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

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D.C. OFFICE OF ZONING

APPELLANTS' VERIFIED SUPPLEMENTAL OPPOSITION TO INTERVENOR'S MOTION TO DISMISS

The Appellants[1], Henry P. Sailer, Lisa S. Kelly, M.D., Steven S. Wolf, M.D., Arthur L. Levi, Veronica and Bruce Steinwald, Veronique LaGrange and Benoit Blarel, respectfully submit the following Verified Supplemental Opposition to the Intervenor's Motion to Dismiss.

I. Summary of Opposition

As set forth in detail below by the Appellants, the following conclusions are inescapable:

A. For timeliness purposes relating to the Appellants, the date on which Mr. Brian Logan (hereinafter "Logan") obtained his last building permit, June 13, 2003, is controlling. This occurred thirteen (13) days after the Notice of Intent to Appeal was filed (and in direct response to it) and only nineteen (19) days before the Appeal was filed.

B. For timeliness purposes related to the Chain Bridge Road Preservation Committee, the date on which DCRA responded in writing, June 27, 2003, is controlling. See Exhibit A, attached. By letter dated June 27, 2003, DCRA provided official notification that the

[1] Judith Lanius and/or the Chain Bridge Road Preservation Committee did not file this Appeal. The actions and knowledge of the Chain Bridge Road Committee were separate from the Appellants and limited to the unauthorized tree removal activities arising from the Tree Removal Permits.

BZA
Case No. 17054
Exhibit No. 34
Board of Zoning Adjustment
District of Columbia
CASE NO. 17054
EXHIBIT NO. 34

Stop Work Order was lifted and that there was no violation of the CBUT Overlay involving the Tree Removal Permits.

C. Logan obtained numerous piecemeal and cumulative permits over an extended period of time and he alone should bear the risk of proceeding with construction before obtaining all necessary permits.

D. Logan had actual knowledge that his property was subject to the Chain Bridge Road University Terrace Overlay District ("CBUT") and he is responsible for proceeding with construction based on the building permits which on their face were not subjected to review and approval under the CBUT restrictions.

E. Every one of the building permit applications submitted by Logan should have been reviewed and approved subject to the tree removal restrictions under CBUT even if the trees were cut down previously.

II. Chronology of Events

January 25, 2000: Logan takes title to the property and occupies it shortly thereafter.

January 16, 2001: Logan obtains an arborist's letter claiming that a large regulated tree is unsafe, hazardous to his and neighbor's properties, and should be removed.

Despite the alleged hazard, Logan takes no action until February 8, 2003, over two (2) years later. Logan's action indicates clear familiarity with tree removal and other restrictions of CBUT Overlay.

May 10, 2001: Logan submits permit application for removal of three (3) trees, including "hazardous" tree, to DCRA. Application includes Tree & Slope Information Form, Tree Removal Affidavit, Topographic Site Plan (not stamped), and Tree Conservation Plan (not stamped) showing number and location of regulated trees. Site Plan and Tree Conservation plan are misrepresented showing *existing* building (subsequently demolished) and impervious coverage of that smaller structure, instead of superimposing the *proposed* buildings, structures and impervious coverage, thus disguising from DCRA reviewers that the wrong improvements on the

property are shown and hence making it impossible to determine compliance with the CBUT Overlay regulations. Logan further misleads DCRA reviewers by stating "Not Applicable" in response to question on Affidavit regarding impervious surface ratio on property, *referring neither to existing or proposed plans*, as if property were devoid of improvements. Numerous trees are mislabeled on Conservation Plan as "not protected" despite Logan's now clear familiarity with the CBUT Overlay. Numerous others are ambiguously labeled as "trees to remain" despite evidence that they would be irreparably damaged in violation of the CBUT Overlay if he had properly submitted the *proposed* building plans for review with this application. Building permit application for construction of a new single family dwelling, finally revealing his proposed plans, was not submitted until November 27, 2001, over six months after his tree removal permit application.

Aug. 8, 2001: Logan receives Building Permit No. B432397 to remove "hazardous" tree (along with two other trees), but does not do so until February 8, 2003, eighteen (18) months later. Permit not identified as within boundaries of the CBUT Overlay.

November 27, 2001: Logan submits application for building permit for construction of new single family dwelling. Application makes no reference to the CBUT Overlay and does not include the Tree Conservation Plan (albeit inaccurate) described above that would be required for appropriate review of the application and approval.

July 30, 2002: Logan provided actual notice that his property is subject to the CBUT Overlay.

August 6, 2002: Logan applies for and receives Building Permit No. B447750 renewing the earlier permit for tree removal. Application describes proposed use of property as "lot." Permit again issued without reference to CBUT Overlay.

January 29, 2003: Logan receives Building Permit No. B448548 for a new single family house. Again, permit not identified as within boundaries of the CBUT Overlay and again not subject to appropriate review and approval within context of the Overlay regulations. Permit does not include authorization for sheeting and shoring, the "in ground pool," or conversion of impervious to pervious surfaces as were later required. Also, the permit was issued based on Lot 870, an Assessment and Taxation Lot, not the required single Record Lot under 11 DCMR 3202.3. The required Subdivision should have been subject to review and approval under the CBUT Overlay.

February 5, 2003: Logan receives an "Emergency" Demolition Permit for the existing structure based on undisclosed "unsafe conditions." With Logan having lived in the existing property for more than two (2) years, it strains

credibility, without any explanation, that unsafe conditions existed or just arose warranting emergency action. More likely, the "emergency" allowed Logan to circumvent the normal raze permit process, including required notice to the affected Advisory Neighborhood Commission. In a matter of days, Logan accomplished what normally takes a minimum of eight weeks and rigorous scrutiny by DCRA and the community.

February 5, 2003: Logan receives Building Permit No. B448706 renewing for a second time the earlier permit for tree removal.

February 8, 2003: On a Saturday, Logan demolishes the existing house and removes trees beyond the scope of permit and in violation of the CBUT Overlay. This unposted and unannounced "emergency" demolition and felling of a "hazardous" tree and two (2) other permitted trees also includes felling of numerous other trees, all without permit. After operation is complete, no tree violations (other than the large "hazardous" oak tree) are immediately discernible to Appellants or community members, since evidence is reduced to rubble and tree remnants.

February 11, 2003: Stop Work Order issued by DCRA.

March 4, 2003: Logan receives Building Permit No. B449057 for sheeting and shoring.

March 24, 2003: Stop Work Order lifted by DCRA. No notice provided to, or knowledge obtained by, Appellants or others in community until June 27, 2003 letter from DCRA. No building permit posted in visible manner at construction site.

March 31, 2003: Subdivision Plat recorded in Office of D.C. Surveyor creating Lot 30, the single Record Lot required to obtain all previous and subsequent permits.

April - June 2003: Repeated efforts by Counsel, on behalf of Chain Bridge Road Preservation Committee, to obtain response from DCRA about status of Stop Work Order are unsuccessful.

May 13, 2003: FOIA request filed by Chain Bridge Road Preservation Committee with DCRA requesting all correspondence and documentation relating to status of Stop Work Order.

Late May 2003: Response to FOIA request is only a "Permit Center-Stop Work & Property Holds Printout."

April 19, 2003: Appellants obtain small-scale Plat for Building Permit for review. The Plat is not sufficient in scale or detail to allow accurate review for zoning compliance and other purposes.

May 2003: Various correspondences between Appellants and Leon Paul of Technical Review Branch, BLRA, DCRA, to clarify apparent discrepancies between Permit and zoning regulations.

May 2003: Several meetings between Appellants and Chain Bridge Road Preservation Committee to discuss the tree and other zoning violations and to prepare response.

Mid-May 2003: Construction begins on two-story "garage/domestics' quarters."

May 20, 2003: Logan obtains Building Permit No. B451476 for construction of an in-ground swimming pool.

May 31, 2003: Appellants meet with Logan to discuss alleged violations of Zoning Regulations. Logan displays exterior plans to Appellants and confirms that the accessory building is not a garage and that the actual garage is in the main building. Appellants conclude that Logan is unwilling to negotiate. Logan is also notified that building permit is not posted. He agrees to correct this.

June 2, 2003: Notice of Intent to Appeal filed by Appellants.

June 13, 2003: Logan applies for and obtains Building Permit No. B452193 to Revise Permit # B448548 to show pervious drive to accessory garage structure.

June 27, 2003: Chain Bridge Road Preservation Committee receive first notice from DCRA that Stop Work Order was lifted on March 24, 2003 and that the tree removals under the Tree Removal Permits was not in violation.

June 27, 2003: DCRA files on property released to Appellants and Committee.

July 2, 2003: Appellants file this Appeal.

September 15, 2003: Appellants receive from Logan some, but not all, of the drawings related to the original January 29, 2003 Permit and the June 13, 2003 Permit. Appellants are unable to verify that the drawings provided by Logan are the same submitted to DCRA. Appellants, despite repeated attempts, are unable to review the approved permit drawings from DCRA until October 15, 2003. The permits were stored in the basement of 941 North Capitol Street, but were unavailable as a result of construction activity in the basement.

October 5, 2003: Appellants' arborist inspects remaining trees on property. Reports that no effort has been made to protect remaining trees during current construction activity and that most remaining trees are irrevocably damaged and will either die or need to be removed as unacceptable risks. Arborist asks to see original boundary and topographic survey to determine location of all trees on property in relation to boundary lines. Until this moment, Appellants

reasonably assumed that Logan had received his tree removal permit on the basis of the application materials that we already received from DCRA. These materials included an arborist's sketch of the trees on the property showing species, size and location of numerous trees (Appellants' Exhibit 6). This sketch appeared to be Logan's tree survey (the Affidavit Form, Appellants' Exhibit 4, requests information showing "the number and location of regulated trees existing on subject site."). Appellants' arborist's observations immediately renewed Appellants' interest in obtaining a complete topographic site plan.

October 7, 2003: Appellants amend the Appeal to include the original permit as revised by the June 13, 2003 permit. Prior to receiving Intervener's Motion to Dismiss, Appellants had no knowledge of the March 4 (sheeting and shoring) or May 20 (inground pool) permits, despite unsuccessful attempts to obtain additional information from DCRA.

October 7, 2003: Logan provides Appellants with a copy of a Boundary and Topographic Survey dated March 15, 2000 which shows the trees located on the property. Based on this information, Appellants determine that Logan has actually removed and/or fatally damaged more trees than set forth in the tree removal permits or allowed under the Overlay.

October 15, 2003: Appellants receive from DCRA an identical Boundary and Topographic Survey as above (unstamped) and a Tree Conservation Plan (unstamped), the latter being identical to the former except with specific trees marked for removal, preservation, etc.

III. Argument

A. Appellants' Timeliness Must Be Determined Based on the June 13, 2003 Building Permit

Over a twenty-two (22) month period (August 8, 2001 through June 13, 2003), Logan obtained no less than nine (9) permits or other required approvals for the construction of the proposed single-family detached dwelling. As clearly established by the Sisson case, the relevant date for applying the sixty-day timeliness rule to the Appellants is June 13, 2003 when Brian Logan obtained what is presumably the final permit for this development project. Sisson v. District of Columbia Board of Zoning Adjustment, 805 A.2d 964 (D.C. 2002). Prior to that date, Logan had not received approval for all necessary elements of his complete proposed plan.

Significantly, Logan also clearly continued to materially revise his construction plans after June 13. The "Paving & Materials' Plans" provided by Logan to Appellants on September 15, 2003 shows a revision date of "8/07/03". See Exhibit B, attached.

There is no reasonable basis for adopting the original building permit issuance date of January 29, 2003 for timeliness purposes. In the Intervener's Motion, it is admitted and well-documented that the January 29, 2003 was not the final step, but just another step in the cumulative and piecemeal approach to obtaining approval for this entire project. After January 29, 2003, at least six (6) additional permits or approvals were required and obtained. First, the "Emergency" raze permit was issued on February 5, 2003. Second, the Tree Removal Permit was renewed on February 5, 2003. Third, Building Permit No. B449057 for the required sheeting and shoring was issued on March 4, 2003. Fourth, a Subdivision Plat creating Lot 30 as the single Record Lot required under 11 DCMR 3202.3 to obtain a building permit was recorded by the D.C. Surveyor. No explanation is offered or apparent on how all the previous permits were issued prior to the creation of the mandatory single Record Lot. Fifth, Building Permit No. B451476 for construction of an in-ground pool was issued on May 20, 2003. Sixth and finally, Building Permit No. B452193 to "Revise Permit #B448548 [January 29, 2003] to show pervious drive to Accessory Garage Structure." was applied for and issued on the same day, June 13, 2003.

All six permits and approvals which occurred after the original January 29, 2003 Permit are significant because each is an integral part of the overall or final development plan contemplated by Logan and directly or indirectly related to determining compliance with the restrictions imposed by the CBUT Overlay, including the issues raised in the Appellants' Appeal. If Logan had not received any one of these Permits, he would not have been authorized to or

capable of proceeding with this project. Specifically, these six permits raise the following questions, including application of the CBUT Overlay restrictions in general, the tree removal restrictions and scope of tree removal actually completed, the impervious surface restrictions, the lot occupancy requirement, and the use and access requirements for the accessory garage with second floor domestic quarters.

Most significantly, the June 13, 2003 Permit establishes the timeliness of this Appeal and that no prejudice resulted. Prior to the June 13, 2003 Permit, no accurate or complete review of the proposed construction was possible by either DCRA or the Appellants. In fact, this sixth permit is the direct result of the Notice of Intent to Appeal which was filed on May 31, 2003. The Notice of Intent to Appeal and contemporaneous meetings with some of the Appellants provided Brian Logan a clear warning that notwithstanding the piecemeal and cumulative nature of the permitting, the totality of the project was not in compliance with the CBUT Overlay. Responding within less than two weeks, Logan scrambled to revise his permit to attempt to simultaneously comply with at least the impervious surface and required access to the accessory structure requirements. Even this last minute effort was not sufficient. Logan felt compelled to make additional material changes to his Paving & Materials plan on August 7, 2003.

As more fully set forth in the Appellants' Prehearing Statement, Logan's latest permit was wholly unsuccessful in bringing his development project into compliance with the applicable Zoning Regulations. This Appeal was filed just nineteen (19) days after Logan obtained the June 13, 2003 Permit.

The instant situation is even more compelling than the events in Sisson. In Sisson, the Court had no difficulty in determining that the Appellant had no reasonable basis or ability for appealing until the last of five (5) building permits over a nine (9) month period were issued.

Sisson, at 969. Here, the piecemeal and cumulative permitting involved nine (9) permits over a twenty-two (22) month period and failed to reflect the entire scope of the project. Six of the permits were issued after the original and incomplete permit was obtained. Similarly, as more fully discussed and established in the Appellants' Supplemental Prehearing Statement, Logan, like Sisson, did work without permits and/or beyond the scope of the permits issues constituting exceptional circumstances beyond the Appellants' control. Sisson at 966.

B. Chain Bridge Road Preservation Committee's Timeliness Must Be Based on June 27, 2003 Letter from DCRA.

By letter dated June 27, 2003, from Mr. Denzil L. Noble, BLRA Administrator and Interim Zoning Administrator, the Chain Bridge Road Preservation Committee was first provided written and formal notice that the February 11, 2003 Stop Work Order had been rescinded on March 24, 2003 and that no violation of the CBUT Overlay restrictions relating to the tree removal permits had occurred. See Exhibit A. Until receipt of this response, no duty to appeal arose for the Chain Bridge Road Preservation Committee or the Appellants related to these issues. Filing of the Notice of Intent to Appeal and Appeal by the Appellants which include, among other issues, the tree removal issues addressed by DCRA, is timely having been filed less than a week after the June 27, 2003 letter. It is well established under the BZA and Court of Appeals decisions that the timeliness of an appeal is measured from the time DCRA reaches a final determination and provides notice to the appealing party. Georgetown Residents Alliance v. D.C. Board of Zoning Adjustment, 816 A.2d 41, 50 (D.C. 2003) (Zoning Administrator's decision appealable when appealing party had actual notice of decision and issuance of permits); Appeal No. 16849 of Robert Lehrman (May 8, 2003) (appeal untimely when Appellant waited more than three (3) months after receiving Zoning Administrator's written determination of no zoning violation); Appeal No. 16764 of Darrel J. Grinstead (May 22,

2002) (No duty to appeal arose during three (3) month delay in DCRA's written determination during which a Stop Work Order was issued and lifted and the property owner continued construction based on a building permit issued more than eight (8) months earlier).

C. Logan Bears The Risk of Proceeding With Construction Before Obtaining All Necessary Permits.

Although Brain Logan knew he had not obtained all necessary approvals, he demolished the existing structure and proceeded with construction. Having made that decision, he alone bears the risk for having not obtained the required approvals in advance. Demolition on an "emergency" basis occurred on Saturday, February 8, 2003, not Friday as claimed in its Motion. Not only was a Stop Work Order in effect until March 24, 2003, (DCRA did not provide notice of the lifting of Stop work Order until June 27, 2003 – three (3) months later) but during that period Logan had not received at least four (4) required permits or approvals, including the March 20 Sheeting and Shoring Permit, the March 31 Subdivision Plat, the May 20 in-ground swimming pool permit, and the June 13 pervious surface and accessory structure access permit. It is undisputed that Brian Logan actually knew or should have known that each of these permits were required to complete his development project.

D. Logan Knew That CBUT Overlay Was Applicable, But Proceeded Without Ensuring Compliance

Beginning in at least January 2001, Brian Logan knew that the CBUT Overlay was applicable to the property and went to great lengths to at least nominally to ensure compliance. He provided the required Tree and Slope Information Form, Tree and Slope Protection (TSP) Overlay Affidavit and supporting documentation from an arborist. While this information appears to be incomplete and lack credibility, Logan clearly knew of the applicability of the CBUT Overlay not only as it relates to tree removal, but also the other elements, including

impervious surface restrictions. Although clearly aware of the CBUT Overlay, he obtained permits and proceeded to complete work based on permits which made no reference to the CBUT Overlay and apparently were not subject to review and approval based on the CBUT restrictions. Sisson at 970 (permits issued under wrong zoning classification and each permit failed to show entire scope of work). In addition to the original January 29, 2003 Permit, The March 4, 2003 Sheeting and Shoring Permit and the May 20, 2003 in ground swimming Pool Permit make no reference to the CBUT Overlay and contain no evidence that the CBUT Overlay restrictions were applied in reviewing and approving those permits.

E. All of The Building Permits Should Have Been Reviewed For Compliance With The CBUT Tree Removal Restrictions

Under 11 DCMR 1568.1, provides that "constructing a building, accessory building, or an addition to building, creating any impervious surface area, subdividing any improved lot so as to increase the number of principal structures thereupon, shall only be permitted as a matter-of-right subject to the following tree removal limitations..." While the record is clear that Logan knew of the tree removal restrictions, there is no record or other evidence that the permits for construction of a building and/or accessory building or creating any impervious surface area were subjected to the required review and determination of compliance. In fact, the timing and circumstances of the tree removal permits being obtained long in advance and separate from the building permits indicates that no such review occurred or such review was not completed in the context of the work which was actually going to be undertaken. As set forth in the Appellants' Supplemental Prehearing Statement, permits were issued for limited tree removal, but the tree removal or fatal damage went far beyond the maximum permitted and/or beyond the scope approved. As a result, protected trees were removed and the CBUT Overlay protections were undermined and ignored causing harm to the Appellants and the entire neighborhood.

removal or fatal damage went far beyond the maximum permitted and/or beyond the scope approved. As a result, protected trees were removed and the CBUT Overlay protections were undermined and ignored causing harm to the Appellants and the entire neighborhood.

IV. Conclusion

For the foregoing reasons, the Appellants respectfully request the Board to DENY the Motion to Dismiss submitted by Intervener.

V. Verification

I, Steven S. Wolf, M.D., being first duly sworn on oath, depose and say:

1. That the information and facts set forth herein are true and correct to the best of my information, knowledge and belief.

Steven S. Wolf, M.D.

Subscribed and sworn to before me this 29th day of October, 2003.

Notary Public

My Commission Expires:

April 14, 2007

Respectfully submitted,

By: Steven S. Wolf

Henry P. Sailer
Lisa S. Kelly, M.D.
Steven S. Wolf, M.D.
Arthur L. Levi
Veronica Steinwald
Bruce Steinwald
Veronique LaGrange
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3111 Chain Bridge Road, N.W.
Washington, D.C. 20016
(202) 966-0077

October 29, 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Appellants' Supplemental Opposition to Intervenor's Motion to Dismiss was served by first-class mail, postage prepaid or hand-delivery as noted below, this 29th day of October, 2003, upon:

Laura Gilbert, Esquire
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Room 9400
Washington, D.C. 20002
(By Hand)

John T. Epting, Esquire
Ashleigh Dale Horne, Esquire
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037
(By Mail)

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

Steven S. Wolf, M.D.

217208v3

Building and Land Regulation Administration
Office of the Administrator

06/30/03 16:53 FAX 2024424863 DCRA/BLRA 002

June 27, 2003

VIA FACSIMILE

Jeannine Rustad Zigner, Esq.
Robins, Kaplan, Miller & Ciresi
1801 K Street, N.W., Suite 1200
Washington, D.C. 20006

Re: Documents Pertaining to 3101 Chain Bridge Road, N.W.

Dear Ms. Zigner:

With the copy of documents I provided you this morning, I neglected to include a copy of your and Mr. Nettler's February 13, 2003, letter to Theresa Lewis. If you would like to have a copy of that letter from our files, please let me know. We also did not include a copy of the February 10, 2003, Stop Work Order, which you may already have. However, if you also wish a copy of that, please let me know.

Sincerely,

Denzil L. Noble
Administrator

Building and Land Regulation Administration
Office of the Administrator

June 27, 2003

VIA FACSIMILE

Jeannine Rustad Zigner, Esq.
Robins, Kaplan, Miller & Ciresi
1801 K Street, N.W., Suite 1200
Washington, D.C. 20006

Re: 3101 Chain Bridge Road, N.W.

Dear Ms. Zigner:

This confirms my telephone advice to you given early Wednesday evening, June 25, 2003, and yesterday, June 26, 2003, that we had re-examined the file pertaining to the alleged violation of the Chain Bridge Road/University Terrace (CB/UT) Overlay District protections at the referenced property. Based upon that review, we determined that the Zoning Administrator's earlier decision that there was no violation was correct. Accordingly, we advised you that we saw no basis to disturb that decision or to make a new determination as to the alleged violation.

This re-examination was taken in response to the concerns expressed by several neighbors and the Chain Bridge Road/University Terrace Preservation Committee at a meeting held with the DCRA Director on June 25, 2003. At that meeting, you and the neighbors expressed your great disturbance with the removal of a large oak tree from the subject property, a removal that you believed violated the CB/UT protections. A Construction Inspector in the Building and Land Regulation Administration issued a Stop Work Order against the property on February 10, 2003, in the belief that the removal had, in fact, been in violation of those protections. That order, however, was subsequently rescinded and the owner allowed to proceed with construction. The neighbors have also complained that they did not receive any formal notice that the Stop Work Order had been lifted.

Our review of the records in this matter (copies of which were provided to you earlier today) reveal that Building Permit No. B432497, issued August 8, 2001, authorized removal of several trees from the property, including a 30" diameter pin oak tree. The removal permit was extended through February 8, 2003, with the issuance of Permit No.

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B447750. This date was again extended through August 8, 2003, with issuance of Permit No. B448706.

In early February 2003, a large oak tree was felled on the property. You and the neighbors brought this to our attention via telephone calls and email on February 8, 2003. As noted above, believing, as you had alleged, that the removal was in violation of applicable CB/UT provisions, a BLRA construction inspector consequently issued a Stop Work Order against the property on February 10, 2003. Thereafter, at the request of the owner's attorney, the Zoning Administrator and I reviewed the basis for the inspector's issuance of the Stop Work Order. In that review, it was ascertained that a certified arborist had examined the subject oak tree and had determined that the tree had suffered major damage to its root structure and that in his opinion it should be taken down. This examination and opinion was reported to the owner in a January 16, 2001, letter, a copy of which had been submitted to us. The Zoning Administrator concluded that, pursuant to the provisions of 11 DCMR §1568.2, the tree was not subject to the CB/UT provisions and that its removal therefore did not violate those provisions. Consequently, by letter dated March 21, 2003, I advised the owner's attorney that the Stop Work Order would be lifted, effective March 24, 2003.

This information was related to you in a telephone conversation Mr. Grant Moy, DCRA Deputy General Counsel, and I had with you on Wednesday evening. Yesterday, you called Mr. Moy to say that the tree that was the subject of the January 16, 2001, arborist's letter was not the one that was of concern to the neighbors. You said that that tree was on the rear of the owner's property (and that you did not question the arborist's report thereto), but that it was the removal of another, different tree "on the front of the property" that constituted a violation of the CB/UT provisions and that was the source of the neighbors' disturbance. You referred us to the April 29, 2003, letter from arborist Frido van Kesteren (a copy of which you had provided to us at the June 25, 2003, meeting) as establishing that there had been removal of a healthy tree at the front of the property.

I have reviewed Mr. van Kesteren's letter, along with all of the materials in the file, and have concluded that he was referring to the very same tree that was the subject of the January 10, 2001, arborist's report. The January 2001 report refers to a tree "on the back/right side of the house, close to the property line," and that it was damaged because of "the construction of a new driveway on the right side neighbor's property." The tree survey submitted with the report shows this damaged tree to be located at the back/rear of the lot, adjoining the driveway of the property bordering on the south. Mr. van Kesteren's letter refers to a tree "that had been felled from near the south property border northward across the lot." This describes the rear of the property, not the front as you had suggested. Further, Mr. van Kesteren's report is not inconsistent with the January 2001 arborist's report. Mr. van Kesteren stated that the tree "appeared healthy" and that there were "no signs of rot on any of the exposed roots." The January 2001 arborist's report stated that "the trunk is straight and apparently free of structural defects." However, that arborist concluded that the tree had suffered major damage, not because the roots were rotted, but because of the physical damage to the root zone caused by the neighbor's construction of a new driveway.

06/30/03 16:54 FAX 2024424863 DCRA/BLRA 005

Until your call to Mr. Moy yesterday morning, there had never been any suggestion that two large oak trees—not one—had been removed. Indeed, in a February 13, 2003, letter from you and Mr. Richard Nettler to Ms. Theresa Lewis, DCRA Deputy Director, you called to our attention that in the process of demolition activity at 3101 Chain Bridge Road, "*a* protected tree under the Overlay was taken down" (emphasis added). In none of the subsequent conversations with you or the neighbors has there ever been mention of a second large oak being taken down. Certainly, had such an event occurred, we would no doubt have heard from the neighbors and the Chain Bridge Road/University Terrace Preservation Committee about it. We must concluded, therefore that there was only one large oak tree removed.

As we had concluded that the large oak tree that was removed did not violate the CB/UT provisions as had been first believed, the Stop Work Order, issued February 10, 2003, was rescinded, effective March 24, 2003, by letter to the owner's attorney, as noted above. Although no formal notice of this there was given to the neighbors and the Preservation Committee, it is clear that they were fully aware that such an action had been taken since they observed that construction activities on the property had resumed in early April.

For the foregoing reasons, and after review of our file and the material you provided, we believe that the decision made in March 2003 to rescind the Stop Work Order was correct. Accordingly, we see no reason to reopen the matter or to make any re-determination as to the action taken.

As Director Clark said at our meeting on June 25, 2003, we hope that by continuing our dialog and by meeting on a regular basis, we can improve our communications on this and other such matters of concern to the community.

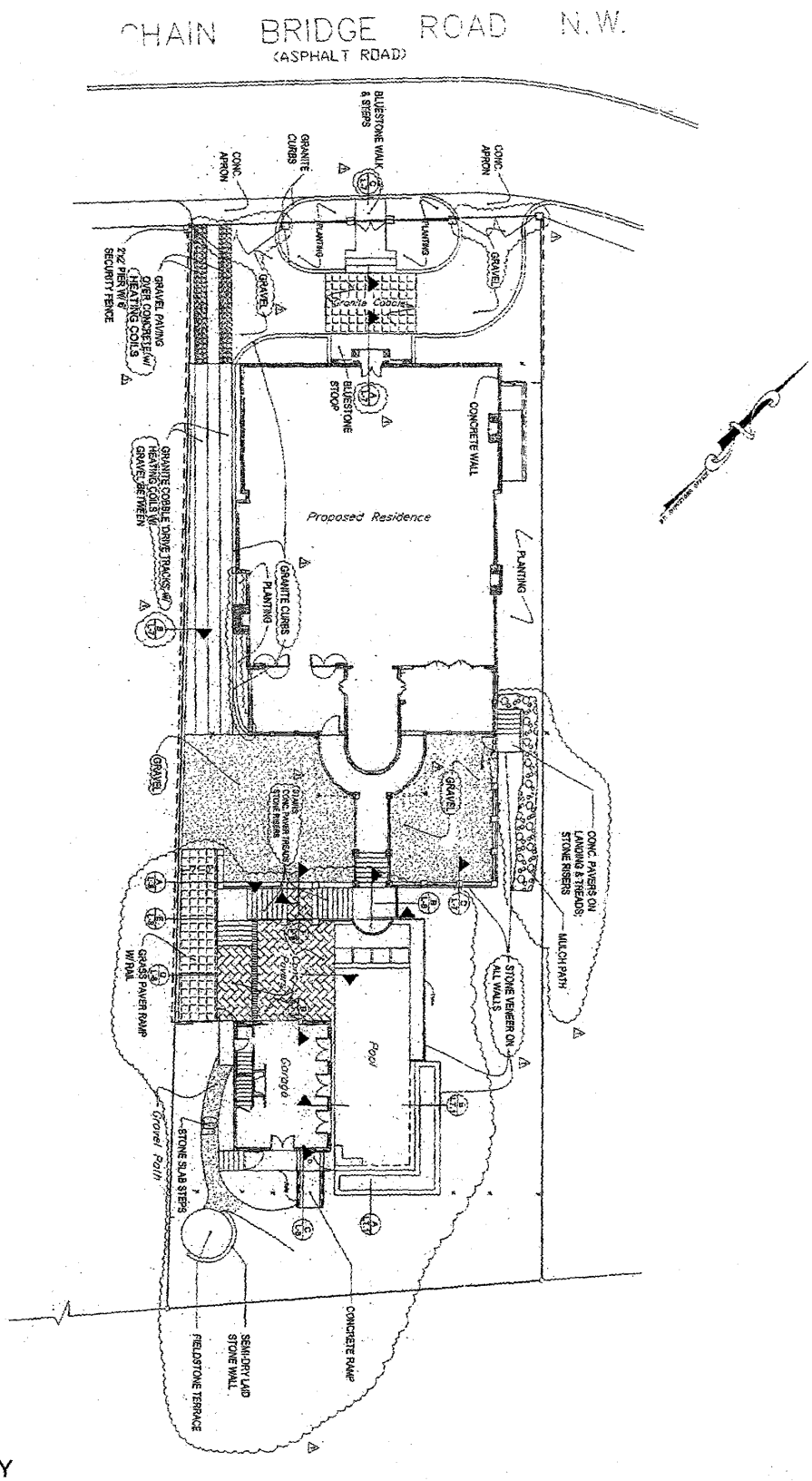
Sincerely,

Noble

Denzil L. Noble
Administrator

cc: David A. Clark
Theresa Lewis
Karen Edwards
Grant Moy

Sept. 15



1 02/07/03 Revision

FOR PERMIT ONLY

Progress Set
PAVING & MATERIALS
Date: 4.26.01, 7/11/01, 7/31/01
Scale: 1" = 10'
Sheet #

LOGAN RESIDENCE

3101 Chain Bridge Road, N.W.
Washington D.C. 20016

BRADLEY-PAPP
LANDSCAPE ARCHITECTURE, INC.

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