BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Henry P. Sailer
Lisa S. Kelly, M.D.
Steven S.Wolf, M.D.
Arthur L. Levi
Veronica and Bruce Steinwald
Veronique LaGrange
Benoit Blarel

BZA Appeal No. 17054
Public Hearing Date: October 21, 2003
ANC 3D

D.C. OFFICE OF ZONING
2003 OCT -7 PM 2:30

APPELLANTS' PRE-HEARING STATEMENT

I. Statement of Appeal

This is an Appeal of Henry P.Sailer, et al., pursuant to 11 DCMR § § 3100 and 3101, from the administrative decision of the Zoning Administrator in the issuance of Building Permit No. B448548, to Brian Logan dated January 29, 2003, for the construction of a new single-family detached dwelling, as revised by Building Permit No. B452193 dated June 13, 2003 to "Revise Permit #B448548 to Show Pervious Drive to Accessory Garage Structure."

1. The Permits violate the tree removal limitations of the Chain Bridge Road/University Terrace Overlay District (CBUT). 11 DCMR §1568. A tree was unlawfully taken down. Others have been so severely damaged by construction activity that they will not remain structurally stable and will need to be removed.

2. The two-story accessory building being constructed on the Subject Property does not comply with the applicable use and access requirements of 11 DCMR §2500.5 and §2117.8. The structure is in reality a prohibited pool house or other forbidden structure, not a garage with a second story domestic quarters.

3. The driveway to the required parking garages does not meet the 14-foot width requirements. 11 DCMR § 2117.8.

BZA
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Exhibit No. 22

Board of Zoning Adjustment
District of Columbia
CASE NO. 17054
EXHIBIT NO. 22

4. The Permit violates the fifty percent (50%) maximum impervious surface requirement of the CBUT, 11 DCMR § 1567.2.

5. The "Drive Courts" are not impervious as required for driveways providing access to required parking and/or an accessory garage or open parking spaces. 11 DCMR §§ 2117.4, 2117.10 .

6. The pervious surface characterization of the driveway is not in compliance with the Zoning Regulations and is an unsuccessful attempt to circumvent the 50% impervious surface restrictions of the CBUT. 11 DCMR §§ 2117.4, 1567.2.

7. The proposed structure violates the applicable eight (8) foot side yard requirement. 11 DCMR §§ 199.1, 405.9, 2503.4.

8. The proposed pool violates the applicable twenty-five (25) foot rear yard requirement. 11 DCMR §§ 199.1, 404.1, 2503.2.

II. Background of the Appeal

This action involves construction on a lot at 3101 Chain Bridge Road N.W., previously the site of one of seven dwellings located on the Battery Kemble Park side of Chain Bridge Road. Appellants are the immediately contiguous neighbors and several additional neighbors. We are appealing various developments at 3101 which have severely injured, are severely injuring and if not halted will severely injure us in the future enjoyment of our homes and lands.

Brian Logan (hereafter "Logan"), whom we understand to be a speculative developer, bought the property in or around 2000 and lived there himself for a period. On February 8th of this year, without the slightest warning, he tore down the only structure on the property, and since then has been building a mansion of approximately 15,000 square feet whose height and width are apparently designed barely to comply with the applicable law in each respect. He is

also in the process of building in his lower yard, which when he bought the property was a grassy slope terminating at Battery Kemble Park, a two story auxiliary building which when seen from the side perspective of the neighbors is some 40 feet high, and has covered a large part of the space remaining on the lot with stone and gravel. In addition, Logan has destroyed a number of trees, including a large one which had been located right next to the border with Logan's neighbor, in claimed compliance with the Chain Bridge Road / University Terrace Overlay tree removal clause, a proposition which we will show to be without merit.

Because of the particular nature of this case, it has not been practicable to prepare a single statement of facts, or a unitary legal argument. Appellants have identified no less than 8 important factual and 8 important legal issues, each bearing no significant relationship of fact or law with any other, and each thus requiring entirely separate argument. There is simply no way to treat these wholly separate matters as one.

III. Argument

1. The Chain Bridge Road / University Terrace Overlay Tree Protection Clause Has Been Violated By the Developer Taking Down A Large Tree Which He Had No Right To Do and Causing Irreparable and Fatal Damage to Other Trees.

A.

The relevant rules as to trees, violation of which carries Draconian penalties, are ultimately very simple. Under the Chain Bridge Road/University Terrace Overlay (§1568.2) no property owner may destroy a tree greater than a certain size on his property without going through certain regulatory procedures unless the tree is dead, unhealthy or hazardous, and is certified to be so by an arborist. If the determination of the property owner and arborist is challenged the property owner must of course prove its correctness.

Logan chose not to go through the regulatory procedures. In early 2001, two years before the other events relevant here, he obtained from an arborist with whose firm he has had other dealings a letter about a large tree on the border between his property and that of an appellant. The letter states that the tree's condition, because many of its roots had allegedly been recently severely cut, made it hazardous both to Logan and his neighbor. Neither that neighbor nor any other appellant was informed of these alleged facts, and none of us knew any of this until the tree, after being felled more than two years later in February 2003, had been reduced to wood chips. We think it extremely odd (to use a polite word) that as to this tree, certified to Logan as "hazardous," he took no action whatever for more than two years, including not notifying his neighbor. Perhaps, like us today, he didn't believe it.

The issue here is the veracity of Logan's arborist's letter, which so far as we know was the sole material on which Logan relied in having the tree felled.

It takes a tolerably close reading of the arborist's letter (indeed so close that it took the writer six readings before he realized it, thus raising the question as to whether perhaps there was a desire to obfuscate) to realize that the arborist never saw a single cut root. Rather, his charges are based on his guess (which was only a guess) that when the neighbor "construct[ed] a new driveway" the roots were cut. In fact there was no "construction of a new driveway." The existing driveway was repaved (a very different proposition).

Our case on this point is simple. We will prove conclusively by two eminent expert witnesses that it is perfectly clear that the roots were not cut. One of these witnesses appears to be the only expert who ever saw the roots with his own eyes. Both witnesses' testimony will be unequivocal.

The only additional ground relied upon by Logan's arborist relates to a condition called Bacterial Leaf Scorch. All three experts on both sides appear to agree that the existence vel non of this condition can be established only by laboratory tests and Logan's arborist states in his January 2001 letter that he has sent twigs [a sample] for this purpose. Remarkably, we have been advised that no testing ever took place – that it was canceled by Logan. There is thus no evidence supporting Logan's arborist's tentative opinion on this score.

B.

Logan has committed an additional, separate, egregious and extremely significant violation of the Tree and Slope Regulations by removing or fatally damaging regulated trees in excess of his allowable quota (§1568.1).

1. As of April 2003, Logan had removed his allowable quota of three trees between 12 and 24 inches in diameter.

2. In violation of §1568.1, and without seeking a Special Exception from the Board of Zoning Adjustment (§1569.1), Logan built a deep trench, concrete retaining wall, and other major construction very close to his North property line, in close proximity to two trees very near that line. An expert witness will testify that this construction activity has so severely damaged the root system of these trees that they will require removal due to the hazardous condition that has been created by Logan's unpermitted activities.

The brevity of our discussion of this issue shows not that the violation was trivial (which it was not) but the precise opposite. The facts are so simple, direct and clear, and the violation so blatant, that there is not much to say on this matter.

We think it appropriate and desirable to bring forward one final point which strictly speaking may not be part of this case, but has a special deleterious effect on one appellant. As stated, in the last few weeks Logan, while presumably preparing to defend his tree felling because of a nonexistent root cutting, has without a by your leave caused the digging of deep trenches right on his boundary line with one of us, which activity has systematically and intentionally cut the roots of several trees standing barely on the other side of that line on our property. One of these trees in particular is mature, extremely handsome, flowering and of great size -- a cherry -- close to its owner's heart. The owner is considering how best to properly seek redress, but in the meantime cannot resist bringing this astonishing action to the Board's attention.

2. <u>The Developer, Brian Logan, Has Not Met The Requirements For Building A Two Story Accessory Building, And has Lied About His Intentions.</u>

Logan is in the process of building in his lower yard -- cheek by jowl with his swimming pool -- a two-story structure. It is to the neighbors highly offensive and 40 feet tall - on a spot that not long ago was unsullied lawn.

The regulations state that such a two-story structure may not be constructed unless the lower story is or contains a garage and the upper story is entirely living quarters for domestic staff (§2500.5). Logan perforce claims that the structure meets these criteria.

To weigh Logan's claim requires a bit of history and a bit of common sense.

In seeking his original permit, Logan made, as he here continues to make, obeisance to the claim of "garage" and "living quarters." We not surprisingly do not have documentary proof that the latter claim was not made in good faith (but see infra). We do have the most concrete evidence as to a proposition we think Logan would be hard put to deny -- that his original statement as to a garage was knowingly and intentionally false -- that he was planning to

construct an illegal building. This is left beyond doubt by the fact that he had no plans and no intention to build an indispensable adjunct to a garage -- a driveway -- leaving his building marooned so far as automobiles were concerned, thus rather strongly tipping his hand.

It required only a cursory look by us at the plan filed with his original permit (in several ways unclear but not in this) which anomalously showed a garage without driveway, to move us to ask Logan for a meeting. No response. But as it became clear to him that we were not going away, he agreed to meet with us. Unfortunately, he brought with him no carrot, but only a large and ugly stick. Unless we left him a free hand, he threatened, he would at substantial expense move large quantities of dirt to satisfy the regulations' grade requirement for a driveway and heap up dirt on top of which to perch a two-story building substantially taller than the one that had already given such offense. And this is what he did. He also -- contemptuously it seems to us -- described his plan to fulfill the garage requirement by putting a motorcycle in the corner. His obvious position that if we withdrew he need not worry about the Board – presumably because it was careless or incompetent – was hardly complimentary.

The Board should not be fooled by this Potemkin maneuver. Logan had already made it unmistakably plain that he did not want a real garage by telling the zoning authorities that he was building one and at the same time making it impossible for it to be used as such. When he was telling the zoning authorities that he intended and wished to have a garage we now know that he was actually intending to build a secret something else. What could it be? And how could the Board possibly assume that he will carry out his currently stated intention of building a garage in light of this history?

We must not lose sight of the second-floor domestics issue -- a separate necessary requisite of a two-story building. Because, as we have just noted, Logan has already been caught

with his hand in the cookie jar, and his credibility is thus shattered, the Board in assessing his representations will have to use common sense.

In doing so, the Board will have to decide how likely it is that the developer of a multimillion dollar property actually intends to perch servants' quarters immediately above the swimming pool which will be used by the owner and his guests, inviting the servants to gaze with amazement, laughter, awe, envy and any other relevant emotion at the prosperous figures disporting themselves immediately below.

Common sense also says that the building, taking into account its location overlooking the swimming pool, is actually intended to be a luxurious pool house of the kind sometimes found on an estate such as this, although seldom so large or tall. Unlike garages and domestics' quarters, pool houses are customarily sited next to or near pools for obvious reasons. We find it impossible to believe that Logan has foregone the pool house which is an amenity of this kind of property in order to have a garage that he has made abundantly clear he does not want and will not use and an inappropriately (make that bizarrely) placed servants' quarters overlooking his swimming pool.

It is not our burden to show the specific use to which Logan intends to put the building, but rather only that it is not a garage and servants' quarters, a proposition the converse of which Logan has far from discharged his burden.

3. The Driveway Beginning At The Street Entrance To Logan's Property Is Far Narrower Than Required By Law.

Logan's driveway beginning at the street, which serves as a way to two parking spaces (one required) in the main house and an additional required space in the auxiliary building (accepting Logan's assertion that it is to contain a garage), is shown on Logan's plans as never more than 8 feet wide. This is clearly greatly insufficient.

A single driveway serving as both entrance and exit for required parking places in two different locations is ipso facto targeted for two-way circulation, and must be 14 feet wide (§2117.8 (c) (2)). Even if designed only for one-way circulation, it would have to be 12 feet wide. Logan is vastly deficient on this score.

4. The Regulations Provide That the Surface Of Logan's Property Must be No More than 50 Percent Impervious. Logan's Own Plans Show That He Has Violated This Regulation.

Our calculations, made from Logan's current plans, show that he is in violation of the requirement that his property's surfaces may be no more than 50% impervious (§1567.2; exceptions not here relevant). See Exhibits 12 and 13.

Logan's plans additionally establish, as we shall show in subsequent paragraphs, that he classifies as pervious a considerable amount of surface required by the regulations to be impervious and thus to count against the 50% limit imposed on impervious surfaces. When the necessary corrections are made, it appears that no less than 61% of Logan's surfaces are required to be impervious, a gross violation of the pertinent regulations. See Exhibits 12 and 13.

5. Logan Has Further Violated The Impervious Surface Regulation By Mischaracterizing His "Drive Court" As Pervious Although It Is Required By Law To Be Impervious.

There is a substantial space on Logan's plans denominated a "Drive Court," no part of which he characterizes as "impervious," no doubt because he fears the consequences of the 50% rule. In fact, a motor vehicle way – a driveway – must be classified as impervious. There is no way to drive to and from the street to Logan's main house garage without driving on the Drive Court as part of the journey, and the surface upon which that driving is done is ipso facto a driveway. Unless Logan properly paves this area in compliance with the regulations, or changes

the garage route, he may not proceed with his construction. And if he does, he will be in gross violation of the 50% rule, and again may not proceed.

The intended use of the remainder of the Drive Court is, we are suspicious enough to believe, as parking spaces, likely for guests using the swimming pool. If so, it must be impervious. Logan will perhaps suggest a different use, and we will leave it to the Board to question him. For our part, we trust we may be pardoned, on the basis of past experience, for being somewhat doubting.

6. Logan Has Violated The Regulation That Requires Him to Have an Impervious Driveway To His Auxiliary Structure, A Problem He Can Solve Only By Increasing His Violation Of The Impervious Regulation.

In building a driveway from the street to his phantom auxiliary garage, Logan has made a mistake of classification. Since the "garage" is, if real, required as an essential element of Logan's two-story building, it is ipso facto a "required garage," and the driveway to it must be impervious (§2117.4).

Logan makes what he presumably intends to be taken as a deep bow towards compliance with the regulations covering driveways serving required garages, but the bow turns out to be no more than a slight nod. His plans show the relevant driveway to consist not of an impervious surface but of two parallel strips of impervious material lying on a pervious bed, over the entirety of which automobiles will pass. This might at best be called a "half impervious" driveway, a category with which neither we nor the regulations are familiar. It is simply not the impervious driveway that the law requires.

The necessary change in classification further increases Logan's already clear violation of the 50% impervious rule. He will have to find surfaces elsewhere on his property which can properly and legally be reclassified pervious.

7. Logan Is Violating The Regulation that Structures May not Encroach To Less than 8 Feet From His Neighbors Property.

Logan's site plan shows a set of stairs descending from the "drive court" to the North side yard, only 4 feet from the border with one of the appellants. Side yards must be 8 feet in width (§405.9) and must be open and devoid of structures with few exceptions. Logan's stairs do not in any measure meet the criteria for the only relevant exceptions. §2503.2 allows structures no greater than 4 feet above the grade at any point within required yards. Logan's stairs are 7 feet above grade, descending from the elevated "drive court" to the side yard. §2503.4 allows stairs in a required yard but only if the stairs lead to the ground from a door located on the story on which the principal entrance is located. The stairs in Logan's project lead from the "drive court," whereas the principal entrance is one story above this.

8. Logan Is Violating the Regulation that Forbids Him to Encroach To Less than 25 Feet from The Border of His Rear Yard .

Logan has designed a swimming pool near the rear property line. Surface water from the pool cascades into a large concrete "catch basin." Measurements from Logan's site plan confirm that this catch basin encroaches to within 18 feet of the rear property line, which abuts National Park Service land. This is not a trivial encroachment into the required rear yard. The regulations provide that a pool, like any other structure, shall be no closer than 25 feet to the rear property line and that rear yards must be unoccupied (§§199.1, 404.1).

IV. Witnesses

1. Ed Milhous (expert)
2. Frido van Kesteren (expert)
3. Steven S. Wolf
4. Veronica Steinwald

5. Henry P. Sailer

6. Arthur Levi (by affidavit)

7. Brian Logan (hostile)

8. Michael Thomas (hostile)

9. Steven Kay (hostile)

10. Joseph Christopher (hostile)

V. Exhibits

Exhibit 1: Trees Irreparably Damaged FromConstruction at 3101 Chain Bridge Road.

Exhibit 2: Sworn Affidavit by Arthur Levi.

Exhibit 3: Letter from Frido van Kesteren, arborist.

Exhibit 4: Sworn "Tree & Slope Protection (TSP) Overlay Districts" Affidavit by Brian Logan, submitted with tree removal permit application.

Exhibit 5: Letter from Joseph Christopher, submitted with tree removal permit application.

Exhibit 6: Sketch by Joseph Christopher showing locations/diameters of trees on property, submitted with tree removal permit application.

Exhibit 7: Handwritten itemized list of trees to be removed from property, submitted with tree removal permit application.

Exhibit 8: Knudson's comments about garage.

Exhibit 9: Plat for Building Permit.

Exhibit 10: Plat for Amended Building Permit.

Exhibit 11: Updated footprint of property construction ("Progress Set: Paving & Materials).

Exhibit 12: Impervious Surface Calculations.

Exhibit 13: Diagram of Declared and Required Impervious Surfaces.

Exhibit14: Letter from Appellants to Logan.

Exhibit15: Photograph taken 2/11/03 of roots of 31 inch diameter oak, felled 2/10/03.

VI. Conclusion

For the foregoing reasons, the Appellants respectfully request the Board to grant this Appeal.

Respectfully submitted,

By: Henry P. Sailer

Henry P. Sailer
Steven S. Wolf, M.D.
Lisa S. Kelly, M.D.
Veronica Steinwald
Bruce Steinwald
Veronique LaGrange
Benoit Blarel
Arthur Levi

October 7, 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Appellant's Pre-Hearing Statement was served by first-class mail, postage prepaid, this 7th day of October, 2003, upon:

Mr. Denzil Noble
Interim Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Room 2000
Washington, D.C. 20002

Mr. Brian Logan
2162 California Street, N.W.
Washington, D.C. 20008

Advisory Neighborhood Commission 3D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

Henry P. Sailer

Henry P. Sailer

216728v1

EXHIBIT 1

Trees Irreparably Damaged from Construction at 3101 Chain Bridge Road

Tree	Diameter	Location	Information Source
Red Oak	15"	near upper north property line	arborist inspection
Red Maple	39" (5 trunks)	northeast corner of property	arborist inspection

AFFIDAVIT

Arthur Levi, being duly sworn, deposes and says:

1. I am an appellant in this action being heard before the Board of Zoning Adjustment on October 21, 2003. I am the owner of 3045 Chain Bridge Road, immediately next to where the construction which is the subject of this action is taking place. I lived at 3045 Chain Bridge Road from November, 1981 through mid August, 2001 when I moved to Paris. I still own the house at 3045 Chain Bridge Road which has been rented to Dr. Bernd Fischer of the German Embassy in Washington, D.C. as of August 23, 2001. Dr. Fischer has lived in the house since that time.

2. On Saturday, February 8 at about 9 a.m. Washington time (3 p.m. Paris time) my tenant, Dr. Bernd Fischer, at 3045 called me at my home in Paris to tell me that early that same Saturday morning a bulldozer had felled the large tree that was almost on the property line between my house and 3101 Chain Bridge Road, the construction site. He said that the root system had caused a part of the driveway on a direct line from the tree to his kitchen door, which is on the side of the house facing the property at 3101 Chain Bridge Road, to heave up, to such a degree that it made the driveway impassable.

3. When in Washington in June of 2003 I spoke to the foreman supervising the work next door to my house and he gave me the name and address of the builder, Steven B. Kay. In June I went to see Mr. Kay, Executive VP of Encore Development Corporation at his office at 8120 Woodmont Ave, in Bethesda..(tel. 301-664-8022) We spoke of matters involving my property. He said, among other things, that his people had been very responsible and repaired the damage to my driveway caused by the falling tree immediately after it had occurred.

4. I am advised by Dr. Fischer that the German Embassy, of which he is an official, has a strict and unbreakable rule, with no exceptions, that its personnel in the United States may not participate in any way in any litigation here, be it state or federal, judicial or administrative. He has advised me that for this reason he cannot play any role whatsoever in this case. It is for this reason that I, having detailed knowledge of this matter and the clearest possible recollection, make this affidavit.

Arthur Levi

Arthur Levi

30 Sept. 2003

Date

Republic of France
City of Paris
Embassy of the United
States of America
} SS:

I hereby certify that on this day the individual (s) named below appeared before me and acknowledged to me that the attached instrument was executed freely and voluntarily

Arthur Landis Levi

Joanna C Melville

9/30/03 date

Consul
of the United States of America

Joanna C. Melville
Consular Associate
U.S. Embassy Paris, France

BARTLETT TREE EXPERTS

12200 NEBEL STREET, ROCKVILLE, MD 20852-2687 • (301) 881-8550 • FAX (301) 881-9063

April 29, 2003

Ms. Judith Lanius, Chair
Chain Bridge Road/University Terrace
Preservation Committee
2824 Chain Bridge Road NW
Washington, DC 20016

Dear Ms. Lanius:

On Monday, February 10, 2003 at 10 am, I observed a clearing operation in progress at 3101 Chain Bridge Road, NW, Washington, DC. The focus of the work centered on a prone Red Oak with a circumference of approximately 90 inches that had been felled from near the south property border northward across the lot.

The tree had been alive. No defects were visible and it appeared healthy. There was no sign of rot on any of the exposed roots.

If you have any questions, please let me know.

Sincerely,

Frido van Kesteren

Frido van Kesteren
ISA Certified Arborist

EXHIBIT D

AFFIDAVIT
TREES & SLOPE PROTECTION (TSP) OVERLAY DISTRICTS

This form must be competed, signed and notarized by the owner or authorized agent of any property that falls within the TSP overlay district and must be accompanied by a set of two topographic site plans complete with contour lines, number and location of regulated trees existing on subject site. Topographic plans should reflect an illustration of total lot occupancy and impervious surface ratio.

---

1. How many regulated trees will be removed? 3
   (provide statement from Arborist or other tree care professional as proof of basis for removal of tree(s))
   15" Spruce
   16" Oak
   30" Oak
2. What is the circumference of each tree to be removed? _____
3. What is the total circumference of all trees to be removed? 61 inches
4. What is the impervious surface ratio on subject property? ~~N/A~~
5. Does subject property abut an environmentally sensitive natural area? Battery Kemble Park
   e.g. parkland, stream beds, etc: If so, provide impact statement of adverse effect, if any, of proposed construction on adjacent subject area.

None

I hereby certify that be information provided on this form is true and correct to the best of my knowledge.

Signature of Owner/Authorized Agent

Brian Logan

Notary:

Subscribed and duly sworn to before my by the above named applicant, on this 9th day of MAY, 2000.

Notary Public

My Commission Expires _____

EMILY K. GUMPERT
NOTARY PUBLIC, D.C.
COMMISSION EXPIRES 4/30/2003

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

TREES & SLOPE INFORMATION FORM

NOTICE: IN COMPLIANCE WITH THE D.C. ZONING REGULATION, Section 1511, Trees & Slope Protection (TSP) Overlay Districts ". . . . . the general location and size of major trees. . . . " MUST BE SHOWN ON ALL APPLICATIONS BEFORE A BUILIDNG PERMIT WILL BE ISSUED

FAILURE TO NOTIFY THE ZONING OFFICE OF THIS INFORMATION MAY RESULT IN A FINANCIAL PENALTY AND /OR PERMIT DENIAL. All applications for any kind of construction (i.e. -greenhouses, additions, decks, etc.) must complete this form.

Check the appropriate response:

☐ I am building on a single family lot that has regulated trees. (Attached affidavit must be completed if checked)

☐ I am building on a single family lot that has no MAJOR TREES (trees of 12 inches or more in diameter measured at 4.5 feet above the ground).

☐ I hereby certify that the proposed construction will cause NO DISTURBANCE WITHIN THE DRIPLINE (outer perimeter of the crown) OF ANY TREE GREATER THAN 12 INCHES IN DIAMETER.

☒ I have major trees on my property and will need an Arborist or other care professional inspection before I can receive my permit.

Date 5/9/01 **Signature** _____
(Owner or Authorized Agent)

Lot size 15,654 s/f **Control Number** _____

Property address 3101 Chain Bridge Road NW, Washington, DC 20016

the CARE of TREES
9228 GAITHER ROAD · GAITHERSBURG, MARYLAND 20877 · (301) 948-5885 · FAX (301) 948-4353

January 16, 2001

Brian Logan Development
2162 California St., NW
Washington, DC 20008

Arborist: Joseph Christopher
International Society of Arboriculture
Certification Number MA-0096

Job Site: 3101 Chainbridge Rd., NW
LOT 870
SQ. 1427

Observations: The tree stands on the back/right side of the house, close to the property line. It is a Pin oak, 31 inches in diameter at 4.5 feet high. The crown of the tree is fully rounded in form. The trunk is straight and apparently free of structural defects. There appears to be a large number of dead branches ranging from 1 to 4 inches in diameter distributed throughout the crown. The extent of branch die back indicates a strong likely hood of an infection of Bacterial Leaf Scorch (Zylella fastidiosa), a disease of oaks which causes them to experience gradual decline and death. A sample of twigs was taken for testing, but the results are not yet returned. Of more immediate concern in terms of both structural stability and long term viability is the major damage to the trees critical root zone caused by the construction of a new driveway on the right side neighbor's property.

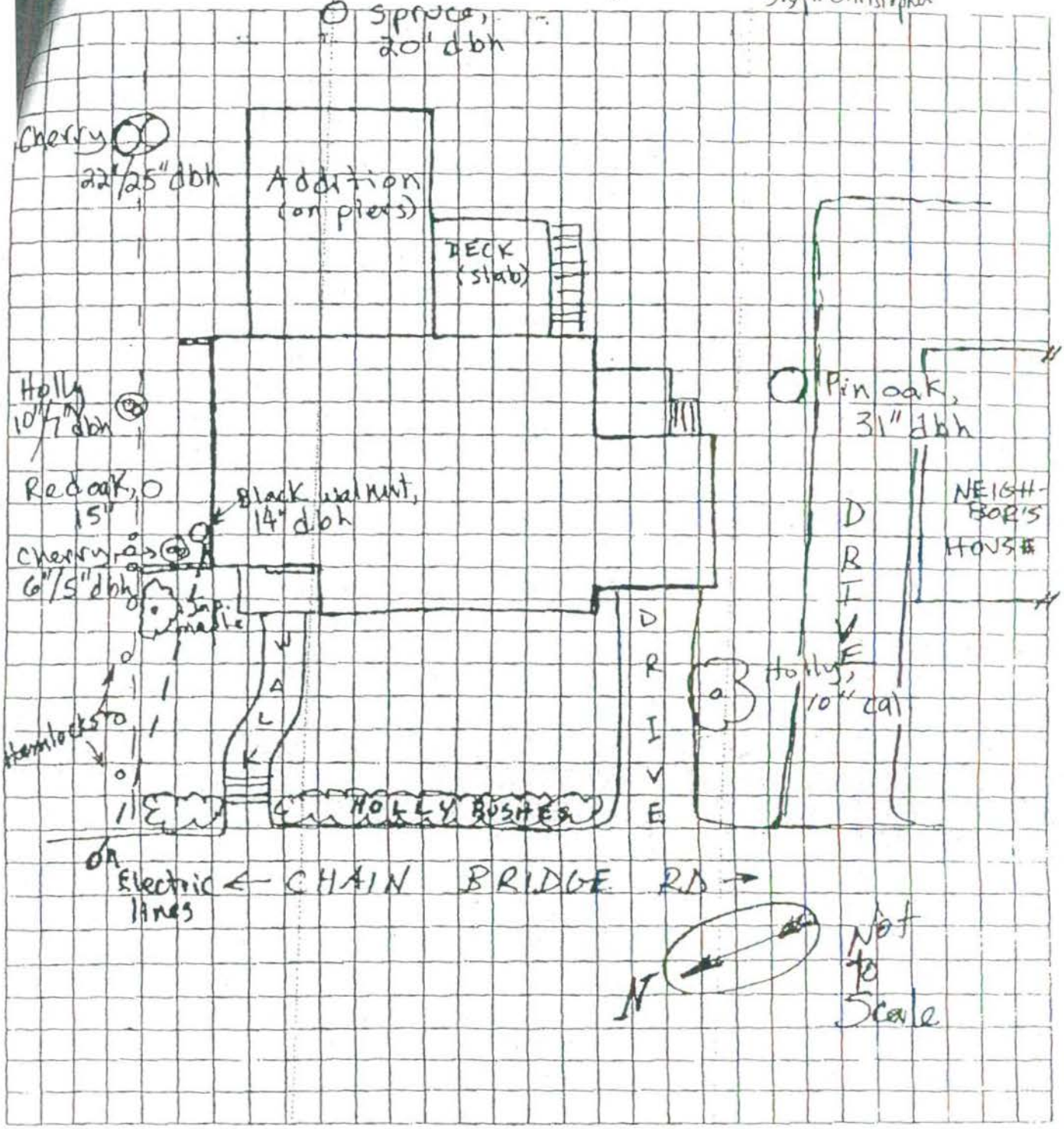
A cut was made across the entire root zone passing within 3 feet of the tree's root flare. As a result, the tree may be more susceptible to wind throw, especially when it leafs out and has an increased sail area. Both the neighbor's and my client's properties are within the potential target zone of the falling tree.

A longer term concern, if the tree does not blow over, is that a great number of roots were ripped off, leaving ragged wounds very susceptible to fungus pathogens such as Armillaria melea, which can cause the tree to decline and fail.

Because of the severe damage to the tree's roots and the resulting hazard to both client's and neighbor's property, as well as the overall poor condition for the tree, it is my opinion that the tree be taken down.

the CARE of TREES
SINCE 1946

Name: Brian Logan Development Co.
Date: 6 Nov., 2000
Address: 3101 Chain Bridge Rd., NW
Surveyed by: JMC
Joseph Christopher



Grid 7/97 | Office Copy - White | Client Copy - Yellow

Joan Sprue
301-948-5885

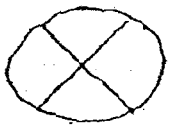
Jan 16 01 01:58p Care of Trees 301 948 4353

BRIAN LOGAN DEVELOPMENT - WASH, DC 20008

JOB SITE: 3101 CHAINBRIDGE RD, NW

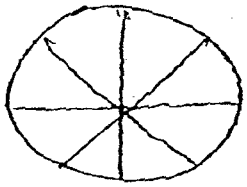
X - TREES TO BE REMOVED - NOT PROTECTED BY TREE & SLOPE OVERLAY

✓(1) - 12" BLADDERNUT
✓(1) - 10" HOLLY
(1) - 12" ASH



TREES TO BE REMOVED - 3 ALLOWED & ACTUAL

✓(1) - 15" SPRUCE
✓(1) - 16" OAK



DEAD OR DYING TREES TO BE REMOVED

✓(1) - 12" DOGWOOD AT REAR PROPERTY LINE

((~~LETTER FROM ARBORIST RECOMMENDING TAKE DOWN~~)

ALSO NOT PROTECTED BY TREE & SLOPE OVERLAY

✓(1) - 30" OAK ON BACK RIGHT SIDE OF HOUSE

(LETTER FROM ARBORIST RECOMMENDING TAKE DOWN)

Memorandum

FROM: David Knudson, Architect
1807 California Street NW, #306
Washington, D.C. 20009
(202) 986 -5542

TO: Leon J. Paul
DCRA Building and Land Regulation Affairs Technical Review Branch
Zoning Section

DATE: September 25, 2002

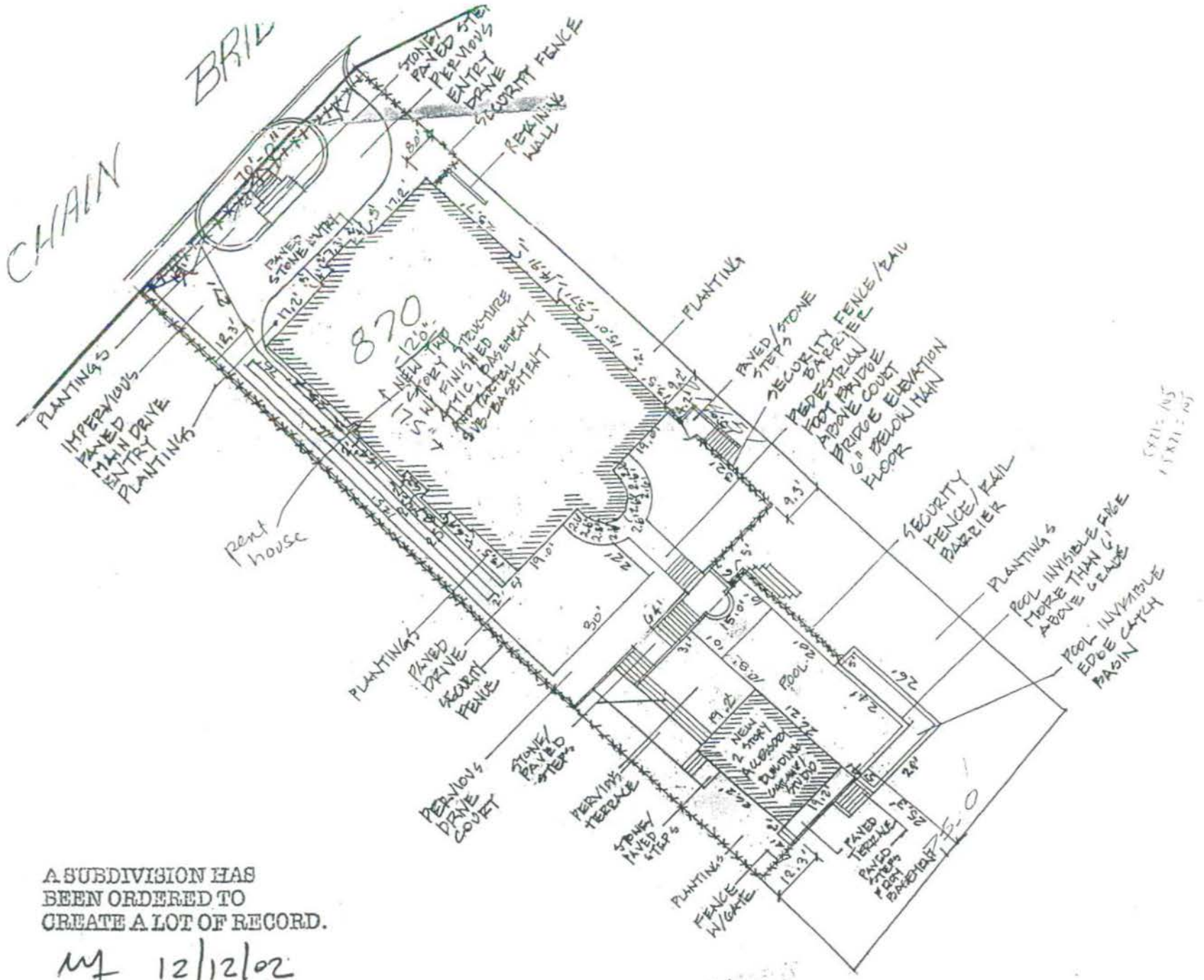
Re: Response to Zoning Questions dated 8/13/02,
Job No. 218A

Question Response

1. Please see drawing 1 on A3.1 for elevation markers for zoning height calculations. Median elevation of curb grade across front of site is 377'-6" with top of front parapet at 417'-6" for a building height of 40'-0". Actual curb height at the middle of the front of the building is 378'-0" – see landscape drawing L4. for a building height in the strictest sense of 39'-6" according to my understanding of the definition on1-12 DCMR title 11.

3. Answering question 3 will clarify the reasoning in answering question 2..
The accessory building was designed as a garage with domestic quarter's above. This is permitted under 2500.5 in DCMR title 11 as I have read it. According to my understanding of 2300.3 in DCMR title 11 the garage can be used as an artist's studio, and as such the garage has some amenities to function as a studio.

2. The accessory building when containing a garage and second floor domestic's quarters can be built to a height of 20'-0" as outlined in 2500.5-7 in DCMR title 11.



A SUBDIVISION HAS
BEEN ORDERED TO
CREATE A LOT OF RECORD.

MT 12/12/02

11/5/02

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., 11-1, 2001

Plat for Building Permit of SQ-1427 LOT 870

Scale: 1 inch = 30 feet Recorded in Book MET MICRO FILM Page 2394

Receipt No. 6086

Furnished to: KENDRA HAMILTON

Surveyor, D.C.

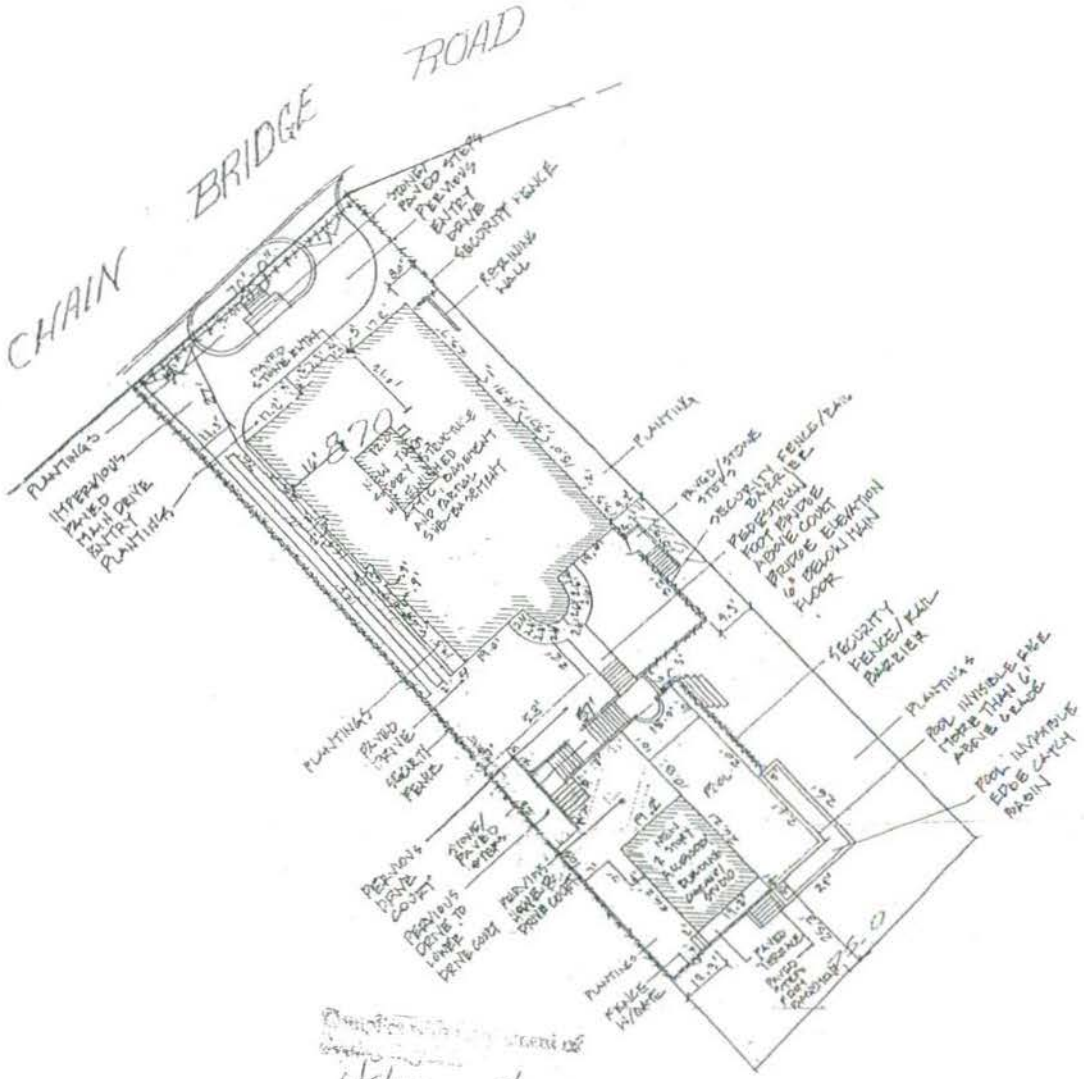
By: DA JMA

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

Date: 11/14/01 6/5/02

(Signature of owner or his authorized agent)

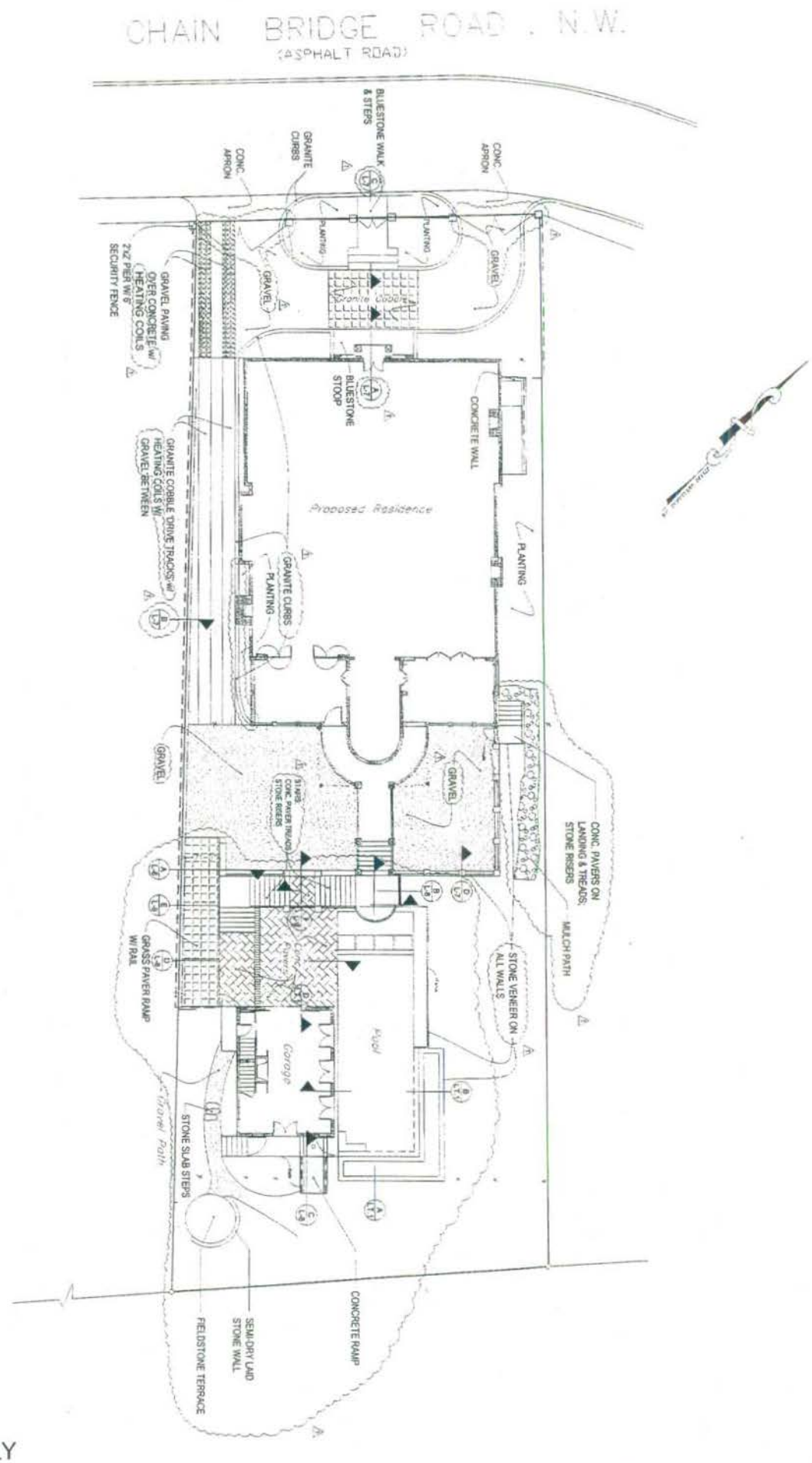
NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



6/5/02

R-2 218 A

FY 2003



1 08/07/03 Revision

FOR PERMIT ONLY

L5 Sheet #

Progress Set
PAVING & MATERIALS
Date: 4.06.01, 7/15/01, 7/31/01
Scale: 1"= 10'

LOGAN RESIDENCE

3101 Chain Bridge Road, N.W.

BRADLEY-PAPP
LANDSCAPE ARCHITECTURE, INC.

6-G Ridge Road • Greenbelt, Maryland • 20770 301•441•3313

EXHIBIT 12

IMPERVIOUS SURFACE COVERAGE AT 3101 CHAIN BRIDGE ROAD (SQUARE FEET)

	Declared Impervious Surfaces	Required Impervious Surfaces
Main House:	3900	3900
Front entrance & steps:	394	394
"Drive Tracks":	510	----
Driveway:	----	714
Accessory Building:	494	494
Accessory Building steps, landings and ramps:	139	139
Pool, Pool Terrace & Catch Basin:	1067	1067
North Sideyard Stairs:	45	45
Main "Drive Court":	----	1860
Driveway to Accessory Building:	----	189
Lower "Drive Court":	----	425
Steps from Main "Drive Court" to Lower "Drive Court":	216	216
Fieldstone Terrace, Rear Yard	78	78
Total Impervious Coverage:	6843	9521
Total Property Square Footage:	15,547	15,547
Percentage Impervious Coverage:	**44%**	**61%**

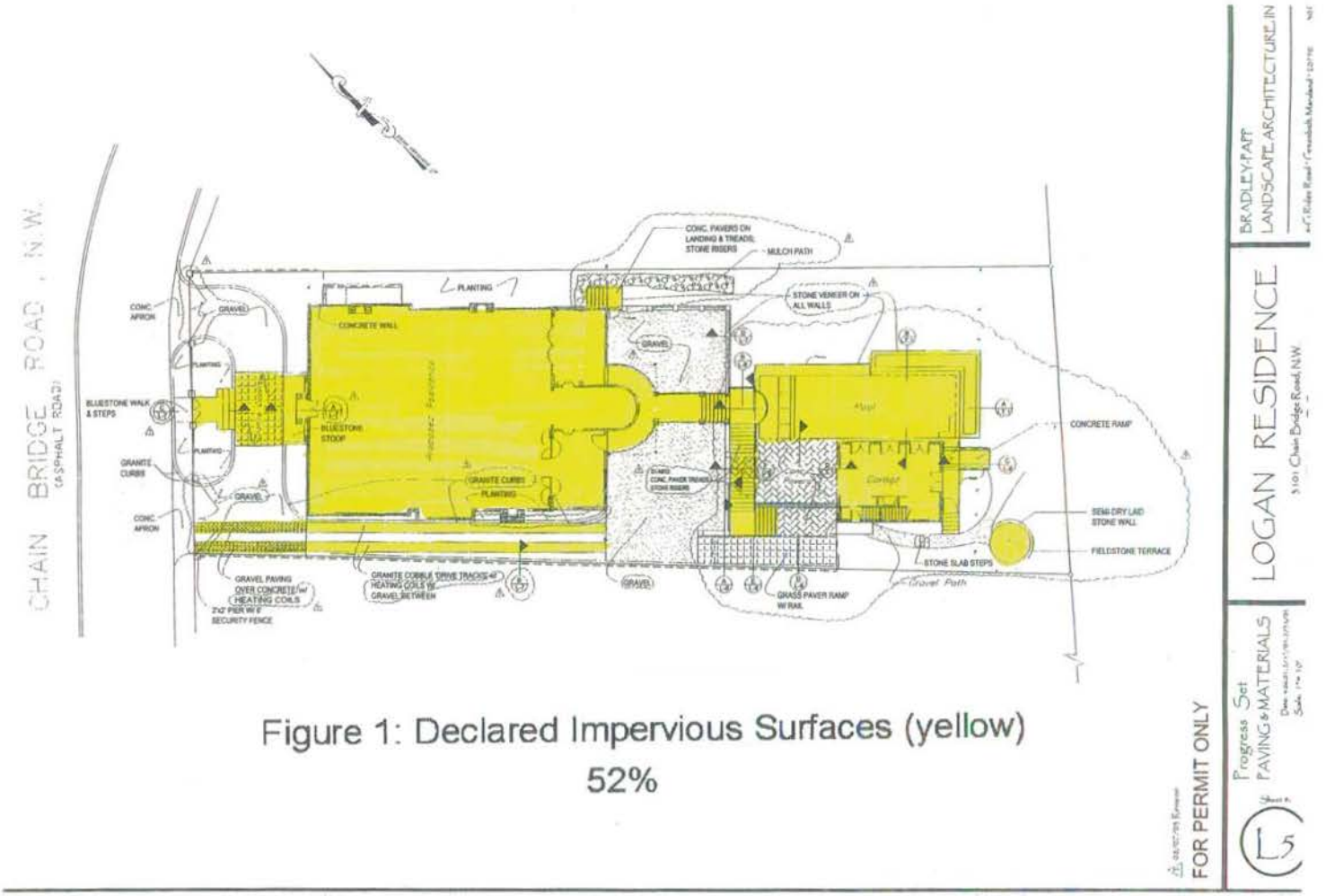


Figure 1: Declared Impervious Surfaces (yellow)

52%

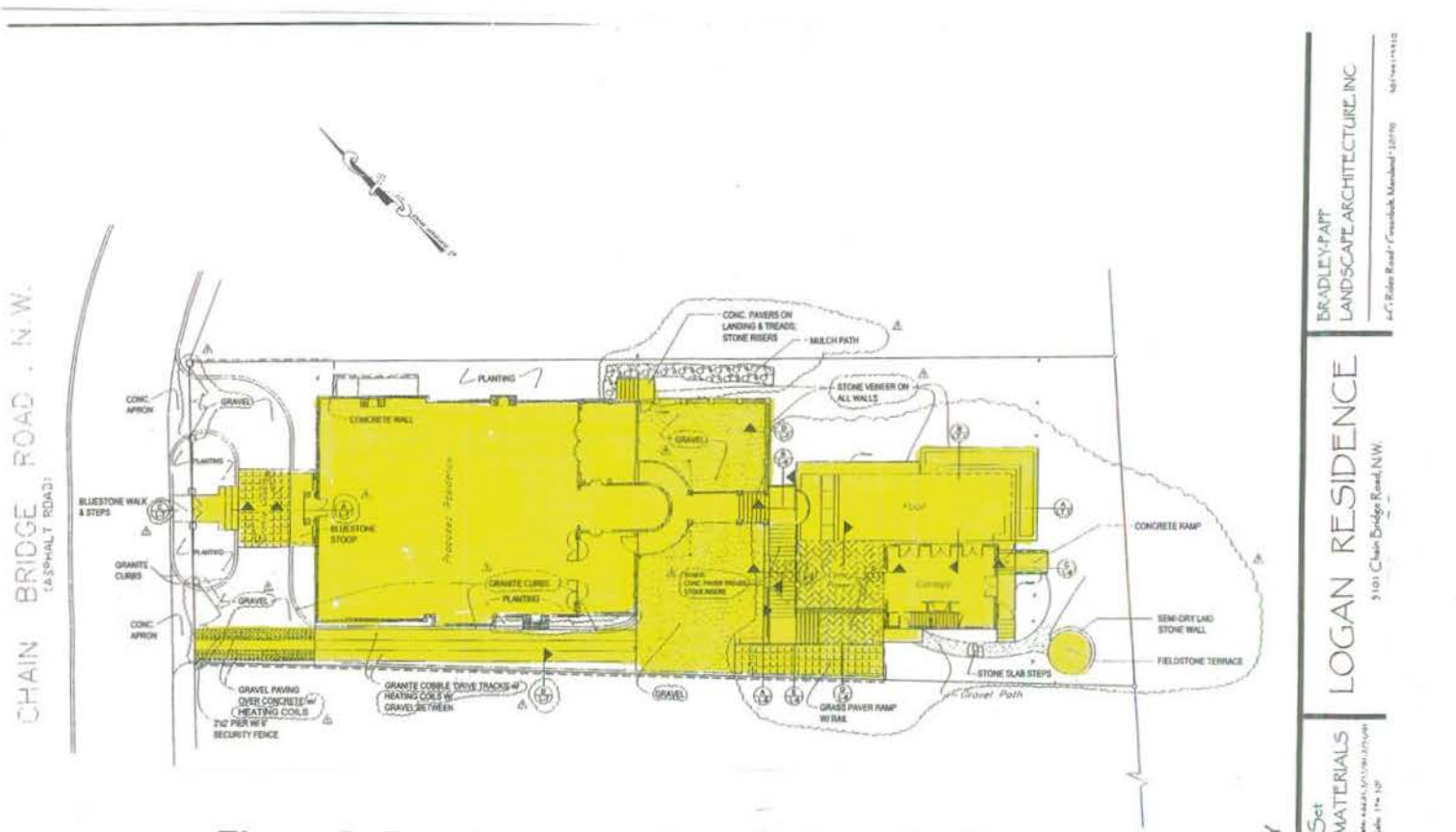


Figure 2: Required Impervious Surfaces (yellow)

61%

3117 Chain Bridge Road, NW Washington, DC 20016

May 21, 2003

Mr. Brian Logan
Brian Logan Real Estate
2162 California St NW
Washington, DC 20008

Dear Mr. Logan:

We are writing to you as concerned neighbors in reference to your property at 3101 Chain Bridge Road, NW (Square 1427, Lot 870). In particular, we are concerned about a potential violation of DCMR Title 11.

Review of construction documents filed with the District Of Columbia Government reveals that the proposed two-story accessory structure, which is designated on the Plat for Building Permit as a "new two-story accessory building, garage/studio," does not meet the DCMR definition for a garage. According to the DC regulations (Title 11, Chapter 1, Section 199), a private garage is defined as "a building or other structure, or part of a building or structure, not exceeding nine hundred square feet (900 $ft.^2$) in area, used for the parking of one (1) or more motor vehicles and having no repair or service facilities."

It is evident that the proposed accessory building cannot be a garage as the construction documents do not provide ingress or egress for motor vehicles to this building.

Furthermore, this structure is designated in the construction documents not just as a garage, but as a "garage/artist studio." In a letter from your architect, Mr. David Knudson, dated September 25, 2002, in response to questions posed by Mr. Leon Paul of the DCRA Building and Land Regulation Affairs Technical Review Branch Zoning Section, Mr. Knudson stated, "according to my understanding of 2300.3 in DCMR title 11, the garage can be used as an artist studio, and as such the garage has some amenities to function as a studio." Section 2300.3 in fact states, "An artist studio shall be a permitted use in either a private garage that is an accessory building located in a Residence District or in a building located on an alley lot." As indicated in the preceding paragraph, this structure is clearly not a garage, nor is it a building located on an alley lot. Since it is neither, the regulations do not provide for this subsidiary function as a studio.

Finally, in order to justify the two-story height of this structure, Mr. Knudson stated in the same letter of September 25, 2002 that, "the accessory building was designed as a garage with domestic quarters above. This is permitted under 2500.5 in DCMR Title 11 as I read it." He further stated that, "the accessory building when containing a garage and second-floor domestic's quarters can be built to a height of 20 ft. 0 in. as outlined in 2500.5-7 in DCMR title 11." However, 2500.5 clearly states, "In an R-l-A or R-l-B District only, an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building." Once again, these regulations clearly pertain specifically to buildings serving a primary use as private garages. Since the proposed two-story accessory

building is not a private garage, as defined in DCMR Title 11, then it cannot have a "second-floor domestic's quarters."

In summary, the proposed structure is not designed to function as a garage and cannot be built as proposed without a variance from the Board of Zoning Adjustment, a process which allows local residents a right of response. The fact that a permit was incorrectly issued by the DCRA does not lessen your responsibility to abide by existing regulations. We refer you to a recent case on nearby Arizona Avenue in which a developer received incorrect permitting from the DC government, in violation of existing regulations of which the developer should have been aware, which led to legal action by the Chain Bridge Road/University Terrace Preservation Committee and resulted in indefinite postponement of the construction.

We would prefer to avoid legal action in this case. However, as residents of Chain Bridge Road, we are concerned to protect the unique beauty of our environment and to insure that developers abide by zoning regulations and overlays that were specifically designed to help protect the environment that we all share. We would like to meet with you on an informal basis to discuss these issues, hear your thoughts, and hopefully arrive at a mutually agreeable accommodation. However, if we have not heard from you within seven calendar days of receipt of this letter, we will assume that our only recourse is to consider legal action in this matter.

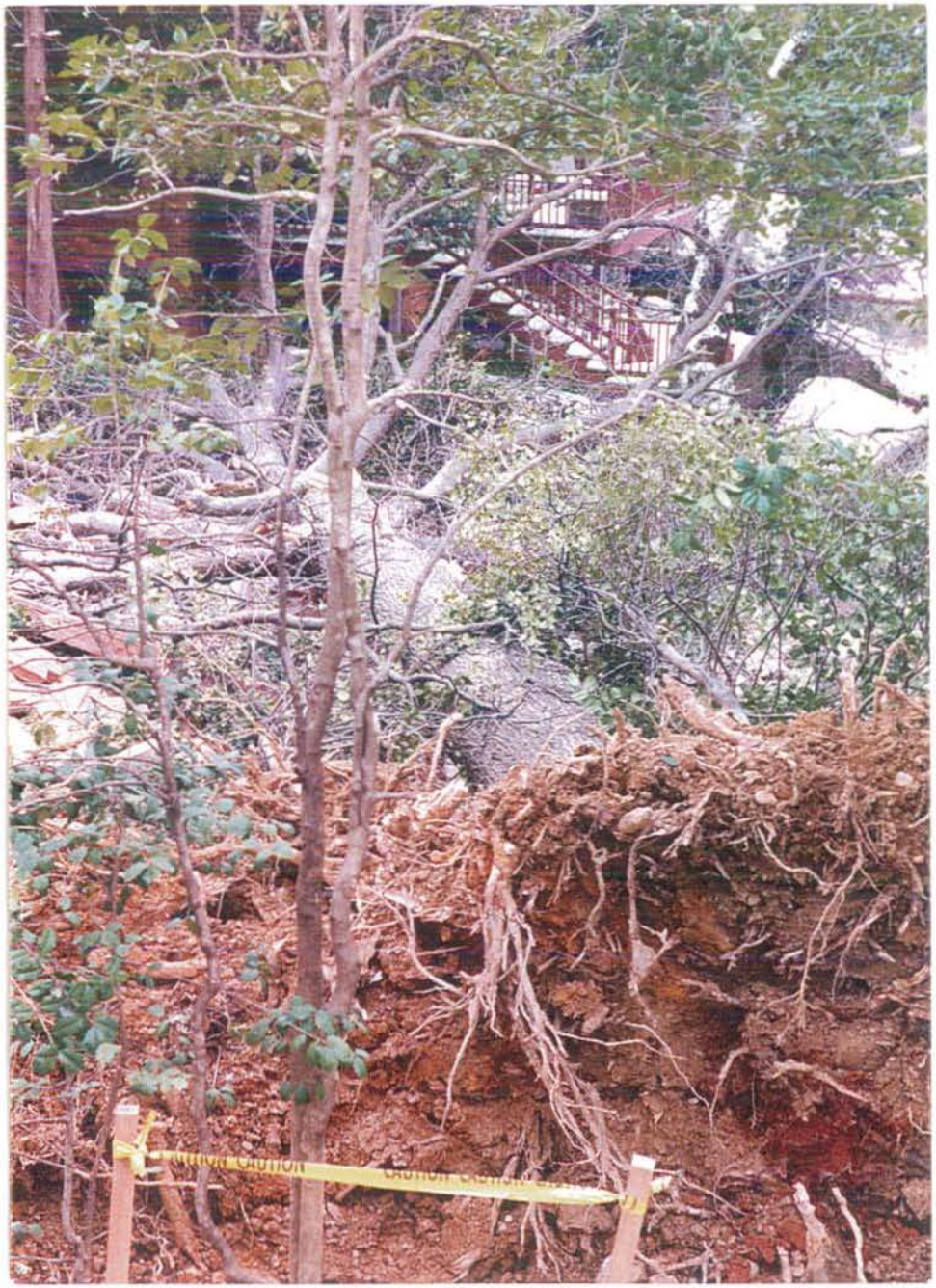
Please feel free to call Steve Wolf to arrange a meeting with the concerned neighbors. He may be reached at home at (202) 966-7399 in the evenings, or at work at (202) 645-5737.

Sincerely,

Steven S Wolf on behalf of

Steven S. Wolf, M.D.
Lisa S. Kelly, M.D.
Ronnie Steinwald
Bruce Steinwald
Veronique LaGrange
Benoit Blarel
Arthur Levi
Jacqueline Gardes
Henry Sailer, Esq.

CC:
Steven Kay, Encore Development
David Knudson, Architect
Judith Lanius, Chair, Chain Bridge Road / University Terrace Preservation Committee
Stuart Ross, President, Palisades Citizens Association
John Finney, Commission Chair, ANC 3-D
Alma Gates, Commissioner, ANC 3-D


CAUTION

