESTERN BOUNDARY WALL VIEW FROM D STREET 9/8/03


35'
40'
Similar Homes on
100 Block of D St, SE


School as seen from
front view, left across
Folger Park


Washington
Sports Club
New homes
here
View down alley
from D St