

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Advisory Neighborhood
Commission 3E and Todd Boley

Case No. 17631

PRE-HEARING MEMORANDUM OF TODD BOLEY

Exhibit 1 to this memorandum is a copy of the appeal in this case filed on behalf of Todd Boley ("Appellant") on February 23, 2007. It sets forth the Zoning Administrator's determinations from which this appeal has been taken, background material, and a description of issues and the interests of Appellant and of Advisory Neighborhood Commission 3E (the "ANC"). Appellant asks that Exhibit 1 be read as part and parcel of this memorandum.

In a nutshell, Dunn Whiskey, LLC ("Developer") has shoehorned into what were two lots four large semi-detached one-family dwellings. The two lots each had one single family home. In March of 2006, the owners of those lots, at the behest of Developer, subdivided them. Developer then bought them. Notice of the application for the subdivision was not given to the ANC or to any of the neighbors.

Developer has pressed ahead speedily with construction and has just about completed its work. Developer did this in reliance on building permits issued in December 2006 that it knew were the subject of this appeal, and even though one of them, for 4321½ Fessenden Street, is not for a new building – which is what Developer built – but for alterations and repair of an existing structure. Developer has accordingly assumed the risk that the development violates the Zoning Regulations. If, as Appellant

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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17631
EXHIBIT NO. 15

contends, it does, this Board should require such changes in the development to bring it into compliance with those Regulations, including, if necessary, dismantling it in whole or in part.

Appellant's and the ANC's dealings with the Zoning Administrator in connection with Developer's activities have been frustrating. Efforts by the neighbors and the ANC to obtain relevant information from the Zoning Administrator in a timely fashion have been stymied. See Exhibits 2, 3 and 4. Moreover, the Zoning Administrator was apparently still considering in February 2007 whether or not Developer was complying with the Zoning Regulations, see Exhibit 4, even though zoning approval and the building permits that triggered this appeal had been given two months earlier. As a result of such foot dragging, Appellant and the ANC had to file their appeal before they were fully informed as to what Developer was doing. Had they waited for cooperation from the Zoning Administrator, their appeal would have been untimely.

The use Developer would make of the lots in question is wholly inconsistent with the character of the block in which they are located. Exhibit 5 shows what the block looked like from overhead prior to Developer's destruction of trees and other greenery to make room for its houses. The center of the block outlined on Exhibit 5 doesn't look like that any more. Property owners who reside on or adjacent to the block consider that the houses are crammed into an area much too small for them, unduly increase population density, present serious storm water management issues and infringe on adequacy of light and air. See Exhibit 6. The development is plainly an unwelcome and destructive alteration of the relative tranquility and spaciousness of the neighborhood.

These structures are big, very big. The two houses built at the back of the property tower over Appellant's back yard with windows looking down on it from close to the property line like the eye of Big Brother mocking his family's privacy.

Whether or not Developer has complied with various specific provisions of the Zoning Regulations as a matter of right – it has not sought variances or special exceptions – can be looked at in two ways: by applying the zoning requirements to the lots without regard to artificial “easements” Developer granted to itself as the owner of all four lots, or by applying those requirements to the lots as they have been defined by the “easements” and as they will actually be used. The latter approach is the only sensible one; these “easements” must be taken to define the lots for zoning purposes. Otherwise, Developer will have managed to flout the spirit and purpose of the Zoning Regulations, and undermine their integrity, by testing them against lots with artificial paper characteristics rather than the actual characteristics of the lots as they will be used on the ground. The “easements” are set forth in Exhibit 7, entitled a “Joint Driveway Parking Area and Use Easement,” and styled as an “Agreement,” albeit one between Developer and itself.

Appellant submits that the development violates the Zoning Regulations in the following ways:

1. Zoning Regulation §401.6 requires that each lot have a street frontage of at least 14 feet. Lot 18 on paper includes a panhandle or rat-tail with a 14 foot street frontage. However, that frontage has from the outset been subject to a perpetual use “easement” from Developer to itself for the exclusive benefit of Lot 19 (see Exhibit 7) but apparently to be used for storm water management

for the entire property. See Exhibit 8. As a result, Lot 18 has no street frontage. This violates §401.6.

2. Lot 17 is the second rat-tail lot. (Both rear lots are rat-tail lots.) It also has a paper street frontage of 14 feet. However, that frontage has from the outset been subject to a perpetual non-exclusive ingress and egress "easement" from Developer to itself for the benefit of all four lots. See Exhibit 7. Lot 17's street frontage has never been its own. This, too, violates §401.6.

3. The driveway established by this ingress/egress "easement" would appear to be only 13 feet wide because the storm water management facilities the Developer will install on what is ostensibly Lot 18 will encroach upon the width of the driveway. See Exhibit 8. This also violates §401.6.

4. If one ignores the way the "easements" define the lots, the frontage for both rear lots, presumably required for the purpose of providing ingress and egress to their garages, becomes only about 11 feet when each lot's rat-tail turns east to provide garage access. See attachments to Exhibit 1. This violates §401.6.

5. Zoning Regs. §2117.4 requires that each separate required parking space – one is required for each lot – be accessible via its own driveway. By virtue of a perpetual non-exclusive ingress and egress "easement" from Developer to itself for the benefit of all

four lots, no lot's required parking space is accessible via the lot's own driveway. See Exhibit 7. This violates §2117.4.

7. 6. Further, if one ignores the way the "easements" define the lots, there is no means of ingress and egress to the required parking spaces for Lots 19 and 20. See the first attachment to Exhibit 1. This violates §2117.4.

7. 7. Zoning Regs. §2116.1 requires all parking spaces to be located on the same lot with the building they are intended to serve. By perpetual exclusive parking "easements" from Developer to itself, however, Lot 18 has one, and Lot 17 has two, parking spaces other than on the same lot as the house the parking space will serve. See Exhibit 7. This violates §2116.1.

8. 8. Zoning Regs. §2116.2(b) bars any parking space within a front yard, but it would appear that in addition to the garages for Lots 17 and 18 additional open-air parking will be available in the front yards of those properties. This violates §2116.2(b).

9. 9. Zoning Regs. §401.3 requires a minimum lot size of 3000 sq. ft. By virtue of perpetual exclusive parking "easements" from Developer to itself for the benefit of Lots 17 and 18, Lot 19 is not 3,024 sq. ft. in area but rather to 2494.8 sq ft. See Exhibit 7. This violates §401.3.

10. 10. Zoning Regs. §404.1 requires a rear yard with a minimum depth of 20 ft. By virtue of perpetual exclusive parking "easements" from

Developer to itself for the benefit of Lots 17 and 18, the depth of Lot 19's rear yard is a fraction less than 20 ft. See Exhibit 7. This violates §404.1.

11. Zonings Reg. §403.2 requires that the building on Lot 19 occupy no more than 40% of the Lot. By virtue of perpetual exclusive parking "easements" from Developer to itself, for the benefit of Lots 17 and 18, the portion of Lot 19 occupied by the building is at least 45%. See Exhibit 7. This violates §403.2.

12. Even if the land granted by "easement" for the benefit of the other lots is included in the area of Lot 19, the building occupies, including its bay window in the front, about 42.5% of the lot in violation of §403.2, and the same is true with regard to Lot 20, which includes no land subject to the "easements." See Exhibit 9.

13. Zoning Regs. §405.9 requires each lot to have a side yard at least 8 ft. wide. Each building has an outside stairway to the basement built into the foundation of the structure. Each stairway takes up about half of the width of what otherwise would be an 8 ft. (barely) side yard for each building. See Exhibit 9. This violates §405.9.

To the extent any Exhibit (or any part thereof) is not already part of the record before the Board on this appeal, Appellant will at the hearing offer that Exhibit (or part thereof) into evidence. The Exhibits are:

- 1 Appeal
- 2 Emails to Zoning Administrator from Susan Walker and Carolyn Sherman
- 3 Email exchange between Susan Walker and Zoning Administrator
- 4 Email exchange between Zoning Administrator and Carolyn Sherman

- 5 Overhead photo of block
- 6 Petitions signed by neighbors
- 7 Easement Agreement
- 8 Susan Walker appeal regarding storm water management
- 9 Wall check

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benjamin W. Boley". The signature is fluid and cursive, with a long horizontal stroke extending to the left. To the right of the signature, the letters "SMB" are handwritten.

Benjamin W. Boley
Goodwin Procter LLP
901 New York Avenue, NW
Washington, DC 20001
Counsel for Appellant

June 25, 2007

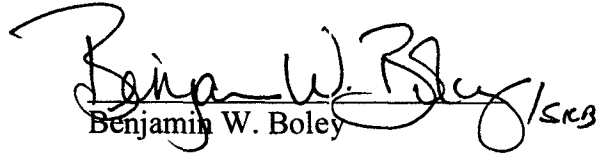
Certificate of Service

I hereby certify that the foregoing Pre-Hearing Memorandum of Todd Boley was served on the following persons by First Class, United States mail, on June 25, 2007:

Zoning Administrator
D.C. Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.W.
Washington, D.C. 20002

Reid Dunn
Dunn Whisky, LLC
1711 Connecticut Ave., N.W.
Washington, D.C. 20009

Advisory Neighborhood Commission 3E
c/o Lisner Home
5425 Western Avenue, NW
Washington, DC 20015


Benjamin W. Boley

EXHIBITS

Form 125 — Exhibit 1
 Revised 03/15/02)

APPEAL

Notice: [Click Here for Appeal Form Instructions](#)

Pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the administrative decision of: **DCRA**
 Made on* **12/26/06**, to the effect that*

DCRA improperly issued the following permits: Permit # 101584 for 4319 Fessenden Street, N.W., Permit # 101585 for 4319 1/2 Fessenden Street, N.W., Permit # 101587 for 4321 Fessenden Street, N.W., and Permit # 101588 in violation of DCMR Sections 401.6, 403.2, 2, 2101.1, 2116.1 (see attached)

Address(es)* of Affected Premises	Square(s)*	Lot(s)*	Zoning Districts*
4319, 4319 1/2 Fessenden Street, N.W.	1655	20, 18	R-2
4321, 4321 1/2 Fessenden Street, N.W.,	1655	17, 19	R-2

Present Use of Property:* single family dwelling
 Proposed Use of Property:* single family dwelling

Owner of Property:* Dunn, Whiskey, LLC

Telephone No.:* (202)332-8449

Name, address and telephone number of lessee:

Name, address and telephone number of appellant, if other than owner:

Todd Boley, 4324 Garrison Street, NW, Washington, DC 20016 (202)362-4500

Advisory Neighborhood Commission 3E, c/o Lisner Home, 5425 Western Ave., N.W. Wash. DC 20015 (anc3e.org)

State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8 1/2" x 11" to respond and attach it to the Form 125 Appeal.

Date:* 02/23/07

Signature: 

To be notified of hearing and decision:
 (Appellant or Authorized Agent)*

Name:* Andrea C. Ferster

Address:* 1100 17th St., N.W. 10th Fl.

City:* Washington

State:* DC

Zip:* 20036

Phone No.:* (202)974-5142

Fax No.: (202)331-9680

E-Mail: aferster@railstotrails.org

Attachment to Form 125 – Appeal of Todd Boley and ANC 3E

This appeal challenges the decision by the D.C. Department of Consumer & Regulatory Affairs (DCRA), Zoning Administrator, approving a series of building permits issued to Dunn Whiskey, LLC, for the construction of four single family houses on recently-subdivided lots that formerly were occupied by two single family dwellings.

Background

On or about March 2006, the D.C. Office of Surveyor approved the subdivision of two lots with street addresses of 4319 and 4321 Fessenden Street, in Square 1644. These lots were subdivided into four separate lots: Lot 17 (4319 ½ Fessenden Street), Lot 18 (4321 ½ Fessenden Street), Lot 19 (4319 Fessenden Street), and Lot 20 (4321 Fessenden Street). According to the subdivision plan (attached), Lots 19 and 20 front directly on Fessenden Street. Lots 17 and 18 are located directly behind Lots 19 and 20. The subdivision plan shows that two, side-by-side panhandle driveways leading from each of the rear lots to Fessenden Street, each of which is 14 feet wide.

Following the subdivision, the owner proceeded to completely demolish the two single family homes previously located at 3219 and 4321 Fessenden Street, and to also cut down numerous mature trees previously on the properties, and construct a fence around the newly-subdivided lots.

Appellants learned in January 2007 that four permits to construct four single-family dwellings on each of the four subdivided lots had been issued by DCRA on December 26, 2006. According to DCRA, these permits are as follows:

Permit No. 101584 for 4319 Fessenden Street, N.W.
Permit No. 101585 for 4319 ½ Fessenden Street, N.W.
Permit No. 101587 for 4321 Fessenden Street, N.W.
Permit No. 101588 for 4321 ½ Fessenden Street, N.W.

Appellants were further advised that Permit No 101588 was for “alteration and repair,” even though there are no longer any structures on the properties.

Appellants have made repeated attempts to obtain copies of these permits, the permit applications, and the associated building plans, to no avail. Each time Appellants or their representatives went to DCRA to review the permitting documents, they were told that the permitting files could not be located. Mr. Crews, DCRA Zoning Administrator, apparently reviewed the permits for three of the properties after neighbors complained, but the permit for 4321 ½ Fessenden Street (alteration and repair) has never been located and Mr. Crews indicated that he had “no idea” where it is. In mid-January, neighborhood representatives were told by DCRA that the permits had been “checked out.”

Issues Raised in Appeal

According to the site plan provided to Appellants by the owner, the construction actually contemplated by the permits differs from the subdivision plan in one material respect: rather than having two, side-by-side 14-foot panhandle driveways to provide Fessenden Street access and street frontage for the two rear lots (Lots 17 and 18), as shown on the subdivision plat, the site plan shows a single, 14-foot “common driveway” providing

access to the two rear lots, leading to a shared “parking court.”(see site plan, attached). The area that was shown on the subdivision plat as a second, 14-foot access is now, according to the site plan, incorporated into the side yard for Lot 19. As a result of this new configuration, only one of the rear lots has separate access from a public way.

The Zoning Regulations requires that “[e]ach lot created after February 15, 1966, to be used and occupied by a one-family detached dwelling . . . have a street frontage measured along the street a distance equal to at least forty percent of the required minimum width of the lot and no case less than fourteen feet (14ft).” 11 DCMR § 401.6 (emphasis added). The Zoning Regulations further provide that “each required parking space shall be accessible at all times direct from improved alleys . . . or improved public streets, via graded and unobstructed driveways that form an all-weather surface.” *Id.* § 2117.4 (emphasis added). The single, 14-foot “common driveway” depicted on the site plan does not satisfy the plain language of these regulations. Instead, the only circumstances under which a single point of ingress and egress can be used for multiple dwellings is where it is approved by this Board as a theoretical lot subdivision. *Id.* § 2516.

On February 15, 2007, Mr. Crews met with Mr. Boley and several other neighbors about the construction at 4319-4321 Fessenden Street. Mr. Crews stated that the zoning reviewer had requested that the plans for 4319 and 4321 Fessenden Street (lots 19 and 20) be revised because the dwellings on both of these lots exceeded 40% of the maximum lot occupancy, but the builder failed to correct the drawings prior to the issuance of the permits. Mr. Crews advised the appellants that the builder has been asked to submit revised plans correcting the dimensions for the two houses so as to be within the maximum lot occupancy. However, given the BZA’s rigid application of the 60-day deadline for filing an appeal, an appeal on this issue is necessary to protect the Appellants in the event the owner attempts to profit from the zoning reviewer’s apparent error and proceeds with construction of the houses per the previously-approved plans. See BZA Appeal No. 17411 of Paul A. Basken and Joshua S. Meyer, (March 23, 2006)).

Due to the inability of Appellants to obtain copies of the drawings, it is also not possible to determine whether the structures satisfy other area zoning requirements such as rear and side yard and parking requirements. The site plan indicates that the four lots share a single “parking court” that appears to overlap lot lines, with no parking space on Lot 20, and a shared parking court overlapping Lots 17, 18 and 19. In fact, Mr. Boley was able to view the permit drawings, which indicated that Lot 19 has four parking spaces within the lot, and Lot 20 has one parking spot. Under the Zoning Regulations, a single family dwelling in a residential zone must have one parking space for each dwelling unit. 11 DCMR § 2101.1. Moreover, unless approved as a special exception by this Board, “all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve.” *Id.* § 2116.1. The parking court depicted in the site plan and building plans does not conform to this requirement.

Appellants’ Interests

The Appellants will be more significantly, distinctly, and uniquely adversely affected and aggrieved by the construction of these nonconforming properties than the general public. Appellant Todd Boley resides and owns property at 4324 Garrison Street, N.W. The rear lot line of his property directly abuts the rear lot line of Lot 17. Mr. Boley purchased his property primarily because of the privacy and tranquility of the extended yard, which stretches 175 feet from Garrison Street, in which he built a swimming pool. By contrast,

Garrison Street is very busy with shoppers at Rodman's and with traffic due to the close proximity of the Friendship Heights Metro and the nearby commercial shopping district on Wisconsin Avenue.

Before the construction began on the Fessenden Street lots, Mr. Boley's rear yard was secluded and not visible to any neighbors, and the heavily wooded neighboring lots gave little or no visibility into his yard in the spring, summer and fall. The single-family home previously located on 4321 Fessenden Street was 120 feet from Mr. Boley's rear lot line and was only partially visible from his rear yard during leafy seasons. However, as a result of the construction now underway, there will be an 84-foot wide mansion more than 30 feet tall within approximately 35 feet of Mr. Boley's rear property line, directly visible from Mr. Boley's rear yard. Mr. Boley believes that having this towering structure shading his backyard will significantly lower the value of his house, and interfere significantly with his use and enjoyment of his property.

Appellants are also concerned about the bad precedent that would be established by permitting the builder to evade parking and street frontage requirements.

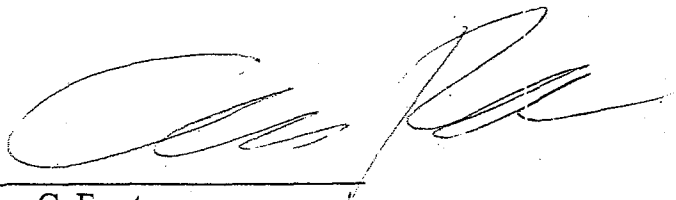
A copy of ANC 3E's resolution joining the appeal is attached, as is a letter from Mr. Boley authorizing the undersigned to file the appeal.

Certificate of Service

I hereby certify that the foregoing appeal was served on the following persons by First Class, United States mail, on February 23, 2007:

William Crews, Zoning Administrator
D.C. Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.W.
Washington, D.C. 20002

Reid Dunn
Dunn Whisky, LLC
1711 Connecticut Ave., N.W.
Washington, D.C. 20009

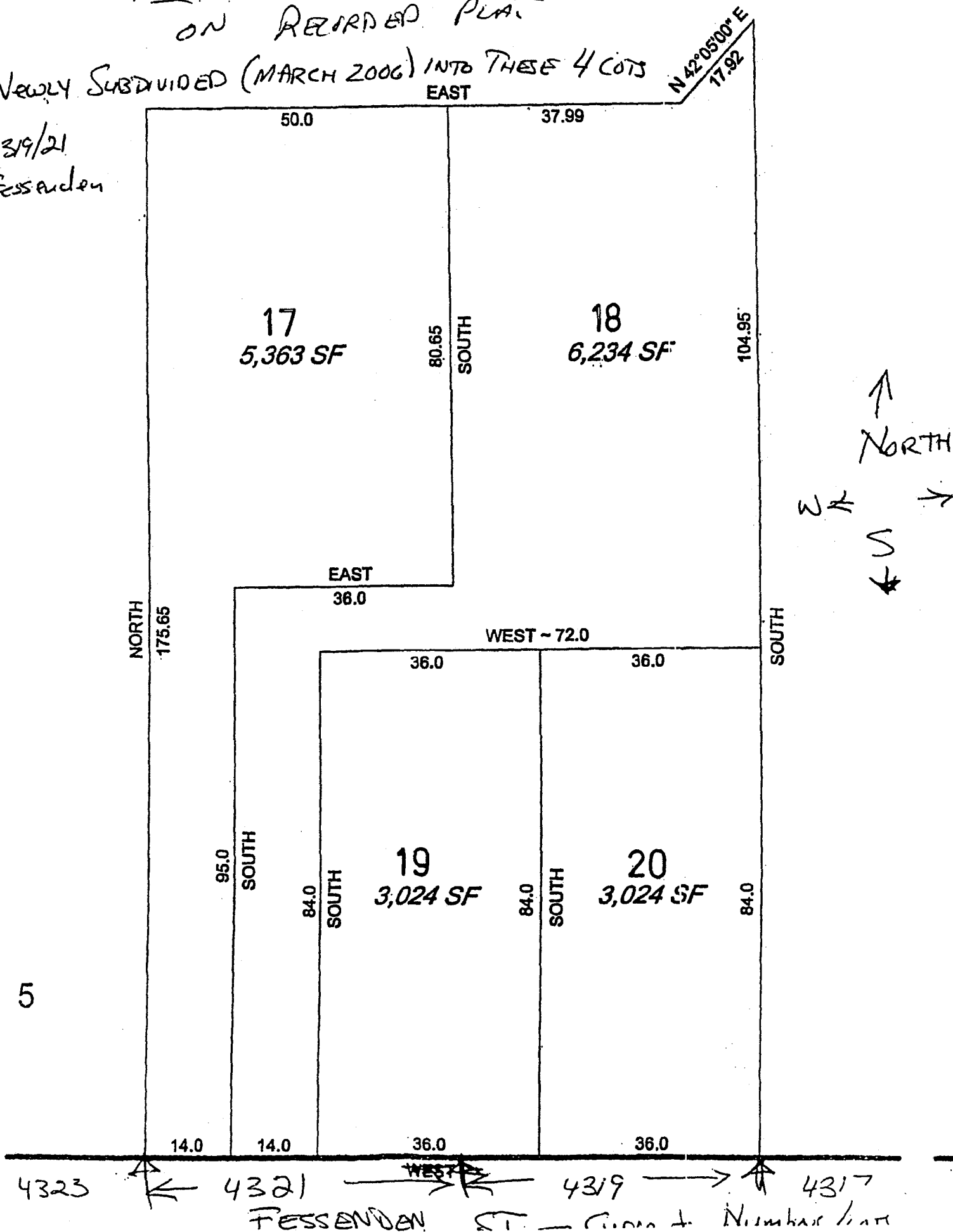


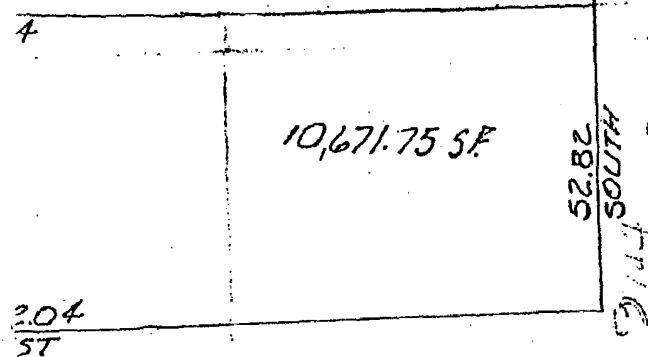
Andrea C. Ferster

NOTE: COMPASS DIRECTIONS ARE INCORRECT
ON RECORDED PLAT

NEWLY SUBDIVIDED (MARCH 2006) INTO THESE 4 LOTS

4319/21
Fessenden





OLD PAPER
LOST

N. 42° 05' E.
74.60

710

25/101

1113

350

0.00

105.39
Square 1658
lot 5

70.63

78.21

350

133.58

4

50.0

528

3

50.0

188.95

2

50.0

151.59

60.0

175.51

800

521° 35' 45" E
163.03

69.34

0.14

60.0

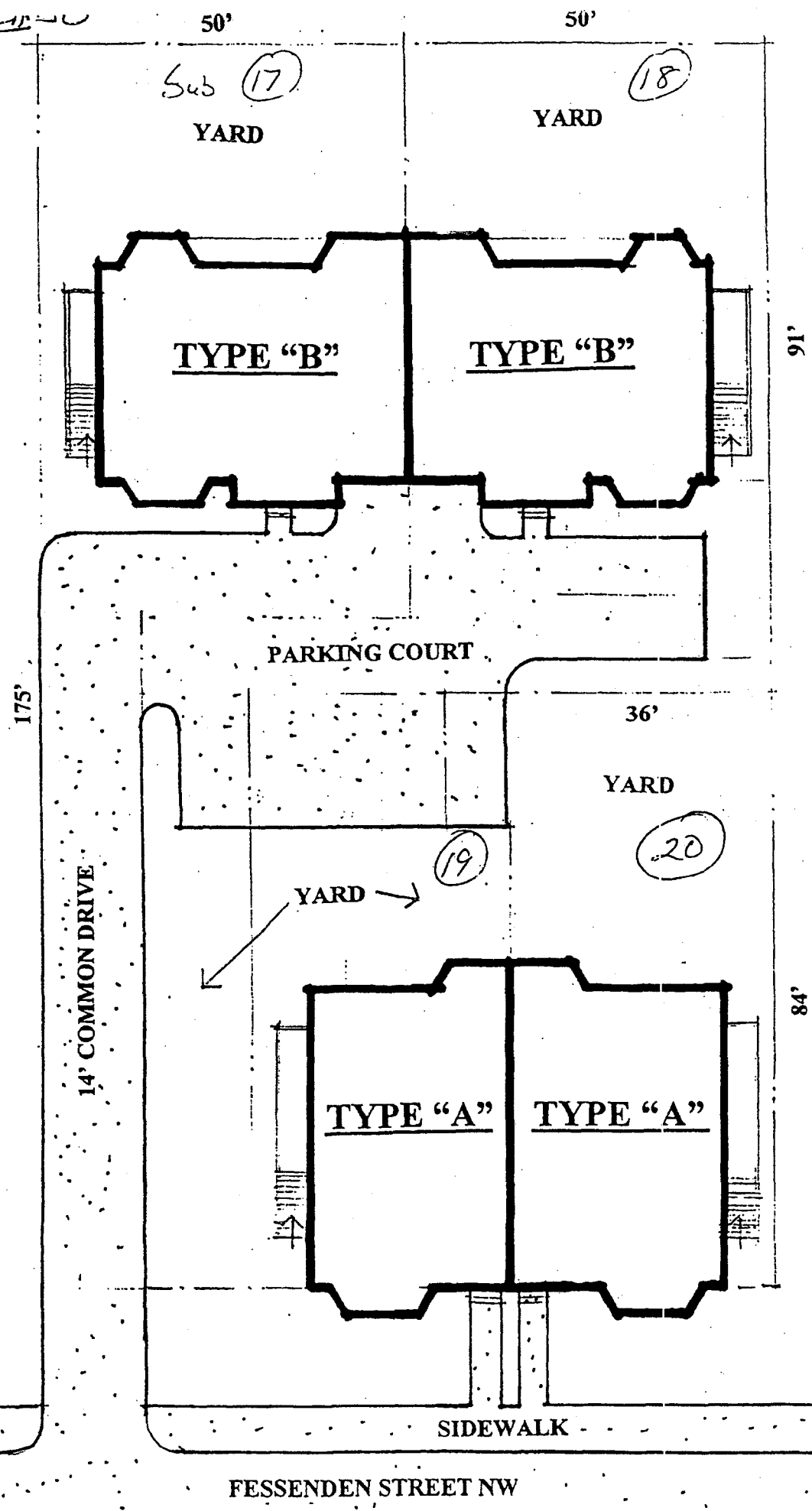
110.0

175.51

FESSENDEN

SUBDIVISION
LOTS 17, 18
19, 20

SITE PLAN
1"=20'
4319-4321 FESSENDEN STREET NW





ADVISORY NEIGHBORHOOD COMMISSION 3E

**TENLEYTOWN AMERICAN UNIVERSITY PARK
FRIENDSHIP HEIGHTS**

c/o Lisner Home 5425 Western Avenue, NW Washington, DC 20015

ANC3E RESOLUTION APPEALING CONSTRUCTION PERMITS AT

4319-21 FESSENDEN STREET, N.W.

Whereas *Department of Consumer and Regulatory Affairs (DCRA)* on 12/26/06 issued permits for construction at the following addresses on Fessenden St., NW: 4319 (permit #101584), 4319 ½ (permit # 101585), 4321 (permit # 101587) and 4321 ½ (permit # 4321 ½ for “alteration and repair”); owner, Dunn, Whiskey, LLC

Whereas, DCRA has made available for review by affected residents only three of the four building permits for a recently (April 06) approved subdivision containing Lots 0017, 0018, 0019, 0020 in Sq1655

Whereas, the plans made available to affected residents show a lot coverage above the 40% allowed by regulation *in an R2 zone*;

Whereas, one of the permits describes a “renovation” and on these lots all the existing structures have recently been razed and there are no buildings or foundations remaining;

Whereas, the plans describe a common single 14-foot driveway serving four dwellings, with no separate access to the rear lots, and no evidence that an easement for the benefit of the adjoining rear lot has been recorded;

Whereas, the Zoning Regulations requires that “[e]ach lot created after February 15, 1966, to be used and occupied by a one-family detached dwelling . . . have a street frontage measured along the street a distance equal to at least forty percent of the required minimum width of the lot and no case less than fourteen feet (14ft).” 11 DCMR § 401.6 (emphasis added);

Whereas, the only street frontage provided for Lots 17 and 18 (the two rear lots) is a single, 14-foot common driveway, and therefore one of these rear lots lacks the required minimum 14 feet of street frontage;

Whereas, under the Zoning Regulations, a single family dwelling in a residential zone must have one parking space for each dwelling unit. 11 DCMR § 2101.1. Moreover, unless approved as a special exception by this Board, “all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve.” *Id.* § 2116.1.; the building plans depict parking that does not conform to these requirements;

Be it therefore resolved that:

1. ANC3E hereby appeals the building permits for this construction on the basis that these permits do not conform to the applicable regulations, including but not limited to Sections 401.6 and 403.2 of the Zoning Regulations.
2. ANC3E requests that DCRA immediately issue a "stop work" order at this site until all these zoning issues are resolved, and/or that the BZA issue an order staying the effectiveness of the permits.
3. That affected residents immediately be provided with copies of all relevant permits, permit applications, and permit plans and drawings pertaining to the construction at 4319, 4319 ½, 4321 and 4321 ½ Fessenden Street, NW.
4. That in the event DCRA, the Board of Zoning Adjustment or a court decides or rules that the permits issued for the property in question were improperly issued or are not in full compliance with the zoning regulations, that those permits be immediately rescinded.

ANC 3 E approved this resolution by a vote of 3-0 at a special duly noted public meeting on February 23, 2007, with a quorum present. Commissioners present were Amy McVey, Anne Sullivan, and Carolyn Sherman.

ANC3E authorizes Andrea C. Ferster to file this appeal with the Board of Zoning Adjustment on behalf of ANC3E.



Amy McVey

Chair,

ANC3E

Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W. Suite 210
Washington, D.C. 20001

RE: Legal Counsel for BZA Appeal

Dear Chairman Griffis:

This is to inform the Board of Zoning Adjustment that Todd Boley, residing at 4324 Garrison St., NW, Washington, DC 20016 has appointed Andrea Ferster, Esq., as legal counsel to file and prosecute an appeal before the BZA of Permit # 101584 for 4319 Fessenden Street, N.W., Permit # 101585 for 4319 ½ Fessenden Street, N.W., Permit # 101587 for 4321 Fessenden Street, N.W., and Permit # 101588 for 4321 ½.

Sincerely,

A handwritten signature in black ink, appearing to read "T.D. Boley".

Todd D. Boley

From: Carolyn Sherman [sherman2@bellatlantic.net]
Sent: Monday, April 16, 2007 8:27 AM
To: Susan Walker
Cc: Crews Bill; Fenty Adrian; Cheh Mary; McVey Amy; Boley Todd; Frankel David; Banta, Susan (COUNCIL); Carolyn Sherman
Subject: Re: Potential Irreparable Damage - When are you going to consider a "stop work" order?

Bill--

I strongly second Susan's request. DCRA has got to show leadership and get on top of this. Since October we have been trying to get some resolution from you on this project. Phone calls and emails aren't answered, and now in this latest installment the next door neighbor has flooding in her basement from the shoddy and careless construction work by Mr. Dunn. Where is DCRA?

I talked with Jannetts Anderson last Thursday, who was very helpful and who suggested we try to get the work stopped. She said the zoning permits haven't been given for 4319-4319 1/2 Fessenden, and yet construction is halfway finished. She had no idea there was a law suit pending. We can't even get copies of the revised plans because Mr. Dunn's permit expediter has them and doesn't return DCRA phone calls. Yet construction is rushing on, with work done on Saturdays and Sundays, in both rain and snow. This is outrageous. We need someone from DCRA to go out there, inspect the project, and stop it until these issues are resolved.

Please call or email me and let me know what you are doing to stop construction until DCRA can tell us first, that the required permits have been given, and given in accordance with the requirements, and second that the builder is actually following the requirements in those permits.

Carolyn Sherman
 Commissioner
 ANC3E-03

Susan Walker wrote:

> Bill,
 >
 > Please refer to my earlier email today. This is a separate plea to
 > ask DCRA to take the time to review the entire permitting process for
 > this site, preferably as an open process.
 >
 > As a result of today's rain, we have new flooding in one basement
 > (immediately adjacent to the construction sites at 4319-21 1/2
 > Fessenden). This property is owned by an elderly widow who has lived
 > here for over 45 yrs. She has put up with the 7am to 7pm
 > construction noise and traffic for months as large, heavy,
 > construction vehicles have moved 100% of the soil on the property
 > immediately adjacent to her property. Four new dwellings (some with
 > six bedrooms?) are being crammed into a space that previously held
 > two small houses. Now, the neighbor has NEW FLOODING in her basement.
 >
 > This is the first substantial rain since the developer began
 > elevating his grade level and slope.
 >
 > The final grade level moves from 322 (where it was for about 80
 > years) to apparently 325 (as per the plans). That is a 3 foot
 > increase (can you say "hill")
 > The impervious surface is going from 3,000 sq ft to 10,000 sq ft (as

> per the plans).
> There is no storm water management system in place today (or, it's
> not working)
> The property currently slopes towards the neighbors, without any
> barrier to water flow. Prior to development, the property was
> basically FLAT. A ground height increase of 3ft adjacent to new
> dwellings may cause all the water to run off these properties onto
> the neighbors. That appears to be happening NOW.
>
> What does it take to get DCRA to send someone out here to CHECK THIS
> OUT!!!! We would really like to have a thorough review of the
> permitting process for these sites - this would include the ENTIRE
> PACKAGE, not just the building plans. Neighbors are suffering.
>
> Susan J. Walker
> 4347 Fessenden St NW
> Washington DC 20016
>

From: Crews, Bill (DCRA) [Bill.Crews@dc.gov]
Sent: Friday, February 02, 2007 1:45 PM
To: swonline11@mac.com
Cc: tboley@capitalbenefitscorp.com; sherman2@bellatlantic.net; DFRANKEL@ftc.gov; suzanne.skelley@noaa.gov
Subject: RE: bad customer service-Fessenden and DCRA service

Sorry for your frustrations today. I just checked with the records folks to see what the status is. Marcella indicated that they are looking for the plans. I told her that I was interested in this too, so that she would let me know when they are located.

Best regards,

Bill Crews

Zoning Administrator for the District of Columbia Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE Suite 2000
Washington, DC 20002
202.442.4576 Office
202.442.4871 Fax
bill.crews@dc.gov

-----Original Message-----

From: swonline11@mac.com [mailto:swonline11@mac.com]
Sent: Friday, February 02, 2007 12:21 PM
To: Bill Crews
Cc: tboley@capitalbenefitscorp.com; sherman2@bellatlantic.net; DFRANKEL@ftc.gov; suzanne.skelley@noaa.gov
Subject: bad customer service-fessenden and dcra service

Bill
I have been in rm 2100 for 45 min.

I have come down here to request copies of the permit applications, permits issued, and plans for buildings to be constructed on what was for 60 some years known as 4319 and 4321 Fessenden, each with one single family home.

The many trees and two homes have been stripped, and apparently a subdivision authorized and building permits issued DEC 26. I know this by looking at the site (a bulldozed wasteland) and at the permits posted on Monday. Numbers 101584, 101585, 101587 and 101588.

The site at 4319, 19 1/2, 21, and 21 1/2 Fessenden St has this week posted these permits dated 26 DEC.

We are unaware of any communication with the ANC about these new dwelling permits, and the developer has not taken any steps that I am aware of to notify neighbors.

When the records clerk finally came out (at 11:48) she gave me copies of 1 page records with less info than is posted at the site. The personnel here are also emphatic that they have given me everything. However, the staff here obtained only info for permits 101584, 101587 from Dec.

They were not interested in my concern that they do not seem to have records for the half numbers (4319 1/2 and 4321 1/2) and told me to call the FOIA office because I am not the home owner.

I also asked about getting copies of permit applications, permits and plans but have been told that I'm not the homeowner and cannot have these. I have wasted much of my time at DCRA and received partial, faulty and inaccurate information, beginning last August when the surveyor's office informed me that there was no subdivision (but one WAS approved the previous April).

I will stay here and try to get this sorted out, but I am frankly totally annoyed at the rudeness and lack of customer service from these folks.

As taxpayers we pay the highest rate in the area, and for this we get treated badly by the folks who should be helpful.

Please help me to understand how I can obtain information about what was issued. As for the posted building permits at the site, 3 appear to be new dwellings, and one for "remodel/alteration. This is worrisome as there is nothing there to remodel.

As concerned neighbors we want to assure that the info on the applications is accurate and process is "matter of right".

If we cannot obtain publicly available info from DCRA, we are significantly disadvantaged.

Please advise

Susan J Walker, M.D.

APPELLANT'S EXHIBIT 4

Todd Boley

From: Carolyn Sherman [sherman2@bellatlantic.net]
Sent: Friday, April 06, 2007 10:12 AM
To: Crews, Bill (DCRA)
Cc: Cheh, Mary (COUNCIL); Smith, Dee (COUNCIL); Todd Boley; Susan Walker; Carolyn Sherman; Amy McVey
Subject: We need the plans for 4319-21 Fessenden NW

Hi, Bill

I'm following up on your email of February 16 (below) in which you promised to send ANC3E the corrected plans for the construction project at 4319-21 Fessenden Street , NW.

Would you please send us those plans as soon as possible? For speed and convenience, I suggest you send them to me at the following address:

Carolyn Sherman, Commissioner, ANC3E-03, 4341 Ellicott St., NW, 20016

We need to know what is in the plans and we need to know the required corrections have been made. As you know we are in litigation over this issue and need your prompt cooperation.

Please let me know that you've received this email and when I can expect to receive the plans.

Thank you.

Carolyn Sherman
Commissioner,
ANC3E-03
202-966-1181

Folks,

First, let me clear up an apparent misunderstanding last night. I said I would check on the issues we discussed and discovered last night, but did not confirm that any permit was issued in error.

I did check with the Zoning reviewer on the discrepancy on the lot occupancy for the two houses close to the street. She has indicated that she did catch that the two houses as shown on the drawings we looked at last night were too big and had directed the builder to correct this. The builder corrected it on the plat, but she missed that the builder did not correct the drawings. She contacted the builder and the builder will be submitting corrected plans showing the two houses as only 25 feet 6 inches wide. So the figures are $47' \times 25.5' = 1198.5 / 3024 = 39.6\%$ lot occupancy.

We will confirm that the correction is made when we provide the ANC with copies of the plans. (emphasis added)

The two houses in the rear are well below the maximum lot occupancy (28% & 24%) mainly because those lots are much bigger than the front ones.

6/20/2007

On the driveway issue, I have double checked the provisions, but am interested in speaking with your attorney to consider what her interpretation is before I make a final determination on the driveway issue.

Carolyn had called today asking about extending the deadline for the appeal. That is up to the Board of Zoning Adjustment. I would be glad to discuss that with your attorney, too.

We will stay on top of this.

Best regards,

Bill Crews

Zoning Administrator for the District of Columbia
Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE Suite 2000
Washington, DC 20002
202.442.4576 Office
202.442.4871 Fax
bill.crews@dc.gov

6/20/2007

Todd Boley

From: Crews, Bill (DCRA) [Bill.Crews@dc.gov]
Sent: Friday, February 16, 2007 5:58 PM
To: Carolyn Sherman; tboley@capitalbenefitscorp.com; Susan Walker
Cc: Smith, Dee (COUNCIL)
Subject: Update on the 4319-21 Fessenden St. Project

Folks,

First, let me clear up an apparent misunderstanding last night. I said I would check on the issues we discussed and discovered last night, but did not confirm that any permit was issued in error.

I did check with the Zoning reviewer on the discrepancy on the lot occupancy for the two houses close to the street. She has indicated that she did catch that the two houses as shown on the drawings we looked at last night were too big and had directed the builder to correct this. The builder corrected it on the plat, but she missed that the builder did not correct the drawings. She contacted the builder and the builder will be submitting corrected plans showing the two houses as only 25 feet 6 inches wide. So the figures are $47' \times 25.5' = 1198.5 / 3024 = 39.6\%$ lot occupancy.

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We will stay on top of this.

Best regards,

Bill Crews

Zoning Administrator for the District of Columbia Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE Suite 2000
Washington, DC 20002
202.442.4576 Office
202.442.4871 Fax
bill.crews@dc.gov



OPPOSITION TO PROJECT AT 4319-4321 FESSENDEN STREET, N.W.

We the undersigned strongly **oppose** the development of four semi-detached houses on lots 0017, 0018, 0019 and 0020 in square 1655 (4319-4321 Fessenden Street, N.W.) as violative of both the spirit and letter of the Zoning Regulations and we urge the Board of Zoning Adjustment to revoke their building permits and order that they be dismantled and the property be landscaped in a way that resembles its pre-existing condition. These houses are out of character with the other houses in the square as well as with other nearby houses. Unlike other houses in square 1655, these four houses occupy far too much of their respective lots, thus unduly increasing density of population, and they present serious storm water management issues for neighbors, including flooded basements. They also infringe on the adequacy of light and air for neighboring houses. The two mini-mansions in the rear (northernmost) lots are particularly objectionable because they are sited in the middle of square 1655, close to neighboring lot lines and they stick out like a sore thumb.

Jana Frankel

Name (printed)

5-28-07

Date

4336 Garrison St., NW, Washington, DC 20016

Address

Jana Frankel

Signature

David P. Frankel

Name (printed)

5-28-07

Date

4336 Garrison St., NW, Washington, DC 20016

Address

David P. Frankel

Signature

Lucie Baierova

Name (printed)

5-28-07

Date

4336 Garrison St. NW, Washington, DC 20016

Address

Lucie Baierova

Signature

OPPOSITION TO PROJECT AT 4319-4321 FESSENDEN STREET, N.W.

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Daphne Trotter 5-28-07
Name (printed) Date

5015 44th St. NW
Address
Washington, DC 20016 Daphne Trotter
Signature

JANET BACHMAN 5/29/07
Name (printed) Date

5012 44TH ST. NW, WASHINGTON, DC 20016
Address
Janet E. Bachman
Signature

Name (printed) Date

Address

Signature

OPPOSITION TO PROJECT AT 4319-4321 FESSENDEN STREET, N.W.

We the undersigned strongly **oppose** the development of four semi-detached houses on lots 0017, 0018, 0019 and 0020 in square 1655 (4319-4321 Fessenden Street, N.W.) as violative of both the spirit and letter of the Zoning Regulations and we urge the Board of Zoning Adjustment to revoke their building permits and order that they be dismantled and the property be landscaped in a way that resembles its pre-existing condition. These houses are out of character with the other houses in the square as well as with other nearby houses. Unlike other houses in square 1655, these four houses occupy far too much of their respective lots, thus unduly increasing density of population, and they present serious storm water management issues for neighbors, including flooded basements. They also infringe on the adequacy of light and air for neighboring houses. The two mini-mansions in the rear (northernmost) lots are particularly objectionable because they are sited in the middle of square 1655, close to neighboring lot lines and they stick out like a sore thumb.

Richard Graham 6/21/07
Name (printed) Date

5007 44th St. NW, Washington, DC 20016
Address

Richard Graham
Signature

Richard Graham 6/21/07
Name (printed) Date

5003 44th St. NW, Washington, DC 20016
Address

Richard Graham
Signature

Todd Boley 6/21/07
Name (printed) Date

4324 Garrison St. NW
Address

Todd Boley
Signature

OPPOSITION TO PROJECT AT 4319-4321 FESSENDEN STREET, N.W.

We the undersigned strongly **oppose** the development of four semi-detached houses on lots 0017, 0018, 0019 and 0020 in square 1655 (4319-4321 Fessenden Street, N.W.) as violative of both the spirit and letter of the Zoning Regulations and we urge the Board of Zoning Adjustment to revoke their building permits and order that they be dismantled and the property be landscaped in a way that resembles its pre-existing condition. These houses are out of character with the other houses in the square as well as with other nearby houses. Unlike other houses in square 1655, these four houses occupy far too much of their respective lots, thus unduly increasing density of population, and they present serious storm water management issues for neighbors, including flooded basements. They also infringe on the adequacy of light and air for neighboring houses. The two mini-mansions in the rear (northernmost) lots are particularly objectionable because they are sited in the middle of square 1655, close to neighboring lot lines and they stick out like a sore thumb.

MICHAEL HOTKA 5-28-07
Name (printed) Date
5011 44TH ST N.W. WASHINGTON, D.C. 20016
Address
Michael Hotka
Signature

Cathy Hotka 5/28/07
Name (printed) Date
5011 44TH ST NW Wash DC 20016
Address
Cathy Hotka
Signature

Andrew Trotter 5-28-07
Name (printed) Date
5015 44th St. NW Washington DC 20016
Address
Andrew J. Trotter
Signature

JOINT DRIVEWAY PARKING AREA AND USE EASEMENT

This Joint Driveway Parking Area and Use Easement (hereinafter the "Agreement") is made as of this 26th day of October, 2004⁶, by Dunn Whiskey, LLC;

Whereas Dunn Whiskey, LLC is the owner of the real property in the District of Columbia commonly identified as Lots 17, 18, 19 and 20 Square 1655, more fully identified on Exhibit A hereto;

Whereas, Dunn Whiskey, LLC wishes to establish along the common boundary between Lots 17, 18, 19 and 20 a joint driveway, parking area and use easement (the "Driveway") located partially on Lots 17, 18 and 19 for the present and future owners of Lots 17, 18, 19 and 20, and their tenants, assigns and successors, substantially as shown on Exhibit A hereto;

Now, Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves, and their heirs, successors and assigns, agree as follows:

1. Dunn Whiskey, LLC does hereby grant and convey to all present and future owners of Lots 17, 18, 19 and 20 their heirs, successors and assigns, including their tenants and invitees, forever and in perpetuity, a non-exclusive easement of ingress and egress exclusive parking use area and exclusive use area easement over and through the portion of the driveway, parking area and use area located on Lots 17, 18 and 19, for vehicular and pedestrian use as a driveway, parking area and use area easement, leading to and from Lots 17, 18, 19 and 20. The exact legal description of the portion of the Driveway located on Lot 17 is attached hereto as Exhibit B.

2. Neither any present or future owner of all or any part of Lots 17, 18, 19 and 20, or their tenants or invitees, shall place or affix, or cause or permit to be placed or be affixed in any portion of the driveway, either temporarily or permanently, any tree, shrub, fence, post, structure, gate, personal property, motor vehicle, or any other improvement or obstruction, it being the intent of the parties the driveway shall be and remain totally free and unobstructed and shall be used solely for the ingress and egress purposes (or related purposes), as set forth in this Agreement.

3. Neither any present or future owner of all or any part of Lots 17, 18, 19 and 20, or their tenants or invitees, shall place or affix, or cause or permit to be placed or be affixed in any portion of the parking area except motor vehicles owned or herein authorized to be used by the owners of the respective lots.

4. Neither any present or future owner of all or any part of Lots 17, 18 and 20, or their tenants or invitees, shall have any right to use any portion of the exclusive use area on Lot 18.

5. Each party shall share equally the cost of maintaining the driveway and parking area, including, but not limited to, repairing or repaving the driveway to maintain it in good condition (the "Driveway Maintenance"). All such work shall be performed and completed in a good and workmanlike manner and in accordance with all applicable laws. The decision as to when and how to undertake the Driveway Maintenance shall be made jointly by the then current owners of Lots 17, 18, 19 and 20. The owner of Lot 19 shall be solely responsible for the cost of maintaining the exclusive use area. In the event the parties are unable to agree on the Driveway Maintenance, the dispute shall be submitted to binding arbitration in accordance with the rules of the American Arbitration

Association for the District of Columbia, and any decision of the arbitrators shall be binding upon the parties. All costs associated with such arbitration shall be borne equally by the parties, unless, as determined by the arbitrator, one of the parties was not acting in good faith with respect to the subject matter of the dispute, in which event the arbitrator shall be free to require all fees associated with the arbitration to be paid by the non-prevailing party. If damage to the driveway and parking area is caused, however, by the misuse or abuse of same by the owner of either Lots 17, 18, 19 or 20, or their tenants or invitees, then the responsible owner shall be responsible for one hundred percent (100%) of the costs incurred to repair such damage, to the extent not covered by available insurance. In the event one party fails to remit its share of any costs associated with the Driveway Easement, the other party may proceed to file an appropriate action to recover the share due from the other party, and in such event, the prevailing party in any such proceeding shall be entitled to recover its costs and expenses from the other party, including reasonable attorneys' fees.

6. The owners of Lots 17, 18, 19 and 20 shall indemnify and hold harmless the other owners from and against any cost, liability or expense incurred by the other owners arising from the negligence, omission or misconduct by the owners, and their agents, successors and assigns, associated with the use of the driveway, parking area and exclusive use area.

7. This Agreement and the grants made herein with respect to the Driveway and its use, shall be made in perpetuity and shall run with and bind the land affected hereby (namely Lots 17, 18, 19 and 20), and shall be binding upon, and inure to the

benefit of, all heirs, successors and assigns of the present and future owners of Lots 17, 18, 19 and 20.

8. The intended beneficiaries of this Agreement, and their heirs, successors and assigns, as the owners of Lots 17, 18, 19 and 20 shall have the right to enforce by a proceeding at law or in equity the provisions hereof, and may enforce its rights hereunder by injunctive relief. If any party which is a beneficiary of any rights under this Agreement is compelled files a legal action to enforce its rights, the prevailing party in any such action shall be entitled to reimbursement of its legal fees in any such action.

9. This Agreement constitutes the entire understanding regarding the subject matter of this Agreement and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement. This Agreement shall be construed in accordance with the laws of the District of Columbia.

In Witness Whereof, the undersigned has caused this instrument to be executed,
under seal on the date indicated above.

Dunn Whiskey, LLC

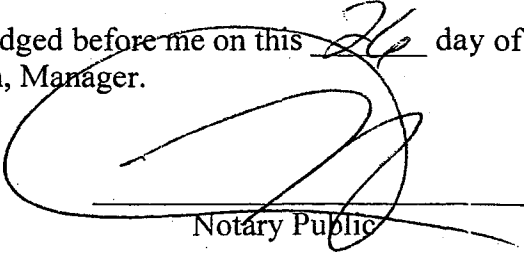
by



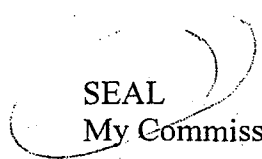
Manager

District of Columbia; ss:

This instrument was acknowledged before me on this 26 day of
November, 2004, by Reid A. Dunn, Manager.



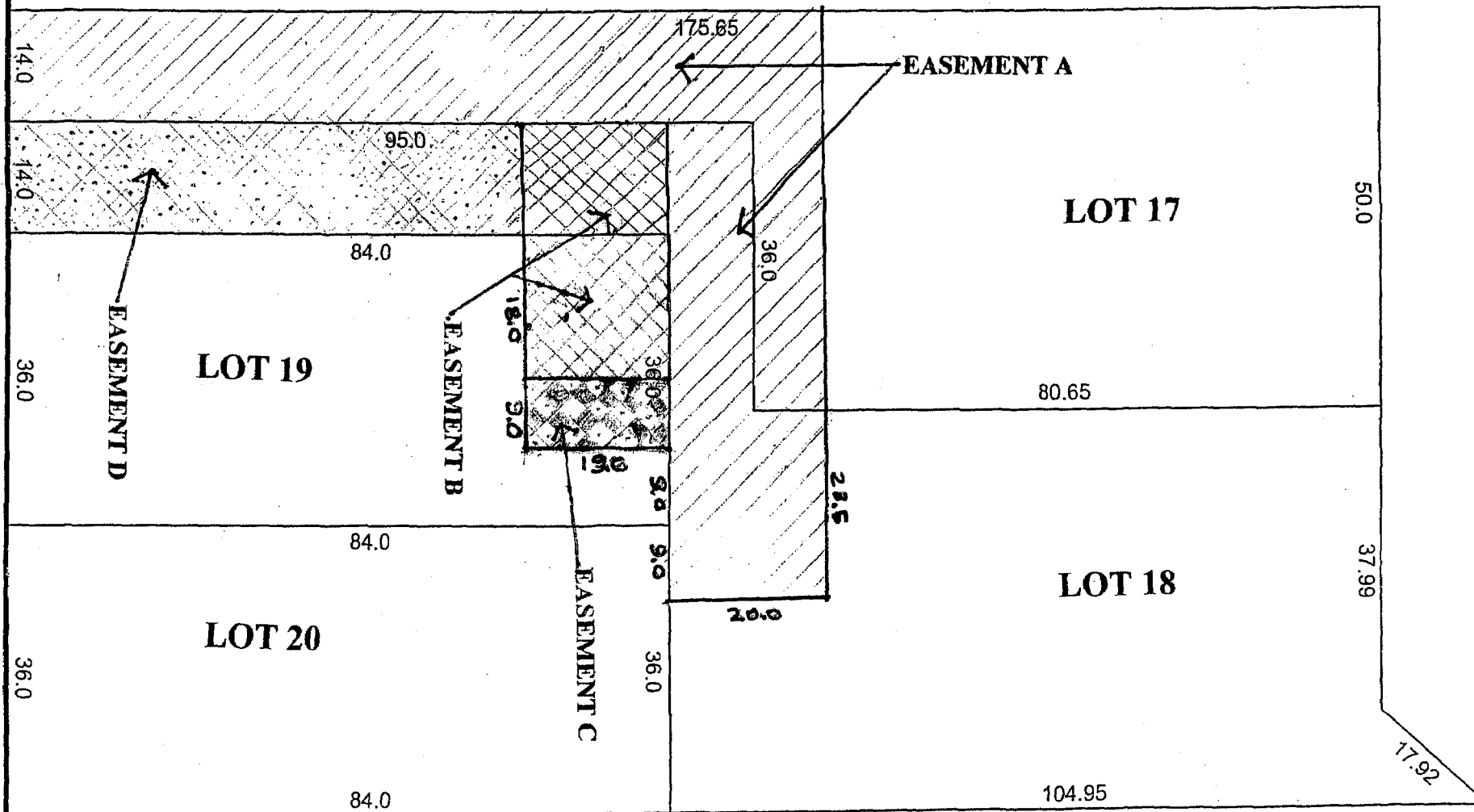
Notary Public


SEAL

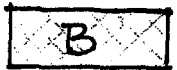
My Commission Expires

Morton H. Press
Notary Public, District of Columbia
My Commission Expires 11/14/2006

FESSENDEN STREET, N.W.



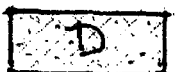
Access Easement for Benefit of Lots 17, 18, 19 and 20.



Parking Easement for Benefit of Lot 17.



Parking Easement for Benefit of Lot 18.



Use Easement for Benefit of Lot 19.

PLAT OF EASEMENT
LOTS 17-20 SQUARE 1655

A. Lots 17 and 18 to Lots 17, 18, 19 and 20

Beginning at the Southwest corner of Lot 17 in Square 1655 proceeding North 104.0', thence East 73.5', thence South 20.0', thence West 59.0', thence South 84.0' to the place of beginning.

B. Lots 18 and 19 to Lot 17

Beginning at a point 84.0' North of the Southwest corner of Lot 18 in Square 1655 proceeding East 32.0' thence South 19.0', thence West 32.0', thence North 19.0' to the place of beginning.

C. Lot 19 to Lot 18

Beginning at a point 9.0' West of the Northeast corner of Lot 19 in Square 1655 proceeding South 19.0', thence West 9.0', thence North 19.0', thence East 9.0' to the place of beginning.

D. Lot 18 to Lot 19

Beginning at the Southwest corner of Lot 18 in Square 1655 proceeding North 65.0', thence East 14.0', thence South 84.0', thence West 14.0' to the place of beginning.

Susan Walker
4347 Fessenden St, NW
Washington, DC 20016
(202) 537-3995

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
April 20, 2007
2007 APR 20 P 2:10

Lisa Marie Morgan, Interim Director
Department of Consumer & Regulatory Affairs,
941 North Capitol Street, NE, Suite 950000,
Washington, DC 20002

Dear Ms Morgan

Pursuant 12 DCMR § 112.1, I am hereby filing an appeal of the following building permits, issued to Dunn Whiskey, LLL, on December 26, 2006:

Permit No. 101584 for 4319 Fessenden Street, N.W. (Lot 19)
Permit No. 101585 for 4319 ½ Fessenden Street, N.W. (Lot 17)
Permit No. 101587 for 4321 Fessenden Street, N.W. (Lot 18)
Permit No. 101588 for 4321 ½ Fessenden Street, N.W. (Lot 20)

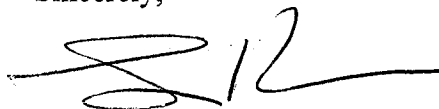
Despite diligent efforts, I was unable to obtain the building plans associated with these permits for many months. Each time I, or other neighbors went to DCRA to review the permitting documents, they were told that the permitting files could not be located. Finally, on Friday, April 6, 2007, I was able to purchase a copy of the full plans.

Upon review of these plans, I have identified numerous violations of building and construction code requirements, specifically relating to storm water management issues. These violations are identified in items ## 2, 3, 4, , 7, 9, and 13 of the attachment (this attachment also identifies numerous zoning violations, which are the subject of pending BZA Appeal of ANC 3 E in BZA Appeal No. 17631). This appeal is timely as it is filed within 15 days of my receipt of these building plans.

I believe that I am adversely affected and aggrieved by the issuance of this permit. In particular, the extraordinary increase in the impervious surfaces of the area and the manifest inadequacy of the storm water management system, will result in storm water run off that will flood my property, which is located approximately two feet from Lot 17.

Feel free to call me at (202) 537-3995 if you need any additional information.

Sincerely,



Susan Walker

Over Building Our Neighborhood:
Concerns for development at 4319 – 21½ Fessenden St

1. Is the finish grade in conformance with zoning regulations?

The developer has plans to elevate the finish grade on the property to 325, which is 3ft above the previous grade at the same sites. This will likely cause water runoff onto nearby properties and increase the chances of basement flooding etc.

2. How does the developer intend to manage the water runoff from buildings, exterior access stairwells, asphalt surfaces, and graded soil surfaces?

The developer's plans indicate a 7,000 sq. ft. increase in impervious surface, and building structures that approach within approximately 4ft of the property lines. The final grade elevation at the buildings is approximately 3 feet above the level of the previous grade.

The developer is increasing (as per his calculations on the plans) the impervious surface on these properties from approximately 3,000 sq ft to over 10,000 sq feet, which means that there is significantly less open ground available for water to disperse. It will need to go somewhere. The submitted plans include a "storm management system", and a plan for an infiltration trench has been provided. The developer does not appear to have provided any plans which specifically detail how and where the water will flow from roofs, gutters, downspouts, sump pumps, basement access wells, asphalt covered areas, and elevated soil areas towards and into the infiltration trench. This should be provided and reviewed by the appropriate regulatory agencies as soon as possible. The neighboring properties experienced significantly increased water runoff from this development area during the rainstorm that occurred on May 15, 2007.

3. Is the proposed storm water plan in violation of P-1101.2.2 of the ~~zoning~~ regulations in that the storm water DOES NOT appear to drain onto the same single lot of record as it was collected?

Section P-1101.2.2 of the DC ^{Building} ~~Zoning~~ Code states that "when approved, storm water may be discharged from roofs (etc)....to vegetated areas, such as lawns, gardens, grassy swales, or bioretention cells on the same single lot of record. In such instances, the storm water shall flow away from the building, and shall not flow over property lines onto adjacent lots unless it runs into existing natural watercourses. Otherwise, storm water shall discharge to an approved place of disposal or into a storm sewer or combined sewer".

4. If in conformation with P-1101.2.2, is the proposed storm water management system adequate, in all aspects, to conform with PM-302.7.3 and to contain the

storm water runoff from these properties and to ensure the continued functioning of this storm water management system?

DC ~~Zoning~~ Regulations Chapter 3G General Requirements:

SECTION PM-302 EXTERIOR PROPERTY AREAS

Add new Section PM-302.7.3 to read to as follows:

PM-302.7.3 Storm water management facilities. Storm water management facilities constructed pursuant to D.C. Storm Water Management Regulations shall be inspected and maintained in good condition and repair, including all graded surfaces, conveyance, basins, drains, structures, vegetation and other protective devices for storm water management, using established guidelines and procedures and approved by the official charged with the administration and enforcement of the D.C. Storm Water Management Regulations, 21 DCMR §§526-535 and the requirements of D.C. Law 5-188, Water Pollution Control Act of 1984, as amended.

The developer has proposed an infiltration trench that has been preliminarily reviewed by the Environmental Health Administration, Sediment and Storm Water Technical Services. The neighbors would like to have answers to these questions:

- How will the system be “maintained and inspected” after the property is sold? Reid Dunn, representing the builder, is currently listed as the responsible entity, and as such he represents the interests of all 4 lots that drain to this infiltration trench. The developer intends to sell these lots to private and separate individuals. How will the developer ensure the transfer of responsibility for maintenance and inspection of this system to the four individual new owners?
- How will the developer ensure that the system is “dewatering” adequately?
- How will the developer ensure that the system does not exert damaging hydrostatic pressure towards the neighboring basement(s)?
- How will the developer ensure that the system does not become “clogged” by debris and leaves, which will naturally gather into this system?
- How will the developer ensure that the system does not become “clogged” during snow events by the shoveling of snow from the driveway onto the system? This is a prominent concern because the system sits immediately adjacent to the only driveway into the properties, and there is essentially no other place to throw the snow.
- How will the developer inform the new owners (individually and jointly) of their responsibility for maintenance and inspection of this system?
- NOTE: The recent heavy rains caused flooding in an adjacent basement and excessive water flow in other adjacent yards. While we understand that the developer has taken the position that this has nothing to do with his development, there is an outstanding concern that the development to date has altered the runoff from 4319 and 4321. We will pursue this concern with the current owner and any future owners until this issue is resolved. The developer should notify any future owners of this issue if he has not resolved prior to selling any of the properties.

5. Is the proposed common driveway in conformation with the zoning regulations?

2117.4 Except as provided in § 2117.15, each required parking space shall be accessible at all times directly from improved streets or alleys or shall be accessible from improved streets and alleys via graded and unobstructed private driveways that form an all-weather impervious surface. Improved streets or alleys providing access to required parking spaces shall have a minimum width of ten feet (10 ft.) and be paved in compliance with the standards of the D.C. Department of Transportation

The developer is planning to construct one driveway to provide common access to dwellings and parking spaces for four houses in this complex. There should be consideration of the “limiting principle” for this common driveway access. There are no other private driveways shared by many dwellings in our square, or in the neighborhood. A more appropriate usage in R-2 would have been to construct individual driveways going to individual properties. However, this would have led to fewer dwellings packed into the space, and the developer has chosen this plan.

6. If the proposed common driveway is allowable, what is the width of that driveway and how will the driveway access be managed at Fessenden St?

2117.8 A driveway that provides access to required parking spaces shall meet the following standards:

- (c) A driveway serving any use other than a one-family dwelling or flat or serving more than one (1) parking space shall be as follows:
 - (2) Not less than twelve feet (12 ft.) in width if designed for one-way circulation or fourteen feet (14 ft.) if designed for two-way circulation; and

The plans indicate that the driveway will be 13 feet wide, which limits it to ONE WAY circulation. The driveway proceeds directly north into the property for 65ft, and then turns 90 degrees to the right. How does the developer intend to ensure that the driveway functions as a one-way circulator? These buildings are designed to hold 22 bedrooms, which assumes that there are likely to be many occupants who will be of driving age at the time of purchase or who will reach driving age. There are 8 open parking spaces and two garages within the complex. Multiple cars simultaneously coming in and out of the complex via Fessenden Street would adversely impact the neighborhood. This section of Fessenden St carries a large amount of pedestrian traffic, and the 80-year precedent on this block is a single-family driveway of approximately 40 feet or less. We anticipate that the new residents will drive at relatively high speed and at much higher volume than any existing driveways in the neighborhood. This neighborhood anomaly will have the potential for accidents and pedestrian injury at the point where the driveway reaches Fessenden Street.

The developer should consider traffic calming measures on this high volume driveway that is totally out of character with the neighborhood. There is no precedent for this type of driveway access in our neighborhood.

7. **Is the building currently on the property (under construction) in conformance with both the zoning requirements and approved plans?**

The plans indicate that the windows and doorways for 4319 ½ are below grade. However, it appears that these structures are above grade as they currently appear on the lot. It appears that the developer has not built to plan on this wall. The city should check the site during construction to determine if the building is constructing in accordance with the approved plans.

8. **Has the developer made application for and received public space permits (i.e. curb cuts) for his current and proposed entry/egress from the properties?**

2117.14 Detailed plans shall be submitted to the D.C. Department of Transportation for approval of all curb cuts and driveway openings, to ensure that compliance with these regulations does not conflict with the responsibility of the Department to protect safety in the public space.

The developer has placed orange netting around a telephone poll and also around a stick near the entrance to what was previously the driveway at 4321. These two orange nets are intended to mark the opening to his construction zone, and are routinely used as guidelines by the very large trucks that come and go at the site on a daily basis. The original curb cut has not been enlarged, but the public space immediately adjacent to the curb cut has had gravel/tar placed onto the grassy area such that the developer's truck are routinely jumping the curb and entering the development area over this gravel, and thru an opening of approximately 14feet.

There is no record of an application for a curb cut or other alteration to this area that would allow the planned 13ft common driveway access to this complex. For the past 80 plus years, this driveway consisted of two small strips of concrete that led to a small one-car garage. The public safety will likely be impacted by a 13foot wide driveway intended to access a complex of 4 dwellings in which there are 22 bedrooms and 10 parking spaces. (2-garage/8 open). Fessenden Street enjoys a great deal of pedestrian traffic, including dog walkers and parents/grandparents with small children. There is no driveway like this anywhere else in our square or our neighborhood. It will be dangerous.

9. **Did the applicant's omission of information on the construction permits, including the environmental assessment forms, lead to decisions by DCRA based upon inadequate information?**

The applicants' answers to several questions (4319 used as an example) on the Environmental Intake Form appear to be incorrect.

The questions on the form (and answers) are repeated below:

- Does the owner of this site own adjacent or abutting property. Answer on the form is NO. This answer appears to be incorrect. The owner owns adjacent property at 4319 ½, 4321, and property at 4321 ½.
- Is additional activity planned by the applicant for the site or any site within the same square during the next three years that requires a permit? (Stated answer for each address is NO. This answer appears to be incorrect. The owner has filed plans for activity on property at 4319 ½, 4321, and property at 4321 ½)
- Is this a project a single-family residence that is not in conjunction with the building of two or more units? The Stated answer is YES. This answer appears to be incorrect – the building at 4319 Fessenden IS in conjunction with two units or more units.

10. Is the developer's plan for parking in conformance with zoning regulations? The developer should clearly state the location of parking spaces intended to be used by each dwelling.

Current zoning regulations require all buildings or structures to provide parking spaces (Chapter 21 2100.1) to the extent specified in 2101, except as permitted in 2102 through 2108. 2100.2 requires that "applications show the location, dimensions, and grades of all parking spaces and approaches thereto..." The developer's plan does include some parking spaces on some lots (with the exception of no parking space on lot 17). As noted in 2116.1 parking spaces shall be located on the same lot with the building or structures they are intended to serve.

Our understanding is that the developer may intend to have these parking spaces function in a manner outside of the zoning regulations, in that he intends to use easements and covenants to deed parking spaces to other lots and thereby have these dwellings function outside the zoning regulations for R-2.

The current plans include two parking spaces in a "front yard" of lot 18, an apparent violation of 2116.2 (b)

The sum of all the "easements and covenants" necessary to allow these dwellings to have driveway access and parking spaces essentially converts these dwellings from R-2 semi-detached into multiple family dwellings, and is inappropriate for this square.

11. The developer should declare the properties that are contiguous to the described parking spaces, and provide information that clarifies how the design of the parking spaces is in conformation with the zoning regulations that require screening from contiguous properties.

2117.12 The open parking spaces shall be screened from all contiguous residential property located in an R-1, R-2, R-3, R-4, R-5-A, or SP District by a solid brick or stone wall at least twelve inches (12 in.) thick and forty-two inches (42 in.) high or by evergreen hedges or evergreen growing trees that are thickly planted and maintained and that are at least forty-two inches (42 in.) in height when planted.

If the open parking spaces are allowable, 2117.12 indicates that these parking spaces shall be screened from contiguous properties. The developer will need an exemption from this section of the code, otherwise there would be no access to the spaces on lots 19 and 20. (The access is likely thru the contiguous property).

~~Is this the lot a contiguous property?~~

12. The entire street frontage of lot 18 will apparently be removed from the deed of lot 18 and replaced by a "covenant" in which the 14 foot frontage of lot 18 is now a "storm water management system" owned in its entirety by lots 17, 18, 19 and 20. Can lot 18 "sell off" their street frontage? What happens to the lots size/building size ratio if this "neck" is removed? How can one set of footprints be used for building permits, yet another set be used for water management?

401.6 Each lot created after February 15, 1966, to be used and occupied by a one-family detached dwelling, one-family semi-detached dwelling, community-house, or row dwelling, shall have a street frontage measured along the street a distance equal to at least forty percent (40%) of the required minimum width of lot and no case less than fourteen feet (14 ft.).

Lot 18 loses its entire 14ft street frontage when the "neck" of the lot becomes a 14 ft wide storm water management facility. The entirety of this facility is intended to be passed into joint ownership by the four dwellings, as the storm water facility, by regulation, must be maintained by a responsible party. The creation of this storm water facility entirely removes the street frontage of lot 18.

NOTE: The root cause of difficulties with defining the usage of sections of land on these properties is that the space is TOO SMALL for all the elements that are reasonably required under the zoning regulations. Driveways, parking on ones own lot, adequate space to have storm water management outside of an area that should be a driveway etc. would have been possible if the developer had designed this space with fewer properties or smaller dwellings. These properties are overbuilt and as a result they are placing an undue burden on the surrounding neighborhood (water

runoff, traffic crossing the public sidewalk, removal of trees and green space, noise, etc)

- 13. The electrical/mechanical plans submitted by the developer appear to be incomplete. Where does he intend to install the air compressor units for these dwellings?**

The air conditioning systems usually consist of an inside air handler (the fan/circulating unit) and an outside air compressor. The air compressor is a large, bulky box, which generally sits away from surrounding structures so that air can circulate. The mechanical plans indicate there are air handlers on the south side of the rear building and on the north side of the front building. It appears that this would require 8 compressor units to be located somewhere on/adjacent to the parking lot.

These large outdoor units may impinge upon the parking, the driveway, and drainage into the storm water management system. The location of these units should be specified in the plans.

- 14. Why is the side yard distance to the adjacent property line only 4ft?**

The plans indicate a 4ft distance from the retaining wall protecting the access to the below ground rooms/stairway and the adjacent lots. Why is there not an 8ft allowance between the neighbors and the buildings?

- 15. Has the developer provided corrected building plans reflecting the proper ratio of building to lot coverage?**

When neighbors met with Bill Crews it was determined that the submitted building plans appeared to exceed allowable lot coverage for units 4319 and 4319 ½. The developer has apparently not submitted any corrections or revised plans to DCRA as of April 6, 2007.

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration

941 North Capitol Street N.E. Room 2100

Washington D.C. 20002

Tel:(202) 442-4470

Fax:(202) 442-4862

B

Building Permit

THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS

PERMIT NO. 101588

DATE: 12/26/2006

ADDRESS OF PROJECT: 4321 1/2 FESSENDEN ST NW		SSL: SQ: 1655 SX: LOT: 19 WARD: 4 ZONE r-2
DESCRIPTION OF WORK: NEW SFD		
PERMIT TYPE: ALTERATION AND REPAIR	PLANS (Y/N): Y	EXISTING USE: ASSEMBLY USES, OTHERS
PROPOSED USE: Residential-One/Two Family		
PERMISSION IS HEREBY GRANTED TO OWNER: DUNN WHISKEY LLC		PERMIT FEE: \$786.00
AGENT NAME: LEON PAUL 202-289-1663		
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES ; ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS ; TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639 ;		
TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639:		
DIRECTOR: <i>Patrick Canavan, Psy. D.</i> Dr. Patrick Canavan, Psy. D.	PERMIT CLERK: <i>[Signature]</i>	EXPIRATION DATE: 12/26/2007

CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to insure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.

NOTIFY THE BUILDING INSPECTOR THE DAY THE WORK STARTS. PHONE: (202)442-4641 941 NORTH CAPITOL ST NE WASHINGTON DC 20002.

A separate permit is required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration

941 North Capitol Street N.E. Room 2100

Washington D.C. 20002

Tel: (202) 442-4470

Fax: (202) 442-4862

B

Building Permit

THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS

PERMIT NO. 101587

DATE: 12/26/2006

ADDRESS OF PROJECT: 4321 FESSENDEN ST NW		S S L:	SQ: 1655	SX:	LOT: 17
		WARD:	4 ZONE r-2		
DESCRIPTION OF WORK: NEW SFD					
PERMIT TYPE: NEW BUILDING	PLANS (Y/N): Y	EXISTING USE: ASSEMBLY USES, OTHERS		PROPOSED USE: Residential-One/Two Family	
PERMISSION IS HEREBY GRANTED TO OWNER: DUNN WHISKEY LLC			PERMIT FEE: \$786.00		
AGENT NAME: LEON PAUL 202-289-1663					
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES. ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS. TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639.					
TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639.					
DIRECTOR: <i>Patrick Canavan, Psy. D.</i> Dr. Patrick Canavan, Psy. D.		PERMIT CLERK: <i>[Signature]</i>		EXPIRATION DATE: 12/26/2007	

CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to insure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

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NOTIFY THE BUILDING INSPECTOR THE DAY THE WORK STARTS. PHONE: (202)442-4641 941 NORTH CAPITOL ST NE WASHINGTON DC 20002.

A separate permit is required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration

941 North Capitol Street N.E. Room 2100

Washington D.C. 20002

B

Tel:(202) 442-4470

Fax:(202) 442-4862

Building Permit

THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS

PERMIT NO. 101585

DATE: 12/26/2006

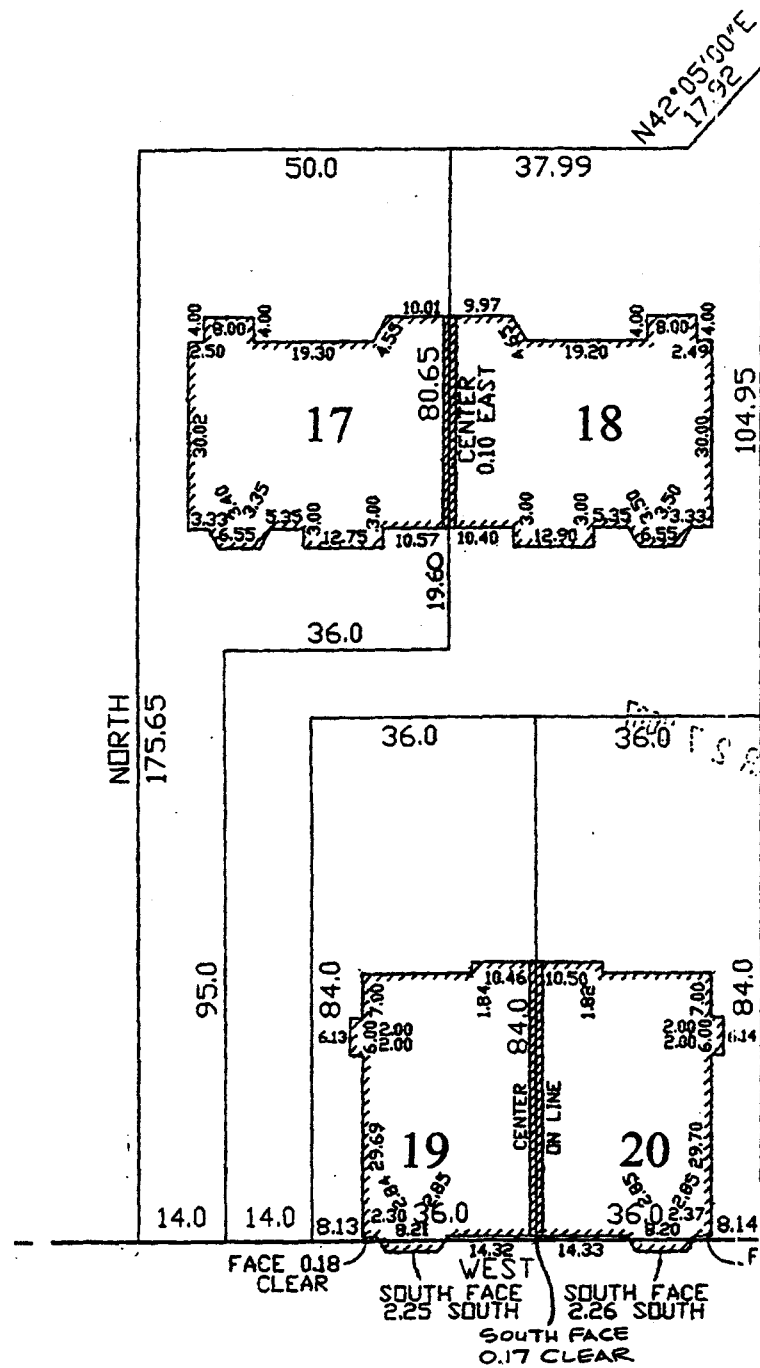
ADDRESS OF PROJECT: 4319 1/2 FESSENDEN ST NW		S S L: SQ: 1655 SX: LOT: 20 WARD: 4 ZONE r-2	
DESCRIPTION OF WORK: NEW SFD			
PERMIT TYPE: NEW BUILDING	PLANS (Y/N): Y	EXISTING USE: ASSEMBLY USES, OTHERS	PROPOSED USE: Residential-One/Two Family
PERMISSION IS HEREBY GRANTED TO OWNER: DUNN WHISKEY LLC		PERMIT FEE: \$576.00	
AGENT NAME: LEON PAUL 202-289-1663			
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES ; ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS ; TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639 ; TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639 ;			
DIRECTOR: <i>Patrick Canavan, Psy.D.</i> Dr. Patrick Canavan, Psy. D.		PERMIT CLERK: <i>[Signature]</i>	EXPIRATION DATE: 12/26/2007

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FESSENDEN STREET

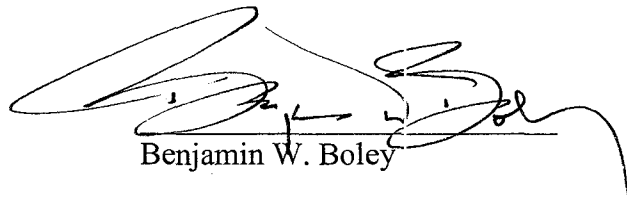
Certificate of Service

I hereby certify that the foregoing Pre-Hearing Memorandum of Todd Boley was served on the following persons by First Class, United States mail, on June 25, 2007:

Zoning Administrator
D.C. Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.W.
Washington, D.C. 20002

Reid Dunn
Dunn Whisky, LLC
1711 Connecticut Ave., N.W.
Washington, D.C. 20009

Advisory Neighborhood Commission 3E
c/o Lisner Home
5425 Western Avenue, NW
Washington, DC 20015



Benjamin W. Boley