

7009 KENHILL ROAD
BETHESDA, MARYLAND 20034
(CODE 301) OLIVER 4-8454

March 15, 1965

District of Columbia Zoning Commission
District Building
Washington D.C.

File 65-13
Re: Case No. 3 March 10, 1965
Request to extend the R-5-C district
to include Lots 44, 35, 37, 19, 20
and 21 in Square 1873.

Gentlemen:

May I be permitted to add to the record this summary of points we neglected to make or emphasize at the hearing:

I. ZONING LINE: The existing Zoning Line was quite obviously drawn in an arbitrary manner primarily along existing alley lines which were set by early developers approximately 50 or more years ago.

As a result they are illogical, unrealistic, unfair, a real hardship, and much too shallow for proper or decent apartment development. The existing line is not at all uniform, and square 1873 has the most shallow zoning on all of Connecticut Avenue. Please compare the following approximate feet from Connecticut Avenue having apartments:

	<u>NORTH PART</u>	<u>SOUTH PART</u>
Subject Property: Existing R-5-C	109.34	71.27
Extension Requested	165	150
TOTAL:	<u>274.34</u>	<u>221.27</u>
The Kenmore (Next adjacent block north)	300	353.2
(Its parking area extends almost 600' back to Chevy Chase Parkway)		
Chevy Chase Community Center (McKinley St.)	346.195	237.145
La Reine & Legation House (Legation St.)	378.48	419.94
Methodist Home (Fessenden St.)	584.26	255.17
The Brandywine	592.56	441.72
The Albemarle	441.72	252
The Chesapeake	343.43	266.07
NW Corner Davenport St.	263.66	375.09

The applicant is NOT asking an intrusion into a residential area, but merely a natural and necessary extension of already existing zoning.

II. BUFFERS: If the intention of the Lewis Plan was to employ the alleys as buffer strips, this will still be the case if the proposed alley relocation is permitted, but there will also be a very considerable additional and beautifully landscaped open space to serve as a buffer.

III. BEAUTIFYING D.C.: The proposed zoning extension will make possible:

(1) The use of 60 to 65% of the entire area for truly lovely wide open green landscaped area with trees (retaining ALL possible existing trees).

Board of Zoning Adjustment
District of Columbia
CASE NO. 18615
EXHIBIT NO. 28

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EXHIBIT 34

shrubs and lawns creating a park-like atmosphere and vista in accordance with the expressed desires of our First Lady, our Fine Arts Commission, and our Commissioner Tobriner...to be built and permanently and properly maintained by private capital...accomplishing the same ends our Redevelopment Land Agency is performing at public expense.

(2) A far more beautiful and esthetically pleasing building with larger, brighter and nicer apartment units to attract the type of tenant who stays for many years and takes pride in his residence and a sincere interest in his community.

(3) More than sufficient off-street parking (mostly underground- and 1:1) which will prevent the parking and traffic problems on the side streets that is most likely under present zoning. In erecting a small building under existing zoning it is economically infeasible to provide underground parking (cost \$2000 to \$2500 per parking space) so that most of the open surface area would have to be used for parking (and the legal minimum of 1:3); this would result in:

- (a) Insufficient off-street parking leading to congestion on side streets.
- (b) A "concrete jungle" instead of the proposed extensive green space with its character and charm.
- (c) 80 to 90% efficiency units which primarily attract transients.
- (d) Retention of the existing unsightly alley with its very tight turn, rather than the proposed wider attractive alley with adequate turning radius.
- (e) Retention of the existing deteriorated houses which are an eyesore and blight to the community.

Additionally, the zoning extension would result in better and higher land use, an enormous increase in real estate taxes paid, and more housing units for middle-income families in an area which has a crying need for them (see surveys)---in a metropolitan area that has and will continue to show a phenomenal growth rate.

The Chevy Chase Citizens Association Executive Committee has considered the pros and cons and has voted "TO TAKE NO ACTION" in the matter. The overwhelming majority of property owners in the immediate area of the subject property---those most concerned and affected by the proposed change---are heartily in favor of or certainly not opposed to the change. I, too, firmly, honestly and completely believe it is in the best interests and to the decided advantage of every resident in the area and the city as a whole, and that, if granted, will necessarily result in increased property values and a finished project that will be an asset every member of the community will be proud of.

Really, the chief objection of opponents has been the lack of assurance that the project will be developed as proposed. In fact it has been implied to at least some petition-signers that the change will result in a much taller and larger building which may be built farther back close to the residences on the east. Of course you know the building cannot be any higher. Brief consultation with any architects or builders who are knowledgeable in the field of apartment design and construction will clearly and definitely assure them that:

- (a) There are basic principles of apartment site planning, design and construction which no one would dare ignore, particularly on such expensive ground.

- 3 -
EXHIBIT 34

(b) To realize the f.a.r. permitted by law it is necessary to erect a minimum of 6 or 7 stories with elevators and, since elevators are needed anyhow, it is much more economical and logical to build the full 90 ft. maximum height and occupy only 35 to 40% of the land, leaving 65 to 60% of the land open and mostly green.

(c) The logical and proper site for the building itself is fronting on and close to Connecticut Avenue like almost all of the existing apartments, so that most of the open green space is in the rear.

Very sincerely yours,


George Bayer

GB/rh

EXHIBIT 35

67261
Day-1749608
Ex

Allan E. Walker, et ux.,)
to) Deed.
Sidney F. Taliaferro.)

No. 43. Recorded June 8, 1910,
at 12:09 P. M.

DC ARCHIVES

67261

THIS DEED made this sixth day of June in the year one thousand nine hundred and ten by and between Allan E. Walker and Maude K. Walker, his wife, of the District of Columbia, parties of the first part, and Sidney F. Taliaferro of the same place, party of the second part: WITNESSETH, that in consideration of one hundred (\$100.) Dollars, the parties of the first part do grant unto the party of the second part, in fee simple, all those pieces or parcels of land in the county of Washington, District of Columbia, described as follows, to wit: Lots numbered Seventeen (17), nineteen (19) and twenty-one (21) in Square 1873 of Allan E. Walker's subdivision of ----- part of a tract of land called "Mount Airy", as per plat recorded in the office of the Surveyor for the District of Columbia in Book 36 page 29; and designated as lots 17, 19 and 21 in Square 1873 upon the records in the office of the Assessor for said District. Subject to the following covenants and restrictions, viz: That when a building is erected upon any one of said lots it shall be used exclusively for residence purposes and shall not cost less than \$4,000., except a stable, carriage house, shed or other out-buildings to be used only in connection with such residence, may cost less and may be erected upon the rear of and not elsewhere upon said land. That any building erected upon any of said lots shall never be used for Apartment house purposes, nor for any trade, business, manufacturing or mercantile purposes. And that when a building is erected upon any of said lots it shall not be within ten feet of the front or street line. And that prior to Jan'y. 1st, 1930 not more than one residence shall be erected upon any one of the lots hereby conveyed, nor shall any building, or any part thereof, be erected or maintained within three feet of the side lines of said lots, nor within six feet of the nearest adjacent building. All the above conditions to run with the land, together with the improvements, rights, privileges, and appurtenances to the same belonging. AND the said parties of the first part covenant that they will warrant specially the property hereby conveyed: and that they will execute such further assurances of said land as may be requisite. WITNESS our hands and seals the day and year hereinbefore written.

67261
Day-1749608

In presence of - C. W. Steers.

Allan E. Walker. (SEAL)

Maude K. Walker. (SEAL)

DC ARCHIVES

DC ARCHIVES

United States District Court

FOR THE
District of Columbia

CIVIL ACTION FILE NO. 1709-72

AMERICAN SECURITY CORPORATION et al

Plaintiff

v.

RICHARD M. NELSON, et al

Defendant

SUMMONS IN CIVIL ACTION

Returnable not later than
days after service.

SUMMONS

Attorney for Plaintiff

To the above named Defendant : CATHERINE F. HACKETT

You are hereby summoned and required to serve upon

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[SEAL]

EDMUND D. CAMPBELL

Plaintiff's attorney, whose address

Subscribed and sworn to before me, a

this

Service

RECORDED

See Southern Building
Deputy United States Marshal
Washington, D. C.

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY

Clerk of Court.

Deputy Clerk.

Date:

August 24, 1972

[Seal of Court]

NOTE:—This summons is issued pursuant to the Federal Rules of Civil Procedure.

I hereby certify and return, that on the

day of

19

RETURN ON SERVICE OF WRIT

EXHIBIT 36
RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the _____ day of _____, 19____,

I received this summons and served it together with the complaint herein as follows:

Date: _____

[Seal of Court]

Deputy Clerk
Clerk of Court
JAMES F. DYER

taken against you for the relief demanded in the complaint.

summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be

MARSHAL'S FEES

Travel \$ _____
Service _____
By _____

United States Marshal.

Deputy United States Marshal.

Subscribed and sworn to before me, a

this

day of _____, whose address is _____

[SEAL]

EDWARD

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

You are hereby summoned and required to serve upon

To the above named Defendant : CATHERINE E. HACKETT

No. _____

United States District Court
FOR THE

Defendant

SUMMONS IN CIVIL ACTION

days

Returnable not later than
after service.

Attorney for Plaintiff

SUMMONS

FPI MI—5-27-71-300,000 6368

CIVIL ACTION FILE NO. _____

FOR THE

United States District Court

SUMMONS IN A CIVIL ACTION

Form No. 104 (Rev. 8-13-64)
CIV. 13 (3-64)

EXHIBIT 36

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AMERICAN SECURITY CORPORATION,]
a corporation]
730 15th Street, N.W.]
Washington, D.C. 20013]
624-4000]

CALVIN CAFRITZ,]
3038 Cambridge Place, N.W.]
Washington, D.C. 20006]
338-4479]

ENID CAFRITZ,]
3038 Cambridge Place, N.W.]
Washington, D.C. 20006]
338-4479]

Plaintiffs,]

v.]

Civil Action No. _____

1. RICHARD M. WELCH,]
3705 Military Road, N.W.]
Washington, D.C.]

2. E. MARIE WELCH,]
3705 Military Road, N.W.]
Washington, D.C.]

3. MILFORD HILLERSON, co-trustee,]
Riggs Building]
Hyattsville, Maryland]

4. LEONARD B. MEYERS, co-trustee,]
Riggs Building]
Hyattsville, Maryland]

5. DAVID P. BOESEL,]
3701 Military Road, N.W.]
Washington, D.C.]

6. GAIL T. BOESEL,]
3701 Military Road, N.W.]
Washington, D.C.]

7. C.W. BLOMQUIST, co-trustee,]
10802 Connecticut Avenue]
Kensington, Maryland]

8. DIANE K. BLOMQUIST, co-trustee,]
10817 Pebble Brook Lane]
Potomac, Maryland]

9. ALAN B. SHOEMAKER, co-trustee,]
Roanoke Street]
Bend, Oregon]

10. ALBERT WARREN]
3707 Military Road, N.W.]
Washington, D.C.]

1709-72

EXHIBIT 36

- | | | |
|-----|---|-----------------------|
| 11. | MARGARET WARREN
3707 Military Road, N.W.
Washington, D.C. |]
]
] |
| 12. | FOSTER SHANNON, co-trustee,
900 17th Street, N.W.
Washington, D.C. |]
]
] |
| 13. | JOHN C. HOLZBERG, co-trustee,
900 17th Street, N.W.
Washington, D.C. |]
]
] |
| 14. | MICHAEL J. HACKETT, JR.,
3709 Military Road, N.W.
Washington, D.C. |]
]
] |
| 15. | CATHERINE F. HACKETT
3709 Military Road, N.W.
Washington, D.C. |]
]
] |
| 16. | NATIONAL SAVINGS AND TRUST COMPANY]
a corporation trustee,
15th & New York Avenue, N.W.
Washington, D.C. |]
]
]
] |
| 17. | HERBERT K. ZASSENHAUS,
3711 Military Road, N.W.
Washington, D.C. |]
]
] |
| 18. | CHARLOTTE S. ZASSENHAUS,
3711 Military Road, N.W.
Washington, D.C. |]
]
] |
| 19. | EDWARD K. JONES, co-trustee,
15th & New York Avenue, N.W.
Washington, D.C., Interstate B.
Assn. |]
]
]
] |
| 20. | FREDERICK A. ALLNUTT, co-trustee,
15th & New York Avenue, N.W.
Washington, D.C., Interstate B.
Assn. |]
]
]
] |
| 21. | LAWTON E. INABINET, co-trustee,
15th & New York Avenue, N.W.
Washington, D.C., Interstate B.
Assn. |]
]
]
] |
| 22. | EDITH C. ROBESON
3713 Military Road, N.W.
Washington, D.C. |]
]
] |
| 23. | H. GORDON STUP,
3715 Military Road, N.W.
Washington, D.C. |]
]
] |
| 24. | HAZEL T. STUP
3715 Military Road, N.W.
Washington, D.C. |]
]
] |
| 25. | SAMUEL SCRIVENER, JR., co-trustee,
1030 15th Street, N.W.
Washington, D.C. |]
]
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] |

EXHIBIT 36

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| 26. | JUNIOR F. CROWELL, co-trustee,
1111 E Street, N.W.
Washington, D.C. |] |
| 27. | ELLIS P. BLOCK,
Woodward Building
733 15th Street, N.W.
Washington, D.C. |] |
| 28. | T. NELSON JEFFRESS,
5 Golane Street
Keywest, Florida |] |
| 29. | J. WILLIAM KEITH, JR.,
613 15th Street, N.W.
Washington, D.C. |] |
| 30. | GEORGE P. PLUMMER, co-trustee,
1001 15th Street, N.W.
Washington, D.C. |] |
| 31. | HORACE W. TALLEY, co-trustee,
1001 15th Street, N.W.
Washington, D.C. |] |
| 32. | GEORGE BASILIKO,
5419 32nd Street, N.W.
Washington, D.C. |] |
| 33. | SOPHIA BASILIKO,
5419 32nd Street, N.W.
Washington, D.C. |] |
| 34. | SAMUEL SCRIVENER, JR., co-trustee
1030 15th Street, N.W.
Washington, D.C. |] |
| 35. | JUNIOR F. CROWELL, co-trustee,
1111 E Street, N.W.
Washington, D.C. |] |
| 36. | GODFREY L. MUNTER, co-trustee,
National Press Building
14th & F Streets, N.W.
Washington, D.C. |] |
| 37. | THEODORE A. MUNTER, co-trustee,
615 Aster Boulevard
Rockville, Maryland |] |
| 38. | CARL F. OLSEN,
3615 Kanawha Street, N.W.
Washington, D.C. |] |
| 39. | SIGRID OLSEN,
3615 Kanawha Street, N.W.
Washington, D.C. |] |
| 40. | NARAIN S. SHARAF,
3728 Kanawha Street, N.W.
Washington, D.C. |] |

EXHIBIT 36

- | | | |
|-----|--|------------------|
| 41. | SAVITA N. SHARAF,
3728 Kanawha Street, N.W.
Washington, D.C. |]
]
] |
| 42. | E. SPENCER FITZGERALD, co-trustee,
c/o District-Realty Title
Insurance Corporation
1030-15th Street, N.W.
Washington, D.C. |]
]
]
] |
| 43. | JEROME MALIN, co-trustee,
1030-15th Street, N.W.
Washington, D.C. |]
]
] |
| 44. | JOHN RUDISILL MILBURN,
3730 Kanawha Street, N.W.
Washington, D.C. |]
]
] |
| 45. | RAYMOND L. WEISMAN, Trustee
10500 Rockville Pike
Rockville, Maryland |]
]
] |
| 46. | RICHARD A. EBERHARDT,
2301 E. Street, N.W.
Washington, D.C. |]
]
] |
| 47. | MARIELA GUIROS,
(now MARIELA EBERHARDT)
2301 E. Street, N.W.
Washington, D.C. |]
]
]
] |
| 48. | JOSEPH E. BRUNO, co-trustee,
3401 Connecticut Avenue
Washington, D.C. |]
]
] |
| 49. | EDWARD W. NYLEN, co-trustee,
Riggs Building
Hyattsville, Maryland |]
]
] |
| 50. | FRANK P. RUBINO, co-trustee,
University Building
2043 University Boulevard E.
Hyattsville, Maryland 20783 |]
]
]
] |
| 51. | OSCAR NOEL ETHIER,
3736 Kanawha Street, N.W.
Washington, D.C. |]
]
] |
| 52. | ELEANOR JEAN ETHIER,
3736 Kanawha Street, N.W.
Washington, D.C. |]
]
] |
| 53. | FREDERICK G. HARTING, JR., co-trustee,
10509 Burbank Drive
Potomac, Maryland |]
]
] |
| 54. | THOMAS M. LEBLING, co-trustee,
6920 Racehorse Lane
Potomac, Maryland |]
]
] |
| 55. | ELLIOTT H. DIAMOND,
3738 Kanawha Street, N.W.
Washington, D.C. |]
]
] |

EXHIBIT 36

- 56. JUSTINE H. DIAMOND,]
3738 Kanawha Street, N.W.]
Washington, D.C.]
- 57. FLORENT B. HUGHES, co trustee,]
9703 Stoneham Terrace]
Bethesda, Maryland]
- 58. C. WILLIAM BLOMQUIST, co-trustee]
10802 Connecticut Avenue]
Kensington, Maryland]
- 59. R. CURT WITTIG,]
1346 Connecticut Avenue, N.W.]
Washington, D.C.]
- 60. JEAN G. WITTIG,]
1346 Connecticut Avenue, N.W.]
Washington, D.C.]
- 61. C. CARSON AUXIER, co-trustee,]
7603 Georgia Avenue, N.W.]
Washington, D.C.]
- 62. JAMES L. HARRIS, co-trustee,]
1421 F Street, N.W.]
Washington, D.C.]
- 63. BERNARD E. ROACHE, co-trustee,]
1825 K Street, N.W.]
Washington, D.C.]
- 64. ANTHONY J. HORAK, co-trustee]
5112 Westpath Court]
Sumner, Maryland]
- 65. ALVIN I. BROWN,]
Investment Building]
1511 K Street, N.W.]
Washington, D.C.]
- 66. DONALD L. BROWN,]
Investment Building]
1511 K Street, N.W.]
Washington, D.C.]
- 67. ANNA E. WEED,]
2725 36th Place, N.W.]
Washington, D.C.]
- 68. NORMAN M. GLASGOW, co-trustee]
Tower Building]
1401 K Street, N.W.]
Washington, D.C.]
- 69. HARVEY H. HOLLAND JR., co-trustee,]
Tower Building]
1401 K Street, N.W.]
Washington, D.C.]
]
]

EXHIBIT 36

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|-----|--|-------------|
| 70. | MAX F. TOKUNAGA,
5336 Chevy Chase Parkway, N.W.
Washington, D.C. |]
] |
| 71. | MARGARET S. TOKUNAGA,
5336 Chevy Chase Parkway, N.W.
Washington, D.C. |]
] |
| 72. | JUDSON C. DODSON, co-trustee,
9625 Carriage Road
Kensington, Maryland |]
] |
| 73. | ROBERT A. APPLEBY, co-trustee,
12129 Nebel Street
Rockville, Maryland |]
] |
| 74. | PAUL S. KREMER,
3727 Kanawha Street, N.W.
Washington, D.C. |]
] |
| 75. | ETHYL ERREE KREMER,
3727 Kanawha Street, N.W.
Washington, D.C. |]
] |
| 76. | STANLEY J. WARDYGA
3729 Kanawha Street, N.W.
Washington, D.C. |]
] |
| 77. | GLORIA T. WARDYGA,
3729 Kanawha Street, N.W.
Washington, D.C. |]
] |
| 78. | PANSY S. WILLNER,
3731 Kanawha Street, N.W.
Washington, D.C. |]
] |
| 79. | ALFRED G. WHITE,
3733 Kanawha, Street, N.W.
Washington, D.C. |]
] |
| 80. | ENID S. WHITE,
3733 Kanawha Street, N.W.
Washington, D.C. |]
] |
| 81. | J. O'CONNOR ROBERTS, co-trustee, |]
] |
| 82. | GENEVIEVE M. BARRETT,
3735 Kanawha Street, N.W.
Washington, D.C. |]
] |
| 83. | AMERICAN SECURITY & TRUST CO.,
Trustee,
15th & Pennsylvania Avenue, N.W.
Washington, D.C. |]
]
] |
| 84. | ROWLAND S. OLIVER,
3737 Kanawha Street, N.W.
Washington, D.C. |]
] |
| 85. | ABBIE H. OLIVER,
3737 Kanawha Street, N.W.
Washington, D.C. |]
] |

EXHIBIT 36

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|-----|---|-------------|
| 86. | CHARLES S. GARDNER,
3710 Military Road, N.W.
Washington, D.C. |]
] |
| 87. | AMELIA GARDNER,
3710 Military Road, N.W.
Washington, D.C. |]
] |
| 88. | RICHARD G. KATZ,
3708 Military Road, N.W.
Washington, D.C. |]
] |
| 89. | JEANNETTE C. KATZ,
3708 Military Road, N.W.
Washington, D.C. |]
] |
| 90. | KENNETH O. HULSE, co-trustee,
5203 Brookway Drive
Sumner, Maryland |]
] |
| 91. | WALTON L. SANDERSON, co-trustee
10401 Grosvenor Place
Rockville, Maryland |]
] |
| 92. | LEO M. BERNSTEIN,
3706 Military Road, N.W.
Washington, D.C. |]
] |
| 93. | NATIONAL BANK OF WASHINGTON, Trustee,
619 14th Street, N.W.
Washington, D.C. |]
] |
| 94. | EVA S. MESA,
3704 Military Road, N.W.
Washington, D.C. |]
] |
| 95. | EDWARD EARLY, co-trustee,
4232 43rd Street, N.W.
Washington, D.C. |]
] |
| 96. | THOMAS R. HARRISON, co-trustee,
Eastern Federal Savings and
Loan Association
336 Pennsylvania Avenue, S.E.
Washington, D.C. |]
]
] |
| 97. | ANDREW McLEAN,
3702 Military Road, N.W.
Washington, D.C. |]
] |
| 98. | TWILA McLEAN,
3702 Military Road, N.W.
Washington, D.C. |]
] |
| 99. | JOHN W. RICHARDS,
3700 Military Road, N.W.
Washington, D.C. |]
] |

EXHIBIT 36

100.	MARY E. RICHARDS, 3700 Military Road, N.W. Washington, D.C.	]
101.	LEROY C. CLEMENTS, 3624 Military Road, N.W. Washington, D.C.	]
102.	ESTHER M. CLEMENTS, 3624 Military Road, N.W. Washington, D.C.	]
103.	WILLIAM DOYLE REED, 3609 Military Road, N.W. Washington, D.C.	]
104.	LOUISE P. REED, 3609 Military Road, N.W. Washington, D.C.	]
105.	BILL LEROY MANVILLE, 3611 Military Road, N.W. Washington, D.C.	]
106.	ANNE B. MANVILLE, 3611 Military Road, N.W. Washington, D.C.	]
107.	CLEO G. WISCHNOWSKI, 3613 Military Road, N.W. Washington, D.C.	]
108.	EDWIN JACOBSON, co-trustee, 1026 17th Street, N.W. Washington, D.C.	]
109.	M. B. SWANSON, co-trustee, 7904 Curtis Street Chevy Chase, Maryland	]
110.	GORDON VAN DYKE MILLER, 3615 Military Road, N.W. Washington, D.C.	]
111.	KATHERINE WISE MILLER, 3615 Military Road, N.W. Washington, D.C.	]
	<u>Defendants.</u>	]

EXHIBIT 36

COMPLAINT FOR DECLARATORY JUDGMENT DECLARING CERTAIN COVENANTS INVALID AND TO REMOVE CLOUD ON TITLE

1. This Court has jurisdiction under its general equity powers (Title 11, Section 521 of the District of Columbia Code, 1967 Ed., as amended). The amount involved exceeds \$50,000 exclusive of interest and costs.

2. Plaintiff, American Security Corporation is a corporation under the laws of the District of Columbia and is the owner of certain real property in Square 1873 in the District of Columbia, bounded by Connecticut Avenue, Military Road (formerly called Keokuk Street) and Kanawha Street, more particularly described in Exhibit A hereto annexed. The said property is hereinafter called "the Property." It is part of a subdivision created on June 1, 1910 by Allan E. Walker by plat duly recorded in the Office of the Surveyor of the District of Columbia. A copy of said subdivision plat is hereto annexed as Exhibit B. It is hereinafter referred to as "the Subdivision." "The Property" is outlined in red upon Exhibit B.

3. Plaintiff, Calvin Cafritz, is the contract owner of "the Property" by virtue of a contract of sale from Plaintiff, American Security Corporation to Anargyros N. Xepapas, which has been duly assigned by said Anargyros N. Xepapas to Plaintiff, Calvin Cafritz. Plaintiff, Enid Cafritz, is the wife of Calvin Cafritz.

4. The Defendants are owners respectively of other lots in "the Subdivision," or trustees under deeds of trust secured upon said lots as is more particularly set forth in Exhibit C hereto annexed.

EXHIBIT 36

5. Unless otherwise noted each of the lots in "the Subdivision" is subject to covenants providing:

a) That it shall be used exclusively for residential purposes.

b) That no building may be erected within a certain distance of the boundary of the lot in question (except that no such restrictions are imposed on lot 23, square 1873, lots 9 and pt. lot 10, square 1873 and lots 1 thru 4, square 1993).

c) That prior to January 1, 1930 not more than one residence shall be erected on any one lot.

d) That prior to January 1, 1930 no building be erected within 3 feet of certain boundary lines nor within 6 feet of nearest adjacent building (except no such restrictions on lot 1, square 1990).

e) That prior to January 1, 1930 no building erected upon said lot (in certain instances, the word "land" is used) may be used for apartment house purposes nor for trade, business, manufacturing or mercantile purposes except (a) the following lots have no stated time limit upon such restriction: Lots 1 thru 4, Square 1993, Lot 1, Square 1870 Lots 1, 2, 3, 4, 12, 13, 14 and pt. 15, Square 1873 and (b) as to the following lots the restriction is that they are never to be used for such purposes:

EXHIBIT 36

Lots 17, 19 (now 827 and an adjoining alley) 21 and 45 in square 1873 and lot 1 in square 1990) and lots 8 and 9 and 10 and 11, square 1870.

The lots shaded in blue on the attached plat (Exhibit B) are the only lots in "the Subdivision" in which the covenants against apartment house use and trade, business, manufacturing and mercantile use, have not expired by their terms.

6. Lot 827 (formerly a part of lot 19) and lot 21 in square 1873 being part of "the Property" owned by Plaintiff, American Security Corporation which is under contract of sale to Plaintiff, Calvin Cafritz as aforesaid are subject to the covenant providing that "any building erected * * * shall never be used for apartment house purposes, nor for any trade, business, manufacturing or mercantile purposes."

They are the only lots in "the Property" with any restriction against apartment house or trade, business, etc., use and the only lots in "the Subdivision" with an endless restriction except for lots 17 and 45 in square 1873, lot 1 in square 1990 and lots 8, 9, 10 and 11, square 1870.

The apartment house and trade or business, etc., restrictions as to the unshaded lots on the plat expired by their terms on January 1, 1930.

7. All of "the Property" is zoned R 5 C under the zoning regulations of the District of Columbia so as to permit the erection of apartments thereon, and Plaintiff, Calvin Cafritz, upon acquiring legal title to "the Property," desires to erect an apartment or apartments thereon in accordance with said zoning regulations. He would be precluded from doing so, if at all, only with respect to lots 827 and 21 in square 1873, and as to

EXHIBIT 36

them only because the restrictive covenants purporting to apply to said two lots provide that they will never be used for apartment house purposes. Said lots 827 and 21, however, are so situated within "the Property" that their use for apartment house purposes is absolutely essential to Plaintiff, Calvin Cafritz, if he is to erect a commercially viable apartment project on the remainder of "the Property".

8. There is already located on lots 9, 10 and 11 in square 1873 of "the Subdivision" (at the corner of Connecticut Avenue and Kanawha Streets, N.W.) a large nine story apartment building which has been erected since January 1, 1930.

9. The remaining lots in "the Subdivision" are not zoned for apartment use except lots 11 and 10 in Square 1870 adjacent to Connecticut Avenue.

10. Plaintiff is advised by counsel and therefore avers that the restrictive covenants affecting lots 827 and 21 in square 1873, forming part of "the Property," are null and void in law in that said covenants lack universality throughout "the Subdivision," and in that they are not reciprocal, and in that it would be unfair to burden lots 827 and 21 with a covenant precluding for all time the erection of an apartment building thereon when apartment buildings could be built on so many of the other lots in "the Subdivision" at any time after January 1, 1930, (subject to zoning regulations) and in that there has been a waiver and abandonment of said covenants and a change in the nature of the community in "the Subdivision," and in that the Defendants and each of them are estopped to assert the validity of said covenants against the Plaintiffs or any of them or their assignees.

EXHIBIT 36

11. The existing covenants of record on lots 827 and 21 as aforesaid precluding their use for all time or for an indefinite time for apartment purposes or for trade, business, manufacturing or mercantile use and the covenants restricting building for residence purposes only and restricting the location of buildings constitute a cloud upon the title to "the Property" which Plaintiffs are entitled to have removed.

WHEREFORE, the premises considered, Plaintiffs demand:

1. That because of the large number of defendants in this action, a special process server may be appointed by this Court with authority to serve a copy of the summons and initial pleadings upon the Defendants and each of them;

2. That service by publication may be had upon such defendants with respect to whom such process is returned "not found";

3. That this Court may enter a judgment declaring that the restrictive covenants found of record with respect to lots 827 and 21 in square 1873, which by their terms would preclude for all time or for an indefinite time the erection of buildings for apartment house use or for trade, business, manufacturing or mercantile purposes, became null and void after January 1, 1930 and are null and void at the present time and that the restrictive covenants for exclusively residential use and restricting building within designated distances from front or street lines are null and void at the present time.

4. That Plaintiffs may have such other, further and alternative relief as the Court may deem meet and proper.


EDMUND D. CAMPBELL


JAQUELIN A. MARSHALL
Attorneys for Plaintiffs
822 Southern Building
Washington, D.C. 20005
Te. 783-7151

DOUGLAS, OBEAR & CAMPBELL
of Counsel

EXHIBIT 36

EXHIBIT "A"

The West 34 feet front on Kanawha Street by the full depth of Lot numbered Nineteen (19) and all of Lots numbered Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four (24) and Twenty-five (25) in Square numbered Eighteen Hundred and Seventy-three (1873) of Allan E. Walker's subdivision of part of a tract of land known as "Mount Airy", now called "Chevy Chase Terrace", as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 36 at folio 29.

Also Lot numbered Thirty-five (35) in Caroline B. Alexander's combination of parts of Lots numbered Twenty-seven (27) and Twenty-eight (28) in Square numbered Eighteen Hundred Seventy-three (1873), "Chevy Chase Terrace", as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 41 at folio 148.

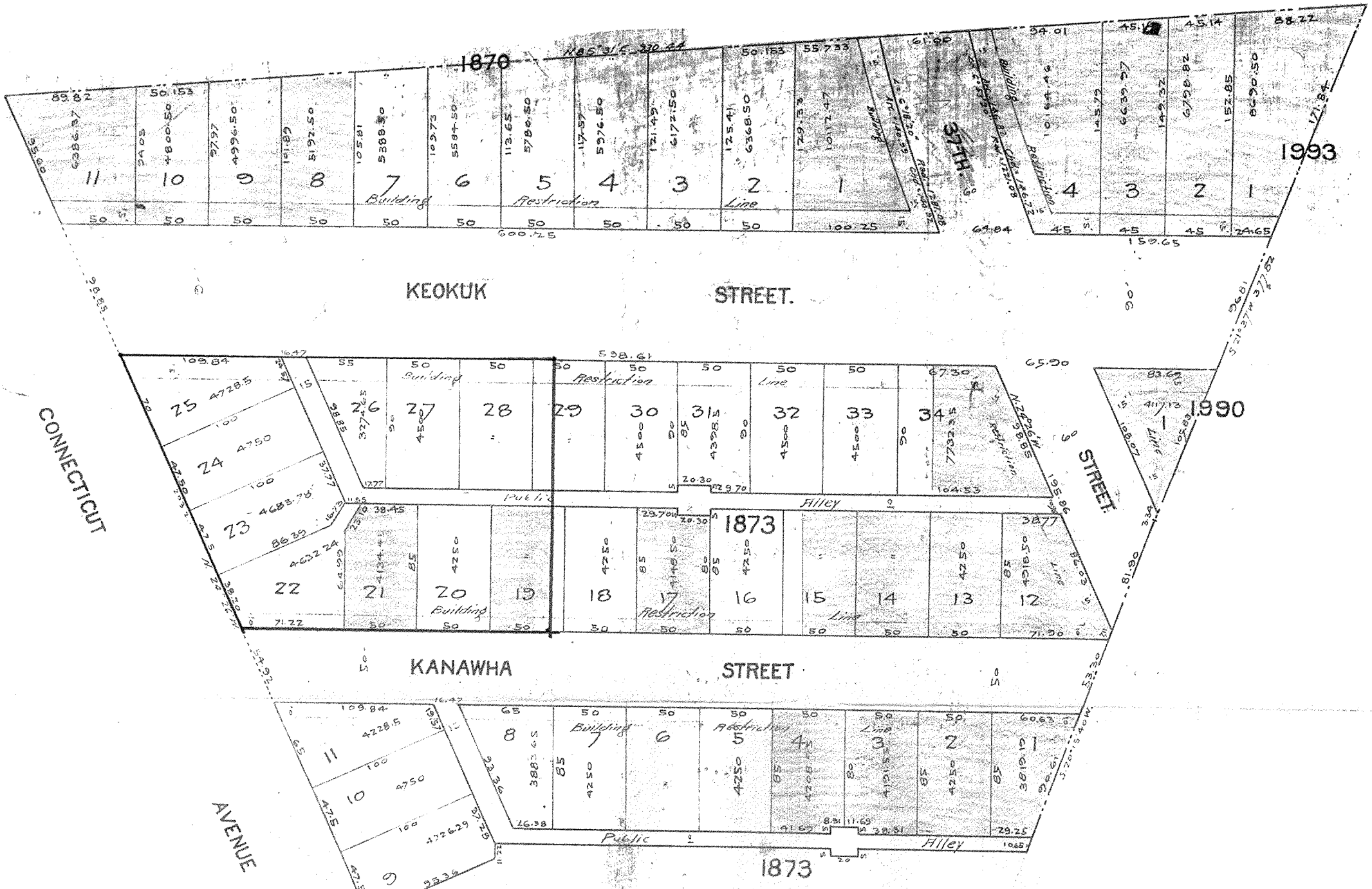
Also Lot numbered Thirty-seven (37) in Allan E. Walker's subdivision of Lots in Square numbered Eighteen Hundred Seventy-three (1873), "Chevy Chase Terrace", as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 43 at folio 15.

Also Lot numbered Forty-four (44) in Allan E. Walker's subdivision of lots in Square numbered Eighteen Hundred and Seventy-three (1873), "Chevy Chase Terrace", as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 43 at folio 104.

Also all those parts of alley closed in Square 1873 lying between the northerly lines of said part of Lot 19 and said Lots 20, 21 and 22 and the southerly lines of said Lot 35, 37 and 44 and also lying between the easterly lines of said Lots 23, 24 and 25 and the westerly line of said Lot 44, as shown on plats recorded in Liber 149, folios 12 and 146 in the Office of the Surveyor for the District of Columbia.

-----O-----

EXHIBIT B



Office of the Commissioners, D.C. June 1, 1910.
Ordered:

The subdivision shown hereon is hereby approved, and the
Surveyor is directed to record same in his office.

Benjamin Rudolph
Chas. A. Brantley
W. H. H. H.
Commissioners, District of Columbia.

I certify that the above plat is correct in accordance with
record and law and actual survey made by this office.

W. C. Hager
Surveyor, District of Columbia.

We hereby subdivide part of tract or land taxed as parcel 47
into lots, squares, public streets and public alleys and
establish building restriction lines in accordance with law,
and do not to build outside of said lines except as provided
by building regulations, all as shown hereon.

Witnesses
James H. Hager
John H. Hager

Owners
Allen S. Hager
James H. Hager

Trustees
James H. Hager
John H. Hager

S.B. 26 p. 427
S.O. 17306
Scale: 1 in = 50 ft.

Rec'd for record June 2, 1910 10:15 a.m.
Recorded in Book 36, page 29
ED 86869/1 Map # 206

EXHIBIT 36

EXHIBIT "C"

SUMMARY OF OWNERSHIPS IN THE SUBDIVISION MADE BY ALLAN E. WALKER RECORDED IN LIBER 36 AT FOLIO 29 IN THE OFFICE OF THE SURVEYOR FOR THE DISTRICT OF COLUMBIA EMBRACING LOTS 1 THRU 11 IN SQUARE 1870, LOTS 1 THRU 34 IN SQUARE 1873, LOT 1 IN SQUARE 1990 AND LOTS 1 THRU 4 IN SQUARE 1993. NOTE: SOME OF THE LOTS HAVE BECOME SUBDIVIDED AND THE PRESENT LOT NUMBERS ARE REFERRED TO IN THIS SUMMARY.

SQUARE 1870

West 40 feet of Lot 1 (taxed as Lot 805) and all of Lot 2 - Richard M. Welch and E. Marie Welch; Milford Hillerson & Leonard B. Meyers, Trustees under Deed of Trust dated July 2, 1969 and recorded in Liber 13008 at folio 609.

East 60.25 feet of Lot 1 (taxed as Lots 803 and 804) - David P. Boesel and Gail T. Boesel; C. W. Blomquist, Diane K. Blomquist and Alan B. Shoemaker, Trustees under Deed of Trust dated November 26, 1968 and recorded in Liber 12948 at folio 304.

Lot 3 - Albert Warren and Margaret Warren, his wife; Foster Shannon and John C. Holzberg, Trustees under Deed of Trust dated December 16, 1964 and recorded in Liber 12336 at folio 36.

Lot 4 - Michael J. Hackett, Jr. and Catherine F. Hackett, his wife; National Savings and Trust Company, Trustee under Deed of Trust dated January 18, 1957 and recorded in Liber 10797 at folio 379.

Lots 5 and 6, subdivided into Lot 13 - Herbert K. Zassenhaus and Charlotte S. Zassenhaus, his wife; Edward K. Jones, Frederick A. Allnutt and Lawton E. Inabinet, Trustees under Deed of Trust dated January 30, 1962 and recorded in Liber 11746 at folio 597.

Lot 7 - Edith C. Robeson.

Lot 8 - H. Gordon Stup and Hazel T. Stup, his wife; Samuel Scrivener, Jr. and Junior F. Crowell, Trustees under Deed of Trust dated May 31, 1957 and recorded in Liber 10861 at folio 427.

Lots 9 and 10 - Ellis P. Block, T. Nelson Jeffress and J. William Keith, Jr.; Geo. P. Plummer and Horace W. Talley, Trustees under Deed of Trust dated June 26, 1963 and recorded in Liber 12029 at folio 466.

Lot 11 - George Basiliko and Sophia Basiliko, his wife; Samuel Scrivener, Jr. and Junior F. Crowell, Trustees under Deed of Trust dated January 10, 1968 and recorded in Liber 12848 at folio 491 and Godfrey L. Munter and Theodore A. Munter, Trustees under Deed of Trust dated May 8, 1972 and recorded in Liber 13348 at folio 322.

SQUARE 1873

Lot 1 - Carl F. Olsen and Sigrid Olsen, his wife; National Savings and Trust Company, Trustee under Deed of Trust dated September 21, 1965 and recorded in Liber 12491 at folio 337.

Lot 2 - Narain S. Sharaf and Savita N. Sharaf, his wife; E. Spencer Fitzgerald and Jerome Malin, Trustees under Deed of Trust dated August 15, 1969 and recorded in Liber 13026 at folio 403.

Lot 3 - John Rudisill Milburn.

Lot 4 - Raymond L. Weisman, Trustee under Trust Agreement dated September 29, 1969 and recorded in Liber 13040 at folio 266.

Lot 5 - Richard A. Eberhardt and Mariela Guiros; Joseph E. Bruno, Edward W. Nylen and Frank P. Rubino, Trustees under Deed of Trust dated December 6, 1971 and recorded in Liber 13295 at folio 356.

EXHIBIT 36

Exhibit "C"

SQUARE 1873 - continued

Lot 6 - Oscar Noel Ethier & Eleanor Jean Ethier; Frederick G. Harting, Jr. and Thomas M. Lebling, Trustees under Deed of Trust dated October 31, 1968 and recorded in Liber 12938 at folio 327.

Lot 7 - Elliott H. Diamond and Justine H. Diamond, his wife; Florent B. Hughes and C. William Blomquist, Trustees under Deed of Trust dated January 17, 1968 and recorded in Liber 12849 at folio 126.

Lot 8 - R. Curt Wittig and Jean G. Wittig, his wife; C. Carson Auxier and James L. Harris, Trustees under Deed of Trust dated July 15, 1971 and recorded in Liber 13240 at folio 616 and Bernard E. Roache and Anthony J. Horak, Trustees under Deed of Trust dated July 15, 1971 and recorded in Liber 13240 at folio 620.

Lot 9 and South 25 feet of Lot 10 (taxed as Lot 821) - Alvin I. Brown and Donald L. Brown.

North 22.5 feet of Lot 10 and all of Lot 11 (taxed as Lot 823) - Anna E. Weed; Norman M. Glasgow and Harvey H. Holland, Jr., Trustees under Deed of Trust dated November 12, 1970 and recorded in Liber 13160 at folio 583.

NOTE: Lots 12, 13, 14, 15 and 16 have become subdivided and/or "split" and are now embraced within Lots 810, 108, 109, 804 and 807 and 46.

Lot 810 - Max F. Tokunaga and Margaret S. Tokunaga; Judson C. Dodson and Robert A. Appleby, Trustees under Deed of Trust dated July 12, 1968 and recorded in Liber 12902 at folio 581.

Lot 108 - Paul S. Kremer and Ethyl Erree Kremer, his wife.

Lot 109 - Stanley J. Wardyga and Gloria T. Wardyga, his wife.

Lots 804 and 807 - Pansy S. Willner.

Lot 46 - Alfred G. White and Enid S. White, his wife; National Savings and Trust Company, Trustee under Deed of Trust dated June 10, 1927 and recorded in Liber 6198 at folio 152 and Dion S. Birney and J. O'Connor Roberts, Trustees under Deed of Trust dated October 15, 1940 and recorded in Liber 7538 at folio 27.

↓
(now deceased)
-----o-----

Lot 17 - Genevieve M. Barrett; American Security and Trust Company, Trustee under Deed of Trust dated October 22, 1971 and recorded in Liber 13277 at folio 476.

Lot 18 - Rowland S. Oliver and Abbie H. Oliver.

NOTE: Lots 29 thru 34 became subdivided and are now Lots 38, 39, 40, 41, 42 and 45.

Lot 38 - Charles S. Gardner and Amelia Gardner, his wife; Samuel Scrivener, Jr. and Junior F. Crowell, Trustees under Deed of Trust dated May 12, 1971 and recorded in Liber 13217 at folio 546.

Lot 39 - Richard G. Katz and Jeannette C. Katz, his wife; Kenneth O. Hulse and Walton L. Sanderson, Trustees under Deed of Trust dated July 14, 1954 and recorded in Liber 10239 at folio 440.

Lot 40 - Leo M. Bernstein; National Bank of Washington, Trustee under Deed of Trust dated August 20, 1968 and recorded in Liber 12913 at folio 361.

EXHIBIT 36

Exhibit "C"

SQUARE 1873 - continued

Lot 41 - Eva S. Mesa; R. Edward Early and Thomas R. Harrison, Trustees under Deed of Trust dated October 23, 1963 and recorded in Liber 12100 at folio 282.

Lot 42 - Andrew McLean and Twila McLean, his wife; Samuel Scrivener, Jr. and Junior F. Crowell, Trustees under Deed of Trust dated September 29, 1960 and recorded in Liber 11493 at folio 347.

Lot 45 - John W. Richards and Mary E. Richards, his wife.

-----o-----

SQUARE 1990

NOTE: Lot 1 in Square 1990, except for parts which went into a street and alley, is now embraced in Lot 88 in Square 1990.

Lot 88 - ^{Leroy}~~Leavy~~ C. Clements and Esther M. Clements, his wife.

SQUARE 1993

Lot 1 - William Doyle Reed and Louise P. Reed, his wife.

Lot 2 - Bill Leroy Manville and Anne B. Manville; Samuel Scrivener, Jr. and Junior F. Crowell, Trustees under Deed of Trust dated December 5, 1967 and recorded in Liber 12828 at folio 348.

Lot 3 - Cleo G. Wischnowski; Edwin Jacobson and M. B. Swanson, Trustees under Deed of Trust dated July 17, 1956 and recorded in Liber 10699 at folio 113.

Lot 4 - Gordon Van Dyke Miller and Katherine Wise Miller, his wife.

EXHIBIT 37

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094 FAX: (202) 442-4789

5333 Connecticut Neighborhood Coalition	)	
P.O. Box 42023	)	
Washington, DC 20015	)	
	)	
Advisory Neighborhood Commission 3/4G	)	[Case # not yet assigned]
PO Box 6252 Northwest Station	)	
Washington, DC 20015	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	
DC Department of Consumer and Regulatory Affairs	)	
1100 4th St SW,	)	
Washington, DC 20024	)	
	)	
Respondent.	)	

APPEAL OF PERMIT ISSUED BY THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS AND REQUEST FOR HEARING

I. Permit Under Appeal

Appellant 5333 Connecticut Neighborhood Coalition¹ and Advisory Neighborhood Commission 3/4G hereby appeal and request a hearing on the final building permit issued

¹ 5333 Connecticut Neighborhood Coalition ("5333CNC") has over 500 members who live in the vicinity of the Project and are concerned about the impact of the development at 5333 Connecticut Avenue on their neighborhood. In addition, a number of its members who live and/or own property on Military Road, Kanawha Street, or Connecticut Avenue have specifically authorized 533CNC and its counsel to file this appeal. The names and addresses of these members are attached as Exhibit 1.

EXHIBIT 37

by the Respondent Department of Consumer and Regulatory Affairs (“DCRA”) on May 28, 2013: B1208792, attached hereto as Exhibit 2. The challenged permit authorizes CMK Development, LLC to begin constructing a massive 299,000-square foot apartment building located at 5333 Connecticut Ave., N.W. (“the Project”).

II. Jurisdictional Statement

The Office of Administrative hearings (“OAH”) has jurisdiction over “adjudicated cases” involving a number of agencies, including DCRA D.C. Code § 2-1831.03(b)(2). In addition, agencies such as DCRA can elect to be covered by procedures established by OAH. *Id.* § 2-1831.03(c)(2). DCRA has, by rule, provided for appeals to OAH of final decisions by the code official based in whole or in part upon the Construction Codes. 12A DMCR § 112.1. This rule provides as follows:

The owner of a building or structure or any person adversely affected or aggrieved by a final decision of the code official based in whole or in part upon the Construction codes may appeal to the Office of Administrative Hearings (OAH) except where the appeal relates to or involves the Zoning regulations, . . . The OAH appeal shall specify that the Construction Codes or the rules legally adopted thereunder have been incorrectly interpreted or applied, the provisions of the Construction Code do not fully apply, or an equally good or better form of construction can be used. The OAH shall have no authority to waive requirements of the Construction Codes.

*Id.*² The challenged building permit is a final decision of Nicholas A. Majett, Director of DCRA, who is the code official pursuant to DCRA rules, and can therefore be appealed

² The DCRA has proposed revisions to this rule, imposing a ten day time frame for filing the appeal:

112.2.1 Appeal of Decisions of the Code Official. The *owner of a building* or other *structure* or any *person* adversely affected or aggrieved by a final decision or order of the *code official* based in whole or in part upon the *Construction Codes*, may appeal to the Office of Administrative Hearings (OAH). The OAH appeal shall be filed within 10 business days after the date the *person* appealing the decision of the *code official* had notice or knowledge of the decision, or should have had notice or knowledge of the

EXHIBIT 37

by 533CNC and ANC 3/4G to OAH. 12 DCMR § 202. A statement explaining how 533CNC is adversely affected and aggrieved is included as part of Exhibit 1.

III. The Challenged Permits Violate the Construction Code

The challenged permits authorize the owner, CMK Development LLC, to begin excavation and sheeting and shoring for the building's foundation, the construction of the foundation, and the construction of the massive 299,000-square foot apartment building located at 5333 Connecticut Ave., N.W. ("the Project"). The permits show that the building will have two bay window, multiple balcony, one vault and three arcway projections that project between two to 13 feet beyond the building restriction line. The code official, in issuing these permits, violated the Construction Codes in the following respects.

First, these projections intrude into and permanently occupy public space and are not in the general public interest as required by the Construction Codes, 12 DCMR § 3202.4. The width of Kanawha Street is only 50 feet, including the roadway, sidewalk and public parking areas. *See* DDOT Design Engineering Manual, Section 29.4.1, at 29-2 (April 2009). Accordingly, the four-foot bay window projection, 3 foot balcony projections,

decision, whichever is earlier. The appeal shall specify that the *Construction Codes* or the rules legally adopted thereunder have been incorrectly interpreted or applied by the *code official*, that the ~~requirements~~ *provisions* of the *Construction Codes* do not fully apply, or that an equally good or better form of construction can be used. The OAH shall have no authority to waive requirements of the *Construction Codes*.

See DC Register Vol. 60, No. 24, 007728, 007819 (May 31, 2013). While the current rule includes no deadline, Appellants are filing this appeal within ten business days of the issuance of the building permit.

EXHIBIT 37

and ten-foot areaway projection on the Kanawha Street side of the building violate the construction code, which provides that “Projections shall *not* be allowed on any street less than 60 feet (18 288 mm) in width.” 12 D.C.M.R. § 3202.7.1 (emphasis added).

Appellants disagree with DCRA’s position that the width of Kanawha Street should be measured from the building restriction line. The area between the building line (building restriction line) and the property line is entirely private land and is not part of a public thoroughfare street under DC law. All Surveyor and DDOT records show that Kanawha St. is a 50-foot wide right of way street, as is reflected on the architectural plans submitted by the developer for permitting. The 10-foot deep building restriction line on private land was recorded in 1910 at the time of subdivision to forever ensure additional mandatory green space to the subdivision beyond the public street “public parking” area approximately 3 feet in width along Kanawha St. This protected building restriction area is not part of the street. The building restriction area is considered the developer’s land area for purposes of determining the maximum size of the building (Floor Area Ratio) that can be built on the property. It cannot be simultaneously considered part of the street for determining street width and part of the private property of the developer..

However, even if Kanawha Street was lawfully viewed as being 70 feet wide, as DCRA appears to contend, the projections violate the following requirements:

1. On streets between 60 and 70 feet wide, the projection of bay windows shall be limited to “3 feet on streets 60 feet to 70 feet wide” and “four feet on streets **more** than 70 feet wide.” 12 DCMR 3202.10.3.3.1. This projection would still be 4 feet versus the three permitted.

EXHIBIT 37

2. The 10 foot areaway projection on the Kanawha St. side of the building would still violate the projection limitation for areaways based on street width, which is limited to “6 feet (1829 mm) on parked streets in Residential Districts and SP Districts, 60 feet to 70 feet (18 288 mm to 21 336 mm) wide.” 12 DCMR 3202.9.1.3.3.

Second, the underground garage portion of the building vault area would extend approximately 12 to 13 feet beyond the Military Road building restriction line and under the entire alley. This part of the structure would be barely below grade in places and would be a key part of the building structure. The P-1 level ceiling/roof would be elevated above the grade of Military Road and its adjacent sidewalk by as much as 6 feet. The impermeable concrete structure of the P-1 level in public space would remove many additional trees during construction and would damage the green space and substantially reduce its ability to sustain the kinds of large trees that are consistent with the surrounding neighborhood. The projection is not in the general public interest, and also violates the construction code vault projections in violation of 12A DCMR 3202.9.2 and DCRA’s “Projection Schedule.” *See* <http://www.dc.gov/DC/Planning/Planning%20Publication%20Files/Projection%20Schedule.pdf>.

Third, the underground garage intake areaway on the Military Rd side of the building would be over 20 feet long and 8 feet wide and would be located entirely beyond the building restriction line by as much as 12-13 feet on the Military Road side of the building, exceeding the limitation of “6 ½ feet (1981 mm) on parked streets in Residential Districts and SP Districts, more than 70 feet (21 336 mm) wide.” 12 DCMR

EXHIBIT 37

3202.9.1.3.4. In addition, the foundation of the building on the Kanawha Street side and the sole garage exhaust vent would extend beyond the building restriction line by approximately one foot. The placement of the exhaust vent beyond the building restriction line is another projection not allowed under on a street less than 60 feet wide. *See Id.* § 3202.7.1.

Fourth, the building structure also would project four feet past the building restriction line along the Military Road side of the building to create an areaway. The bottom of the areaway is the P-1 parking level slab and areaway would sit above grade in violation of the restriction that “the height of areaway enclosures shall be limited to the highest point of the surface of the adjoining pavement or grade.” 12 DCMR 3202.9.1.2.

Finally, the above ground portion of the building includes numerous projections into public space that violate the construction code 12A DCMR Chapter 32A, governing encroachments beyond building lines, and related public space standards and guidelines. This includes:

1. A single “bay window” or “oriel” projection extending two feet past the building restriction line along Military Road for floors 3-9, which will be approximately 115 feet wide and 75 feet high that violates 12 DCMR 3202.10.3.1.4. regarding projection width.
2. A single “bay window” or “oriel” projection extending four feet past the building restriction line along Kanawha St for floors 2-9, which will be approximately 60 feet wide and 85 feet high that violates 12 DCMR 3202.10.3.1.4 regarding projection width.

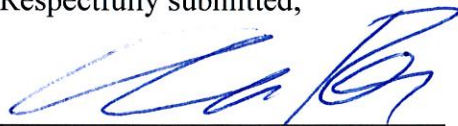
EXHIBIT 37

The Code Official does have the authority to grant modifications of provisions of the Construction Code where “there are practical difficulties or undue economic hardship.” 12 DCMR § 104.10. However, “the code official shall first find that special individual reason makes the strict letter of the Construction Code impractical and the modification is in compliance with the intent and purpose of the Construction Code and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements.” *Id.* The construction code further requires that “The final decision of the code official [on a modification request] *shall* be officially recorded with the application for the permit, in the permanent records of the Department.” *Id.* § 104.10.1 (emphasis added). Representatives of Appellant 533CNC have reviewed the DCRA files associated with the challenged building permit. These files contain no formal request for a modification of the construction codes pertaining to variances or a written final decision by the code official on any such request reflecting the applicable findings and standards for granting a modification.

IV. Conclusion

For the foregoing reasons, Appellants request a hearing to set aside the challenged permits based on the aforementioned construction code violations.

Respectfully submitted,



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EXHIBIT 37



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Jim McCarthy, Chairman
ANC 3/4G
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Phone: (202) 363-5803
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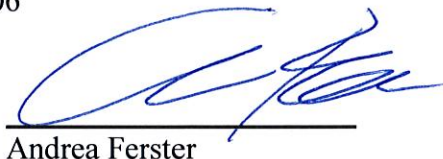
Certificate of Service

I hereby certify that, on June 11, 2013, I served the foregoing appeal by depositing the same in the U.S. Mail, 1st Class Postage pre-paid, on the following responsible persons:

CMK Development, LLC (Owner of 5333 Connecticut Ave NW)
1828 L Street NW # 703
Washington, DC 20036
(202) 248-5800
Eric Colbert (Agent of owner)
717 5th Street, NW
Washington, DC 20001

Nicholas Majett, Director
DCRA
1100 4th St SW,
Washington, DC 20024

Wayne Quinn
Holland and Knight
800 17th Street, NW Suite 1100
Washington, DC 20006



Andrea Ferster

EXHIBIT 37

EXHIBIT 1

EXHIBIT 37

Appeal to OAH of 5333CNC – Attachment 1

Appellant 5333 Connecticut Neighborhood Coalition (“5333CNC”) is an unincorporated membership association with over 500 members, individuals 5333CNC’s members reside in the immediate neighborhood of the property on Military Road, Kanawha Street, or Connecticut Avenue, and include the 32 individuals who reside within 200 feet of structure the permits for which are challenged here. These members will be directly affected by the proposed development at 5333 Connecticut Avenue and are concerned about its impact of the quality of life in their neighborhood, the health of neighborhood residents, and the value of their property. Members of 5333CNC are more aggrieved than the general public because the building unlawfully intrudes into public space. This building, if approved despite non-compliance with the construction codes, will have a serious adverse impact on the use and enjoyment of members’ homes.

In addition, 5333CNC members’ homes and the community in general are more aggrieved than the general public because their homes will be subject to light and noise pollution from this building. The development will result on significant traffic congestion on neighborhood streets, compromised pedestrian safety, and parking problems from its use of side streets and public alleys. These members will all be significantly more impacted than the general public by the traffic and noise during construction.

Those members (and individual appellants) who reside within 200 feet are more aggrieved than the general public because (1) many members’ houses abut the ten-foot-wide alley, now in poor condition, which barely accommodates the city’s trash trucks, let alone fire trucks, and which will experience significantly more traffic activity both during construction and throughout the life of the proposed building, (2) many members’ houses are near the building’s exhaust vent located at ground level close to these homes, causing significant air pollution problems, (3) narrow streets will suffer significant traffic congestion, compromised pedestrian safety, and parking problems from the proposed building’s use of side streets and public alleys, (4) the projections into public space on Kanawha and Military will reduce green space and overwhelm those narrow streets, and (5) members’ homes will be significantly more impacted than the general public by the traffic and noise during construction and, because many members’ homes are downhill from the construction site, by the downflow of water, mud, and other materials during construction.

The following individuals who live and/or own property on Military Road, Kanawha Street, or Connecticut Avenue have specifically authorized 533CNC and its counsel to file this appeal:

Within 200 feet of the 5333 Connecticut Avenue N.W. project:

NAME:

ADDRESS:

Jean G. Wittig
Richard Graham
JoAnna L. Graham
Daniel S. Greenberg

3740 Kanawha St. N.W., Washington, DC 20015
3738 Kanawha St. N.W., Washington, DC 20015
3738 Kanawha St. N.W., Washington, DC 20015
3736 Kanawha St. N.W., Washington, DC 20015

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Appeal to OAH of 5333CNC – Attachment 1

Wanda J. Reif	3736 Kanawha St. N.W., Washington, DC 20015
John F. Cooney	3735 Kanawha St. N.W., Washington, DC 20015
Elizabeth Kimball	3735 Kanawha St. N.W., Washington, DC 20015
Mariela Eberhardt	3734 Kanawha St. N.W., Washington, DC 20015
Lewis F. Smith	3733 Kanawha St. N.W., Washington, DC 20015
Priscilla Skillman	3733 Kanawha St. N.W., Washington, DC 20015
Franz Le Lesle	3732 Kanawha St. N.W., Washington, DC 20015
Vanessa Le Lesle	3732 Kanawha St. N.W., Washington, DC 20015
Thomas J. Beckman	3731 Kanawha St. N.W., Washington, DC 20015
Edith S. Levine	3731 Kanawha St. N.W., Washington, DC 20015
Susan Peterson	3730 Kanawha St. N.W., Washington, DC 20015
Archie V. Alexander	3730 Kanawha St. N.W., Washington, DC 20015
Anil Kumar Venkatenamiah	3726 Kanawha St. N.W., Washington, DC 20015
Suzanne Wethered	3726 Kanawha St. N.W., Washington, DC 20015
David Hollar	3717 Military Rd. N.W., Washington, DC 20015
Susan B. Hollar	3717 Military Rd. N.W., Washington, DC 20015
William J. Lenyk	3715 Military Rd. N.W., Washington, DC 20015
Elizabeth H. Lenyk	3715 Military Rd. N.W., Washington, DC 20015
Roger Reith	3713 Military Rd. N.W., Washington, DC 20015
Robert Gordon	3711 Military Rd. N.W., Washington, DC 20015
Leila Gordon	3711 Military Rd. N.W., Washington, DC 20015
Mark J. Ruggieri	3709 Military Rd. N.W., Washington, DC 20015
Stephani Ruggieri	3709 Military Rd. N.W., Washington, DC 20015
Linda A. Strachan	3708 Military Rd. N.W., Washington, DC 20015
Peter J. Donahue Jr.	3707 Military Rd. N.W., Washington, DC 20015
Angela N. Donahue	3707 Military Rd. N.W., Washington, DC 20015
Marilyn J. Holmes	3700 Military Rd. N.W., Washington, DC 20015
Joseph E. Cicero	5310 Connecticut Ave. N.W., Wash., DC 20015
William Walde	5323 Connecticut Ave., N.W., Wash., DC 20015

Beyond 200 feet of the 5333 Connecticut Avenue N.W. project:

Thomas Cole	3641 Kanawha St. N.W., Washington, DC 20015
Kevin Mulshine	3620 Kanawha St. N.W., Washington, DC 20015
Laura Kumin	3620 Kanawha St. N.W., Washington, DC 20015
Jamie Butler	3611 Kanawha St. N.W., Washington, DC 20015
Stuart Butler	3611 Kanawha St. N.W., Washington, DC 20015
George W. Gaines	3700 Kanawha St. N.W., Washington, DC 20015
Mary Alice Gaines	3700 Kanawha St. N.W., Washington, DC 20015
Paul V. Piazza	3753 Kanawha St. N.W., Washington, DC 20015
Louise D. Piazza	3753 Kanawha St. N.W., Washington, DC 20015

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George E. Burson
Patricia A. Bond
Peter G. Gosselin
Flavio Cumpiano
Stephanie Saenger

3754 Kanawha St. N.W., Washington, DC 20015
3754 Kanawha St. N.W., Washington, DC 20015
3701 Military Rd. N.W., Washington, DC 20015
5310 Connecticut Ave. N.W.#12, Wash., DC 20015
5310 Connecticut Ave. N.W.#12, Wash., DC 20015

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EXHIBIT 2

EXHIBIT 37

13-000 327



Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 05/28/2013

PERMIT NO. B1208792

Expiration Date: 05/28/2014

Address of Project: 5333 CONNECTICUT AVE NW		Zone:	Ward:	Square: 1873	Suffix:	Lot: 0128
Description Of Work: NEW 263 UNIT APARTMENT BUILDING CONSISTING OF: 9 STORIES; A PENTHOUSE LEVEL; TWO CELLAR PARKING LEVELS AND 1 CELLAR/BASEMENT LEVEL FOR RESIDENTIAL USE AND STORAGE. THE USE SHALL INCLUDE 88 REQUIRED AUTOMOBILE PARKING SPACES; ONE REQUIRED LOADING BERTH AT 55 FT. DEEP X 12 FEET WIDE X 14 FT. HIGH; ONE LOADING PLATFORM AT 200 SQ-FT. X 12 FT. WIDE X 10 FT. HIGH; ONE SERVICE SPACE AT 20 FT. DEEP X 10 FT. WIDE X 10 FT. HIGH.						
Permission Is Hereby Granted To: Cmk Dev Llc		Owner Address: 1825 K ST NW FL 14 WASHINGTON, DC 20006-1202		PERMIT FEE: \$101,508.55		
Permit Type: New Building	Existing Use: Apartment Houses - R-2		Proposed Use: Apartment Houses - R-2		Plans: Yes	
Agent Name:	Agent Address:	Existing Dwell Units: 0	Proposed Dwell Units: 263	No. of Stories: 9	Floor(s) Involved: All Floors	
Conditions/ Restrictions:						
THE SCOPE OF WORK APPROVED BY THE OFFICE OF THE ZONING ADMINISTRATOR INCLUDES A NEW 263 UNIT APARTMENT BUILDING CONSISTING OF: 9 STORIES; A PENTHOUSE LEVEL; TWO CELLAR PARKING LEVELS AND 1 CELLAR/BASEMENT LEVEL FOR RESIDENTIAL USE AND STORAGE THE USE SHALL INCLUDE 88 REQUIRED AUTOMOBILE PARKING SPACES; ONE REQUIRED LOADING BERTH AT 55 FT. DEEP X 12 FEET WIDE X 14 FT. HIGH; ONE LOADING PLATFORM AT 200 SQ-FT. X 12 FT. WIDE X 10 FT. HIGH; ONE SERVICE SPACE AT 20 FT. DEEP X 10 FT. WIDE X 10 FT. HIGH. A WALL CHECK IS REQUIRED TO VERIFY COMPLIANCE WITH APPROVED ZONING SETBACKS. This Permit Expires If no Construction Is Started Within 1 Year or If the Inspection Is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; 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 work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to http://ddoe.dc.gov, Lead and Healthy Housing.						
Director: Nicholas A. Majett		Permit Clerk Keith Hawkins				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						