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March 15, 2004

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

Re: BZA Application No. 17108
206, 208 & 210 D Street, S.E.
Our File No. 092314.00000

Dear Mr. Griffis:

Per the Board's request at the close of the February 24, 2004 hearing, enclosed you will find twenty-one (21) copies of the testimonies of Larry Smith, Louise Smith, James Marsh and Mary Ann Snow, as well as our correspondence to DCRA.

Thank you for your attention to this matter.

Sincerely,

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

Richard B. Nettler
Jeannine Rustad

Enclosures (as stated)
cc: Mary Ann Snow & James Marsh
Larry & Louise Smith
ANC 6B (w/encl.)
Capitol Hill Restoration Society (w/encl.)
Joel Lawson, Office of Planning (w/encl.)

Word 45651543.1

BZA
Case No. 17108
Exhibit No. 52

Board of Zoning Adjustment
District of Columbia
CASE NO. 17108
EXHIBIT NO. 52

Testimony before the Board of Zoning Adjustment
Hearing Date 2/24/04

My name is Jim Marsh and I am here today to testify in opposition to the request for a variance.

I have lived on Capitol Hill for approximately 13 years, and have lived at 320 2nd St., SE with my wife and 2 children for the past 7 years. The rear of our property directly adjoins the side of the development property, and so we have had a unique opportunity to observe the activity on the property.

We certainly have a personal interest in this development as we are so directly affected by it. However, we also bear a community interest in making sure that development in our neighborhood complies with appropriate zoning regulations and respects the permitting process. I don't believe this development on D St, SE does either.

In Feb 2003 my wife and I attended our local ANC meeting at which Mr. Stoneburner displayed some drawings of the buildings planned for the site. At the end of the meeting, he gave us a copy of one set of drawings. At that same meeting, we asked a few questions about the project, and our local ANC representative Mr. Dave Sheldon advised us to attend the next meeting of the HPRB which was reviewing the drawings from an architectural point-of-view.

Several months passed, during which there was no activity at the site. As we looked at the

drawings, it appeared that one of the measurements from the front of our properties, extending eastward to the edge of the development property, did not indicate the width of our private pathway. At that point I got a tape measure and made a rough measurement from the front edge of our house (property line) back toward the development lot, to get an idea of where the edge of their property, and therefore the building construction, should be. When excavation of the site began in late June and early July, we watched with careful interest. Not long into the excavation process, the developers dug away the private 4-foot easement running along the length of the 5 properties abutting the side of the development. This greatly alarmed us, since Mr. Stoneburner himself had told us at the Feb ANC meeting that he knew the easement belonged to and was shared by the five properties, and by my own earlier measurement, I knew they were far beyond their property boundaries.

This excavation raised serious doubts in our minds whether the development of the property had been properly reviewed or approved or was being managed carefully. It also raised serious concerns as well when the Pepco substation was raised, as we had no knowledge whether the proper environmental assessment was done or if soil sampling was required. At this point, we began to talk to our neighbors and others in the community, including our ANC representative Mr. Sheldon. He encouraged us to pursue looking into the activity at the site. We consulted the zoning regulations and made numerous phone calls to DCRA. Within a few days, we believed we had discovered serious errors in the way the project was proceeding, most notably the fact that the developers were building 3 houses on substandard width and area lots which required them seek a variance.

We mentioned this in several brief conversations with the developers and were told simply that they were building by matter of right, and that they didn't need a variance. However, in reading the regulations, and based on conversations with others in the community who had some experience with zoning matters, we didn't believe this.

My wife had several more conversations with Mr. Sheldon, which she and I discussed, who continued to urge us to pursue the matter. We mentioned to him our concern about the density of the project - 6 units in an area already congested with noise, pedestrians, and (especially) rerouted truck traffic as a result of changes to traffic patterns imposed by Capitol Hill police following the attacks on September 11th. He supported us in fighting it.

We ultimately hired an attorney to help us articulate our objections to the way the development at the site was proceeding.

Many of the details of the unfortunate things that happened to this and the adjoining neighbors properties will be heard in other testimony . However, I would like to speak to the public safety and zoning issues at hand.

My objection to the variance is one of density. I do not object to the development of the property, per se, but I believe any such development should be in compliance with current zoning regulations and should faithfully and honestly adhere to the permitting application and approval process. How can it not be in the community's best interest to make sure developers who want to build on properties within our city adhere to our zoning laws?

I welcome appropriate development on Capital Hill which improves our neighborhoods, but such development should be placed in the overall context of current life on Capitol Hill, and not solely on how to maximize the number of living units which can be squeezed in a non-conforming way into an open lot.

With regard to improving this particular lot, by building on it, the presence of homelessness and weeds growing in our pathway have been mentioned. It is true a homeless person occasionally inhabited the area for brief periods of time. After 1-2 weeks I would then go out and urge him to move along, and then clean up. In any case, we all know homelessness does exist in the city, and the solution to homelessness is not to simply build multi-million dollar homes on properties in the hopes the homeless will go away. It also is true that weeds and grass would grow in the path, and pedestrians and passers by would throw trash down. Again, I would periodically clean this area up, but in an open urban environment, this is a never-ending task.

My concern for the best interests of the community is also spurred by the fact that we still have been unable to get any specific or concrete information about the environmental assessment done of this former Pepco site, which we believe once contained transformers and may be potentially contaminated. While this is not a zoning issue per se, the initial zoning and permitting decisions which allowed the project to proceed have resulted in excavation and building on a potentially hazardous site.

Promoting appropriate development of properties in our city and encouraging residents to move back into the city is not served by allowing developers to build on properties in violation of

zoning regulations and permit requirements. The situation our Capitol Hill community is now faced with is the reality that the masonry shell of the three buildings are now almost complete. The developers have thrust this difficulty on the community by continuing to build these structures, despite the stop work order which was imposed in early September of last fall, when they were informed the subdivision of the properties was invalid and they needed a variance to proceed. Had they ceased at that point, when the building barely consisted of the basement walls extending to grade level, and sought the variance they needed, many of the problems we are all now facing might have been avoided. I personally believe this is why the 3 out of the 7 ANC members who voted to support the variance, voted the way they did, because they are trying to find the easiest way out of this difficult problem. Each member who voted in support of the application said that it was a hard case and that they thought that the applicant would have a hard time meeting the test for a variance. However, I still find it difficult to understand how they could support the applicant, while acknowledging that they didn't feel the applicant had met the test and in light of their unanimous vote to support our appeal. In the case of our representative Mr. Sheldon, who initially was so supportive and helpful to us, he never spoke to us or engaged us in a discussion about his apparent change of position regarding the development.

We too hoped there might be some solution. We offered to discuss ideas of ways to adapt the development that could address the community concerns about density and environmental issues, and might comply with the zoning laws. The developers refused to discuss any of this with us.

Thank you.

Larry K Smith's Testimony , February 24 BZA Hearing

In the second week of July, 2003, I came home from a business trip and found that our property had been stolen, literally taken away, without permission or warning leaving a pit of twenty or so feet just inches from our back gate.

Also the developers had sealed our back gate with a large sheet of heavy plywood.

Since this gate was our only exit in case of fire, I removed the plywood. The next day the developers had nailed it back even tighter. So I tore it off again to make sure that we had a rear fire escape.

These invasions of our home caused substantial emotional stress for Louise and our neighbors.

Mary Ann's inquiries into the developers' dealing with the District government led us to believe that it wasn't just in their dealings with us but also in regard to their applications for permits they simply were not playing by the rules.

So on August 7 we wrote the developer a letter, raising both sets of issues—their destruction of our property and their flaunting of the District's zoning and building processes.

On next Saturday afternoon, August 9, 2003, I went to the building site to say hello to Stan, the Building Superintendent. We had a pleasant chat, and he told me that the east basement wall (next to the Health Club) would be poured with only one side of a form, (the other will be earth.) The form for the west wall, (our side) however, will have two sides. Stan said they computed the cost of doing it with just one side and decided it would be cheaper for them to use a two-sided form. This would be cheaper even though it would require them to dig out enough space west of the west side of the form to install it. To do this required them to remove almost all of the easement.

In a letter, dated August 8, the developer replied to our letter and extended their "assurances" to restore the right of way by October 30 and suggesting we "maintain the temporary blocking of access from the rear gates." They also said that they were "compelled to inform" us of their deep concern regarding any time or money costs resulting from our letter.

A few days later, I returned home from a business trip in the afternoon and learned that the two developers had come to our home. They had left only a few minutes before I arrived. They had tried to brow beat Louise about the letter we sent. One of them is a big guy and although Louise is strong, gritty and gracious lady, it was clear to me that their visit was an attempt to intimidate her. They threatened retaliation if we continued to raise these issues.

We proceeded to retain counsel and have focused our efforts, not on the danger to our home, but on helping the District ensure that these developers play by the rules.

As an ordinary citizen, I don't have much knowledge of the various procedures a developers must respect in order to build. But it has been clear to me at least since September, at least, that the developers have needed a zoning variance to build these properties.

Yet, they have stubbornly insisted they do not need such a variance and proceed to do what they want "as a matter of right." And as late as last December they told us that they didn't need a variance.

For me, our appeal is not to seek relief from the developers' invasion of our property. For me, our appeal is to ensure that these guys have to play by the same rules as everyone else. As our neighbor Jim Marsh said one night last fall, "What they (the developers) have done just isn't right."

Good afternoon. My Name is Louise Farmer Smith. I reside at 322 Second Street, S.E., Washington, DC, which is adjacent to the subject property. I would like to address several matters concerning the excavation of the site and, as well, our property.

Excavation began in late July/early August. I could watch the digging of the huge foundation pit on the Folger Park property out my kitchen window. The work was slow because of the hardness of the clay and each time the big claw connected with the earth there was a loud clank. I had seen drawings of the front and floor plans of the proposed townhouses, and was eager to see what they would look like as they went up.

Four or five times a week I walk past the front of the property on my way to class at the Health Club on D Street. One morning in the first week of August I observed that the developers had dug out all the peach trees that edged the property line between us and them. I took note that my own peach tree was well on my side of the line, and satisfied, I went into the health club. An hour later when I came out my peach tree was gone as was the back four feet of my property and that of my neighbors to the South and North. We had certainly not given permission for this nor had we received any warning.

When we bought our house in 1991 there was an ancient brick wall behind our house running contiguous with our neighbor's walls. This wall is between our bricked in garden and the back four feet of our property. All the neighbors who back up to this path have a right of way to cross our property and that owned by our neighbors to the South, so that they can get out of the back of their houses in case of fire and for the disposal of refuse as well as access for workmen and those delivering heavy appliances. We all have gates onto this right of way. Although our gate opens onto this right of way, we actually own the land all the way up to the applicant's property. We have used this easement from time to time for deliveries for home improvements, trash removal and access for landscaping on our property.

Without warning or permission a few days after our land was removed all these gates were nailed shut by the developers. After my husband broke the gate free, it was nailed shut again, still without a word from the developers. A third time it was nailed shut.

We and our neighbors sent a letter of protest to the developers regarding the taking of our land. We sent copies to others including our ANC representative. The developers sent a letter back, dated August 8, protesting. They wrote that they were sorry they had dug away our easement and would be replacing it in October. They also asked that we should extend to them "the courtesy to discuss the matter as neighbors rather than send a threatening letter."

A few days after we received our letter from Folger Park North, Alger Stoneburner and Chris Doefler, the two developers, knocked on my door and asked if they could come in. I asked them to sit down in the living room. They appeared unhappy, but acted in a civil manner.

They said they had nailed up our gates to protect our safety if we should inadvertently open the gate and drop nine feet into their pit. I said I much perfered to take care of this by putting a padlock on my gate to which I had the key, so that in an emergency I could take my chances.

They explained that the taking away of the entire easement was "an accident." They were both out of the country when it happened, and the site foreman, Stan, had made the decision to scoop out all the land right up to our gates because it was so loose and just slipped away. I knew the land was not loose as I had watched the digging, and I knew from my husband's having talked with Stan that they had planned all along to take the easement because they wanted to build a two-sided wall, but I was alone in the house and nervous and did not contradict them in this or anything they said after this.

They stayed for a while and chatted. They explained the long delay between when their sign first went up announcing Folger Park North and the razing of the Pepco substation which they had to do before they could begin construction. Both of them told the story: They had been told originally by the city that they could build only two townhouses because of the size of the lot. "It took us six month before someone showed us how we could build three."

Mary Ann Snow Testimony

My name is Mary Ann Snow. I live with my husband, James Marsh, and my two children, Benjamin and Samantha Marsh, at 320 Second Street, S.E. I am here to testify in opposition to the application of Folger Park North for a variance of the lot size and area requirements of the zoning regulations.

I moved to Washington, D.C. from Michigan in 1980, and lived in the District until 1987, when I relocated to another state with my husband and our new son for my husband's educational pursuits. In August 1995, I returned to Washington, D.C. with my husband, son, and daughter. In March 1996, we purchased our home at 320 Second Street, S.E. where we have lived since that time. Our house was built in 1860. The other homes on our block are of nearly the same vintage; some are a bit older.

We have a small yard behind our house. At the rear of our backyard there is a brick fence, approximately six feet high, with a wooden gate which provided access to an approximately four-foot-wide grassy pathway to D Street, S.E.. The brick fence connects with similar brick fences behind 322, 324, and 326 Second Street, S.E. These brick fences appear to be quite old. On the other side of the pathway was a large piece of land owned by Pepco. At the front of the Pepco property stood a brick building, bearing the address "210 D Street, S.E." The building had been used by Pepco as a transformer substation, but was no longer in use at the time we moved into our home on Second Street. However, it was not "boarded up," as the applicant has claimed. There had existed a brick retaining wall, separating the property owned by Pepco from the pathway behind our house. The Pepco retaining wall sloped gradually downward towards D Street, S.E. The highest elevation of the retaining wall was at least four-feet, if not higher, at the rear of 318 Second Street, S.E., and sloped gradually until it was approximately one-foot high, or less, at the sidewalk elevation on D Street, S.E.. On the other side of the Pepco retaining wall, and behind the Pepco building which fronted on D Street, S.E., was an open, grassy area, where my children and their cousins and friends would play occasionally. We used the pathway behind our house for ingress from and egress to D Street, S.E. from our backyard, for bringing large appliances into our house, for access by our tree trimmer to prune our 80-year-old flowering crab apple tree, and for other household-related purposes. A few years ago, a few small pear trees were planted at the edge of the pathway.

In or about 2002, a sign was erected in front of 210 D Street, S.E. announcing the coming of three luxury town homes. There was no mention of the size of the proposed town homes or the lot dimensions. After the sign was posted, nothing happened for quite a long time, and we wondered if the sale of the property had failed. Our neighbor, Karl Winberg, who lived at 318 Second Street, S.E., but is now deceased, had told us that he had tried to buy that property for many years, without success.

At some point, we received a letter, either through our mail slot or through posted mail, from the Folger Park North telling us to contact Verizon to ensure that our phone service would not be disconnected, because Verizon was not cooperating with them to put the wires underground - or something of that nature. My neighbor, Karla Winters, Mr. Winberg's niece who lives at 318 Second Street, S.E. with her family, wrote a letter in response, which she shared with me and my

husband. In her letter to the developer, she stated that it was the developer's job to negotiate with Verizon, and that they should to do whatever was necessary to ensure that our phone service would not be interrupted. That is the only letter we ever received from the applicant at any time since the site development began.

On February 11, 2003, my husband and I attended the ANC 6B meeting. There, Alger Stoneburner did a presentation of what he planned to build on the 210 D Street, S.E. site. Mr. Stoneburner gave us a copy of the plans, and told us that he knew of the existence of a deed providing a right-of-way behind our properties. Our ANC 6-B representative, David Sheldon, expressed concern that the development would be utilized as businesses or occupied by lobbyists, and inquired whether they would actually be single-family homes. Mr. Stoneburner responded that he was not required to disclose the identities of his buyers, and that just about any use is permitted in an R-4 district.

On February 27, 2003, my neighbor, Louise Smith, who lives at 322 Second Street, S.E., and I attended a Historic Preservation Review Board Meeting at which the architectural renderings submitted by the applicant were addressed. I recall that HPRB would not approve a mezzanine on the top of the buildings because it would make the buildings too tall. I also recall that an architect on the HPRB, I believe it was Amy Weinstein, commented that she did not understand how the developers were able to get a variance. I recall there being nothing stated by the applicant that was directly responsive to her comment. At that meeting, Mrs. Smith and I had occasion to speak with Nancy Metzger of the Capitol Hill Restoration Society, who informed us that Mr. Stoneburner told CHRS that they were building as a matter-of-right because there previously had been three town homes on the site. Nothing happened on the 210 D Street, S.E. site for many months, and, again, we wondered if the purchase of the property had failed.

In or about June 2003, the 210 D Street, S.E. site was fenced in, including the pathway behind our fences and the public alley next to the health club. A trailer was placed on the public alley. The fencing in of the pathway caused my husband to look again at the drawings Mr. Stoneburner had given us, and my husband then measured the lot line depth of our house and compared it with the measurements on the builders plans. I decided to try to locate the deed pertaining to the pathway behind our fences.

On June 30, 2003, I obtained from the Register of Deeds a certified copy of the 1928 deed which provides a perpetual right of way over the area behind the fences of 318, 320, 322, 324 and 326 Second Street, S.E. Based on the property description, this deed appeared to us to pertain to either 324 or 326 Second Street, S.E. The deed confirmed the existence of a perpetual right-of-way for the use of these five houses. The deed also informed us that the property extended from front to rear 81.79 feet. However, the developer's plans represented the distance from front to rear of the corner lot (326 Second Street, S.E.) to be 75 ½ feet, which, therefore, inaccurately included the 4-foot right-of-way. I called Maiden & Associates, the architectural firm indicated on the plans, and spoke with Phil Maiden. I told him that their plans contained an inaccurate measurement. Mr. Maiden said that the plans were only "preliminary."

Sometime between June 30, 2003 and July 8, 2003, while I was away on vacation with my

family, the Pepco transformer substation building was razed. We wondered whether any environmental studies had been done to determine whether the soil contained PCBs or other contaminants, and repeatedly sought information regarding this.

In or about week of July 7, 2003, without notice or permission, the pathway behind our fences was completely dug away, and boards were attached to the outside of our gates. This conduct alarmed us, and spurred us to investigate what was going on. I began researching the zoning regulations and building permit requirements, and calling the ANC 6B, the Capitol Hill Restoration Society, and the Department of Consumer and Regulatory Affairs, and the Department of Health for information and assistance.

Sometime from the middle to the end of July 2003, or in the beginning of August 2003, I asked Stan, the site superintendent, to see their building permits. Stan showed me permits for foundations and plumbing, but he could not produce any building permits and he did not show me any raze permit for the Pepco substation. He told me all the permits were on file downtown.

I began calling DCRA repeatedly to discuss the zoning and building permit issues. I was told repeatedly that in an R-4 district, the lots must be a minimum 18 feet wide and 1800 square feet in area, and that anything less would require a variance. DCRA also told me that no building permits had been issued for the property, and DCRA could not find a permit to raze the building. I was told to contact Juan Scott, the building inspector, regarding the lack of building permits and a permit to raze the building.

Near the end of July 2003, I went to DCRA and left a note for Juan Scott regarding what appeared to be the razing of the Pepco building without a permit. Sometime thereafter, a stop work order was posted. Mr. Scott later found the raze permit, and withdrew the first stop work order. I saw Stan sometime thereafter, and he said to me, something in the nature of, "I'm sick of you people," that he had half a mind to tear our fences down, and, that they had already been delayed enough by how hard the ground was to dig out.

On August 4, 2003, I called the Office of Zoning, and spoke with Richard Nero. I inquired about the procedure for building homes that did not meet the R-4 district zoning requirements. Mr. Nero told me that the Zoning Administrator would examine the building permit applications to make sure they were in compliance with zoning regulations, that the applications would be rejected if the buildings were to be only 16 feet wide in an R-4 district, and that the applications would then be 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 told me, further, that if permits were to be issued, we would have to appeal the issuance of the permits under which they were proceeding with construction. That same day, I called 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 for plumbing, and that there were no building permits on file.

I spoke with Ms. Epps, who provided me 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.). I also spoke with Mr. Lenny Douglas with the permit issuance branch. Mr. Douglas told me that a building permit was not needed until the construction went above ground, and that since the foundation was underground, no building permits were needed at that time. I then called Frank Moody with the permit intake branch, who informed me that there were no building permit applications on file. Next, I spoke with Rochelle Joseph at DCRA, who advised me that when the developers applied for building permits, they would be told they would have to file for a variance because the lots do not conform with R-4 lot width and area zoning requirements.

On August 5, 2003, I called OSHA to see if that agency had any jurisdiction over possible PCB contamination and potential worker exposure to it. I was told that the report had to come from an on-site employee. I also sent an email to David Sheldon, ANC 6B, informing him that I had learned that the developers had permits for foundation and plumbing only, that they did not have building permits, that they had not applied for building permits, and that they dug out our right-of-way, and I asked for his help. That weekend, my husband and I met with Larry and Louise Smith, who live next door to us at 318 Second Street, S.E., to discuss our concerns. We decided to write a letter to the developers detailing our concerns.

On August 7, 2003, Mrs. Smith and I sent, by federal express, our letter to the developers regarding their destruction of the right-of-way and the substandard lot width and area of the lots. Shortly thereafter, we received a letter dated August 8, 2003 from the developers in response to our letter. The letter advised us, among other things, that right-of-way would be replaced no later than October 30, 2003.

Shortly after receiving letter from the developers, Mrs. Smith informed me that Mr. Stoneburner and Mr. Doefler came to her home and asked her if she liked their letter, and explained that they were told, initially, that they could only build two town homes, and that it took them about six months to figure out how they could build three, because they wanted to build three.

On or about August 11, 2003, Mr. and Mrs. Smith and my husband and I decided to hire an attorney. Mr. Smith initiated contact with the Piper and Rudnick law firm to see if they would represent us. I again made repeated calls to DCRA, which were not returned, or I was told to call someone else. I left numerous voice mail messages.

On August 12, 2003, I sent a summary of the information I had obtained to date to the Piper and Rudnick law firm

On August 13, 2003, I spoke with a representative of DCRA, whose name I did not record, unfortunately, and was told to formally request a ruling on whether a variance was required, and to request that no further permits be issued until a ruling on the variance issue was provided. We scheduled a conference call with the attorney at Piper and Rudnick for August 15, 2003. In or about this time period, a single foundation floor was poured over all three lots. The foundation extended about ten to twelve inches into our right-of-way. Later, a black pipe of uncertain purpose was laid in the same area.

On or about August 16 or 17, 2003, Tracy Gruis, the daughter of Mr. and Mrs. Gruis - the owners of 324 and 326 Second Street, S.E. who are now deceased - was visiting her parents' homes. (Although the developers have contended, essentially, that they did the neighborhood a favor by cleaning up the overgrown pathway, this cannot condone the unilateral, unauthorized action they took in digging up property that did not belong to them. Moreover, it should be noted that, very sadly, Mr. and Mrs. Gruis died within a year of one another, and because their children were grown and did not live with their parents, there was no one available to take care of the grounds on a day-to-day basis. From time to time, my husband would clear out the overgrown foliage and any debris in the pathway). Tracy Gruis and I looked at the foundation and pipe which encroaches on her property and in the shared right-of-way. I was with her when she took the photographs of the foundation and black plastic pipe lying on her property and in the shared right-of-way.

On August 14, 2003, I stopped at DCRA and requested copies of all applications pertaining to 210 D Street, S.E. I was provided with copies of applications for lot 206, 208, and 210 D Street, S.E. It was clear to me from reading the applications that DCRA had not been adequately informed that the three lots were being constructed as one large development comprised of three adjoining two-family town homes. It appeared that no environmental impact study had been triggered because the developer represented on each application that the developer did not own an adjacent lot, and did not intend to do any construction on an adjacent lot within the next three years.

I still did not understand how the lots had been created without a variance, since I had been told repeatedly by DCRA representatives what the lot width and area requirements were in an R-4 district, and these lots did not conform. Since I was at the DCRA office, I sought to speak with someone directly. I was assisted by Ms. Yavocka Young. She suggested that I speak with someone in the Surveyor's Office, and took me there. I spoke with a representative in the Surveyor's Office, who pulled out a very old plat map, which he said was at least a hundred years old. On top of that portion of the map showing Lot 4 in Square 763 was a small piece of paper - an overlay - showing the boundaries of the Pepco substation. The representative of the Surveyor's Office told me that the lot on which the Pepco building had been built was always only one record lot, and that the three lot lines shown on the developer's plans were always only tax and assessment lots, and were never lots of record, until the land was subdivided in 2002. I ordered and obtained a copy of the 2002 subdivision plat map, but left it with Ms. Young, who said she would speak with one of her supervisors about it, and try to schedule a meeting.

That same day, I sent a copy of our letter dated August 7, 2003 to David Sheldon, ANC 6B representative. I also spoke by phone with an attorney from Piper and Rudnick, who informed me that the firm could handle the encroachment issues, but not the zoning issues. My husband and I, and the Smiths, decided to search for new legal counsel.

On August 15, 2003, I spoke with Ms. Young at DCRA, who said she had spoken with Mr. Denzil Noble. She told me, further, that Mr. Noble said I should meet with Ms. Ogunneye, the Chief Zoning Technician. Ms. Young told me that Ms. Ogunneye was out of the office until August 22, 2003, and that I should call Ed Reeves or Yvonne Epps to schedule a meeting with

Ms. Ogunneye. I could not reach either one; either their voice mail was full or they did not return the call. I called Ms. Young about this problem, and she recommended that I schedule a meeting with Ms. Ogunneye for August 25, 2003 by sending her an email requesting a meeting on that date. Ms. Young provided the email address of: Faye.Ogunneye@dc.gov. Ms. Young said she would sit in on the meeting. I sent the email to Ms. Ogunneye.

On August 16, 2003, we began communications with Robins, Kaplan, Miller & Ciresi for legal representation.

On or about August 20, 2003, I stopped at DCRA and picked up the copy of the subdivision plan I had left with Ms. Young; Ms. Young told me she would direct my questions to Mr. Noble. As of August 25, 2003, Ms. Ogunneye had not responded to my request for a meeting. I called DCRA, and was told that she apparently had not returned to the office.

On August 26, 2003, I spoke by telephone with Thomas Collier at the Department of Health about our concerns with the possible PCB contamination on the Pepco site. He told me to send him a FOIA request by fax. That same date, I faxed a FOIA letter request to Thomas Collier, Esquire, Department of Health, Office of General Counsel, requesting information on any environmental impact studies that were conducted on the Pepco property. To date, there has been no response to that request.

On September 9, 2003, I spoke with a building inspector at DCRA regarding the demolition of our right-of-way, as well as the lack of shoring and subsidence from the excavation under the public alley and under the sidewalk at the front of the site on D Street, S.E. . I was told that an inspector would be sent out, and was told to call Public Space. I called Public Space, and spoke with Connie Wheeler. By the time an inspector went out, the foundation wall had been erected next to the alley. Ms. Wheeler told me that since the foundation wall had been erected next to the alley, the subsidence could not be seen; that photographs would not be sufficient, and that because it would be our word against theirs, they could do nothing.

On September 3, 2003, our lawyer informed me that her paralegal had just returned from DCRA, and learned that building permits had been issued on or about August 25, 2003.

On September 12, 2003, our appeal was filed with the Board of Zoning Adjustment. About the same time, prior to the hurricane which began on Thursday, September 18, 2003, the right-of-way was replaced with some kind of substance that did not appear to be soil. Since we could now walk on the pathway behind our property, we removed the board that had been placed against our gate. We discovered that the board had been attached with long screws and mollies, which were difficult to remove. The screws damaged the mortar between the bricks. The weight of the board in conjunction with the lack of underground support caused significant stress to the fence and gate. We were unable to close our gate as before, and have had to support it with a cinder block.

Sometime thereafter, we learned that, on or about September 16, 2003, Mr. Denzil Noble sent a letter to the developers informing them that the subdivision was flawed and should not have been

approved, and that the developers needed to seek a variance through the Board of Zoning Adjustment. A second Stop Work Order was issued. At that time, the construction consisted solely of the foundation floor and foundation walls, rising about three feet above the ground.

In or about the week of September 22, 2003, the construction resumed. We did not know why until much later.

On or about October 31, 2003, our appeal was 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.

On or about November 13, 2003, Tracy Gruis, who represents the estate of her parents with respect to 324 and 326 Second Street, S.E., provided me with a copy of a letter from Linden Contracting, Inc. to her, in response to a letter she had written to the applicant on October 23, 2003, in which she told the developer that the foundation and black pipe must be removed from her property. In the letter from Linden, in response to Ms. Gruis' letter, the president of Linden Contracting informed Ms. Gruis that the concrete was "miscellaneous overflow or spillage," which would be 8 feet or more underground, and provided no conflict with any future use of her site, and that the black plastic pipe "was shown on the approved plans and provides hydrostatic pressure relief to both sides of the site."

On November 26, 2003, I went to the Register of Deeds and obtained certified copies of the more recent deeds for 320, 322, 324, and 326 Second Street, S.E. The deeds confirm that the owners of 322, 324, and 326 Second Street, S.E., own the land behind their brick fences, which the developer excavated and on which part of the developer's foundation, the black plastic pipe, and some type of porous construction material was placed.

Since mid-September, construction has been ongoing. It is difficult to understand why the developers have been permitted to continue construction before this administrative process addressing the variance issue has been concluded. It is very clear that by the time this administrative process is concluded, the construction will have been substantially completed, despite the pendency of our appeal, which asks this Board to review, among other things, the issuance of building permits for these nonconforming lots, as well as the lifting of the second stop work order.

Harm to the Surrounding Environment and Public Works Systems.

The fact that the developers dug away land that did not belong to them, placed part of their foundation on that land, and installed a pipe designed to "provide hydrostatic pressure relief to both sides of the site" on land they do not own makes clear that the developers are unable to build these three, nonconforming buildings within the boundaries of their own lot lines. The developers have alternately claimed that these pipes were per plans. However, the plans only show the drainage piping within their own property lines. More importantly, it should be of significant concern to the community and to this Board that the developers failed to do what was necessary to have an environmental impact study done to ensure that the land they were going to

excavate was free from PCBs and other possible contaminants. We have repeatedly asked to see the studies they claimed to have made, but they have never provided a copy, and we have been unable to obtain any copies of such studies from DCRA. It also should be of significant concern to the community and to this Board that the developers did not take the steps required by DC WASA with respect to the hydraulic loading that will be placed on the storm and sanitary sewers from each new building, as well as with respect to planning for erosion and sediment control.

Traffic Congestion.

We live in a Capitol Interest Overlay District, as well as in an R-4 district. The Capitol Interest Overlay District is intended to be a low to medium density area. However, this area is already highly congested because of the large number of apartment buildings, the sports club, and the American Legion club. There is heavy commuter traffic during the day, making on the street parking exceedingly scarce. But the parking problem is not limited to the daytime hours. Almost every evening, when I return home from work at 7:00, 7:30, or 8:00 p.m., I drive around for many minutes, sometimes ten, sometimes fifteen minutes or more, looking for a place to park near my home. The evening traffic and parking congestion results from the fact that Maryland and Virginia residents use the sports club on D Street, S.E., evening events are held at the American Legion hall on 3rd and D Street, S.E., and, occasionally, late evening Congressional matters take place, which require Congressional staffers, who park in the area, to work later than usual. These three additional, two-family townhouses, having only one off-street parking space provided for each of these six-family units, will create greater congestion in this area.

I fail to understand why the developers did not comply with the zoning regulations, and build two, two-family townhouses on the site. The developers now contend that two 24-foot wide townhouses would be too large for the area, and that they would not have received approval from the Historic Preservation Review Board. However, it is clear that the townhouses would not have to be 24 feet wide; they could be 18 or 20 feet wide, with front and side yards. If the developer had constructed 2 town homes requiring no zoning relief, the resulting homes would have only been 16 feet wide. Moreover, it does not make sense that the Historic Preservation Review Board would not have approved two larger townhouses as being out-of-character with the neighborhood, because there are many homes in the area that are larger than 18 and 20 feet wide, although such homes are not as tall as the townhouses being constructed by the developers.

The developer has told many conflicting stories as to the nature of the development and how they got to where they are, including an allegation that DCRA told them they had to build 3 town homes, rather than two. It is clear that the Developer simply wanted a larger profit and was willing to gain such profit at the expense of the surrounding neighborhood.

For these reasons, we request that the Board deny the application.

Attached with my testimony are pictures of: (1) the stage of construction when the September 16, 2003 stop work order was issued; (2) homes in the neighborhood that are more than 18 feet wide; (3) the damage done to our fences and gates as a result of construction; (4) the trench along the front of the buildings, which causes a hazard to vehicles in the alley; (5) the west side

of the building, which illustrates the encroachment into our walkway (and the Smith/Gruiss properties); and (6) damage to the surrounding public walk and alley ways from the excavations.


PRIVATE
PROPERTY





155 N. CAROLINA S.E.



148 C St. S.E.



155 E St. S.E.



325 3rd St. S.E.



201 C St. S.E.



133 C St. S.E.

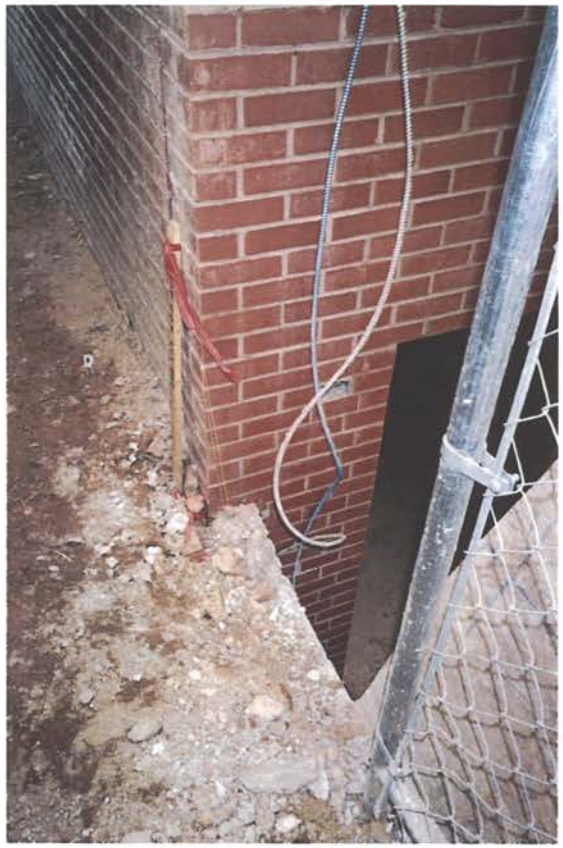










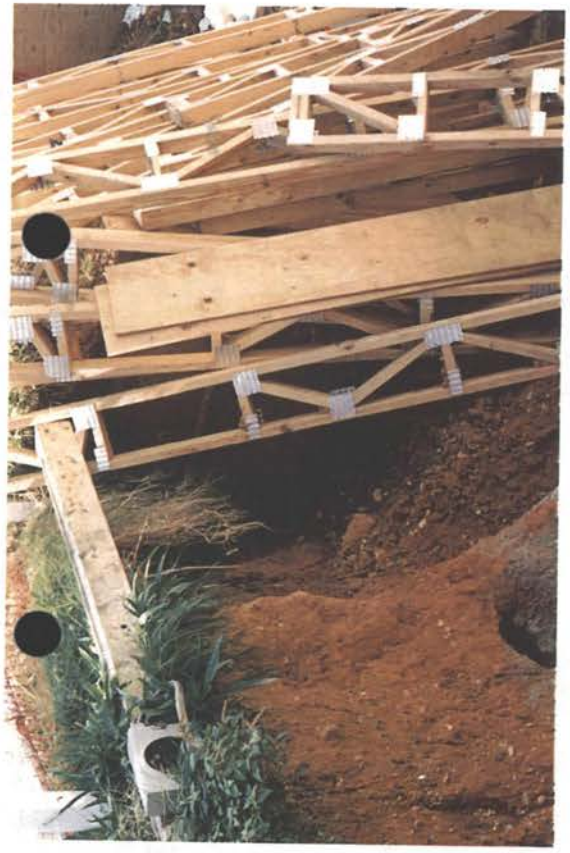




















From: Jeannine Rustad Zigner
To: internet:denzil.noble@dc.gov; internet:theresa.Lewis@dc.gov
Date: 8/27/2003 5:24PM
Subject: 210 D Street, S.E.

Since our meeting of August 19, we have been retained by the adjoining property owners to the above-referenced property. Attached is a letter outlining several concerns regarding the subdivision and construction at 210 D Street, S.E. By this letter, we are requesting a meeting within the next few days.

Please contact me at your earliest convenience.

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

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

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

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800 LaSalle Avenue
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TEL: 612-349-8500 FAX: 612-339-4181
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ATTORNEYS AT LAW

Richard B. Nettler
(202) 736-2720
rbnettler@rkmc.com

Jeannine Rustad Zigner
(202) 736-2718
jrzigner@rkmc.com

August 27, 2003

BY FACSIMILE AND EMAIL
Ms. Teresa Lewis
Deputy Director/Chief of Staff
Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.W.
Washington, D.C. 20002

Mr. Denzil Noble
Acting Zoning Administrator
Building & Land Regulation Administration
Department of Consumer & Regulatory Affairs
941 North Capitol Street, NW, Room 2500
Washington, D.C. 20002

Re: 206, 208 & 210 D Street, S.E.; Square 763, Lots 26, 27 & 28

Dear Masseur/Madam:

As you may recall, at the conclusion of our August 19, 2003 meeting, I brought up the fact that we had been contacted by several neighbors of the above-referenced properties (hereinafter the "Properties") regarding concerns over the recent subdivision of the Properties, as well as the on-going construction. This letter shall serve to advise you that we have been retained by the neighbors adjoining the Properties along 2nd Street, S.E. (the "Neighbors") and to request a meeting as soon as possible to discuss the following issues.

Subdivision of the Properties. On or about September 30, 2002, the Properties were subdivided from one existing lot of record (Lot 4) into the three current nonconforming lots. As indicated below, each of the Properties is nonconforming by way of lot width and area.

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

None of the exceptions to the area requirements in the Zoning Regulations justify these nonconformities.

The required lot width and area are eighteen feet (18') and 1,800 s.f., respectively. 11

D.C.M.R. § 401.3. Even assuming the previous individual assessment and taxation lots (i.e. A&T Lots 800, 801 & 802) provide a basis for the current subdivision (which we submit would be erroneous), section 401.2 is inapplicable in the instant matter, as these properties are adjoining, unimproved properties. 11 D.C.M.R. § 401.2. Section 401.4 is likewise inapplicable, as Lot 4 was greater than 200% of the required lot width and lot area. Finally, Section 407.1 cannot apply, as the deviation on the lot area for each of the Properties is greater than two percent (2%). 11 D.C.M.R. § 407.1. Moreover, the deviation would not be "minor", as the end result – allowing three (3) new two-family flats in the CAP/R-4 zone district – would impair the purpose of the Zoning Regulations of controlling density in the CAP overlay. In light of the foregoing, the subdivision of the Properties is illegal and must be revoked.

Building Code Violations.

Section 112.9 of the D.C. Construction Code authorizes revocation of a permit for, *inter alia*, "false statement or misrepresentation of fact on application or plans" or if the construction does not comply with the construction code, permit or approved plans. 12 D.C.M.R. § 112.9.1 & 2; *see also* 12 D.C.M.R. § 113 *et seq.* (conditions of permits). The permits for the properties must be cancelled as they contain false statements, misrepresentations on submitted plans and construction is not in conformity with the permits and submitted plans.

False statements and misrepresentations include the following:[1]

1. The address of the owner of the Properties is listed as 210 D Street, S.E. However, this is one of the subject Properties and is currently unimproved;[2]
2. On the application for Lot 27, the owner failed to complete boxes 22 and 23 regarding disturbing the earth, despite the fact that the permit application is for a foundation;
3. A certificate of occupancy is attached to the applications, which certificate does not appear to pertain to the Properties;
4. The application for Lot 27 is unsigned;
5. Plans erroneously show 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";
6. The owner's plans erroneously label a private easement to the west of Lot 28 as an "alley";
7. Upon information and belief, the foundation and footings for Lot 28 encroaches upon the properties at 324 and 326 2nd Street, S.E. and a private right of way behind 318, 320 and 322 2nd Street, S.E. Encroachment is approximately one foot;
8. The owner, without availing itself of the alley-closing procedures, has closed off access to the north-south alley to the east of the Properties and regularly closes off more street frontage than permitted by its public space permit; and

[1] We have only been able to obtain copies of the permit applications for Lots 26 and 27.
[2] However, it is suspected that there is someone living in the construction trailer.

9. On the Environmental intake form, the owner incorrectly states that its does not own adjoining property (box 1).

Section 3302.3 of the Building Code provides that:

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

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

Section 3310.2 provides:

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

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

Finally, section 3310.7 provides that:

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

In addition to encroaching upon the easement area to the east of the Properties, the owner has excavated the easement area. By letter dated August 7, 2003, the Neighbors notified the owner of the encroachment. Rather than cease construction in order to obtain the necessary written consent from the Neighbors to continue to use the easement, the owner simply responded that it hoped to restore the easement by October 30, 2003. Similarly, excavation has occurred in the public alley to the west of the Properties. The excavation in the easement area has

compromised the structural integrity of the brick fences at the rear of the Neighbors' properties, as no shoring has been provided. Likewise, the excavation in the public alley has compromised the safety of the alley.

Request For Meeting. Before construction proceeds any further causing potentially irreparable damage to the Neighbors' properties, we request a meeting with you to be scheduled within the next few days. The owner's disregard for the applicable regulations and the property of the Neighbors has raised great concerns. Given that there appears to be no justification for the subdivision, Rick Driest should be included in this meeting, as well as the new Zoning Administrator, if he is available.

I am available to meet any time after 10:00 a.m. on Friday, August 29, all day on Tuesday, September 2, after 10:30 a.m. on either Wednesday or Thursday, September 3 or 4, and between 10:30 and 2:00 on Friday, September 5.

Your prompt response to this request for a meeting is greatly appreciated.

Sincerely,

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

Richard B. Nettler
Jeannine Rustad Zigner

cc: Mary Ann Snow (by email)
Louise Smith (by email)
Tracy Gruise

** JOB STATUS REI ** AS OF SE. . 2003 15:49 PAGE. 01

ROBINS KAPLAN

JOB #500

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	STATUS
001	9/11	15:38	4424863	EC--S	01' 32"	009	OK
002		15:43	4429445	EC--S	01' 42"	009	OK
003		15:46	3072304	EC--S	02' 45"	009	OK

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

SUITE 1200
1801 K STREET, N.W.
WASHINGTON, DC 20006
TEL: 202-775-0725 FAX: 202-223-8604
www.rkmc.com

ATTORNEYS AT LAW

FROM: Jeannine Rustad Zigner

The information contained in this facsimile message is privileged and confidential information intended for the use of the addressee listed below and no one else. If you are not the intended recipient or the employee or agent responsible to deliver this message to the intended recipient, please do not use this transmission in any way, but contact the sender by telephone.

DATE: September 11, 2003

		FAX	PHONE
TO:	Mr. Denzil Noble	2/442-4863	2/442-4455
	Ms. Theresa Lewis	2/442-9445	2/442-8947
	Mary Ann Snow	2/307-2304	2/307-0476

Client No.: 09

NUMBER OF PAGES INCLUDING COVER SHEET:

If transmission problems occur, or you are not the intended recipient, please call (202) 775-0725.

MESSAGE:

URGENT!!! (Revised)

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

SUITE 1200
1801 K STREET, N.W.
WASHINGTON, DC 20006
TEL: 202-775-0725 FAX: 202-223-8604
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MESSAGE:

URGENT!!! (Revised)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (727-7039)

★★★ GOVERNMENT OF THE DISTRICT OF COLUMBIA

BLRA-35 (Rev. 5/85)

Ward 6

APPLICATION FOR PUBLIC SPACE PERMITS

(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS)

1. Date of Application: 6/4/03

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 18

2. Address of Premise for which Public Space Work is Proposed:	3. Lot:	4. Square:	5. Type of Application: ☒ New ☐ Renewal	6. Previous Permit Number If Renewal:
210 D ST, SE	27	763		

7. Owner of the Premise:	8. Owner's Address:	9. Phone:
FULGER PARK WORTH, LLC	5000 GARONER DR VA 22304	703 566 8464

10. Authorized Agent (if applicable):	11. Firm's Name:	12. Address:	13. Phone:
CHRIS DOERFLER	SAME	SAME	703 608 3339

14. Check all proposed work; indicate the specific street of work and the names of boundary streets; and specify the length and width of the work area.

Check	Proposed Work	Located on the following Street (or Alley)	Between (Street Name)	And (Street Name)	Length of Work (ft)	Width of Work (ft)
	A. Temporary Use for: 1. Crane					
	2. Truck: ☐ Dump ☐ Concrete ☐ Construction Equipment					
	3. Dumpster					
	4. Hoists/Scaffolds					
	5. Use of Sidewalk for: ( )					
	6. Use of Roadway for: ( )					
	B. Excavation for: ( )					
	C. Sheeting and Shoring					
	D. Driveway Construction					
	E. Sidewalk Construction					
	F. Curb and Gutter Construction					
	G. Alley Construction					
	H. Grading ☐ Street ☐ Alley					
	I. ☐ Trees ☐ Planter Boxes ☐ Hedges					
X	J. ☒ Fence ☐ Wall					
X	K. Other (specify): TEMP CLOSE SIDEWALK (15 DAYS)	D ST, SE NORTH SIDE	2ND	3RD	48'	

15. Description of Proposed Work:
TEMP CLOSE SIDEWALK DURING DEMOLITION OF BUILDING (48')
D ST, SE TEMP FENCE 80'

16. Start Date: 6/5/03

17. End Date: 6/21/03

18. APPLICANT'S SIGNATURE: I have read and I understand the conditions set forth on this application. I further understand that penalties are provided for furnishing false information.

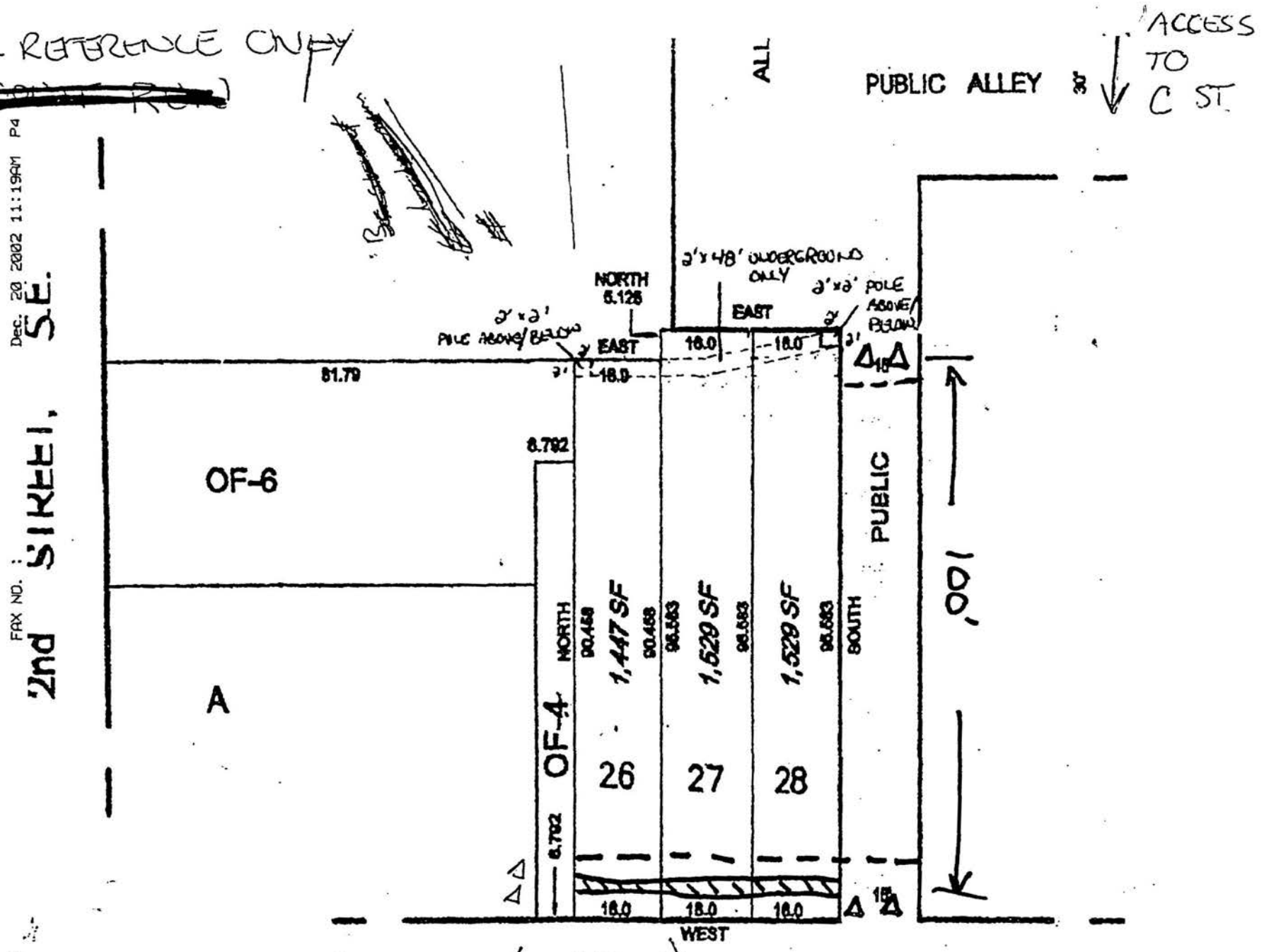
AGENT'S SIGNATURE: ..... DATE: .....

OWNER'S SIGNATURE: ..... MEMBER ..... DATE: 6/4/03

COMPLETE Page 4 If Trees, Rental of Public Space, Fuel Oil Tanks, & Parking Lot.

FOR REFERENCE ONLY

Dec. 20 2002 11:19AM P4
FAX NO.:



FROM:

EXHIBIT A - DEED OF EASEMENT (VERIZON)

SIDEWALK D STREET. SE

12/4/03

REVISE & RESUBMIT
DATE 5/21/03 CONTACT Ka
PHONE 21 671 2710

TCP NEED WORK
NEED MORE SIGNS
FOR CLOSEING SIDEWALK

ATTACHMENT 2
SUBJECT PERMIT - 08-

From: Jeannine Rustad Zigner
To: internet:denzil.noble@dc.gov; internet:theresa.Lewis@dc.gov
Date: 9/11/2003 12:46PM
Subject: 210 D Street, S.E. — Sq. 763, Lots 26, 27, 28

In addition to those matters set forth in our August 27, 2003 correspondence (copy attached for your reference) regarding the above properties, our research of the Public Space records revealed that the property owner's application for use of the alley located to the east of the properties was denied. Despite this denial and without the authority to do so, the owners have closed off the alley and are occupying the alley. This only further illustrates the owner's complete disregard for the regulations of the District of Columbia.

I trust that an inspection can be conducted today and, given the amount of evidence we have presented, a stop work order will be issued and the owner compelled to remove the obstructions from the alley.

I eagerly anticipate your response.

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

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

Richard B. Nettler
(202) 736-2720
rbnettler@rkmc.com

Jeannine Rustad Zigner
(202) 736-2718
jrzigner@rkmc.com

August 27, 2003

BY FACSIMILE AND EMAIL
Ms. Teresa Lewis
Deputy Director/Chief of Staff
Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.W.
Washington, D.C. 20002

Mr. Denzil Noble
Acting Zoning Administrator
Building & Land Regulation Administration
Department of Consumer & Regulatory Affairs
941 North Capitol Street, NW, Room 2500
Washington, D.C. 20002

Re: 206, 208 & 210 D Street, S.E.; Square 763, Lots 26, 27 & 28

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8. The owner, without availing itself of the alley-closing procedures, has closed off access to the north-south alley to the east of the Properties and regularly closes off more street frontage than permitted by its public space permit; and

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[1] We have only been able to obtain copies of the permit applications for Lots 26 and 27.

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

9. On the Environmental intake form, the owner incorrectly states that its does not own adjoining property (box 1).

Section 3302.3 of the Building Code provides that:

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

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

Section 3310.2 provides:

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

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

Finally, section 3310.7 provides that:

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

In addition to encroaching upon the easement area to the east of the Properties, the owner has excavated the easement area. By letter dated August 7, 2003, the Neighbors notified the owner of the encroachment. Rather than cease construction in order to obtain the necessary written consent from the Neighbors to continue to use the easement, the owner simply responded that it hoped to restore the easement by October 30, 2003. Similarly, excavation has occurred in the public alley to the west of the Properties. The excavation in the easement area has

compromised the structural integrity of the brick fences at the rear of the Neighbors' properties, as no shoring has been provided. Likewise, the excavation in the public alley has compromised the safety of the alley.

Request For Meeting. Before construction proceeds any further causing potentially irreparable damage to the Neighbors' properties, we request a meeting with you to be scheduled within the next few days. The owner's disregard for the applicable regulations and the property of the Neighbors has raised great concerns. Given that there appears to be no justification for the subdivision, Rick Driest should be included in this meeting, as well as the new Zoning Administrator, if he is available.

I am available to meet any time after 10:00 a.m. on Friday, August 29, all day on Tuesday, September 2, after 10:30 a.m. on either Wednesday or Thursday, September 3 or 4, and between 10:30 and 2:00 on Friday, September 5.

Your prompt response to this request for a meeting is greatly appreciated.

Sincerely,

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

Richard B. Nettler
Jeannine Rustad Zigner

cc: Mary Ann Snow (by email)
Louise Smith (by email)
Tracy Gruise