To circumvent the clear terms of the code, as well as its intent, the department has admitted suggesting to the builder that he can put a "berm" in front of some portion of the length of the basement so that it can be pretended that there are not more than four feet of basement exposed. This is a deliberate attempt at evasion of the zoning requirements.

First, the house is some fifty four feet wide. Unless the garage (which opens at the front of the house) and the front steps leading immediately from the doorway are to be fully covered with dirt, at least one-half of the basement will remain exposed more than four feet. I seriously doubt that the builder is planning on burying the garage and the front steps which lead immediately from the front door. If the berm is on the other side, the basement windows must be filled in and covered.

Second, unless the "berm" is only a foot or less in width, the house is so close to the sidewalk (where there is a four foot retaining wall), there will be no way to get from the front door to the street via walkways unless one is pitched at a 45 degree angle to descend the 15 feet from the front door down to the sidewalk. The only other alternatives are a rope, an elevator, a chairlift or a helicopter. I hope that you have been to the property to see what I mean. And the builder has narrowed the existing steps from the front door from 5 feet to 3 feet wide by building two feet past the original foundation (yes I have pictures).

Third, the existing basement wall in the front ends at or below the grade level. The rest of the basement wall is two courses of bricks thick on top of the foundation, with no cement foundation or cement blocks. And those two courses of bricks have four large window holes in them that would need to be filled in before a "berm" could be constructed.

The department need not fear a claim by the builder that it must let the construction go forward because it approved the original application. Mr. Bellow, who approved that application, has told my neighbor Stuart Sloame that he now recognizes that the original application called for a different structure than in fact is being built. This deliberate deception removes all claims of equity by the builder.

There is also no question but that the building does not match the permit, and not only because it is four stories instead of three. The three new stories are <u>not</u> being built on the existing foundation. The three stories are being added on the original one

Board of Zoning Adjustment
District of Columbia
CASE NO.16533
EXHIBIT NO.21A2

story basement foundation plus an extension to that foundation. That extension is 6.5 feet x 50 feet and is shown on the plans as part of the original foundation. The application is simply wrong. You have been deceived.

All of this shows that there is no reason for the department to stretch the code to accommodate a builder who has deliberately not been forthright in its application. It makes no sense to us that citizens who want compliance with the law cannot even get a meeting with the department, while the department goes out of its way to aide a builder who has made deliberate misrepresentations to it. This is not fair consideration.

The five sets of neighbors who have petitioned to your department to enforce the law have lived in the City for well over 100 years combined. It is in the interest of all of us to have a house built which adds to, rather than detracts from, property values. The owner has refused to talk with us about complying with the law, claiming that he can build four stories "as of right." His plans submitted to your department deliberately failed to describe his project with any degree of accuracy. I can see no legitimate reason for the Williams Administration to try to torture the rules to favor such an applicant over long-time District residents.

This argument is not about style. A drive down our street reflects a diversity of style, size and siting. There was no opposition to the last home built on the block, which is very different stylistically from all of the others. All of the current petitioners lived on 28th Street during its construction. There is no reason to give an exception for a building which everyone who has seen it immediately recognizes as inappropriate to the site.

The builder has been racing to frame his illegal structure while the city considers what to do. All three of the new stories have gone up since I first spoke to Mr. Nunley. They have built in rain, hurricane, Saturdays, some Sundays, and even all day on Labor Day. There could be little better demonstration of guilty knowledge of wrongdoing.

The lot is 7494 square feet, below the minimum lot size in the District for building. The house will have at least 8000 square feet, counting all four stories. It towers above every other house on a street of large houses. It is at best 15 feet (again the bare minimum) from the building restriction line in front. And the floor of the first story above the basement is at least 15 feet above the street. At four stories it is an eyesore which detracts from all of

our property values. At three stories it may be domineering, but at least it would be legal.

In addition to the height problem there is a second issue. We have also been told by the inspector that the house sits illegally close to the adjacent properties. As the only person from the department who has visited the site he agrees with us. I have measured it myself and it is less than five feet away. The builder (without disclosing it in his permit application) expanded the existing foundation 6 1/2 feet from the back of the house on which he is placing three stories. And he has added a chimney on the south side of the house which is not on the plans and which encroaches the eight foot limit.

As you know, this activity is illegal under 11 DCMR § 405.8. Absent that section, 11 DCMR § 2002.5 prohibits the enlargement of a nonconforming use unless the enlargement is conforming in all respects. Under 11 DCMR §401.1, a building may not be enlarged or replaced by a new building unless it meets all other code requirements. This one clearly fails among other reasons because the side yards are less than eight feet. Therefore, § 405.8 is the only arguable way for the builder to avoid code requirements.

But § 405.8 does not help the builder. There is no extension or addition being made to a building existing on or before May 12, 1958. As the application admits, the previous single-family dwelling was demolished. Under the zoning definitions, a "building" is a structure having a roof for the shelter, support, or enclosure of persons. Once the existing dwelling was destroyed there was no roof and therefore no building to expand or add to.

Under § 405.8 "an extension or addition may be made to the building." That is not what has taken place here. An entirely new building has been constructed within the definition of the code. Therefore a new building must have 8 foot side yards. The plans show side yards of 6 feet.

Even if your department takes the arbitrary and capricious view that this was the expansion of an existing building (which of course was destroyed according to the permit) it still violates § 405.8. That section says that the width of the side yards "shall not be decreased." Yet that is what has happened at the two new corners of the extended foundation.

Finally, even under § 405.8 the width of the side yard "shall be minimum of five feet." The new building is less than five feet from either of the adjacent properties.

I am a University of Illinois graduate and am hopeful that you will bring some midwestern Champaign common sense to your new position. Please do not leave the citizens of the District of Columbia in the same unprotected position they have long suffered in. Please protect us from builders who submit less than accurate and forthright applications and then claim that they are entitled to build because the department approved the plans. Please show the citizens that the Barry days really are over. Those of us on 28th Street will accept nothing less.

As you know from my message of this morning, I look forward to your call to arrange our meeting.

Sincerely yours,

George R. Clark

GRC/ydl
cc: Mayor Anthony Williams
Kathy Patterson, Councilperson (via fax/202-724-8118)
Lloyd Jordan, Director of DCRA (via fax/202-442-9445)
Richard Nettler, Esq., (via fax/202-223-8604)

EXHIBIT 14

Forest Hills, LLC
PO Box 34208
Bethesda, Maryland 20827

September 10, 1999

Mr. Armando Lourenco
Administrator, Building and Land
Regulation Administration
941 North Capitol Street, NE
Washington, D.C. 20002

Re: 4512 28th Street, NW
Permit # B424294

Dear Mr. Lourenco,

I certainly enjoyed our brief meeting on Wednesday, September 8th, following the DC Liaison Committee Meeting at NAHB Headquarters.

As you were well aware, we are awaiting the City's issuance of our revised building permit for the above referenced residence, now under construction.

Mr. Bello had indicated that your input was needed, since neighbors had questioned the sideline requirements and finished grade elements. For this reason, I was pleased that you had visited the site the night before and indicated to me that we are "OK" in our present position.

Based upon our conversation, it is my understanding the following is the case:

1. The house location and side-line setbacks are in compliance with DC Rules and Ordinances, under the present building permit.

2. Revised plans submitted to Mr. Bello to raise the finished grade and amend the building permit are acceptable and will result in a revised permit being issued.

3. Based upon the above, we are proceeding with our investment and continuing construction.

Once again, thank you for your review and support of our compliance.

Very truly yours,

Murray A. Cohen

EXHIBIT 15

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

KATHY PATTERSON
COUNCILMEMBER, WARD 3

CHAIRPERSON
COMMITTEE ON GOVERNMENT OPERATIONS

OFFICE: (202) 724-8062
FAX: (202) 724-8118

September 8, 1999

Lloyd J. Jordan, Director
Department of Consumer and
Regulatory Affairs
941 North Capitol Street NE, Suite 9500
Washington DC 20002

By facsimile and mail

Dear Mr. Jordan: Lloyd

Please find enclosed correspondence my constituent, George Clark, regarding a home being built at 4512 28th Street NW. In a conversation with my staff on September 7, 1999, Armando Lourenco stated that one issue the neighbors believe is a violation appears not to be–the height of the house. It is my understanding that Mr. Lourenco said if the grade is raised, the house height is measured from the grade. If this is the case, Mr. Clark's September 2, 1999 letter is accurate, "...that a builder could put up a 10 story house in an R-1-A zone as long as he put a 7 story berm in front of it." Mr. Lourenco was still in the process of reviewing the plans and permits to make a determination about the size of the side yard and if the actual structure matches the permits on file. Meanwhile, work on the house continues.

Time is of the essence. When will the Department make a final decision on the points raised by Mr. Clark? When can Mr. Clark expect to receive a written reply to his letters? Thank you for your attention to this issue. I look forward to your response.

Sincerely yours,

Kathy

Kathy Patterson

Enclosures

cc: Mayor Anthony Williams
Carlynn Fuller
George Clark

ps: And when will you return my calls?!

EXHIBIT 16

REED SMITH SHAW & MCCLAY LLP

1301 K STREET, N.W.

SUITE 1100 - EAST TOWER

WASHINGTON, D.C. 20005-3317

202-414-9200

FAX 202-414-9299

HARRISBURG PA
McLEAN VA
NEW YORK, NY
NEWARK, NJ
PHILADELPHIA, PA
PITTSBURGH PA
PRINCETON NJ

GEORGE R. CLARK
202-414-9215
e-mail: grclark@rssm.com

September 10, 1999

VIA FACSIMILE (202) 442-4863

Mr. Michael Johnson
Zoning Administrator
DCRA/BLRA
Zoning Division
941 North Capital Street, N.E.
Suite 2200
Washington, D.C. 20002

Re: 4512 28th Street, N.W.

Dear Mr. Johnson:

On September 8, 1999 you called me early in the morning to tell me that the department saw no violations and approved amended permits for this property. You kindly offered to meet with me to explain the department's decision, but could not do so before that afternoon because of other commitments.

I called your office on September 8 to try to arrange an appointment. I also called your office early on September 9 and was told that you would get back to me that day about your call and a meeting. As of this morning, I have not heard back from you.

While I am most desirous of having a meeting to hear the department's explanation for its action, we also need to have some evidence of a decision from the department so that we can file an appeal with the Board of Zoning Adjustment to overturn this arbitrary and capricious decision. As Mr. Bellow of your office has admitted, your position would allow the construction of 10 story dwellings in R-1-A zones. You can be certain that there will be developers asking for approval of five-story homes with two-story berms, especially on "tear down" properties, within months, if not days. The zoning laws will be rendered meaningless.

Even the "new" DCRA does not have the authority to change the zoning regulations. In the meantime, construction continues, even though there are no new permits posted reflecting the

department's approval of any change to try to eliminate the fourth story. We citizens wonder what is going on when we cannot get a meeting even after one is offered. It does not seem that the developers have that problem.

I have heard that Mr. Jordan said yesterday that he has sent his best inspectors to the property this week and everything is fine. But how can they ignore what can easily be seen in the attached picture taken this week? Is this the type of violation that DCRA's new and expensive computerized inspection system, so widely heralded when it was announced September 8, still cannot find?

Sincerely yours,

George R. Clark

GRC/ydl

cc: Mayor Anthony Williams (via fax/202-727-6561)
Lloyd J. Jordan (via fax/202-442-9445)
Kathy Patterson (via fax/202-724-8118)
Richard Nettler, Esq. (via fax/202-223-8604

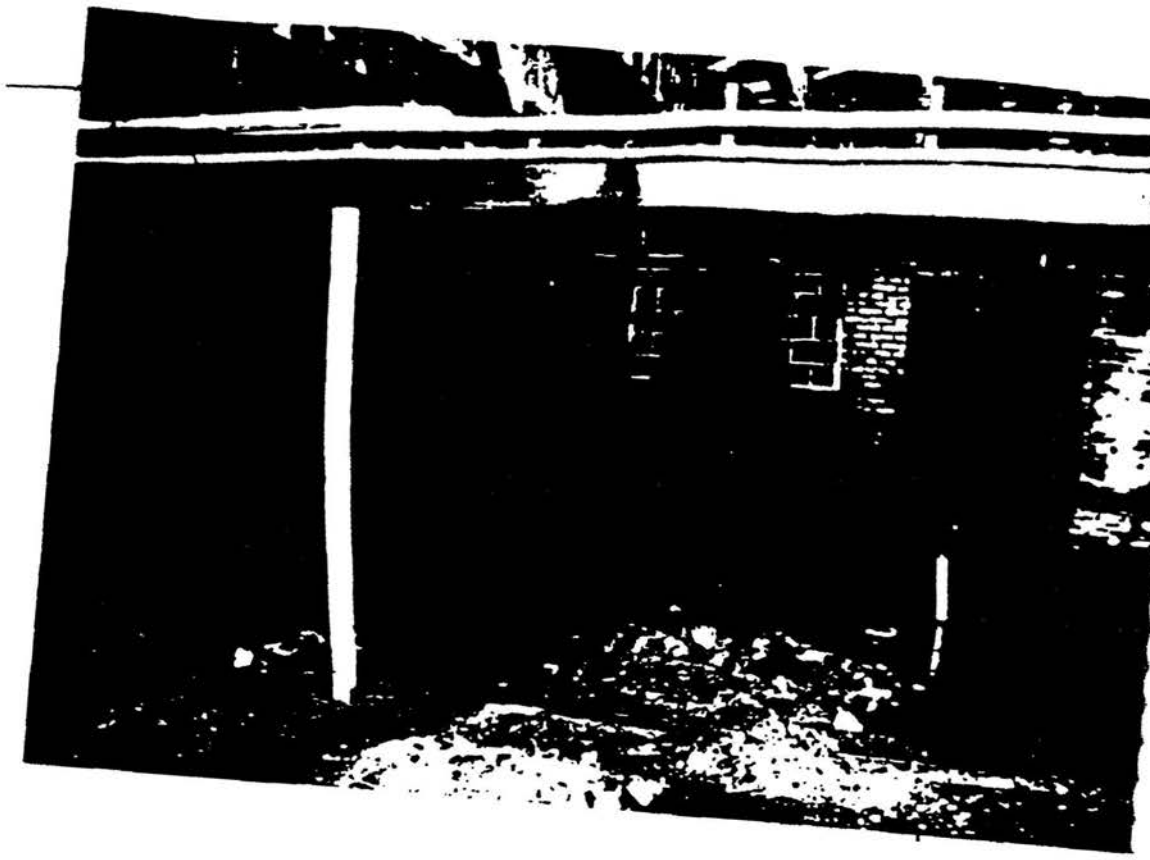


EXHIBIT 17

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

September 10, 1999

Honorable Kathy Patterson
Councilmember, Ward 3
Council of the District of Columbia
441 4th Street, N.W. - Suite 709
Washington, D.C. 20001

Re: 4512 28th Street, NW

Dear Councilmember Patterson:

This is to provide you with an update on the situation of the permitting and construction at the above referenced site. As you know, several neighbors have expressed concerns about the volume, appropriateness, height, number of stories and other zoning requirements that the project, as permitted, would violate. Mr. George Clark's letter of September 8 addresses all of those concerns.

As a result of the complaints received, the permit records were reviewed by me and staff, and I visited the site on Tuesday, September 7, 1999. The purpose of my visit was to ascertain, in the field, whether the construction significantly deviated from the approved plans and to have a better feeling for the topography of the site and the placement of the building on the site.

After reviewing all the information now available, it is my opinion that the only aspect in which the approved project is questionable, based on the provisions of the Zoning Regulations, is the matter of the number of stories. The zone (R-1-A) allow only three-story structures to be erected, to a maximum height of 40 ft. The structure, as it now stands and if nothing was done to remedy it, is technically a four story building. As Mr.

Clark well remarked, there is a 4 foot threshold to determine whether a level in a building is a story or not, even though it is not measured as Mr. Clark seems to believe.

The Zoning Regulations establish that the height of a building in a district where the height is limited to 40 feet (as is the case of R-1-A) is measured "from the finished grade at the middle of the front of the building to the ceiling of the top story." The regulations also establish, under the definition of "Story" the following:

> "(...) The number of stories shall be counted at the point from which the height of the building is measured. For the purpose of determining the maximum number of permitted stories, the term story shall not include cellars, (...)"

The definition of "cellar" further reads: "that portion of a story, the ceiling of which is less than four feet (4 ft) above the adjacent finished grade."

The owner has already been made aware of the fact that the approved plans appeared to show the proposed finished grade, at the front of the building, more than 4 feet below the ceiling of the lower level of the building. As a result, the owner filed an application to revise the profile of the existing berm, at the front of the building, to bring the finished grade to four feet below the level of the main floor of the building. With this revision, the ceiling of the lower level will be clearly less than 4 feet above the finished grade, therefore that level constitutes a cellar and does not count for the number of stories. Obviously, until the project is completed the finished grade may not be at the correct level, but our office will keep monitoring this site to ensure compliance of the final construction. I would like to point out that this house is located on a hillside lot and the grade at the sides and rear are much higher than in the front.

The City Council will soon be considering the adoption of the new version of the Construction Codes (12DCMR). The proposed amendments to Section 118.0, Certificates of Occupancy, will require new single-family dwellings to have a Certificate of Occupancy that will certify final compliance with these and other code requirements. This provision will ensure that a final construction inspection will verify completion of all required items, such as final regrading.

It is true that the main level of the house is approximately 14 or 15 feet above the sidewalk. The other houses in the block, north of the house in question, are also at least as high above the sidewalk. But as I explained above, that is irrelevant to the application of the zoning regulations. I also measured the floor-to-floor dimensions of the framing and the distance between the first and the third floors is approximately 21 feet. The ceiling height of the top floor will be less than 10 feet, therefore, the height of the finished building, with the regraded front berm, will be approximately 35 ft.

A professional land surveyor performed a survey of the walls and the respective wall test plat indicates the closest points to be 5'-11" and 5'-2" from the side property lines. Therefore, the side yards, at their narrowest points, are more than 5 feet wide. I have

to rely on the results of this survey. A measurement taken from the fence, on the field, will never be as accurate as a professional survey.

The original building at 4512 28th Street NW was built in 1956, which preceded the Zoning Regulations (May 1958). Several aspects of the pre-existing development of the lot are grandfathered. Because the side yards were at least 5 ft wide, the structure was never considered a "non-conforming structure." The provisions that regulate additions to a non-conforming structure are not applicable to this project. As a conforming structure, alterations or additions to it are allowed, and the side yard condition may remain even though an entirely new structure is required to have a minimum of 8 feet side yard, as long as the alterations or additions do not reduce the side yard and the side yards are at least 5 ft wide The project preserved the foundations and walls up to the level of the main floor, therefore the sides of the house remain at the same location as before.

Because 4512 28th Street NW is not located in any district enjoying special protection under the Historic Preservation Law or the Shipstead-Luce Act, considerations of appropriateness of the style of the project for the neighborhood are beyond our regulatory reach. I empathize with the neighbors in this respect. This house will certainly be the most conspicuous structure to anyone walking along the block, but none of these considerations amount to a violation of the applicable regulations that would warrant any enforcement action on our part.

If I can be of further assistance on this or any other matter, please call me at (202) 442-4677. Mr. Michael D. Johnson, Zoning Administrator, can also be reached at (202) 442-4560, for further clarification on this matter in the event that I am not immediately available.

Sincerely yours,

Armando M. Lourenco
Administrator

cc: Lloyd J. Jordan, Director
Michael D. Johnson, Zoning Administrator

EXHIBIT 18

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

KATHY PATTERSON
COUNCILMEMBER, WARD 3

CHAIRPERSON
COMMITTEE ON GOVERNMENT OPERATIONS

OFFICE: (202) 724-8062
FAX: (202) 724-8118

September 13, 1999

Lloyd J. Jordan, Director
Department of Consumer and
Regulatory Affairs
941 North Capitol Street NE Suite 9500
Washington DC 20002

By facsimile and mail

Dear Mr. Jordan:

In a telephone conversation Thursday, September 9, 1999, you assured me that I would receive from you the following morning, by hand delivery, your written opinion that the structure under construction at 4512 28th St. NW is in compliance with all relevant requirements, including height and footprint.

Instead, I received by fax at close of business Friday a lengthy letter from Armando Lourenco on your staff stating, in conclusion, that "none of these considerations amount to a violation of the applicable regulations that would warrant any enforcement action on our part." I presume, therefore, that Mr. Lourenco speaks on your behalf.

Mr. Lourenco writes that "a professional land surveyor performed a survey of the walls." Please provide me, as soon as possible, with a copy of that survey. Please inform me as to who hired the surveyor, who compensated the surveyor, and the timeframe for the survey. If the survey was made at the request of a private party I would question Mr. Lourenco's assertion that "I have to rely on the results of this survey."

In your letter, you also acknowledge that "...the owner filed an application to revise the profile of the existing berm, at the front of the building, to bring the finished grade to four feet below the level of the main floor of the building" because "...the approved plans appeared to show the proposed finished grade, at the front of the building, more than 4 feet below the ceiling of the lower level of the building." Therefore, the owner amended his original application because your agency concluded that the actual structure was not in compliance with regulations. Is it common practice to permit a developer to raise the berm, rather than reduce the height, when a building is found not to be in compliance with regulations? Do you anticipate changing regulations that permit such a practice or will it be necessary for me to pursue a legislative route?

Thank you.

Sincerely yours,



Kathy Patterson

cc: George Clark

EXHIBIT 19

REED SMITH SHAW & MCCLAY LLP

1301 K STREET, N.W.
SUITE 1100 - EAST TOWER
WASHINGTON, D.C. 20005-3317
202-414-9200
FAX 202-414-9299

HARRISBURG PA
McLEAN VA
NEW YORK NY
NEWARK NJ
PHILADELPHIA PA
PITTSBURGH PA
PRINCETON NJ

GEORGE R. CLARK
202-414-9215
e-mail. grclark@rssm.com

September 14, 1999

VIA FACSIMILE (202) 442-9445

Lloyd J. Jordan, Director
Department of Consumer and
Regulatory Affairs
941 North Capitol Street, NE
Suite 9500
Washington, DC 20002

Re: 4512 28th Street, N.W.

Dear Mr. Jordan:

I have seen a copy of Armando Laurenco's September 10, 1999 letter to Kathy Patterson concerning this property. I have also seen a copy of her letter of September 13, 1999 to you. I hope you will have answers to her questions forthwith, including whether it is common practice to allow a builder to change the ground level when a structure is found not to be in compliance with the regulations, rather than enforcing the law. I know that various citizens' associations and members of the media are very interested in DCRA's answer. No other local jurisdiction takes this view.

I will admit to being perplexed, however, as to your department's lack of concern that the structure is "technically, a four story building" and your proposed solution to in effect, "wait and see what happens."

According to Mr. Laurenco's September 10, 1999 letter, there is no approved permit application to revise the profile of the existing berm. His recommended course is to

allow the builder to finish the house, and then see if the builders does something which your department will find acceptable. Quite frankly we are simply dumbfounded at this complete abdication of responsibility by the DCRA. Under your "plan," the builder will finish the home and then discover it can't fix the problems. You will then be "forced" to approve the illegal structure.

Please provide me a copy of the revised application. There are many questions. Are the four basement windows to be covered? Is the existing garage now to be underground?

The original application states that the previous building had "2" existing stories and the proposed one has "3". You have acknowledged that the building in the original application has four stories by any measurement. Why does this misrepresentation entitle the builder to special consideration.

The department approved plans for a four-story house that it should never have approved. Now it is trying to find a way to say that it did nothing wrong. My only thought is that every President from Nixon to Clinton has learned that the cover-up is far worse than the original misdeed.

Mr. Laurenco is also incorrect when he tries to imply that the old building was conforming for purposes of 11 DCMR §405.8. Yet by referring to the five foot side yard requirement, he admits that §405.8 does apply to this property (that 5 foot requirement appears nowhere else in the regulations). That section says in full:

> In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; Provided, that the width of the existing side yard shall not be decreased; and Provided further, that the width of the

existing side yard shall be a minimum of five feet (5 ft.).

Mr. Laurenco admits that the new structure is 5 feet 2 inches on one side. The old house which was demolished had a minimum side yard of six feet according to the plans which your department approved. Therefore there has been a reduction in the side yard in violation of §405.8. Even Mr. Laurenco admits that any alteration or addition cannot "reduce the side yard" (page 3). Yet the department's own measurements (assuming it did the measuring) prove that that is exactly what has happened.

Mr. Laurenco is also incorrect in saying that the sides of the house "remain at the same location as before" (page 3). The main story and the two additional stories of the house have been extended by 6 1/2 feet along each side, before an additional 10 foot single story extension. Once again Mr. Laurenco has not looked carefully either at the plans or the property.

Finally, Mr. Laurenco has not at all addressed the point that § 405.8 does not allow this addition or extension, as is explained in my letter of September 8, 1999. The plans which your department approved say "remove roof above completely." Therefore there is no building under § 405.8 which can be expanded or added to. This is not a "technicality" to be ignored -- it is the law you are sworn to uphold.

Please let me know whether the department has in fact approved amended plans, and on what date it did so. If it has not, please let me know on what basis the department is allowing construction to go forward. I also request that you make a copy of the application and the plans available to me immediately.

Thank you for your assistance.

Sincerely yours,

George R. Clark

GRC/ydw

cc: Anthony A. Williams, Mayor
Kathy Patterson, Councilperson
Michael Johnson, Zoning Administrator
Richard Nettler, Esq.

EXHIBIT 20

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B416784

PERMIT

Date 9/17/99 (Type) MISC.

Address of work 4512 28TH ST NW

Lot 29 Square 2251

Permission is hereby granted to
FOREST HILLS, LLC
who is authorized to perform the work described herein at the address shown above *in strict accordance with the conditions* stated on BOTH sides of this permit.

Authorized work and conditions of performance thereof

(Owner) NO.

TOTAL PERMIT FEE $

FILING FEE $

DATE

FEE PAYABLE $ 60.00

FOR INSPECTIONS CALL [redacted] 442-4641

REVISE BUILDING PERMIT # B424294
CHANGE FINISHED GRADE TO CONVERT BASEMENT TO CELLAR AS PER ROBERT CHEN.

Builder—

Value $

No. of Bldgs.

Width of Bldgs. Length

Height

No. of Stories 2

Zone R1A

To be occupied as SFD

Height of terrace above grade

Projections:

Address of owner PO BOX 34208

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

L. JORDAN

DIRECTOR

Chief, Permit Issuance Branch

By J Hackney
Permit Clerk

EXHIBIT 21

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE DIRECTOR

September 20, 1999

Honorable Councilmember Kathy Patterson
Ward 3
Council of the District of Columbia
441 4th Street, NW
Washington, DC 20001

Re: 4215 28th Street, NW

Dear Councilmember Patterson:

I apologize for the misunderstanding as to who was going to issue an opinion on the subject property.

I thank you for bringing to my attention this matter of the potential abuses of the Zoning Regulations by regrading properties so as to fit certain new homes, or additions to existing homes, under the height cap allowed by the rules. I agree with you that the Zoning Regulations have too many gray areas that need to be clarified and this administration will work with your office towards this goal. The special nature of the regulation of land use in the city, that the city charter assigned to the Zoning Commission, will require a truly collaborative effort of various branches of government to achieve such a goal.

I addressed your concerns to the Building and Land Regulation Administration staff. They reported that the enforcement of the regulations has been based on allowing matter-of-right development upon request. The regulations do allow property owners to regrade their lots as they see fit, including raising the finished grade. This has been a practice allowed by the Zoning Administrator, for years.

The Zoning Regulations do not restrict the way in which berming at the front of a residence is accomplished and at this time I do not anticipate requesting the Zoning Commission to address this particular aspect. Given the wide range of conditions that the terrain may present in the different neighborhoods of the city, this is an area where the impact of further regulatory constraints should be very carefully assessed before new rules are enacted. The City is full of areas with very steep slopes, many of which in Ward 3. A change in the rules, even a small one, to prevent regrading of lots, may result in a dramatic impact on the ability of property owners to use their properties.

On the issue of the wall check, the procedure currently in place is that the owner of a property where new construction occurs is responsible for contracting a land surveyor registered in the District of Columbia to perform a survey of the location of the walls as they reach grade level. The surveyor files the plat thus produced with the D.C. Surveyor, who reviews the methodology used in performing the survey and transmits it to the Zoning Division. Upon comparison of the field conditions depicted on the wall check plat with the approved plans, the Zoning Administrator transmits his concurrence to building inspections, to proceed with the construction. When Mr. Lourenco stated that he had to accept the results of the surveyor's wall check, he meant that it is practically impossible to obtain the same precision with a cursory field measurement as the precision level achieved in a professionally performed survey that starts from permanent markers and utilizes precision surveying equipment.

As you certainly recall, the Second Omnibus Regulatory Reform Bill, passed by the Council at the end of 1998, mandated that private professional land surveyors be allowed to perform certain surveying functions that include, and far exceed, these wall check surveys. It is implicit in this process that a licensed professional surveyor will perform his or her job dutifully. That is the principle that both the Council and the Financial Authority embraced when the policy of expanding the scope of regulatory functions that could be outsourced to third party private entities was adopted and enacted in the two omnibus bills. In the particular case of third-party wall checks by D.C. registered professional land surveyors, more than ten years of experience have proven to be very successful, therefore we see no reason to believe that this particular survey (copy appended) is flawed.

Should the adjoining neighbors believe that the determination of the lot line done by the first surveyor is wrong, they have the option of contracting another D.C. registered land surveyor to establish independently the location of the lot line. The neighbors may obtain a list of professional land surveyors registered in the District from the D.C. Surveyor's Office upon demand, by calling (202) 442-4690. If a significant discrepancy is found, I certainly would like to be apprized of it, to investigate the matter and take any steps that may be warranted to ensure the continued integrity of the process.

Sincerely,

Lloyd J. Jordan
Director

Attachment

8-18-99

DISTRICT OF COLUMBIA GOVERNMENT
Office of the Surveyor

Wall Report for SQUARE 2251 LOT 29

Scale: 1 inch = 20 feet Recorded in Book 83 Page 44

S.O. SEAL S.O. Receipt No. S-06583

Received by _____ Surveyor, D.C.

Date August 27, 1999

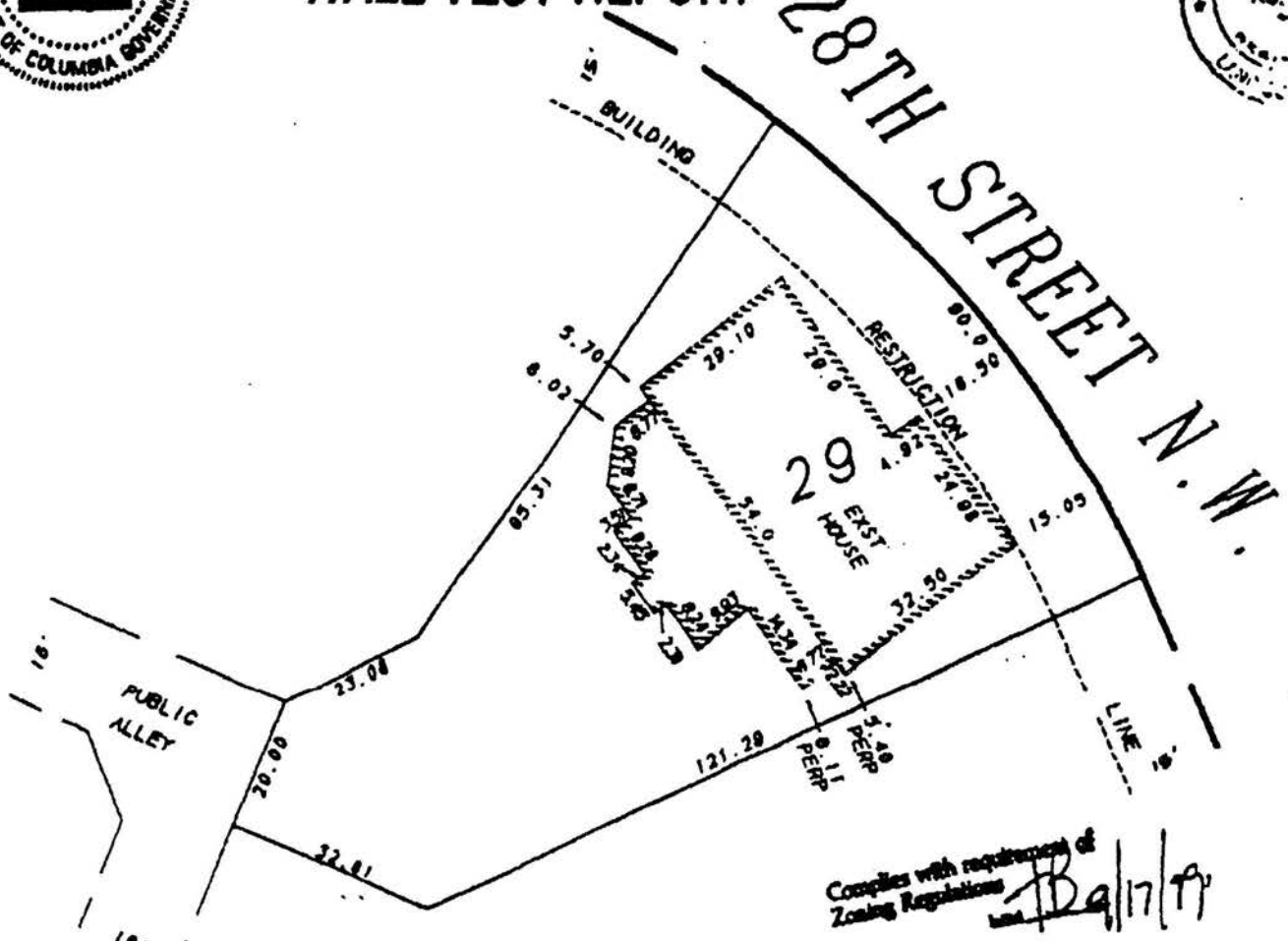
REGISTERED LAND SURVEYOR'S CERTIFICATION

I certify that the wall locations shown hereon have been determined by me, or under my direction, in accordance with Chapter 28 of Title 10 DCMR, and that I have not engaged in the construction layout of this site.

RLS SEAL

DISTRICT OF COLUMBIA — THOMAS A. MADDOX — No. 91-4

WALL TEST REPORT



Complies with requirement of Zoning Regulations [illegible] 8/17/99

B424294

4512 28th St NW

CINDERBLOCK CORNERS LOCATED

EXHIBIT 22

PERMIT

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

Form BLRA 15
(Rev 9/30/91)

BUILDING PERMIT PERMIT NO. B423559

Date 12/9/99 (Type) MISC. /PROJ. /MODIF./RET. WALL Lot 29 Square 2251

Address of work 4512 28TH ST. N.W. TOTAL PERMIT FEE $

Permission is hereby granted to FOREST HILLS LLC. (Owner) FILING FEE $

who is authorized to perform the work as stated herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit. NO. DATE

Authorized work and conditions of permit are marked. FEE PAYABLE $ 450.00

FOR INSPECTIONS CALL 727-7562

INSTALL NEW STEPS, LEADWALK, AND RETAINING WALL IN FRONT. NEW RET. WALL IN REAR. MAT. TIMBER-REAR, BLOCK, CONCRETE , STONE, HEIGHT 3 FT. TO 6.5 FT. ENTIRELY ON OWNER'S LAND. INSPECTION BRANCH 442-4641.

Builder— Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories 3

Zone To be occupied as SFD-RESIDENCE

Height of terrace above grade Projections:

Address of owner

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

L. JORDAN
DIRECTOR

Chief, Permit Issuance Branch

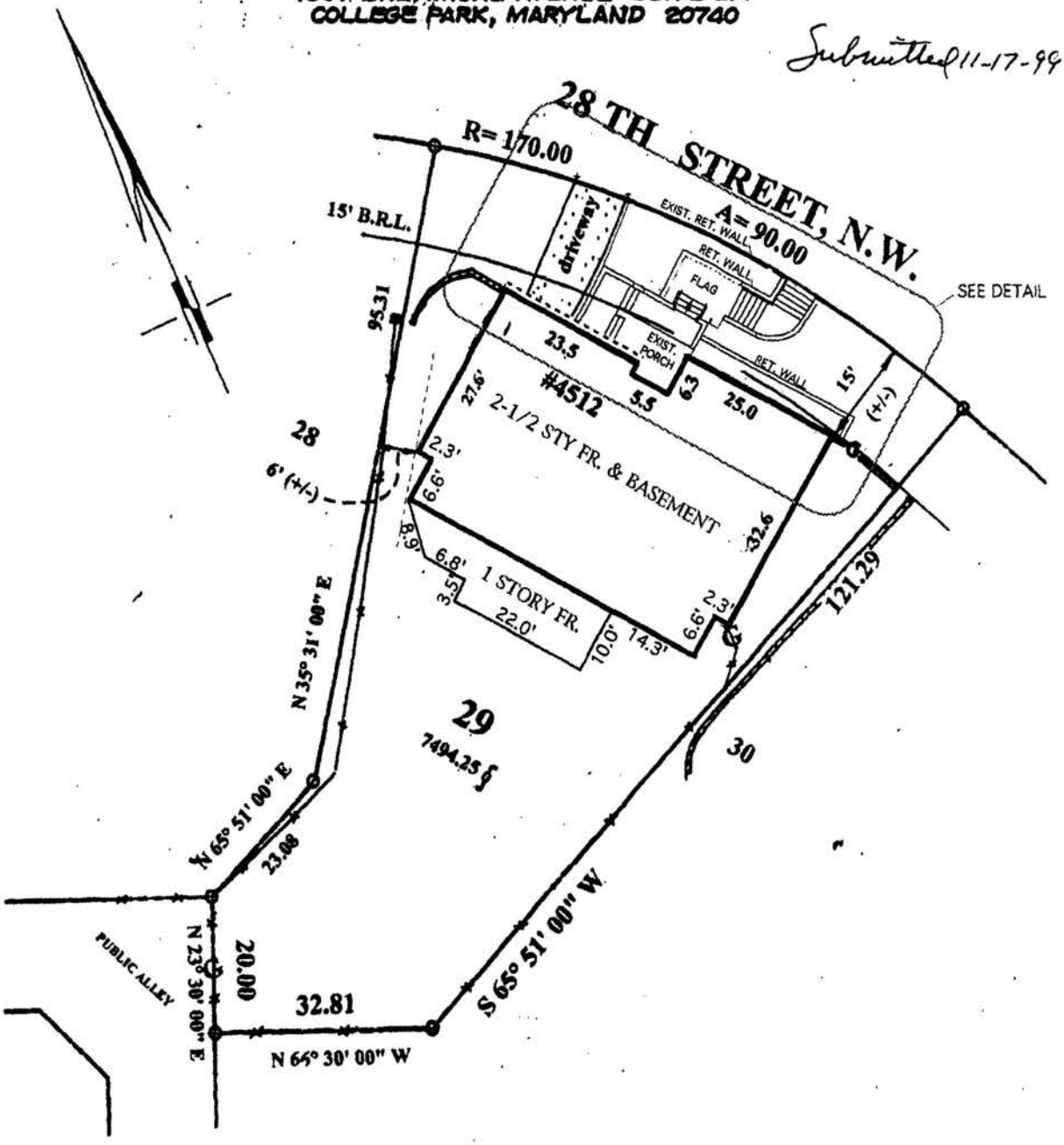
By D. Hicks
Permit Clerk

Phone: 301-949-6089 Fax: 301-949-9455

EXHIBIT 23

7807 BALTIMORE AVENUE SUITE 214
COLLEGE PARK, MARYLAND 20740

Submitted 11-17-99



NOTE: THIS PROPERTY LIES IN FLOOD ZONE C, AN AREA OF MINIMAL FLOODING AS DELINEATED ON THE MAPS OF THE NATIONAL FLOOD INSURANCE PROGRAM

STATE OF MARYLAND
GRADON A. ROGERS
No. 119
REGISTERED
PROPERTY LINE SURVEYOR

NO TITLE REPORT FURNISHED

LOCATION SURVEY OF 4512 28TH STREET, N.W. WASHINGTON, D.C.	LOT: 29	SQUARE: 2251
	LIBER: 83	FOLIO: 44
	DATE: 12-22-98	SCALE: 1" = 20'
	CASE NO:	FILE NO: AT-98141

CERTIFICATION: I hereby certify that the position of all the existing visible improvements on the above described property has been [illegible] established in relation to the apparent title lines and that, unless otherwise shown, [illegible] visible encroachments. This is not a property line survey and should not be used for the location of fences or any other improvements.

[illegible] MD. LIC. NO. 119

EXHIBIT 24

8-18-99

DISTRICT OF COLUMBIA GOVERNMENT
Office of the Surveyor

Wall Report for SQUARE 2251 LOT 29

Scale: 1 inch = 20 feet Recorded in Book 83 Page 44

S.O. SEAL

S.O. Receipt No. S-06583

Received by _____ Surveyor, D.C.

Date August 27, 1999

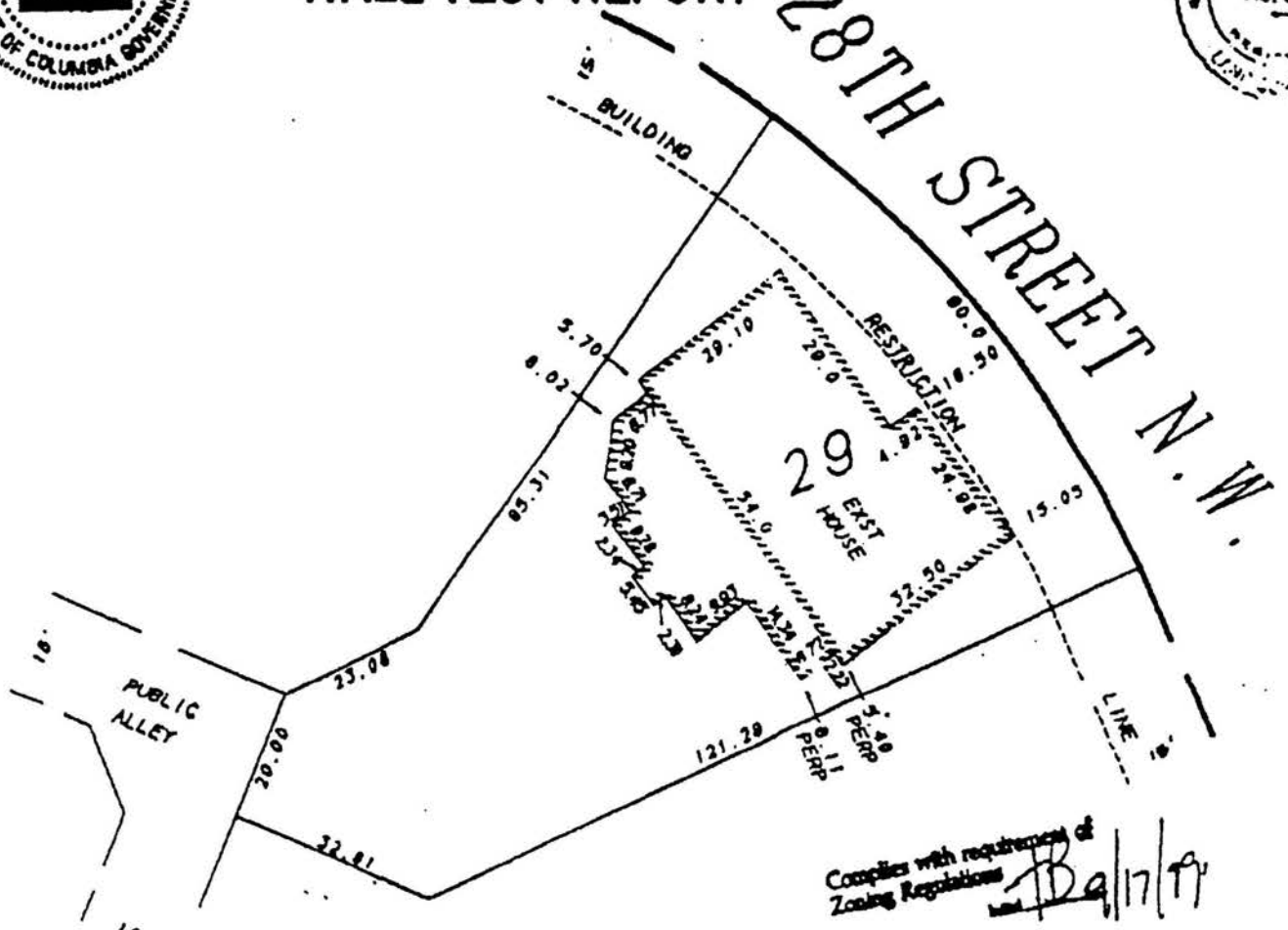
REGISTERED LAND SURVEYOR'S CERTIFICATION

I certify that the wall locations shown hereon have been determined by me, or under my direction, in accordance with Chapter 28 of Title 10 DCMR, and that I have not engaged in the construction layout of this site.

RLS SEAL

DISTRICT OF COLUMBIA — THOMAS A. WADDUP — No. 91-4

WALL TEST REPORT



Complies with requirements of Zoning Regulations 8/17/99

B424294

2512 28th St NW

CINDERBLOCK CORNERS LOCATED

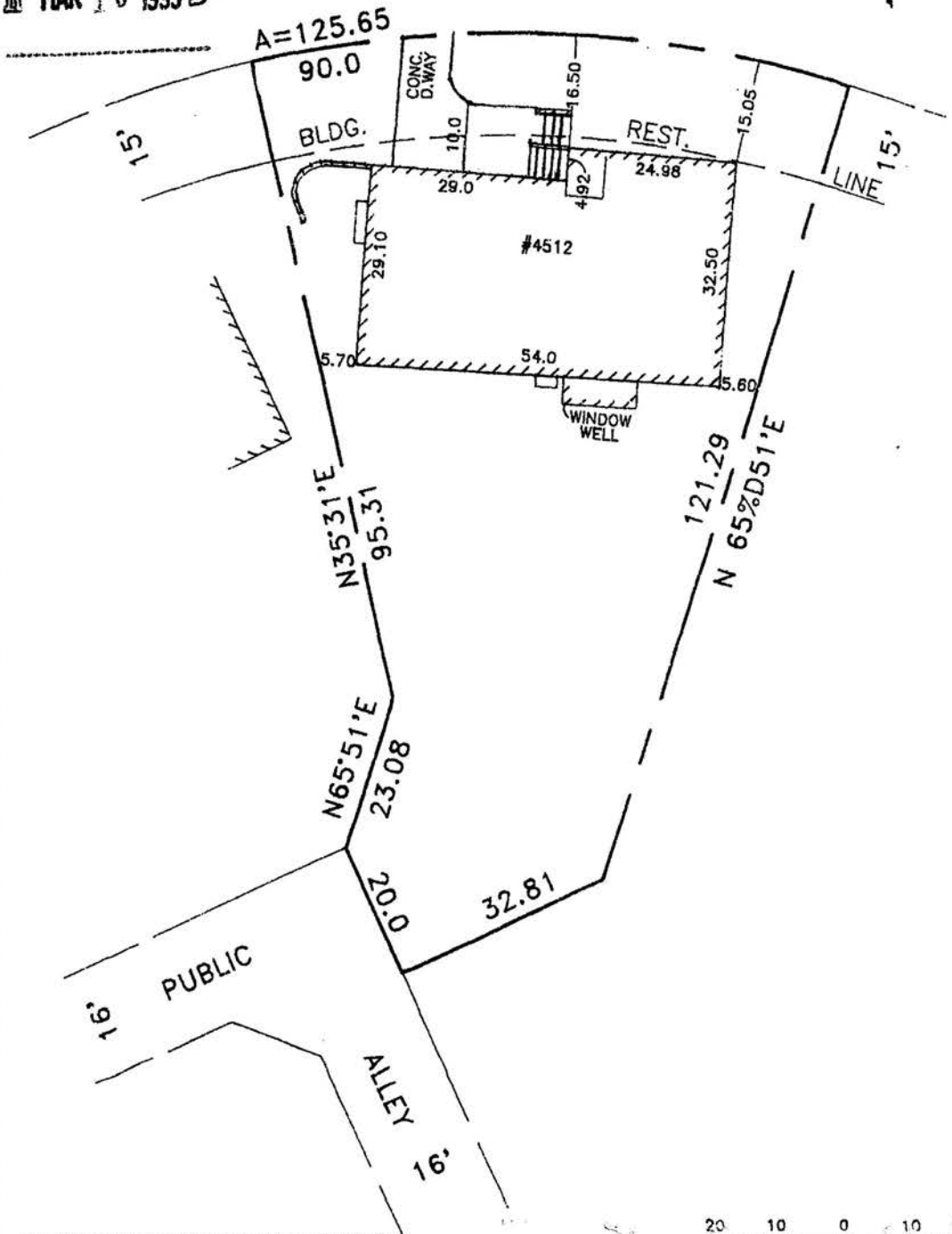
EXHIBIT 25

HOUSE LOCATION SURVEY
LOT 29 4215 28TH ST, N.W.
WASHINGTON, D.C.

28TH STREET, N.W.

SCALE: 1" = 20'

RECEIVED
MAR 10 1999



THIS PROPERTY IS SUBJECT TO RESTRICTIONS OF RECORD.
THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT

20 10 0 10 20
SCALE: 1" = 20'

CERTIFICATE

I HEREBY CERTIFY THAT THE POSITION OF ALL THE EXISTING IMPROVEMENTS ON THE ABOVE DESCRIBED PROPERTY HAS BEEN CAREFULLY ESTABLISHED BY A TRANSIT-TAPE SURVEY.

REGISTERED PROFESSIONAL ENGINEER

PROFESSIONAL LAND SURVEYOR No.

REFERENCES	
PLAT BK.	
PLAT No.	
LIBER	
FOLIO	
FIELD BOOK	
PAGE No.	

WEST CONSULTING GROUP, INC.
4424 MONTGOMERY AVENUE,
BETHESDA, MARYLAND 20814
(301) 654-7907 654-7908 (FAX)

DATE OF SURVEYS	SCALE: 1" = 20'
WALL CHECK	DRAWN BY: RP
HOUSE LOC.	
BOUNDARY	JOB No. 99-025

EXHIBIT 26

NEAL ALAN DUNCAN ARCHITECT
1789 Lanier Place NW Suite B2
Washington DC 20009 202 667-1494 V+F

JOHN PATRICK BROWN. JR.
Greenstein Delorme & Luchs, P.C.
1620 L St. NW Suite 900

January 26 2000

Dear Pat,

Per your request I visited the project at 4512 28th St. NW this morning and obtained the following measurements:

1. The first floor overhang above the garage at the front of the house overhangs 1'-7" finished from the exist. basement foundation wall. This is consistent with my plans which call for 1'-6" to rough framing. (1'-6" + 1/2" sheathing + 1/2" siding = 1'-7")

2. The front balcony and the porch beneath it have the same footprint. They project 1'-10" from the wall of the building nearest 28th street, and run parallel with the front 13'-2 1/2".

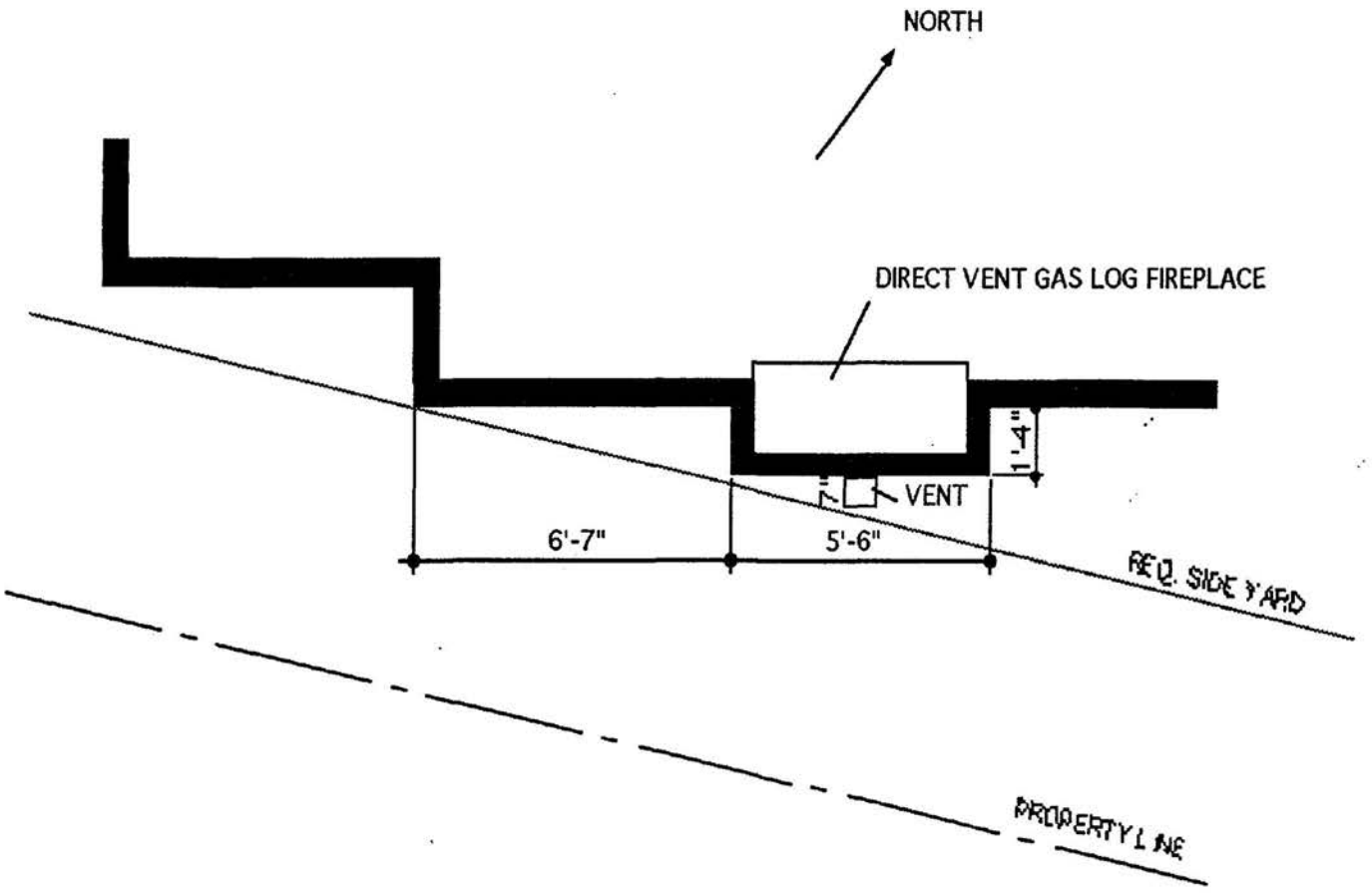
3. At the front of the house where the 4 basement windows are, the basement ceiling is 3'-6" above finish grade (±1"). The stone watercourse above the basement windows is 3" above the basement ceiling (±1/4").

4. The enclosure for the direct vent gas log fireplace in the living room projects from the side of the building 1'-4" and is 5'-6" long (parallel with side of house). It starts 6'-7" from the rear corner of the house closest to the property line. See attached drawing.

Sincerely

neal alan duncan

Neal Duncan



PLAN DETAIL @ SOUTHEAST CORNER OF HOUSE

1/4" = 1'-0"

4512 28TH STREET NW
WASHINGTON DC