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February 23, 2004

BY HAND

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

Re: **BZA Application No. 17108**
Our File No. 092314.0000

Dear Mr. Griffis:

Attached for filing you will find the original and twenty (20) copies of the Supplemental Statement of Mary Ann Snow, James Marsh and Larry & Louise Smith in Opposition of the Application.

Thank you for your attention to this matter.

Sincerely,

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

Richard B. Nettler
Jeannine Rustad

cc: Mary Ann Snow & James Marsh
Capitol Hill Restoration Society, c/o Gary Petersen
Office of Planning, c/o Joel Lawson
ANC 6B c/o David Sheldon (119 Duddington Place SE, Washington, DC 20003)
Richard Aguglia, Esquire
(All by hand and with enclosures)

BZA
Case No. 17108
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
CASE NO. 17108
EXHIBIT NO. 38A1

BEFORE THE BOARD OF ZONING ADJUSTMENT

OF THE DISTRICT OF COLUMBIA

Appeal of Larry & Louise Smith and
Mary Ann Snow and James Marsh BZA Appeal No. 17108

SUPPLEMENTAL STATEMENT OF MARY ANN SNOW, JAMES MARSH AND LARRY & LOUISE SMITH IN OPPOSITION OF THE APPLICATION

In response to the Applicant's prehearing statement and the report of the Office of Planning, Mary Ann Snow, James Marsh and Larry & Louise Smith (the "Neighbors") offer the following brief response:

A. Subdivision and Grandfathering of the Subject Properties.

In its recent submissions, the Applicant asserts, in support of its request for a variance, that:

(1) It relied on a recorded plat for lots 800, 801 and 802 (the "A&T lots");

(2) The A&T lots were once improved with three residential houses (circa 1928) and later by a Pepco substation all constructed prior to 1958;

(3) When the applicant applied for building permits, the A&T lots were converted to record lots;

(4) Lot 801 (now Lot 27) was exempt from the lot size and width by section 401.1 of the zoning regulations; and

(5) Lots 800 and 802 (now Lots 26 and 28) are exempted by section 401.2.

However, the Applicant's arguments fail on several grounds.

First, the previous residential homes do not create any grandfathering rights because of the intervening use of and improvements on the property with the Pepco substation. As clearly depicted on the plat for the substation (*see* ***Exhibit 1***), the substation was constructed on Lot 4. For reasons unknown, the certificate of occupancy was issued for the substation for the address of 210 D Street, S.E. but listing the lots as "800&802". These are the exterior A&T lots and it is undisputed that the substation also occupied lot 801, the interior lot. In fact, the Applicant would have you believe that the substation only occupied lot 801 and that lots 800 and 802 were vacant. *See* Applicant's Prehearing Statement at p 2, fn. 2 and BZA Case No. 17108 Exhibit 4 at pp. 5-6 (wherein the Applicant claims that the substation footprint "sat principally on Lot 801 (middle lot), and encroached for approximately 8.5 feet onto each of the end lots"). In support of its contention that lots 800 and 802 were vacant, the Applicant points to the DC assessment records, which listed these properties as unimproved. *See* BZA Case. No. 17108 Exhibit No. 4 at p. 5.

However, as this Board discussed in BZA Appeal No. 17034, unimproved means "lands once improved that have reverted to a state of nature as well as lands that have never been improved" and "unimproved land" means land "not built upon or otherwise improved for use, retained in the wild or natural state." *See* ***Exhibit 2a*** at p. 51-52 (citing Black's Law Dictionary and Webster's Dictionary); *see also* ***Exhbit 2b*** (granting the appeal). Clearly, lots 800 and 802 were improved, as the Pepco substation extended onto those properties by 8.5 feet (or, more than half the width of those lots).

Second, with respect to the "grandfathering" in this matter, the Applicant has not attempted to build on the A&T lots, which it claims are grandfathered. Instead, the Applicant is building on subdivided lots it created. *See Sagalyn v. Foundation for Preservation of Historic Georgetown*, 691 A.2d 107, 112 & 114 (taking an A&T lot and converting it into a record lot held to be a subdivision)(attached as ***Exhibit 3***). As lots 26, 27 and 28 did not exist prior to 2002, they could not have acquired any rights under section 401.1 or 401.2 of the zoning regulations. Furthermore, in creating the subdivision, the Applicant was required to either (1) create conforming lots or (2) to the extent nonconforming lots were created, maintain those lots as vacant.

Third, the A&T lots were not "converted into record lots" when the Applicant applied for building permits. To the contrary, the Applicant applied for the subdivision plat in September 2002, but did not apply for building permits until April 2, 2003. As set forth below, this was part of the Applicant's piecemeal approach to get the development through DCRA without needing any variances. A telling fact on this point is the absence of review of the subdivision by the Historic Preservation Review Board.[1]

B. The Applicant Cannot Meet the Variance Test.

1. Practical Difficulty.

The Applicant supports its argument of practical difficulty by essentially saying that, if two conforming lots had been created, the resulting homes would be have been large and out of proportion with the neighboring houses. This argument falls short of proving any practical difficulty with complying with the zoning regulations for several reasons.

First, the argument ignores the simple fact that the Applicant would not have been required to build to the same footprint as the current structures occupy. That is, there is no

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[1] D.C. Code Section 6-1106 requires that all applications for subdivision in an historic district, be reviewed by the Mayor in accordance with this section [6-1106(a)] and place notice of the application in the District of Columbia Register. D.C. Code § 6-1106(a). Accordingly, an application for subdivision of a property in an historic district is to be referred to the Historic Preservation Review Board for its recommendation and findings as to whether the subdivision "is necessary in the public interest or that a failure to do so will result in unreasonable economic hardship to the owner." D.C. Code §§ 6-1106 (b) & (e). "Subdivide" or "subdivision" is defined as "the division or assembly of land into 1 or more lots of record, including the division of any lot of record into 2 or more theoretical building sites as provided by the Zoning Regulations of the District of Columbia (11 DCMR 2516 et seq.)." D.C. Code § 6-1102(13); *See Sagalyn*, 691 A.2d 107, 114.

requirement that the Applicant build large houses and, in fact, the Applicant could build smaller houses that would be in conformity with the neighborhood.[2] For example, the Applicant could have built houses with either a smaller footprint and/or with only two (2) stories. This would address the Applicant's concern that HPRB may not approve a design plan for two (2) large town homes.

Second, as raised by the Office of Planning, pursuant to section 405.3 of the zoning regulations, the outside lots of the new row houses are required to have side yards. Had the Applicant created (two) conforming lots and, consequently, complied with the side yard requirements of the zoning regulations, the resulting homes would not have been unexceptionally wide or large.[3]

Third, any "practical difficulty" arises out of the Applicant's own actions of creating substandard lots. *See*, the Neighbor's Request for Party Status at pp. 10-11.

Simply put, there was nothing unique about the property, which is flat and rectangular, that makes it difficult for the Applicant to comply with the zoning regulations.

2. The Applicant Did Not Rely in Good Faith on the District's Approvals of Its Proposed Development.

The Applicant claims that the exceptional situation in the instant matter is the approvals by zoning officials on "numerous occasion" that "construction of three row houses on the three 800 lots/three record lots was matter of right zoning without the need for a variance." *See* Applicants February 10, 2004 Filing at p. 4. However, what the Applicant fails to disclose in making this statement is the numerous and repeated misrepresentations that it made to the District that lead to the District erroneously approving the development without referring the Applicant to the Board. The Applicant would have this Board sanction these misrepresentations by allowing the Applicant to boot-strap the resulting approvals to support its belated request for a variance.

Despite the Applicant's claims, it did not rely in good faith on the District's approvals. Attached is a time line depicting the convoluted process that resulted in the erroneous grant of the various permits. The salient points of the extent of the Applicant's actions and misstatements can be summarized as followed:

a. The Applicant applied for the permits in a piecemeal manner and under different names;

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[2] In fact, the neighborhood is replete with larger buildings and larger lots. *See* ***Exhibit 4***.

[3] Even if the side yard requirements do not apply, the resulting homes would not have been out of character with the neighborhood. *See* ***Exhibit 4***.

b. The Applicant misrepresented the nature of the structure being demolished. *See* ***Exhibit 5a*** (raze permit application);

c. The Applicant misrepresented the fact that it owned vacant, adjacent property within Square 763 and that it was undertaking additional development within the Square. *See* ***Exhibit 5b-d*** (foundation permit applications at EIS form);

d. The Applicant attached a certificate of occupancy for a flat for a property at 610 D Street, S.W. to its foundation permit applications, presumably as evidence of the preexisting use of the property. *See* ***Exhibit 5b-c;***[4] and

e. The Applicant misrepresented the lot depth of the adjacent properties of 324 and 326 2nd Street, S.E. as being 75½ feet (as opposed to their actual depth of 81'9.5"), as well as the nature of the right of way to the west of the property (which the Applicant represented to be an "Alley"). *See* ***Exhibit 6a-d***.

In addition to the foregoing unequivocal evidence, the Applicant has made several statements to the Neighbors that belie their assertion that the District always told them that they could build three homes on the property. To the contrary, the Applicant informed Louise Smith during a visit to her at her home that it took them six months to figure out how they could build three homes.

The fact that the Historic Preservation Division of the Office of Planning confirmed with DCRA that no variance relief was necessary does not bolster the Applicant's case. Instead, it is merely a continued illustration of the fact that DCRA was mistaken as to the nature of the development, which, again, was a direct result of the Applicant's misinformation provided to DCRA. Furthermore, based on the Historic Preservation Review Board ("HPRB") hearing, the Applicant was on notice of the doubt as to the matter-of-right nature of their development. Specifically, HPRB member Amy Weinstein questioned the ability to develop the substandard lots and pointed out by way of example a proposed development on a sixteen foot (16') wide lot at 315 East Capitol Street, which lot had been in existence since the 1890s. *See* ***Exhibit 9***.

3. <u>There Would Be No Hardship to the Developers If the Variance Was Denied</u>.

The Applicant attempts to play on the sympathy of the Board by stating that

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[4] Conspicuously, the Applicant failed to submit these misleading documents with its filings before this Board.

> Denial of the variances requested will cease extreme hardship on Folger and possible bankruptcy for its investors, who have already expended $2.4 million under the impression that construction of the three row houses was matter of right.

Applicant's February 10, 2004 filing at p. 3. To the contrary, this money has been expended at the Applicant's own risk when it proceeded with construction after the issuance of the stop work order in September 2004. At the time of the issuance of the stop work order, the Applicant had just started construction above-grade. Clearly then, the Applicant could have taken steps to protect the foundations from the elements, waited for the Board's decision and then, if necessary, reconfigured the development to conform to the zoning regulations.[5] Although there may have been some financial loss, it would have been much less than the claimed $2.4 million.

Furthermore, the Applicant has failed to show how any uniqueness of the property gave rise to practical difficulties in complying with the zoning regulations. Instead, developing three (3), as opposed to two (2), row houses was simply the preferred development of the Applicant. *See* Discussion at pp. *infra*.

4. Harm to the Public Good.

This overdevelopment of the site will result in harm to the surrounding community and harm to the public good by way of increased traffic congestion and parking, as well potential over taxation of the water/sewer facilities for the Square.

The subject property is located within one block of the Library of Congress and two blocks of the Capitol. *See* ***Exhibit*** 4 (map); *see also* Office of Planning Attachments I & II. The two (2) block radius within the property is improved with numerous apartment buildings, condominiums, office buildings and other commercial facilities. *Id.* By way of example, St. Peters Church is located directly to the east of Square 763 on 2nd Street, S.E. Also in that square (Square 733) is an apartment building and the Republican National Committee building. *Id.* In Square 763, to the immediate east of the property across the public alley, is a private club with offices. *Id.* There is also an apartment building along 3rd Street and one on C Street in Square 763. *Id.* Since September 11, 2002, the traffic patterns in the neighborhood have been redirected and parking surrounding the Capitol and attending buildings restricted. This, along with the mixed uses in the vicinity, has caused a burden on streets such as 2nd and D Streets, S.E. by way of traffic and parking. In deed, this neighborhood suffers one of the most severe parking shortage of parking in the Capitol Hill district.

Allowing three (3) flats will only serve to exacerbate this already undue burden on the neighborhood in terms of parking and traffic. In today's day and age with most families owning two (2) (or more) automobiles, the potential increase in demand on parking by the three (3) large (luxury) flats is between nine and twelve (9-12) on a regular basis. This increase is especially likely given the steep sales price of the homes of $1.8 million each. In contrast, if two smaller,

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[5] Such prudent action would have supported the request for an expedited hearing.

more compatible units were constructed, the maximum increase would be approximately four to six (4-6).[6]

With regard to parking, the Applicant shows one parking space per unit. However, when questioned about a covenant for the shared driveway, the Applicant stated that they do not yet have one in place, as they are unaware as to the exact location of the driveway. This raises grave concern about the ability of the Applicant to provide the requisite parking, given that the plans submitted to the District show a driveway and, yet, the Applicant is unsure where that driveway will be located. Additionally, when the question of the adequacy of the parking provided was raised, the Applicant stated that they could provide two (2) parking spaces per row dwelling. Again, this causes concern as to the intent of the Applicant and the accuracy of their plans. Specifically, each lot is only sixteen feet (16') wide. Required parking spaces must have a width of nine feet (9') and accessory spaces a width of eight feet (8'). 11 DCMR §§ 2115.1 & 2115.3. Thus, with three lots, it is impossible to provide two parking spaces per lot. In contrast, it would be possible to provide two (2) parking spaces per lot if two (2) conforming lots had been created.

As to harm to the public good concerning storm water run off and demand for water by the new development, it is clear that insufficient information has be provided to the District. *See* Office of Planning report. Furthermore, given the narrow width of the lots and the lack of side yards, storm water run off had to be provided underneath the Neighbor's right of way and underneath the property at 324 (the Smith property) and 326 2nd Street, S.E. Granting the requested variance would condone the taking of neighboring property for the purpose of developing a non-matter of right development. Given that the District Water and Sewer Agency ("WASA") could not determine the impact of this development on the surrounding public systems, granting a variance without full comment and review by WASA would be premature.

The Applicant Needs a Side Yard Variance for the Two End Units.

As pointed out by the Office of Planning, as the two end homes do not adjoin another row house, they must comply with the side yard requirements. *See* 11 DCMR § 405.3. Specifically section 405.3 provides that:

> In R-2, R-3, R-4, and R-5 Districts, when a one-family dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.

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[6] If smaller units were developed on the site, the resulting rental units would demand a lower rent, which may, in turn, encourage tenants who would take advantage of Metro, rather than car ownership.

While this provision is arguably in conflict with section 405.6,[7] a review of the legislative history and subsequent interpretation of section 405.3 removes any ambiguity of the intent of that section, which is to ensure that semi-detached buildings provide a side yard. *See* Office of Planning report at 7. That a side yard is required for the exterior lots (Lots 26 and 28) is consistent with the Board's decision in BZA Application 16811 (attached as ***Exhibit 7***). In that decision, in interpreting section 405.3, the Board stated that

> The Board rejects the arguments of the Zoning Administrator and the property owners that § 405.3 does not apply as long as a dwelling has (at least) one common division wall. Subsection 405.3 must be read in its entirety. The first clause employs the general phrase "one-family dwelling," defined in § 199.1 as "a dwelling used exclusively as a residence for one (1) family," rather than the more specific classifications, "one-family detached," "one-family semi-detached dwelling," or "row dwelling," all defined in § 199.1. If the purpose of § 405.3 was limited to the preventing the construction of only one-half of a pair of semi-detached dwellings as urged by the property owners, then the regulation would have used the specific term "one-family semi-detached dwelling," and not the general term, "one-family dwelling."
>
> Moreover, the last clause of the sentence, in requiring "a side yard on each resulting free-standing side," refers to each one of potentially two free-standing sides.[8] Moreover, the use of the word "resulting" indicates that the free-standing side results from the absence of a common division wall with an adjacent building, such

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[7] Section 405.6 states that:

> Except as provided in §§ 405.1 and 405.2, a side yard shall not be required in an R-3, R-4, R-5-B, 1R-5-C, R-5-D, or R-5-E District. However, if the yard is provided, it shall be at least three inches (3" in.) wide per foot of height of building, but not less than eight feet (8' ft.) wide.

[8] The word "each" is defined as:

> being one of two or more distinct individuals having a similar relation and often constituting an aggregate: this as well as that or the next or any other of two or more separate but similar individuals (a boat hung from the ceiling by ropes attached at each end . . .) (the little chipmunk with a pinion nut in each cheek pouch . . .) (each day was like every other one . . .) (each year the Cape has a summer inundation of people . . .) (a program flexible enough to be tailored to each individual employee . . .) (giving to each syllable an equal stress . . .) (some publishers . . . will have books to show in each category. . .).

Webster's Third New International Dictionary (1986) (citations to sources of examples omitted).

that a side yard must be provided on each side of the dwelling that does not share a common division wall with an adjacent building.

Subsection 405.5, which states that "A side yard shall not be required along a side street abutting a corner lot in a Residence District," provides the an exception to § 405.3. Thus, at the end of a row of row dwellings, except in the case of a corner lot, the last dwelling (a semi-detached dwelling) must provide a side yard.

The Zoning Administrator also argued that the purpose of 405.3 was to prevent property owners from constructing a semi-detached dwelling to within one foot or so of the lot line. Subsection 405.3, however, does not address the required minimum width of side yards. Rather, it specifies circumstances under which a side yard must be provided. Subsections 405.6 and 405.9 specify minimum side yard width requirements. These regulations were in place prior to the adoption of § 405.3. Therefore, § 405.3 could not have been intended to prevent narrow, one-foot side yards, since §§ 405.6 and 405.9 already required a semi-detached dwelling to provide one side yard, a minimum of eight feet in width.

Finally, the Zoning Administrator argued that an interpretation of § 405.3 as requiring a side yard on the side of a dwelling that does not share a common division wall would not make sense in light of § 401.3, which prescribes for row dwellings in the R-4 District a minimum lot area of 1,800 square feet and a minimum lot width of 18 feet. The Zoning Administrator noted that the provision of an 8-foot wide side yard on an 18-foot wide lot would leave only 10 feet for the dwelling. Subsection 401.3, however, also prescribes for a one-family semi-detached dwelling in the R-4 District a minimum lot area of 3,000 square feet and a minimum lot width of 30 feet. Subsection 101.6 provides in pertinent part that "Where a lot is divided, the division shall be effected in a manner that will not violate the provisions of this title for yards . . . applicable to that lot or any lot created." To comply with the side yard requirement of § 405.3, property should be subdivided such that the end lot (that is not a corner lot) of a row of lots subdivided for purposes of constructing row dwellings will have sufficient width to accommodate a semi-detached dwelling.

***Exhibit** 7* at pp. 8-9.

Likewise, in BZA Application No. 16709, the Board denied a variance from, *inter alia*, section 405.3. In that case, the applicant requested the area variances so as to allow the conversion of the property, which was purchased two (2) years earlier as a two-unit (*ie,* a flat) rental property, to an owner-occupied, one-family dwelling and to construct an addition so as to

provide them with an increased amount of interior living space in which to raise a family. ***Exhibit 8*** at p. 2. In denying the requested variance, the Board found that the configuration of the property did render the property unique but that there was no practical difficulty in complying with the zoning regulations. *Id.* at p. 6. Specifically, the Board stated that the identified practical difficulties – "the amount of interior living space that would be available if they converted the flat to a one-family dwelling without variance relief, the elongated floor plan of the dwelling, and the split floor levels within the building" and the preference for "a larger home, with an improved interior circulation pattern, in which to raise a family" -- was merely the preferred option of the applicant, but not the only option. *Id.* The Board pointed out that the applicant had not proven that alternative methods of combining the two units to create a one-family dwelling were unnecessarily burdensome or rose to the level of "peculiar and exceptional practical difficulties" required for variance relief. *Id.* Alternatives to the applicants proposal, as pointed out by the Board, included combining the two units into a one-family dwelling without variance relief (*ie,* without the addition), or alternatively, continue the two-family rental use of the property. Citing *Barhour v. District of Columbia Board of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976), the Board noted that:

> The fact that an expansion requiring a variance is personally preferable to other methods not requiring variances does not constitute a unique property situation. Further, this case does not present a situation where no use could be made of the property absent a variance. as in A.L.W., Inc. v. District of Columbia Board of Zoning Adjustment, [338 A.2d 428 (1975)].

Id.

CONCLUSION

For the reasons stated herein and for the reasons provided at the hearing, the Neighbors respectfully submit that the application should be denied.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI, LLP

By: _____
Richard B. Nettler
Jeannine Rustad

cc: Mary Ann Snow & James Marsh
Capitol Hill Restoration Society, c/o Gary Petersen
Office of Planning, c/o Joel Lawson
ANC 6B c/o David Sheldon (119 Duddington Place SE, Washington, DC 20003)
Richard Aguglia, Esquire
(All by hand and with enclosures)

210 D Street, S.E. - Chronology

February 20, 1948 Certificate of Occupancy No. 118519 issued for Pepco substation.

November 1, 1957 Trigger date for sections 401.2 and 401.3 of the Zoning Regulations (lot must be unimproved and in single ownership as of this date).

May 12, 1958 Trigger date for section 401.1 of the Zoning Regulations (building must be existing as of this date).

June 14, 2002 Developer closes on purchase of the Properties

End June 2002 Sign erected announcing the coming of three luxury town homes (no mention of size/lot dimensions)

July 1, 2002 Date of plans for proposed new row houses – these plans were submitted with the permit applications

- Page C2 – private right of way to west of the Property listed as an "alley"
- Plans 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"

September 30, 2002 Subdivision Plat recorded subdividing Lot 4 in to Lots 26, 27 and 28

Nov. 5 or 11, 2002 Applicant applies for raze permit for 210 D Street, S.E., (lots 800,801 & 802 in square 763). Application is dated Nov. 5, 2002 but wasn't signed until Nov. 11, 2002.

- Owner of Property listed as Folger Park North, LLC
- Address of Owner: 5000 Gardner Drive, Alexandria, VA 22304
- W.J. Maiden signing for owner.
- Per application & DC sign-offs, no environmental review.
- Description: ***Raze Ancillary STORAGE Building. No Electric or Plumbing Utilities***

November 13, 2002 Demolition Permit No. B424724 issued. Building listed as "Ancillary storage building, no electric or plumbing utilities".

February 11, 2003 James Marsh and Mary Ann Snow attend ANC 6B meeting on HBRB design review and obtain copy of plans from Alger Stoneburner; Stoneburner mentions existence of deed of right-of-way behind Neighbors' properties and Property.

February 27, 2003 Louise Smith and Mary Ann Snow attend Historic Preservation Review Board Meeting re: architectural renderings submitted by the developers; architect on HPRB (Amy Weinstein) comments that she does not understand how developers were able to get a variance.

Nancy Metzger, Capitol Hill Restoration Society tells Mary Ann and Louise that Stoneburner told CHRS that they were building as a matter-of-right because there previously had been three town homes on the site.

April 2, 2003[1]

Application for building permit for 206 D Street, S.E. filed (Lot 26)

- Owner: Folger Park North, LLC
- Filed by Elizabeth Johnson
- Address of owner listed as 206 D Street (210 crossed out)
- Box 13 – existing use listed as vacant
- Box 43 – greenery listed as 20%
- Box 54 – no driveway
- Box 55 – no sheeting/shoring necessary
- Zoning sign off dated **July 22, 2003**

Application for building permit for 208 D Street, S.E. filed (Lot 27)

- Owner: Folger Park North, LLC
- Filed by W.J. Maiden
- Address of owner listed as 208 D Street (210 crossed out)
- Box 13 – existing use listed as vacant
- Box 43 – greenery listed as 20%
- Box 54 – no driveway
- Box 55 – no sheeting/shoring necessary
- Zoning sign off dated **July 22, 2003**

Application for building permit for 210 D Street, S.E. filed (Lot 28)

- Owner: Folger Park North, LLC
- Filed by W.J. Maiden
- Address of owner listed as 210 D Street
- Box 13 – existing use listed as vacant
- Box 43 – greenery listed as 20%
- Box 54 – no driveway
- Box 55 – no sheeting/shoring necessary (yes checked and then scratched out)
- Zoning sign off dated **July 22, 2003**

April 21, 2003

Application for foundation permit filed for 210 D Street, S.E. (Lot 28)

- application signed and dated 4/21
- Owner: Chris Doefler
- Filed by W.J. Maiden
- Address of owner listed as 210 D Street, S.E.
- Box 47 – answers "yes" to projection beyond building line; does not answer 48-52, as required.
- Box 55: No sheeting/shoring necessary
- Attach Certificate of Occupancy for 610 D Street, S.W. (Square 495, Lot 839)

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[1] Developer, in its application to the BZA, claims that building permit applications were filed on August 8, 2002.

- Notation on section J "Restrictions of the Permit" was "Approved for foundation only[2]

April 29, 2003

Application for foundation permit filed for 206 D Street, S.E. (Lot 26)

- application dated 4/29; signed on 4/30
- Owner: Chris Doefler
- Filed by Elizabeth Johnson
- Address of owner listed as 210 D Street, S.E.
- Box 42 – total lot area not provided
- Box 47 – answers "yes" to projection beyond building line; does not answer 48-52, as required.
- Box 55 - No sheeting/shoring necessary
- Attach Certificate of Occupancy for 610 D Street, S.W. (Square 495, Lot 839)
- Notation on section J "Restrictions of the Permit" was "Approved for foundation only (same on Building permit control batch sheet)
- Environmental Intake Form: Applicant checks "no" on questions 1-3. Question 1 asks "Does the owner of this site own adjacent or abutting property?" Question 3 asks "Is additional activity planned by the applicant for this site or any site within the same square during the next three years that requires a permit?" Yes answers to either of these questions require the submission of a site plan to the EIS Coordinator of DCRA. If no plan exists, the applicant is required to submit a written explanation to the EIS Coordinator.

Application for foundation permit for 208 D Street filed (Lot 27)

- Application unsigned
- Owner listed as Chris Doefler
- Filed by Elizabeth Johnson
- Address of owner listed as 210 D Street, S.E.
- Box 47 – answers "yes" to projection beyond building line; does not answer 48-52, as required.
- No sheeting/shoring necessary
- Attach Certificate of Occupancy for 610 D Street, S.W. (Square 495, Lot 839)
- Notation on section J "Restrictions of the Permit" was "Approved for foundation only (same on Building permit control batch sheet)
- Environmental Intake Form: Applicant checks "no" on questions 1-3. Question 1 asks "Does the owner of this site own adjacent or abutting property?" Question 3 asks "Is additional activity planned by the applicant for this site or any site within the same square during the next three years that requires a permit?" Yes answers to either of these questions require the submission of a site plan to the EIS Coordinator of DCRA. If no plan exists, the applicant is required to submit a written explanation to the EIS Coordinator.

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[2] Neither the Control Batch nor the Environmental Intake Form not provided to Appellants by DCRA sheet not provided to the Neighbors by DCRA

May 23, 2003 Permit No. B451616 issued (foundation Lot 26)

Permit No. B 451615 issued (foundation Lot 27)

Permit No. B451617 issued (foundation Lot 28)

In or about June 2003 Property is fenced in, including the property behind Neighbors' fences, and the trailer is placed on the public alley; Jim measures lot line depth of our house and compares it with measurements on builder's plans.

June 30, 2003 Mary Ann Snow obtains from the Register of Deeds certified copy of 1928 deed providing a perpetual right of way over area behind fences of 318, 320, 322, 324 and 326 Second Street, S.E.; same day, Mary Ann Snow calls Maiden & Associates, speaks with Phil Maiden, and tells him their plans contain an inaccurate measurement; Maiden says plans are only "preliminary."

Between approx. June 30 & July 8, 2003 Former Pepco substation is razed.

Week of July 7, 2003, Neighbors' fences are boarded up and their property/right-of-way is excavated. This conduct alarms Neighbors, and raises the fear that the developers may try to build on their right-of-way.

Neighbors' research on zoning regulations begins, as well as calls to ANC 6B, Capitol Hill Restoration Society, and the Department of Consumer and Regulatory Affairs for information and assistance. SMD member of ANC recommends that the Neighbors hire an attorney.

July 22, 2003 Zoning sign off on applications for building permits

July 25, 2003 **Application for plumbing permit for 206 D Street filed (Lot 26).**
- Owner – Chris Doefler
- Owner address – 210 D Street

Plumbing Permit PLBG59014 issued

Application for plumbing permit for 208 D Street filed (Lot 27).
- Owner – Chris Doefler
- Owner address – 210 D Street

Plumbing Permit PLBG59013 issued.

Application for plumbing permit for 210 D Street filed (Lot 28).
- Owner – Chris Doefler
- Owner address – 210 D Street

Plumbing Permit PLBG59011 issued

July 2003 Mary Ann Snow visits DCRA and leaves a note for Juan Scott, building inspector, regarding the razing of the building without a permit.

Approx. end July/ Early August 2003 Neighbors ask developers' site superintendent to see permits - Stan shows Mary Ann Snow permits for foundation; no building permit; Louise Smith is told the permits are "all downtown;" Mary Ann Snow calls DCRA repeatedly during July and August to discuss the zoning and building permit issues; is told repeatedly that the lots must be a minimum 18' feet wide & 1800 square feet, and that anything less will require a variance; DCRA also says no building permits had been issued for the property; could not find a permit to raze the building.

End July/early Aug. FIRST STOP WORK ORDER posted on basis of no raze permit.

Mr. Scott later found raze permit, and withdrew first stop work order.

August 4, 2003 Mary Ann Snow calls the Office of Zoning and speaks with Richard Nero, who says the procedure is that the Zoning Administrator would examine the building permit applications to make sure they were in compliance with zoning regulations, and would be rejected if only 16 feet wide in an R4 district and referred to the BZA for a variance. Mr. Nero checked their records, and stated that no applications for a variance were on file with respect to this property; he stated, further, that if permits were to be issued, we would have to appeal the issuance of the permits under which they are proceeding with construction.

Mary Ann Snow calls the DCRA permit branch and was told that the only type of applications on file for construction at this location were for a new foundation - "family flat," and, upon information and belief, for plumbing; there were no building permits on file. Ms. Epps provided Mary Ann Snow with the application numbers for the foundation permits (B451616 - 206 D Street, S.E.; B451615 - 208 D Street, S.E.; and B451617 - 210 D Street, S.E.).

Mary Ann Snow also spoke with Mr. Lenny Douglas with the permit issuance branch of DCRA. Mr. Douglas said that a building permit is not needed until construction goes above ground; since the foundation is underground, no building permit is needed at this time.

Mary Ann calls Mr. Frank Moody with the permit intake branch - no building permit applications on file. Mary Ann also speaks with Rochelle Joseph at DCRA, who advised that when the developers apply for a building permit, they would be told they have to file for a variance because the lots do not conform with R4 width and area zoning requirements.

August 5, 2003 Mary Ann calls OSHA to see if that agency had any jurisdiction over possible PCB contamination and potential worker exposure to it; told the report had to come from an on-site employee.

Mary Ann Snow also sends an email to David Sheldon, ANC 6B, informing him that she learned that the developers only permits for a foundation and for plumbing only, that they did not have building permits and had not applied for building permits, and that they dug into our right-of-way, and asked for his help.

August 7, 2003 Letter sent by neighbors to developers regarding the developers' destruction of neighbors' land and the substandard width and area construction of the lots.

August 8, 2003 Developers write letter to neighbors in response.

August 9, 2003 Larry Smith visits "Stan" (the superintendent of the Properties). Stan informed Larry that he had made a phone call overseas to talk about the problem of erecting a wall on the west side of the Properties without excavating the walkway and was informed by the Developer just to take out the walkway.

Week of August 11, 2003 Developers visit Louise Smith at her home and ask if she like their letter. They explain that they were initially told by DCRA that they could only build two town homes, but they wanted to build three, and that it took them about six months to figure out how they could build three.

(on or about), Larry and Louise Smith, Jim Marsh and Mary Ann Snow meet and decide to hire an attorney; Larry Smith initiates contact with Piper and Rudnick law firm to see if they will represent the Neighbors.

Repeated calls to DCRA are not returned, or representative say to call someone else; numerous voice mail messages are left.

August 12, 2003 Mary Ann Snow sends summary of information obtained to date to Piper and Rudnick

August 13, 2003 Mary Ann Snow speaks with representative of DCRA (name not recorded) and is told to formally request a ruling on whether a variance is required, and request that no further permits be issued until a ruling on the variance issue is provided.

Conference call with attorney at Piper and Rudnick is scheduled for 8/15/03.

Around this time period, foundation floor is erected, extending about ten to twelve inches into our property/right-of-way. Black pipe is laid in same area. Photographs are taken.

August 14, 2003 Mary Ann Snow visits DCRA, requests copies of all applications pertaining to 210 D Street, S.E.; picks up copies of applications for each of the lots; speaks with Ms. Yavocka Young, who takes Mary Ann Snow to surveyor's office; representative in Surveyor's Office says that the Pepco lot was always only one record lot; the three lot lines were tax and assessment lots - never lots of record; Mary Ann Snow orders copy of subdivision plan, but leaves it with Ms. Young, who said she would speak with one of her supervisors about it, and try to schedule a meeting.

Mary Ann Snow sends copy of 8/7/03 letter to David Sheldon, ANC 6B representative.

Mary Ann Snow speaks by phone with attorney from Piper and Rudnick; the law firm states they could handle the encroachment issues, but not the zoning issues. Neighbors decide to search for zoning counsel.

August 15, 2003 Mary Ann Snow has conversation with Ms. Young at DCRA, who said she spoke with Mr. Noble, who stated that she should meet with Ms. Ogunneye, the chief zoning technician; Ms. Ogunneye is out until 8/22/03, so Ms. Young advised that Ms. Snow call Ed Reeves or Yvonne Epps to schedule a meeting with Ms. Ogunneye. Neither one could be reached; either their voice mail was full or they did not return the call. Ms. Young then recommended that Ms. Snow schedule a meeting with Ms. Ogunneye for 8/25/03 by sending her an email requesting a meeting on that date. Ms. Young provided email address of Faye.Ogunneye@dc.gov. Ms. Young said she will sit in on the meeting. Email sent by Ms. Snow to Ms. Ogunneye.

August 16, 2003 Neighbors begin communications with Robins, Kaplan, Miller & Ciresi L.L.P. for legal representation.

August 19, 2003 Counsel for Neighbors meeting with DCRA, including Denzil Nobel on another matter, brings up potential problems with the Property.

August 20, 2003 (on or about) Mary Ann Snows picks up copy of subdivision plan from Ms. Young at DCRA; Ms. Young says she will direct the Neighbor's questions to Mr. Noble.

August 25, 2003 Building permits are issued for construction of row houses (permit nos. B454260 for Lot 26, B454262 for Lot 27, and B454261 for Lot 28)

- Ms. Ogunneye had not responded to request for a meeting; apparently had not returned to the office.

August 26, 2003 Mary Ann faxes FOIA letter to Thomas Collier, Esquire, U.S. Department of Health, Office of General Counsel, per his direction, requesting information on environmental impact studies on the Pepco property (To date, no response received).

August 27, 2003 Counsel for Neighbors writes DCRA (Theresa Lewis and Denzil Nobel) regarding Property, outlining concerns and requesting meeting within the next few days.

August 30, 2003 Neighbor's write Councilmember Ambrose re: Property.

September 3, 2003 Letter received by counsel for Neighbors from Joseph McClarley of DCRA (customer service) acknowledging receipt of counsel's "September 2, 2003" letter regarding the Property & indicating a response will be sent within 7 business days.

Mary Ann Snow speaks with Toye Bello of the Office of Zoning. Mr. Bello surprised that construction is new construction and that none of the lots (*ie.*, Lots 26, 27 & 28) met the minimum 1800 sf zoning requirement

September 9, 2003 Mary Ann Snow speaks with building inspector at DCRA regarding the demolition of our right-of-way and the subsidence from the excavation; says inspector will be sent out, and is told to call public space.

Mary Ann speaks with Connie Wheeler at public space, who states that since the foundation wall had been erected next to the alley, the subsidence cannot be seen; it's our word against theirs, photographs are not sufficient, and they can do nothing.

September 11, 2003 Counsel for Neighbors writes DCRA (Denzil Noble and Theresa Lewis) attaching Aug. 27 letter and notifying DCRA of the denial of a public space permit to the developer. Request inspection of work at the Property.

September 12, 2003 Neighbors' appeal is filed with the Board of Zoning Adjustment; about the same time, the private right-of-way is replaced, prior to the hurricane Isabel's occurrence beginning on Thursday, September 18, 2003.

September 16, 2003 Denzil Noble writes the developers stating that the subdivision is flawed and should not have been approved, and that the developers need to seek a variance through the Board of Zoning Adjustment.

SECOND STOP WORK ORDER ISSUED. The construction consists solely of foundation and foundation walls.

September 22, 2003 (in or about week of 9/22/03) - construction RESUMES.

September 25, 2003 Counsel for Neighbors receives letter from Mr. Noble (dated September 16, 2003) that stop-work has been imposed.

October 1, 2003 Construction resumes

October 1-3, 2003 Counsel for Neighbors attempts to reach Denzil Noble at DCRA to discuss (and/or meet) whether (and) why stop work order was lifted. No response received

October 6, 2003 The following response is received from DCRA:

> 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

October 6 – end Oct. 2003 Attempts made by counsel for Neighbors to contact DCRA Counsel to set up meeting between parties and to ascertain why stop work order was lifted.

October 23, 2003 Office of Planning ("OP") recommends expedited hearing. Reason for expedited hearing "due to the quick onset of winter and potential for adverse weather effects on the partial construction, the applicant and DCRA are anxious to resolve the issue." (This, despite construction ongoing)

October 31, 2003 Appeal supplemented to include the lifting of the stop work order, referenced in Mr. Noble's letter dated September 16, 2003, which was received by Robins, Kaplan, Miller & Ciresi on September 25, 2003.

November 4, 2003 Meeting with Office of Planning.

- Informed that developer granted DCRA an indemnity in exchange of being allowed to proceed with construction

Developer writes Tracy Gruis, owner of adjoining properties, and states that:

> The building has been constructed under 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.

EXHIBIT 1

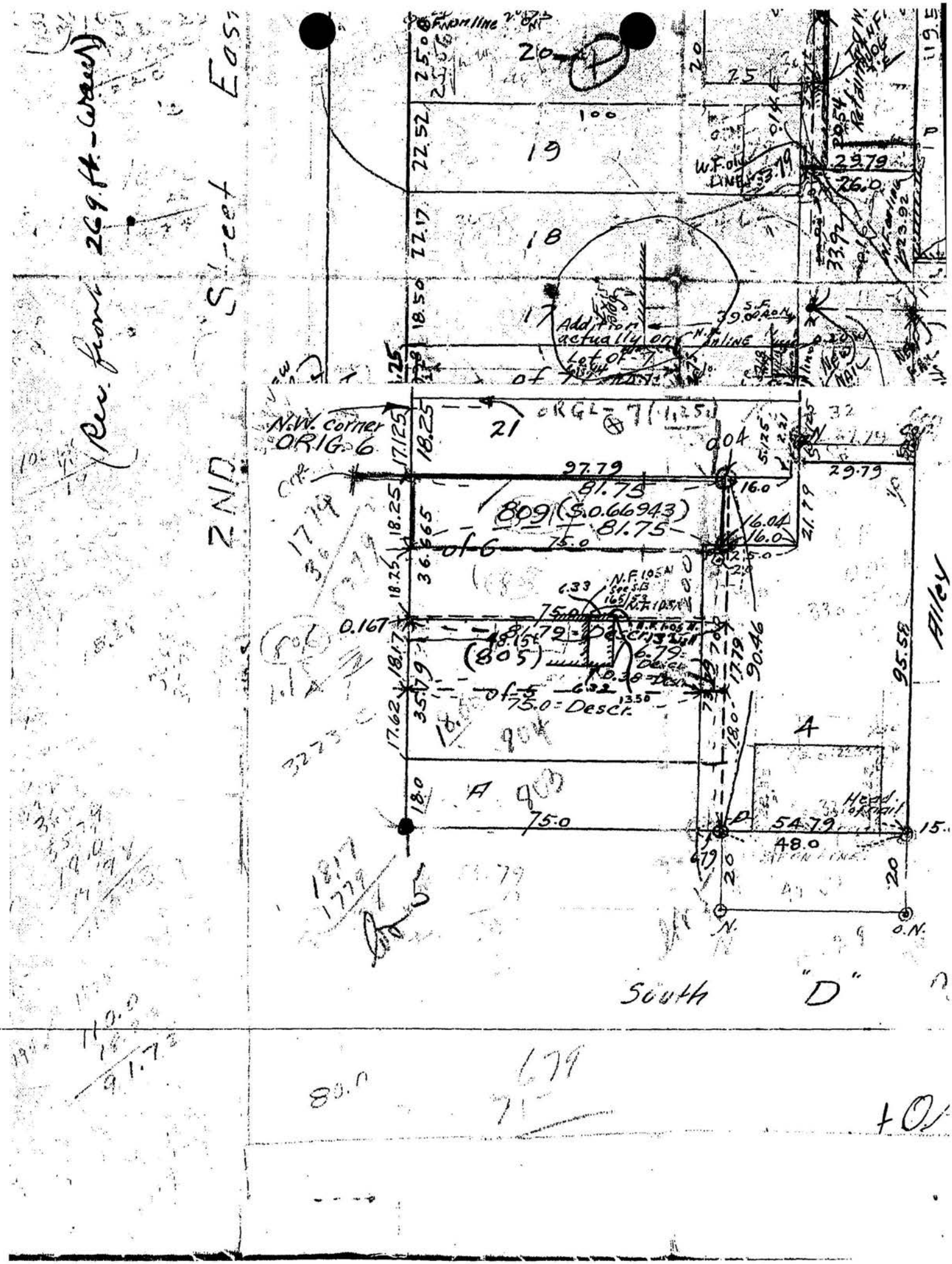

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EXHIBIT 2a

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

NOVEMBER 25, 2003

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 9:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS,	Chairperson
CURTIS ETHERLY, JR.,	Vice Chairperson
RUTHANNE MILLER,	Board Member
DAVID ZAIDAIN,	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN G. PARSONS,	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Clifford Moy,	Office of Zoning
Beverley Bailey,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Sherry Glazer,	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Lori Monroe, Esq.

C-O-N-T-E-N-T-S

AGENDA ITEM	PAGE
FOREIGN MISSIONS BZA - NOTICE OF PROPOSED RULEMAKING AND DETERMINATION AND ORDER No.17051	3
APPEAL APPLICATION OF HENRY P. SAILER, et.al. No.17054	5
APPEAL APPLICATION OF ADVISORY NEIGHBORHOOD COMMISSION 2E. No. 17034	39

Moy.

So with the passage of that motion, we will see this appeal and its scope based on the revision permit on 27 January of '03, is that correct?

MR. MOY: Yes, sir.

CHAIR GRIFFIS: An where is that on the schedule?

MR. MOY: In the afternoon. The first case in the afternoon.

CHAIR GRIFFIS: Okay. First case in the afternoon.

MR. MOY: January 27th.

CHAIR GRIFFIS: Excellent. Thank you very much.

I think we're ready the next one then.

MR. MOY: The next case is appeal application 17034 of the Advisory Neighborhood Commission 2E, pursuant to 11 DCMR ? 3100 and 3101, from the administrative decision of the Zoning Administrator in the issuance of a final and bidding ruling letter dated July 12, 2001, to the law firm of Shaw Pittman confirming the ability to develop three lots on the east side of the 1500 block of 32nd Street, N.W. with three row dwellings. Appellant alleges that the Zoning Administrator's decision is

the enforcement of zoning regulations and in, and I'm actually reading his testimony, in the vesting of the grandfathered rights. In the case of the improved directed in parts on Lots 19, 20, 21 the certificate of occupancy number B1923 was not issued until January 14, 195. Of course, that would establish the fact that it was based on his understanding and argument an unimproved lot in November 1957.

Ms. Miller?

BOARD MEMBER MILLER: I think that the basic issue in this case is whether or not the property was "improved" as of November 1, 1957. And I think that the Appellant has obviously put substantial evidence in the record that nobody rebuts that there was in fact a building there that was substantially built as of that date.

And Mr. Lourenco I believe said that the certificate of occupancy sanctions completion of improvements and thereby authorizes use. I don't think that the word "completely improved." We didn't have any authority cited by the Intervenor as to what improvement means or unimproved. And I believe that the Appellant referred to *Webster's*. And I did some research on my own to see what authority was out there. And *Black's Law Dictionary* defines unimproved

land as follows: "A statutory term which includes lands once improved that have reverted to a state of nature as well as lands that have never been improved."

CHAIR GRIFFIS: It sounds idyllic.

BOARD MEMBER MILLER: Yes, I think it is supposed to be idyllic. And I think *Webster's* also refers to unimproved land as not built upon or otherwise improved for use, retained in the wild or natural state.

And we have evidence in the record clearly that this was not in the wild or natural state. That in fact there was much construction on it as of February --

CHAIR GRIFFIS: Not like buffalos kind of roaming across the lot.

BOARD MEMBER MILLER: And also I looked further. It seems that this term is used all the time and very rarely defined as if everybody assumes that unimproved means not built upon at all.

I've looked just for guidance. It's not controlling on us. But D.C.'s real property tax regulations set forth at 9 DCMR says that improvement -- they consider a building improved when it is considered taxable, when it's 65 percent complete.

EXHIBIT 2b

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

DECEMBER 2, 2003

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS,	Chairperson
CURTIS H. ETHERLY, JR.,	Vice Chairperson
DAVID A. ZAIDAIN,	Board Member (NCPC)
RUTHANNE G. MILLER,	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Zoning Commission Member

Office of Zoning STAFF PRESENT:

Clifford Moy
Beverly Bailey
John K.A. Nyarku

conditions on the motion of Zaidain, seconded by Ms. Miller. Also in favor of the motion the chairman, Mr. Etherly, and Mr. Hood. Would you like staff to go over the changes in the conditions?

CHAIRPERSON GRIFFIS: Love to but we have no time.

MR. MOY: Okay, conditions as recorded.

CHAIRPERSON GRIFFIS: Fabulous, thank you.

MR. MOY: The next case, application, is the appeal Application No. 17034 of Advisory Neighborhood Commission 2E pursuant to 11 DCMR ? 3100 and 3101 from the administrative decision of the Zoning Administrator in the issuance of a final and bidding ruling letter dated July 12, 2001 to the law firm of Shaw Pittman confirming the ability to develop three lots on the east side of the 1500 block of 32nd Street, N.W. with three rural dwellings.

The appellant alleges that the Zoning Administrator's decision is flawed and contains factual and legal errors. The R3 zoned subject premises are located in the 1500 block of 32nd Street, N.W. That's on the east side in Square 1270, Lots 19, 20 and 21.

This case was convened by the board at its special public meeting on November 25th, 2003. After

C-O-N-T-E-N-T-S

AGENDA ITEM	PAGE
APPLICATION NO. 17069 (APPROVED) ..... OF 5656-28 CONNECTICUT AVENUE ASSOCIATES	4
APPLICATION NO. 17034 (APPROVED) ..... APPEAL OF ADVISORY NEIGHBORHOOD COUNCIL 2E	16
APPLICATION NO. 17022 (APPROVED) ..... EDMUND BURKE SCHOOL	16

sections we do have to understand how each of the sections relates to the previous and looking at 401.1 I think it's important to look at that in view of 401.2 in this aspect, 401.1 points to a case where a building is located on May 12, 1958.

Meaning it may well and it could be argued that the fact of 401.2 aspect of unimproved would be over a matter of time not just the point at which November 1, 1957. Otherwise, why are we listing on May 12, 1958 a building and covering it in that section?

If we look at how we dissect them 401.2, we may obviously I think it would be a fairly straight read that the lot must be unimproved on November 1, 1957.

I've thrown a little bit of an addition to that but I think that's an important aspect to have board discussion on at this point whether the facts go to whether this was unimproved as of November 1, 1957. Anyone find that pertinent? The wave must be building somewhere. Yes, Ms. Miller.

MS. MILLER: I think what I was focusing on last week were two things. One is that the ZA erred initially by just concluding that the lots were unimproved on July 12, 2001 and not even referring

back to November 1, 1957 so that was the first error.

And then the second error was that they were not unimproved, that the property was not unimproved on November 1, 1957 and there was -- it was uncontested I believe that the building was under construction in 1957 and it got its C of O January 14, 1958 so by November 1, 1957 it was well underway.

So then we got into the discussion about what does improved mean and interveners' argument rests on improvement meaning getting the C of O and I don't think that is supported by any legal authority.

So, and actually even concluded that the C of O is issued upon a completion of an improvement so, therefore, there must have been improvements along the way.

In any event, I think that there is substantial evidence in the record including photographs and newspaper articles showing that this building was under construction in 1957 for us to conclude that the property was not unimproved in 1957 and, therefore, these property owners should not be excepted 401.2. I'm not sure if I'm characterizing that properly but it will fall within the exception of 401.2.

MR. ZAIDAIN: I think, I followed

everything you just said there except for your initial statement, which was that the ZA found, the ZA was in error when they found that the project was or the land was unimproved in 2001.

MS. MILLER: Right.

MR. ZAIDAIN: Where did that issue stem from?

MS. MILLER: I think we have to look back to his letter where I think he makes a statement that the property was unimproved.

MR. ZAIDAIN: It says in `57. I just didn't see the reference to 2001 because I was understanding everything you were saying except for that one point.

MS. MILLER: I have to find it in the letter.

MR. ZAIDAIN: Okay.

MS. MILLER: I think he made a finding that the property was unimproved on July 12, 2001, which is the date of his letter. Oh, okay. Okay, third paragraph, second line says the lots are unimproved.

MR. ZAIDAIN: Oh, okay.

MS. MILLER: And were in single ownership on November 1, 1957, so he was finding that the lots -

MR. ZAIDAIN: Oh, were unimproved in the present tense. Well at least that's what we are and we are speculating that he meant but I see your point. Are you sure that that is not referring to the condition of the site in 1957?

I mean the way -- I mean the context of the regulations are ownership and improvement in 1957 so I'm not sure how. I don't know I'm not sure I totally agree with inferring that that is -- that's heading toward the present tense of 2001, well of 2001.

MS. MILLER: Okay. The way it's written it says the lots are unimproved meaning that --

MR. ZAIDAIN: And were, yes, that's true.

MS. MILLER: Now it doesn't matter to me because either way I think he erred.

MR. ZAIDAIN: Okay.

MS. MILLER: If he's concluding that they were unimproved on November 1, 1957 I think that that's an error and I think that's important for us to decide that since there were buildings under construction that they didn't constitute being unimproved as of that date.

MR. ZAIDAIN: Okay.

CHAIRPERSON GRIFFIS: Others?

VICE CHAIRPERSON ETHERLY: I agree with Ms. Miller's interpretation.

CHAIRPERSON GRIFFIS: Thank you.

MS. MILLER: I think that if we conclude that the ZA erred with respect to its determination whether the property was unimproved as of that date then that decides that the property owners could not come in as a matter of right by means of 401.2 and we could just grant the appeal on that basis.

And, therefore, I would move that we grant the appeal of the ANC 2E that the Zoning Administrator erred in his July 12, 2001 letter granting the ability to the property owners to develop the lots in question as a matter of right.

VICE CHAIRPERSON ETHERLY: Seconded, Mr. Chair.

MR. ZAIDAIN: As a course of deliberation on that issue, I want to make sure that we're clear on what we're determining here. You're not saying that it's based on the C of O that was proffered? It was based on the evidence of some sort of construction on the property in that time frame, correct?

MS. MILLER: The evidence that the property was unimproved in 1957.

MR. ZAIDAIN: Well, because we got into this long kind of day long discussion about what the word improvement meant and I want to -- I just want some clarification on what your stance is on that.

There was discussion on whether or not a certificate of occupancy meant improvement but if I understand your deliberation before you made your motion that's not what you're basing it on. You're basing it on evidence of some type of construction activity within that time frame around 1957.

MS. MILLER: The evidence that I'm basing it on are the newspaper articles that show the building under construction.

MR. ZAIDAIN: Right.

MS. MILLER: I believe both the interveners did not rebut that the building was under construction.

MR. ZAIDAIN: Okay.

MS. MILLER: Actually, I guess, that's in the record and also the fact that they were issued a C of O on January 14, 1958 shows that the building must have been under construction on November 1, 1957.

MR. ZAIDAIN: So there's not one thing that you're saying constituted improvement. It was these confluence of factors that led you to believe

that it was improved.

MS. MILLER: The confluence of factors that proved that there was a building under construction on November 1, 1957.

MR. ZAIDAIN: Okay.

CHAIRPERSON GRIFFIS: So, Ms. Miller, you're finding that the ZA erred in determining that this was unimproved on November 1, 1957?

MS. MILLER: Yes.

CHAIRPERSON GRIFFIS: Okay. Mr. Hood.

MR. HOOD: I was just going to ask, you actually answered my question, Mr. Chairman. So we have established that this lot was not unimproved?

CHAIRPERSON GRIFFIS: Yes.

MS. MILLER: What Ms. Miller, what she's implicating.

CHAIRPERSON GRIFFIS: Depending on the outcome of the motion that may be established as the board's position, yes.

VICE CHAIRPERSON ETHERLY: I mean just for the purposes of discussion and follow-up to Mr. Hood's question we did receive written submissions that were contained in the appellant's submission regarding the existence of a nursing home wing which was constructed in 1956 that occupied and straddled the three lots and

that's at page two of the appellant's appeal application, which is Exhibit No. 1.

That claim was not refuted or otherwise rebutted by the intervener's submission which is -- I apologize for not having an exhibit number but it's at page three of the bound copy of intervener's statement in opposition to the appeal where the intervener notes: "Although construction has started across a small portion of the rear of the lots by November 1, 1957 it was not complete."

So with those two pieces of information I am very much in support in Ms. Miller's argument finding that there was indeed an improvement on this property as of November 1, 1957.

CHAIRPERSON GRIFFIS: So, if I'm understanding the statements of the board their interpretation of the three terms that are used in the section 401, unimproved structure and building, the hierarchy as the board views it is that, that unimproved is the general term of any type of, I'm just not going to limit the word but any type of improvement.

That would then also encompass a smaller subset of structure so if there is a beginning of a building or excavation, a structure coming out of the

ground it is also encompassing improvement and the building is the last piece of which it would, in fact, be an enclosed structure able to or would receive a certificate of occupancy. Is that how you're viewing this Ms. Miller?

MS. MILLER: Yes.

CHAIRPERSON GRIFFIS: Very well. So, the relevance of the certificate of occupancy that Mr. Zaidain is talking to or asked you about falls away for you because that isn't a pivotal milestone of improvement or unimprovement.

MS. MILLER: I think even the intervener said the C of O sanctions completion of improvements so it doesn't establish an improvement. Also, I believe that not all buildings have to get a C of O. I don't think that residences have to get certificates of occupancy and I don't think -- I think it's clear that if there's a residence, there's a home on the property that the property is improved.

CHAIRPERSON GRIFFIS: When you say residence are you meaning single family home?

MS. MILLER: Yes, I'm meaning single family home. Thank you.

CHAIRPERSON GRIFFIS: I see.

MS. MILLER: I also would say that my

EXHIBIT 3

LEXSEE 691 A.2D 107

Louise Sagalyn, Arnold Sagalyn, Appellants, v. Foundation for Preservation of Historic Georgetown, Appellee.

No. 94-CV-284, No. 94-CV-1024

DISTRICT OF COLUMBIA COURT OF APPEALS

691 A.2d 107; 1997 D.C. App. LEXIS 42

February 13, 1996, Argued
March 20, 1997, Decided

PRIOR HISTORY: [**1] Appeal from the Superior Court of the District of Columbia. (Hon. Arthur L. Burnett, Trial Judge).

DISPOSITION: The judgment appealed from hereby is affirmed, in part, and the issue of attorneys' fees is remanded to the trial court for further proceedings consistent with this opinion.

LexisNexis (TM) HEADNOTES - Core Concepts:

COUNSEL: Whayne S. Quin, with whom J. Carter McKaig, was on the brief, for appellants.

Richard B. Nettler for appellee.

JUDGES: Before Wagner, Chief Judge, and Farrell and Reid, Associate Judges.

OPINIONBY: Wagner

OPINION:

[*108] Wagner, *Chief Judge*: In these consolidated appeals, appellants, Louise and Arnold Sagalyn, challenge five trial court orders granting appellee, the Foundation for the Preservation of Historic Georgetown (Foundation), injunctive and declaratory relief and awarding appellee attorneys' fees. n1 They argue that the trial court erred in holding that by consolidating their record lots into one new record lot without a change in boundaries, they violated the terms of [**2] an Easement which prohibited the subdivision of their real property. They contend that the trial court erroneously based its decision on an interpretation of "subdivide" to include an assemblage of lots, which is contrary to its plain meaning and the intent of the parties, and which, in any event, did not occur here. The Sagalyns challenge the [*109] award of attorneys' fees on the grounds that the conditions for their recovery, as set forth in the Easement, were not met and that the amount awarded is excessive. We hold that the trial court properly determined that the Sagalyns subdivided their lot within the meaning of their Easement. However, we reverse the order awarding attorneys' fees and remand to the trial court for further consideration consistent with this opinion.

n1 The Sagalyns do not challenge the trial court's order granting an injunction against their construction of an addition to their residence, except to the extent that it forms a basis for the award of attorneys' fees.

I.

At the center of [**3] this controversy is a Deed of Scenic, Open Space, and Architectural Facade Easement (the Easement) which the Sagalyns' predecessors in title, W. Randolph Burgess and Helen Burgess (grantors), donated to the Foundation (grantee) in December 1977 on the Burgesses' property at 1248 30th Street, N.W., Washington D.C., in historic Georgetown. For assessment and tax purposes, the property was designated as Lot 892, Square 1209, although the property was comprised of parts of record lots 10, 11, 12 and 13 and part of lot 1 in Square 39. The Easement imposed several restrictions on the alteration, use, division and conveyance of the property, among them a

prohibition against subdivision or conveyance except as a unit. n2 The Easement also provides that in the event of violation of its covenants or restrictions, the grantee can institute a suit for injunctive relief and recover costs and attorneys' fees if it prevails. The grantors and the Foundation obtained an appraisal of the value of the Easement in order to determine the value of the income tax deduction available as a result of the transfer. According to the appraisal report, under the then-current zoning regulations, the highest and **[**4]** best use for the property would be its division into four single family lots. According to the appraisal, the prohibition against subdivision diminished the value of the property by $ 50,000.

n2 Pertinent to this case, the Easement provided, as follows:

> (1) . . . Without the express written permission of the Grantee . . . no construction, alteration, or remodeling or any other thing shall be undertaken . . . on the subject premises . . . which would affect either the exterior surfaces . . . or increase the height, or alter the exterior facade (including, without limitation, the exterior walls of garden and of residence, the roofs, cupola and chimneys) or the appearance of the building located thereon . . .; provided, however, that the reconstruction, repair, repainting or refinishing of presently existing parts or elements of the lot and improvements . . . damage to which has resulted from casualty loss, deterioration, or wear and tear, shall be permitted . . . .
>
> (2) The property shall be used only for residential purposes, but not for a boarding house, rooming house, or dormitory, and no industrial or commercial activities shall be carried on on the property.
>
> (3) The property shall not be subdivided, nor shall it ever be devised or conveyed except as a unit[.]
>
> (4) No extension of the existing structure or erection of any additional structures shall be permitted, except that in the event of damage resulting from casualty loss to an extent rendering repair or reconstruction of the existing improvements impracticable, erection of a new single-family residential structure shall be permitted.
>
> * * * *
>
> (7) No topographical changes, including but not limited to excavation and the cutting of trees . . . shall occur upon the property.
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> * * * *
>
> (9) In the event of a violation of any covenant or restriction herein, the Grantee . . . may, following reasonable notice to Grantors, institute a suit to enjoin by ex parte, temporary, and/or permanent injunction, such violation and to require the restoration of the premises to their prior condition . . . . The Grantee . . . shall also have available all legal and equitable remedies to enforce Grantors' obligations hereunder, and in the event Grantors are found to have violated any of their obligations Grantors shall reimburse the Grantee . . . for any costs or expenses incurred in connection therewith, including court costs and attorneys fees.

[5]**

The Sagalyns purchased the property from the Burgesses in November 1985. Prior to the purchase, the Foundation granted them permission to construct a swimming pool on the property. The Sagalyns sought another waiver of the Easement to construct a one-story addition to their kitchen, but the Foundation denied the request on March 30, 1989 as well as subsequent requests for meetings and for reconsideration in April and May of 1989. Without the Foundation's knowledge, the Sagalyns applied for and obtained a new record lot designation for the property, Lot 52, in July 1989 as a preliminary step toward **[*110]** securing a building permit for the kitchen addition. n3 This designation effected no changes to the boundary or square footage of the property. On August 17, 1989, the Sagalyns filed a

building permit application with the District of Columbia Department of Consumer and Regulatory Affairs (DCRA). The DCRA referred the application to the Commission of Fine Arts (Commission).

n3 A building permit will not be issued for an addition to a structure covering two or more lots unless a fire wall separates them. The addition contemplated was to be a part of the main structure; therefore, the Sagalyns had to obtain a single record lot designation in order to proceed. *See* 11 DCMR § 3202.3 (1996).

[6]**

The Commission held a hearing on the application on June 21, 1990, and the Foundation appeared in opposition to it. The Commission forwarded its recommendation to the designated Mayor's agent, who adopted the recommendation pursuant to *D.C. Code § 5-1005* (1992), finding that a building permit could be issued. n4 The District issued a building permit to the Sagalyns on August 2, 1990.

n4 The Commission found that:

> The proposed addition: (1) would have minimal effect on a recently constructed (1961) wing of an existing building; (2) is barely, if at all, visible from public space; (3) its design is appropriate to the existing building and will be an improvement over present conditions, and; (4) complies with the intent and specific requirements of Public Law 808, *The Old Georgetown Act.*

During August 1990, counsel for the parties exchanged correspondence. The Sagalyns agreed not to commence construction on the addition, and the Foundation agreed to refrain from taking legal action. According **[**7]** to the Sagalyns, they instructed their counsel to inform the Foundation that they would not pursue construction without approval of plans acceptable to the Foundation. At the same time, the Sagalyns took the position that they had not sought division of the property; therefore, they had not violated the Easement. On September 4, 1990, counsel for the Foundation wrote the Sagalyns' attorney and explained that he had met with the Sagalyns' architect and received their offer of settlement; however, many of the Foundation's trustees were out of town, therefore he could not respond. He indicated that he had to file the petition for review of the administrative order and a complaint to protect the Foundation's rights "in light of the Foundations's concerns about the building permit . . . and the Corporation Counsel's position with regard to the timeliness of the challenges to the administrative orders."

On September 4, 1990, the Foundation filed a complaint in Superior Court for declaratory and injunctive relief to enforce the Easement. On May 23, 1991, the Foundation agreed to allow the Sagalyns to replace their existing kitchen wall with a glass wall, but made as a precondition the payment **[**8]** of attorneys' fees up to the date of settlement. n5 Attorneys' fees amounted to $ 11,013.70 as of May 29, 1991. On June 20, 1991, the Sagalyns accepted the settlement as to the construction, but refused to pay attorneys' fees, contending they had not violated the Easement. On December 12, 1991, the trial court (Judge Ricardo Urbina) granted partial summary judgment for declaratory and injunctive relief and enjoined the Sagalyns from constructing any addition without the Foundation's approval or leave of court. The court referred the Foundation's request for attorneys' fees to a mediator and held in abeyance the issue of whether an assemblage of lots constitutes a subdivision within the meaning of the Easement pending attempts by the parties to settle. When the parties failed to settle, final summary judgment was entered in favor of the Foundation on December 1, 1993. In that order, the trial court concluded that the terms "subdivided," "subdivide" and "subdivision" are terms of art which control the use of the terms in the Easement and that the Sagalyns violated the Easement by assembling the property into a single lot of record. The trial court denied the Sagalyns' motion for reconsideration, **[**9]** and **[*111]** later granted the Foundation's motion for attorneys' fees.

n5 Approval was granted provided that (1) the glass wall did not encroach upon any existing open space (*i.e.*, is not a bay); (2) the existing permit for the addition was returned to the District; and (3) the Foundation would have an opportunity to review any final architectural designs.

The parties agreed that the issue could be resolved by summary judgment. In its memorandum opinion and order determining whether the Sagalyns had violated the Easement by subdividing the property, the trial court (Judge Arthur Burnett) concluded that the term "subdivide" was used in real estate at the time that the Easement was prepared to include a division or assembly

of land. The court relied upon subdivision regulations which defined "subdivision" as "the division or assembly of land into one or more lots of record." 10 DCMR § 2799.3 (1994). The court also had before it an affidavit of H.C. Langelan, a private surveyor, providing a definition to the same [**10] effect. It was the court's view that any attorney preparing the Easement would have known and had reference to this definition. The trial court held that:

> The fact that the "assembly" here did not result in the addition of any additional land area is beside the point; the act of applying for a plat of subdivision, merging the portions into a new Lot of Record for purposes of the Office of Surveyor records nonetheless violated the "subdivision" prohibition of the Deed of Easement in this case.

II.

The Sagalyns argue that the trial court erred in concluding that they had violated the Easement by having their lots redesignated as a single lot. They contend that the trial court erred in concluding that "subdivide" is a term of art that includes an assembly of lots and that, in any event, no "assembly" of lots occurred. They claim that the plain meaning of the Easement should govern. Absent a violation of the Easement, they argue, attorneys' fees are not recoverable under the terms of the Easement.

A. *The Disputed Clause*

At issue here is the meaning of "subdivide" as used in paragraph (3) of the Easement. That provision reads, "the property shall not be subdivided, [**11] nor shall it ever be devised or conveyed except as a unit." As they did in the trial court, the Sagalyns argue that the language must be given its plain, ordinary and usual interpretation. They argue that the plain and ordinary meaning of "subdivide," according to Webster's Third New International Dictionary, is to divide into building lots. They cite Black's Law Dictionary (6th ed. 1990) which states that "subdivide" means to divide a part into smaller parts and that "subdivision" means a division of a lot, tract or parcel or land into two or more lots, tracts, parcels of other divisions of land for sale or development. Thus, they contend that consolidating their record lots into a single lot designation with no change of boundaries is not a subdivision within the meaning of the Easement's terms.

In this jurisdiction, we adhere to an "objective law" of contracts, which means that the written language will govern the parties' rights, unless it is not susceptible of clear meaning or absent other circumstances not pertinent here. *See Minmar Builders, Inc. v. Beltway Excavators, Inc., 246 A.2d 784, 786 (D.C. 1968)* (quoting *Slice v. Carozza Properties, 215 Md. 357, 137 A.2d 687, 693 (Md.* [**12] *1958))*. Words [are] given their ordinary and usual meaning. *National Symphony Orchestra Ass'n v. Konevsky, 44 A.2d 694, 695 (D.C. 1945)*. As has often been stated, "the first step in contract interpretation is determining what a reasonable person in the position of the parties would have thought the disputed language meant." *Intercounty Const. Corp. v. District of Columbia, 443 A.2d 29, 32 (D.C. 1982)* (citing *District of Columbia Dep't of Hous. and Community Dev. v. Pitts, 370 A.2d 1377, 1380 (D.C. 1977)* and *1901 Wyoming Ave. Coop. Ass'n v. Lee, 345 A.2d 456, 461 (D.C. 1975))*. "The presumption is that the reasonable person knows all the circumstances before and contemporaneous with the making of the [agreement]." *Lee, 345 A.2d at 461-62* (footnote omitted); *Intercounty, 443 A.2d at 32*. "The reasonable person is bound by all usages which either party knows or has reason to know." *Intercounty, 443 A.2d at 32; Lee, 345 A.2d at 462*.

Contrary to the Sagalyns' position, the Foundation argues that there is no "plain" meaning for the term "subdivide" as [*112] used in the Easement. It contends, consistent with the trial court's ruling, that "subdivide" as used [**13] here is a "term of art, with a definite and express meaning, depending on the jurisdiction in which it is being used." We agree that the context in which the word is used may shape the term's meaning. We have recognized that the term may have different meanings depending on the context in which it is used. *See, e.g., Acheson v. Sheaffer, 520 A.2d 318, 319-20 (D.C. 1987)*. In *Acheson*, the issue was "whether the division of several property lots and their subsequent combination into two lots of record constitutes a subdivision within the meaning of the Historic Landmark and Historic District Protection Act, *D.C. Code § § 5-1001 et seq.* (1981) [Act]." *520 A.2d at 319* (footnote omitted). At the time, the Act defined subdivision as the "division of a lot into 2 or more lots of record," n6 while the Subdivision Regulations, Art. I, § 2 (j) (1967), also included assembly of lots within its definition. n7 *Id.* There, we held that the action of the Surveyor in aggregating the parts of the four lots into two of record did not fall within the Act's definition. *Id. at 320*. Thus, it is apparent that the term "subdivide" is susceptible to other meanings beyond its dictionary [**14] definition which the Sagalyns advance, and may be informed by the context in which the word is used. Where, as here, the disputed term is reasonably susceptible of different interpretations, the provision is considered to be ambiguous. *Lee, supra,* 345 A.2d at 461 n.7. In

interpreting the term, we look to the rules of contract construction. n8 *See Intercounty, supra*, 443 A.2d at 32.

n6 The Council subsequently amended the law to provide that the assemblage of land constitutes a subdivision under the Act. *See* D.C. Law 8-232, 38 D.C. Reg. (1991).

n7 "A 'lot' is a general term used to describe any plot, parcel or piece of land. A 'lot of record' is a lot platted and recorded by the District of Columbia Surveyor." *Acheson, supra*, 520 A.2d at 319 n.1 (citing 11 DCMR § 199.4, 199.9 (1986) and 14 D.C. Reg. 39 (1967)).

n8 The endeavor to ascertain what a reasonable person in the position of the parties would have thought the words of a contract meant applies whether the language is ambiguous or not. *1010 Potomac Ass'n v. Grocery Mfr. of Am., 485 A.2d 199, 205-06 (1984); Lee, supra*, 345 A.2d at 461 n.9. In determining what a reasonable person in the position of the parties intended, we consider that the reasonable person is: (1) presumed to know the circumstances surrounding the making of the contract; and (2) bound by the usages of the term which either party knows or has reason to know and the course of conduct of the parties. *Intercounty, supra*, 443 A.2d at 32. We also consider the intent of the parties in entering into the agreement. *Id.* Where the document is unambiguous, its language provides "the best objective manifestation of the parties' intent." *1010 Potomac*, 485 A.2d at 205 (citations omitted). "Extrinsic evidence of the parties' subjective intent may be resorted to only if the document is ambiguous." *Id.* (citation omitted). If ambiguities remain, then the contract is construed against the drafter. *Intercounty, 443 A.2d at 32.*

[15]**

In this case, the trial court found that "subdivide" must be given the same meaning as found in the District of Columbia Planning and Development regulation which defines "subdivision" as "the division or assembly of land into one or more lots of record." 10 DCMR § 2799.3. Here, the Sagalyns filed a plat with the Office of the Surveyor to assemble the lots into one record lot as a prerequisite to obtaining a building permit. Under the definition provided in § 2799.3, this constituted an "assembly of land into one . . . lot[] of record." *Id.* As the trial court determined, it is reasonable to conclude that the parties knew or should have known the meaning of "subdivide" in real estate at the time the Easement was created. Since the parties are "bound by [the] usages [of a term] which either party knows or has reason to know," *Intercounty, supra, 443 A.2d at 32,* it cannot be said that the trial court erred in interpreting "subdivided" according to the definition set forth in the real estate regulations. The trial court's interpretation of the term is supported by the affidavit of a private surveyor, Langelan, who stated that "common usage of the term 'subdivision' in **[**16]** the District of Columbia includes both the division of lots and the assembly of lots or parts thereof into one or more other lots." The Sagalyns offered no counter-affidavits refuting the claim. n9

n9 The Sagalyns' argument that the appraiser's report, which the trial court considered in determining the usage of the term subdivide, was irrelevant in resolving the ambiguity is correct. This court has decided previously that a contemporaneous appraiser's report, introduced under circumstances similar to those in this case, as extrinsic evidence of the parties' intended meaning of a term, is not competent or "sufficient evidence" of the definition intended by the parties. *Foundation of Historic Georgetown v. Arnold, 651 A.2d 794, 797 (D.C. 1994)* (citations and internal quotation marks omitted). However, this point does not alter the result in light of the other grounds for the trial court's decision.

[*113] B. *Consistency Argument*

The Sagalyns contend that the trial court's definition of "subdivided" **[**17]** is erroneous because it fails to give meaning to every part of the Easement, thereby creating internal inconsistencies in the document and prohibiting action which otherwise would be permissible. Specifically, they claim that they would have to consolidate the property into one record lot to meet the requirements of 11 DCMR § 3202.3 as a prerequisite for obtaining a building permit which would allow them to take the following actions permitted by the Easement: (1) reconstruct the home in the event of damage; (2) convert the home to other residential uses; and (3) erect a single family dwelling in the event of total casualty loss. n10 The Foundation responds that § 3202.3 has never been construed to prohibit the reconstruction of a home or its conversion to other residential use. It points out that a modification would be necessary for these actions, but that a destruction of the dwelling because of casualty "would change fundamentally the nature of the Conservation Easement." In such a case, the Foundation concedes that "by necessity, a modification of the [Easement] may have to be drafted which would permit

the property to be subdivided," since the subject of the restrictions **[**18]** in the Easement would no longer exist. n11 It is clear that the Easement explicitly permits the Sagalyns to reconstruct, rebuild and change the use of the principal dwelling on the property under specified circumstances, but that they may not subdivide the property. There is no actual inconsistency between these provisions of the document. What creates the problem, according to the Sagalyns, is a local regulation. While these factors may bear upon potential issues as to the enforcement of the provisions for reconstruction and rebuilding, they do not guide the interpretation of the provision under consideration here. Therefore, we are not persuaded that there exists an internal inconsistency in the document which precludes interpretation of the term "subdivide" as interpreted by the trial court.

n10 Section 3202.3 provides in pertinent part that

> 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 . . . has been divided so that each structure will be on a separate lot of record.

[19]**

n11 The Foundation asserts that it has granted such a modification to another property by adding language "to allow limited construction and a subdivision." The modification provided that "consolidation of the property into a single assessment and taxation lot for tax purposes shall be permitted with 60 days notice to the Grantee."

C. *The Intent of the Parties*

The Sagalyns argue that the parties could not have intended to prohibit the mere obtaining of a single record lot in place of a single assessment taxation lot. The intention of the parties to the Easement, they contend, was to protect the integrity of the exterior and open spaces of the property. They argue that if the parties had intended to prohibit the renumbering of the record lots into one single record lot, the Easement would have included such a restriction specifically. They contend that the plain ordinary meaning of the term "subdivided" conveyed the parties' purpose, *i.e.*, that the property would not be changed in dimension or boundary.

This argument essentially restates the argument concerning the meaning **[**20]** of the term "subdivide" previously addressed. With certain limited exceptions, not present here, "'the written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the intent of the parties at the time they entered into the [agreement].'" *Minmar, supra, 246 A.2d at 786* (quoting *Slice, supra*, 137 A.2d at 693).

The Sagalyns contend that the shift from an assessment and taxation lot to a record lot without any change in dimensions of the property furnishes no additional rights in **[*114]** general nor does it convey or imply any additional rights under the Easement. As the trial court observed, however, whether the boundaries of the property were changed is not determinative of the issue. What is at issue here is whether the Sagalyns violated the Easement by obtaining a single record lot. However, as the Foundation points out, the shift from an assessment and taxation lot number to a record lot number, *does* alter the rights of the parties in that the record lot designation permits the Sagalyns to obtain a building permit, thereby placing them in a position to violate the restrictions in the Easement. n12

n12 The Sagalyns candidly admit that they sought the single record lot designation in order to get the building permit. They claim they wanted to secure a review by the Commission in order to pressure the Foundation to reconsider its opposition to the addition.

[21]**

D. *Ambiguities Construed Against the Drafter*

The Sagalyns make an argument for construing any ambiguity against the drafter, the Foundation. *See Arnold, supra* note 9, *651 A.2d at 797.* ("[A] deed will be resolved against the drafter of the instrument."). They recognize, however, that "[this] principle applies only after the ordinary rules of construction have been applied and the agreement is still ambiguous." *See Lee, supra, 345 A.2d at 463* (citing 17 Am. Jur.2d *Contracts* § 276 (1964)); *Intercounty, supra, 443 A.2d at 32.* Here, the ambiguity is resolved by reference to other rules of construction as previously discussed. Therefore, we need not apply this rule.

E. *Absence of an Assemblage*

The Sagalyns also press the argument that if "subdivided" is a term of art, an "assembly" is also and that no assemblage took place because they merely took

one assessment and taxation lot and replaced it with one record lot. This argument also fails. Contrary to the Sagalyns' assertion, this case is similar to *Acheson,* where this court found that an assembly, but not a division, had occurred where three lots were added together to form **[**22]** one new record lot, and a second lot was created by adding all four lots. *Acheson, supra, 520 A.2d at 320.* The Sagalyns contend that *Acheson* cannot be compared because a subdivision occurred, where four lots, two of record and two others, were combined and replaced by two new lots. *Id. at 319.* This argument was rejected in *Acheson*. There, this court stated that it was the end product, *i.e.*, the aggregation of two or more lots, with which the legislature was concerned. *Id. at 320.*

III. *Attorney Fees*

The trial court awarded the Foundation $ 33,994.65 in legal fees. The Foundation is entitled to recover such fees only as provided under paragraph 9 of the Easement. That paragraph provides for an award of attorneys' fees and costs in the event the grantors or their successors (the Sagalyns) violate covenants or restrictions in the Easement and the grantee (the Foundation) institutes suit to enjoin the violation or to enforce other remedies.

The Sagalyns argue that the requirements for the recovery of costs and attorneys' fees were not met in this case. They contend that neither the procurement of a building permit nor a record lot designation **[**23]** violated the terms of the Easement. Moreover, they contend that the Foundation did not institute an action to enjoin any violation or enforce any obligation.

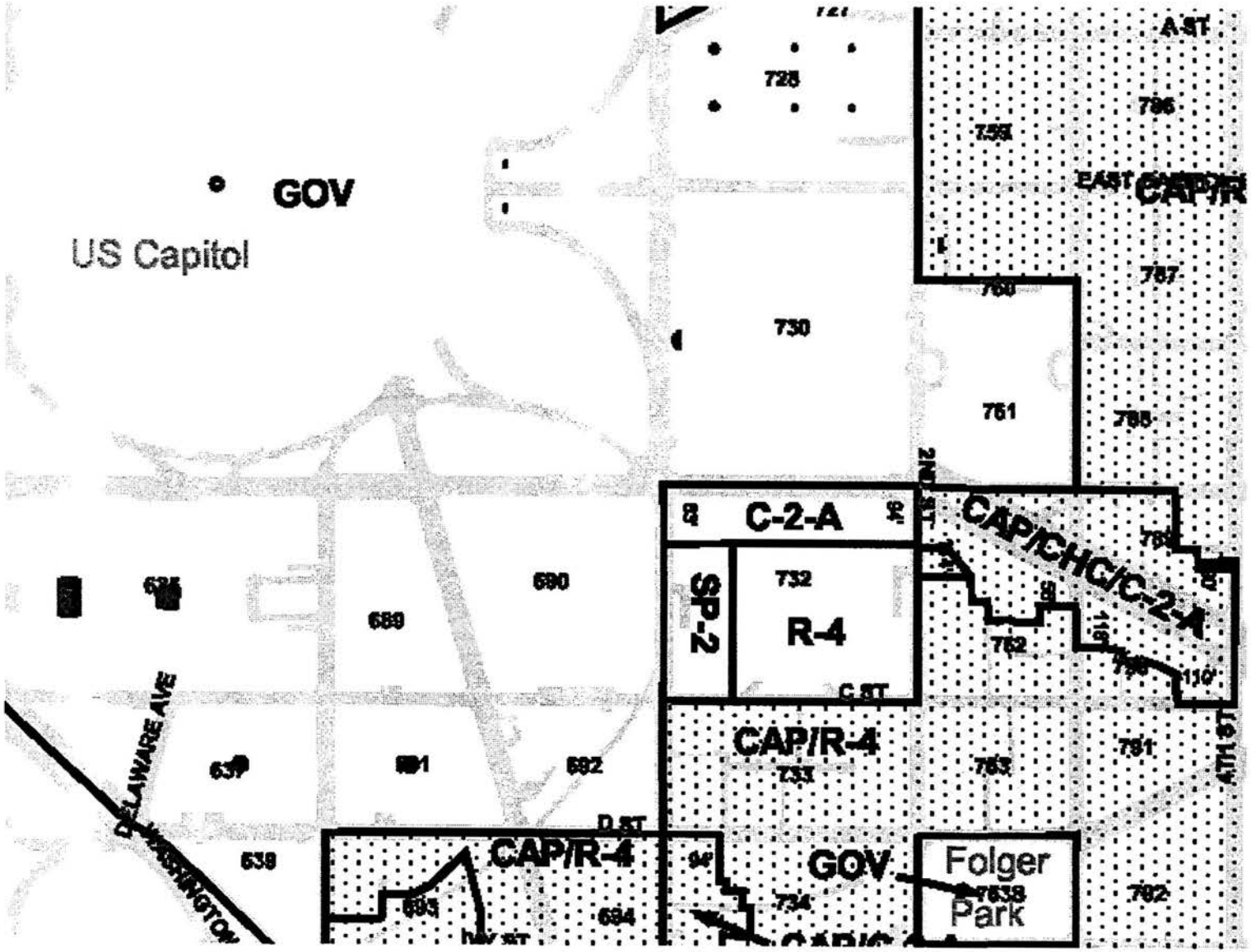
While the redesignation of the lot technically violated the terms of the Easement, as previously determined, the Sagalyns have not been shown to have violated any other provisions of the Easement. Even the Sagalyns' procurement of a building permit is not prohibited by the terms of the Easement. What is restricted is any alteration or construction of the exterior surfaces of the building. The Sagalyns did not alter the premises in any way or even commence actual physical preparations for construction on the premises. Indeed, there is evidence in the record that they agreed not to undertake any construction without the Foundation's consent. The Foundation does not dispute this contention or the further contention that they had agreed to withhold suit pending further discussions. Therefore, it appears that the Foundation's efforts to enjoin construction of **[*115]** an addition to the Sagalyns' property were premature.

However, litigation over whether the Sagalyns had violated the prohibition against subdividing is legitimate, even if **[**24]** that violation is not imminently harmful without further action. The Sagalyns assert that any award of attorneys' fees should be limited to those paid in connection with the litigation over the meaning of the word "subdivide," and not work undertaken to enjoin the addition, which it agreed not to undertake without the Foundation's consent. Their argument has merit. It appears that the trial court, which was not the court which decided the case on the merits, did not give consideration to the substantial legal services performed on the Foundation's behalf that were not occasioned by any violation of the Easement. Given what was legitimately at issue and covered by paragraph 9 of the Easement, the attorneys' fees awarded are unreasonable. The determination of reasonableness of attorney's fee lies within the trial court's sound discretion. *Hampton Courts v. District of Columbia Rental Hous. Comm'n, 599 A.2d 1113, 1115 (D.C. 1991).* However, the failure to take into account the extent to which the services were unnecessary, specifically those not associated with the subdivision issue, results in an abuse of discretion and an excessive award. *See Johnson v. United States, 398 A.2d* **[**25]** *354, 364-66 (D.C. 1979).* Therefore, we must remand the case to the trial court for redetermination of an award taking into account this factor.

For the foregoing reasons, the judgment appealed from hereby is affirmed, in part, and the issue of attorneys' fees is remanded to the trial court for further proceedings consistent with this opinion.

So ordered.

EXHIBIT 4


GOV
US Capitol
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694
639
638
C-2-A
SP-2
R-4
CAP/R
CAP/R-4
CAP/C/HC/C-2-A
GOV
Folger Park
A ST
C ST
D ST
2ND ST
3RD ST
DELAWARE AVE

1) Situs: **224 D ST SE, WASHINGTON DC 20003-1921 C024**

APN:	0763-0000-0001			Rec/Sale Dt:		Total Value:	$642,540
County:	DISTRICT OF COLUMBIA, DC			Sale Price:		Land Value:	$177,500
Use:	CLUB			Liber/Folio#:		Bldg/Liv Area:	8,070
Subdiv:				1st Mtg $:		Lot Area:	4,034
Zoning:	R4	Cnty Use:	034	Bedrooms:		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit:	0001	Full Baths:	Half: 5	Yr Built:	1856
Owners:	POST KENNETH H NASH 8					Stories:	2.00
						Phone:	

Mail: **224 D ST SE; WASHINGTON DC 20003-1921 C024 C/O AMERICAN LEGION**

2) Situs: **216-218 D ST SE, WASHINGTON DC 20003-1921 C024**

APN:	0763-0000-0002			Rec/Sale Dt:	10/05/1998 09/30/1998	Total Value:	$1,603,180
County:	DISTRICT OF COLUMBIA, DC			Sale Price:	$2,666,000	Land Value:	$309,670
Use:	OFFICE BUILDING			Liber/Folio#:	78648	Bldg/Liv Area:	14,319
Subdiv:				1st Mtg $:	$1,895,000	Lot Area:	4,692
Zoning:	R4	Cnty Use:	051	Bedrooms:		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit:	0002	Full Baths:	Half: 4	Yr Built:	1890
Owners:	GAILOR FRANK R					Stories:	3.00
						Phone:	

Mail: **118 SAINT MARYS ST; RALEIGH NC 27605-1809 C004**

3) Situs: **212-214 D ST SE, WASHINGTON DC 20003-1921 C024**

APN:	0763-0000-0003			Rec/Sale Dt:	10/05/1998 09/30/1998	Total Value:	$1,155,360
County:	DISTRICT OF COLUMBIA, DC			Sale Price:	$2,666,000	Land Value:	$288,290
Use:	CLUB			Liber/Folio#:	78648	Bldg/Liv Area:	13,098
Subdiv:				1st Mtg $:		Lot Area:	6,552
Zoning:	R4	Cnty Use:	034	Bedrooms:		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit:	0003	Full Baths:	Half: 1	Yr Built:	1890
Owners:	GAILOR CAROLE S					Stories:	2.00
						Phone:	

Mail: **PO BOX 1015; HORSHAM PA 19044-8015 B099**

4) Situs: **317 3RD ST SE, WASHINGTON DC 20003-1961 C014**

APN:	0763-0000-0015			Rec/Sale Dt:		Total Value:	$495,110
County:	DISTRICT OF COLUMBIA, DC			Sale Price:		Land Value:	$89,410
Use:	APARTMENT			Liber/Folio#:		Bldg/Liv Area:	8,840
Subdiv:				1st Mtg $:		Lot Area:	5,383
Zoning:	R4	Cnty Use:	021	Bedrooms:		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit:	0015	Full Baths:	15 Half:	Yr Built:	1927
Owners:	DONOHOE A					Stories:	2.00
						Phone:	

Mail: **4000 MASSACHUSETTS AVE NW APT 1309; WASHINGTON DC 20016-5133 C040**

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5) Situs: **319-321 3RD ST SE, WASHINGTON DC 20003-1962 C014**

APN:	0763-0000-0016		Rec/Sale Dt:			Total Value:	$482,020
County:	DISTRICT OF COLUMBIA, DC		Sale Price:			Land Value:	$128,810
Use:	APARTMENT		Liber/Folio#:			Bldg/Liv Area:	9,006
Subdiv:			1st Mtg $:			Lot Area:	4,879
Zoning:	R4	Cnty Use: 021	Bedrooms:			Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0016	Full Baths:	15	Half: 1	Yr Built:	1959
Owners:	METROPOLITAN MASONRY INC					Stories:	3.00
						Phone:	
Mail:	319 3RD ST SE; WASHINGTON DC 20003-1962 C014						

6) Situs: **312 2ND ST SE, WASHINGTON DC 20003-1901 C024**

APN:	0763-0000-0017		Rec/Sale Dt:	12/1985		Total Value:	$536,080
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$200,000		Land Value:	$113,780
Use:	MULTI FAMILY DWELLING		Liber/Folio#:			Bldg/Liv Area:	2,605
Subdiv:			1st Mtg $:			Lot Area:	1,850
Zoning:	R4	Cnty Use: 024	Bedrooms:	4		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0017	Full Baths:	3	Half:	Yr Built:	1860
Owners:	WINBERG CARL O					Stories:	3.00
						Phone:	
Mail:	1611 S PACIFIC COAST HWY; REDONDO BEACH CA 90277-5606 C008						

7) Situs: **310 2ND ST SE, WASHINGTON DC 20003-1901 C024**

APN:	0763-0000-0018		Rec/Sale Dt:	03/28/1995		Total Value:	$623,420
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$360,000		Land Value:	$115,680
Use:	MULTI FAMILY DWELLING		Liber/Folio#:	20021		Bldg/Liv Area:	3,359
Subdiv:	DUPONT EAST		1st Mtg $:	$288,000		Lot Area:	2,217
Zoning:	R4	Cnty Use: 024	Bedrooms:	4		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0018	Full Baths:	2	Half: 1	Yr Built:	1860
Owners:	BISHOP ALLEN R					Stories:	3.00
						Phone:	
Mail:	PO BOX 9000; BROWNSVILLE TX 78523-9000 B050						

8) Situs: **308 2ND ST SE, WASHINGTON DC 20003-1918 C024**

APN:	0763-0000-0019		Rec/Sale Dt:	08/16/1994		Total Value:	$719,910
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$350,000		Land Value:	$115,800
Use:	MULTI FAMILY DWELLING		Liber/Folio#:	65978		Bldg/Liv Area:	4,968
Subdiv:	NEW WILLIAMSBURG		1st Mtg $:			Lot Area:	2,252
Zoning:	R4	Cnty Use: 024	Bedrooms:	4		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0019	Full Baths:	3	Half:	Yr Built:	1840
Owners:	RALPH URSULA E					Stories:	3.00
						Phone:	
Mail:	3600 JACKSON ST; SAN FRANCISCO CA 94118-1810 C006						

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9) Situs: **304-306 2ND ST SE, WASHINGTON DC 20003-1901 C024**

APN:	0763-0000-0020		Rec/Sale Dt:	10/27/1970		Total Value:	$535,440
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$60,500		Land Value:	$114,700
Use:	MULTI FAMILY DWELLING		Liber/Folio#:			Bldg/Liv Area:	3,780
Subdiv:			1st Mtg $:			Lot Area:	2,006
Zoning:	R4	Cnty Use: 024	Bedrooms:	4		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0020	Full Baths:	3	Half: 1	Yr Built:	1880
Owners:	DESAN ELIZABETH H					Stories:	3.00
						Phone:	

Mail: **1620 29TH ST NW; WASHINGTON DC 20007-2901 C005**

10) Situs: **316 2ND ST SE, WASHINGTON DC 20003-1901 C024**

APN:	0763-0000-0021		Rec/Sale Dt:	01/10/1979		Total Value:	$555,160
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$117,500		Land Value:	$113,520
Use:	MULTI FAMILY DWELLING		Liber/Folio#:			Bldg/Liv Area:	2,695
Subdiv:	ISAAC BURSEY'S COMBINATION		1st Mtg $:			Lot Area:	1,814
Zoning:	R4	Cnty Use: 024	Bedrooms:	4		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0021	Full Baths:	2	Half: 1	Yr Built:	1890
Owners:	STARK D R					Stories:	3.00
						Phone:	

Mail: **137 C ST SE; WASHINGTON DC 20003-1807 C024**

11) Situs: **209 C ST SE, WASHINGTON DC 20003-1910 C024**

APN:	0763-0000-0022		Rec/Sale Dt:	12/01/1988		Total Value:	$320,000
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$325,000		Land Value:	$115,620
Use:	TOWNHOUSE/ROWHOUSE		Liber/Folio#:	67639		Bldg/Liv Area:	1,882
Subdiv:			1st Mtg $:	$220,000		Lot Area:	2,207
Zoning:	R4	Cnty Use: 011	Bedrooms:	2		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0022	Full Baths:	1	Half: 1	Yr Built:	1890
Owners:	ESKRIDGE WILLIAM H					Stories:	2.00
						Phone:	

Mail: **209 C ST SE; WASHINGTON DC 20003-1910 C024**

12) Situs: **311 3RD ST SE, WASHINGTON DC 20003-1906 C014**

APN:	0763-0000-0023		Rec/Sale Dt:	10/30/1995		Total Value:	$457,110
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$275,000		Land Value:	$112,940
Use:	MULTI FAMILY DWELLING		Liber/Folio#:	65462		Bldg/Liv Area:	2,475
Subdiv:			1st Mtg $:	$261,250		Lot Area:	1,690
Zoning:	R4	Cnty Use: 024	Bedrooms:	4		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0023	Full Baths:	2	Half: 1	Yr Built:	
Owners:	SAYLES DESIREE					Stories:	2.00
						Phone:	

Mail: **311 3RD ST SE; WASHINGTON DC 20003-1906 C014**

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29) Situs: **207 C ST SE, WASHINGTON DC 20003-1910 C024**

APN:	0763-0000-0814		Rec/Sale Dt:	11/01/1989		Total Value:	$339,230
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$240,000		Land Value:	$110,280
Use:	TOWNHOUSE/ROWHOUSE		Liber/Folio#:	61598		Bldg/Liv Area:	1,655
Subdiv:			1st Mtg $:	$216,000		Lot Area:	807
Zoning:	R4	Cnty Use: 011	Bedrooms:	2		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0814	Full Baths:	1	Half: 1	Yr Built:	1870
Owners:	JAUSSI W R					Stories:	2.00
						Phone:	

Mail: **96 PTARMIGAN LOOP; LOGAN UT 84321-4956 C025**

30) Situs: **215 C ST SE, WASHINGTON DC 20003-1955 C024**

APN:	0763-0000-0817		Rec/Sale Dt:			Total Value:	$1,363,400
County:	DISTRICT OF COLUMBIA, DC		Sale Price:			Land Value:	$183,010
Use:	MULTI FAMILY DWELLING		Liber/Folio#:			Bldg/Liv Area:	37,500
Subdiv:			1st Mtg $:			Lot Area:	4,521
Zoning:	R4	Cnty Use: 022	Bedrooms:			Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0817	Full Baths:	63	Half: 2	Yr Built:	1947
Owners:	ZUPNIK STANELY R					Stories:	5.00
						Phone:	

Mail: **5530 WISCONSIN AVE; CHEVY CHASE MD 20815-4404 C035**

31) Situs: **C ST SE, WASHINGTON DC 20003**

APN:	0763-0000-0818		Rec/Sale Dt:			Total Value:	$129,220
County:	DISTRICT OF COLUMBIA, DC		Sale Price:			Land Value:	$129,220
Use:	VACANT LAND (NEC)		Liber/Folio#:			Bldg/Liv Area:	
Subdiv:			1st Mtg $:			Lot Area:	3,193
Zoning:		Cnty Use: 194	Bedrooms:			Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0818	Full Baths:		Half:	Yr Built:	
Owners:	ZUPNIK STANELY R					Stories:	
						Phone:	

Mail: **5530 WISCONSIN AVE; CHEVY CHASE MD 20815-4404 C035**

32) Situs: **219 C ST SE, WASHINGTON DC 20003-1910 C024**

APN:	0763-0000-0819		Rec/Sale Dt:			Total Value:	$193,352
County:	DISTRICT OF COLUMBIA, DC		Sale Price:			Land Value:	$80,552
Use:	SFR		Liber/Folio#:			Bldg/Liv Area:	1,425
Subdiv:			1st Mtg $:			Lot Area:	1,441
Zoning:	R4	Cnty Use: 013	Bedrooms:	3		Map Pg:	02-0221
Block/Bldg:	0763	Lot/Unit: 0819	Full Baths:	1	Half:	Yr Built:	1890
Owners:	FINNELL VIRGINIA B					Stories:	2.00
						Phone:	

Mail: **219 C ST SE; WASHINGTON DC 20003-1910 C024**

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37) Situs: **309 3RD ST SE, WASHINGTON DC 20003-1906 C014**

APN:	**0763-0000-0825**			Rec/Sale Dt:	**04/07/1971**	Total Value:	**$536,050**
County:	**DISTRICT OF COLUMBIA, DC**			Sale Price:	**$56,000**	Land Value:	**$112,930**
Use:	**MULTI FAMILY DWELLING**			Liber/Folio#:		Bldg/Liv Area:	**2,490**
Subdiv:				1st Mtg $:		Lot Area:	**1,689**
Zoning:	**R4**	Cnty Use:	**024**	Bedrooms:	**3**	Map Pg:	**02-0221**
Block/Bldg:	**0763**	Lot/Unit:	**0825**	Full Baths:	**3** Half:	Yr Built:	**1870**
Owners:	**WILLIAMS MAURICE**					Stories:	**2.00**
						Phone:	
Mail:	**4850 OSPREY DR S APT 402; ST PETERSBURG FL 33711-4696 C069 (No Mail)**						

38) Situs: **C ST SE, WASHINGTON DC 20003**

APN:	**0763-0000-0828**			Rec/Sale Dt:		Total Value:	**$91,580**
County:	**DISTRICT OF COLUMBIA, DC**			Sale Price:		Land Value:	**$91,580**
Use:	**VACANT LAND (NEC)**			Liber/Folio#:		Bldg/Liv Area:	
Subdiv:				1st Mtg $:		Lot Area:	**2,263**
Zoning:		Cnty Use:	**194**	Bedrooms:		Map Pg:	**02-0221**
Block/Bldg:	**0763**	Lot/Unit:	**0828**	Full Baths:	Half:	Yr Built:	
Owners:	**ZUPNIK STANELY R**					Stories:	
						Phone:	
Mail:	**5530 WISCONSIN AVE; CHEVY CHASE MD 20815-4404 C035**						

39) Situs: **C ST SE, WASHINGTON DC 20003**

APN:	**0763-0000-0829**			Rec/Sale Dt:		Total Value:	**$8,990**
County:	**DISTRICT OF COLUMBIA, DC**			Sale Price:		Land Value:	**$8,990**
Use:	**VACANT LAND (NEC)**			Liber/Folio#:		Bldg/Liv Area:	
Subdiv:				1st Mtg $:		Lot Area:	**222**
Zoning:		Cnty Use:	**194**	Bedrooms:		Map Pg:	**02-0221**
Block/Bldg:	**0763**	Lot/Unit:	**0829**	Full Baths:	Half:	Yr Built:	
Owners:	**ZUPNIK STANELY R**					Stories:	
						Phone:	
Mail:	**5530 WISCONSIN AVE; CHEVY CHASE MD 20815-4404 C035**						

40) Situs: **, DC**

APN:	**0763-0000-0830**			Rec/Sale Dt:	**12/02/1983**	Total Value:	
County:	**DISTRICT OF COLUMBIA, DC**			Sale Price:	**$230,000**	Land Value:	
Use:				Liber/Folio#:		Bldg/Liv Area:	
Subdiv:				1st Mtg $:		Lot Area:	
Zoning:		Cnty Use:		Bedrooms:		Map Pg:	
Block/Bldg:		Lot/Unit:		Full Baths:	Half:	Yr Built:	
Owners:						Stories:	
						Phone:	
Mail:							

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41) Situs: **, DC**

APN:	**0763-0000-0831**			Rec/Sale Dt:	**10/26/1978**		Total Value:
County:	**DISTRICT OF COLUMBIA, DC**			Sale Price:	**$1,514**		Land Value:
Use:				Liber/Folio#:			Bldg/Liv Area:
Subdiv:				1st Mtg $:			Lot Area:
Zoning:		Cnty Use:		Bedrooms:			Map Pg:
Block/Bldg:		Lot/Unit:		Full Baths:		Half:	Yr Built:
Owners:							Stories:
							Phone:
Mail:							

42) Situs: **320 2ND ST SE, WASHINGTON DC 20003-1901 C024**

APN:	**0763-0000-0832**			Rec/Sale Dt:	**04/11/1996**		Total Value:	**$546,210**
County:	**DISTRICT OF COLUMBIA, DC**			Sale Price:	**$355,000**		Land Value:	**$111,820**
Use:	**TOWNHOUSE/ROWHOUSE**			Liber/Folio#:	**22083**		Bldg/Liv Area:	**3,252**
Subdiv:	**CAPITOL HILL**			1st Mtg $:	**$266,250**		Lot Area:	**1,343**
Zoning:		Cnty Use:	**011**	Bedrooms:	**4**		Map Pg:	**02-0221**
Block/Bldg:	**0763**	Lot/Unit:	**0832**	Full Baths:	**2**	Half: **1**	Yr Built:	**1860**
Owners:	**DRESSER KENNETH B**						Stories:	**3.00**
							Phone:	
Mail:	**320 2ND ST SE; WASHINGTON DC 20003-1901 C024**							

43) Situs: **305 3RD ST SE, WASHINGTON DC 20003-1906 C014**

APN:	**0763-0000-0833**			Rec/Sale Dt:	**03/12/2003**	**03/10/2003**	Total Value:	**$531,900**
County:	**DISTRICT OF COLUMBIA, DC**			Sale Price:	**$555,000**		Land Value:	**$111,500**
Use:	**SFR**			Liber/Folio#:	**28909**		Bldg/Liv Area:	**2,241**
Subdiv:				1st Mtg $:	**$444,000**		Lot Area:	**1,246**
Zoning:	**R4**	Cnty Use:	**013**	Bedrooms:	**3**		Map Pg:	**02-0221**
Block/Bldg:	**0763**	Lot/Unit:	**0833**	Full Baths:	**3**	Half: **1**	Yr Built:	**1963**
Owners:	**SANDERS TIMOTHY K**						Stories:	**3.00**
	MURPHY CAROL A						Phone:	
Mail:	**305 3RD ST SE; WASHINGTON DC 20003-1906 C014**							

44) Situs: **326 2ND ST SE, WASHINGTON DC 20003-1901 C024**

APN:	**0763-0000-0835**			Rec/Sale Dt:			Total Value:	**$611,810**
County:	**DISTRICT OF COLUMBIA, DC**			Sale Price:			Land Value:	**$133,800**
Use:	**MULTI FAMILY DWELLING**			Liber/Folio#:			Bldg/Liv Area:	**2,115**
Subdiv:				1st Mtg $:			Lot Area:	**2,915**
Zoning:	**R4**	Cnty Use:	**024**	Bedrooms:	**3**		Map Pg:	**02-0221**
Block/Bldg:	**0763**	Lot/Unit:	**0835**	Full Baths:	**2**	Half: **1**	Yr Built:	**1880**
Owners:	**GRUIS EDWARD G**						Stories:	**2.00**
	SIMMONS DUNTON & DUNTON						Phone:	
Mail:	**PO BOX 5; WHITE STONE VA 22578-0005 B001**							

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1) Situs: **D ST SE, WASHINGTON DC 20003**

APN:	0733-0000-0007			Rec/Sale Dt:		Total Value:	$62,580
County:	DISTRICT OF COLUMBIA, DC			Sale Price:		Land Value:	$62,580
Use:	VACANT LAND (NEC)			Liber/Folio#:		Bldg/Liv Area:	
Subdiv:				1st Mtg $:		Lot Area:	1,165
Zoning:	R4	Cnty Use:	193	Bedrooms:		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit:	0007	Full Baths:	Half:	Yr Built:	
Owners:	LIPNICK MAURICE					Stories:	
						Phone:	
Mail:	1825 K ST NW FL 12; WASHINGTON DC 20006-1202 C049 C/O CAFRITZ CO						

2) Situs: **109 C ST SE, WASHINGTON DC 20003-1831 C024**

APN:	0733-0000-0019			Rec/Sale Dt:	02/10/1995	Total Value:	$532,850
County:	DISTRICT OF COLUMBIA, DC			Sale Price:	$265,000	Land Value:	$114,080
Use:	MULTI FAMILY DWELLING			Liber/Folio#:	9911	Bldg/Liv Area:	3,045
Subdiv:	RESIDENCES AT MARKET SQUARE WI			1st Mtg $:	$212,000	Lot Area:	1,900
Zoning:	R4	Cnty Use:	024	Bedrooms:	4	Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit:	0019	Full Baths:	4 Half:	Yr Built:	1880
Owners:	WINBERG CARL 1992					Stories:	3.00
	WINTERS R L #206					Phone:	
Mail:	1611 S PACIFIC COAST HWY; REDONDO BEACH CA 90277-5606 C008						

3) Situs: **111 C ST SE, WASHINGTON DC 20003-1832 C024**

APN:	0733-0000-0020			Rec/Sale Dt:	01/25/1996	Total Value:	$533,870
County:	DISTRICT OF COLUMBIA, DC			Sale Price:	$280,000	Land Value:	$114,080
Use:	MULTI FAMILY DWELLING			Liber/Folio#:	4540	Bldg/Liv Area:	3,045
Subdiv:	CAPITOL HILL			1st Mtg $:	$196,000	Lot Area:	1,900
Zoning:	R4	Cnty Use:	024	Bedrooms:	5	Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit:	0020	Full Baths:	4 Half:	Yr Built:	1880
Owners:	HUANG BETTY TRUST					Stories:	3.00
						Phone:	
Mail:	1099 22ND ST NW APT 1010; WASHINGTON DC 20037-1836 C055						

4) Situs: **115 C ST SE, WASHINGTON DC 20003-1806 C024**

APN:	0733-0000-0022			Rec/Sale Dt:	11/26/1996 11/26/1996	Total Value:	$629,670
County:	DISTRICT OF COLUMBIA, DC			Sale Price:	$537,000	Land Value:	$115,820
Use:	MULTI FAMILY DWELLING			Liber/Folio#:	78070	Bldg/Liv Area:	3,714
Subdiv:	HARVARD MEWS			1st Mtg $:	$300,000	Lot Area:	2,271
Zoning:	R4	Cnty Use:	024	Bedrooms:	5	Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit:	0022	Full Baths:	6 Half: 3	Yr Built:	1880
Owners:	WINBERG CARL O					Stories:	3.00
						Phone:	
Mail:	1611 S PACIFIC COAST HWY; REDONDO BEACH CA 90277-5606 C008						

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5) Situs: **117 C ST SE, WASHINGTON DC 20003-1806 C024**

APN:	0733-0000-0023		Rec/Sale Dt:	04/23/2001	04/12/2001	Total Value:	$593,670
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$649,000		Land Value:	$115,820
Use:	TOWNHOUSE/ROWHOUSE		Liber/Folio#:	37578		Bldg/Liv Area:	3,045
Subdiv:	KELLY & SHEPHERD'S		1st Mtg $:	$519,200		Lot Area:	2,271
Zoning:	R4	Cnty Use: 011	Bedrooms:	6		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0023	Full Baths:	2	Half: 1	Yr Built:	1880
Owners:	LESTER JOHN M					Stories:	3.00
						Phone:	

Mail: **117 C ST SE; WASHINGTON DC 20003-1806 C024 (No Mail)**

6) Situs: **121 C ST SE, WASHINGTON DC 20003-1844 C024**

APN:	0733-0000-0025		Rec/Sale Dt:	03/29/1990		Total Value:	$512,050
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$420,000		Land Value:	$115,820
Use:	TOWNHOUSE/ROWHOUSE		Liber/Folio#:	18695		Bldg/Liv Area:	3,045
Subdiv:			1st Mtg $:			Lot Area:	2,271
Zoning:	R4	Cnty Use: 011	Bedrooms:	5		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0025	Full Baths:	5	Half:	Yr Built:	1880
Owners:	WINBERG CARL O					Stories:	3.00
						Phone:	

Mail: **1611 S PACIFIC COAST HWY; REDONDO BEACH CA 90277-5606 C008**

7) Situs: **123 C ST SE, WASHINGTON DC 20003-1845 C024**

APN:	0733-0000-0026		Rec/Sale Dt:	01/02/1996		Total Value:	$629,670
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$420,000		Land Value:	$115,820
Use:	TOWNHOUSE/ROWHOUSE		Liber/Folio#:	102		Bldg/Liv Area:	3,045
Subdiv:	CAPITOL HILL		1st Mtg $:	$185,000		Lot Area:	2,271
Zoning:	R4	Cnty Use: 011	Bedrooms:	4		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0026	Full Baths:	4	Half:	Yr Built:	1880
Owners:	WINBERG CARL O					Stories:	3.00
						Phone:	

Mail: **1611 S PACIFIC COAST HWY; REDONDO BEACH CA 90277-5606 C008**

8) Situs: **125 C ST SE, WASHINGTON DC 20003-1835 C024**

APN:	0733-0000-0027		Rec/Sale Dt:			Total Value:	$544,830
County:	DISTRICT OF COLUMBIA, DC		Sale Price:			Land Value:	$115,820
Use:	MULTI FAMILY DWELLING		Liber/Folio#:			Bldg/Liv Area:	2,997
Subdiv:	KELLY & SHEPHERD'S		1st Mtg $:			Lot Area:	2,271
Zoning:	R4	Cnty Use: 024	Bedrooms:	5		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0027	Full Baths:	4	Half:	Yr Built:	1880
Owners:	SASMORE CARMEN S					Stories:	3.00
						Phone:	

Mail: **329 6TH ST SE; WASHINGTON DC 20003-2754 C001**

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9) Situs: **127 C ST SE, WASHINGTON DC 20003-1836 C024**

APN:	0733-0000-0028			Rec/Sale Dt:	04/17/1972		Total Value:	$178,640
County:	DISTRICT OF COLUMBIA, DC			Sale Price:	$76,000		Land Value:	$89,700
Use:	MULTI FAMILY DWELLING			Liber/Folio#:			Bldg/Liv Area:	2,553
Subdiv:				1st Mtg $:			Lot Area:	2,271
Zoning:	R4	Cnty Use:	025	Bedrooms:			Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit:	0028	Full Baths:	5	Half:	Yr Built:	1880
Owners:	FUCHS M						Stories:	3.00
							Phone:	2025432655
Mail:	320 E ST NE; WASHINGTON DC 20002-4925 C051							

10) Situs: **129 C ST SE, WASHINGTON DC 20003-1847 C024**

APN:	0733-0000-0029			Rec/Sale Dt:	03/03/1978		Total Value:	$542,800
County:	DISTRICT OF COLUMBIA, DC			Sale Price:	$160,000		Land Value:	$115,820
Use:	MULTI FAMILY DWELLING			Liber/Folio#:			Bldg/Liv Area:	3,045
Subdiv:				1st Mtg $:			Lot Area:	2,271
Zoning:	R4	Cnty Use:	024	Bedrooms:	4		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit:	0029	Full Baths:	3	Half: 1	Yr Built:	1882
Owners:	PARSONS SUSAN H						Stories:	3.00
							Phone:	2025448236
Mail:	129 C ST SE; WASHINGTON DC 20003-1847 C024							

11) Situs: **131 C ST SE, WASHINGTON DC 20003-1806 C024**

APN:	0733-0000-0030			Rec/Sale Dt:	07/23/1975		Total Value:	$576,780
County:	DISTRICT OF COLUMBIA, DC			Sale Price:	$75,000		Land Value:	$115,440
Use:	MULTI FAMILY DWELLING			Liber/Folio#:			Bldg/Liv Area:	3,608
Subdiv:				1st Mtg $:			Lot Area:	2,151
Zoning:	R4	Cnty Use:	024	Bedrooms:	5		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit:	0030	Full Baths:	4	Half:	Yr Built:	1880
Owners:	PARTRIDGE B W						Stories:	3.00
							Phone:	
Mail:	225 PENNSYLVANIA AVE SE; WASHINGTON DC 20003-1108 C014 C/O J C FORMANT RE INC							

12) Situs: **139 C ST SE, WASHINGTON DC 20003-1807 C024**

APN:	0733-0000-0032			Rec/Sale Dt:	10/29/2002	10/22/2002	Total Value:	$883,670
County:	DISTRICT OF COLUMBIA, DC			Sale Price:	$522,879		Land Value:	$117,380
Use:	MULTI FAMILY DWELLING			Liber/Folio#:	124855		Bldg/Liv Area:	4,008
Subdiv:				1st Mtg $:	$369,000		Lot Area:	2,749
Zoning:	R4	Cnty Use:	024	Bedrooms:	4		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit:	0032	Full Baths:	2	Half: 2	Yr Built:	1860
Owners:	SHELDON LOUIS P & BEVERLY B						Stories:	3.00
	SHELDON LOUIS P						Phone:	
Mail:	139 C ST SE; WASHINGTON DC 20003-1807 C024							

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17) Situs: **148 D ST SE, WASHINGTON DC 20003-1810 C024**

APN:	0733-0000-0038		Rec/Sale Dt:	04/01/1996		Total Value:	$256,630
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$168,000		Land Value:	$111,300
Use:	TOWNHOUSE/ROWHOUSE		Liber/Folio#:	19472		Bldg/Liv Area:	1,887
Subdiv:	CAPITOL HILL		1st Mtg $:	$151,200		Lot Area:	1,155
Zoning:	R4	Cnty Use: 011	Bedrooms:	3		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0038	Full Baths:	1	Half: 1	Yr Built:	1890
Owners:	ADAMS RICHARD					Stories:	2.00
						Phone:	2025477037
Mail:	148 D ST SE; WASHINGTON DC 20003-1810 C024						

18) Situs: **146 D ST SE, WASHINGTON DC 20003-1810 C024**

APN:	0733-0000-0039		Rec/Sale Dt:			Total Value:	$399,700
County:	DISTRICT OF COLUMBIA, DC		Sale Price:			Land Value:	$111,680
Use:	TOWNHOUSE/ROWHOUSE		Liber/Folio#:			Bldg/Liv Area:	2,167
Subdiv:	MCLEAN GARDENS		1st Mtg $:			Lot Area:	1,295
Zoning:	R4	Cnty Use: 011	Bedrooms:	3		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0039	Full Baths:	2	Half:	Yr Built:	1890
Owners:	WELLS KAY F					Stories:	2.00
						Phone:	
Mail:	146 D ST SE; WASHINGTON DC 20003-1810 C024						

19) Situs: **138 D ST SE, WASHINGTON DC 20003-1810 C024**

APN:	0733-0000-0040		Rec/Sale Dt:	01/04/1995		Total Value:	$495,670
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$291,500		Land Value:	$114,830
Use:	TOWNHOUSE/ROWHOUSE		Liber/Folio#:	580		Bldg/Liv Area:	2,648
Subdiv:	BRIGHTON COURT		1st Mtg $:			Lot Area:	2,032
Zoning:	R4	Cnty Use: 011	Bedrooms:	3		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0040	Full Baths:	2	Half: 1	Yr Built:	1890
Owners:	DOGGETT ELIZABETH B					Stories:	2.00
						Phone:	
Mail:	138 D ST SE; WASHINGTON DC 20003-1810 C024						

20) Situs: **136 D ST SE, WASHINGTON DC 20003-1810 C024**

APN:	0733-0000-0041		Rec/Sale Dt:	08/18/1999	08/16/1999	Total Value:	$540,730
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$470,000		Land Value:	$114,830
Use:	MULTI FAMILY DWELLING		Liber/Folio#:	74833		Bldg/Liv Area:	2,648
Subdiv:			1st Mtg $:	$307,100		Lot Area:	2,032
Zoning:	R4	Cnty Use: 024	Bedrooms:	3		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0041	Full Baths:	3	Half: 1	Yr Built:	1890
Owners:	JONES KERRY L					Stories:	3.00
						Phone:	
Mail:	136 D ST SE; WASHINGTON DC 20003-1810 C024						

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21) Situs: **134 D ST SE, WASHINGTON DC 20003-1810 C024**

APN:	0733-0000-0042		Rec/Sale Dt:	11/25/2002	10/31/2002	Total Value:	$430,000
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$111,000		Land Value:	$115,340
Use:	TOWNHOUSE/ROWHOUSE		Liber/Folio#:	137317		Bldg/Liv Area:	2,662
Subdiv:	BENTLEY & WYNKOOP'S		1st Mtg $:	$111,000		Lot Area:	2,091
Zoning:	R4	Cnty Use: 011	Bedrooms:	4		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0042	Full Baths:	3	Half: 1	Yr Built:	1890
Owners:	LEWIS ALLISON L					Stories:	2.00
						Phone:	
Mail:	134 D ST SE; WASHINGTON DC 20003-1810 C024						

22) Situs: **132 D ST SE, WASHINGTON DC 20003-1810 C024**

APN:	0733-0000-0043		Rec/Sale Dt:	12/15/2000	11/10/2000	Total Value:	$550,570
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$410,000		Land Value:	$115,340
Use:	TOWNHOUSE/ROWHOUSE		Liber/Folio#:	114574		Bldg/Liv Area:	2,662
Subdiv:			1st Mtg $:	$252,700		Lot Area:	2,091
Zoning:	R4	Cnty Use: 011	Bedrooms:	3		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0043	Full Baths:	2	Half: 2	Yr Built:	1890
Owners:	RYUN ANNE S					Stories:	2.00
						Phone:	
Mail:	132 D ST SE; WASHINGTON DC 20003-1810 C024						

23) Situs: **137 C ST SE, WASHINGTON DC 20003-1807 C024**

APN:	0733-0000-0045		Rec/Sale Dt:	06/23/2000	06/21/2000	Total Value:	$804,350
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$850,000		Land Value:	$119,530
Use:	SFR		Liber/Folio#:	58611		Bldg/Liv Area:	4,257
Subdiv:	WYOMING		1st Mtg $:	$400,000		Lot Area:	4,063
Zoning:	R4	Cnty Use: 013	Bedrooms:	3		Map Pg:	02-0221
Block/Bldg:	0733	Lot/Unit: 0045	Full Baths:	3	Half: 1	Yr Built:	1860
Owners:	NATIONAL PRAYER CENTER INC					Stories:	3.00
						Phone:	
Mail:	PO BOX 23768; WASHINGTON DC 20026-3768 B017						

24) Situs: **, DC**

APN:	0733-0000-0046		Rec/Sale Dt:	05/12/1978		Total Value:	
County:	DISTRICT OF COLUMBIA, DC		Sale Price:	$1,551,000		Land Value:	
Use:			Liber/Folio#:			Bldg/Liv Area:	
Subdiv:			1st Mtg $:			Lot Area:	
Zoning:		Cnty Use:	Bedrooms:			Map Pg:	
Block/Bldg:		Lot/Unit:	Full Baths:		Half:	Yr Built:	
Owners:						Stories:	
						Phone:	
Mail:							

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