

Appeal No. 18108

Presentation of Appellants

Advisory Neighborhood Commission 3C

Richard DeKaser and Rebecca Rhames

Margaret M. Ernst and Frederick E. Jenney

Sarosh Sattar

and

Woodley Park Community Association

October 2010

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18108

EXHIBIT NO. 22

3 ways to subdivide property in DC

- As a matter of right
 - No special regulatory approval needed.
- By variance under the Subdivision Regulations (10 DCMR chapter 27) for non-conforming properties.
 - Owner must prove “practical difficulty or economic hardship.”

The third way

“Minor deviation” authority granted to the Zoning Administrator (sec. 407).

- allows a 2% deviation from area requirements if they are “deemed by the Zoning Administrator not to impair the purpose of the otherwise applicable regulations.”

- percentage deviations for other zoning limits permitted also, subject to “impair the purposes” limitation.

Not just a numerical exercise

- If it were, there would be no need for the language about the ZA determining that his decision would not “impair the purpose of the otherwise applicable regulations.”
- Language shows that the Commission intended a *qualitative* analysis, not just checking an applicant’s arithmetic.

Purposes of the Zoning Regulations

- **Section 101.1**
- In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to:
 - “(a) Provide adequate light and air;
 - “(b) Prevent undue concentration of population and the overcrowding of land; and
 - “(c) Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.
- **Section 101.2**
- In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to:
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- **Section 200**
- R-1 district is intended to “protect quiet residential areas” and to “stabilize the residential areas and to promote a suitable environment for family life.”

But that's not all.

- Under D.C. Code § 6-641.02, the Zoning Regulations must not be “inconsistent with the comprehensive plan for the nation’s capital” and shall be designed to advance certain goals specified in that statute.
- Council has stated the Comprehensive Plan is intended to “guide executive and legislative decision on matters affecting the District and its citizens.”
- In construing the “purposes” of the Zoning Regulations, therefore, the Zoning Administrator needs to look to the Comprehensive Plan.
- That didn’t happen here.

Why this decision should be reversed

- This change is not “minor” – not extending a deck a few inches too far or something similar.
- Subdivision violates two key goals:
 - No overcrowding ; no McMansions on sites that can't support them.
 - This subdivision changes the character of the neighborhood.

**Appealing the Subdivision:
Saving a Corner of Woodley Park**
Appeal No. 18108

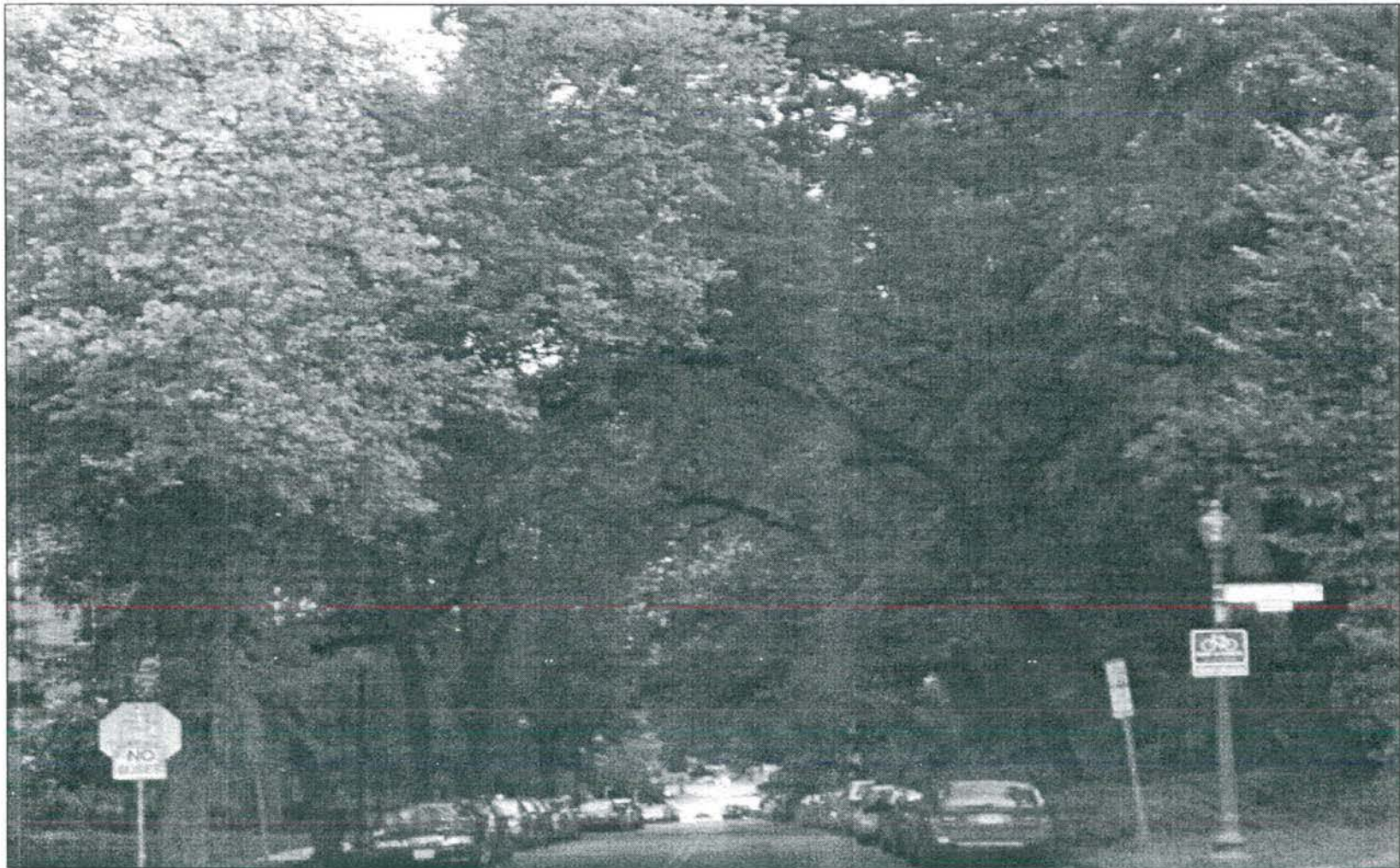
Sarosh Sattar
Resident of Woodley Park
October 5, 2010

1

**Our zoning district, R-1-B, is characterized
by modest 2-story homes (29th Place)**



A neighborhood distinguished by its many trees



And homes that work with the hilly topography (Garfield St.)



With gardens and trees

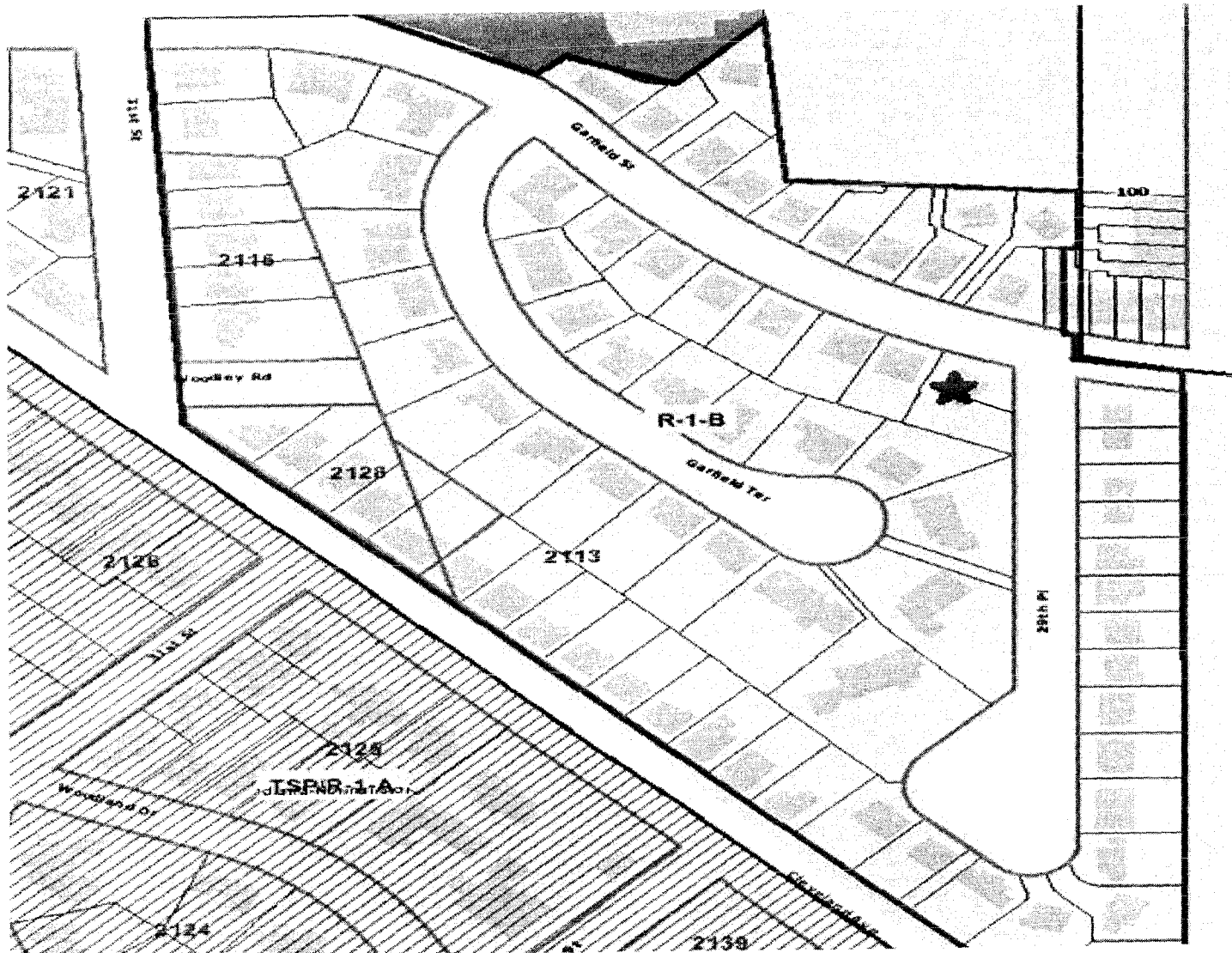
(Garfield Terrace & 31st St)



2910 Garfield Street



A corner lot affecting many neighbors



A focal point



On a steep slope



At the bottom of a hill



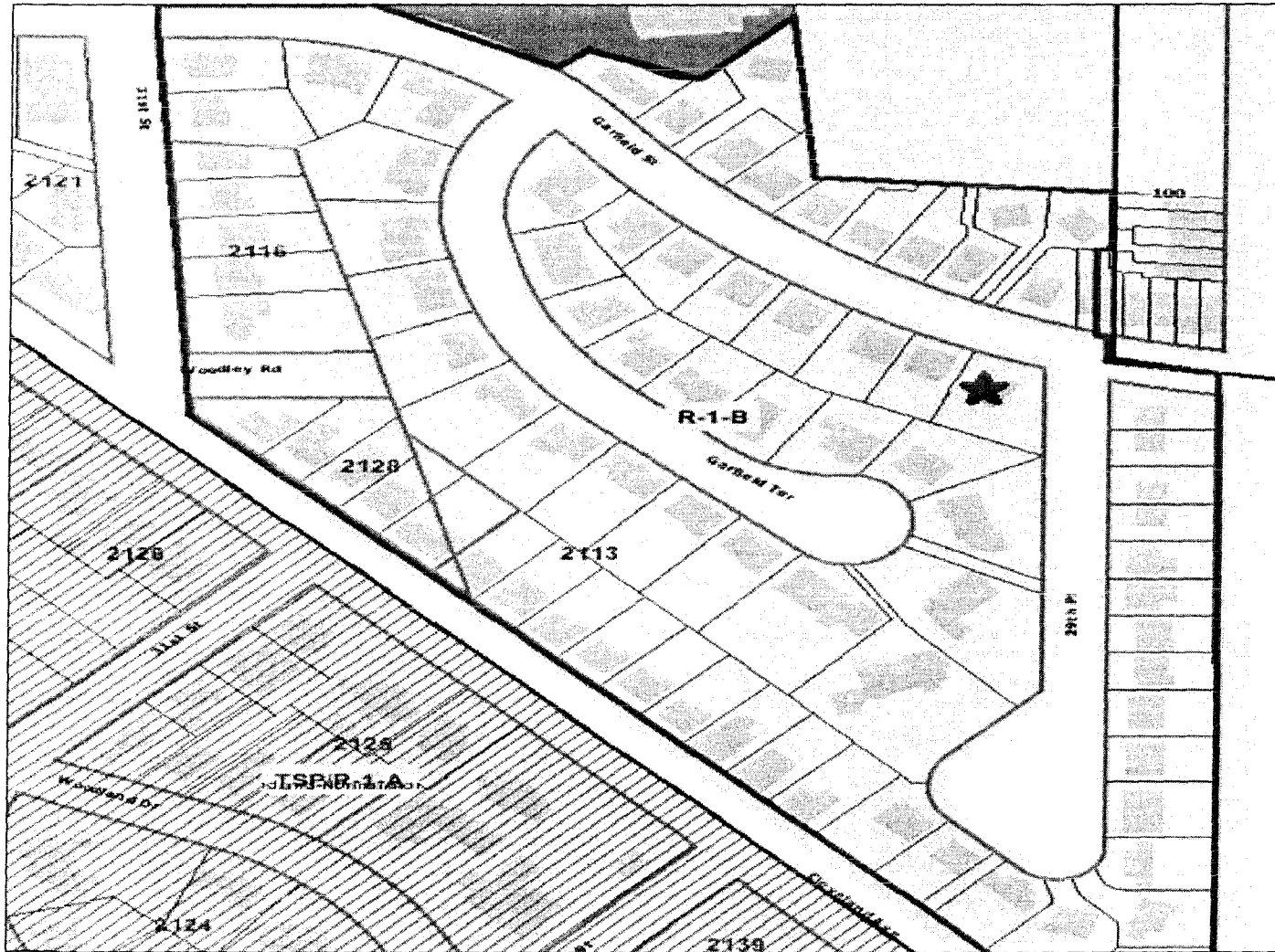
Changing the topography of the neighborhood: Excavation



Changing the tree canopy of the neighborhood: Logging



Changing the streetscape: Building on the undeveloped side of 29th Place



Intentional undeveloped land



Woodley Park



A Big Impact from a 'Minor Deviation'

Irrevocably changes the character of
Woodley Park

- ☐ Changes the topography
- ☐ Reduces tree canopy
- ☐ Alters the streetscape

As originally designed



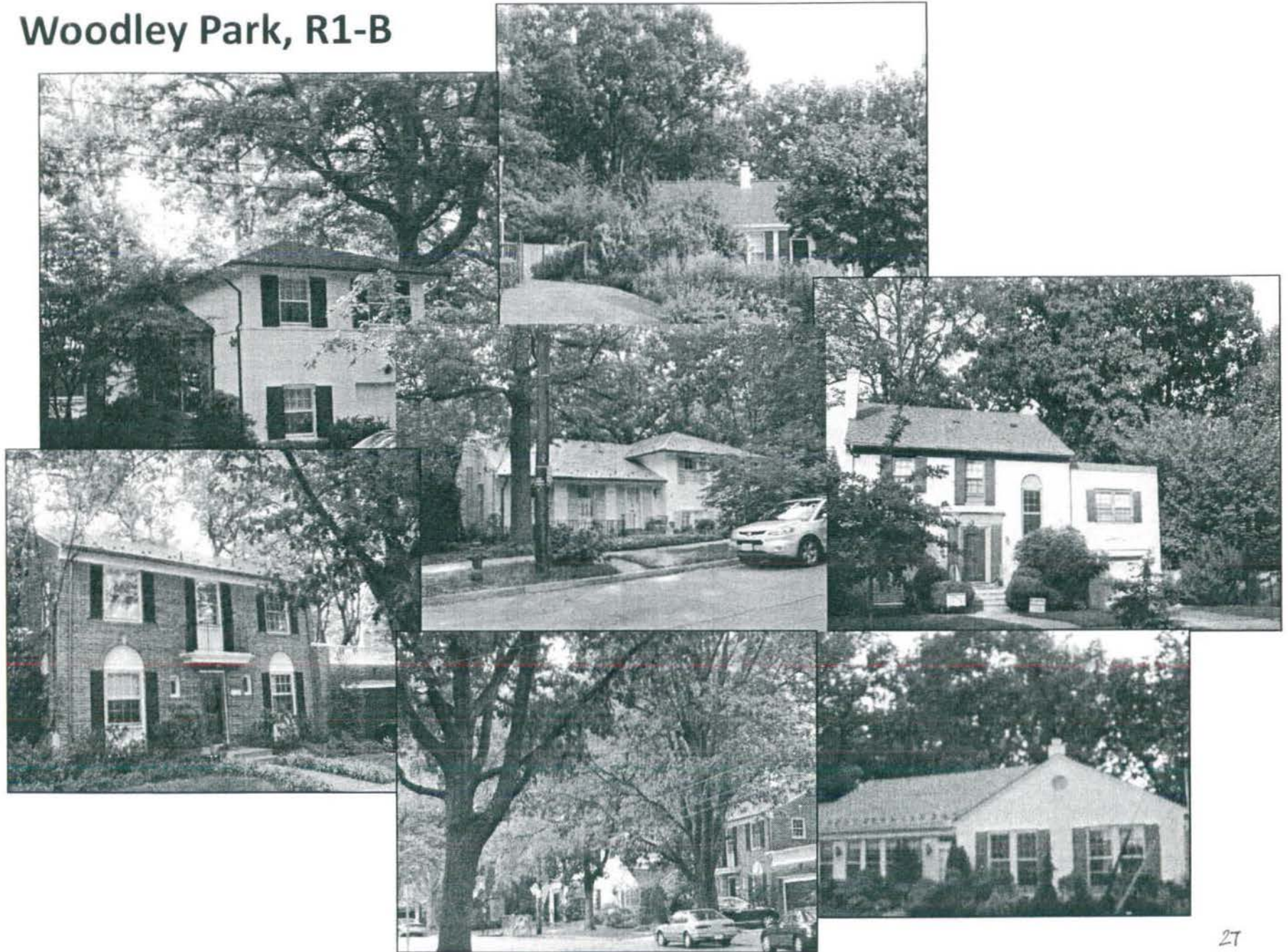
Subdivision Erasing History?

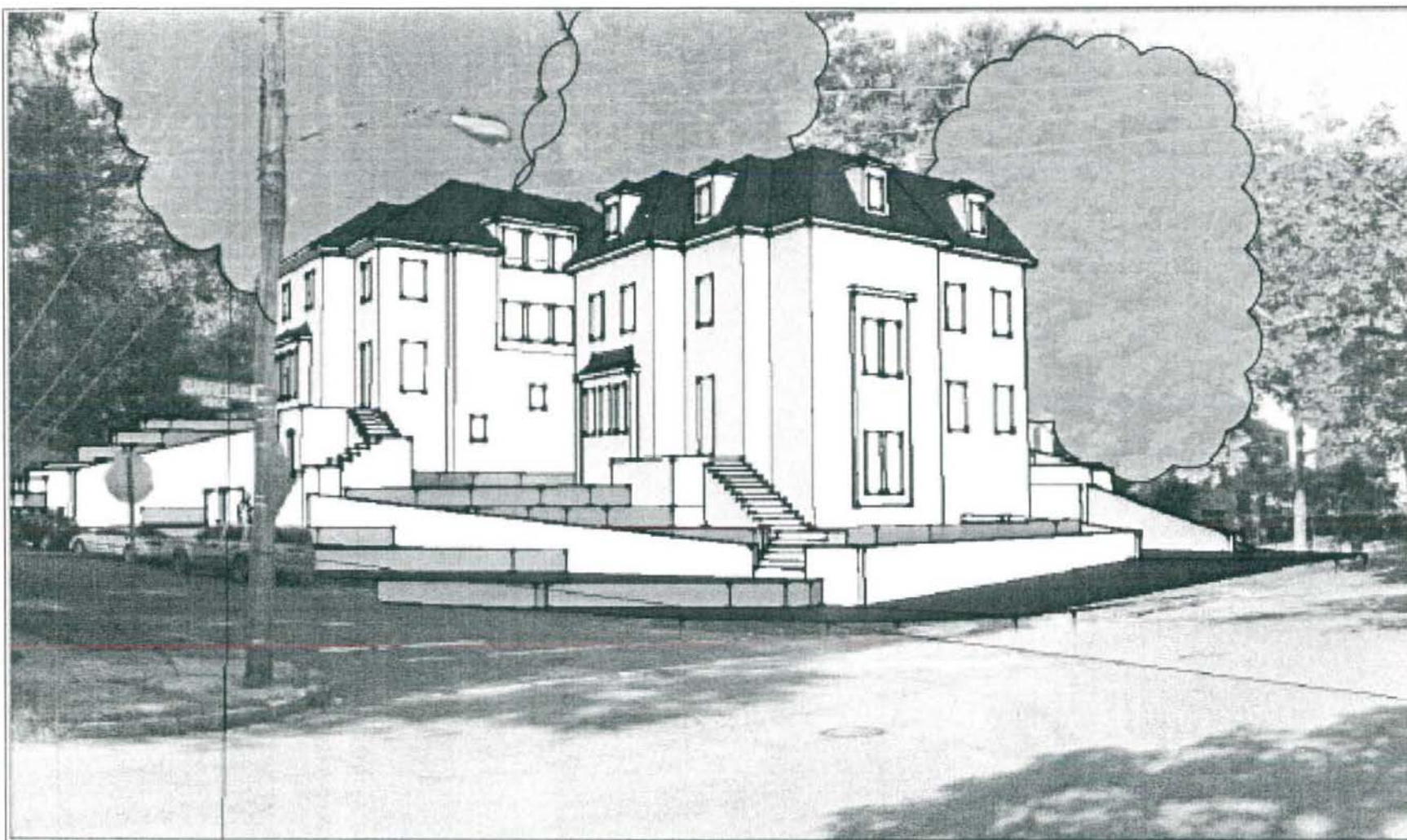


Woodley Park, R1-B



Woodley Park, R1-B







**BZA Appeal No. 18108 of
2910 Garfield Street, NW subdivision**

George Oberlander, AICP
October 5, 2010

DC's Comprehensive Plan

The purpose of DC's Comprehensive Plan¹ is to:

- **Guide growth** and neighborhood conservation
- **Protect low density, stable residential neighborhoods**
- Future development [] must be carefully managed to [] **protect and enhance the existing, scale, function, and character of these neighborhoods.**

1/ Approved by the Council of the District of Columbia. Reviewed by N.C.P.C. and considered by Congress.

Zoning regulations shall be made...

- With reasonable consideration to the **character of the respective district**
- **Encourage stability of districts** and land values therein

This ‘minor deviation’ impairs the purpose of the Regulations – Sec 101.1

- Section 101.1 paragraph (b) deals with “preventing undue concentration of population and the **overcrowding of land...**”
 - The deviation overcrowds the lot with an additional structure which the previous lot division avoided

This ‘minor deviation’ impairs the purpose of the Regulations – Sec 101.2

- Section 101.2 deals with “**character of the respective district**” and “encourage of stability of districts and land values”
 - The subdivision, when constructed, will affect the character of the neighborhood by changing the desirability of living adjacent and across the street

This ‘minor deviation’ impairs the purpose of the Regulations – Sec 200.2

- Section 200.2 states “the provisions [] are intended to **stabilize residential areas**”
 - The ZA permitting the subdivision and construction of two considerably larger structures has set bad precedents – and threatens the stability of R-1-B

Irregular shaped lots

- The subdivision design – with two irregular shaped lots on a sloping hill – **creates practical construction difficulties**
 - Requires extensive excavation
 - Requires substantial retaining walls
- Due to existing topography and size, **the lot is not suitable for subdivision**

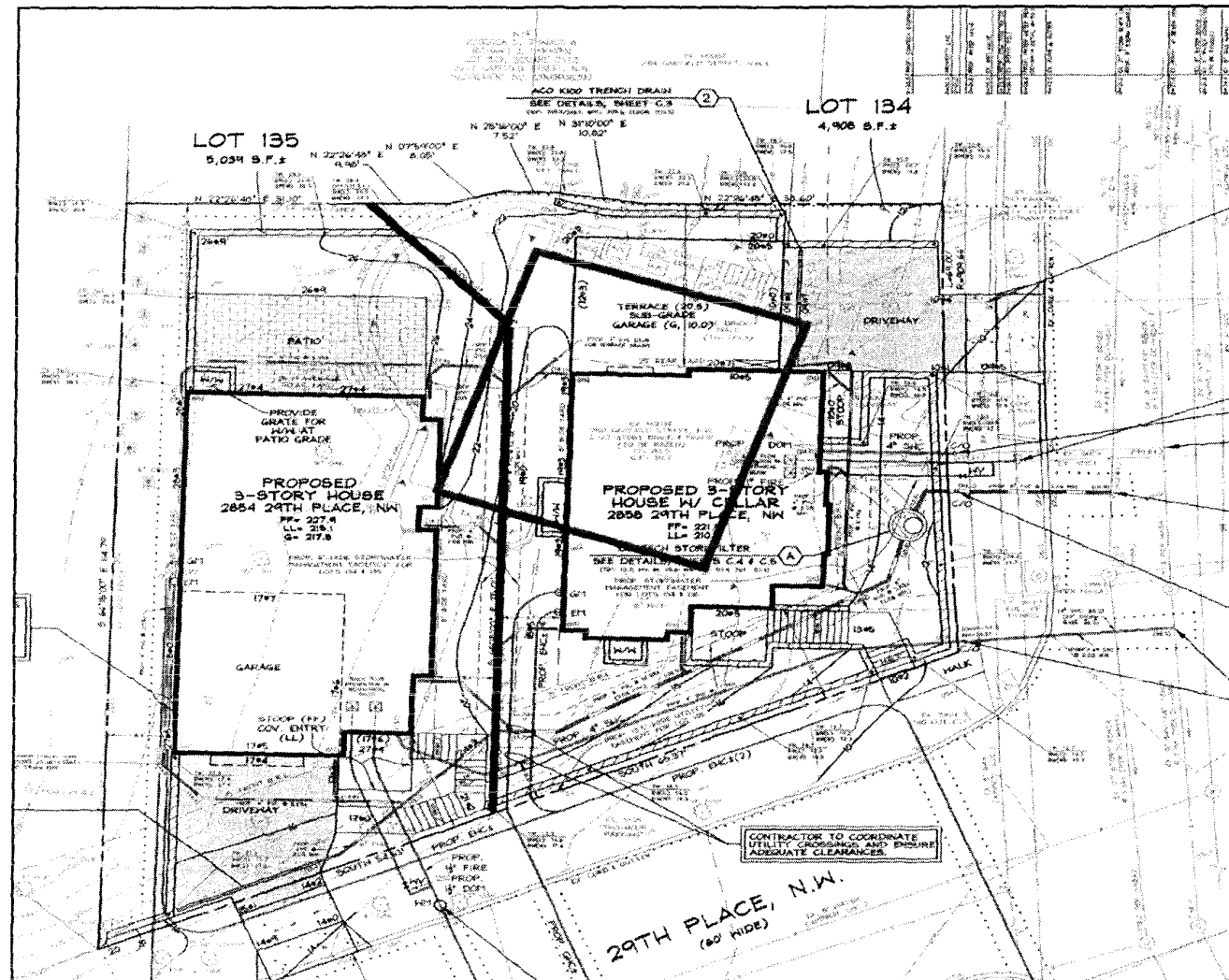
Irregular lots on hilly topography



Implications of the deviation

- **Lots were artificially shaped** in order not to exceed the 2% lot area deviation
- Steep topography of Lot A requires **extensive excavation and retaining walls** – changing the character of the immediate neighborhood
- Adding a new driveway on 29th Place **does not lessen congestion** on the street – one of the purposes of the Regulations

Irregular shaped lots



Further implications of the deviation

- The subdivision proposes to **eliminate 22 of 31 trees** on the lot – this will create condition unfavorable to health, prosperity, and recreation and can **impact property values** of the abutting lots
- The ZA did not consider the **suitability** of allowing two buildings, larger than customary, on smaller-than-neighboring lots.
- The ZA did not consider the possible adverse impacts on the nearby designated **Historic District**

Notice

- Applications for variances require public notice.
- Deviations from regulations do not provide any public notice

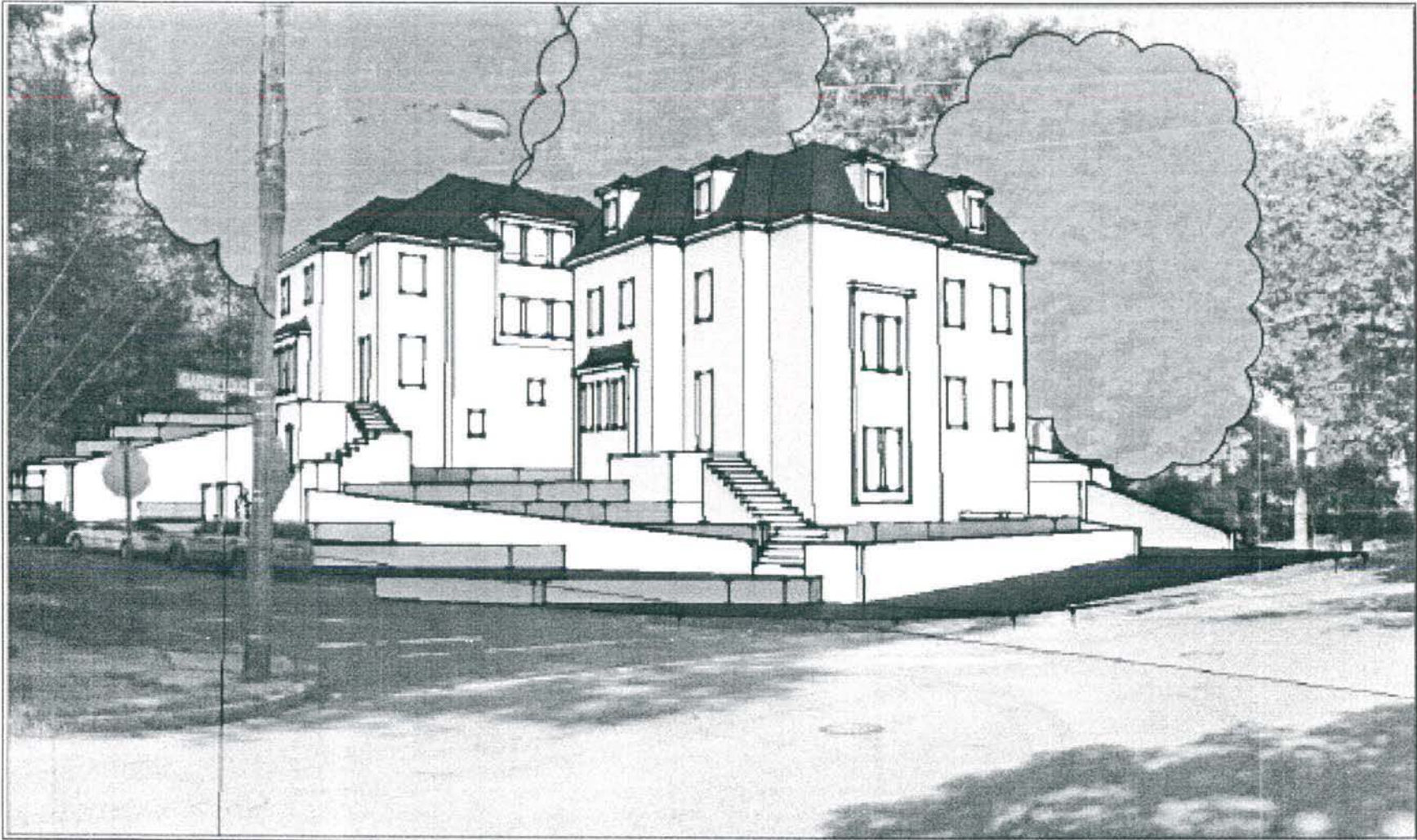
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This deviation is inconsistent with the Comprehensive Plan



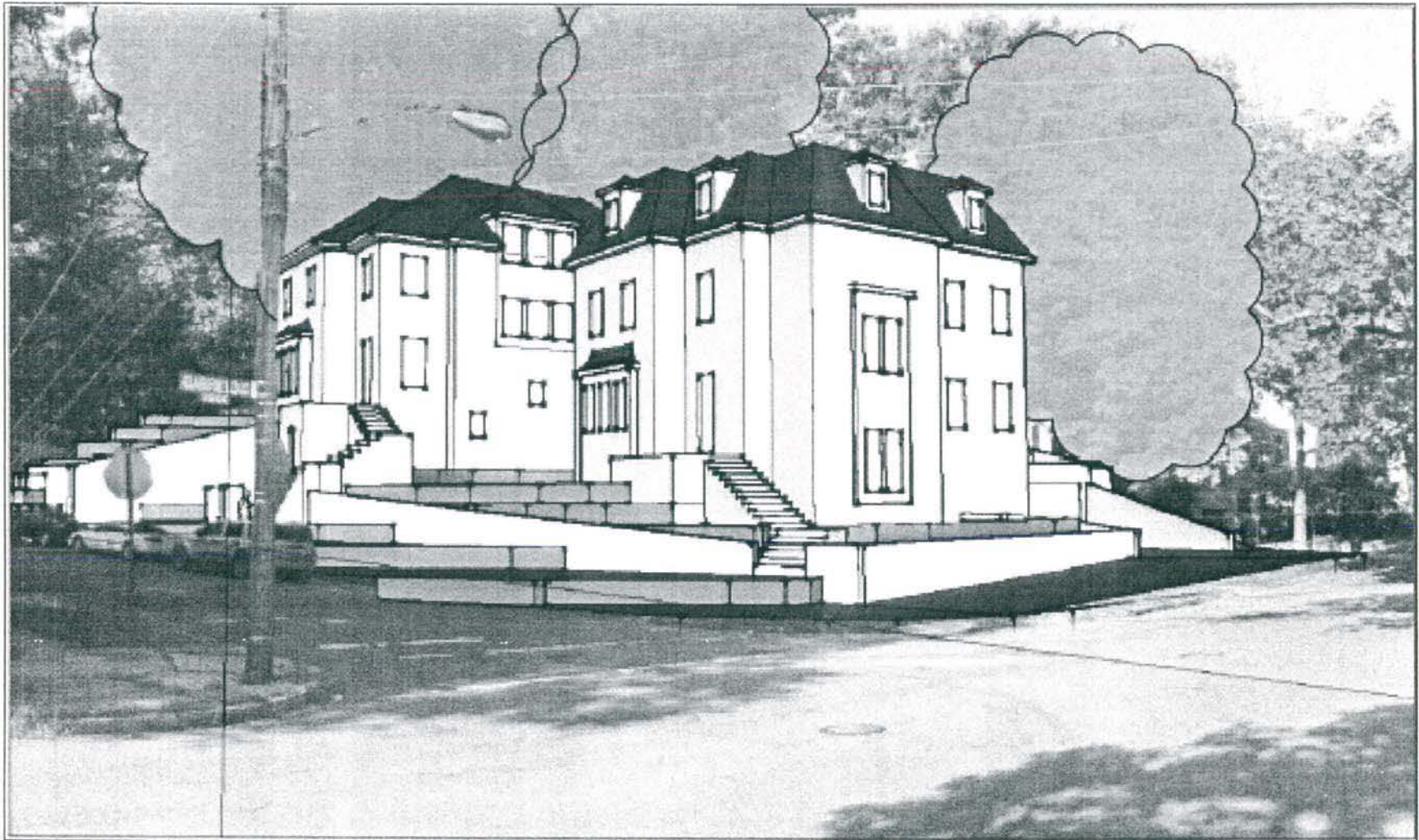
“Tear downs and mansionization”

- The Comprehensive Plan indicates the “tear downs and mansionization” is an issue in Woodley Park
- Sec 2307.3 (i) – **“the character of new development is an issue**, particularly as more homes are [] torn down and replaced with larger homes.”
- Sec 2308.5 - **“Height and density** for such development **should be appropriate** to the scale and character of adjoining communities”

“Tree removal”

- Sec 2307.3 (j) states – “**tree removal** and development on steep slopes...continues to cause erosion”.
- There is no evidence that the ZA considered this issue which **impacts health, safety, and protection of property**

This deviation is inconsistent with the Comprehensive Plan



Some responses

- ZA: The Board has previously upheld minor deviations.
 - None of the cited BZA rulings deals with the issues here.
 - No ruling dealt with criteria to be applied or application of Comprehensive Plan.
- ZP: Consistency with R-1-B is enough.
 - Then why did the Commission add “purposes” language?
 - *Tenley and Cleveland Park* case cited to say that BZA has no jurisdiction over “consistency” issues. Not so.
 - Case held that the newly enacted 1984 Comprehensive Plan was not “self-executing” and did not automatically bar development that was allowed under the existing Zoning Regs
 - Zoning Commission was responsible for adopting rules to implement that new Comprehensive Plan and to amend the Zoning Regs to assure their “consistency” on a going-forward basis.