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January 13, 2004

BY HAND

Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

Re: **BZA Application No. 17108**
Folger Park North, LLC
206, 208 & 210 D Street, S.E.
Square 763, Lots 26, 27 & 28 (the "Property")

MOTION TO APPEAR AS A PARTY AND
MOTION TO CONSOLIDATE THE APPLICATION WITH APPEAL NO. 17085

Dear Mr. Griffis:

Our firm represents the Larry and Louise Smith, of 322 2nd Street, S.E. and Mary Ann Snow and Jim Marsh, 320 2nd Street, S.E., adjoining neighbors (the "Neighbors") of the property at issue – 206, 208 and 210 D Street, S.E. (collectively referred to as the "Property"). On behalf of the Neighbors, we request that the Board of Zoning Adjustment (the "Board") permit the Neighbors to appear as a party in opposition to the relief requested in the above-referenced application (the "Application"). Additionally, we hereby request that the instant application be consolidated with the Neighbor's appeal relating to the Property in BZA Appeal No. 17085 (the "Appeal"), as the Appeal and the Application involve the same set of facts and same witnesses.

The outcome of the Application will not be dispositive of the Appeal. For example, while we oppose the Application, if the Application is granted, still to be determined in the appeal is whether the following actions were erroneous:

1. Approval by Department of Revenue and Finance (September 23, 2002), the Zoning Administrator of the Department of Consumer and Regulatory Affairs ("DCRA") (September 30, 2002) and the Historic Preservation Division (September 23, 2002) and the approval and issuance of S.O. 009755 by the D.C.

BZA
Case No. 17108
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO. 17108
EXHIBIT NO. 28

Surveyor subdividing Lot 4 and part of Lot 6 in Square 763 into Lots 26, 27 & 28. Subdivision recorded at Book 196, Page 42 on September 30, 2002.

2. Issuance by DCRA, Building and Land Regulation Administration ("BLRA") of Permit No. 424724 on November 13, 2002, permitting the razing of the Pepco substation at 210 D Street, S.E., Lots 800, 801 and 802 in Square 763.

3. Issuance by BLRA of Permit No. B451616 on May 23, 2003, permitting the construction of a new foundation, with plumbing, for a two-family flat 206 D Street, S.E., Lot 26 in Square 763.

4. Issuance by BLRA of Permit No. B451615 on May 23, 2003, permitting the construction of a new foundation, with plumbing, for a two-family flat 208 D Street, S.E., Lot 27 in Square 763.

5. Issuance by BLRA of Permit No. B451617 on May 23, 2003, permitting the construction of a new foundation, with plumbing, for a two-family flat 210 D Street, S.E., Lot 28 in Square 763.

6. Issuance by BLRA of Permit No. B451260 on August 25, 2003, permitting the construction of a new two-family flat 206 D Street, S.E., Lot 26 in Square 763.

7. Issuance by BLRA of Permit No. B451262 on August 25, 2003, permitting the construction of a new two-family flat 208 D Street, S.E., Lot 27 in Square 763.

8. Issuance by BLRA of Permit No. B451261 on August 25, 2003, permitting the construction of a new two-family flat 210 D Street, S.E., Lot 28 in Square 763.

9. Lifting of the stop work order on or about September 25, 2003.

In support hereof, we provide the following:

I.
STATEMENT IN SUPPORT OF PARTY STATUS.

With regard to the requirements of 11 DCMR § 3106.2(a)-(d), we state as follows:

a. The persons seeking party status (along with their respective addresses) are:

Name	Address	Length of Ownership/Occupancy
Larry & Louise Smith	322 2nd Street, S.E.	Since 1991 (approx. 13 years)
Mary Ann Snow & Jim Marsh	320 2nd Street, S.E.	Since April 1996 (approx. 8 years)

b. The Neighbors request to appear as a parties to this matter;

c. The Neighbors will appear in **opposition** to the application; and

d. The Neighbors will appear through undersigned legal counsel.

In accordance with 11 DCMR § 3106.2(e), we provide the following:

1. Interests of the Neighbors [11 DCMR § 3106.2(e)(1) through (3)].

As set forth above, the Neighbors are adjoining property owners to the Property. The Neighbors own and reside in their respective properties.

2. Impact of the Requested Relief and the Unique Interests of the Committee [11 DCMR § 2106.2(e)(4)&(5)].

Given the adjacency of the Neighbors to the Property, the Neighbors are uniquely affected by the construction and development (which are almost complete), and the applicant's disregard to for the District of Columbia zoning and building regulations on the Property, including the resulting over-density and taking of their property. Because of their adjacency to the Property, the Neighbors stand to suffer substantial harm if the Board were to grant the requested relief. By way of example, because it was not feasible for the proposed development to be constructed within the Property lot lines, the construction has resulted in a trespass on and

under the Neighbors' properties.[1] This trespass has been acknowledged and admitted to by the applicant both at various community meetings and in writing. *See* ***Exhibits*** **1 & 2.**

II.
MOTION TO CONSOLIDATE THE APPLICATION WITH APPEAL NO. 17085

A. Statement of Facts.

For a full statement of the facts, see the Neighbor's Statement in Support of Appeal of the Subdivision of Previous Lot 4 in Square 763 into Lots 26, 27 and 28 and the Subsequent Issuance of Permits for Demolition, Construction and Occupancy of Public Space attached hereto as ***Exhibit 3***.

What finally brings the applicant before the Board was the issuance of a stop work order on or about September 15, 2003. The stop work order was issued after DCRA investigated the subdivision of previous Lot 4 into the current, substandard lots of record. Upon investigation, DCRA stated that it had:

> . . . determined that the subdivision was flawed and should not have been approved. A Stop Work Order has been placed on construction at this location while I review the basis for the approved subdivision. The developer has been informed that absent a valid basis for the approval of the subdivision, BZA approval will be required in order to continue the development as it is proposed.

Exhibit 4.

Contrary to this statement and without explanation from DCRA, on or about October 1, 2003, work resumed at the property. The Neighbors attempted, to no avail, to obtain an explanation from DCRA as to why the applicant was permitted to resume construction. For example, on October 1, 2003, counsel for the Neighbors called DCRA to set up a meeting to discuss the lifting of the stop work order. By email to DCRA dated October 2, 2003, counsel for the Neighbors informed DCRA that she was available to meeting that afternoon. ***Exhibit 5.*** Getting no response, counsel again emailed DCRA on October 3, 2003. *Id.* DCRA's response was evasive at best, as DCRA refused to meet to discuss this matter:

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[1] The applicant has asserted on one hand that, because the wall check shows the walls of the buildings to be within its lot lines, the buildings are completely within the lot lines. However, this ignores the fact that the footings and drainage piping are under the adjoining properties, a fact which the applicant has admitted in writing. *See Exhibits 1 & 2.*

> This is matter is pending an appeal before the BZA in which you represent the appellant. The appellant appealed my decision to issue the building permits. The General Counsel has advised me that any matters pending before BZA or any courts in the District of Columbia, the parties must contact the Office of the General Counsel for a meetings relating to the case. The General Counsel can be reached at (202) 442-8475.

Exhibit 5.

Counsel for the Neighbors immediately responded, by email, in an attempt to clarify that the request for the meeting was to discuss the on-going construction, not a matter yet under appeal. ***Exhibit 5.*** In fact, as of October 6, 2003, the Neighbors had been unable to ascertain whether the stop work order had been lifted, or if the applicant had merely proceeded with construction despite the imposition of the stop work order. Despite numerous attempts to contact General Counsel for DCRA, General Counsel never responded to the Neighbors.

It was not until on or about October 27, 2003, the Neighbors learned how it was that the applicant was able to proceed with construction. On or about that day, counsel for the Neighbors spoke with Ellen McCarthy, Deputy Director for Development Review and Coordination of Planning, of the Office of Planning ("OP") and learned that DCRA had lifted the stop work order in exchange for receiving an indemnification against the City by the developer. Accordingly, on October 31, 2003, the Neighbors amended their appeal to include an appeal from DCRA's decision to lift the stop work order and allow the construction, determined not to meet the requirements of the zoning regulations, to proceed prior to the Board deciding whether a variance was warranted. *See* ***Exhibit 6***. On November 4, 2003, the Neighbors met with Ms. McCarthy, Jennifer Steingasser and Travis Parker of OP to discuss the Property. At this meeting the Neighbors were informed that, as part of the release of the stop work order, the applicant was to have filed an application with the BZA by November 1, 2003, which deadline the applicant had not met.

B. The Application and Appeal Arise from the Same Set of Facts and the Outcome of the Application does not Moot the Appeal.

1. <u>The Application and Appeal Arise from the Same Set of Facts</u>.

The applicant stated at the meeting of the Zoning and Planning Committee of the Capitol Hill Restoration Society ("CHRS") on January 8, 2004, that this case is "unique and unusual". While the matter is not unique or unusual in the sense that this characterization supports any relief sought in this Application, this statement instead demonstrates the efforts made by the

developer to subvert application of the zoning regulations and DCRA's willingness to ignore its obligations. The Application and the Appeal are inexorably intertwined. The connection of the cases is best illustrated by the applicant's justification for its requested variances, as represented by the applicant at the Planning and Zoning Committee meetings of both the CHRS and ANC 6B.

At these meetings, as to the uniqueness of the Property and the practical difficulty that the applicant would suffer if the zoning regulations were strictly enforced, the applicant claimed that it is DCRA's actions in this case that give rise to "exceptional circumstances" and result in practical difficulties to the applicant. Specifically, the applicant asserts that DCRA told them that they *had* to construct three (3) (as opposed to two) town homes on the Property. The applicant further alleged that it was forced to indemnify the District in order to be allowed to file an application with the Board. The Neighbors, in their appeal, claim that the applicant filed its various permit applications in a piecemeal manner so as to avoid the true implications of its actions and to mislead DCRA. *See **Exhibit 3***. Furthermore, at the hearing on both matters, the Neighbors will present evidence that the applicant took considerable time in devising a plan to get around the fact that it had been informed by DCRA that it would be possible to build only two (2) row houses on the Property. To establish these facts, the same witnesses will be needed in both cases. Representatives of DCRA will be a crucial witness in both matters.

Just as the same set of facts apply to both the Application and the Appeal, the same legal arguments apply in each case. For example, both the Neighbors, in their appeal, as well as the applicant in the instant matter, have argued whether or not sections 401.1, 401.2, 404.4 and/or 2000.2, 2000.4 and 2000.5 apply.

As both matters rely on many of the same set of facts, same witnesses to attest to those facts and the same legal arguments, consolidation of the Application and Appeal will serve the function of "judicial economy" by avoiding the need of the same witnesses having to appear twice to give the same testimony and prevent the Board from having to hear the same evidence and arguments twice.

2. <u>The Outcome of the Application is Not Dispositive of Appeal</u>.

Regardless of the outcome of the Application, the Board will retain jurisdiction over the Appeal, which will have unresolved issues that will have to be addressed. For example, if the Application is denied, to ensure enforcement action by DCRA and/or the Compliance Officer of the Office of Zoning, the issue of whether the stop work order was properly lifted will have to be decided by the Board. The applicant is going to great lengths to complete construction of the row houses and has threatened that, if denied its application, it will file for bankruptcy and the houses (in either full or partially finished state) will remain as is. If the Application is granted, the question still remains if the subdivision plat or any of the permits were properly issued.

Rather than leave to chance the need to address the issues in the Appeal and given the fact that those issues are so closely related to the Application, the optimal manner in which to proceed is to consolidate the two matters into one hearing resulting in a single order addressing all issues.

3. Additional Benefits of Consolidation.

Continuing the hearing on the consolidated matter until February 24, 2004 will provide additional benefit. Specifically, on November 14, 2003, ANC 6B wrote a letter to DCRA inquiring about several issues raised by the Neighbors, including the Stop Work Order and the justification for lifting the same. *See* ***Exhibit 7.*** Upon information and belief, DCRA has not yet responded to this correspondence. The Neighbors hereby request that in continuing the consolidated matter to February 24, 2004, the Board make a request to DCRA to respond to the ANC's questions. Such responses will assist in clarifying the facts and narrowing down the issues to be heard by the Board.

Additionally, the Neighbors have stated at the CHRS and ANC committee meetings that it would be interested in seeing a copy of the indemnity agreement with the District. Allowing the continuance will provide time for the applicant and/or DCRA to provide a copy to both parties to this matter, as well as to the Board.[2]

The Zoning and Planning Committee of CHRS, through Gary Peterson, has consented to the consolidation of the Application and the Appeal. At the Zoning and Planning Committee meeting of ANC 6B, the applicant indicated that it was not opposed to consolidation of the two cases. Given that the applicant was allowed to proceed with construction while the Application is pending and has done so with full acceptance of the risk that the Application could be denied, there is no prejudice to the parties by allowing the consolidation. OP supported an expedited hearing on this matter "[d]ue to the quick onset of winter and the potential for adverse weather effects on the partial construction" as a result of which, "the applicant and DCRA are anxious to resolve the issue. However, as the applicant has been permitted to proceed with construction, the risks of exposure to the elements has been eliminated and, accordingly, there will be no prejudice

[2] The hearing on the consolidated matter cannot commence on January 27, 2004, because of notice requirements for the appeal. Furthermore, the Neighbors need additional time to respond to the applicant's letter to the Board dated September 24, 2003, in which the applicant claims that the Appeal was untimely filed. Although this letter was filed with the Board months ago by counsel for the applicant, as indicated by the copy list on the letter, the applicant failed to serve the parties to the Appeal – the Neighbors and the ANC. It was only by happenstance that this letter was discovered when counsel for the Neighbors was reviewing the file at the Office of Zoning in between hearings on January 6, 2004. This is yet another example of the applicant's disregard for rules and procedure.

to the parties by a brief continuation of the hearing on the consolidated matters to February 24, 2004.

III.
THE APPLICATION CANNOT SATISFY ITS BURDEN FOR THE REQUESTED VARIANCES.

A. The Property Does Not Meet the Requirements for a Variance.

The Board is empowered to grant an area variance where it finds three conditions:

> (1) The property is unique because, inter alia, of its size, shape or topography;
>
> (2) The owner would encounter practical difficulties if the zoning regulations were strictly applied;
>
> (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

Roumel v. District of Columbia Bd. of Zoning, 417 A.2d 405, 408 (D.C. 1980); *see also Association For The Preservation Of 1700 Block Of N Street, N.W. v. Board of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978)(the applicant must demonstrate that compliance with the area restriction is unduly burdensome and the practical difficulties are unique to the property).

Reviewing the criteria for an area variance, the Court, in *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939, 941-942 (D.C. 1987), stated that the

> threshold requirement to show that the property is unique with respect to the hardship or difficulty asserted as grounds for the variance means the property owner must present proof that "the circumstances which create the hardship uniquely affect the petitioner's property * * * ." Taylor, supra note 6, 308 A.2d at 234 (emphasis in original).

Id.; see also Russell v. Board of Zoning Adjustment, supra, 402 A.2d at 1235 (the requirement that the practical difficulty be caused by the uniqueness of the property "insures relief for problems peculiarly related to the * * * land or structure, and not shared by other property in the

neighborhood, thus avoiding a de facto amendment of zoning laws."); *Gilmartin*, 579 A.2d at 1168.

1. The Property is Not Unique.

Section 3103.2 of the zoning regulations, with respect to the Board's authority to grant variances, states that variances may be granted:

> . . . where, by reason of *exceptional narrowness, shallowness, or shape* of a specific piece of property *at the time of the original adoption of the regulations*, or by reason of *exceptional topographical conditions* or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, Title 11 District of Columbia Municipal Regulations upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

11 DCMR § 3103.2 (emphasis added).

Immediately prior to the subdivision of the Property into three (3) nonconforming lots, the Property was a large, rectangular flat property improved only with a Pepco substation that was no longer in use. There was nothing exceptional in the size, shape, dimension or topography of the Property. Indeed, the applicant has failed to offer any argument as to any such conditions. Rather, the only attempt at an argument that applicant makes is to say that there existed three (3) row houses on the Property in the 1920s. However, as outlined below, this begs the question that, as of the adoption of the regulations (the point in time that section 3103.2 requires the Board to look to), the Property was a single lot of record – Lot 4 – and improved with a Pepco Substation. *See* ***Exhibit 8***. There was nothing that prevented the applicant from subdividing the Property into two conforming lots and developing the Property as a matter of right.

The applicant has argued that DCRA's actions with regard to the Property constitute "other extraordinary or exceptional situation or condition of" the Property so as to satisfy the

uniqueness prong of the variance test.[3] However, not only is this not the type of extraordinary or exceptional situation contemplated by the regulations, as set forth in the Neighbor's statement in support of the Appeal, the applicant does not come to the Board with clean hands. Rather, the applicant went to great lengths to conceal the true nature of its development. Thus, any errors made by DCRA were aided by the applicants inconsistent, misleading and incomplete statements and representations in its applications. Under these circumstances, the applicant cannot be permitted to boot strap its conduct, and DCRA's subsequent errors, to create a uniqueness of the Property.

2. Assuming the Property is Unique, Any "Practical Difficulties" do Not Arise from Such Uniqueness but, Rather, Arise from the Applicant's Affirmative Actions.

Even if the Board were to adopt the applicant's argument with regard to uniqueness that DCRA's actions with regard to the Property created a extraordinary and exception circumstance for the Property, any such "uniqueness" does not give rise to any practical difficulties in the applicant's ability to use its Property if the zoning regulations were to be strictly applied. The hardships that the applicant complains of are, quite simply, self-created.

The fact that difficulties complained of by the applicant are self-created (or self-imposed) is one of the many factors that can be considered by the Board in determining whether there are any practical difficulties. *See Gilmartin v. Board of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990); *Azcarate v. Board of Zoning Adjustment*, 388 A.2d 1233, 1239 (D.C. 1978) *see also* 83 Am. Jr. 2nd, Zoning & Planning § 828. In *Azcarate*, the court noted that the self-created hardship rule is a "manifestation of the equitable principle of estoppel," and explained that "where an applicant for an applicant for an area variance, or his predecessor in title, has committed an affirmative act which directly results in the hardship complained of, variance relief will be withheld." *Azcarate*, 388 A.2d at 1239, *citing* 2 A. RATHKOPT, LAW OF ZONING, § 48-6 (3rd. ed. 1972). Examples of instances where courts have denied area variances based on self-created hardships resulting from direct actions of the applicant include situations where: (1) a substandard lot results from a faulty survey and the surveyor was hired by the applicant; (2) the applicant proceeded with construction in disregard of applicable zoning ordinances or without the necessary permits; (3) a substandard lot was created and the deficiency could have been avoided. *See* 83 Am. Jr. 2nd, Zoning & Planning §§ 824-827. Additionally, the Board may consider weather there is an alternate use of the property that would require a less extensive variance. Id. at § 827.

In *Azcarate*, the court found that the hardship at issue – the failure of the configuration of the lot in question to meet the lot-width requirements of the zoning regulations -- was not a direct

[3] The applicant has used the same argument to support the practical difficulties prong, as well.

consequence of the applicant's sole affirmative acts, as the zoning officials played a "significant part by approving three separate applications during the original subdivision of [the lot]." *Id.* In so holding, the Court noted that variances are "designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack . . . and prevent usable land from remaining idle." *Azacarate*, 388 A.2d at 1236, *citing Palmer v. Board of Zoning Adjustment*, D.C.App., 287 A.2d 535, 541 (1972); *see Daniel v. Board of Zoning Adjustment*, 329 A.2d 773, 775 (1974); *Salsbery v. Board of Zoning Adjustment*, 318 A.2d 894, 896 (1974). The Court acknowledged that:

> This is not to say that any subsequent event will invariably result in unusual conditions supporting the grant of a variance, *particularly if an affirmative act of the applicant is the direct and sole cause of the hardship complained of.*

Azacarate, 388 A.2d at 1237, n.9.

The instant matter is clearly distinguishable from the *Azacarate* case on two primary aspects.

First, unlike in *Azacarate*, it was the applicant, and not DCRA, that played a significant role in creating the substandard lots – a condition which could have been avoided. In *Azacarate*, DCRA approved the substandard subdivision of the property on three (3) separate occasions (the original subdivision and then subsequent redrawings of the lot lines). The instant matter involves only one (1) subdivision. Upon information and belief, the applicant used the fact that there had previously existed three row houses on the Property to convince the Surveyor that the subdivision was legal. However, this is simply no justification for the creation of substandard lots of record.

Second, the property in *Azacarate* was rendered undevelopable, as the substandard lot that was created was sold to a third party. In the instant matter, three (3), as opposed to one, substandard lot was created by the applicant. Additionally, the applicant is currently the owner of all three (3) substandard lots and could subdivide them so as to create lots that comply with the area requirements.

The applicant also claims economic hardship if the zoning regulations are strictly enforced. However, not only did the applicant take considerable time between the purchase of the Property and beginning the application process for permits to develop the Property, the applicant was put on notice early on that there were potential zoning issues. ***See Exhibit 8.*** Moreover, the applicant cannot show that it would have been economically infeasible to develop the Property in a manner that complies with the zoning regulations.

3. The Approval of a Variance Would Result in Substantial Harm to the Surrounding Community and the Zone Plan.

As demonstrated in the Neighbor's appeal, the applicant could not have built the three (3) row houses without encroaching on the Neighbor's properties. The construction required the removal of the Neighbor's right of way behind their properties and the subsequent construction of the buildings footings (referred to as "spill over" by the applicant) and drainage piping under this right of way. *See **Exhibits 1 & 2***. The applicant claims that the digging away of the right of way was "accidental" and never intended. However, that assertion belies the fact that the footings extend approximately eight inches (8") into the right of way and the piping much further into the right of way, feats that could not have been accomplished without digging away the right of way. As set forth in the Appeal, the applicant was able to conceal this fact from DCRA by misrepresenting the length of the adjoining lots along 2nd Street. The applicant conducted itself in this manner without taking the appropriate steps pursuant to the building regulations to obtain its neighbors' consent to encroach upon their property. Now that the damage is done, the applicant believes it is excused, as it has made improvements to the right of way and because the footings and piping is more than eight feet (8") below ground. Irrespective of the applicant's bold assertions, its actions constitute an ongoing trespass, causing detriment to the public good, as well as the Neighbor's individual property rights.

In addition to its blatant and willful violations of the building code and adjoining neighbors' property rights, the construction of three (3), rather than two (2), flats would harm the zone plan and create further detriment on the neighborhood by way of creating increasing density (that is, increasing the number of housing units rather than increasing total building square footage). If the applicant were to construct matter of right flats, the most that could be constructed on the Property would be two flats, or four (4) additional homes. By building three (3) flats, six (6) additional homes are being imposed on this neighborhood.

As is well accepted, parking is a commodity on Capitol Hill. Although the applicant is providing one space per flat, in today's day and age of multi- car families and SUVs, this is simply not adequate. In contrast, if only two (2) flats were constructed, it may be possible to provide two parking spaces per flat. Even if only one space per flat were provided, the elimination of two (2) homes would significantly reduce the demand for on-street parking, which is already overtaxed.

4. Exceptions to the Area Requirements do Not Apply to the Property.

Contrary to the applicant's assertions in its application, the exceptions to the area requirements set forth in section 401.1, 401.2 and 401.4 do not apply to the instant matter. Likewise, section 2000.2,2000. and 2000.5 are inapplicable.

a. Section 401.1.

Section 401.1 of the zoning regulations provides that:

> Except as provided in chapters 20 through 25 of this title, in the case of a building located, on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title.

11 D.C.M.R. § 401.1. In determining whether this section has any applicability, all one must look to is what existed at the property as of May 12, 1958. As of that date, the Pepco Property was improved with the Pepco substation, not three (3) townhouses, as alleged by the Owner.

With regard to the applicant's argument that the Pepco substation somehow grandfathers the use of the Property as substandard lots, this is simply not the case. Although it is unknown why the 1942 through 1948 documents regarding the substation show the assessment and taxation ("A&T") lots (lots 800-802), the structure was actually constructed on record lot 4. Moreover, the applicant's argument ignores the plain language of this provision which states that "***the building may not be enlarged or replaced by a new building*** *unless it complies with all other provisions of this title.*" These buildings, which replace the Pepco substation (which, in turn, replaced the previous row houses on the Property) do not comply, as they are constructed on substandard lots.

Finally, section 3202.3 prohibits the construction on anything but a record lot.[4] Thus, the

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[4] Section 3202.3 provides that:

> Except as provided in § 2516 and § 5 of An Act To amend an Act of Congress approved March 2, 1893, entitled "An Act To provide a permanent system of highways in that part of the District of Columbia lying outside of cities, and for other purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Official Code § 9-101.05(2001)(formerly codified at D.C. Code § 7-1 14 (1995 Rep].))", a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, *unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record*; except buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.

mere fact that prior to 1958, improvements had been constructed on A&T lots on the Property does not serve as justification to violate section 3202.3, or the conversion of A&T lots into record lots.

b. Inapplicability of Sections 401.2 and 401.4 of the Zoning Regulations.

Section 401.2 of the zoning regulations provides:

> Except as provided in § 401.3, in the case of an unimproved lot in single ownership on November 1, 1957, that has a lot area or width of lot less than that specified in § 401.3 for the district in which it is located and that does not adjoin another unimproved lot in the same ownership, a structure may be erected on the lot if both the lot area and width of lot are at least eighty percent (80%) of the lot area and width of lot specified under § 401.3; provided, that the structure shall comply with all other provisions of this title.

As of November 1, 1957, only one record lot existed, that being record lot 4. There were three (3) A&T lots as of May 12, 1958; however, there is no authority that A&T lots give rise to a "grandfathered right" for record lots. Even assuming the previous individual A&T lots (i.e. A&T Lots 800, 801 & 802) provide a basis for the current subdivision (which we submit would be erroneous), section 401.2 is inapplicable in the instant matter, as these properties are adjoining and, at the time of the granting of the applications for building permits and were unimproved. 11 D.C.M.R. § 401.2.

The applicant attempts to argue that the Property should be considered as vacant "through the present day" based on the 2001 and 2004 tax assessments for the Property, which has improvements valued at $0. However, this argument is simply ludicrous. As illustrated by the attached application for a certificate of occupancy and subsequent certificate of occupancy in 1948, the property was clearly improved with a Pepco substation as of the adoption of the zoning regulations. However, some time ago, the substation was no longer used. At that point, the substation being (presumably) obsolete and unused, the demolition costs would have exceeded any value of the structure.

Section 401.4 is likewise inapplicable. Section 401.4 provides the following exception to 401.3:

(Emphasis added.) Thus, contrary to the applicant's assertions during community meetings, it could not have constructed the row houses on the previously existing A&T lots as a matter of right. Rather, the applicant would have been required to file for a special exception pursuant to section 2516 of the zoning regulations, or for a variance from section 3202.3, to allow three principal structures on a single lot of record.

> In the case of an unimproved plot of ground in single ownership on November 1, 1957, that has a lot area or width of lot less than two hundred percent (200%) of that prescribed in § 401.3 or the district in which it is located and that does not adjoin another unimproved plot of ground in the same ownership, two structures may be erected on the lot; provided, that each structure shall be erected on a lot that complies with eighty percent (80%) of both the required lot area and width of lot specified in § 401.3; and provided further, that each structure shall comply with all other provisions of this title.

Given that Lot 4 was greater than 200% of the required lot width and lot area, this section does not apply.

c. Sections 2000.2, 2000.4 and 2000.5 are Inapplicable.

The applicant's argument that sections 2000.2, 2000.4 and 2000.5 provide an exemption from the application of the area requirements of section 401.3 ignores the plain language of these provisions.

For example, the final sentence of section 2000.2 provides that

> It is the intent of this title that nonconformities may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in this title.

Thus, the fact that the Pepco substation existed on the Property at the time of the adoption of the zoning regulations does not allow the replacement of the substation with new construction on substandard lots. Similarly, section 2000.4 only allows the continuation of a nonconforming use existing as of May 12, 1958, it does not allow the replacement of a nonconformity with a new nonconformity, as the applicant is attempting.

The applicant blatantly misrepresents the location of the Pepco substation as having been constructed on the "middle" lot with a partial encroachment on the two outlying lots. Not only does the certificate of occupancy documentation make it clear that the substation was constructed on lots 800 *through* 802, the applicant's own exhibit (Office of Zoning Exhibit 10) illustrates this fact. As depicted on the plat submitted with the building permit for the Pepco substation, the substation was constructed on the southern end of the Property and spanned across the entire

width of lot 801 (the "middle" lot) and eight feet (8'), or half the width of lots 800 and 802 (the "outlying" lots).

Finally, the applicant fails to cite to section 2000.6, which explicitly prohibits changes in nonconformities. Specifically section 2000.6 provides that:

> A nonconforming use of land or of land with structures incidental to the use of the land shall neither be extended in land area nor changed to any use except a use permitted in the district in which the property is located.

In short, irrespective of whether the substation was nonconforming, as alleged by the applicant, any such nonconformity does not grandfather a different nonconformity. Likewise, the previously existing row houses from the 1920s do not grandfather the row houses now under construction and almost complete, as there was an intervening use at the time of the adoption of the zoning regulations – the Pepco substation.

d. As the Deviations are Greater Than Two Percent (2%), Relief is not Available Through Section 407.1.

Finally, Section 407.1 cannot apply, as the deviation on the lot area and lot width for each of the Properties is greater than two percent (2%). 11 D.C.M.R. § 407.1. Moreover, the deviation would not be "minor", as the end result – allowing three (3) new two-family flats, as opposed to the matter-of-right two (2) residences permitted in the CAP/R-4 zone district – would impair the purpose of the Zoning Regulations of controlling density in the CAP overlay. Given the negative impact on the surrounding neighborhood caused by the development of these self-created substandard lots, the community must be given a right to be heard on the matter, a right that was denied by the issuance of the permits.

CONCLUSION

The Neighbors submit that they meet the criteria to be granted party status in the instant matter and, for the foregoing reasons, respectfully request that the instant application be consolidated with BZA Appeal No. 17085 and the consolidated appeal be set for hearing on February 24, 2004 at 1:00 p.m. In the alternative, the Neighbors request that the relief requested by the applicant in the instant application be denied.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler
Jeannine Rustad

Enclosures (as stated)
cc: Mr. Denzel Noble (by hand; w/encl.)
Ellen McCarthy, Jennifer Steingasser, Travis Parker
Office of Planning (by hand; w/encl.)
Karen Edwards, Esquire, DCRA Office of the General Counsel (by hand; w/encl.)
Denzil Noble, DCRA (by hand; w/encl.)
DCRA, Zoning Administrator (by hand; w/encl.)
Folger Park North, LLC (w/encl.) through:
Chris M. Doerfler
5000 Gardner Drive
Alexandria, VA 22304

Selig Solomon, Esquire
21 Penny Lane
Baltimore, MD 21209-2723

ANC 6B (by hand w/encl.)

EXHIBIT LIST

1. Letter dated August 8, 2003 from Folger Park North LLC to adjoining neighbors.
2. Letter dated November 4, 2003 from Linden Contracting, Inc. to Tracy N. Gruis.
3. Statement In Support of Appeal [No. 17085] of the Subdivision of Previous Lot 4 in Square 763 into Lots 26, 27 & 28 and the Subsequent Issuance of Permits for Demolition, Construction and Occupancy of Public Space.
4. Letter dated September 16, 2003 from DCRA to counsel for the Neighbors.
5. October email correspondence between DCRA and counsel for the Neighbors.
6. Supplement to BZA Appeal No. 17085 dated October 31, 2003
7. Letter dated November 14, 2003 from ANC 6B to DCRA.
8. Certificate of Occupancy No. 118519 (with application) dated February 20, 1948 for the Pepco substation at the Property.
9. Letter dated August 7, 2003 from adjoining neighbors to Folger Park LLC *et al.*

1

August 8, 2003

Folger Park North, LLC
210 D Street, SE
Washington, DC 20003

By First Class Mail:

Karla Winters, 318 2nd Street, SE, Washington, DC 20003
Mary Ann Snow, 320 2nd Street, SE, Washington, DC 20003
James K. Marsh, 318 2nd Street, SE, Washington, DC 20003
Louise F. Smith, 322 2nd Street, SE, Washington, DC 20003
Larry K. Smith, 322 2nd Street, SE, Washington, DC 20003
Tracy N. Gruis, 324 and 326 2nd Street, SE, Washington, DC 20003

Dear Sirs and Madams:

In reference to your letter of August 7, 2003, and per previous discussions between Mr. Alger Stoneburner of Folger Park North, LLC and yourselves, we would like to extend our assurances to you that the right of way between our properties shall be restored to it's former condition. If our previous discussions on this subject with the neighbors, including a number of those listed above, had failed to adequately convey our commitment to restore the right of way, we now extend our apologies to you. We should have more formally requested your permission for the temporary encroachment upon of this right of way.

We anticipate restoring the right of way by approximately Oct 30, 2003, and will keep you advised of any changes to that schedule. During this time, we do suggest that, as a safety precaution, you maintain the temporary blocking of access from the rear gates.

In regard to the R4 zoning and right to build the new rowhomes, the ongoing construction is in compliance with the zoning laws, and does not and has never required any type of zoning variance. Further, this project was presented on two occasions to the ANC 6B, was given rigorous review by the head of Zoning prior to permit approval, as well as having been certified as a *matter of right* (v. variance) project before the Historic Preservation Review Board (at a hearing where at least one of the recipients of this letter was present).

It is our commitment to you that, although new construction does come with a certain amount of temporary inconvenience for the neighborhood, we shall take all reasonable steps to provide a harmonious construction environment and ensure timely completion of the new homes.

We are also compelled to inform you of our deep concerns for any unwarranted extra costs on this project in time or money as a result of your inaccurate and misleading presentation of the applicable zoning laws. It is hoped that you will see fit to advise all parties that received your letter so as to preclude any unfortunate scenarios where the aforementioned information may adversely affect the public perception of these fine new homes.

As you are all well aware, from a number of our previous personal meetings and discussions, it is very important to us to act as and be good neighbors. To that end we had previously informed you that the situation concerning the easement will be corrected by approximately October 30, 2003 and extended our sincere apologies.

In the future, if you have any concerns on any aspect of this project, it would be greatly appreciated if you would continue to extend to us the same courtesy and discuss the matter as neighbors rather than send a threatening letter. We have always placed ourselves at your disposal to discuss the project.

Appreciating your many past courtesies, we remain

Sincerely,

Folger Park North, LLC

cc: (by first class mail)

Selig Solomon, Esquire
21 Penny Lane,
Baltimore, MD 21209-2723

David P. Sheldon, Esquire
ANC 6B Representative
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Avenue
Washington, DC 20004

Capitol Hill Restoration Society
PO Box 15264
Washington, DC 20002

Ms. Lisa Burcham
State Historic Preservation Officer
D.C. Historic Preservation Office
801 N. Capitol Street, NE, Suite 3000
Washington, DC 20002

Mr. Jean-Keith Fagon
Publisher
Capital Community News, Inc./Hill Rag
224 7th Street, SE Suite 300
Washington, DC 20003

2

LINDEN
CONTRACTING, INC.

November 4, 2003

Tracy N. Gruis
2400 Clarenden Blvd #308
Arlington VA 22201

Re: Correspondence of October 23, 2003 – Folger Park North

Dear Ms. Gruis:

As the general contractor responsible for construction of the property in question, I have the response to the encroachment allegations.

The building has been constructed under a city approved and permitted set of drawings and built in accordance with standard construction practices. You specifically mentioned concrete and black plastic drainage pipe. The concrete could only refer to miscellaneous overflow or spillage, and would be 8 feet or more underground, and provides no conflict with any future use of your site.

The black plastic pipe was shown on the approved plans and provides hydrostatic pressure relief to both sides of the site.

A survey has been completed that certifies that the building is within its property lines.

Thank you for this opportunity to respond to your concerns. Please contact me should you have any questions regarding this project.

Sincerely,

Glen R. Lindengren/djp

Glen R. Lindengren
President

GRL/djp

Cc: Folger Park North, LLC

EXHIBIT LIST

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9. Letter dated August 7, 2003 from adjoining neighbors to Folger Park LLC *et al.*

3

STATEMENT IN SUPPORT OF APPEAL OF THE
SUBDIVISION OF PREVIOUS LOT 4 IN SQUARE 763 INTO LOTS 26, 27 & 28
AND THE SUBSEQUENT ISSUANCE OF PERMITS FOR DEMOLITION,
CONSTRUCTION AND OCCUPANCY OF PUBLIC SPACE

This Statement of Reasons is submitted on behalf of the appellants, Larry & Louise Smith and Mary Ann Snow, the owners of properties adjoining the subject property.

The Property. The subject property is located at 206, 208 and 210 D street, S.E., Square 763, Lot 26, 27 and 28 (the "Properties"), previously known as 210 D Street, S.E., Lot 4 (assessment and taxation lots 800, 801 and 802) in Square 763. The Property is located in the Capital Hill Historic District. On February 20, 1948, Certificate of Occupancy No. 118519 (**Exhibit 10**) was issued for 210 D Street, S.E., Lots 800 and 802 (the "Pepco Properties") for use as a "public utility – electric power substation" (the "substation"). The substation occupied the Properties until its demolition in early July 2003. As outlined below, through a piecemeal process and without fully revealing his/its intent for and interest in the Properties, Chris Doefler ("Doefler") and/or Folger Park North, LLC ("Folger")(hereinafter collectively referred to as the "Owner") applied for and obtained: (a) a subdivision of the Pepco Property into three (3) substandard lots (**Exhibit 1**); (b) a demolition permit for the substation (**Exhibit 2**); (c) construction permits for the foundations, plumbing and construction of three (3) two-family, row house flats (**Exhibits 3 – 8**); and (d) public space permits for the use of the on-street parking spaces in front of the Properties (**Exhibit 9.**) Additionally, the Owner has illegally encroached upon the appellants' properties and, contrary to its building permits and plans, construction is not entirely on the Owners' Properties. (**Exhibit 9.**) Finally, the Owner has illegally closed the portion of the north-south alley adjacent to the Properties. (**Exhibit 9.**) The foundations have been laid and construction of the row houses is underway.

Exceptions to Administrative Decisions. By this application, the appellants appeal from the following decisions:

1. Approval by Department of Revenue and Finance (September 23, 2002), the Zoning Administrator of the Department of Consumer and Regulatory Affairs ("DCRA") (September 30, 2002) and the Historic Preservation Division (September 23, 2002) and the approval and issuance of S.O. 009755 by the D.C. Surveyor subdividing Lot 4 and part of Lot 6 in Square 763 into Lots 26, 27 & 28. Subdivision recorded at Book 196, Page 42 on September 30, 2002. (**Exhibit 1.**)

2. Issuance by DCRA, Building and Land Regulation Administration ("BLRA") of Permit No. 424724 on November 13, 2002, permitting the razing of the Pepco substation at 210 D Street, S.E., Lots 800, 801 and 802 in Square 763. (**Exhibit 2.**)

3. Issuance by BLRA of Permit No. B451616 on May 23, 2003, permitting the construction of a new foundation, with plumbing, for a two-family flat 206 D Street, S.E., Lot 26 in Square 763. (**Exhibit 3.**)

4. Issuance by BLRA of Permit No. B451615 on May 23, 2003, permitting the construction of a new foundation, with plumbing, for a two-family flat 208 D Street, S.E., Lot 27 in Square 763. (**Exhibit 4.**)

5. Issuance by BLRA of Permit No. B451617 on May 23, 2003, permitting the construction of a new foundation, with plumbing, for a two-family flat 210 D Street, S.E., Lot 28 in Square 763. (**Exhibit 5.**)

6. Issuance by BLRA of Permit No. B451260 on August 25, 2003, permitting the construction of a new two-family flat 206 D Street, S.E., Lot 26 in Square 763. (**Exhibit 6.**)

7. Issuance by BLRA of Permit No. B451262 on August 25, 2003, permitting the construction of a new two-family flat 208 D Street, S.E., Lot 27 in Square 763. (**Exhibit 7.**)

8. Issuance by BLRA of Permit No. B451261 on August 25, 2003, permitting the construction of a new two-family flat 210 D Street, S.E., Lot 28 in Square 763. (**Exhibit 8.**)

9. Failure of DCRA to take action to compel Owner to remove obstructions (fence closing and construction trailer on) from north-south alley to the immediate east of the Properties. July through August, 2003. The Owner has applied for, but was denied, an application to close the sidewalk in front of the Properties. Drawing attached to that application show fencing extending across the southern entrance to the alley along D Street, S.E. and across the alley adjacent to the northern boarder of the Properties. (**Exhibits 9.**) In the event that a public space permit has been granted for the closing of the alley, appellants appeal the issuance of such permit.

10. Issuance of Public Space Permit for dumpster. (*See* **Exhibit 9.**)[1]

Upon information and belief, the Owner claims that the subdivision and development of the Properties is as of right, based on the Owner's misrepresentations that the Properties were once improved with three (3) town homes and there previously existed three (3) lots. The appellants submit that the Owner's contentions and the decisions appealed from were erroneous for the following reasons:

1. Subdivision of the Properties. On or about September 30, 2002, the Properties were subdivided from one existing lot of record (Lot 4) into the three (3) current nonconforming lots. The required lot width and area in the R-4 zone district is eighteen feet (18') and 1,800 square feet, respectively. As illustrated below, each of the Properties is nonconforming by way of both lot width and area.

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[1] Attempts have been made to obtain a copy of this permit but one has not been secured as of the filing of this application.

Lot	Lot Width	Lot Area
26	16'	1,447 s.f.
27	16'	1,529 s.f.
28	16'	1,529 s.f.

None of the exceptions to the area requirements in the zoning regulations justify these nonconformities.

a. Inapplicability of Section 401.1 of the Zoning Regulations.

Section 401.1 of the zoning regulations provides that:

> Except as provided in chapters 20 through 25 of this title, in the case of a building *located, on May 12, 1958*, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title.

11 D.C.M.R. § 401.1. In determining whether this section has any applicability, all one must look to is what existed at the property as of May 12, 1958. As of that date, the Pepco Property was improved with the Pepco substation (**Exhibit 10**), not three (3) townhouses, as alleged by the Owner.

b. Inapplicability of Sections 401.2 and 401.4 of the Zoning Regulations.

Section 401.2 of the zoning regulations provides:

> Except as provided in § 401.3, in the case of an unimproved lot in single ownership on November 1, 1957, that has a lot area or width of lot less than that specified in § 401.3 for the district in which it is located and that does not adjoin another unimproved lot in the same ownership, a structure may be erected on the lot if both the lot area and width of lot are at least eighty percent (80%) of the lot area and width of lot specified under § 401.3; provided, that the structure shall comply with all other provisions of this title.

As of November 1, 1957, only one record lot existed, that being record lot 4. (**Exhibit 11.**) There were three (3) assessment and taxation lots ("A&T lots") as of May 12, 1958; however, there is no authority that A&T lots give rise to a "grandfathered right" for record lots. Even assuming the previous individual A&T lots (i.e. A&T Lots 800, 801 & 802) provide a basis for the current subdivision (which we submit would be erroneous), section 401.2 is inapplicable in the instant matter, as these properties are adjoining and, at the time of the granting of the applications for building permits, were unimproved. 11 D.C.M.R. § 401.2.

Section 401.4 is likewise inapplicable. Section 401.4 provides the following exception to 401.3:

> In the case of an unimproved plot of ground in single ownership on November 1, 1957, that has a lot area or width of lot less than two hundred percent (200%) of that prescribed in § 401.3 or the district in which it is located and that does not adjoin another unimproved plot of ground in the same ownership, two structures may be erected on the lot; provided, that each structure shall be erected on a lot that complies with eighty percent (80%) of both the required lot area and width of lot specified in § 401.3; and provided further, that each structure shall comply with all other provisions of this title.

Given that Lot 4 was greater than 200% of the required lot width and lot area, this section does not apply.

c. <u>As the Deviations are Greater Than Two Percent (2%), Relief is not Available Through Section 407.1</u>.

Finally, Section 407.1 cannot apply, as the deviation on the lot area and lot width for each of the Properties is greater than two percent (2%). 11 D.C.M.R. § 407.1. Moreover, the deviation would not be "minor", as the end result – allowing three (3) new two-family flats, as opposed to the matter-of-right two (2) residences permitted in the CAP/R-4 zone district – would impair the purpose of the Zoning Regulations of controlling density in the CAP overlay. Given the negative impact on the surrounding neighborhood caused by the development of these *self-created* substandard lots, the community must be given a right to be heard on the matter, a right that was denied by the issuance of the permits.

2. Because the Properties do Not Meet the Requirements for Minimum Lot Area and Lot Width, Permits for the Properties Should Not Have Been Issued. Because the Properties do not meet the minimum lot area and width requirements, the permits for development of the Properties should not have been issued. As illustrated above, the Properties do not meet the tests for any of the exceptions to the lot area requirements. As such, the subdivision of the Properties resulted in the creation of unbuildable lots – a result stemming from the Owner's own actions.

The Owner has gone to great lengths to conceal the fact that the Properties do not meet the exceptions from the area requirements outlined above by applying for permits on a piece-meal basis and providing misleading and false statements on its applications. Additionally, construction has not been in accordance with the Owner's plans and, in addition to circumventing the zoning regulations, the Owner has consistently circumvented other applicable regulations, including the building code and public space permitting regulations. The culmination of these actions is a grand scheme to develop the Properties in violation of the zoning regulations in an expeditious manner, so as to avoid repercussions. The magnitude and

grievousness of the Owner's actions warrant mentioning, as provided in the following outline of false statements and misrepresentations:

(1) The address of the owner of the Properties is listed as 210 D Street, S.E. However, this is one of the subject Properties and is currently unimproved. On the building permits, the address of the Owner is listed as the subject Property. Finally, the "Owner", as listed on the permits and subdivision plat, is inconsistent (*see* **Exhibits 1-8**);[2]

(2) On the application for Permit No. B424724, the Owner (listed as Folger) misrepresented the building to be demolished as being an "Ancillary storage building. No Electric or Plumbing Utilities". (**Exhibit 2**, box 12.) Instead, the building to be demolished was a former public utility electric power substation. (*See* **Exhibit 10**.) Upon information and belief, this misrepresentation allowed the Owner to avoid environmental inspection and necessary soil testing of the site. The Owner also misrepresented the proposed use of the Properties as "vacant".

(3) a. On the applications for Permit Nos. B451616, B451615 and B451617 (Owner listed as Doefler), although the Owner indicated in Box 47 that there would be projections beyond the building line, the Owner failed to provide the information regarding such projections in Boxes 48 through 52. (**Exhibits 3, 4 & 5.**)

b. The Owner also misrepresented the need for sheeting and shoring.

c. As noted on the DCRA Batch information Sheets, the Owner failed to sign the permit applications.

d. On the Environmental Intake Forms, the Owner made the blatant misrepresentation that he does not own adjacent or abutting property and failed to complete boxes 5-11 of the forms.

e. A certificate of occupancy is attached to the applications, which certificate does not pertain to the Properties.

(4) On the application for Permit No. B451615 (**Exhibit 3**), the owner failed to complete boxes 22 and 23 regarding disturbing the earth, despite the fact that the permit application was for a foundation;

(5) On the application for Permit No. B454260 (Owner Listed as Folger), the Owner failed to disclose the fact that the foundation and/or footing of the

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[2] However, it is suspected that there is someone living in the construction trailer.

foundation encroached upon the adjoining properties that front 2nd Street, S.E., including the easement serving the appellants' properties. **(Exhibit 6.)**

(6) a. Contrary to representations on the previous permit applications, on the applications for Permit Nos. B454260, B454262 and 454261 (Owner Listed as Folger), the Owner, for the first time, revealed that the improvements will include an elevator. **(Exhibits 6, 7, and 8.)**

b. Although the plans depict a driveway, the Owner represented on the applications that there would be no construction of a driveway.

(7) Plans submitted with the permit applications **(Exhibit 12)** erroneously:

a. Depict the lot depths of 326 and 324 2nd Street, S.E. as 75'1/2". In fact, the depths of those properties are 81'9.5" (*Compare* **Exhibit 12** *with* **Exhibits 13 through 16);**

b Label a private easement to the west of Lot 28 as an "alley";

(8) Upon information and belief, the foundation and footings for Lot 28 encroaches upon the properties at 324 and 326 2nd Street, S.E. and a private right of way behind 318, 320 and 322 2nd Street, S.E. Encroachment is approximately one foot **(Exhibit 9)**.

(9) The Owner, without availing itself of the alley-closing procedures, has closed off access to the north-south alley to the east of the Properties and regularly closes off more street frontage than permitted by its public space permit **(Exhibits 9 and 17)**.

Section 3302.3 of the Building Code provides that:

> **Temporary encroachments:** Sidewalk sheds, underpinning and other temporary projective guards and devices shall not project beyond the interior and street lot lines except where required to ensure safety of the adjoining property and the public, *subject to approval.* Where necessary, *the written consent of the adjoining property owner shall be obtained.*

12A D.C.M.R. § 3302.3 (emphasis added).

Section 3310.2 provides:

> **Protection of Adjoining Property:** *If afforded the necessary written permission* to enter the adjoining lot, building or structure, the person causing demolition or excavation to be made *shall at all*

> *times and at his or her own expense* preserve and protect the lot, building or structure from damage or injury. If the necessary written permission is not afforded, it shall be the duty of the owner of the adjoining lot, building or structure to make safe his or her own property, for the prosecution of which said owner shall be granted the necessary written permission to enter premises for demolition or excavation. In the case of an existing adjoining or party walls which require underpinning, proper underpinning shall be provided in accordance with 3309.3 whether or not written permission to enter the adjoining lot is granted, provided adjoining owner has been given 30 days written notice by registered mail.

12A D.C.M.R. §3310.2 (emphasis added).

Finally, section 3310.7 provides that:

> **Sheeting and Shoring:** All excavations shall be protected by sheet piling or adequate shores of approved design in order to prevent excavation wall collapse and to protect adjoining building or property from damage.

By letter dated August 7, 2003, the appellants notified the owner of the encroachment onto their properties, as well as to their belief that the on-going construction was in violation of the zoning regulations. **(Exhibit 18.)** By letter dated August 8, 2003, the Owner, acknowledging its trespass, simply responded that it "hoped to restore the easement by October 30, 2003." **(Exhibit 19.)** With regard to the alleged zoning violations, erroneously claimed that the Historic Preservation Review Board ("HPRB") found that the development was as of right. To the contrary, HPRB does not have jurisdiction over zoning issues and, furthermore, at least one member of HPRB questioned how the Owner could be building on substandard lots. The Owner further asserted that:

> We are also compelled to inform you of our deep concerns for any unwarranted extra costs on this project in time or money as a result of your inaccurate and misleading presentation of the applicable zoning laws. It is hoped that you will see fit to advise all parties that received your letter so as to preclude any unfortunate scenarios where the aforementioned information may adversely affect the public perception of these fine new homes.

(Exhibit 19.) It is clear from this statement that the Owner (1) has no intention of complying with applicable regulations, including the zoning regulations, and (2) is solely motivated by profit, as evidenced by the quick turn around in construction (demolition occurring in early July, 2003 with construction to be completed by October 1, 2003). **(Exhibit 19.)** In addition to showing the Owner's true motivation, this statement is threatening in tone intended to discourage the appellants from pursuing their rights to see that the applicable regulations are followed and enforced.

The misrepresentations itemized above concealed the fact that the construction is not in accordance with the submitted applications, plans and permits or, most significantly, the zoning regulations. The misrepresentation regarding ownership of adjacent property allowed the Owner to proceed with construction as a matter of right, rather than filing for the necessary variances. Further illustrating the intent to deceive is the fact that the Owner has applied for applications for permits on a piecemeal basis, rather than contemporaneously, as well as the unprecedented expediency of the construction. *See* 11 D.C.M.R. § 3112.2(b)(1)(appeal cannot be filed ten (10) days after construction is under roof).

Because the Properties, created by the Owner's own actions, are substandard, the permits should not have been issued. In the alternative, once issued, the permits should have been revoked. However, DCRA has refused to take any action.

3. Given the Extraneous Circumstances Surrounding the Properties, the Actions of the Owner and the Inaction of and Misinformation Provided by DCRA, the Instant Application is Timely. The Zoning Commission recently amended section 3112.2 of the zoning regulations to set a limitation on the filing of an appeal. The amendments provide that:

> (a) An appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier.
>
> (b) If the decision complained of involves the erection, construction, reconstruction, conversion, or alteration of a structure or part thereof, the following subparagraphs shall establish the latest date on which an appeal may be filed:
>
> > (1) No appeal shall be filed later than ten (10) days after the date on which the structure or part thereof in question is under roof. For purposes of this subparagraph, the phrase "under roof" means the state of completion of a structure or part thereof when the main roof of the structure or part thereof, and the roofs of any structures on the main roof or part thereof, are in place: and
> >
> > (2) The provisions of paragraph (b) of this subsection shall not relieve an appellant of the jurisdictional requirement in paragraph (a) of this subsection of filing a timely appeal.
>
> (c) Notwithstanding paragraphs (a) and (b) of this subsection, for purposes of establishing the timeliness of an appeal under this subsection, an appellant shall have a minimum of

sixty (60) days from the date of the administrative decision complained of in which to file an appeal. The Board may extend the sixty- (60) day deadline for the filing of an appeal only if the appellant demonstrates that:

(1) There are exceptional circumstances that are outside of the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board: and

(2) The extension of time will not prejudice the parties to the appeal, as identified in § 3199.1.

Appellants contend that, given that they have acted diligently, the appeal is timely. In the alternative, given the extraordinary circumstances of this matter, the sixty-day limitation should be extended pursuant to section 3112.2(c).

Since the demolition of the Pepco substation in early July of this year, the appellants, not experienced in zoning matters, have made frequent inquiries to DCRA, including BLRA and the Surveyor, as to how the Owner could be proceeding in light of the substandard lots. With regard to the subdivision, it was not until the appellant's reviewed the plans submitted to DCRA for permit review that they became fully aware of, and consequently extremely concerned about, the substandard lots. The Owner had previously represented that the lots were "grandfathered", as the Properties had previously been improved with row houses. However, research revealed that the certificate of occupancy attached to the foundation permit applications, purportedly backing up this claim, was not for the subject Properties. To the contrary, the application for the certificate of occupancy attached to the permit applications reveals that the certificate of occupancy was issued for ***610 D Street, Southwest, Square 465, Lot 839***. **(Exhibit 20.)** Attaching this certificate of occupancy to the permit applications was just another outrageous aspect of the Owner's plot to deceive both DCRA, as well as its surrounding neighbors.

When the neighbor's contacted DCRA with their concerns, they were informed that the proposed development would be reviewed for zoning compliance at the time of the filing of a building permit. Additionally, they were informed by DCRA that no applications for building permits had been filed. To the contrary, building permit applications were filed in April of 2003. DCRA's misrepresentation regarding the status of the permit applications continued into late August. When above-grade construction commenced, the appellants again inquired as to the status of permits. It was at this time that they learned that applications for building permits had been submitted and approved.

In late July, the appellants contacted DCRA regarding their concerns, including concerns about the alley closing and damage to their properties and the alleyway. Juan Scott of BLRA informed the appellants that the Owner had all the requisite permits – yet another incorrect statement on behalf of DCRA.

By letter dated August 27, 2003 (sent via email), the appellants, through counsel, again informed DCRA of the violations and requested a meeting to review the matter. **(Exhibit 21.)** On September 3, 2003, notice was sent to the appellants from DCRA acknowledging their inquiry (erroneously listing the date of inquiry as September 2, 2003) and informing the appellants that they would receive a response within seven (7) business days. **(Exhibit 22.)** Rather than wait for a response, the appellants immediately began to prepare the instant appeal and to continue their own investigation into the matter.

On September 11, 2003, it was discovered that the Owner had applied for, but had been denied, a public space permit to temporarily close the sidewalk adjacent to its property.[3] **(Exhibit 17.)** Much to the astonishment of the appellants, the drawings submitted with this application revealed that the fencing to close the side walk not only extended across the southern entrance of the alley on D Street, S.E., it depicted fencing for this "sidewalk closure" on the alley adjacent to northern portion boundary of the Properties. This fencing was installed despite the rejection of this permit and failure of the Owner to obtain an alley closing in accordance with Chapter 14 of Title 24 of the D.C. Municipal Regulations, extends the full width of the fifteen foot (15') alley and remains in place as of the date of the filing of this application. (*See* **Exhibit 9.**) Upon discovery of this egregious violation, the appellants sent notice to DCRA, by facsimile and email, requesting the matter be investigated that day and the Owner be compelled to remove the obstructions immediately. **(Exhibit 23.)** DCRA failed to respond. If there had been any doubt of the Owner's deliberate intention to violate the applicable regulations, the sidewalk closing application and the Owner's subsequent illegal closing of the alley erases any such doubt.

The appellants will prove their case relying on: (1) the plain language of the zoning regulations; (2) testimony of the appellants; (3) documents itemized in the Exhibit List and attached hereto; and (4) such additional evidence and testimony as deemed necessary.

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[3] In light of DCRA's early representation that the Owner had all the necessary permits, including a permit for the alley closing, the denial of the side walk closing permit (in addition to the application's contents) came as quite a surprise.

CONCLUSION

For the reasons stated herein and for the reasons provided at the hearing, the appellants respectfully submit that the subdivision plat and all permits for the Properties should be revoked and the Owner compelled to remove the improvements to the Properties.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI, LLP

By: _____
Richard B. Nettler
Jeannine Rustad Zigner

EXHIBIT LIST

1. Subdivision Plat for S.O. 009755.
2. Permit No. 424724, including application (dated November 5, 2002).
3. Permit No. B451616, including application (dated April 29, 2003).
4. Permit No. B451615, including application (dated April 29, 2003).
5. Permit No. B451617, including application (dated April 21, 2003).
6. Permit No. B451260, including application (dated April 2, 2003).
7. Permit No. B451262, including application (dated April 2, 2003).
8. Permit No. B451261, including application (dated April 2, 2003).
9. Photographs.
10. Certificate of Occupancy No. 118519 dated February 20, 1948, including application (dated September18, 1947).
11. Surveys of Properties and surrounding neighborhoods.
12. Building Plans.
13. Deed for Lot 804, Square 763.
14. Deed for Lot 803, Square 763.
15. Deed of easement adjacent to and benefiting, *inter alia*, the appellants properties.
16. Assessment and Taxation Plat for Lots 803 and 804, Square 763.
17. Application for Public Space Permit dated June 4, 2003.
18. Letter dated August 7, 2003 from appellants and other neighbors to the Owner.
19. Response letter dated August 8, 2003 from the Owner.
20. Application for certificate of Occupancy dated May 5, 1948, for Square 465, Lot 839.
21. Correspondence dated August 27, 2003, from counsel for the appellants to DCRA.
22. Response of DCRA dated September 3, 2003.
23. Correspondence dated September 11, 2003, from counsel for the appellants to DCRA.

4

Received 9/25

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

Building and Land Regulation Administration
Office of the Administrator

September 16, 2003

Richard B. Nettler
Jeannine Rustad Zigner
Robins, Kaplan, Miller & Ciresi
1801 K Street, NW #1200
Washington, DC 20006

Ref: 206, 208 & 210 D Street SE

Dear Mr. Nettler and Ms. Zigner:

I am responding to your letter dated August 27, 2003 regarding the referenced properties.

After thorough review of the subdivision that was approved for square 763, lots 26, 27 and 28, it has been determined that the subdivision was flawed and should not have been approved. A Stop Work Order has been placed on construction at this location while I review the basis of the approved subdivision. The developer has been informed that absent a valid basis for the approval of the subdivision, BZA approval will be required in order to continue the development as it is proposed.

If you want to meet with me regarding this matter, please call Diana Dorsey at 442-4677 to arrange a mutually convenient time. Thank you for bring this matter to our attention.

Sincerely,

Denzil L. Noble
Administrator

cc: Theresa Lewis
Roland Dreist
Faye Ogunneye

IQ# 182185 & 182150

5

From: Jeannine Rustad Zigner
To: internet:Loraine.Bennett@dc.gov
Date: 10/2/2003 8:52:04 AM
Subject: 206, 208 & 210 D Street, SE

As a follow up to my voice mail to you yesterday, my schedule has freed up and I am available to meet any time after 12:30 this afternoon. I remain available any time tomorrow. Please call me to let me know what time is convenient for Mr. Nobel. As Construction has resumed at the properties, it is imperative that we meet this week.

Jeannine Rustad Zigner
Robins, Kaplan, Miller & Ciresi L.L.P.
1801 K Street, N.W., Suite 1200
Washington, D.C. 20006
Telephone: 202-736-2718
Facsimile: 202-223-8604
e-mail: jrzigner@rkmc.com
website: www.rkmc.com/business

CC: internet:davida.clark@dc.gov; internet:denzil.noble@dc.gov; internet:mary.ann.snow@usdoj.gov; internet:theresa.Lewis@dc.gov; internet:unblink@earthlink.net; Nettler, Richard B.

Jeannine Rustad - RE: Meeting on properties at 206, 208, 210 D Street, S.E.

From: Jeannine Rustad Zigner
To: "Denzil.Noble@dc.gov".GWIA.RKMCPD1
Date: 10/6/2003 4:06 PM
Subject: RE: Meeting on properties at 206, 208, 210 D Street, S.E.
CC: "Davida.Clark@dc.gov".GWIA.RKMCPD1; "Karen.Edwards@dc.gov".GWIA.RKMCPD1; "Theresa.Lewis@dc.gov".GWIA.RKMCPD1

My question then relates to your letter to me of Sept. 16 indicating that a stop-work order was issued. Has that stop-work order been lifted?

>>> "Noble, Denzil (DCRA)" <Denzil.Noble@dc.gov> Monday, October 06, 2003 >>>
Ms. Zigner

This is matter is pending an appeal before the BZA in which you represent the appellant. The appellant appealed my decision to issue the building permits. The General Counsel has advised me that any matters pending before BZA or any courts in the District of Columbia, the parties must contact the Office of the General Counsel for a meetings relating to the case. The General Counsel can be reached at (202) 442-8475.

Denzil L. Noble
Administrator
941 North Capitol Street, N.E. - Suite 2000
Washington, D.C. 20002
(202) 442-4542

-----Original Message-----
From: Jeannine Rustad Zigner [mailto:JRZigner@rkmc.com]
Sent: Friday, October 03, 2003 12:13 PM
To: denzil.noble@dc.gov
Cc: davida.clark@dc.gov; Loraine.Bennett@dc.gov; theresa.Lewis@dc.gov; unblink@earthlink.net; Richard B. Nettler; mary.ann.snow@usdoj.gov
Subject: 206, 208, 210 D Street, S.E.

>>>> Please read the confidentiality statement below <<<<

Denzil:

I have been trying now for 3 days to set up a meeting with you regarding these properties and the lifting of the stop-work order. Not only is the construction illegal because of the substandard lots (not, the townhouses cannot be grand fathered because of the intervening use as the Pepco substation), but construction is not in accordance with the plans, as it encroaches onto the neighboring properties. Contrary to any representations that the developer may have made, he does not have authority to build or otherwise occupy the neighboring properties.

I had hoped to have a meeting with you to discuss this by the end of this week. However, the lack of response of your office has precluded this possibility. If I do not hear from you today to arrange a meeting for Monday or Tuesday, I will have no choice but to believe you are purposely avoiding this issue.

I anxiously await your response.

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

Telephone: 202-736-2718
Facsimile: 202-223-8604
e-mail: jrzigner@rkmc.com
website: www.rkmc.com/business

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Robins, Kaplan, Miller & Ciresi L.L.P.
http://www.rkmc.com

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ROBINS, KAPLAN, MILLER & CIRESI LLP

SUITE 1200
1801 K STREET, N.W.
WASHINGTON, D.C. 20006-1307
TEL: 202-775-0725 FAX: 202-223-8
www.rkmc.com

ATTORNEYS AT LAW

RICHARD B. NETTLER
JEANNINE RUSTAD ZIGNER
(202) 775-0725

October 31, 2003

BY HAND
Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Room 210
Washington, DC 20001

Re: **Supplement to BZA Appeal No. 17085**
206, 208 and 210 D Street, S.E. -- Square 763, Lots 26, 27 and 28

Dear Mr. Griffis:

By this letter, we hereby amend the above-referenced appeal to include an appeal from the District of Columbia Department of Consumer & Regulatory Affairs ("DCRA"), Building and Land Regulation Administration's ("BLRA") lifting of the stop work order referenced in the attached letter, which was received on September 25, 2003. Work resumed at the properties on or about October 1, 2003. Upon information and belief, BLRA lifted the stop-work order in exchange for an indemnification against the District. Despite numerous attempts, including calls to Karen Edwards, Esquire, counsel for DCRA, we have been unable to ascertain the exact date the stop work order was lifted.

Thank you for your attention to this matter.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler
Jeannine Rustad Zigner

Enclosures (as stated)
cc: Mary Ann Snow (by hand; w/encl.)
Larry & Louise Smith
Ellen McCarthy, Office of Planning (by hand; w/encl.)
ANC 6B (w/encl.)
DCRA

Word 45645003.1

7

ANC 6B

Capitol Hill / Southeast

Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue SE
Washington, DC 20003

November 14, 2003

Denzil Noble, Administrator
Building and Land Regulation Administration
941 North Capitol Street, NE Suite 2000
Washington, DC 20002

Re: 206, 208 & 210 D Street, SE

Dear Mr. Noble:

At our December meeting, ANC 6B will take up the issue of the construction at 206, 208 & 210 D Street, SE. Specifically, the ANC will address BZA Appeal #17085, which is the appeal by certain neighbors of the decision by the Zoning Administrator to allow this construction to move forward as a matter of right. In order to assist the ANC in its deliberation on this case, we would request the follow additional information from you and your office:

1. In a letter to Richard B. Nettler and Jeannine Rustad Zigner dated September 16, 2003, you state that "after thorough review of the subdivision that was approved for square 763 lots 26, 27 and 28, it has been determined that the subdivision was flawed and should not have been approved." In light of this statement, what is the status of this project, specifically, has your office determined that the project now needs BZA approval to continue? (Note: if this is true, then the current BZA appeal is moot).

2. What specifically were the flaws in the subdivision and what was the rationale for the previous decision to grant the subdivision? Please be as specific as possible as to what was incorrect in the original decision to grant the subdivision.

3. Your letter of September 16 also states that "a Stop Work Order has been placed on construction at this location." We understand that the Stop Work Order was subsequently removed and construction resumed. What was the reason for lifting the Stop Work Order, especially in light of your earlier finding that the granting of the subdivision was flawed?

4. Given that the building formerly occupying the site was a PEPCO transformer station, what actions were taken to ensure that there was no environmental contamination on the site?

5. The neighbors who have filed this appeal have also alleged various building code violations in their letter (from their attorneys) to you dated August 27, 2003. What actions has DCRA taken to investigate these complaints?

6. The ANC is especially concerned about the complaint concerning excavation under the public alley between the property and the Washington Sports Club and under the public sidewalk in front of the property. From photos we have seen, the excavation under these public spaces could present a public safety concern. What actions has DCRA taken to ensure that there is no public safety risk or that any previous risk due to such excavations has been corrected?

The Planning and Zoning Committee will be considering these issues at its meeting of December 2. Therefore, we would appreciate your response by December 1 at the latest. You may fax your response to the ANC at 202-543-3507.

Thank you very much for your cooperation.

Sincerely,

Mary C. Wright

Mary Wright
Chair, Planning and Zoning
Committee of ANC 6B

Cc: The Honorable Sharon Ambrose
Alger Stoneburner, Folger Park, LLC
Richard B. Nettler and Jeannine Rustad Zigner, Robins, Kaplan, Miller & Ciresi LLP

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THIS CERTIFICATE SHALL BE CONSPICUOUSLY POSTED AT ALL TIMES

DEPARTMENT OF BUILDING INSPECTION
DISTRICT OF COLUMBIA

No 118519

CERTIFICATE OF OCCUPANCY

WASHINGTON, D. C., Feb 20/1948, 10 ...

Permission is hereby granted to ... Potomac Electric Power Co.

to use the ... both ... floor of the building located on Lot ... Square ... 765

Premises ... 810 D Street S.E. ... for the following purposes:

... Public Utility: Electric Power Trans. Substation

This certificate does not take the place of any license required by law, nor does it authorize the use of boilers, motors, or machinery. Any change in the use or occupancy of this building shall require a new certificate.

Zone ... R-5 60 C ... Fee, $ 2.00

ROBERT M. DAVIS.
Director of Inspection

By ... Doris O Negaha
Permit Clerk.

#57

Form 185

WRITE WITH INK

APPLICATION FOR CERTIFICATE OF OCCUPANCY

Permit No. 44515 Issued 9/24/47

Date September 18, 1947

Name of proposed occupant POTOMAC ELECTRIC POWER COMPANY

Premises number 210 D STREET, S. E.

Lot number 800 & 802 Square number 763

To be used as PUBLIC UTILITY - ELECTRIC POWER SUBSTATION TRANS

Last used as SAME

Material of building BRICK

No. of stories high 1 & BASEMENT

Which floor do you propose to use? BOTH

Owner of building (or agent)

POTOMAC ELECTRIC POWER COMPANY

Address 929 E STREET, N. W.

TO BE FILLED IN BY CLERK

Use 150

Height 60

Area C

Transcript of No. 7

Police survey /

Building permit 25513 (8-24-42)

E. D. No. 169482-7

M.

(Initials)

It is understood that the Certificate of Occupancy does not take the place of any license that may be required by law, and also that it does not confer the right to install or erect any kind of machinery.

Signature of proposed occupant POTOMAC ELECTRIC POWER COMPANY

Approved for Plumbing

Date 9/29/47

Name of applicant POTOMAC ELECTRIC POWER COMPANY

9

August 7, 2003
318 Second Street, S.E.
320 Second Street, S.E.
322 Second Street, S.E.
324 Second Street, S.E.
326 Second Street. S.E.
Washington, D.C. 20003

By Federal Express

Mr. Alger Stoneburner
Folger Park, L.L.C.
210 D Street, S.E.
Washington, D.C. 20003

Maiden and Associates
8030-B Georgia Avenue
Silver Spring, Maryland 20910

Linden Contracting, Inc.
1212 Butterworth Ct.
Stevensville, Maryland 21666

BB&T
1308 Devils Reach Rd.
Woodbridge, Virginia 22192

Ms. Bobbe Ward
Sotheby's Washington Fine Properties
3201 New Mexico Avenue, Suite 220
Washington, D.C. 20016

Re: 210 D Street, S.E.

Dear Sirs and Madams:

We have significant concerns about the site development you and your companies are undertaking at 210 D Street, S.E. in the District of Columbia.

First, you failed to exercise requisite care in your excavation of the site. As a result, you encroached upon our property, and destroyed an easement that our properties share in common. As you are aware from deeds on file with the Register of Deeds, our property lines extend 81 feet, 9 ½ inches from the outer front wall of our homes, bringing our property lines approximately 4 to 4 ½ feet beyond the brick fences that have existed on our properties for many, many years. With respect to that area behind our fences, our properties, by deed, share a

perpetual right of way, upon which you trespassed, and then destroyed and rendered useless.

Second, you have not obtained a building permit for the construction of three townhouses which, according to your plans, are each to be only 16 feet wide, in violation of R4 zoning regulations, for which you have not sought or obtained a variance.

We want specific guarantees that you will comply with District of Columbia zoning regulations and building codes, and that your construction will fully protect our property and easement rights. If we do not receive these satisfactory assurances within seven business days, we will instruct our attorney to seek an injunction and to prepare to file suit against you.

Sincerely,

Karla Winters (Representing Winberg Trust
Which Owns The Property Of 318)
318 Second Street, S.E.

Mary Ann Snow
320 Second Street, S.E.

James K. Marsh
318 Second Street, S.E.

Louise F. Smith
322 Second Street, S.E.

Larry K Smith
322 Second Street, S.E.

Tracy N. Gruis
324 & 326 Second Street, S.E.

cc: (By First Class Mail)

David P. Sheldon, Esquire
ANC 6B Representative
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Avenue
Washington, D.C. 20004

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

Mr. Richard Nero
D.C. Office of Zoning
441 4th Street, N.W.
Suite 210 South
Washington, D.C. 20001

Mr. Fydney Lester
Acting Program Manager for Building Inspection Division
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Capitol Hill Restoration Society
Post Office Box 15264
Washington, D.C. 20003

Ms. Lisa Burcham
State Historic Preservation Officer
D.C. Historic Preservation Division
801 N. Capitol Street, N.E., Suite 3000
Washington, D.C. 20002

Mr. Jean-Keith Fagon
Publisher
Capital Community News, Inc./Hill Rag
224 7th Street, S.E., Suite 300
Washington, D.C. 20003