

Arent Fox

1. Interest in the Subject Property -- 11 DCMR § 3106.2(c)(1)-(3).

Commerce Bank holds a long-term lease on the Subject Property pursuant to that certain lease dated April 5, 2006 between Commerce and Donovan Properties, the Subject Property owner.

2. Impact of the Requested Relief -- 11 DCMR § 3106.2(c)(4)&(5).

Commerce, acting as agent for Donovan Properties, applied for and obtained a building permit for the construction of a new single-story bank building. In reliance on the validly-issued building permit, Commerce contracted for construction services to erect the new bank building. Granting of the instant appeal will result in severe economic loss to Commerce in the form of the construction contracts it has entered into to complete the building, as well as a deprivation of its right to operate a bank, which is a permitted use in the C-2-A zone district, on the Subject Property. The cost of the building is estimated to be \$1,020,000.

3. Significant Impact -- 11 DCMR § 3106.3.

As the lessee of the Subject Property, Commerce's interests will be more significantly, distinctively, and uniquely affected if the instant appeal were granted than those of the general public. Commerce has invested significant resources into the Subject Property to date, as mentioned above, and has acted in good faith in its dealings with all parties during this process, including the ANC.

B. ARGUMENT IN SUPPORT OF DENIAL

The ANC's resolution (the "Resolution") misstates several facts regarding the Subject Property and incorrectly interprets the Zoning Regulations. The Resolution incorrectly states that the "type of permit issued is for 'alteration and repair,' and on the property all of the existing structures have recently been razed and there are no buildings or foundations remaining." The District of Columbia Department of Consumer & Regulatory Affairs (the "DCRA") initially issued a building permit on August 23, 2007 with a confusing array of misinformation listed on the permit, including "new theater," "new 1 story bank building per plans," and "alteration/repair." Commerce immediately requested reissuance of the permit, as the application clearly stated it was for new construction and not alteration/repair, and clearly stated the new one story bank branch was to replace the existing theater. This data entry error was immediately corrected and the permit no longer lists such information. *See Building Permit Application and Permit #100336, attached as Exhibits A & B, respectively.*

Secondly, the Resolution states that "'a Drive-Through Establishment' is not a Use as a Matter of Right in a C2A [sic] zone" and "neither the widening of an alley, nor the providing of

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continuous customer vehicle ingress through a residential boundary zone alley into a commercial property's drive-through lane is a Use as a Matter of Right in a C2A [sic] zone." This is also incorrect, as the proposed drive-through is an *accessory use* that is permitted as a matter of right for all uses (except a fast food restaurant) in the C-2-A zone district. Moreover, neither the widening of an alley nor the ingress to a commercial property over an alley are uses that are regulated by the Zoning Regulations. *See 11 D.C.M.R. §§ 601.1(f) and 601.3.*

Thirdly, the Resolution claims that the plans for the Subject Property "show an inadequate number of spaces in the queuing lanes" as required by 11 D.C.M.R. § 2304.2. Whether or not this was true with respect to the plan that the ANC reviewed at the time they filed their appeal, this is currently incorrect, as can be seen by the latest plan of the Subject Property and the proposed improvements. *See Exhibit C.* Furthermore, the Resolutions' assertions as to the inadequate length and width of and exclusive use of the queuing lanes misinterpret the requirements as they are clearly written and as they have been interpreted by both the DCRA and the Board of Zoning Adjustment. *See 11 D.C.M.R. § 2304.3.* The plan illustrates that the two queuing lanes contain properly sized spaces and afford ample room for the queuing of automobiles in multiple configurations. *See Exhibit C.*

Finally, the Resolution states that the Zoning Regulations require:

"a parking lot located in any other district where such parking lot is contiguous to an R-1, R-2, R-3, R-4, or R-5-A District, shall be screened from all contiguous residential property located in [the residential districts cited above] by a solid brick or stone wall at least twelve inches thick and forty-two inches high or by evergreen hedges or evergreen trees that are thickly planted and maintained and at least forty-two inches in height when planted."

and allege that such requirement demands that such a wall be constructed along the length of the Subject Property adjacent to the alley such that any access to and from the alley would be blocked by the wall. This is incorrect because the alley provides a boundary zone between the C-2-A and the R-2 zoned residential property to the east of the site. The Zoning Regulation requirement cited only requires such screening from "all *contiguous* residential property." *See 11 D.C.M.R. § 2303.2 (emphasis added).* The Subject Property and the residential property are not contiguous because they are separated by an alley. Even if the alley were interpreted to be residentially-zoned, it is not "residential property," rather, it is an alley. Therefore, no such screening requirement applies in the Subject Property in this case.

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C. CONCLUSION

Commerce's interests will be more significantly, distinctively, and uniquely affected if the instant appeal were granted than those of the general public. Accordingly, we respectfully request that relief sought by the ANC in the instant appeal be denied.

Sincerely,



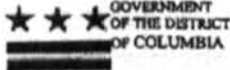
Kinley R. Dumas



Jim Shipe

cc: Advisory Neighborhood Commission 3E
Matthew LeGrant, Zoning Administrator
Matthew Green, Assistant Attorney General

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
N.C.P.C. No:	O.G. No:				By:
H.P.A. No:	S.L. No:	Ward No:	Receipt No:	Date:	Receipt No:



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION PERMIT SERVICE CENTER
 Tel 202-442-4589 Fax 202-442-4862

BLRA-33
(Rev. 2/04)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY
 (PRINT IN INK OR TYPE, DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

CLEARANCE TO FILE
By _____ Date _____

ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1. Address of Proposed Work: 4849 Wisconsin Ave, NW		Suite No.	2. Lot 57	3. Square 1736	4. Application Date 9/18/06
5. Owner of Building or Property Donovan Property, LLC		6. Address (include Zip Code) 1124 Hallesworth Dr Rockville MD 20854		7. Phone 301 294-8834	
8. Agent for Owner: (if applicable) David Fontana		9. Address (include Zip Code) 10856 Main St. Fairfax VA 22030		10. Phone 703 891-1100	
11. Type of Proposed Work (check all applicable boxes)					
☒ New Building ☐ Addition ☐ Alteration and Repair ☐ Raze Building ☐ Retaining Wall ☐ Fence ☐ Shed ☐ Awning ☐ Garage ☐ Sign ☐ Projection ☐ Other (Specify) _____					
12. Description of Proposed Work New 1-story Building per plans					
13. Existing Use(s) of Building or Property Vacant (previous Building Razed)		14. Ex. No of Stories of Bldg 0	15. Ex No of Dwelling Units 0	Official Use Only Miscellaneous FEE \$	
16. Proposed Use(s) of Building or Property Bank - Office		17. Prop No of Stories of Bldg 1	18. Prop. No of Dwelling Units 0	By:	Date:
19. Starting Date ASAP	20. Completion Date of work 1 year	21. Method of Removing Construction Debris ☐ Pick-up Truck ☒ Dumpster ☐ Other (specify) _____		22. Does the proposed work involve disturbing the earth or razing a building? ☒ Yes, answer q. 23 ☐ No, SKIP q. 23-27	
23. Is the area of disturbed earth more than 50 sq. ft? ☒ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25	24. Soil Erosion Control Methods Hay Bales + Silt Fences		25. Area of Offsite Drainage 0 sq. ft	26. No of Footings or Columns 16	27. Size of Footings or Columns 8'6" x 8'6" x 1'5" to 4'6" x 4'6" x 1'0"

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION D)

Complete Section B if the proposed work is new building, addition or alteration. (Page 2)
 Complete Section C if the proposed work is razing a building. (Page 2)
 Complete Section D if the proposed work is a retaining wall. (Page 2)
 Complete Section E if the proposed work is a fence. (Page 3)
 Complete Section F if the proposed work is a shed/garage. (Page 3)
 Complete Section G if the proposed work is an awning. (Page 3)
 Complete Section H if the proposed work is a sign. (Page 3)

OFFICIAL USE ONLY				
	R	P	H	A
M				
P				
E				W ☐ Yes ☐ No
F				PLANS
S				☐ No ☐ Sm ☐ Lg

A



Department of Consumer and Regulatory Affairs
Permit Center

941 North Capitol St. NE Room 2100

Washington DC 20002

Tel: (202) 442-4589

B

Building Permit

THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS

PERMIT NO. 100336

DATE: 8/23/2007

ADDRESS OF PROJECT: 4849 WISCONSIN AVE NW		SSL: SQ: 1736 WARD: 4	SA: LOT: 67 ZONE: C2A
DESCRIPTION OF WORK: NEW 1 STORY BUILDING PER PLANS, INCLUDING COMPACTION AND BACKFILL construction of new bank			
PERMIT TYPE: NEW CONSTRUCTION	PLANS (Y/N): Y	EXISTING USE: THEATRE	PROPOSED USE: Others (provide description)
PERMISSION IS HEREBY GRANTED TO OWNER: DONOVAN PROPERTY, LLC		PERMIT FEE: \$300.00	
AGENT NAME: DAVID FONTANA 703-891-1100			
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES ; ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS ; SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED ; dot sign off is strictly for the construction of building and parking lot. Driveway have not been establish. No driveway to be constructed without dot permit. TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-321-1639:			
Acting DIRECTOR: Linda K. Argo	PERMIT CLERK:		EXPIRATION DATE: 8/22/2008

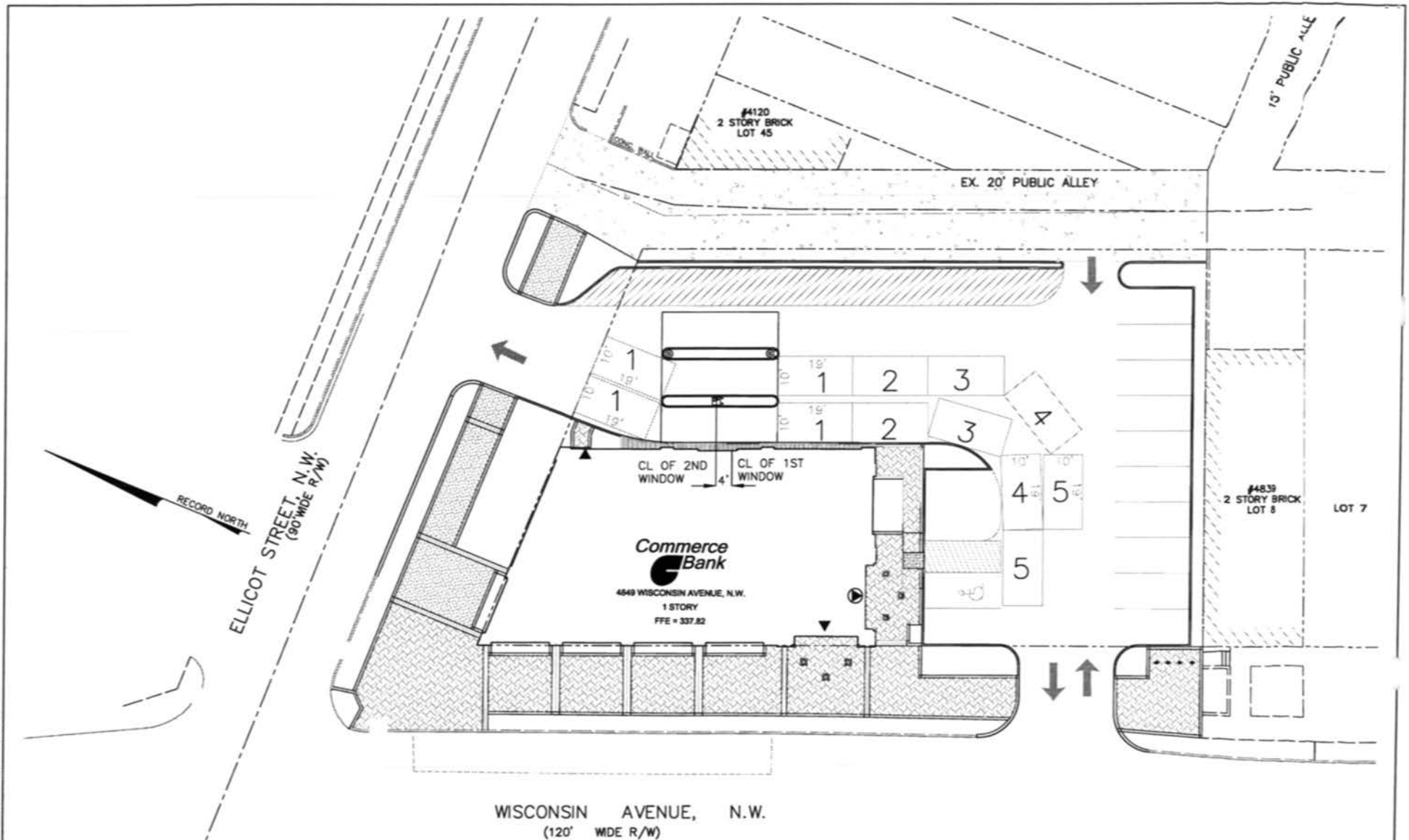
CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.

Separate permits are required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.



B



Patton Harris Rust & Associates, Inc.
Engineers, Surveyors, Planners, Landscape Architects
14532 Lee Road
Chantilly, VA 20151-1679
T 703.448.6700
F 703.448.6714
www.phra.com



DRAWN BY: SLB
SCALE: 1"=10'
DATE: OCTOBER 23, 2007
REVISION:
DATE: NOVEMBER 6, 2007

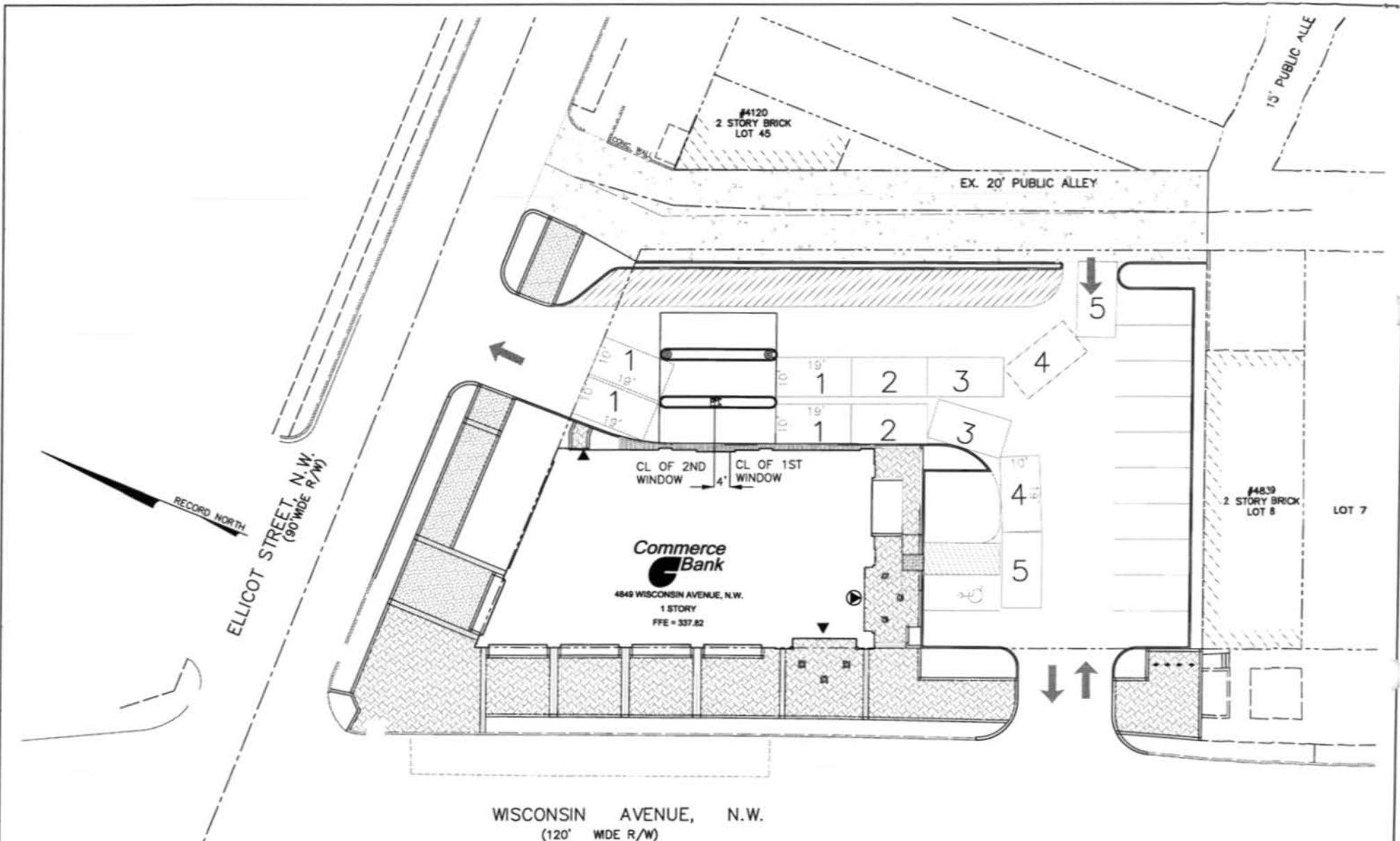
2-A STACKING EXHIBIT

COMMERCE BANK • OUTER CIRCLE



4849 WISCONSIN AVE., NW
WASHINGTON, DC 20016
LOT 57 SQUARE 1736

C



Patton Harris Rust & Associates, Inc.
Engineers, Surveyors, Planners, Landscape Architects.
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Cherry Hill, VA 20151-1679
T 703.448.6700
F 703.448.6714
www.phra.com

DRAWN BY: SLB
SCALE: 1"=10'
DATE: OCTOBER 23, 2007
REVISION:
DATE: NOVEMBER 8, 2007

2-B STACKING EXHIBIT

COMMERCE BANK • OUTER CIRCLE
4849 WISCONSIN AVE., NW
WASHINGTON, DC 20016
LOT 57 SQUARE 1736