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**Todd Boley and ANC 3E
From the Decision of the Zoning
Administrator Approving Building
Permits for Four Semi-Detached
Dwellings at 4319, 4319½, 4321 and
4321½ Fessenden Street, N.W.
Square 1655, Lots 17-20**

Hearing Date: July 10, 2007

I. INTRODUCTION

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17631
EXHIBIT NO. 18

Board of Zoning Adjustment
District of Columbia
CASE NO. 17631
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The Appellants' misreading of the parking requirements has also led them to erroneously conclude that the locations of the parking spaces do not comply with the provisions of Chapter 21. Because the spaces meet all relevant standards of the parking requirements, the Zoning Administrator did not commit any error and this remaining portion of the appeal should be denied.

II. BACKGROUND

On March 23, 2006, Dunn Whiskey, LLC,¹ purchased Lots 17, 18, 19 and 20 in Square 1655 in order to construct four semi-detached dwellings on the property, with one house on each parcel. The four lots were created by the previous owner out of Lots 3 and 4 in Square 1655. As shown on the plats attached as Exhibits A and B, two houses will front on Fessenden Street, while the other two houses will be located toward the interior of the square with street frontage to Fessenden through "pan-handle" shaped lots.

In order to obtain the necessary building permits for new construction, Dunn Whiskey recorded a covenant on December 1, 2006, for a Storm Water Management Plan for the benefit of the District. A few weeks later, the District's Department of Consumer and Regulatory Affairs ("DCRA") issued the following four building permits to Dunn Whiskey:

Date	Permit No.	Lot	Address	Description of Work	Permit Type
12/26/06	101587	17	3221 Fessenden St NW	New SFD	New Bdg
12/26/06	101584	18	4319 Fessenden St NW	New SFD	New Bdg
12/26/06	101588	19	4321½ Fessenden St NW	New SFD	Alt/Rep ²
12/26/06	101585	20	4319½ Fessenden St NW	New SFD	New Bdg

¹ Reid A. ("Sam") Dunn is the managing member of Dunn Family, LLC, which is the sole member of Dunn Whiskey, LLC.

² While the permit for Lot 19 correctly describes the work as a new single-family dwelling, the type of permit is mistakenly listed as "alteration and repair," as noted by the Appellants. Because the drawings accompanying the permit clearly indicate new construction, the error is harmless. Further, despite Appellants' implications to the contrary, this ministerial error does not raise any zoning issues. To the extent it raises any issues at all, it would fall under the building code and the purview of DCRA.

Shortly after the permits were issued, DCRA notified Dunn Whiskey that the houses on Lots 19 and 20 may not comply with the 40% lot occupancy requirements. Dunn Whiskey modified its plans and DCRA issued revised permits on May 11, 2007, to reduce the footprints slightly to meet the lot occupancy limitations. A copy of the revised building plat is attached as Exhibit B.

The plans for the site contemplate three parking spaces for each house by means of an interior parking court created by cross-easements on the four lots. The Zoning Regulations only require one parking space for each house. *See* 11 DCMR 2101.1. The required parking for Lots 17 and 18 – the dwellings to the rear of the Site – will be located in garages incorporated into the facades of the houses. Lot 18 will also have a second parking along the eastern portion of its lot. Two additional spaces for Lot 17 and one additional space for Lot 18 will be located in the common parking court area created by the easement.

The owners of all four houses will access their parking spaces from Fessenden Street by one common driveway. The driveway is located on the panhandle portion of Lot 17, and portions of Lot 17, 18 and 19 at the interior of the Site, as shown on the drawing attached as Exhibit C.

In May 2006, Dunn Whiskey contacted ANC 3E to inform them that building permit applications and plans had been filed for the proposed houses. *See* Exhibit D. Over the next ten months, Dunn Whiskey and the ANC, the Zoning Administrator, Todd Boley, and other area residents were in constant communication about the new development and exchanged dozens of emails. Dunn Whiskey shared copies of the plans with Mr. Boley in Spring of 2006, and answered numerous community questions about the subdivision, lot dimensions, the common

driveway and cross-easements, trees, storm water management and other issues related to building codes and the Zoning Regulations.

Construction began in 2007 and the houses are now framed out and under roof. See photographs attached as Exhibit E. Dunn Whiskey anticipates that construction will be completed by the end of the year.

On February 23, 2007, Todd Boley and ANC 3E filed this appeal.

III. ARGUMENT

A. Appeal of Lot Width Issues is Untimely.

The Appellants knew about the subdivision plat, the lot width and share driveway issues as early as May 2006, and certainly no later than October 2, 2006, yet failed to file their appeal within the requisite 60-day time period. Thus, the appeal on these issues is untimely and should be dismissed.

Under section 3112.2 of the Zoning Regulations, an appeal must be filed within 60 days from either the date the appellant had notice or knowledge of the decision complained of, or the date the appellant reasonably should have known of such complaint. Zoning Commission Order No. 02-01, February 7, 2003, at 3-4. *See also Waste Management of Maryland, Inc. v. D.C. Board of Zoning Adjustment*, 775 A.2d 1117,1122 (D.C. 2001) ("in the absence of exceptional circumstances substantially impairing the ability of an aggrieved party to appeal – circumstances outside of the party's control – we conceive of two months between notice of a decision and appeal therefrom as the limit of timeliness"). The requirement for a timely appeal is jurisdictional. If any appellant misses the deadline, the Board is without power to consider the appeal. *Goto v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 917, 923 (D.C. 1980); *Mendelson v. District of Columbia Bd. of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994).

In analyzing whether an appeal is timely, the reviewing agency or court must determine: (i) the official decision complained of that triggers the start of the 60-day clock; (ii) whether the appellant had notice or knowledge of that decision, or should have reasonably known of it, *whichever is earlier*; and (iii) whether there were any exceptional circumstances beyond the control of the appellant that would have substantially impaired its ability to file an appeal.³ Each is discussed in turn below.

1. The Official Decision Complained Of

The appellant takes exception with the zoning approval for the proposed lot width and shared driveway, which was approved as part of the subdivision review and recordation process. The subdivision plat was recorded on March 20, 2006, which would ostensibly trigger an appeal date of May 20, 2006.

³Section 3112.2 provides that any person aggrieved by a decision of an administrative officer in the administration of the Zoning Regulations may file a timely appeal as follows:

- (a) An appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, *whichever is earlier*.

* * *

- (c) Notwithstanding paragraphs (a) and (b) of this subsection, for purposes of establishing the timeliness of an appeal under this subsection, an appellant shall have a minimum of sixty (60) days from the date of the administrative decision complained of in which to file an appeal.
- (d) The Board may extend the sixty- (60) day deadline for the filing of an appeal only if the appellant demonstrates that:
- (1) There are exceptional circumstances that are outside of the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and
 - (2) The extension of time will not prejudice the parties to the appeal, as identified in § 3199.1.

11 DCMR § 3112.2, Zoning Commission Order No. 02-01, February 7, 2003 (emphasis added).

2. Knowledge of the Official Decision

However, as stated by the Appellants, DCRA did not provide them notice of the subdivision. Nevertheless, they were notified by Dunn Whiskey of the permit applications and plans for the site as early as May 2006, or nine months before the appeal was filed. On Friday, May 19, 2006, Sam Dunn of Dunn Whiskey wrote in an email to the ANC that he had filed building permit applications for the Fessenden Street houses and that he was interested in sharing his plans with the ANC. See copies of email correspondence attached as Exhibit D. Numerous, emails, discussions, and meetings ensued thereafter.

The subdivision plans – and their conformity with the Zoning Regulations – were also specifically addressed in email correspondence between Mr. Dunn and the ANC, Mr. Boley and other neighbors. In an email dated October 2, 2006, Ms. Susan Walker, a neighbor opposed to the new houses, specifically asked about the zoning compliance of the subdivision and shared driveway, the very issues that are raised in this appeal. Both the ANC Single Member District representative, Carolyn Sherman, and Appellant Todd Boley, were copied on the email. See copies of email correspondence attached as Exhibit D. It is clear that, at the very least, the Appellants knew of the subdivision no later than October 2, 2006, thus triggering an appeal deadline of December 2, 2006 for the lot width and shared driveway issues attendant to the subdivision plat. As such, the second prong of the timeliness test is met.

3. No Exceptional Circumstances Exist to Toll the 60-Day Deadline

Finally, there are no exceptional circumstances beyond the control of the Appellants that would warrant the tolling the 60-day deadline. While the Zoning Administrator's office may have misplaced the permit files, the subdivision plat was *not* lost and, in fact, has been available in the Office of the Surveyor at Book 200 Page 90 since its recordation on March 20, 2006.

Moreover, the Appellants had sufficient information from Mr. Dunn himself to raise zoning compliance questions on the subdivision on October 2, 2007.

4. Dunn Whiskey Will Be Prejudiced if the Deadline Is Extended

Even if exceptional circumstances existed in this case, which they do not, Dunn Whiskey would be severely prejudiced by any extension in the requisite 60-day filing deadline.

The purpose in prescribing time limits is

a salutary one. It provides a period after which the permittee knows that he may proceed safely in accordance with the permit. Where the permit is denied, it gives those opposing its issuance assurance that the applicant who has been denied the permit may no longer secure a review, and a possible reversal, by the board of appeals, and that their vigilance need no longer be maintained.

Waste Management, 775 A.2d at 1122, fn. 6.

Here, Dunn Whiskey purchased the properties in reliance on their lawful subdivision, and went to considerable time and expense in designing and permitting the houses to be built. The owner was aware of the Appellant's objections to use of a common driveway and the zoning questions it raised, and knew that any appeal on that basis would have to be filed by July 2006 and absolutely no later than December 2, 2006. When that day came and went without any such action, Dunn Whiskey confidently proceeded with finalizing its plans, obtaining permits and undertaking its construction efforts.

This jurisdiction has consistently held that a prospective appellant is not excused from its duty to file a timely appeal because he chooses to pursue other avenues of resolution that appear more promising than an appeal. Such various avenues can and should be pursued simultaneously. *Id.* at 1123 1123 ("DCRA did not preclude Waste Management from taking a prompt appeal from the February 1996 denial if the company was of a mind to do so. Indeed, Waste Management could have taken such an appeal and applied for a variance or special

exception simultaneously..."); *see also Woodley Park Community Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 490 A.2d 628, 638 (efforts to resolve dispute through negotiations did not excuse delay in filing appeal, even where adversary is less than fully candid); *accord* BZA Order in Appeal No. 17411, March 23, 2006 ("a party who chooses to engage in negotiations or other ways to resolve a dispute does not thereby extend its time for filing an appeal"); *see also* BZA Order in Appeal No. 17127, June 2, 2005 ("[a]lthough it may have been difficult for the Appellant to obtain details from DCRA regarding the revised permits and plans, there is no evidence that DCRA's actions substantially impaired Appellant's ability to file an appeal", particularly where the Appellant knew of the permit issuance).

The Appellants in this case pursued alternative avenues by discussing matters with the Zoning Administrator and Dunn Whiskey. Yet, by their own alternative actions, the Appellants failed to preserve their appeal rights on the subdivision issues.

The Appellants must now suffer the consequences of their untimeliness, and the appeal on issues pertaining to lot width and the common driveway should be dismissed. It would be patently unfair and work a great hardship on Dunn Whiskey if the Board were to depart from past precedent and find that the ANC's efforts to pursue other alternatives excusable delay. Here, the Appellants waited until February 23, 2007, almost five months after the date they knew of the issues and decision complained of and thus the appeal is untimely.

B. Shared Driveway Easements Do Not Reduce Required Lot Widths nor Render Them Nonconforming

Even if the appeal were timely, access easements or restrictive covenants for storm water management do not render the subdivision nonconforming. Appellants urge that such easements and restrictive covenants violate section 401.6 of the Zoning Regulations because they diminish the width of a lot. Not surprisingly, Appellants are unable to cite any BZA decision or court case

to support this contention. In fact, such easements and covenants are common in matter-of-right developments and have absolutely no effect on lot width.

For example, parking for the ten new lots and houses at the Rosedale site in Cleveland Park is accessed by a shared driveway from Newark Street over panhandle-shaped lot, as shown on the easement diagram attached as Exhibit F.⁴ There, three of the ten lots only have street frontage by virtue of "pipe stems" or panhandles, and the entire width of Lot 24 from Newark Street to the interior of the square is encumbered by the access easement. Similarly, the entire 20-foot width of Lot 21 in that development is encumbered by an access easement.

Yet this subdivision, which was subject to review under the by the Mayor's Agent for Historic Preservation, Large Tract Review and close scrutiny by the community, was approved as a matter-of-right by virtue of the common driveway to each of the required parking spaces. The presence of the shared driveway and access easements had absolutely no effect on the required widths under section 406.1 for Lots 24 and 21 in the Rosedale development. Similarly, the shared driveway and access easements do not in any way affect or reduce the required widths of Lots 17 or 18 for the Dunn Whiskey houses.

The Board has routinely recognized the benefit of driveway easements across adjoining project to provide access to required parking spaces. At no time has the presence of those easements affected the lot dimensions of the encumbered property. *See, for example*, BZA Order No. 13235, May 15, 1985, at 2 (adjoining properties on separate lots encumbered by paved easement area to provide shared driveway access and maneuvering space for parking spaces; easement created exceptional condition for variance test to allow a rear deck); order in BZA Application No. 13223, July 28, 1980 at 2 (parking spaces to new residential development to be

⁴ See Easement and Covenant Agreement recorded among the Land Records of the District of Columbia on October 1, 2002, as Document No. 2002113179; *see also* Easement Agreement recorded among the Land Records of the District of Columbia on December 4, 2002 as Document No. 2002141530.

accessed by easement over adjoining lot not owned by applicant); order in BZA Application No. 12591, August 1, 1878 (new residential development in R-5-A District to provide access to parking space via easement for shared driveway).

For the same reasons, a storm water management facility on the Site has no bearing on the minimum lot dimensions of the subdivision. First, the majority of the storm water management features are underground. Second, even those features at ground level do not in any way interfere with lot lines established through subdivision any more than fences, retaining walls, sheds or other structures do. To find otherwise – that utility easements affect lot dimensions – would lead to absurd consequences and undermine the infrastructure required for any development in the city, whether existing or new. *See Parreco v. District of Columbia Rental Housing Commission*, 567 A.2d 43, 46 (D.C. 1989) (interpretations that lead to absurd consequences, which the legislature could not have intended, are to be avoided).

C. Section 2117.4 Does Not Require Each Parking Space to be Accessible by its Own Driveway.

Just as the Appellants have misconstrued section 406.1 of the Zoning Regulations, they also misread Section 2117.4 to require each parking space to be accessible by its own driveway. Section 2117.4 does not require that each space be accessible via its own driveway. Instead, that section provides that:

each required parking space shall be accessible at all times directly 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 Department of Transportation.

In order to reach its reading of this section, Appellants must add new words to the regulations that simply do not exist; that is, their rewrite of the regulations would state that "each

required parking space shall be accessible ... via its own graded and unobstructed private driveways...." However, rules of statutory construction preclude interpretations that requiring reading new words into regulations. Moreover, only the Zoning Commission can rewrite the Zoning Regulations.

The numerous cases cited above demonstrate the BZA's long-standing recognition of a need for single driveways to serve required parking for multiple single-family dwellings. The Appellants provide no evidence to the contrary and the appeal should be denied on this ground as well.

D. All Required Parking Spaces are Properly Located on the Lots They Serve.

Appellants also allege that the Zoning Administrator erred in finding that the parking spaces complied with section 2116.1 of the regulations. That section provides that "all parking spaces shall be located on the same lot with the building or structure it is intended to serve." Similarly, the Appellants claim that the parking spaces are impermissibly located in the front yards of houses on Lots 17 and 18 at the rear of the Site in violation of section 2116.2 and 2116.4. Those sections provide that parking spaces shall be located either in (i) a garage or carport; (ii) the rear yard or (iii) side yard, and shall not be located "in the area between the building line and lot line abutting the street."

Here, all required parking spaces are located on the same lot with the building or structure it is intended to serve. Both required spaces for Lot 17 and 18 are located in garages incorporated into the facades of the houses. The required spaces for Lots 19 and 20 are located in the rear yard of each house.

The Appellants take issue with the parking spaces provided in front of the house on Lot 18. However, these spaces are not located "in the area between the building line and lot line abutting the street." A building line is a

line beyond which a property owners have no legal or vested right to extend a building or part of a building without special permission and approval of the proper authorities; ordinarily a line of demarcation between public and private property, but also applied to building restriction lines, when recorded in the records of the Office of the Surveyor.

11 DCMR § 199.1 ("building line").

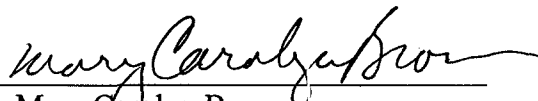
Here, Dunn Whiskey would be permitted to construct a building or part of a building to the southern line of Lot 18 adjoining the rear of Lot 20 without special permission of the proper authorities. That southern lot line does not demarcate public and private property, nor does it relate to a building restriction line. Accordingly, the additional parking spaces on Lot 18 do not violate the provisions of section 2116 and the appeal must fail on this ground, as well.

IV. CONCLUSION

For the foregoing reasons, the Appellants have failed to meet their burden of proof that the Zoning Administrator erred in approving the subdivision and building permits for Lots 17-20 in Square 1655. The appeal should therefore be denied.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Mary Carolyn Brown
2099 Pennsylvania Ave., N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000
Counsel for Dunn Whiskey, LLC

July 5, 2007

CERTIFICATE OF SERVICE

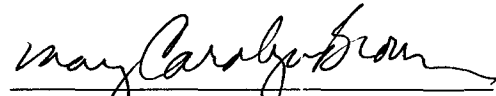
I HEREBY CERTIFY that a copy of the foregoing Opposition to Appeal was served
this 5th day of July, 2007, via email or hand delivery, upon the following:

Benjamin W. Boley, Esq.
Goodwin Proctor
901 New York Avenue, NW
Washington, DC 20001
bboleyn@goodwinproctor.com

Matthew LeGrant
Acting Zoning Administrator
D.C. Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002
matt.legrant@dc.gov

Advisory Neighborhood Commission 3E
Lisner Home
5425 Western Ave. NW
Washington, DC 20008
Attn: Polly King Evans, Administrator
pkingevans@lldhhome.org

Carolyn Sherman, ANC3E03
4341 Ellicott St., NW
Washington, DC 20015
sherman2@bellatlantic.net


Mary Carolyn Brown

A

Washington, D.C., January 4, 2006

Scale: 1 inch = 20 feet

Receipt No. 25001

Furnished to: REID DUNN

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.)

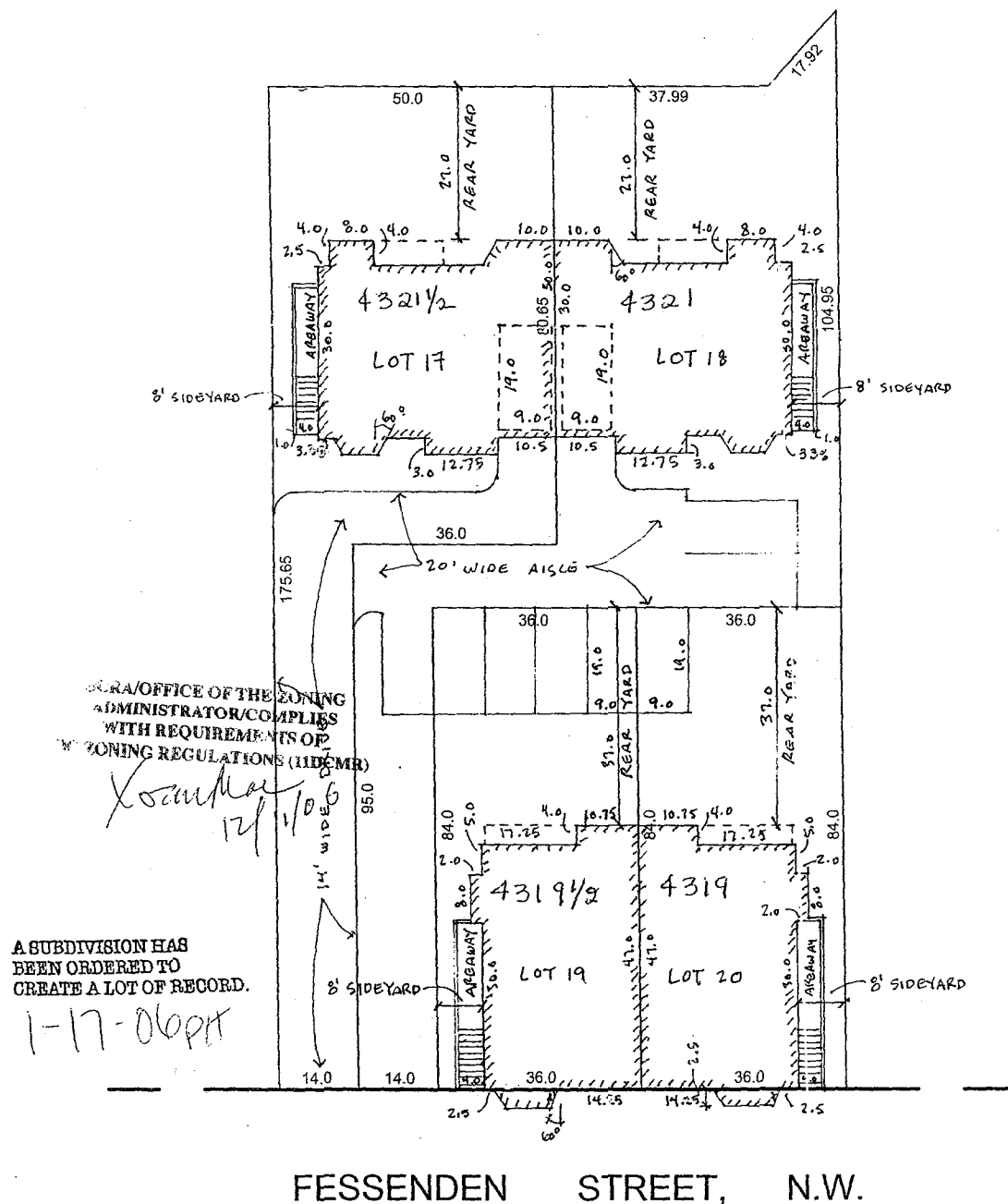
Date:

Surveyor, D.C.

By: B.D.M.

(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.



B

**DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR**

Washington, D.C., January 4, 2006

Plat for Building Permit of: SQUARE 1655 SITE PER SUB

Scale: 1 inch = 20 feet

Receipt No. 25001

Furnished to: REID DUNN

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.)

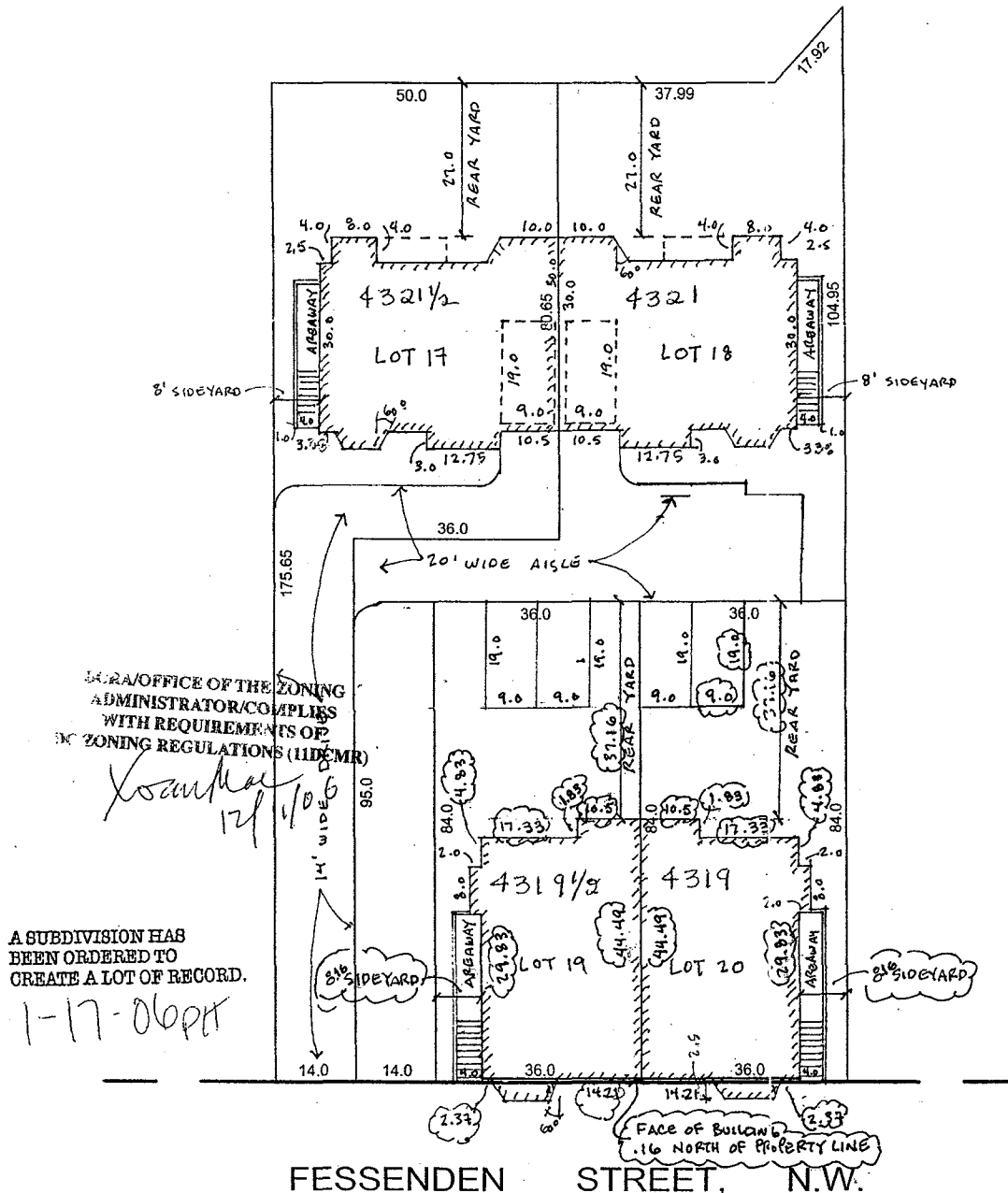
[Signature]
Surveyor, D.C.

Date: 29 May 2006

By: B.D.M. *[Signature]*

[Signature] (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.



C

D

From: Carolyn Sherman [sherman2@bellatlantic.net]
Sent: Sunday, May 21, 2006 2:02 PM
To: samdunn@rcn.com
Cc: Carolyn Sherman
Subject: Your application for 4319-4213 Fessenden

Hi, Sam--

Thanks for sending your email, which Polly Evans forwarded to me. I'm the ANC Commissioner for that area and will call you Monday or Tuesday to talk about your application.

I look forward to talking with you. Thanks again.

Carolyn Sherman
Commissioner, ANC 3E-03

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

Subject:FW: ANC

Date:Fri, 19 May 2006 12:15:51 -0400

From:Polly King Evans <pkingevans@lldhhome.org>

To:'Amy McVey' (E-mail) <amybmcvey@msn.com>, AmyHoangDC3E02 (E-mail) <AmyHoangDC3E02@aol.com>, Anne Sullivan (E-mail) <acsullivan@starpower.net>, Carolyn Sherman (E-mail) <sherman2@bellatlantic.net>, Lucy Eldridge (E-mail) <lucy.eldridge@verizon.net>, Polly King (E-mail 2) <evansp@doaks.org>, Polly King (E-mail) <pkingevans@lldhhome.org>

FYI see below.

Polly King Evans

Development Coordinator

202.966.6667x3361

www.lldhhome.org <<http://www.lldhhome.org>>

lisner louise dickson hurt home logo

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

From: samdunn@rcn.com [mailto:samdunn@rcn.com]
Sent: Friday, May 19, 2006 10:48 AM
To: pkingevans@lldhhome.org
Subject: ANC

I have submitted an application to demolish two small houses at 4319-21 Fessenden Street NW and am available to discuss this with the ANC. Let me know via e-mail or at (202) 437-7679 if anyone at the ANC would like to meet.

Reid (Sam) Dunn

From: Susan Walker [susanjwalker@mac.com]
Sent: Monday, October 02, 2006 9:27 PM
To: samdunn@rcn.com
Cc: Sherman Carolyn; Frankel David; Wendy Maiorana; Boley Todd
Subject: Fessenden St

Sam,
Thank you for your email. I would like to ask several questions so as to better understand how you are planning to proceed.

1. Currently, the properties at 4319/21 have single family homes, each with one driveway. This has been the building/lot configuration for many decades. The appearance of a small section of property in the back of each lot seems to be the basis for the reconfiguration. You (or the former owner) have apparently obtained a subdivision of 4319/21 which has resulted in four properties. I am making every effort to understand how this subdivision was possible, but am receiving conflicting advice/answers. It is not clear to me that this was an allowable/legal subdivision, but you are likely to have additional information on how this was accomplished. Would you be willing to share details that you might have concerning the legal basis for this subdivision?
2. Your subdivision appears to now include 4 individual lots. On the lot drawings two of these lots (in the rear) have individual driveways that connect the lots to Fessenden St. The two other lots (fronting on Fessenden) have no individual driveways. The building plans appear to have a significant amount of "shared space" for the four properties. Specifically, all four properties would "share" one driveway. All four units would therefore be accessed thru the interior of the subdivision, not directly via individual driveways connecting to the street. The plans also indicate that the second driveway will be converted into the "side yard" for the front building. I am unaware of any similar "shared space" arrangement in our zoning area. The outward appearance of the proposed construction seems more consistent with a "coop" or "townhouse" arrangement, with multiple families sharing driveway and parking areas. Can you help us understand how your proposed plans for shared driveway access, central parking, and the recent "redrawing" of the positions/street access for these lots can be within the zoning and neighborhood character for R2?
3. Your subdivision, with one driveway, will result in (at a minimum) 4 large green trash cans and 4 recycle cans aligned next to the one driveway every Monday evening and staying out there likely until Tuesday night. I am unaware of any street fronting driveway like this in AU Park/Friendship heights. There are no alleys in our square (1655), which results in all the cans needing to be lined up on the street. The multitude of trash cans is likely to give this driveway the appearance of containing an apartment building, instead of single family homes. What is your plan for trash management for these units?

Thank you.

Susan J. Walker
4347 Fessenden St NW
Washington, DC 20016

202 669-5914

On Sep 26, 2006, at 10:54 AM, samdunn@rcn.com wrote:

Carolyn, Susan et al,

I have your correspondence. As I told you at our meeting I will stay in touch as things progress.

To date we have received two permits -- for tree removal and for demolition. This work will proceed in the near future. First we are moving the large azaleas and some other plants to the rear property line. We are removing a number of trees. All are either diseased (according to the D.C. arborist) or directly in the path of construction. It is in our interest, as well as yours, to retain as many healthy trees as possible

As I told you I am also willing to meet with neighbors, although hopefully not too often, to hear suggestions or to discuss your concerns.

I trust you will forward this to the others. I would prefer to use e-mail and not regular mail for our communications -- if you will send me the addresses I will include everyone on future correspondence.

Sam Dunn

From: Carolyn Sherman [sherman2@bellatlantic.net]
Sent: Monday, October 02, 2006 10:28 PM
To: Susan Walker
Cc: samdunn@rcn.com; Frankel David; Wendy Maiorana; Boley Todd
Subject: Re: Fessenden St

Susan,

I wonder if Bill Crews might also have some answers for the questions below. You might call him if you haven't already and just ask him. His number is (202) 442-4576. When he comes to the meeting next week everyone can ask him about the details and see whether Dunn can do what he's planning.

We're sending notices about the meeting to the listservs and the Current, so I hope people will be aware of it and come with their questions. Only someone from DCRA will have the answers or know where to find them. This situation shows very clearly the importance of zoning in a neighborhood. The meeting should be interesting.

Carolyn

Susan Walker wrote:

> Sam,
> Thank you for you email. I would like to ask several questions so as
> to better understand how you are planning to proceed.
>
> 1. Currently, the properties at 4319/21 have single family homes,
> each with one driveway. This has been the building/lot configuration
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>
> 2. Your subdivision appears to now include 4 individual lots. On the
> lot drawings two of these lots (in the rear) have individual driveways
> that connect the lots to Fessenden St. The two other lots (fronting
> on Fessenden) have no individual driveways. The building plans appear
> to have a significant amount of "shared space" for the four
> properties. Specifically, all four properties would "share" one
> driveway. All four units would therefore be accessed thru the
> interior of the subdivision, not directly via individual driveways
> connecting to the street. The plans also indicate that the second
> driveway will be converted into the "side yard" for the front
> building. I am unaware of any similar "shared space" arrangement
> in our zoning area. The outward appearance of the proposed
> construction seems more consistent with a "coop" or "townhouse"
> arrangement, with multiple families sharing driveway and parking areas.
> Can you help us understand how your proposed plans for shared driveway
> access, central parking, and the recent "redrawing" of the
> positions/street access for these lots can be within the zoning and
> neighborhood character for R2?
>
> 3. Your subdivision, with one driveway, will result in (at a
> minimum) 4 large green trash cans and 4 recycle cans aligned next to
> the one driveway every Monday evening and staying out there likely
> until Tuesday night. I am unaware of any street fronting driveway

> like this in AU Park/Friendship heights. There are no alleys in our
> square (1655), which results in all the cans needing to be lined up on
> the street. The multitude of trash cans is likely to give this
> driveway the appearance of containing an apartment building, instead
> of single family homes. What is your plan for trash management for
> these units?

>
> Thank you.

>
> Susan J. Walker
> 4347 Fessenden St NW
> Washington, DC 20016
>
> 202 669-5914

>
>
>
>
>
>
> On Sep 26, 2006, at 10:54 AM, samdunn@rcn.com wrote:

> Carolyn, Susan et al,

>
> I have your correspondence. As I told you at our meeting I will stay
> in touch as things progress.

>
> To date we have received two permits -- for tree removal and for
> demolition. This work will proceed in the near future. First we are
> moving the large azaleas and some other plants to the rear property
> line. We are removing a number of trees. All are either diseased
> (according to the D.C. arborist) or directly in the path of
> construction. It is in our interest, as well as yours, to retain as
> many healthy trees as possible

>
> As I told you I am also willing to meet with neighbors, although
> hopefully not too often, to hear suggestions or to discuss your
> concerns.

>
> I trust you will forward this to the others. I would prefer to use e-
> mail and not regular mail for our communications -- if you will send me
> the addresses I will include everyone on future correspondence.

>
> Sam Dunn

From: Todd Boley [tboley@capitalbenefitscorp.com]
Sent: Wednesday, October 04, 2006 9:46 AM
To: samdunn@rcn.com
Subject: RE: Fessenden St

Sam-

Putting aside the viability of the project with relation to legal issues, I would encourage you to revisit the financial feasibility of the project. Even if you are successful in defeating the neighbors, who are unanimous in their disapproval of the plans, I can't calculate how the risk/reward figures make this an attractive endeavor for you.

I am not a zoning expert nor a lawyer, but I understand finances and I know real estate and I know this neighborhood.

Since you were unaware that a swimming pool lies 30 feet away from the proposed bedroom windows of your back 2 properties, I shall to further explain why the numbers necessary to pull any reasonable profit are overambitious.

Behind your property at 4319 lives a contractor who eternally has a blue construction van parked in the middle of his backyard. Caddy corner to your property at 4319 sits an AU sorority house with empty kegs year round in their backyard. Adjacent to that house is one that rents out its backyard to commuters who line the fence all day with their vehicles.

Directly behind that house, and I am on back to Fessenden Street now, you have another backyard rented by commuter vehicles. Then you have a tennis court that is in use between 7 AM and dark 7 days a week. Your direct neighbor at 4317 Fessenden has recently discontinued using their backyard as a parking lot, but who knows for how long? On the 44th street side of Fessenden and Garrison you have owner occupied dwellings, all of whom are distraught with the idea of waking up in the AM and seeing your large duplex in the middle of the neighborhood.

Interest rates are going up and we are staring in the face of real estate prices correcting after the outrageous run up they have had in the last 6 years. We are looking at a prolonged period of inactivity.

I believe that the neighborhood will back you any way it can if you reconsider your plans on the back duplex. Your potential for big loss is minimized by working on the original properties and reselling them or renting. If you chose to do this I promise to support you.

If somehow you defeat us, I will turn my backyard into a much more unappealing sight than a swimming pool that potential buyers are certain to resist.

With 1.5 million out of pocket to buy the properties, and likely close to that much to build 4 dwellings, ultimately you are ruining our urban oasis and will ultimately lose your shirt doing so.

I truly believe that it is in your best interest to reconsider the back 2 dwellings as they simply won't sell for the price you need to make this work.

Todd Boley
202 262 3317

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

From: samdunn@rcn.com [mailto:samdunn@rcn.com]
Sent: Tuesday, October 03, 2006 8:29 PM
To: Susan Walker
Cc: Sherman Carolyn; Frankel David; Wendy Maiorana; Boley Todd
Subject: Re: Fessenden St

Carolyn, Susan et al,

I will try to answer your questions. And, as I have said, I am willing to meet with you again. However, I would like to ask that you not engage my superintendant, Dave Mitchell, in discussions about zoning matters because he has not been involved in the design and planning of the project. His area of expertise is construction so feel free to talk to him about the construction process.

The answer to your question about "how I am planning to proceed," is the same answer I have given to you and others in the meetings and correspondence I have had with neighbors over the past weeks. You also have sketches of the houses and the site plan.

Whether something can be done under zoning is obviously controlled by the zoning regulations. These go to issues of lot size, width, street frontage and so forth. I assure you that what we are doing complies with zoning. And I could explain it to you in detail again if you wish. This would require a meeting but I'm willing to do it.

But as I have said to both of you in our meetings, since you seem to doubt me you shouldn't take my word for it. Moreover I understand you are having your own zoning expert look at it. So I'm a little confused why you would continue to ask me when you've hired him. Maybe the best way to proceed is to have him contact me once he has reviewed everything.

The issue of "shared space" is not a zoning matter. This will be handled with private easements between the properties. There are many examples of this. Most often it will be found in driveways that straddle a property line and are used by two houses. I believe this was the case between 4319 and 4321 Fessenden.

Regarding trash cans, the house buyers will be under the same duty that all of us are to bring our cans in promptly after pick-up. I don't share your view that their trash cans would somehow figuratively turn this into an apartment complex.

I am leaving town tomorrow for 10 days. I will be checking e-mail but obviously won't be able to meet.

Sam Dunn

E

EXHIBIT E
PHOTOGRAPHS OF HOUSES



4319-4321 ½ Fessenden Street, N.W. (7/4/07)
Street View of Houses



EXHIBIT E
PHOTOGRAPHS OF HOUSES



4319-4321 ½ Fessenden Street, N.W. (7/4/07)
Detail of Houses Fronting on Fessenden St.



4319-4321 ½ Fessenden Street, N.W. (7/4/07)
View of Semi-Detached Houses at Rear Lots

F

NEWARK STREET, N.W.

ORDWAY STREET, N.W.

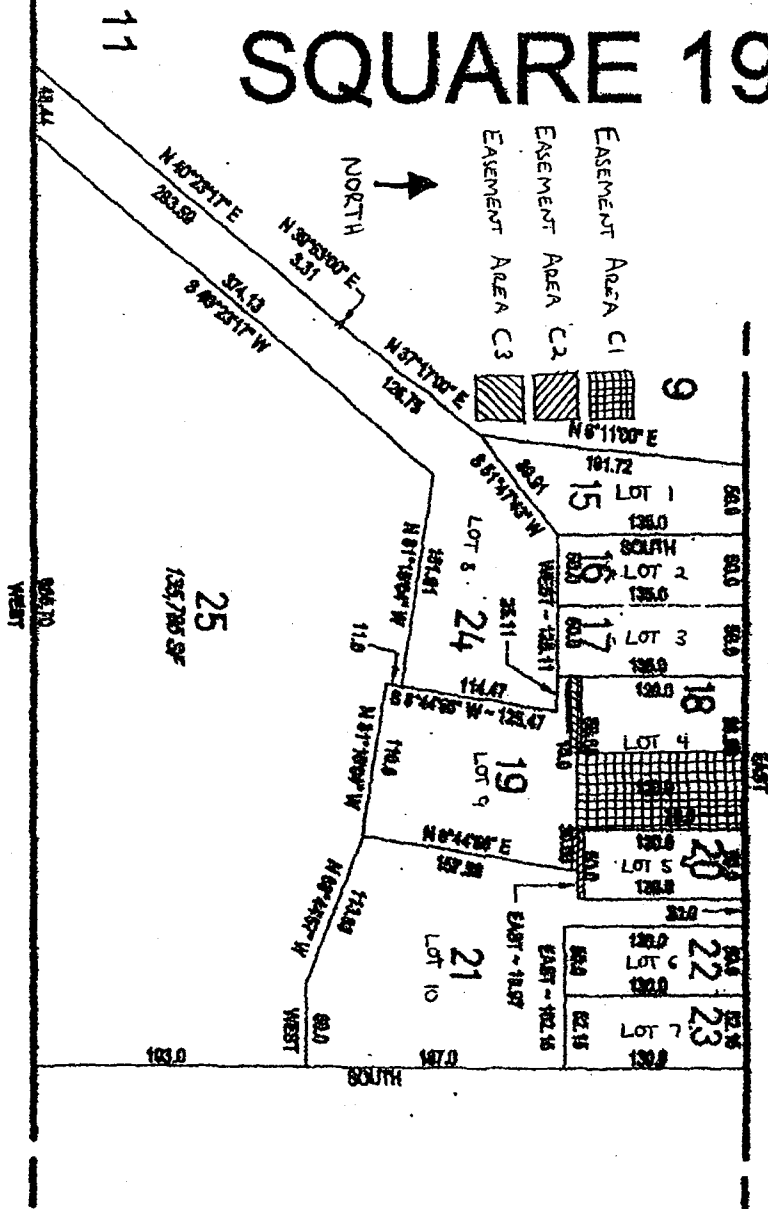
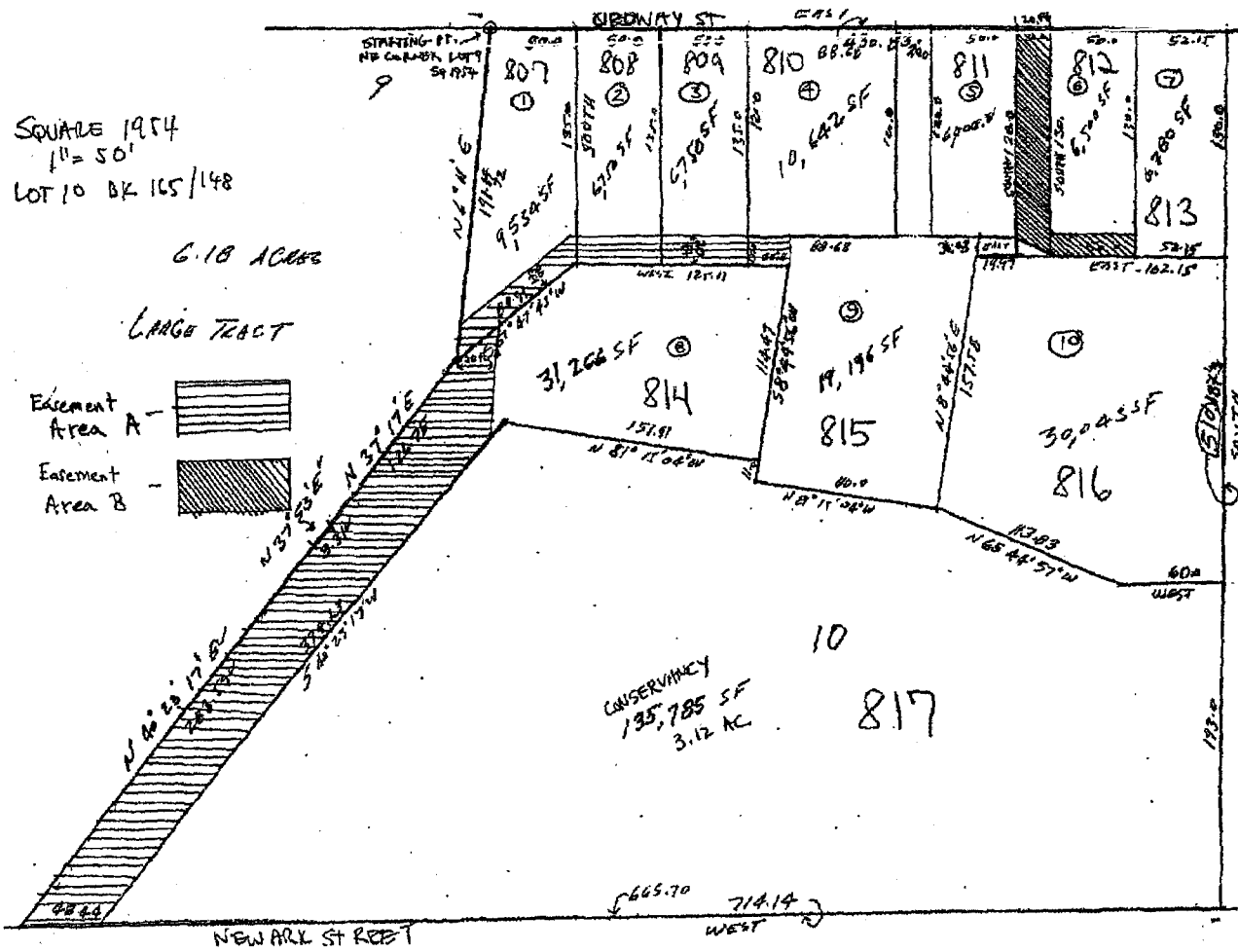


Exhibit A

ROSEDALE SUBDIVISION

EXHIBIT 25



ROSEDALE SUBDIVISION