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October 23, 2012

VIA HAND DELIVERY

Board of Zoning Adjustment
441 4th Street, N.W
Suite 210S
Washington, DC 20001

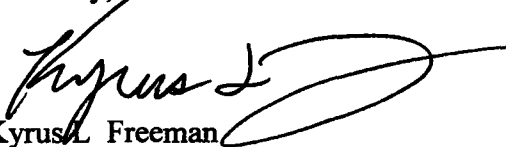
Re Application No. 18434 - PreHearing Statement

Honorable Members of the Board.

On behalf of the District of Columbia CVS Pharmacy, L L C and MacArthur Boulevard CVS, Inc , enclosed please find one original and twenty copies of the Applicant's prehearing submission in support of its application to the Board of Zoning for a special exception to continue the use of a parking lot (last approved by BZA Order No. 17680, dated December 4, 2007) under section 213, in the R-1-B District at premises 4817 U Street, N.W. (Square 1389, Lot 816).

Thank you for your attention to this application

Sincerely,


Kyrus L. Freeman

Enclosure

cc. Brandice Elliott, Office of Planning (Via Hand, with enclosure)
ANC 3D (Via U S. Mail, with enclosure)

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18434
EXHIBIT NO. 26

Board of Zoning Adjustment
District of Columbia
CASE NO.18434
EXHIBIT NO.26

**BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

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**APPLICATION OF
DISTRICT OF COLUMBIA
CVS PHARMACY, L.L.C.
4817 U Street, N.W.
(Square 1389, Lot 816)**

**BZA APPLICATION NO. 18434
HEARING DATE: NOV. 7, 2012
ANC 3D**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of the District of Columbia CVS Pharmacy, L.L.C. and its lessee, MacArthur Boulevard CVS, Inc. ("CVS"), in support of the application to the Board of Zoning Adjustment for a special exception to continue the use of a parking lot (last approved by BZA Order No. 17680, dated December 4, 2007) under section 213, in the R-1-B District at premises 4817 U Street, N.W. (Square 1389, Lot 816).¹

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment ("BZA" or "Board") has jurisdiction to grant the special exception relief requested pursuant to Section 3104.1 of the Zoning Regulations.

**III.
BACKGROUND**

A. Description of the Subject Property

The Subject Property consists of Lot 816 in Square 1389, the city block bounded by MacArthur Boulevard, N.W., to the west, U Street to the south, 48th Place and V Street to the north, and 48th Street to the east. See Exhibit A.

¹ The Applicant changed its legal name from First FSK L.P. to the District of Columbia CVS Pharmacy, L.L.C.

Fronting on U Street, the lot is rectangular in shape, measuring approximately 200 feet on U Street, with a depth of approximately 155 feet. The parking lot is located approximately ninety feet to the north of the CVS Store across U Street. The closest street intersection at MacArthur Boulevard and U Street, N.W., is located approximately 124 feet from the entrance driveway. The entrance is not fenced off and there is currently no fee for parking on the lot. Moreover, as shown in the photos attached hereto as Exhibit B, the Applicant has installed a "Pay & Display" kiosk on the parking lot. The installation of this system has helped to ensure that the parking spaces are reasonably available for other uses in the neighborhood.

The surface of the parking lot is paved with asphalt and comprises three-quarters of the site. Seventy-eight parking spaces are located on the parking lot. The grade slopes gently upward to the east curb of the parking area, then rises significantly at the unimproved portion of the site. Consisting of natural vegetation and landscaping, this steep berm extends the full depth of the lot and comprises twenty-five percent of the site. In addition, the Applicant has retained a commercial parking lot management company to manage the lot and to maintain its appearance and condition.

B. Description of Surrounding Area

The site is located in the R-1-B District, a residential district consisting of single family uses and certain other permitted uses. (11 DCMR § 201) To the east and north of the site are single family houses, which are screened from the parking lot by the thick vegetation and landscaping.

The parking lot is contiguous to the C-2-A District to the south and west located along MacArthur Boulevard. The C-2-A District is a community business area designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the city.

outside of the central core. Commercial uses along MacArthur Boulevard include Safeway Stores, Inc , an Exxon Service Station across MacArthur Boulevard, the CVS Store, as well as several other small commercial retail uses

C. Description of Proposal

CVS is the lessee of the parking lot at 4817 U Street, N.W , and proposes to continue the parking lot use as previously approved for an additional five year period The Board first granted approval for a parking lot use at this site in 1991 Most recently, the Board approved a five-year renewal of the parking lot use pursuant to BZA Order No. 17680, effective December 4, 2007 The parking lot is not required parking accessory to the CVS Store but is provided as a convenience to CVS patrons, neighborhood residents and other commercial uses in the neighborhood. The subject property has been used as a parking lot since 1946 pursuant to a series of special exception approvals granted by the Board (See BZA Order Nos 1662, 2566, 3688, 5391, 14001, 15064, 16311, 16722 and 16912) A copy of the most recent approval - BZA Order No. 17680 - is attached as Exhibit C.

IV.

**THE APPLICANT MEETS THE TEST FOR
SPECIAL EXCEPTION RELIEF TO CONTINUE THE EXISTING PARKING LOT USE
CONSISTENT WITH 11 DCMR § 213.**

A. Standard for Approving Special Exception Relief

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met In reviewing an application for special exception relief, "[t]he Board's discretion . is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) *quoting Stewart v*

District of Columbia Board of Zoning Adjustment, 305 A.2d 516, 518 (D C. 1973). If the applicant meets its burden, the Board must ordinarily grant the application. *Id*

B. Standard of Review for Parking Lot Special Exceptions

Under section 213, the Board may grant special exception relief for a parking lot in a residential district provided the conditions of that section are met. As demonstrated below, and through exhibits, testimony and other information to be submitted into evidence before the Board, CVS meets all the standards of section 213. The requested relief can be granted without materially impairing the intent and purpose of the Zoning Regulations, and the use will not tend to affect adversely the use of neighboring property.

1. Adjacency to an Existing Commercial District.

Section 213.2 of the regulations states that a "parking lot shall be located in its entirety within two hundred feet (200 ft.) of an existing Commercial or Industrial district." Section 213.3 further states that the "parking lot shall be contiguous to or separated only by an alley from a Commercial or Industrial district." Consistent with these requirements, the parking lot is located in its entirety within 200 feet of the C-2-A District. The commercial zone boundary line is contiguous with the western edge of the parking lot, as shown on the Zoning Map attached as Exhibit B. The lot then extends a total distance of 200 feet east from that boundary line, placing the entire lot within 200 feet of the C-2-A District.

2. Compliance with Chapter 23 of the Zoning Regulations

Section 213.4 of the regulations requires the applicant to comply with all the provisions of Chapter 23 of the Zoning Regulations. Consistent with this requirement, the parking lot complies with the following applicable provisions of Chapter 23.

a Impervious Paved Surface

Under section 2303 1(a), all areas devoted to driveways, access lanes, and parking areas must be paved and maintained with bituminous concrete or brick materials, or a equivalent materials, which form an all-weather impervious surface, and which is a minimum of four inches in thickness. Consistent with this provision, the subject parking lot is paved with impervious asphalt with a thickness of at least four inches.

b. Appropriate Layout

Section 2303 1(b) further requires that the lot must be designed so that no vehicle or any part of a vehicle projects over any lot line or building line. Consistent with this section, the southern edge of the parking lot is bordered with landscaping, which prevents vehicles from projecting over the lot line. To the north and west, a metal railing acts as a similar barrier to vehicles. Thus, the lot is in full compliance with this requirement.

c Limitation of Uses on the Site

The provisions of section 2303 1(c) prohibit any other uses from being conducted on the site, and do not allow any structures except for an attendant booth or an otherwise permitted use or structure. No other uses or structures are located on the parking lot, and thus the applicant is in compliance with this requirement.

d Limitation on Proximity to Intersection

Section 2303 1(d) also prohibits any vehicular entrance or exit to be located within forty feet of a street intersection, as measured from the intersection of the curb lines extended. Consistent with this provision, the parking lot entrance is approximately 124 feet away from the intersection of MacArthur Boulevard and U Street, N W.

e. Confinement of Light Rays to the Site

In order to protect adjacent property from unnecessary light wash, section 2303.1(e) requires that any lighting must be arranged so that all direct rays are confined to the surface of the parking lot. The installed lighting is consistent with this subsection. The light poles have been installed in the center area of the lot to ensure that light rays are directed downward and away from adjacent residential properties.

f. Maintenance and Landscaping of the Lot

Section 2303.1(f) sets forth several requirements regarding the appearance of the lot to maintain its compatibility with its residential surroundings. That section states that:

The parking lot shall be kept free of refuse and debris and shall be landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. Landscaping with trees and shrubs shall cover a minimum of five percent (5%) of the total area of the parking lot, or an area as determined by the Board of Zoning Adjustment for a parking lot otherwise requiring Board approval.

CVS has instituted several measures to ensure the cleanliness of the lot. A new maintenance contractor has been hired and the lot has been cleaned every three days and landscaping and lawn mowing services performed every ten days. The store manager also inspects the site daily and requests supplemental cleaning service, as necessary.

With respect to the landscaping requirement, the natural vegetation and landscaping along the eastern edge of the site comprises approximately twenty-five percent of the property, well in excess of the five percent minimum standard. Landscaping has been planted along this portion of the site to buffer adjacent residential uses from the parking lot. A privet hedge also borders the southern property line on either side of the entrance to the lot.

g Adequate Screening from Adjacent Residential Properties

Section 2303.2 further requires that a parking lot located in an R-1 District must be screened from all contiguous residential property by either a solid brick or stone wall at least one foot thick and 3.5 feet in height, or by evergreen hedges or trees, thickly planted and maintained, and at least 3.5 feet in height when planted. Consistent with these provisions, the parking lot is screened from the residential properties to the north by a masonry wall 2.5 feet in height, which is topped by a stockade fence 3.5 feet in height. A wooded area is also maintained in front of this fence. Along the eastern border of the property, evergreen trees at least 3.5 in height have been planted, which supplement the thickly growing natural vegetation on the unpaved portion of the site.

Section 2303.2 also reiterates the need for maintenance of the lot. As noted above, CVS has been maintaining the lot in a clean and orderly fashion.

3 Prohibition Against Dangerous Traffic Conditions

In order to protect the character and future development of the neighborhood, section 213.5 states that no dangerous or otherwise objectionable traffic conditions shall result from the use of the parking lot. Since 1946, the parking lot has been operated in a safe and orderly manner without creating any dangerous or objectionable traffic conditions. Further, in coordination with the Department of Public Works, in approximately 2001, CVS extended the public sidewalk along U Street to the entrance of the parking lot in order to enhance pedestrian safety in the neighborhood.

4. Convenience to Other Neighborhood Uses

Finally, sections 213.6 and 213.7 require the parking lot to be reasonably necessary and convenient to other uses in the vicinity, so that the likely result will be a reduction in overspill.

parking on neighborhood streets. The majority of parking spaces shall serve residential uses or short-term parking needs of retail, service, and public facility uses in the vicinity

Consistent with these sections, the parking lot provides a vital service to area retail and service uses, thereby preventing overspill parking on neighborhood streets and at the same time accommodating the needs of a local business. For example, the automobile service station across MacArthur Boulevard is also able to use the lot to park vehicles that have been repaired on a short-term basis. Similarly, the lot provides supplemental space for weddings, funerals, or other special services at Our Lady of Victory Church located across U Street from the site

**V.
WITNESSES**

- A. Representative of CVS
- B Representative of Parking Lot Management Company

**VI.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION**

- Exhibit A Portions of the Sanborn Atlas showing the Subject Property,
- Exhibit B Photographs of Subject Property,
- Exhibit C BZA Order No 17680,
- Exhibit D A portion of the Zoning Map showing the Subject Property,
- Exhibit E Site Plan of Parking Lot;
- Exhibit F Outline of Witness Testimony

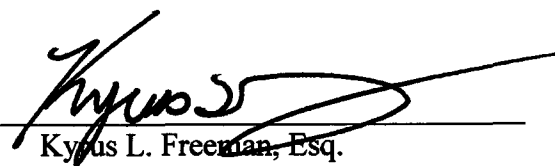
**VII.
CONCLUSION**

For the reasons stated above, the requested relief meets the applicable standards for a special exception relief under the Zoning Regulations. The granting of the application will be in harmony with the general purpose and intent of the regulations and will not adversely affect the use of neighboring properties. Accordingly, CVS respectfully requests the Board to grant the application and renew the parking lot use for a period of five years.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By

A handwritten signature in black ink, appearing to read 'Kyrus L. Freeman', is written over a horizontal line.

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