



ADVISORY NEIGHBORHOOD COMMISSION 3E

TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS

c/o Lisner Home 5425 Western Avenue, NW Washington, DC 20015

ANC3E RESOLUTION APPEALING TO THE BOARD OF ZONING ADJUSTMENT THE ISSUANCE OF A BUILDING PERMIT BY THE DC DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

TO

DONOVAN PROPERTY, LLC, FOR "ALTERATION AND REPAIR" AT
4849 WISCONSIN AVENUE, NW ("THE PROJECT")

Whereas, the *Department of Consumer and Regulatory Affairs (DCRA)* on 8/23/2007 issued a building permit (permit #100336) at the following address: 4849 Wisconsin Avenue, NW, Lot 57 in Sq 1736; owner, Donovan Property, LLC ("the Property");

Whereas, the type of permit issued is a permit 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;

Whereas, the permit describes the proposed use of the Property as a "theatre;"

Whereas, the intended use of the Property, as reflected in the plans made available to affected residents and to ANC 3E, is for a bank to be used by customers in motor vehicles by means of at least two and potentially three drive-through lanes;

Whereas, a "Bank" is a Use as a Matter of Right under the zoning regulations for a C2A zone (DCMR § 721.1, § 701.1(a));

Whereas, the Property, which is in Zone C2A (Commercial District), is separated from an R2 zone (Residential District) only by an alley, and the alley is the boundary between the two zones;

Whereas, the Project proposes to widen the alley by 3 feet and to use the expanded alley as a driveway for ingress of customers to a proposed parking lot and the proposed drive-through lanes;

Whereas, neither the widening of an alley, nor the providing of 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 zone;

BOARD OF ZONING ADJUSTMENT

District of Columbia

Board of Zoning Adjustment

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CASE NO.

17745

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Whereas, the plans also show a proposed driveway on Wisconsin Avenue, NW, and two proposed driveways on Ellicott Street, NW, for ingress and egress into and out of the proposed queuing lanes for the drive-through service;

Whereas, a "Drive-Through Establishment" is not a Use as a Matter of Right in a C2A zone;

Whereas, in a Mixed Use (Commercial – Residential) District, a "Drive-Through Establishment" ("any establishment where goods or services are rendered directly to occupants of motor vehicles while in the vehicles") is a Prohibited Use (DCMR § 602.1(d));

Whereas, the Zoning Regulations require that, where a Drive-Through Establishment is permitted, *"the queuing lane shall provide a minimum of five (5) queuing lane spaces before the first service location and one (1) queuing lane space after the last service location before entering public space."* 11 DCMR § 2304.2 (emphasis added);

Whereas, the plans made available to affected residents and to ANC 3E show an inadequate number of spaces in the queuing lanes as required by DCMR § 2304.2;

Whereas, the Zoning Regulations require that *"each queuing space shall be a minimum of ten feet (10 ft.) in width by nineteen feet (19 ft.) in length and shall constitute an exclusive queuing lane."* 11 DCMR § 2304.3 (emphasis added);

Whereas, the plans made available to affected residents and to ANC 3E show an inadequate length and width of queuing lanes not conforming with the requirements of DCMR § 2304.3;

Whereas, the plans made available to affected residents and to ANC 3E show a lack of exclusive use of the queuing lanes as required by DCMR § 2304.3;

Whereas, 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 R-1, R-2, R-3, R-4, or R-5-A district 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."* 11 DCMR § 2303.2 (emphasis added);

Whereas, the Property's proposed parking lot is contiguous via the boundary/alley to the R2 residential zone and the proposed parking lot is not intended to be screened from the R2 district;

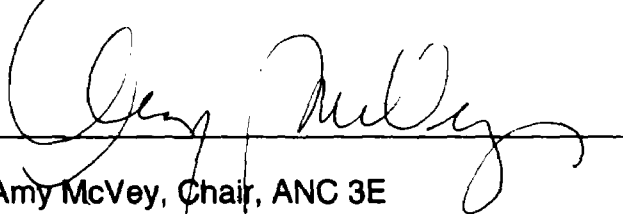
Whereas, the copy of the Public Space application for construction for the Project of two driveways on Ellicott Street, N.W., received by ANC 3E does not reflect the drawings submitted to it, and differs from the plans submitted and approved for the building permit;

Whereas, ANC 3E has not received copies of all of the plans, applications, permits, proposals, or other documents relevant to the Project;

Be it therefore resolved that:

1. ANC 3E hereby appeals the issuance by DCRA of a permit, and objects to the issuance of DDOT of all permits applicable to the Project, on the basis that these permits do not conform to the applicable regulations, including but not limited to the regulations cited herein.
2. ANC 3E requests that DCRA immediately issue a "stop work" order on the Property, and/or that the BZA issue an order suspending all permits already issued.
3. That any further action by DCRA or DDOT on the Public Space Application submitted on September 6, 2007, for construction of two driveways on Ellicott Street, NW, be suspended.
4. That affected residents and ANC 3E immediately be provided with copies of all permits, permit applications, and permit plans and drawings pertaining to the Project at 4849 Wisconsin Avenue, NW.
5. That in the event DCRA, the Board of Zoning Adjustment or a court decides or rules that the permits issued for the property in question were improperly issued or are not in full compliance with the zoning regulations, that those permits be immediately rescinded.

ANC 3 E approved this resolution by a vote of 5-0 at a duly noted public meeting on October 11, 2007, with a quorum present. Commissioners present were Amy McVey, Ann Sullivan, Lucy Eldridge, Carolyn Sherman and Talia Primor.



Amy McVey, Chair, ANC 3E



ADVISORY NEIGHBORHOOD COMMISSION 3E

TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS

c/o Lisner Home 5425 Western Avenue, NW Washington, DC 20015

October 18, 2007

Richard S. Nero, Jr.
Deputy Director
DC Office of Zoning
441 4th Street NW, Suite 200S
Washington, DC 20001

Dear Mr. Nero:

This is to inform you that today, October 18, 2007, the Advisory Neighborhood Commission 3E of Washington, DC, mailed a copy of their appeal of DCRA Permit No. 100336 with the DC Board of Zoning concerning the building of a Commerce Bank at 4849 Wisconsin Ave. NW, Washington, DC to the following individuals who have interests in aforementioned Commerce Bank.

Jim Villars, Commerce Bank
9000 Atrium Way, Building #1
Mount Laurel, NJ 08054

Mike Powell, Commerce Bank
9000 Atrium Way, Building #1
Mount Laurel, NJ 08054

Kinley R. Dumas, ~~Robins, Kaplan, Miller and Ciresi, LLP~~ *Arent Fox LLP*
~~1875 Eye St. NW, Suite 900~~ *1050 Conn. Ave NW*
~~Washington, DC 20006~~ *Washington, DC 20036*

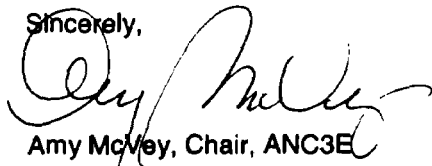
David Fontana, Authorized Agent, Donovan Properties, LLC
1134 Hales Worth Drive
Rockville, MD 20854-6180

Matt Le Grant, Deputy Zoning Administrator
DCRA
941 North Capitol Street NE Ste. 2000
Washington, DC 20002

ANC3E, c/o Lisner Home
5425 Western Ave., NW
Washington, DC 20015

The letters were sent by certified mail of the US Postal Service.

Sincerely,



Amy McVey, Chair, ANC3E